UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Pennsylvania State Democratic Party,

Plaintiff,

v.

Republican Party of Pennsylvania, Donald J. Trump for President, Inc., Roger J. Stone, Jr., and Stop the Steal, Inc.,

Defendants.

Case No. 16-5664

SURREPLY OF DEFENDANT DONALD J. TRUMP FOR PRESIDENT, INC. TO PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

Plaintiff's coordinated, nationwide scheme to disrupt the 2016 presidential election is coming apart at the seams. As of filing its reply, Plaintiff had lost two of its cookie-cutter lawsuits, a fact Plaintiff's reply ignored. And just today the Sixth Circuit unanimously overturned the one injunction Plaintiff was able to win in Ohio. Those cases prove there is no merit to Plaintiff's accusation that nearly half the electorate, led by a presidential campaign, is engaged in a "conspiracy" to intimidate voters. The cases also confirm that Plaintiff's request for an injunction is absurd. Make no mistake, Plaintiff is asking this Court—on the eve of a presidential election—to enjoin one party, and only one party, from engaging in constitutional speech. And to justify that outlandish ask? Tweets, decade-old news reports, and inflammatory, unsubstantiated allegations about white supremacists. Courts in Nevada and Arizona as well as the Sixth Circuit have seen Plaintiff's stunt for what it is; this Court should too.

In Nevada, Judge Boulware, after affording the plaintiff every opportunity to present evidence—indeed, holding three separate evidentiary hearings on the plaintiff's TRO request—denied relief in full. *See* Tr. of Mot. Hearing (Ruling), *Nevada State Democratic Party v. Nevada Republican Party*, No. 2:16-cv-02514 (Nov. 4, 2016) (Ex. A). Likewise, in Arizona, Judge Tuchi held an evidentiary hearing and then denied plaintiff's TRO request in a 25-page written order. Judge

Tuchi concluded the plaintiff failed to show a likelihood of success on the same two claims raised in this action. *See* Order, *Arizona Democratic Party v. Arizona Republican Party*, No. 16-cv-03752 (Nov. 4, 2016) (Ex. B). Judge Tuchi's lengthy, careful Order explained that the plaintiff had "not demonstrated it is likely to succeed in showing the statements and actions of Defendants to-date constitute intimidation, threat, coercion or force against voters for voting or attempting to vote in violation of" the relevant statutes. *Id.* at 24. The same holds here.

To be sure, a court in Ohio issued an injunction in one of Plaintiff's cases—which swept in wide-ranging entities, including the *Hillary Clinton Campaign*. *Ohio Democratic Party v. Ohio Republican Party*, No. 1:16-cv-02645, Order 3 (N.D. Ohio Nov. 4, 2016) (Ex. C). But that order was quickly and unanimously reversed by the Sixth Circuit, which concluded "the Plaintiff did not demonstrate before the district court a likelihood of success on the merits, and that all of the requisite factors weigh in favor of granting the stay." *Ohio Democratic Party v. Ohio Republican Party* No. 16-4268, order 2 (6th Cir. Nov. 6, 2016) (Ex. D at 2).

Returning to this case, nothing in Plaintiff's reply carries their motion above the exceedingly high standard for obtaining preliminary relief. In fact, most of what it says just confirms the infirmity of Plaintiff's allegations and the unconstitutionality of the requested injunction. This Court should deny Plaintiff's request to issue an unconstitutional injunction, as three other federal courts have.

ARGUMENT

I. There Is No Evidence The Campaign Has Called For Voter Intimidation

Plaintiff opens its argument by crowing (at 1) that "The Trump Campaign does not dispute that its leader and principal repeatedly has made these statements at public rallies in Pennsylvania and elsewhere, typically attended by tens of thousands of Trump's vocal supporters." The relevance of this concession is unclear. Perhaps Plaintiff thinks that as more people hear a particular person speak, the less that person is free to say what he thinks. In any event, Plaintiff quickly confirms it has unearthed no evidence whatsoever of any effort by the Campaign to engage in or encourage voter intimidation. The most Plaintiff can muster is to again (at 2) turn to a white supremacist who claims he is going to set up "hidden cameras" and send "an army" to "watch the polls." The Campaign has no connection to this supposed person, and Plaintiff knows it. The only effect of including such an outrageous discussion in Plaintiff's reply is to unmask this lawsuit for what it is—an effort to paint half the electorate as deplorables.

Eventually, Plaintiff tacitly concedes (at 4) that there is no evidence of a conspiracy to intimidate voters. Plaintiff argues it does not need to show past violations to be entitled to a preliminary injunction. That argument is understandable—since Plaintiff has no evidence—but it is also damning.

Plaintiff's request for emergency relief rests upon an alleged conspiracy

among the state Republican party, the Campaign, and others to "threaten, intimidate, and thereby prevent" voters from voting in the 2016 election. Compl. ¶ 1. But two district courts have already held—after lengthy evidentiary hearings with extensive live testimony and, in Nevada, actual discovery—that these accusations have no basis in reality. In Nevada, Judge Boulware ruled that the Nevada Democratic Party faced no irreparable harm because the Campaign and the Nevada Republican Party "are not involved . . . in activities that constitute voter intimidation or coercion." Ex. B at 7. Likewise, in Arizona, Judge Tuchi ruled that "the inferences necessary to reach a conclusion that there is a conspiracy to intimidate voters have reached the point of speculation." Ex. C at 19. Similarly, the Sixth Circuit found that the Plaintiff had not demonstrated a likelihood of success on the merits. Ex. D at 2.

Given the serious nature of Plaintiff's allegations—and the fact that three courts have already found them meritless—one would expect Plaintiff to have presented firm evidence that one of this State's two main political parties actively seeks to deny Pennsylvanians their fundamental right to vote. But that evidence is nowhere to be found in the 28-page Complaint, the 25-page motion for a TRO, or the 13-page reply. And Plaintiff has submitted no fact declaration.

Plaintiff does say cryptically in its reply (at 5) that it has identified "reports of voter intimidation in Philadelphia by those associated with Defendants [that]

have arisen in the recent past." That opaque claim appears to refer to the *more-than-ten-years-old prediction* by a newspaper that some "Republican volunteers" were going to "try to block" some people "from casing votes" and the report that some attorneys were challenging voter credentials. Cmplt. ¶ ¶ 44-45. As the Campaign has explained, even if these decade-old reports were true, they have no connection to the Campaign—which *did not exist over a decade ago*.

But surely Plaintiff has something more to demonstrate the likelihood that the Campaign will cause Plaintiff harm on Election Day? No. The best Plaintiff can find (at 4) is admittedly "subtle" evidence that supporters have been told to "watch." But "simply arguing there is voter fraud and urging people to watch out for it is not, without more, sufficient to justify the extraordinary relief that an injunction constitutes." *Arizona Democratic Party*, No. 16-cv-0375 (Ex. B, at 17). Plaintiff also (at 5) utters an un-cited claim that "unknown numbers of Trump's supporters are mobilizing for action." But not even this benign statement rises to the level of *intimidation*. The complete lack of evidence relating to force, threats, intimidation, or coercion, is apparent on the face of Plaintiff's motion and dooms Plaintiff's claims.

The absence of evidence here also distinguishes the lone case Plaintiff relies upon in arguing that past violations are not necessary to justify an injunction. In that case, there was concrete evidence of past intimidation. *Daschle v. Thune*,

TRO, Civ. 04-4177 (D.S.D., Nov. 1, 2004).[1] Indeed, as Judge Tuchi in Arizona wrote on Friday, distinguishing *Daschle*: "Without any of these several types of evidence, the Court is unable to evaluate in any meaningful way the likelihood of the harm Plaintiff urges will occur in terms of actual or attempted voter intimidation as a result of the Trump Campaign's statements." *Arizona Democratic Party*, No. 16-cv-03752 (Ex. B, at 18).

II. Plaintiff's Suggested Order Unconstitutionally Restricts Protected Speech

Plaintiff's next argument (at 6) is "[s]ensible limitations on 'poll monitoring' activities is consistent with the First Amendment." But Plaintiff is not seeking anything "sensible," or anything consistent with the First Amendment. Plaintiff's argument runs this way: The proposed order would only "restrain Defendants" from "voter intimidation." And since voter intimidation is not protected speech, Plaintiff's injunction does not offend the First Amendment. QED.

The problem, however, is how Plaintiff defines "voter intimidation."

[1] *United States v. Tan Duc Nguyen*, 673 F.3d 1259 (9th Cir. 2012), is inapposite. There, the defendant was convicted of obstruction of justice. *Id.* at 1261. Moreover, the case had nothing to do with an injunction; it was a criminal case. But to the extent the court's discussion of voter intimidation is relevant here, the *Nguyen* court made clear that there was direct evidence. Nguyen had targeted 14,000 "newly registered voters with Hispanic surnames," informing them in Spanish that "there is no incentive for voting in this country." *Id.* The letter also threatened to send their personal information to an anti-immigration organization if the newly registered voters voted. In this case, Plaintiff has come forward with nothing even remotely resembling those egregious facts.

According to Plaintiff, "[q]uestioning" a voter constitutes intimidation. Cmplt. ¶82(d). "How are you doing, George?" Enjoined. According to Plaintiff, "[f]ollowing" a voter is intimidation. *Id.* "Hold on; do you want an 'I voted' sticker?" Enjoined. According to Plaintiff, "taking photos" of voters is intimidation. *Id.* "Want a selfie?" Enjoined.

Judge Tuchi got it right in Arizona: "Plaintiff has not provided the Court with a narrowly tailored injunction that would not unintentionally sweep within its ambit other activities that constitute exercise of freedom of speech." *Arizona Democratic Party*, No. 16-cv-03752 (Ex. B, at 23). Moreover, any injunction could "have a chilling effect on protected First Amendment speech by others." *Id.* Plaintiff's injunction against "intimidation" is too imprecise to withstand First Amendment scrutiny. "It is settled that" restraints on speech "so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void, on its face." *Winters v. N.Y.*, 333 U.S. 507, 509 (1948). Plaintiff would surely prefer the Campaign and its supporters to remain silent on election day, but the First Amendment stands in the way.

The First Amendment also stands in the way of Plaintiff's reliance on accusations of voter fraud as evidence of voter intimidation. Plaintiff wholly ignores the long history Pennsylvania has when it comes to voter fraud by

Democrats. A history well evidenced by *Marks v. Stinson*, 19 F.3d 873, 878 (3d Cir. 1994), which continues today.[2] But whether concerns about fraud are legitimate (and they are), political speech "is at the core of what the First Amendment is designed to protect." *Morse v. Frederick*, 551 U.S. 393, 403 (2007). And what Mr. Trump has said is nothing more than that—political speech.

Similarly, Mr. Trump's call for supporters to volunteer as poll watchers is a legal request that Plaintiff cannot mute. The practice is explicitly sanctioned by Pennsylvania law. 25 Pa. Stat. § 2687(a).[3] Indeed, Plaintiff concedes (at 9) that inside poll watching by credentialed poll watchers is permitted. But Plaintiff quickly turns to arguing that Mr. Trump has encouraged individuals to violate Pennsylvania's county-residency requirement for poll watching. Of course, to be a certified poll watcher in Pennsylvania, one must be a resident of the county in which the voter serves as a watcher. *Id.* But that restriction only applies to certified watchers who can go *inside* the polling places. Nothing restricts Pennsylvanians (or any other person's—for example, the news media) right to

[2] Pennsylvania state police are investigating 7,000 potentially illegal registrations in Delaware and Philadelphia Counties. *See* Thomas Sullivan Declaration, Ex. R. As to corruption, Attorney General Kane, state Treasurer McCord, U.S. Rep. Fattah, a Philadelphia state senator, and five representatives were convicted or pled guilty to offenses in 2015 and 2016. Philadelphia's District Attorney has even established a task force to fight election fraud. *Id.* Ex. G-Q.

[3] Plaintiff also (at 7) tries to justify its injunction against "exit polling." Plaintiff inexplicably ignores the fact that the Campaign *has no intention of conducting exit polling*. The arguments on this score are thus irrelevant.

observe outside the polling place, so long as they do so ten feet from the polling place and in a manner that does not illegally disrupt the voting process. More to the point, Plaintiff does not even allege Mr. Trump was calling on non-residents to be official, credentialed poll watchers. And besides, Plaintiff has been recruiting an eclectic bunch of supporters—supporters it will presumably ensure do not try to proclaim themselves inside poll watchers on election day. *See* Sullivan Decl. Ex S-T.[4]

Plaintiff's last ditch effort to get around the First Amendment is to argue (at 8) that the real right at stake in this case is the right to vote. The Campaign respects every voter's right to vote for his candidate of choice. And Plaintiff has pointed to no evidence here—or in any of the *six* lawsuits it has filed—that the Campaign has done anything to undermine that sacrosanct right. It is not the Campaign that is trying to deny anyone's rights, it is Plaintiff.

III. The Court Should Not Issue a TRO the Afternoon Before The Presidential Election

"The Supreme Court has repeatedly instructed courts to carefully consider the importance of preserving the status quo on the eve of an election." *Veasey v.*

[4] No more availing is Plaintiff's loose invocation (at 10) of *DNC. v. RNC*, No. 81-3876 at 25 n.13 (D.N.J. Nov. 5, 2016). The Campaign was not a party to that case, nor was Plaintiff; and it involved a decades-old consent decree. Moreover, the DNC *lost* the case. In any event, the judge's comments had nothing to do with Pennsylvania's carefully structured regime governing poll watching.

Perry, 769 F.3d 890, 892 (5th Cir. 2014). Conducting an election is a logistically complicated task, and changing the ground rules shortly before election day causes "serious disruption of [the] election process." *Williams v. Rhodes*, 393 U.S. 23, 35 (1969). Further, "[c]ourt orders affecting elections . . . can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell* v. Gonzalez, 549 U.S. 1, 5 (2006). As a result of these considerations, courts "generally decline to grant an injunction to alter a State's established election procedures" "[w]hen an election is 'imminen[t]' and when there is 'inadequate time to resolve [ ] factual disputes' and legal disputes." *Crookston v. Johnson*, — F.3d —, No. 16-2490, 2016 WL 6311623, at *2 (6th Cir. Oct. 28, 2016) (quoting id. at 5–6). Indeed, three days ago, Judge Pappert rejected the Republican Party of Pennsylvania's lawsuit explaining it was too late: "[t]here is good reason to avoid last-minute intervention in a state's election process." *Republican Party of Pennsylvania v. Cortes*, No. 16-05524, slip op. 6 (E.D.Pa. Nov. 3, 2016). "Any intervention at this point," Judge Pappert wrote, "risks practical concerns including disruption, confusion or unforeseen deleterious effects." *Id.* And in this case, all of Mr. Trump's quoted statements were made a month ago. Yet Plaintiff waited to file suit until it was politically advantageous.

In a footnote (n.9), Plaintiff says *Cortes* was different, because there the plaintiff wanted to change the status quo. Here, Plaintiff claims it "seeks to

maintain the status quo." If that is all Plaintiff wants—an order that Defendants follow the law—then why are we here? Indeed, Pennsylvania already forbids voter intimidation and harassment generally. 25 Pa. Stat § 3527 (forbidding the "use [of] any intimidation, threats, force or violence with design to influence unduly or overawe any elector"). Federal courts do not issue "obey-the-law" injunctions absent compelling evidence the law will be broken. *See Belitskus v. Pizzingrilli*, 343 F.3d 632, 650 (3d Cir. 2003). But Plaintiff wants to have its cake and eat it too. On the one hand, it wants nothing more than a "fair, orderly" election: follow the law is all we are asking. Reply at 10 n.9. On the other hand, Plaintiff wants an order enjoining only one political campaign and its supporters from being able to "question" voters or "distribut[e] literature" regarding voter fraud. Proposed Order 2. Whichever injunction Plaintiff really wants, Plaintiff is not entitled to it.

Truth be told, however, Plaintiffs really wants the broadest, most malleable injunction possible. *See* Proposed Order 2. That way Plaintiff is armed with a federal sword if it sees a Trump supporter exercising his First Amendment rights. The requested injunction is, in reality, just an eleventh-hour attempt to revamp the rules governing poll watching, exit polling, and campaigning—turning those activities into potential violations of federal law.

In the past, the Supreme Court has concluded that orders changing election procedures even "weeks before an election" came too late. *Purcell*, 549 U.S. at 4.

For example, during the 2014 election season, the Supreme Court "halted three [lower court] decisions that would have altered the rules of [the] fall's general election [up to eight weeks] before it beg[an]." *Veasey*, 769 F.3d at 894; *see North Carolina v. League of Women Voters of N.C.*, 135 S. Ct. 6 (2014) (staying order entered on October 1). Similarly, during this election season, when a court of appeals issued an election-related order on November 4, the Supreme Court unanimously stayed the order the very next morning. *Tatum v. Arizona*, No. 16A460. "[T]he common thread is clearly that the decision of the [lower court] would change the rules of the election too soon before the election date." *Veasey*, 769 F.3d at 895. The Sixth Circuit did exactly the same thing today by staying the Ohio order. All of these cases confirm this Court should not issue an injunction the *day* before the election.

* * *

Plaintiff has brought forth no evidence to justify the outrageous injunction it wants. Three courts have rebuffed the claims this lawsuit is based on, and this Court should do the same. If Plaintiff prevails, this Court will either issue a needless follow-the-law injunction or a sweeping injunction that will chill core political speech. Either way, Plaintiff will have succeeded in co-opting the judiciary in Plaintiff's quest to upend the election mere hours before the polls open.

Plaintiff's motion should be denied.

Dated: November 6, 2016

Respectfully submitted,

/s/ Chad Readler

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Pennsylvania State Democratic Party, Plaintiff, v. Republican Party of Pennsylvania, Donald J. Trump for President, Inc., Roger J. Stone, Jr., and Stop the Steal, Inc., Defendants.	Case No. 16-5664 **DECLARATION OF THOMAS C. SULLIVAN, ESQ.**

I, Thomas C. Sullivan, Esq., being of full age and upon my oath according to law, hereby declare as follows:

1. I am an Attorney-at-Law admitted in the Commonwealth of Pennsylvania and State of New Jersey. I am an attorney at the law firm of Marks & Sokolov, LLC. Attorneys for Defendant Donald J. Trump for President, Inc. I am familiar with the facts related to this litigation.

2. Exhibit A attached hereto, is a true and correct copy of the ruling in *Nevada State Democratic Party v. Nevada Republican Party*, No. 2:16-cv-02514 (Nov. 4, 2016).

3. Exhibit B attached hereto, is a true and correct copy of the Order in *Arizona Democratic Party v. Arizona Republican Party*, No. 16-cv-03752 (Nov. 4, 2016).

4. Exhibit C attached hereto, is a true and correct copy of the Order in *Hillary Clinton Campaign, Ohio Democratic Party v. Ohio Republican Party*, No. 1:16-cv-02645, Order 3 (N.D. Ohio Nov. 4, 2016).

5. Exhibit D attached hereto, is a true and correct copy of the Order in *Ohio Democratic Party v. Ohio Republican Party* No. 16-4268 (6th Cir. Nov. 6, 2016)

6. Exhibit E attached hereto, is a true and correct copy of *Marks v. Stinson,* 1994 U.S. Dist. LEXIS 1586 (E.D.Pa. Feb. 18 1994).

7. Exhibit F attached hereto, is a true and correct copy of *Marks v. Stinson*, 19 F.3d 873 (3d Cir. 1994).

8. Exhibit G attached hereto, is a true and correct copy of an article published by the Washington Post on August 16, 2016 related to Kathleen Kane.

9. Exhibit H attached hereto, is a true and correct copy of an article published on February 18, 2015 by Philly.com at http://www.philly.com /philly/newspolitics/20150218_McCord_set_to_plead_guilty_to_extortion.html related to McCord guilty plea.

10. Exhibit I attached hereto, is a true and correct copy of an article published on June 21, 2016 by USA Today regarding Fattah.

11. Exhibit J attached hereto, is a true and correct copy of an article published on October 31, 2014 by Philly.com regarding Washington.

12. Exhibit K attached hereto, is a true and correct copy of a Philadelphia District Attorney press release published on December 16, 2015 regarding Bishop.

13. Exhibit L attached hereto, is a true and correct copy of an article published on June 8, 2015 regarding Brownlee.

14. Exhibit M attached hereto, is a true and correct copy of an article published by the Philadelphia Daily News on June 2, 2015 regarding James and Walter.

15. Exhibit N attached hereto, is a true and correct copy of an article published by the Philadelphia Daily News on September 22, 2016 regarding Acosta.

16. Exhibit O attached hereto, is a true and correct copy of a Philadelphia District Attorney Press Release dated November 3, 2014 regarding the new Election Fraud Task Force.

17. Exhibit P attached hereto, is a true and correct copy of a Philadelphia District Attorney Press Release dated June 24, 2915 regarding the Philadelphia DA issuing arrest warrants for three Philadelphia election officials for voter fraud.

18. Exhibit Q attached hereto, is a true and correct copy of a Philadelphia District Attorney Press Release dated May 18, 2015 regarding the Philadelphia DA issuing arrest warrants for four Philadelphia election officials for voter fraud.

19. Exhibit R attached hereto, is a true and correct copy of an article

published by Philly.com/Philadelphia Enquirer/Philadelphia Daily News on November 4, 2016 at:http://www.philly.com/philly/news/politics/20161104_ Meehan _claims__criminal_conspiracy__in_Delco_voter_registration_probe.html regarding the voter fraud raid in Delaware County.

20. Exhibit S attached hereto, is a true and correct copy of an article published by Philly.com/Philadelphia Enquirer/Philadelphia Daily News on November 6, 2016 at: http://www.philly.com/philly/news/politics/presidential/ 20161106_Fearing_a_Trump_presidency__they_traveled_from_Europe_to_help_ Clinton_s_campaign.html regarding Dutch citizens coming to help the Clinton campaign.

21. Exhibit T attached hereto, is a true and correct copy of the text of an article published by CNN on November 6, 2016 at: http://www.cnn. com/2016/11/04/politics/foreign-workers-us-elections/ regarding Australians helping the Clinton campaign.

I declare under penalty of perjury that the foregoing is true and correct.

November 6, 2016

Thomas C. Sullivan, Esq.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

NEVADA STATE DEMOCRATIC PARTY, Plaintiff, vs. NEVADA REPUBLICAN PARTY, DONALD J. TRUMP FOR PRESIDENT, INC., ROGER J. STONE, JR., and STOP THE STEAL, INC., Defendants.	Case No. 2:16-cv-2415-RFB-NJK Las Vegas, Nevada Friday, November 4, 2016 3:00 p.m. EXCERPT OF MOTION HEARING (RULING)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THE HONORABLE RICHARD F. BOULWARE, II,
UNITED STATES DISTRICT JUDGE

APPEARANCES: See the next page

COURT REPORTER: Patricia L. Ganci, RMR, CRR
United States District Court
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Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

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LAS VEGAS, NEVADA; FRIDAY, NOVEMBER 4, 2016; 3:00 P.M.

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P R O C E E D I N G S

THE COURT: Okay. So at this point in time the Court is going to deny the motion for a Temporary Restraining Order/Preliminary Injunction without prejudice as to the Nevada Republican Party and the Donald J. Trump Campaign. After reviewing the record in the case, the Court does not find that the plaintiffs have met their burden to be entitled to the injunctive relief that they seek. After reviewing the record and testimony in the case, the Court preliminarily makes the following findings.

The Court does not find that the Nevada Republican Party has been or plans to be engaged in poll watching or observing in this election cycle. The Court finds that the Nevada Republican Party has provided space for the Trump Campaign and is aware of the campaign's poll watching program, but that the Nevada Republican Party is not engaged in any substantial coordinating or organizing activities regarding the campaign's poll watching activities.

The Court finds that there is no evidence in the record that the Nevada Republican Party is engaging in any activities regarding exit polling.

The Court finds that the Trump Campaign does have an

active and current program involving poll watching, that it began training poll watchers around October 24, 2016, and that it compiled a list of names of volunteers from its website and other direct inquiries to create a list of poll watchers.

The Trump Campaign's poll watching program in Nevada is overseen by Jesse Law, a former employee of the Nevada Republican Party, who has no current responsibilities with or for the Nevada Republican Party. To date, Mr. Law has conducted or participated in all of the polling training for all of the campaign's poll watcher volunteers, and there have been approximately a dozen training sessions and between 100 and 400 watchers trained.

For this training, Mr. Law received from the campaign's national headquarters a PowerPoint slide presentation for training and a poll watcher's guide. The guide is handed out to all potential poll watchers. The PowerPoint is used for the required in-person training to become a poll observer.

The initial PowerPoint-guided training sessions were deficient and incomplete with respect to voter challenges. While it does not appear that Mr. Law intentionally left out information, the sessions had significant informational gaps. Specifically, the initial training did not fully explain and emphasize the requirements for asserting a voter challenge, including that the challengers must have personal knowledge of the facts that form the basis of the challenge, that the

challenger would have to attest to such facts under penalty of perjury, or that there could be civil or criminal penalties regarding improper or false challenges.

However, on November 3rd in the morning the campaign through Mr. Law sent out an e-mail to poll watchers addressing these deficiencies in the initial poll training. This e-mail fully explained the requirements for voter challenges and possible consequences for improper or false challenges. It emphasized that challenges were generally not likely and not encouraged by the campaign. It required poll watchers to contact the campaign before initiating any challenge, and the e-mail was, in fact, more restrictive than the legal requirements themselves.

With respect to polling incidents at poll locations, there is evidence of individuals who may have identified themselves as Trump supporters improperly disrupting and intimidating voters on one or two occasions in Las Vegas voting locations. There is, however, insufficient evidence or no direct evidence linking these incidents to the campaign. There is no evidence or sufficient evidence in the record that the campaign coordinated or directed any disruption of early voting and no sufficient evidence that it intends to do so on Election Day.

There is no evidence at all linking these incidents or any other incidents to the Nevada Republican Party. The Court

has no basis for finding that these alleged incidents were anything other than improper or unlawful acts carried out by individuals potentially acting on their own.

There is no record of any voter challenges having been made by the Nevada Republican Party or the campaign. And there is no evidence of improper voter challenges having been made -- any improper voter challenges having been made by the Nevada Republican Party or the campaign.

Based upon these findings, the Court finds that there is not a likelihood of success on the merits with respect to the plaintiff's claim. While the Court might have found that the initial deficient poll watcher training combined with various political statements might have led to circumstances in which campaign poll watchers could have improperly challenged voters leading to possible voter intimidation, the Court finds that the e-mails sent by the campaign on November 3rd addressed any issues or confusion that were created by the initial deficient poll training. Also, there is no evidence of voters having been improperly challenged by campaign poll observers.

There is an insufficient factual basis for the finding -- excuse me. There is an insufficient factual basis for finding that the two alleged incidents of voters being harassed or intimidated resulted from campaign activities or directions such that it would warrant the injunctive relief sought by the plaintiffs.

There is no likelihood of success on the merits regarding the Nevada Republican Party. There is no evidence of poll watching activity by the Nevada Republican Party. There is no evidence of voting challenges by the Nevada Republican Party, and no connection between any alleged incidents of voter intimidation and the Nevada Republican Party. Therefore, there would be no likelihood of success on the merits at this time as it relates to the Nevada Republican Party.

Given the Court's finding, the Court does not find that there would be irreparable harm as the defendants, specifically the Nevada Republican Party and the Donald J. Trump Campaign, are not involved as explained in activities that constitute voter intimidation or coercion. However, given the energy and emotion around this election cycle, the Court remains concerned about the possibility of voting disruptions without attributing this possibility to any particular entity or party.

Therefore, the Court will set a hearing for Tuesday at 2:30 to address any new issues raised by parties in any filing done by Tuesday at 1 p.m. If no such filing occurs, the Court will vacate the hearing at that time.

This lays out the Court 's reasoning for denying without prejudice the motion for a Preliminary Injunction and Temporary Restraining Order. Does either party have any comments about the Court's findings or any clarifications that it seeks at this point in time?

MR. HARDY: No, Your Honor.

MR. GOTTLIEB: No, Your Honor.

THE COURT: Okay. So is there anything else that we need to do today?

MR. GOTTLIEB: Not from our perspective, Your Honor.

MR. HARDY: I'm assuming that order will be published just as soon as we get out of the courtroom today?

THE COURT: Well, it depends upon what else we have to do. It may be published later. The Court -- it's not clear to me at this point in time, depending on what else we have to do, whether or not I'm going to issue a more formal written ruling. I don't know that I'm required to do that. That's why I try to be as explicit as I could be about the reasons why I was denying the TRO and Preliminary Injunction. I don't know that I actually am required to issue a written ruling given the explicit findings of the Court, Mr. Hardy, unless you think that the Court needs to do that.

MR. HARDY: I'm just curious because you seemed like you'd read it. I didn't know if you were reading it and you were going to publish that order or if it would just be merely a minute order that would come out.

THE COURT: Well, it depends on how much work you all have me do later on.

MR. HARDY: You've dealt with us for three days, so I don't want to push any farther.

THE COURT: If we're working together, we're working together. No, I did want to again give you all an opportunity, that's why I read it in court, if you thought that there were things that you wanted to comment on and suggest. That's why I read it in court and reviewed the findings in court. I think it's consistent with what I have said previously on the record so far.

So I don't know if there's anything else that we would need to address. And so at this point in time I might issue a minute order indicating whether or not I'm going to have a separate written order or simply rely upon the transcript. I don't know if there's any other legal basis that the Court would need to lay out in terms of its consideration of the motion.

Is there anything else that you think would need to be laid out, Mr. Hardy?

MR. HARDY: No, you're great there, Your Honor. Thank you.

THE COURT: Mr. Gottlieb?

MR. GOTTLIEB: No, Your Honor.

THE COURT: Okay. So, remember, before you leave today I would like all counsel to leave contact information, cell phones, too, please. We will not share that with the other side unless you want us to, but please leave all contact information such that you can be contacted over the weekend because I want to be clear about something. I don't really want to be in a

situation where any lawyer says, Well, we didn't get the message until Monday morning. We're going to send the messages on the contact information that you provide. So I expect that you will all be checking it, as I will have to be checking, over the weekend for anything that comes in.

Are we clear about that?

MR. SPRINGMEYER: Yes, Your Honor.

MR. JENSEN: Crystal clear, Your Honor. But what time are we coming back on Monday?

THE COURT: Oh, you're right. I did not set a time for that.

(Court conferring with courtroom administrator.)

THE COURT: 1:30 on Monday, the 7th.

(Court conferring with law clerks.)

THE COURT: Okay. We are adjourned on this matter. I'm going to stay on the bench for a few minutes. Thank you.

(Whereupon the proceeding concluded at 4:06 p.m.)

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COURT REPORTER'S CERTIFICATE

I, PATRICIA L. GANCI, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: November 4, 2016.

/s/ **Patricia L. Ganci**

Patricia L. Ganci, RMR, CRR

WO NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Arizona Democratic Party,

Plaintiff,

v.

Arizona Republican Party, *et al.*,

Defendants.

No. CV-16-03752-PHX-JJT

ORDER

In response to what it alleges to be a call for the intimidation of voters in next week's presidential election by Donald J. Trump for President, Inc. ("Trump Campaign"), the Arizona Republican Party ("ARP"), Roger J. Stone, Jr., and Stop the Steal, Inc., the Arizona Democratic Party ("ADP") filed this lawsuit a mere eight days before the election. Plaintiff ADP seeks injunctive relief for violations of the Ku Klux Klan Act of 1871, 42 U.S.C. § 1985(3), and Section 11(b) of Voting Rights Act of 1965, 52 U.S.C. § 10307(b). (Doc. 1, Compl.) After the Court set an expedited briefing and hearing schedule (Doc. 7), Plaintiff filed a Motion for Temporary Restraining Order and/or Preliminary Injunction (Doc. 10, Mot.), Defendants ARP and the Trump Campaign filed a Response (Doc. 15, GOP Resp.), and Plaintiff filed a Reply thereto (Doc. 22, Reply to GOP).

Plaintiff was only able to serve Defendant Stop the Steal on November 2, 2016 (Doc. 19), the day its Response to Plaintiff's Motion would have been due, and Plaintiff did not file a certificate of service with regard to Defendant Mr. Stone prior to the

Hearing (*see* Doc. 22-1). On November 3, 2016, the Court held a Hearing on Plaintiff's Motion. (Doc. 24.) Stop the Steal and Mr. Stone appeared through counsel at the Hearing for the purpose of contesting both service and the Court's jurisdiction over them in this matter. The Court denied Stop the Steal's motion to dismiss and reserved judgment on that of Mr. Stone. (Doc. 24.) The Court heard evidence and argument from all parties on Plaintiff's Motion and ordered briefing from Stop the Steal. (Doc. 24.) On November 4, 2016, Stop the Steal and Mr. Stone filed a Response (Doc. 27, STS Resp.), and Plaintiff filed a Reply thereto (Doc. 28, Reply to STS).

Considering all the evidence and arguments of the parties and for the reasons that follow, the Court will deny Mr. Stone's Motion to Dismiss (Doc. 24) and deny Plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction (Doc. 10).

I. LEGAL ANALYSIS

A. Standing

To bring a judicable lawsuit into Federal Court, Article III of the Constitution requires that one have "the core component of standing." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To satisfy Article III's standing requirements, a plaintiff must show that he suffered a "concrete and particularized" injury that is "fairly traceable to the challenged action of the defendant," and that a favorable decision would likely redress the injury. *Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000). In the complaint, the plaintiff must "alleg[e] specific facts sufficient" to establish standing. *Schmier v. U.S. Court of Appeals for Ninth Circuit*, 279 F.3d 817, 821 (9th Cir. 2002). Accordingly, courts should dismiss a plaintiff's complaint if he has failed to provide facts sufficient to establish standing. *See, e.g., Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1123 (9th Cir. 2010).

An organization has standing "to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy." *Warth v. Seldin*, 422 U.S. 490, 511 (1975). An organization also has "associational standing" to bring suit on behalf of its members "when its members would otherwise have standing to

sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc.*, 528 U.S. at 181 (citing *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)).

In the Complaint, Plaintiff alleges it has standing to bring this action both on behalf of itself and its members "because it is supporting many candidates in the Presidential, Senate, House, and numerous statewide elections" and will suffer immediate and irreparable injury if Defendants' alleged conspiracy to intimidate voters "succeeds in disrupting or changing the results of the election." (Compl. ¶ 14.) This is sufficient to establish Plaintiff's standing, *see Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008), and Defendants do not challenge Plaintiff's standing to bring its claims in this matter.

B. Mr. Stone's Motion to Dismiss for Lack of Service and Jurisdiction

At the Hearing, Mr. Stone, through counsel, moved to dismiss Plaintiff's claims against him for lack of service and lack of jurisdiction.[1] (Tr. at 43.) Since then, Plaintiff has filed a certificate of service with regard to Mr. Stone (Doc. 26), so the Court will deny as moot his motion with regard to service. The Court addresses his motion with regard to jurisdiction here.

In order for a federal court to adjudicate a matter, it must have jurisdiction over the parties. *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982). The party bringing the action has the burden of establishing that personal jurisdiction exists. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 182-83 (1936)); *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977). When a defendant moves, prior to trial, to dismiss a complaint for lack of personal jurisdiction, the plaintiff must "'come forward with facts, by affidavit or otherwise, supporting personal

[1] The Court denied a similar motion brought by Defendant Stop the Steal at the Hearing. (Tr. at 52.)

jurisdiction.'" *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986) (quoting *Amba Mktg. Sys., Inc. v. Jobar Int'l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977)).

Because there is no statutory method for resolving the question of personal jurisdiction, "the mode of determination is left to the trial court." *Data Disc*, 557 F.2d at 1285 (citing *Gibbs v. Buck*, 307 U.S. 66, 71-72 (1939)). Where, as here, a court resolves the question of personal jurisdiction upon motions and supporting documents, the plaintiff "must make only a prima facie showing of jurisdictional facts through the submitted materials in order to avoid a defendant's motion to dismiss." *Id.* In determining whether the plaintiff has met that burden, the "uncontroverted allegations in [the plaintiff's] complaint must be taken as true, and conflicts between the facts contained in the parties' affidavits must be resolved in [the plaintiff's] favor." *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002) (citation omitted).

To establish personal jurisdiction over a nonresident defendant, a plaintiff must show that the forum state's long-arm statute confers jurisdiction over the defendant and that the exercise of jurisdiction comports with constitutional principles of due process. *Id.*; *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 269 (9th Cir. 1995). Arizona's long-arm statute allows the exercise of personal jurisdiction to the same extent as the United States Constitution. *See* Ariz. R. Civ. Proc. 4.2(a); *Cybersell v. Cybersell*, 130 F.3d 414, 416 (9th Cir. 1997); *A. Uberti & C. v. Leonardo*, 892 P.2d 1354, 1358 (Ariz. 1995) (stating that under Rule 4.2(a), "Arizona will exert personal jurisdiction over a nonresident litigant to the maximum extent allowed by the federal constitution"). Thus, a court in Arizona may exercise personal jurisdiction over a nonresident defendant so long as doing so accords with constitutional principles of due process. *Cybersell*, 130 F.3d at 416.

Due process requires that a nonresident defendant have sufficient minimum contacts with the forum state so that "maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)); *see also Data Disc*,

557 F.2d at 1287. Courts recognize two bases for personal jurisdiction within the confines of due process: "(1) 'general jurisdiction' which arises when a defendant's contacts with the forum state are so pervasive as to justify the exercise of jurisdiction over the defendant in all matters;[2] and (2) 'specific jurisdiction' which arises out of the defendant's contacts with the forum state giving rise to the subject litigation." *Birder v. Jockey's Guild, Inc.*, 444 F. Supp. 2d 1005, 1008 (C.D. Cal. 2006).

Here, Plaintiff contends that the Court has specific jurisdiction over Mr. Stone through his actions in conjunction with and as a volunteer for Stop the Steal. The issue of whether specific jurisdiction will lie turns on the extent of the defendant's contacts with the forum and the degree to which the plaintiff's suit is related to those contacts. *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1210 (9th Cir. 2006). The Ninth Circuit uses the following approach in making this evaluation: (1) the nonresident defendant must do some act in or consummate some transaction with the forum, or perform some act by which it purposefully avails itself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or results from the defendant's forum-related activities; and (3) exercise of jurisdiction must be reasonable. *Data Disc*, 557 F.2d at 1287. All three requirements must be satisfied for the exercise of jurisdiction to comport with constitutional principles of due process. *Omeluk*, 52 F.3d at 270. The plaintiff bears the burden of establishing the first two prongs of the test. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). If the plaintiff does so, the burden shifts to the defendant to set forth a "compelling case" that the exercise of jurisdiction would be unreasonable. *Mavrix Photo, Inc. v. Brand Tech's., Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985)).

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[2] Plaintiff does not attempt to provide facts to support a finding of general jurisdiction over Mr. Stone.

With regard to the first element, the plaintiff must show the defendant "either (1) 'purposefully availed' himself of the privilege of conducting activities in the forum, or (2) 'purposefully directed' his activities toward the forum." *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155 (9th Cir. 2006) (quoting *Schwarzenegger*, 374 F.3d at 802). The Ninth Circuit has explained that in cases involving tortious conduct, as here, the purposeful direction analysis is most commonly applied. *Mavrix Photo*, 647 F.3d at 1228. Purposeful direction is determined by using the "effects" test that was developed in *Calder v. Jones*, 465 U.S. 783, 789-90 (1984). The effects test requires that "the defendant allegedly must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Yahoo!*, at 1206.

A defendant's intentional act in the forum state does not necessarily have to be wrongful or tortious. "In any personal jurisdiction case we must evaluate all of a defendant's contacts with the forum state, whether or not those contacts involve wrongful activity by the defendant." *Yahoo!*, 433 F.3d at 1207. Courts must consider "the extent of the defendant's contacts with the forum and the degree to which the plaintiff's suit is related to those contacts. A strong showing on one axis will permit a lesser showing on the other." *Id.* at 1210.

Plaintiff alleges and proffers some evidence that Mr. Stone and Stop the Steal have "engaged in the recruitment of individuals to come into the State of Arizona for the purpose of engaging in election monitoring and exit poll activities on Election Day in Arizona," including signing up 107 volunteers as of November 1, 2016, and that Mr. Stone has publicly and repeatedly tied himself to Stop the Steal. (Tr. at 47-50; Reply to STS at 3-6.) Though Mr. Stone's counsel argued that Mr. Stone is distinct from Stop the Steal in terms of these actions (Tr. at 46), Mr. Stone produced no evidence to contradict Plaintiff's evidence. The Court finds that, through the acts of recruiting and organizing exit poll takers to come to Arizona polling places, Mr. Stone has sufficient contacts with Arizona. Furthermore, it is undisputed that Plaintiff's claims arise from

those contacts. Because Mr. Stone made no argument that the Court's exercise of jurisdiction would be unreasonable, the Court finds it has jurisdiction over Mr. Stone in this matter. Accordingly, the Court will deny Mr. Stone's oral motion to dismiss on that basis.

C. Plaintiff's Motion for Injunctive Relief

The Supreme Court has observed that "a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (internal quotation and citation omitted). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted); *see also Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). The Ninth Circuit Court of Appeals, employing a sliding scale analysis, has also stated that, where there are "serious questions going to the merits" such that a plaintiff has not necessarily demonstrated a "likelihood of success," "a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met." *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1085 (9th Cir. 2013) (internal quotations and citations omitted).

1. Likelihood of Success on the Merits

Plaintiff brings claims under both the Voting Rights Act and Ku Klux Klan Act. Section 11(b) of the Voting Rights Act provides, "No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote" or "for urging or aiding any person to vote or attempt to vote." 52 U.S.C. § 10307(b).[3] The statute does not

[3] ARP and the Trump Campaign argue that an action under Section 11(b) of the Voting Rights Act requires a showing that a defendant intended to intimidate, threaten or coerce or attempt to intimidate, threaten or coerce a person for voting or attempting to

exclude a private right of action for injunctive relief, as Plaintiff has brought here. *Allen v. State Bd. of Elections*, 393 U.S. 544, 555-56 & n.18 (1969); *see also* 28 U.S.C. § 1343(a)(4).

The Ku Klux Klan Act provides that an injured party has a right of action for recovery of damages against a person who, with another person, "conspire[s] to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States." 42 U.S.C. § 1985(3).[4]

Arizona law also includes an anti-voter intimidation provision, which states it is a class 1 misdemeanor for a person, directly or indirectly, to knowingly "practice intimidation" or "inflict or threaten infliction" of "injury, damage, harm or loss" in order "to induce or compel" a voter "to vote of refrain from voting for a particular person or measure at any election provided by law, or on account of such person having voted or refrained from voting at an election." A.R.S. § 16-1013. In addition, Arizona more stringently controls the area within 75 feet of a polling place as posted by election officials. A.R.S. § 16-515. At any time the polls are open (except for the purpose of voting and for election officials), only "one representative[5] at any one time of each

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vote. (GOP Resp. at 22 (citing *Olagues v. Russoniello*, 770 F.2d 791, 804 (9th Cir. 1985)).) Plaintiff argues that an action under Section 11(b) only requires that a defendant intended to act, with the result that the actions intimidate, threaten or coerce or attempt to intimidate, threaten or coerce a person for voting or attempting to vote. (Reply to GOP at 4 (citing Section 11(b) of the Voting Rights Act); Reply to STS at 7-9.) While the Court agrees with Plaintiff that the plain language of the statute does not require a particular *mens rea*, the Court need not decide this question to resolve Plaintiff's Motion.

[4] ARP and the Trump Campaign argue that an action under 42 U.S.C. § 1985(3) requires a showing of racial animus and that the specific provision invoked by Plaintiff—the "support and advocacy clause"—cannot be applied against a non-state actor. (GOP Resp. at 17-19.) Plaintiff disagrees on both counts. (Reply to GOP at 4-8.) Again, the plain language of the statute does not require either of the elements proposed by ARP and the Trump Campaign. For the purpose of resolving Plaintiff's Motion, the Court presumes application of the "support and advocacy clause," like the other clauses in 42 U.S.C. § 1985(3), to ARP and the Trump Campaign as non-state actors. The Court need not read into the statute a racial animus requirement to resolve Plaintiff's Motion.

[5] For the purposes of this Order, the Court refers to these representatives provided

political party represented on the ballot who has been appointed by the county chairman of that political party and the challengers allowed by law" may be present within the 75-foot limit, and "[v]oters having cast their ballots shall promptly move outside" the 75-foot limit. A.R.S. § 16-515(A). Election officials, party representatives and challengers authorized by law to be within the 75-foot limit "shall not wear, carry or display materials that identify or express support for or opposition to a candidate, a political party or organization, a ballot question or any other political issue and shall not electioneer" within the 75-foot limit. A.R.S. § 16-515(F). The statute defines "electioneering" as expressing support for or against a political party, candidate or ballot measure "knowingly, intentionally, by verbal expression and in order to induce or compel another person to vote in a particular manner or refrain from voting." A.R.S. § 16-515(I). The statute also provides that no person shall take photographs or videos while within the 75-foot limit. A.R.S. § 16-515(G). A violation of any of these provisions is a class 2 misdemeanor. A.R.S. § 16-515(H).

For Plaintiff's claim under the Voting Rights Act, Plaintiff must demonstrate that Defendants acted or attempted to intimidate, threaten or coerce a person for voting or attempting to vote; similarly, for Plaintiff's claim under the Ku Klux Klan Act, Plaintiff must demonstrate that Defendants conspired to prevent a person from voting through force, intimidation or threat. Plaintiff claims that Defendants' statements to their constituents urging them to be present and observe the activities of other voters at polling places, to follow other voters and interrogate them as to their votes, to record other voters' license plates, to photograph and video-record other voters, and to call 911 if they suspect someone has engaged in voter fraud constitute at least an attempt to intimidate and/or threaten voters for voting or attempting to vote. (*E.g.*, Compl. ¶¶ 49, 51, 58.) Plaintiff also claims that the plan by Mr. Stone and Stop the Steal to conduct exit polls at

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for by statute and duly appointed as "credentialed poll watchers." The Court refers to those persons present to observe activities at a polling place who are not appointed under the statute as "uncredentialed observers."

carefully selected polling places is merely a pretext for intimidating minority voters. (*E.g.*, Compl. ¶¶ 36-39.)

a. Statements of the Arizona Republican Party

In conjunction with its claims against ARP, Plaintiff proffers evidence that, in a press release, ARP Chairman Robert Graham stated that the party's credentialed poll watchers "will be the eyes and ears of the GOP to look for those who show up with multiple ballots." (Doc. 11-2 at 6-8, Gonski Decl. Ex. 2.) Acknowledging that state law prohibits talking to voters or taking photographs in polling places, Mr. Graham stated that credentialed poll watchers are "still free to follow voters out into the parking lot, ask them questions, take their pictures and photograph their vehicles and license plate." (Gonski Decl. Ex. 2.) ARP spokesman Tim Sifert added that credentialed poll watchers are "free to go outside that 75-foot limit" and "[t]hat's where they can turn on their phone to take video or pictures or something like that." (Gonski Decl. Ex. 2.) Mr. Graham also stated that, if they believe a felony is in progress, credentialed poll watchers can call 911. (Gonski Decl. Ex. 2.) Plaintiff claims that these statements amount to a call for ARP's credentialed poll watchers to intimidate voters at polling places. Moreover, Plaintiff points to evidence that ARP is flooded with requests from people who would like to become credentialed poll watchers in the upcoming election—some of whom, Plaintiff asserts, the Trump Campaign recruited—to argue that ARP is cooperating with the Trump Campaign to intimidate voters on a wide scale.

Mr. Graham and Mr. Sifert made their statements in the context of a new Arizona law, A.R.S. § 16-1005(H)-(I), which prohibits a practice called "ballot harvesting," or collecting other people's ballots (with some exceptions, including family members and caregivers) and delivering them to polling places.[6] The press release makes the context of the ARP officials' statements clear; Mr. Graham states that the ARP's credentialed poll watchers are looking "for those who show up with multiple ballots." (Gonski Decl.

[6] The day after the Hearing, an *en banc* panel of the Ninth Circuit Court of Appeals ruled that the statute is constitutionally infirm and struck it down in Ninth Circuit Case No. 16-16698, Order dated Nov. 4, 2016. (*See* Reply to STS at 2.)

Ex. 2.) Contrary to Plaintiff's suggestion, nothing in these officials' statements to the press indicates that ARP is training or otherwise instructing its credentialed poll watchers, or anyone else, to follow voters to their cars or take their photographs for reasons other than suspected ballot harvesting. Both officials also state that Arizona law prohibits talking to voters or taking photographs at polling places, that is, within the 75-foot limit. (Gonski Decl. Ex. 2; *see also* Doc. 25, Transcript of Nov. 3, 2016 Hearing ("Tr.") at 71-72.)

At the Hearing, Mr. Graham testified that the Arizona Republican Lawyers Association ("ARLA") trains ARP's credentialed poll watchers and is responsible for the contents of the training manual. (Tr. at 58, 64-65.) He confirmed that ARP has received requests from approximately 1,000 people to be poll watchers for this election, compared to approximately 200 in past elections, but that ARP does not have the resources to train all of those interested before this election and those not trained will not become credentialed poll watchers. (Tr. at 59, 69.) Mr. Graham stated that in his time with ARP, there has never been an issue with credentialed poll watchers acting improperly in past elections. (Tr. at 71.) He also stated that ARP's credentialed poll watching program is provided for by law—the same as in past elections—and that ARP is not coordinating with the Trump Campaign or anyone else to organize any other poll watching activities. (Tr. at 57, 68, 71, 76-77.) Indeed, Mr. Graham testified that he had never heard of Stop the Steal or Mr. Stone before this lawsuit. (Tr. at 73-74.) Mr. Graham confirmed that his statements in the press were specifically aimed at the new ballot harvesting law and that, if the Ninth Circuit strikes down the ballot harvesting prohibition, ARP would instruct credentialed poll watchers not to photograph voters dropping off multiple ballots.[7] (Tr. at 72.) The Court heard no evidence of a broad conspiracy to intimidate voters through poll watching, as claimed by Plaintiff, or a plan by ARP to train or otherwise organize poll watchers with the Trump Campaign, Stop the Steal or Mr. Stone.

[7] After the Ninth Circuit did strike the ballot harvesting law, ARP filed a Notice (Doc. 30-2) that it was informing its credentialed poll watchers via its website not to follow or photograph voters suspected of ballot harvesting or, indeed, any voter.

Walter Opaska testified on behalf of ARLA, which has taken on the responsibility of training credentialed poll watchers for the Republican Party in Arizona. (Tr. at 81.) Mr. Opaska stated that ARLA trains credentialed poll watchers never to talk to or confront voters and not to lodge a "challenge" as provided for by law against any voter. (Tr. at 87-88.) Mr. Opaska stated that credentialed poll watchers do not have the authority to enforce the now stricken ballot harvesting law, or any other law, and if they suspect a voter is breaking the law, they are to report it to the elections inspector. (Tr. at 88-90.) He tells credentialed poll watchers that they may discreetly take photos or videos of a person suspected of breaking the law outside the 75-foot limit but never to interact with a voter. (Tr. at 87, 90-91.) While the training manual for credentialed poll watchers states that a voter could be suspected of ballot harvesting if he or she brings in three or more ballots, Mr. Opaska stated that he instructed credentialed poll watchers only to be suspicious of voters who come to the polling place with "10, 20, a box load of ballots"—an instruction that is no longer meaningful in the absence of a ballot harvesting prohibition. (Tr. at 86, 90.) He stated that, in the years he has been involved in the program, there has never been a report that a credentialed poll watcher for the Arizona GOP challenged a voter. (Tr. at 94.) The Court heard no evidence that ARP is affiliated with training poll watchers to engage in any activities that would on their face constitute intimidation, threat, coercion or force against any voter for voting or attempting to vote.

In its brief filed after the Hearing, Plaintiff provides a screen-shot of a page from ARP's website that states, "If you observe anything improper or illegal at the polls on Election Day please use this form to report it to the Arizona Republican Party. Submit any photos, videos, or other materials as evidence. Thank you for your service to ensure the integrity of elections in Arizona!" (Reply to STS at 3; Ex. 3.) Plaintiff argues that this statement contemplates activity beyond that which ARP claims it proscribes, both by encouraging members of the public to be uncredentialed observers at polling places by taking photos or videos of perceived illegal activity and by failing to advise uncredentialed observers that no photos or videos can be taken within the 75-foot limit.

(Reply to STS at 3.) On its face, there is nothing untoward about telling members of the public to say something if they witness the law being broken, and ARP's website does not exhort action for any specific perceived crime or against any specific type of person or group. The Court thus sees no obvious tie between the statement on the website and intimidation, threat, coercion or force against any voter for voting or attempting to vote. Moreover, Arizona law already provides that no photographs or videos can be taken within the 75-foot limit—a rule that everyone is obligated to follow—and ARP's website is not telling uncredentialed observers to break the law.[8]

Plaintiff likens ARP's statements regarding following and photographing a narrow group of voters suspected of ballot harvesting or breaking the law to actions that the District of South Dakota enjoined in the context of a prior election in *Daschle v. Thune*, No. 04-CV-4177 (D.S.D. Nov. 2, 2004). There, the court received evidence that individuals acting on behalf of the defendants in that case followed Native American voters from the polling places and copied or otherwise recorded their license plate numbers, and that the conduct resulted in intimidation of Native American voters, particularly through the resulting word of mouth among the Native American population. *Id*. The two cases are not similar, however. There, the defendants had already taken actions against a group of voters that the group already perceived as intimidation, and the court had evidence that defendants' actions were likely to suppress the vote. Here, Plaintiff produced no evidence that ARP's actions will result in voter intimidation. Indeed, although ARP publicly condoned the idea that its credentialed poll watchers could follow and photograph a voter outside the 75-foot limit in the narrow instance in which the voter was suspected of violating Arizona's new ballot harvesting law, that law is no longer valid. Credentialed poll watchers are trained not to talk to, confront, or interact in any way with the voter. ARP's public statements with regard to following and photographing voters outside the 75-foot limit were made only in the context of helping

[8] After the Ninth Circuit struck the ballot harvesting law, ARP filed a Notice declaring that it removed the subject page from its website. (Doc. 30-2.)

law enforcement enforce the now-invalid ballot harvesting law and could not reasonably have been read to address voters generally, much less intimidate them. Moreover, credentialed poll watchers for both political parties are established and regulated by Arizona law, and there is no evidence of even a single incident between a credentialed poll watcher and voter since at least 2006—the period of time Mr. Opaska has been involved with the ARLA credentialed poll watcher training.

With regard to the statement on ARP's website, it is tailored to recording somebody suspected of breaking the law and it is not on its face tied to voter intimidation. The Court also heard no evidence of coordination between ARP and the other Defendants such that statements of the other Defendants could be tied to ARP. As a result, the Court cannot find that Plaintiff is likely to succeed in showing ARP's statements constitute intimidation, threat, coercion or force against voters for voting or attempting to vote in violation of the Voting Rights Act and/or the Ku Klux Klan Act.

b. Statements of the Trump Campaign

In its pleadings, moving papers and presentation to the Court, Plaintiff identified various statements made by the candidate, his surrogates and campaign officials that, it argues, show both an intent on the part of the Trump Campaign to intimidate voters and intimidation in fact. Plaintiff pointed to an unnamed Trump Campaign official recently telling reporters that "[w]e have three major voter suppression operations under way," which Plaintiff summarized as targeting "Latinos, African Americans, and other groups of voters." (Compl. at 1.) It introduced news articles relating Mr. Trump's own statements at campaign rallies and before the media that the election is "rigged" and that widespread voter fraud will favor his opponent. Plaintiff relates additional statements by Mr. Trump to his supporters that, "[a]s opposed to somebody coming up and voting 15 times for Hillary[,] I will not tell you to vote 15 times. I will not tell you to do that. You won't vote 15 times, but people will. They'll vote many times, and how that could have happened is unbelievable." (Gonski Decl. Ex. 18.)

During a speech given in Pennsylvania, Mr. Trump told attendees, "I hope you people can sort of not just vote on the eighth [but] go around and look and watch other polling places and make sure that it's 100 percent fine. . . . Go down to certain areas and watch and study, make sure other people don't come in and vote five times." (Gonski Decl. Ex. 11.) The following week, while exhorting followers to "go out and watch" for voter fraud, Mr. Trump told attendees, "[a]nd when I say 'watch,' you know what I'm talking about, right?" (Gonski Decl. Ex. 19.) In Michigan, the candidate told those present to "[g]o to your place and vote, then go pick some other place, and go sit there with friends and make sure it's on the up and up." (Gonski Decl. Ex. 20.)

Plaintiff introduced as evidence additional media reports that campaign spokespersons were to emphasize talking points stating, among other things, "We have []seen very significant recent voting irregularities across the country from Pennsylvania to Colorado and an increase in unlawful voting by illegal immigrants"; "Non-citizen votes may have been responsible for Barack Obama's narrow margin of victory in North Carolina in 2008"; and, "More than 14 percent of non-citizens surveyed in 2008 and 2010 [] said they were registered to vote." (Gonski Decl. Ex. 10.)

Finally, Plaintiff provided pages from the Trump Campaign website where those interested could "Volunteer to be a Trump Election Observer" to "Help [Trump] Stop Crooked Hillary From Rigging This Election," which had fillable fields asking for an entrant's name, contact information and date of birth. (Gonski Decl. Ex. 3.) From the above statements, talking points and webpage, Plaintiff urges the conclusion that the Trump Campaign has intimidated, threatened or coerced persons for voting, or attempts to so intimidate, threaten or coerce such persons in violation of the Voting Rights Act. Plaintiff also urges the conclusion that the Trump Campaign and its co-Defendants have conspired to prevent voters from voting by intimidation or threat, or to injure them for voting, in violation of the Ku Klux Klan Act.

Plaintiff's evidence regarding the Trump Campaign is insufficient to demonstrate a likelihood of success on the merits of either its Voting Rights Act claim or its Ku Klux

Klan Act claim. First, at least some of the Trump Campaign's statements on which Plaintiff relies are taken out of context because they were abbreviated, and when considered in full, do not persuade at all that they evince an intent to intimidate voters, or to coordinate or conspire with others to deny the vote to anyone; nor when read in full would the statements have the effect of intimidating a voter. The quote that the campaign had "three major voter suppression operations underway," which Plaintiff summarizes as against Latinos, African Americans, and others, without more, leads a reader to conclude that the "suppression" referred to is to be achieved by denying the vote to certain groups, and that the only groups being "suppressed" are minority voters. A reading of the full text of the article provides a different meaning:

> "We have three major voter suppression operations under way," says a senior official. They're aimed at three groups Clinton needs to win overwhelmingly: idealistic white liberals, young women, and African Americans. Trump's invocation at the debate of Clinton's WikiLeaks e-mails and support for the Trans-Pacific Partnership was designed to turn off Sanders supporters. The parade of women who say they were sexually assaulted by Bill Clinton and harassed or threatened by Hillary is meant to undermine her appeal to young women. And her 1996 suggestion that some African American males are "super predators" is the basis of a below-the-radar effort to discourage infrequent black voters from showing up at the polls—particularly in Florida.

Inside the Trump Bunker, With Days to Go, Joshua Green and Sasha Issenberg, Bloomberg Business, October 27, 2016. The full text makes clear the speaker uses the word "suppression" to describe efforts to persuade voters not to vote for Hillary Clinton by pointing out issues on which the Trump Campaign believes her positions do not appeal to those voter demographic groups—not any effort to deny the vote by intimidation or otherwise. The quote also makes clear that the Trump Campaign is targeting its arguments against voting for Ms. Clinton to groups beyond minorities. The quotation from the unnamed campaign official is not persuasive of any element of proof required here.

Second, whether true or false, and whether appealing or repugnant to the listener, Mr. Trump's and his agents' statements that the election is rigged, that voter fraud is

being perpetrated *en masse* by "illegal aliens," and that his supporters should go to polls and watch to ensure a fair election, without more, simply do not prove actual or likely intimidation. One can seriously question the wisdom of stirring up supporters about a controversial issue, encouraging them to go to a precinct that is not their own, and telling them to look for "voter fraud" without defining what it is, leaving individuals to their own devices to figure out how to go about that task.[9] If the objective of observing is to detect persons voting more than once, the fact that the observer is in a precinct not their own, whether in the next town or the next state, only adds to the difficulty of recognizing a voter coming through the line more than once. And if the objective of observing, as strongly suggested by the candidate's statements, is to detect persons attempting to vote who are ineligible because they are not citizens, it is beyond question that no one can tell a person's citizenship based on what that person looks like or sounds like. But whatever the shortcomings of the Trump Campaign's statements on this issue might be, simply arguing there is voter fraud and urging people to watch out for it is not, without more, sufficient to justify the extraordinary relief that an injunction constitutes.

Plaintiff bears the burden of providing the evidence to take its claims from a nebulous concern over Defendants' statements, to a likelihood that the named Defendants and those acting in concert with them will intimidate, threaten, coerce, or attempt to intimidate, threaten or coerce, voters. Plaintiff has produced no evidence that anyone who signed up on the Trump Campaign website was ever contacted to follow up or connect them with a polling place. It produced no evidence that the Trump Campaign organized, trained or otherwise facilitated any volunteer's actual attendance at a polling place as an

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[9] Indeed, among other evidence, Plaintiff produces a Tweet from a Trump supporter in Florida stating he planned to be "wear'n red at polls," "watch'n fer shenanigans," and "haul ya away," accompanied by a photo of a pickup truck and a person-sized cage built in the bed, surrounded by American flags. (Gonski Decl. Ex. 7.) An Ohio supporter stated, "it's called racial profiling. Mexicans. Syrians. People who can't speak American. I'm going to go right up behind them. I'll do everything legally. I want to see if they are accountable. I'm not going to do anything illegal. I'm going to make them a little bit nervous." (Gonski Decl. Ex. 6.) While these statements are deeply troubling, they do not illustrate an organized effort to intimidate voters in this jurisdiction, but rather appear to be outlier statements from other jurisdictions. Enjoining Defendants in this action is not likely to address those statements.

observer, in Arizona or elsewhere. It produced no evidence of any specific actions that observers would take, things they would say, or other facts that would allow the Court to evaluate whether such actions or statements could or would constitute intimidation, instead inviting the Court to conclude that the Trump Campaign's general exhortations to watch polling places is enough, and largely to speculate about what will come of them.

Plaintiff produced no evidence that the Trump Campaign had engaged in voter intimidation in Arizona in the past. And despite that early in-person voting has been ongoing in Arizona for over three weeks, it produced no evidence of any attempts at voter intimidation, or any voter reporting they felt intimidated, during this cycle. This places the instant case in vastly different territory than *Daschle v. Thune*, where, as discussed above, the court had before it concrete examples of voter intimidation by the defendants' supporters that had actually occurred during early voting, thus removing any air of speculation about likelihood of harm to voters or the plaintiff.[10]

Without any of these several types of evidence, the Court is unable to evaluate in any meaningful way the likelihood of the harm Plaintiff urges will occur in terms of actual or attempted voter intimidation as a result of the Trump Campaign's statements. For that reason, Plaintiff is unlikely to succeed on the merits of its Voting Rights Act claim. Nor is Plaintiff likely to succeed on the merits of its claim under the Ku Klux Klan Act, as it has not presented sufficient evidence of a conspiracy between the Trump Campaign and any co-Defendant to suppress votes in Arizona. As discussed above, the uncontroverted evidence at the hearing was that ARP did not communicate with the Trump Campaign on this topic and that the poll watching manual made available to all credentialed Republican poll watchers advises them not to contact voters directly and states that as a general matter, credentialed poll watchers do not challenge voters.

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[10] The Court notes, as have other district courts considering similar matters, that should evidence arise on or before November 8, 2016, demonstrating harm or likelihood of harm as a result of Defendants' actions, it would entertain renewal of Plaintiff's Motion.

As for Defendants Stop the Steal and Mr. Stone, whatever communications may occur between them and the Trump Campaign, Plaintiff has not produced evidence sufficient to persuade the Court that they have conspired to intimidate voters, based on the same analysis as above. The Court agrees with Plaintiff's counsel that it may make inferences from what evidence exists. But at some point the inferences become so attenuated as to be speculative. In the Court's judgment, based on the evidence before it, the inferences necessary to reach a conclusion that there is a conspiracy to intimidate voters have reached the point of speculation.

c. Statements of Stop the Steal and Mr. Stone

Plaintiff has proffered evidence that Stop the Steal's planned exit polling is illegitimately designed to target Democratic-leaning and majority-minority districts, rather than legitimate exit polling, which requires broad geographical distribution to produce unbiased, reliable results. (Doc. 12, Mellman Report and Decl. at 1.) This may be true. However, as Stop the Steal's counsel iterated, there is no requirement that exit polls be scientific. (Tr. at 158-59 ("Stop the Steal isn't required to be scientific. It's not even required to succeed. It may fail.").) Nor is Stop the Steal or Mr. Stone required to operate a polling firm in order to conduct exit polling. There is no law or regulation requiring any exit polling to be standardized, reliable, or to serve any purpose, much less a legitimate one—only that it not serve an expressly illegitimate one. Therefore, it is not for the Court to decide whether or not resultant information may be of use. Instead, the Court must determine whether or not such activity, be it called "exit polling" or anything else, violates voters' rights.

At base, Stop the Steal is not prohibited from conducting exit polling, so long as it does so in accordance with all applicable laws and regulations. *See Daily Herald Co. v. Munro*, 838 F.2d 380, 390 n.8 (9th Cir. 1988) (upholding District Court's finding that exit polling did not interfere with citizens' right to vote without showing that polling was disruptive, intended to interfere with any voter's rights, or that someone did not vote or voted differently due to polling). Unscientific, targeted, unreliable, and even useless exit

polling, by itself, does not violate any voters' rights. Without a demonstration that Stop the Steal's planned exit polling is likely to intimidate, the Court may not enjoin it from conducting its polling. Plaintiff has failed to proffer any evidence that any voter is likely to be intimidated, threatened, or coerced due to the polling. Instead, Plaintiff offers conclusory statements based only on the purported motivation of Stop the Steal and its members. If Stop the Steal does intend to conduct its polling only at Democratic-leaning or majority-minority districts, its actions are facially suspicious. And neither Stop the Steal nor Mr. Stone have offered legitimate reasons for conducting polling in those targeted locations. But Plaintiff does not offer the vital evidentiary components that would allow the Court to infer likely or intended intimidation: precisely what Stop the Steal plans to do, where it plans to do it, how such conduct will intimidate voters, or even if the exit polling will ultimately occur. (Mellman Report and Decl. at 1.) The factually unsubstantiated, though informed, opinion of Plaintiff's expert does not obviate the need for further evidence of either Stop the Steal's alleged stratagem to intimidate non-white voters, or indeed any evidence of what Stop the Steal will do at the polls. Without such evidence, the Court cannot evaluate whether Stop the Steal's activities might constitute intimidation or not.

Plaintiff has also produced evidence that Stop the Steal and Mr. Stone recruited and mobilized groups of volunteers known as "vote protectors," who are encouraged to identify themselves as reporting for vote protectors, approach voters at the polls, and inquire about election fraud. (Gonski Decl. at Ex. 23; http://stopthesteal.org.) Plaintiff also alleges that Mr. Stone is using social media to urge potential uncredentialed observers to wear red shirts on Election Day. (Compl. ¶ 35.) However, there is no prohibition regarding the clothing of uncredentialed observers at polling locations, nor has Plaintiff provided any legal precedent holding that such activity is unconstitutional, likely to intimidate voters, or will otherwise hinder voter participation. Neither the encouragement of the activities alleged, nor the activities themselves are *per se*

prohibited. It is Plaintiff's burden to illustrate that these activities are likely to intimidate, threaten, or coerce voters. The evidence educed has failed to do so.

2. Likelihood of Irreparable Harm

While a large portion of ARP and the Trump Campaign's brief focuses on what is purportedly the second part of the four-factor test (GOP Resp. at 4-7), they instead articulate that there is no evidence that the alleged harms have occurred or are likely to occur. This argument is properly placed in the first part of the four-factor test—likelihood of success on the merits. In analyzing the irreparable harm factor, the Court does not assess the likelihood that such harm will occur, but, if such harm does occur, whether it will be irreparable.

In doing so, it is clear that abridgement of the right to vote constitutes irreparable injury. *Reynolds v. Sims*, 377 U.S. 533, 562 (the right to vote is "a fundamental political right, because [it] is preservative of all rights"); *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'") (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *Cardona v. Oakland Unified Sch. Dist., California*, 785 F. Supp. 837, 840 (N.D. Cal. 1992) ("Abridgement or dilution of a right so fundamental as the right to vote constitutes irreparable injury."); *see also Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) ("A restriction on the fundamental right to vote . . . constitutes irreparable injury.") (internal citation omitted). Consequently, if potential members of the electorate suffer intimidation, threatening conduct, or coercion such that their right to vote freely is abridged, or altogether extinguished, Plaintiff would be irreparably harmed. Further, if some potential voters are improperly dissuaded from exercising their franchise, it is unlikely those voters can be identified, their votes cannot be recast, and no amount of traditional remedies such as money damages would suffice after the fact. This factor weighs in favor of a preliminary injunction.

3. Balance of Equities and the Public Interest

Because Plaintiff brings this action not only on behalf of the Arizona Democratic Party, but also unidentified potential voters (*see, e.g.*, Mot. at 15-16), and ARP and the Trump Campaign purport to oppose the injunction due to its effect on unknown third-parties (GOP Resp. at 7-10), the Court will collapse the final two factors into a single category. *See Arizona Dream Act Coal. v. Brewer*, 818 F.3d 901, 920 (9th Cir. 2016) (analyzing both public interest and equities factors simultaneously); *Minard Run Oil Co. v. U.S. Forest Serv.*, 670 F.3d 236, 256 (3d Cir. 2011) ("we consider together the final two elements of the preliminary injunction framework—the public interest and the balance of the equities"); *Merced v. Spano*, No. 16CV3054 (SJ) (SMG), 2016 WL 3906646, at *2 (E.D.N.Y. July 14, 2016) ("The remaining elements (irreparable harm, balance of the equities and public interest) will be discussed together because in this instance, they are intertwined."). Analyzing factors three and four in unison, the Court must balance both Plaintiff's and the public's interest in protecting voters from undue influence, intimidation, or coercion, against Defendants' poll observing rights and right to free speech under the First Amendment.

As stated, the right to vote is a fundamental one, *Reynolds*, 377 at 562, the preservation of which is compelling. *See, e.g.*, *Burson v. Freeman*, 504 U.S. 191 (1992). Indeed, "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Wesberry v. Sanders*¸ 376 U.S. 1, 17 (1964); *see also Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003) ("There is no doubt that the right to vote is fundamental . . ."). The Supreme Court has consistently held that the states, too, have a compelling interest in maintaining the integrity of the voting place and preventing voter intimidation and confusion. *Burson v. Freeman*, 504 U.S. 191, 198 (1992); *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 229 (1989); *Anderson v. Celebrezze*, 460 U.S. 780 (1983). Accordingly, both Plaintiff and the public have a strong interest in allowing every registered voter to do so freely.

On the other hand, the Court acknowledges that Plaintiff's injunction, as requested, raises First Amendment concerns. Just as the right to vote is a fundamental one, so too is the right to political speech and the right to associate. *See, e.g.*, *Mills v. Alabama*, 384 U.S. 214, 218-19 (1966) ("there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs . . . [including] discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes"); *Lerman v. Bd. of Elections in City of New York*, 232 F.3d 135, 146 (2d Cir. 2000) ("The right to political association also is at the core of the First Amendment, and even practices that only potentially threaten political association are highly suspect.") (internal quotation and citation omitted). While the Court may only enjoin Defendants and their co-conspirators, if any, the injunction may nonetheless have a chilling effect on protected First Amendment speech by others. Indeed, Plaintiff has not provided the Court with a narrowly tailored injunction that would not unintentionally sweep within its ambit other activities that constitute exercise of freedom of speech. *See, e.g.*¸ *Rodriguez v. Robbins*, 715 F.3d 1127, 1133 (9th Cir. 2013) ("An overbroad injunction is an abuse of discretion."); *Union Pac. R. Co. v. Mower*, 219 F.3d 1069, 1077 (9th Cir. 2000) ("one basic principle built into Rule 65 is that those against whom an injunction is issued should receive fair and precisely drawn notice of what the injunction actually prohibits") (quoting *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 444 (1974)); *Waldman Pub. Corp. v. Landoll, Inc.*, 43 F.3d 775, 785 (2d Cir. 1994) ("an injunction should not impose unnecessary burdens on lawful activity").

The Court also acknowledges that Plaintiff's requested injunction may further impinge on state-created rights or freedoms regarding poll observation. However, the injunction issued, if any, would only instruct both credentialed poll watchers and uncredentialed observers alike to follow the law as prescribed, and for any training given to credentialed poll watchers to similarly guide its trainees. Further, poll watching is not a

fundamental right that enjoys distinct First Amendment protection and it does not carry the same implications as the preceding rights. *See, e.g.*, *Cotz v. Mastroeni*, 476 F. Supp. 2d 332, 364 (S.D.N.Y. 2007) ("poll watching is not incidental to this right and has no distinct First Amendment protection"); *Turner v. Cooper*, 583 F. Supp. 1160, 1161–62 (N.D. Ill. 1983) (holding that the act of poll watching is not protected by the First Amendment). Ultimately, each side implicates vital rights central to our system of government. Because the right to vote is sacrosanct and preservative of all other rights, the hardship balance and public interest factors weigh slightly in favor of granting Plaintiff's Motion.

II. CONCLUSION

The Court finds that Defendant Mr. Stone has sufficient contacts with Arizona and that Plaintiff's claims arise from those contacts, such that the Court has jurisdiction over Mr. Stone in this matter. The Court also finds that Plaintiff has not demonstrated it is likely to succeed in showing the statements and actions of Defendants to-date constitute intimidation, threat, coercion or force against voters for voting or attempting to vote in violation of the Voting Rights Act and/or the Ku Klux Klan Act. Moreover, Plaintiff has not shown the likelihood of a conspiracy as required for its Ku Klux Klan Act claim. Plaintiff is thus not likely to succeed on the merits for either of its claims against Defendants. Although Plaintiff has demonstrated (1) a likelihood of irreparable injury if Defendants violate the Voting Rights Act and/or the Ku Klux Klan Act prior to or on Election Day; (2) that the balance of equities tips slightly in its favor; and (3) that, in such an instance, an injunction would be in the public interest, the Court must deny Plaintiff's request for injunctive relief before Election Day based on the record before the Court. The parties may continue to raise issues to this Court through Election Day if they receive additional, material evidence.

IT IS THEREFORE ORDERED denying Plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction (Doc. 10).

IT IS FURTHER ORDERED denying as moot Defendant Roger J. Stone, Jr.'s oral motion to dismiss for lack of service and denying his oral motion to dismiss for lack of jurisdiction (*see* Doc. 24; Doc. 25, Tr. at 43).

Dated this 4th day of November, 2016.

Honorable John J. Tuchi
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

OHIO DEMOCRATIC PARTY, Plaintiff, vs. OHIO REPUBLICAN PARTY et. al., Defendants.	:	CASE NO. 16-CV-02645 OPINION & ORDER [Resolving Doc. No. 8]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Plaintiff Ohio Democratic Party asks this Court to issue a temporary restraining order ("TRO") enjoining Defendants Ohio Republican Party, Donald J. Trump for President, Inc. ("Trump"), Roger J. Stone, Jr. ("Stone"), and Stop the Steal, Inc. from conspiring to intimidate, threaten, harass, or coerce voters on Election Day.[1]

Plaintiff Ohio Democratic Party argues that the Defendants are violating Section 2 of the Ku Klux Klan Act of 1871[2] and Section 11(b) of the Voting Rights Act of 1965[3] by conspiring to prevent minority voters from voting in the 2016 election in violation of.[4]

As evidence, the Plaintiff points to Donald Trump's comments encouraging rally attendees to monitor "certain areas,"[5] as well as promises from Mr. Trump's supporters to aggressively patrol polling places.[6] Defendants respond that there is no evidence of Defendants

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[1] Doc. 1. at 27-29; Doc. 8.
[2] 42 U.S.C. § 1985(3).
[3] 52 U.S.C. § 10307(b).
[4] Doc. 1 at 1-2.
[5] *Id.* at 9. "Trump told a crowd in Altoona, Pennsylvania, in August that 'I hope you people can . . . not just vote on the 8th, [but also] go around and look and watch other polling places and make sure that it's 100-percent fine. We're going to watch Pennsylvania—go down to certain areas and watch and study—[and] make sure other people don't come in and vote five times. . . . The only way we can lose, in my opinion—and I really mean this, Pennsylvania—is if cheating goes on.'"
[6] *Id.* at 19. The Plaintiffs cite a *Boston Globe* article where an Ohio resident said "'I'll look for . . . well, it's called racial profiling. Mexicans. Syrians. People who can't speak American," he said. "I'm going to go right up behind

intimidating or harassing voters.[7] Defendants also say that Ohio election law already prohibits the hypothetical conduct complained about by Plaintiffs, and therefore a TRO is inappropriate.[8]

Defendant Trump argues that Plaintiff's proposed TRO is an impermissible "obey-the-law" injunction that simply orders Defendants and their supporters to do what is already required—obey Ohio law.[9] While "obey the law" injunctions are generally disfavored, this motion for injunctive relief does not fit in that category. "Obey the law" injunctions are hyper-generalized orders to indefinitely abide by broad legal commands.[10] Here, rather than issue a broad and indefinite injunctive order, the Court orders compliance with specific provisions of the Ohio Revised Code until voting concludes for the 2016 Presidential Election. And, where there is a legitimate possibility that particular laws may be imminently violated, ordering compliance with those laws is appropriate.

Having considered all of the materials and arguments that have been submitted in this matter, the Court **GRANTS** Plaintiff Ohio Democratic Party's motion for a TRO with respect to Defendants Trump, Stone, and Stop the Steal. The Court denies the request for a TRO as against the Ohio Republican Party.

It is hereby ordered that, effective immediately and extending until 11:59 p.m., November 8, 2016, or until voting in the 2016 Presidential Election is complete, Defendants Trump, Stone, and Stop the Steal—as well as their officers, agents, servants, and employees—and other individuals or groups, including groups associated with the Clinton for Presidency

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them. I'll do everything legally. I want to see if they are accountable. I'm not going to do anything illegal. I'm going to make them a little bit nervous."

[7] Doc. 24 at 3.

[8] Doc 10. At 3.

[9] Doc. 12 at 2 (citing *E.E.O.C. v. Wooster Brush Co. Employees Relief Ass'n*, 727 F.2d 566, 576 (6th Cir. 1984)).

[10] *See, e.g.*, *Perez v. Ohio Bell Tel. Co.*, No. 15-3303, 2016 WL 3755795, at *6 (6th Cir. July 14, 2016); *Wooster Brush*, 727 F.2d at 576 (striking down a district court's general order that the defendant be "permanently enjoined from discriminating against women on the basis of their gender").

campaign, are restrained and enjoined from engaging in voter intimidation activity, including but not limited to:

a. Hindering or delaying a voter or prospective voter from reaching or leaving the polling place fixed for casting the voter's ballot;

b. Engaging in any unauthorized "poll watching" activities inside of polling places, within one hundred feet of polling places ("the buffer zone")[11], or within ten feet of a voter standing in a line extending beyond the buffer zone.[12] Unauthorized "poll watching" includes challenging or questioning voters or prospective voters about their eligibility to vote, or training, organizing, or directing others to do the same;

c. Interrogating, admonishing, interfering with, or verbally harassing voters or prospective voters inside polling places, in the buffer zone, or within ten feet of a voter standing in line outside the buffer zone, or training, organizing, or directing others to do the same;

d. Distributing literature and/or stating to individuals at polling places, in the buffer zone, or within ten feet of a voter standing in line outside the buffer zone, that voter fraud is a crime, or describing the penalties under any Ohio or Federal statute for impermissibly casting a ballot, or training, organizing, or directing individuals to do the same;

[11] *See* O.R.C. 3501.30(A)(4).
[12] *See* O.R.C. 3501.35(A)(2).

e. Gathering or loitering, or otherwise being present without the intention to vote, at polling places, in the buffer zone, or within ten feet of a voter standing in line outside the buffer zone;

f. Following, taking photos of, or otherwise recording voters or prospective voters, those assisting voters or prospective voters, or their vehicles at or around a polling place, or training, organizing, or directing others to do the same;

g. Questioning, and training, organizing, or deputizing any persons to question voters at Ohio polling places, in the buffer zone, or within ten feet of a voter standing in line outside the buffer zone, under the guise of the purported "exit polling" or "citizen journalist" operations organized and encouraged by Defendants Stone and Stop the Steal.

This Order does not apply to any activity explicitly authorized by Ohio law with respect to poll observers officially credentialed by a board of elections to be present at the polling place or the right under Ohio law for others to enter a polling place solely for purposes of reviewing the list of voters.[13]

It is further ordered that this Order be publicized to law enforcement and elections officials in advance of Election Day.

The Plaintiff will be required to post a $1,000 bond.

IT IS SO ORDERED.

Dated: November 4, 2016

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

[13] *See* O.R.C. 3503.23; O.R.C. 3505.21.

No. 16-4268

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 06, 2016
DEBORAH S. HUNT, Clerk

OHIO DEMOCRATIC PARTY,

Plaintiff-Appellee,

v.

DONALD J. TRUMP FOR PRESIDENT, INC.,

Defendant-Appellant

OHIO REPUBLICAN PARTY; ROGER J. STONE, JR.; STOP THE STEAL, INC.,

Defendants.

O R D E R

Before: BATCHELDER, ROGERS, and GRIFFIN, Circuit Judges.

Donald J. Trump for President, Inc. moves for a stay of the district court's temporary restraining order, dated November 4, 2016, enjoining Defendants Donald J. Trump for President, Stop the Steal and Roger J. Stone, Jr., their officers, agents, servants, and employees, and others not parties to this action, including groups associated with the Clinton for Presidency campaign, from engaging in various activities denominated by the district court as voter intimidation activity.

We review for abuse of discretion the district court's order granting a temporary restraining order. *Ohio Republican Party v. Brunner*, 543 F. 3d. 357, 361 (6th Cir. 2008). We review a motion to stay a temporary restraining order using the same factors that we consider in determining whether to grant a temporary restraining order or a preliminary injunction:

> (1) whether the movant has a strong likelihood of success on the merits, (2) whether the movant would suffer irreparable injury absent a stay, (3) whether granting the stay would cause substantial harm to others, and (4) whether the public interest would be served by granting the stay.

Id.

After reviewing the district court's order, the motion for an emergency stay of that order, and the Plaintiff's submission in response to the Petition for Initial En Banc Hearing, we conclude that the Plaintiff did not demonstrate before the district court a likelihood of success on the merits, and that all of the requisite factors weigh in favor of granting the stay.

Accordingly, the motion for an emergency stay is **GRANTED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

BRUCE S. MARKS, et al. v. WILLIAM STINSON, et al.

CIVIL ACTION NO. 93-6157

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

1994 U.S. Dist. LEXIS 1586

February 18, 1994, Filed

COUNSEL: [*1] For BRUCE MARKS, KATHY STECK, on behalf of the Voters of the Second District, PLAINTIFF: PAUL R. ROSEN, SPECTOR, GADON & ROSEN, P.C., PHILA, PA. For REPUBLICAN STATE COMMITTEE OF PENNSYLVANIA, PLAINTIFF: MICHAEL J. ROTKO, DRINKER, BIDDLE & REATH, PHILA, PA.

For PHILADELPHIA COUNTY BOARD OF ELECTIONS, DEFENDANT: MICHAEL F. EICHERT, DEPUTY CITY SOLICITOR, PHILA, PA. For WILLIAM STINSON, DEFENDANT: RALPH J. TETI, WILLIG, WILLIAMS & DAVIDSON, PHILA, PA. For MARGARET M. TARTAGLIONE, JOHN F. KANE, ALEXANDER Z. TALMADGE, JR., DEFENDANTS: MICHAEL F. EICHERT, DEPUTY CITY SOLICITOR, PHILA, PA.

For MANUEL LORENZO, LYDIA COLON, LILLIAN CRUZ, DIANA IRIZARRY, RUTH MARTINEZ, ZORAIDA RODRIGUEZ, YESENIA VASQUEZ, RESPONDENTS: PAUL R. ROSEN, SPECTOR, GADON & ROSEN, P.C., PHILA, PA.

For PENNSYLVANIA STATE SENATORS MELLOW, LINCOLN, BODACK, O'PAKE, AFFLERBACH, STAPLETON, REIBMAN, FUMO, ANDREZESKI, BELAN, BORTNER, DAWIDA, FATTAH, JONES, LAVALLE, LEWIS, MUSTO, PECORA, PORTERFIELD, SCANLON, SCHWARTZ, STEWART, STOUT, WILLIAMS, MOVANTS: ARTHUR MAKADON, DARRYL J. MAY, BALLARD, SPAHR, ANDREWS AND INGERSOLL, PHILA, PA.

JUDGES: NEWCOMER

OPINION BY: CLARENCE C. NEWCOMER

OPINION

Newcomer, J.

Presently before the court is plaintiffs' Motion [*2] for Preliminary Injunctive Relief. After a hearing in this matter on February 7-9, 1994, and after considering the arguments of counsel, the court makes the following Findings of Fact and Conclusions of Law.

I. *Findings of Fact*.

1. Plaintiffs are Bruce S. Marks, Kathy Steck, Emanuel Lorenzo, Lydia Colon, Lillian Cruz, Diana Irizarry, Ruth Martinez, Zoraida Rodriguez, Yesenia Vasquez, and the Republican State Committee.

2. Defendants are William Stinson, the William Stinson Campaign, the Philadelphia County Board of Elections, Margaret M. Tartaglione, John F.

Kane, Alexander Z. Talmadge, Jr., and various Doe and Roe defendants.

3. Republican Bruce Marks ("Marks") and Democrat William Stinson ("Stinson") were candidates for the Pennsylvania State Senate in an election conducted on November 2, 1993 in the Second Senatorial District (the "District"). The election was held to fill the remaining portion of a term which expires in December, 1994. The District consists of all or part of the 7th, 18th, 19th, 20th, 23rd, 33rd, 37th, 42nd, 49th, 53rd, 54th, 55th, 56th, 61st, and 62nd wards. *See* Plaintiffs' Exhibit 48. This election was particularly significant to both parties because [*3] control of the State Senate hung in the balance.

4. A significant portion of the District consists of African-American and Latino voters. Testimony of Voters.

5. According to the certified results of the Philadelphia City Commissioners ("the Board"), sitting as the County Board of Elections, candidate Marks won 19,691 votes and candidate Stinson won 19,127 votes on the voting machines on Election Day. *See* Official Certification, Plaintiffs' Exhibit 113.

6. According to the certified results of the Board, Marks won only 371 votes and Stinson won 1,396 votes from absentee ballots. *See* Official Certification, Plaintiffs' Exhibit 113.

7. Pennsylvania permits a qualified elector to vote by absentee ballot in the event that the elector is, *inter alia*, absent from the Commonwealth or county of residence "because his duties, occupation or business require him to be elsewhere during the entire period the polls are open" or is physically unable to go to the polls. *25 P.S. § 3146.1(j)&(k)*.

8. An elector seeking to vote by absentee ballot must submit a proper absentee ballot application, including a statement that the elector expects to be out of the county on Election Day or that [*4] the elector is physically unable to go to the polls, with a declaration stating the nature of the disability and the name, address, and telephone number of the attending physician. *25 P.S. § 3146.2(e)(1)&(2)*.

9. The application requires that the elector provide a "post office address to which ballot is to be mailed". *25 P.S. § 3146.2(e)(1)&(2)*.

10. In Philadelphia County, the application has a mailing label on it for the address, which is removed and affixed to the Absentee Ballot Package when the application is approved. Testimony of Dennis Kelly.

11. Although the law requires the elector to provide the "reason for his absence", the application in use in Philadelphia County inexplicably does not require this provision, increasing the possibility of widespread abuse of absentee ballots. *25 P.S. § 3146.2(e)(1)*; Plaintiffs' Exhibit 1.

12. In Philadelphia, the application is not available in a Spanish translation even though approximately twenty-five (25) percent of the District is Spanish speaking and absentee ballots and declarations are available in a Spanish translation. Testimony of Commissioner Talmadge; Plaintiffs' Exhibit 1-3.

13. Absentee ballot applications are processed by [*5] the Board, which is charged with overseeing elections, and, which, in Philadelphia County, consists of the three County Commissioners, Democrat Chairman Margaret Tartaglione ("Tartaglione"), Democrat Alexander Talmadge, Jr., Esq. ("Talmadge"), and Republican John Kane ("Kane"). *25 P.S. § 3146.2b*. Although the Board is controlled by one party, it has a statutory and constitutional obligation to conduct elections fairly and impartially.

14. The practice and procedure of the Board is to promptly time-stamp each application when it is received by the Board. (Testimony of Commissioner Talmadge and Dennis Kelly). The Board is required to process absentee ballot applications to determine if they meet the legal requirements and to notify an applicant immediately if an application is rejected. *25 P.S. § 3146.2b*.

15. The Board does not check the signatures on absentee ballot applications against the signatures on voter registration (binder) cards to prevent forgeries, even though Commissioner Talmadge asserts that it is official policy to do so. Testimony of Commissioner Talmadge and Dennis Kelly.

16. If the absentee ballot application meets the required criteria and is otherwise complete, [*6] the Ward, Division and Registration number (or Control number) is placed on the application by the

Board. The Control number is the same number that appears on the voter registration or permanent binder card. Testimony of Dennis Kelly.

17. The Board is required to maintain all applications as public records for two years. *25 P.S. §§ 3146.2(i), 3146.9*. The application states, as required by law, that "a voter who receives an absentee ballot . . . and, who, on election day, is capable of voting at the appropriate polling place must void the absentee ballot and vote in the normal manner." *25 P.S. § 3146.2(i)*; Plaintiffs' Exhibit 1.

18. The deadline for receipt of applications is 5:00 p.m. on the Tuesday before the election, which in the instant case was October 26, 1993. *25 P.S. § 3146.2a*.

19. After approving an absentee ballot application, the Board is to mail or deliver the corresponding absentee ballot package to the elector using the mailing label existent on the application. *25 P.S. § 3146.5*. The absentee ballot package ("Absentee Ballot Package") consists of an outer envelope in which is enclosed a declaration envelope (the "Declaration" or "Declaration Envelope"), an inner envelope [*7] (the "Inner Envelope"), a ballot (the "Ballot"), and instructions. *25 P.S. § 3146.6*; Plaintiffs' Exhibit 3.

20. Pennsylvania law does not permit the Board to deliver an Absentee Ballot Package to any person other than the applicant elector, *25 P.S. § 3146.5*, and, upon receipt, an elector is to mark the Ballot "in secret." *25 P.S. § 3146.6*. After marking the Ballot, an elector is to seal it in the Inner Envelope, seal the Inner Envelope in the Declaration Envelope, and execute the declaration on the Declaration Envelope. Testimony of Dennis Kelly and Commissioner Talmadge.

21. The elector is then to "send by mail" or deliver "in person" the executed Declaration Package to the Board. *25 P.S. § 3146.6*. The deadline for receipt of absentee ballots is 5:00 p.m. on the Friday before the Election, which in the instant case was October 29, 1993.

22. Ballots are then collected and distributed to polling places on Election Day. *25 P.S. § 3146.8(a)*; Testimony of Dennis Kelly.

23. An absentee ballot cast by a voter who is in the county of residence and able to go to the polls on Election Day is void as a matter of law, and an absentee ballot voter has a duty to go to the polls and void the ballot [*8] in the event such voter is in the county and able to do so. *25 P.S. § 3146.6b*.

24. In the event an elector votes in person on Election Day, the Declaration is marked "void" and the absentee ballot is not counted. Testimony of Dennis Kelly.

25. At the close of the polls on Election Day, absentee ballots are canvassed by opening the Declaration Envelopes, removing, mixing, and then opening the sealed Inner Envelopes and then counting the ballots. This procedure is conducted to ensure the secrecy of the vote. *25 P.S. § 3146.8*.

26. Once the inner envelopes are mixed and opened, it is difficult, if not impossible, to match a ballot with a particular voter. Testimony of Dennis Kelly.

27. The overall absentee ballot process is designed to provide the same privileges and protections as if the absentee voter were to cast a ballot at the polls. Testimony of Commissioner Talmadge.

28. If campaign and party workers who deliver applications to the Board are also given the corresponding Absentee Ballot Packages to deliver to voters, grave opportunity for misconduct is created, because there is little or no safeguard against forged applications and ballots. Such an abuse took place in the instant [*9] action. *See* Testimony of Commissioner Talmadge; Voter Testimony.

29. Providing Absentee Ballot Packages to campaign and party workers also creates an opportunity for other abuses, such as campaign workers directing completion of, or even completing the applications and ballots for voters. *See infra* Findings of Fact. This practice was routinely conducted by Stinson campaign workers. Testimony of Commissioner Talmadge Testimony; Ruth Birchett; Voter Testimony.

30. Democrats have controlled the County Board of Elections at least since 1971. Testimony of Dennis Kelly; Commissioner Talmadge.

31. The Board is under a statutory duty to strictly enforce the Election Code to avoid any partiality in the conduct of elections. Commissioner Talmadge, however, was unaware of existence of

certain statutory provisions and admitted that certain other provisions were not followed. Commissioner Talmadge and Dennis Kelly both testified that they knew of and even condoned certain Board activities of the Commission that contradicted the Election Code. Testimony of Commissioner Talmadge; Dennis Kelly.

32. If the Board does not strictly enforce the Election Code, the potential for abuse arises, especially [*10] when irregular conduct favors one political party. In the instant action, there was little or no evidence to suggest that the improper conduct of the Board was generalized and was not intended to favor any one candidate. The testimony supports an opposite finding that the malfeasance and nonfeasance of the Board was purposefully directed at favoring only Stinson, the democratic candidate. This is particularly important to a motion for an injunction where the court must weigh the equities involved.

33. In the past, the policy and practice of the Board was to follow the Election Code and mail or personally deliver Absentee Ballot Packages only to an applicant voter. There was also testimony establishing that in special circumstances, an applicant voter's spouse or close relative could obtain the Absentee Ballot Packages. This was the procedure until the 1993 Election. Testimony of Commissioner Kane, Reba Morella, and Peter Medina.

34. In the 1993 Election, Absentee Ballot Packages were provided in bulk, through the offices of Commissioners Tartaglione and Talmadge, to the Stinson Campaign for delivery directly to voters. *See* Stinson Deposition, at p. 180; Testimony of Martz, Birchett, [*11] and Commissioner Talmadge. The official minutes of the Commissioners' public meetings on October 20 and 27, 1993, however, reflect that Dennis Kelly, supervisor of elections, stated that Absentee Ballot Packages were being mailed to voters. It was not disclosed at the meeting that thousands of Absentee Ballot Packages were being delivered to Democrat committeepersons or Stinson campaign workers during the 1993 election. Plaintiffs' Exhibits 120, 121.

35. Commissioner Kane, the Republican City Commissioner, was not aware that other Commissioners permitted absentee ballots to be delivered to Democrat committeepersons or to Stinson campaign workers. *See* Testimony of Commissioner Kane.

36. Reba Morella was an employee of the Board. Her responsibilities consisted of processing absentee ballot applications and ballots during the two weeks prior to the election. She did not observe absentee ballots being delivered to Democrat committeepersons or to Stinson campaign workers during normal office hours. Rather, the standard operating procedure during normal office hours was to mail Absentee Ballot Packages only to the voter or to allow the voter's spouse to pick it up personally. Testimony [*12] of Reba Morella.

37. Commissioner Talmadge and Dennis Kelly, in violation of the Election Code were secretly conducting activities relating to the Absentee Ballot Packages. Commissioner Tartaglione was aware of, and ratified these activities. Most of employees of the Board were not aware of the irregularities. Testimony of Commissioner Talmadge, Kelly and Morella.

38. No witness, other than those involved in the malfeasance, was able to offer testimony that supported the existence of a practice allowing Absentee Ballot Packages to be delivered to any campaign or political workers for delivery to voters prior to, or during, the 1993 Election. *See* Testimony of Martz, Birchett, and Commissioner Talmadge.

39. Similarly, Peter Medina, a Democratic committeeperson who worked in various political divisions over the last 40 years, never saw Absentee Ballot Packages in the hands of any campaign worker prior to this election. Testimony of Peter Medina.

40. Stinson worker Josue Santiago came to Medina one or two days before the Election (which would be three days after the deadline for the return of absentee ballots to the Board) with a legal size box full of Absentee Ballot Packages that [*13] he was delivering throughout minority areas of the District. Santiago convinced Medina that the law had changed to permit Santiago to have in his possession the Absentee Ballot Packages. Medina had never heard of such a procedure before Santiago communicated it to him. Testimony of Peter Medina.

41. The Board, through the conduct of Commissioners Tartaglione and Talmadge, Dennis Kelly, and their agents, engaged in a covert process which assisted the Stinson Campaign by delivering, and/or knowingly allowing the delivery of, hundreds of Absentee Ballot Packages directly to the Stinson Campaign and other Stinson supporters, rather than mailing or delivering them to voters. *See* Testimony of Ruth Birchett, Dennis Kelly, and Commissioners Talmadge and Kane.

42. The campaign entity organized under Pennsylvania law for the Stinson Campaign was registered as the "Committee to Elect Bill Stinson". Joseph Martz served as the campaign manager and was paid through Rendell '91, a political action committee associated with Democrat Mayor Ed Rendell. Plaintiffs' Exhibit 11; Testimony of Joseph Martz.

43. Frank Felice ("Felice") served as the treasurer for the Stinson Campaign. Testimony of Martz [*14] and Jones.

44. During July, August, and September, 1993, Stinson canvassed predominately Caucasian areas of the district with Craig Cummons, Frank Felice, William Jones, and others. During the canvassing, the canvassers solicited absentee ballot applications from individuals, including persons registering to vote for the first time, pursuant to a plan to obtain 20 absentee ballots from each division. Testimony of Jones; Stinson Deposition, at p. 114; Plaintiffs' Exhibit 113.

45. Many persons who were hesitant to register because they simply did not want to go to the polls were told that they could fill out an absentee ballot application and obtain an absentee ballot out of convenience. Many applications were received based on this misrepresentation. Testimony of Jones.

46. Many of the applications listed the basis for voting absentee as being out of the county when it was clear that in July, August, or September that the voter had no basis to believe that he or she would be out of the county on Election Day. Testimony of Jones; Voter Testimony.

47. Candidate Stinson and his campaign workers instructed the canvassers not to fill in the date on the absentee ballot applications in order [*15] to conceal that the applications had been solicited many months prior to Election Day. Testimony of Jones.

48. Numerous absentee ballot applications solicited with Stinson's personal involvement were obtained in violation of the Election Code. Testimony of Jones.

49. The Stinson Campaign also used a strategy whereby workers would tell people they could vote from home, even though many such people were unemployed and were not going to be out of the county. There was simply no attempt to establish that any of the people were going to be out of the county. The "out of the county" exception was the easiest exception because it was virtually impossible to verify. Testimony of Jones.

50. After working in the field for a few weeks, Jones was assigned to review applications after canvassing each evening and to complete, when appropriate, necessary information for submission to the Board. Jones became concerned that the applications were being obtained in an illegal manner. Testimony of Jones.

51. Jones approached Stinson and complained that there was improper conduct taking place in reference to the ballot applications. Stinson advised him to try and have the applications corrected and to [*16] give them back to solicitors Cummings and Campaign Treasurer Felice to see if the applications could be corrected. Jones carried out Stinson's instructions, but the same type of problems continued. Testimony of Jones. 52. After he realized that the situation had not been corrected, Jones again approached Stinson and informed Stinson that the applications were still being obtained in an improper manner. Stinson directed Jones to use his best judgment and if fifty (50) percent of it looked correct, then he was satisfied. Testimony of Jones.

53. Stinson told Jones that he was never going to lose another election because of the absentee ballots. Stinson then admonished Jones for placing the dates on applications instead of leaving the date blank. Testimony of Jones.

54. Jones raised questions with Frank Felice and others as to the absentee ballots and applications, and Jones was assured that it would not be

relevant because Stinson was going to win by such a large margin. Testimony of Jones.

55. After these discussions with Stinson and other campaign workers, Jones became increasingly concerned about the absentee ballot problem and was worried that if he submitted the absentee ballot [*17] applications to the Board, he would be the "fall guy" in the event this information became public. In light of this, Jones resigned. Testimony of Jones.

56. Jones was considered to be a good worker by Stinson, who stated he had no problems with Jones' performance. Stinson Deposition, at p. 101.

57. Stinson stated at deposition that the applications in the white areas were submitted directly to Commissioner Tartaglione's office and corresponding Absentee Ballot Packages were returned directly to the Stinson Campaign. Stinson Deposition, at p. 101.

58. The Absentee Ballot abuse was further developed by various committeepersons in the District. For example, Fani Papanikalau, a Democrat committeewoman, obtained several illegal absentee ballots in the 42nd ward, 6th division. Adverse inference from Papanikalau *Fifth Amendment* testimony.

59. In addition, Absentee Ballots were forged in this division. Testimony of Pedro Figueroa.

60. Barbara Landers, a Democrat committeeperson, obtained several illegal absentee ballots in the 43rd ward, 19th division. Adverse inference from Landers *Fifth Amendment* Testimony.

61. Voters were mislead into improperly voting by absentee ballots in this division. [*18] Testimony of Voters.

62. Anthony Rotondo, a Democrat committeeperson, obtained several illegal absentee ballots in the 43rd ward, 18th division. Adverse inference from Rotondo *Fifth Amendment* testimony. In addition, Absentee Ballot Packages were provided directly to Democrat Committeepersons throughout the District. Testimony of Dennis Kelly.

63. Approximately three weeks before the Election, Jones received a phone call from Marge Summers, a worker for the Stinson Campaign. Summers told him that a new internal poll from the Democratic State Committee was published to show that William Stinson was four (4) percent behind Bruce Marks. Testimony of Jones.

64. At that time, Summers disclosed to Jones that the Stinson Campaign was going to saturate the Hispanic areas with applications and that the saturation was going to use the same scheme that was employed earlier. The "joke" at the campaign was that the Hispanics would sign anything. Testimony of Jones.

65. In response to the poll, the Stinson Campaign began an effort to convince Latino and African-American voters to cast absentee ballots using, *inter alia*, "Out of County" as the excuse for absentee voting. Testimony of Voters; [*19] Jones; and Adverse inference from Ascencio, Landers, Pratt, and Santiago *Fifth Amendment* Testimony.

66. Ruth Birchett served as the campaign director for the African-American and Latino areas. (Testimony of Birchett and Martz). Josue Santiago ("Santiago") was responsible for overseeing the absentee ballot program in the Latino areas. He was hired directly by Stinson, and reported to Stinson. Testimony of Birchett and Martz.

67. Sultan Mateen ("Mateen") was responsible for overseeing the absentee ballot program in the African-American areas. Angel Ascencio ("Ascencio") was a worker on the Latino Team who solicited absentee ballot applications and ballots. Testimony of Birchett; Adverse Inference, Ascencio *Fifth Amendment* Testimony.

68. Ramon Pratt ("Pratt") was a Latino Team worker who solicited absentee ballot applications and ballots. Adverse Inference Pratt *Fifth Amendment* Testimony; Birchett Receipts.

69. Peter Medina, a Democrat Committeeperson, assisted Santiago as part of the Latino Team. Testimony of Medina.

70. Several other persons were identified by voters as Stinson supporters who conducted the same absentee ballot procedure. Testimony of Voters.

71. The absentee application [*20] and ballot scheme consisted of deceiving Latino and African-American voters into believing that the law had changed and that there was a "new way to vote"

from the convenience of one's home. Testimony of Voters; Adverse inference from *Fifth Amendment* testimony of Santiago, Pratt, and Ascencio.

72. One part of the scheme involved paying field workers $ 1.00 per application or ballot obtained. (Testimony of Martz and Birchett, and Adverse Inference from *Fifth Amendment* testimony of Santiago, Pratt, and Ascencio). Ruth Birchett testified that at least $ 500 to $ 700 was dispensed in this effort to obtain such amount of votes.

73. The scheme was also implemented through the use of phone bank scripts in English and Spanish which informed voters that they could elect Bill Stinson by voting from home. Plaintiffs' Exhibit 8. The English translation of the Spanish script could reasonably lead a person to believe that there was a new way to vote. *Id.*; Testimony of Martz and Birchett.

74. The Stinson Campaign obtained approximately 1,000 absentee ballot applications from the minority areas of the district. Almost 400 absentee ballot applications were submitted to the Board for approval by [*21] the Stinson Campaign for unregistered voters from minority areas. Plaintiffs' Exhibit 90.

75. Most of the Rejected Applications used "Out of County" as an excuse for an absentee ballot. *See* Rejected Applications.

76. At least $ 4,000 was specially allocated to implement this scheme from a political action committee associated with Democrat State Senator Vincent Fumo. Testimony of Martz and Birchett.

77. The scheme was further executed by having Birchett and others under her direction and control submit applications to the Board through Commissioner Talmadge's office by hand delivery. Testimony of Birchett.

78. The applications were delivered to Commissioner Talmadge's office in order for Commissioner Talmadge to provide Absentee Ballot Packages in return to the Stinson Campaign. Testimony of Birchett and Commissioner Talmadge.

79. Prior to his contact with Ruth Birchett in her capacity as a Stinson worker, Commissioner Talmadge was aware that she worked for Stinson, and she had worked on Talmadge's campaign in 1991. Testimony of Commissioner Talmadge.

80. Even though he has a duty to know and understand the Election Code and stated that he was aware of most of the absentee voting [*22] requirements, Commissioner Talmadge approved the absentee ballot procedure even though the procedure involved providing official absentee ballot materials and the ballot declarations to campaign workers. Testimony of Commissioner Talmadge.

81. Ruth Birchett even questioned both Candidate Stinson and Commissioner Talmadge as to the propriety of this scheme. She was assured that it was proper. Testimony of Birchett and Commissioner Talmadge.

82. Delivery of Absentee Ballots Packages to the Stinson Campaign workers was not initially disclosed to Commissioner Kane nor on the public record of the meetings held by the County Commissioners on October 20 and 27, 1993. Such meetings only disclosed the incorrect information that the Absentee Ballot Package were being returned to the voters by mail. Plaintiffs' Exhibits 120 and 121.

83. The Board's delivery of Absentee Ballot Packages to the Stinson Campaign was designed to aid the Stinson Campaign in obtaining more votes through personal contact between the voter and the Stinson Campaign workers, and was a discriminatory practice which favored one candidate and party over another.

84. Based on this scheme, whereby the Stinson campaign retained [*23] custody of the Absentee Ballot Packages from the Board to the voter and back again, a sampling of over 30 voters testified that in numerous instances Stinson workers were executing applications, ballots, and/or declarations without the voter understanding the nature of the document. In addition, there was significant testimony indicating Stinson workers exerted improper influence over voters in the voters' homes. For example, Stinson workers would either instruct the voter to check certain places on the ballot, or in some instances, the workers even filled out the ballots for certain voters and even forged other ballots. Testimony of Voters.

85. Voters also completed applications and Declaration Packages after the statutory deadline for receipt by the Board and such ballots were counted by the Board. Testimony of Medina and Voters.

86. Peter Medina obtained Absentee Ballot Packages from voters on November 1, three days after the statutory deadline. Medina acknowledged that on approaching the voters with their ballots, most of the voters did not even know that they had signed absentee ballot applications. Testimony of Medina.

87. The testimony of the voters is credible, especially [*24] given the Board's undisputed failure to properly time- stamp official documents such as the Rejected Applications.

88. Some voters testified that they do not want their own illegal votes to count in light of the manner in which their votes were obtained. Some voters testified that they voted as they would have voted had they gone to the polls. Testimony of Voters.

89. The Stinson Campaign and Stinson workers conducted a widespread and deliberate scheme throughout the Latino and African-American areas to knowingly misrepresent election procedures and illegally obtain absentee votes. This scheme was known to at least two members of the Board and was known and ratified by Candidate Stinson. Testimony of Jones, Medina, Commissioner Talmadge; Adverse inference from *Fifth Amendment* testimony of Santiago, Ascencio, Landers, and Pratt.

90. Approximately 400 applications were rejected by the Board as being "not in binder" and/or "not in system", in other words, unregistered persons (the "Rejected Applications"). Plaintiffs' Exhibit 90. One application was filed by Stinson Worker Sultan Mateen. Only sixty of these original applications bore the stamp of the Board's office.

91. The Rejected Applications [*25] were delivered from the Delaware Avenue and Spring Garden Street office, where they were being processed, to the custody of Dennis Kelly who would return them to Commissioner Talmadge who in turn delivered them to Ruth Birchett. No record of the Rejected Applications was kept. Testimony of Dennis Kelly.

92. No notification was given to the persons who submitted the Rejected Applications that such applications were rejected, nor was notice provided to applicants regarding the reasons why their applications were rejected. In light of the returned applications, Dennis Kelly's inaccurate reports at the Board's meetings, the secret dealings between the Board and Stinson Campaign workers, and other testimony, several people were trying to conceal the absentee ballot solicitation scheme of the Stinson Campaign. Testimony of Kelly, Jones, and Commissioner Talmadge.

93. The original Rejected Applications were delivered to Commissioner Talmadge for return delivery back to Ruth Birchett within a week prior to the Election. This was inconsistent with Dennis Kelly's prior testimony at a deposition on January 25, 1994. Testimony of Dennis Kelly.

94. Kelly did not disclose this information to the [*26] Pennsylvania Attorney General's office when questioned about the procedures. Testimony of Dennis Kelly.

95. Martz advised Ruth Birchett to discard the Rejected Applications. This is further evidence that the Stinson Campaign knew of the improper absentee ballot activities and later tried to conceal it.

96. Commissioner Talmadge knew about the Rejected Applications, facilitated the distribution of hundreds of Applications to Stinson Campaign workers, intentionally failed to enforce the Election Code, and later attempted to conceal this activity. Testimony of Commissioner Talmadge, Birchett, and Kelly.

97. Despite hundreds of applications being returned to the Board, no one made any effort to investigate this conduct even though one returned application could stimulate such an inquiry. Testimony of Commissioner Talmadge and Kelly.

98. The practice of returning absentee ballot applications to a party or candidate was done outside the normal course of the Board.

The Improper Certification

99. On November 18, 1993, the Board certified Candidate Stinson as the winner of the election from the Second Senatorial District. However, this was done during the course of a public hearing prior

[*27] to concluding the Board's findings of fact and conclusions of law. The decision to certify Stinson was made on November 18, 1993 when all other candidates for Election in the County of Philadelphia were certified on November 22, 1993. Testimony of Commissioner Talmadge.

100. The Board certified Stinson during the hearing even though Commissioner Talmadge knew that the Election Code provided two days to appeal a decision of the Board with respect to challenges and even though he knew Marks was going to appeal. Marks did appeal. *25 P.S. § 3146.8(e)* requires the County Board to suspend any action in canvassing, computing, and certifying the winner pending the 48 hour period during which Marks had a right to appeal the City Commissioners' decision and *25 P.S. § 3157* requires the Board to suspend certification pending such appeal.

101. The actions of the Board were designed to, and did in fact, prevent any realistic opportunity to appeal the certification in the State court system. The Board applied the Election Code in a discriminatory manner designed to favor one candidate. Certifying Stinson in this manner would end inquiries into the election abuse in which Commissioners Tartaglione [*28] and Talmadge participated. The Board conducted nothing more than mock hearings and intentionally reached decisions that would not reveal their involvement in the ongoing absentee ballot voting scheme. Defendants alleged plaintiffs consistently failed to avail themselves of the proper appeal procedures. Plaintiffs were never given the opportunity to present their claims because the safeguards failed at every level. Commissioner Talmadge readily admitted that if the Board would have properly performed its function even in light of the conduct of the Stinson Campaign, that the absentee ballot scheme would not have tainted the election in such an invidious manner.

The appeal and challenge structure is grounded in the rudimental supposition that the process is fair and not inherently flawed. The Stinson Campaign activities relating to the absentee ballots were improper. Nonetheless, this abuse should have been corrected by the Board. The improper actions of the Board deprived the plaintiffs from ever having their claims heard. Based on the Board's decision with reference to the challenges, the Board deprived the Court of Common Pleas of jurisdiction to consider plaintiffs' substantive [*29] claims. In short, the Board participated in an improper scheme and were then called upon to sit in judgment of that very conduct.

II. *Conclusions of Law*.

1. Plaintiffs have standing to bring claims regarding violations of the Civil Rights Act, *42 U.S.C. § 1983* and the Voting Rights Act, *42 U.S.C. §§ 1971, 1973. Anderson v. Celebrezze, 460 U.S. 780, 75 L. Ed. 2d 547, 103 S. Ct. 1564 (1983)* (candidate); *Harman v. Forssenius, 380 U.S. 528, 14 L. Ed. 2d 50, 85 S. Ct. 1177 (1965)* (voter); *Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173, 59 L. Ed. 2d 230, 99 S. Ct. 983 (1979)* (political party).

2. This Court has jurisdiction pursuant to the Civil Rights Act and the Voting Rights Act.

3. *Federal Rule of Civil Procedure 65* requires that notice be given to adverse parties. During closing arguments on February 9, 1994, counsel for the Board argued that the Board did not have notice of the hearing nor that injunctive relief was being considered against his clients. In their pleadings, plaintiffs set forth specific injunctive relief sought against each of the defendants, [*30] and at conference in this matter, all the parties were made aware of the scope of discovery and this was tailored to the injunctive relief sought against the defendants. In addition, counsel for the Board was present at the entirety of the proceedings, participated in discovery, and cross-examined and called witnesses at the hearing.

4. *Standard for a Preliminary Injunction*:

When ruling on a motion for preliminary injunctive relief pursuant to *Federal Rule of Civil Procedure 65*, a district court must consider four factors: (1) the likelihood that the movant will prevail on the merits at a final hearing; (2) the extent to which the plaintiff is being irreparably harmed by the conduct complained of; (3) the extent to which the defendants will suffer irreparable harm if the preliminary injunction is issued; and (4) the public interest. *S & R Corporation v. Jiffy Lube International, Inc., 968 F.2d 371, 374 (3d Cir. 1992)*. All four factors should favor preliminary relief before the injunction will issue. *Id.* Moreover, the grant of

injunctive relief is an "extraordinary remedy which should be granted only in limited circumstances." *Instant Air Freight Co. v. C.F. Air Freight, Inc., 882 F.2d 797, 800 (3d Cir. 1989)*. [*31] Additionally, the courts have consistently recognized that this extraordinary remedy is only available where the party seeking injunctive relief has no adequate remedy at law. *Frank's GMC Truck Center, Inc. v. General Motors Corp., 847 F.2d 100, 102 n.3 (3d Cir. 1985)*; *see also Justin Industries v. Choctaw Securities, L.P., 747 F. Supp. 1218, 1220 (N.D. Tex. 1990)*.

The court agrees with defendants to the extent that an injunction in this type of case is appropriate only in the most unusual circumstances. Under most circumstances, it is desirable to allow the legislative body to function without a federal court interfering into the state's legislative and political processes. In determining whether a preliminary injunction should issue, the criteria are to be applied, and in addition, the court must exercise judgment sensitive to all the interests likely to be affected by an injunction and the suitability of the underlying controversy to judicial resolution. *See, e.g., Cintron-Garcia v. Romero-Barcelo, 671 F.2d 1, 5 (1st Cir. 1982)*. In essence, a district court must engage in a balancing [*32] of harms, and in a case such as this, plaintiffs have an up-hill battle in demonstrating that they have met their burden.

A. *Likelihood of Prevailing on the Merits*:

The first requirement that the movant must meet before an injunction will issue is the reasonable probability of eventual success in the litigation. *Instant Air Freight Co., 882 F.2d at 800*. In the instant case, plaintiffs have set forth substantial evidence supporting each of their claims. Substantial evidence was presented establishing massive absentee ballot fraud, deception, intimidation, harassment, and forgery. Candidate Stinson knew of and ratified the procedures, and the Board participated in and later tried to conceal its involvement in the scheme. This is supported by the plaintiffs' exhibits such as the returned absentee ballot applications, the phone bank scripts, and the direct testimony of Jones, Kelly, and Commissioner Talmadge.

The conduct of the Stinson Campaign and Board, through the conduct of Commissioner Tartaglione and Talmadge and their agents goes well beyond a "garden variety" election dispute and attacks the very integrity of the electoral process itself. Plaintiffs [*33] have established a likelihood of success on their claims that such activity violates:

i. the *First Amendment* rights of Plaintiffs by illegally discriminating in favor of Democrat Stinson over Republican Marks. *Newcomb v. Brennan, 558 F.2d 825, 828* (7th Cir.) *cert denied, 434 U.S. 968, 98 S. Ct. 513, 54 L. Ed. 2d 455 (1977)*. *Madison Joint School District v. Wisconsin Employment Relations Commission, 429 U.S. 167, 175-176, 97 S. Ct. 421, 426, 50 L. Ed. 2d 376 (1976)*; *Shakman v. Democratic Organization of Cook County, 481 F. Supp. 1315, 1332-1334 (N.D. Ill. 1979), judgment vacated on other grounds, 829 F.2d 1387 (7th Cir. 1987)*.

ii. the equal protection rights of Plaintiffs by illegally discriminating in favor of Democrat Stinson over Republican Marks with no rational reason or purpose. *Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173, 99 S. Ct. 983, 59 L. Ed. 2d 230 (1979)*; *Libertarian Party of Indiana v. Marion County Bd. of Voter Registration, 778 F. Supp. 1458 (S.D. Ind. 1991)*; [*34]

iii. the substantive due process right of Plaintiffs to a free and fair election. *Reynolds v. Sims, 377 U.S. 533, 555, 84 S. Ct. 1362, 1378, 12 L. Ed. 2d 506 (1964)*; *Duncan v. Poythress, 657 F.2d 691, 704*, (5th Cir. 1981), *cert. dismissed, 459 U.S. 1012, 103 S. Ct. 368, 74 L. Ed. 2d 504 (1982)*;

iv. the Voting Rights Act by applying a "standard, practice, or procedure different from the standards, practices, or procedures" in a discriminatory fashion in favor of presumed supporters of Democrat Stinson over presumed supporters of Republican Marks in the delivery of Absentee Ballot Packages. *Brier v. Luger, 351 F. Supp. 313 (M.D. Pa. 1972)*.

In addition, plaintiffs have demonstrated the likelihood of success on their claims in that the Stinson Campaign and Democrat party workers, in conjunction with the Board, conspired to violate the Election Code and Voting Rights Act by targeting Latino and African-American voters for fraud, intimidation, and deception in order to obtain illegal absentee ballots for Stinson.

[*35] This Court is entitled to take an adverse inference when appropriate in a civil case from the *Fifth Amendment* testimony of various witnesses. *See Rad Services, Inc. v. Aetna Cas. and Sur. Co., 808 F.2d 271 (3d Cir. 1986)*. However, even without any adverse inferences from the witnesses who invoked their rights under the *Fifth Amendment*, plaintiffs have still met their burden of demonstrating a likelihood of success on the merits.

B. *Irreparable Harm*:

The second criteria a movant must establish before an injunction will issue is proof of irreparable harm. In order to demonstrate irreparable harm, "the plaintiff must demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial." *Instant Air Freight Co., 882 F.2d at 801*. Furthermore, the request for monetary relief has not been considered to constitute irreparable harm for the purposes of a preliminary injunction. *See id.* The Supreme Court, in determining the applicability of monetary relief to the grant of a preliminary injunction, has stated:

> the temporary loss of income, ultimately to be recovered, does not usually [*36] constitute irreparable injury . . . Mere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Sampson v. Murray, 415 U.S. 61, 90, 39 L. Ed. 2d 166, 94 S. Ct. 937 (1964) (quoted in *Instant Air Freight Co., 882 F.2d at 801*). Thus, it is evident that the harm "must be of a peculiar nature, so that compensation in money cannot atone for it." *Campbell Soup Co. v. ConAgra, Inc., 977 F.2d 86, 92 (3d Cir. 1988)*.

In the present case, plaintiffs have set forth substantial evidence demonstrating that they will suffer irreparable harm. An improperly seated state representative and the loss of constitutional freedoms constitutes irreparable harm. *See Elrod v. Burns, 427 U.S. 347, 49 L. Ed. 2d 547, 96 S. Ct. 2673 (1976)*. The plaintiffs have alleged more than mere monetary harm, and even more importantly, plaintiffs set forth substantial evidence demonstrating that the absentee [*37] ballot scheme was a widespread effort to improperly obtain absentee ballots. Plaintiffs have not been subjected to this type of scheme for an extended period and simply decided to bring a claim at this juncture. Plaintiffs have repeatedly tried to have their claims heard, but due to the failure of the Board to consider their claims, plaintiffs have been foreclosed from receiving any relief. A racially discriminatory strategy was conducted by the defendants by actively misrepresenting and abusing the use and vote by minority Latino, Afro-American, elderly and other absentee ballot voters. In essence, defendants carried out an improper scheme to favor one candidate. Money alone cannot address these claims and time is of the essence. *Cf. Cintron-Garcia v. Romero Barcelo, 671 F.2d 1, 3-4 (1st Cir. 1982)* (where challenged practices have been openly in existence for years prior to challenge, injunctive relief is inappropriate).

Plaintiffs, and even the entire state, suffer irreparable harm when a state representative is not properly elected. *See, e.g., Bell v. Southwell, 376 F.2d 659 (5th Cir. 1969)*. This is ordinarily [*38] a matter within the sound discretion of the state, but in exceptional cases involving massive improper conduct, plaintiffs should be allowed to have their claims heard and an injunction issue if substantial evidence supports their claims.

C. *The Extent to which the Defendants Will Suffer Irreparable Harm if the Preliminary Injunction is Issued*.

The irreparable harm suffered by the plaintiff exceeds any injury that may result to the defendants. With regards to the Board, it is their duty to ensure that elections are proper and fair. If an injunction is tailored to promote this end, the Board would not suffer any harm.

D. *The Public Interest*.

The public interest is served when courts enforce free and fair elections. *See Reynolds v. Sims, 377 U.S. 533, 12 L. Ed. 2d 506, 84 S. Ct. 1362 (1964)*. While it is true that the State of Pennsylva-

nia has a great interest in the outcome of its elections and should be able to resolve disputes without federal court intervention, the public interest is served in the extraordinary case, as here, when massive improper conduct has taken place by private and public workers. The public interest is served when the integrity [*39] of the election process is upheld and when adequate remedial measures are afforded complainants.

5. Federal courts in shaping equity decrees are "vested with broad discretionary power," *Lemon v. Kurtzman, 411 U.S. 192, 36 L. Ed. 2d 151, 93 S. Ct. 1463 (1973)* and *Donohue v. Bd. of Elections, 435 F. Supp. 957 (S.D.N.Y. 1976)*, and have exercised their powers in enjoining persons from taking office and voiding elections. *Bell v. Southwell, 376 F.2d 659, 665 (5th Cir. 1969)* (election invalidated and candidate enjoined from office); *Ury v. Santee, 303 F. Supp. 119 (N.D. Ill. 1969)* (municipal election invalidated on due process and equal protection grounds and candidates enjoined from office).

6. In light of the massive scheme of Candidate Stinson and the Stinson Campaign, and in light of the failure of the Board to fairly conduct its duties, it would be grossly inequitable to allow Stinson to remain in office and for the Board to continue to conduct business as it did during the 1993 Election. In a similar circumstance, where a federal court addressed massive improper conduct on the part of a candidate, [*40] relief was granted which resulted in the certification of the candidate receiving the greatest number of legal votes without the requirement of a vote by vote canvass. *Curry v. Baker, 802 F.2d 1302, 1312-14 (11th Cir. 1986)* (in circumstances of "massive violations of state and federal law" there is no requirement to "use only mathematically precise voter-by-voter testimony to determine which candidate received the most legal votes cast . . . . Under this standard, massive voting irregularities could never be effectively redressed; it would put a premium on wrongdoing of enormous proportions").

7. The votes cast at the voting machines were not affected by the improper conduct of the Stinson Campaign or the Board, and no evidence indicates that the machine returns do not reflect the will of the electorate. The District should not be denied representation in the State Senate based on the efforts taken by the Stinson Campaign and the Board to conceal certain conduct relating to the absentee balloting procedures.

8. The will of the electorate is reflected in the votes cast on the voting machines. The public interest will be served by having Marks, the candidate [*41] who prevailed on the undisputed legal votes, serve the remaining months of the term, which expires in December, 1994, rather than declaring the seat vacant and scheduling a new election at the May primary. It would be inequitable to cause the Second Senatorial District to be without representation in the State Senate pending the outcome of a new election, especially in light of the fact that those voters in the District who exercised their vote legally have voiced their desire to have Marks serve as their State Senator. Another consideration in the balancing of equities in this case, though certainly not a binding one standing alone, is the cost that a new election would impose on the taxpayers of Philadelphia due to the fraud perpetrated by the City Commissioners.

Because time is of the essence, because it would be inequitable to order a new election, and because the Board acted improperly in administering the last election, the court will order that the election be recertified on the results of the ballots cast at the polls. *Id.* This is extraordinary relief; however, it is appropriate because extraordinary conduct by the Stinson Campaign and the Board tainted the entirety of [*42] the absentee ballots.

9. Injunctive relief is also appropriate against the Board to ensure that voters understand the application procedures (in their native language when appropriate) and that the Board's procedures are followed so that constitutional and other rights are not violated. Proper respect is due to state proceedings. Only in the most unusual circumstances should a federal court intervene in an area that is so traditionally state controlled. *See generally Gruenburg v. Kavanagh, 413 F. Supp. 1132 (E.D. Mich. 1976)*. Because the plaintiffs were unable to have their claims heard and because of the most unusual circumstances and the significant federal rights involved, this court has heard plaintiffs' claims and will tailor specific injunctive relief.

An appropriate Order follows.

Clarence C. Newcomer, J.

ORDER

AND NOW, this day of February, 1994, upon consideration of plaintiffs' Motion for Preliminary Injunctive Relief, and the responses and arugments thereto, and after a hearing in this matter, and consistent with the foregoing Memorandum Opinion, it is hereby ORDERED that said motion is GRANTED as follows:

1. The Certification that Defendant [*43] William Stinson had more votes than Bruce Marks issued on November 18, 1993 by the County Board of Commissioners acting as the Board of Elections is VOID, as contrary to law.

2. Defendant William Stinson is hereby ENJOINED from acting in any capacity to vote, perform any duties or otherwise act or hold himself out as the duly elected Senator from the Second Senatorial District of Philadelphia, Pennsylvania.

3. The County Board of Commissioners acting as the Board of Elections is hereby ORDERED to recertify the results of the Second Senatorial District election based on the votes cast on the voting machines ONLY within seventy-two (72) hours of the date of this Order, and transmit such recertification to the Secretary of the Commonwealth as required by law.

4. All absentee ballots, applications and materials issued by the Defendant, the County Board of Commissioners, acting as the Board of Elections, shall from this point forward be distributed in the English language and in the Spanish language.

5. The County Board of Commissioners acting in the capacity of the Board of Elections, their agents, servants and representatives and those acting in concert with them are hereby ENJOINED [*44] from distributing official absentee ballot material to any candidate or representatives of any candidate in connection with any election in a discriminatory manner. The official absentee ballot material, which is distributed from the County Board of Elections for use in primary or general elections after the receipt of a duly qualified absentee voter application processed pursuant to the Election Code *25 P.S. § 3146.2b*, shall only be distributed by mailing same to the voter, or by hand delivery to the voter, pursuant to *25 P.S. § 3146.5*.

6. The defendant, Board of Commissioners, acting in the capacity of the County Board of Elections, their agents, servants and those acting in concert with them are hereby further ENJOINED from receiving any official absentee ballot materials or declarations from any candidate or its workers, or by anyone other than the voter in a discriminatory manner. The Board of Commissioners shall only accept such ballots if delivered to them in person by the voter, or mailed to them by the voter, pursuant to *25 P.S. § 3146.6*.

7. The County Board of Commissioners, acting as the Board of Elections shall maintain all official absentee ballot applications and all [*45] other absentee ballot materials in their possession for public access, and shall not deliver or return such records to any agent or other representative of any political party or candidate pursuant to *25 P.S. § 3146.9*.

8. The defendant County Board of Commissioners, acting as the Board of Elections, shall not employ discriminatory practices which involve applying the Election Code or any other law in a manner that favors or disfavors a candidate.

9. The County Board of Commissioners, acting as the Board of Elections, their agents, representatives and those acting in concert with them are further ordered to take all steps necessary within their department and within the office of the County Board of Elections to enforce the terms of this Order and to comply with the terms of the Election Code and other laws.

10. A trial in this matter will be scheduled by further Order of this court.

AND IT IS SO ORDERED.

Clarence C. Newcomer, J.

BRUCE MARKS; KATHY STECK, on behalf of the Voters of the Second District; EMANUEL LORENZO; LYDIA COLON; LILLIAN CRUZ; DIANA IRIZARRY; RUTH MARTINEZ; ZORAIDA RODRIGUEZ; YESENIA VASQUEZ; REPUBLICAN STATE COMMITTEE v. WILLIAM STINSON; THE WILLIAM STINSON CAMPAIGN; PHILADELPHIA COUNTY BOARD OF ELECTIONS; MARGARET M. TARTAGLIONE; JOHN F. KANE; ALEXANDER Z. TALMADGE, JR. and various Doe and Roe Defendants Senator William Stinson Appellant in No. 94-1247 Philadelphia County Board of Elections, Margaret M. Tartaglione, John F. Kane and Alexander Talmadge, Jr., Appellants in No. 94-1248 Ida Dougherty, Daniel J. Sears, Josephine Martin, Mary Martin, Joseph J. Jordan, Anne Jordan, Mary Sullivan, Mary Mendoloski, Anna Hagan and Robert W. Les, Intervenor-Appellants, as per the Court on 3/9/94, in Nos. 94-1247 and 94-1248

Nos. 94-1247, 94-1248

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

19 F.3d 873; 1994 U.S. App. LEXIS 4602

March 10, 1994, Argued
March 16, 1994, Filed

SUBSEQUENT HISTORY: As Amended March 30, 1994.

PRIOR HISTORY: [**1] On Appeal From the United States District Court For the Eastern District of Pennsylvania. (D.C. Civil Action No. 93-cv-06157).

COUNSEL: Bruce S. Marks, 1700 Market Street, 29th Floor, Philadelphia, PA 19103, Pro Se for Plaintiff-Appellee, Bruce S. Marks.

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[**2] Philadelphia County Board of Elections, Margaret Tartaglione, John F. Kane and Alexander Talmadge, Jr.

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JUDGES: BEFORE: STAPLETON, GREENBERG and COWEN, Circuit [**3] Judges.

OPINION BY: STAPLETON

OPINION

[*875] *OPINION OF THE COURT*

STAPLETON, Circuit Judge:

After an evidentiary hearing on the plaintiffs' motion for a preliminary injunction, the district court in this case found that certain officials responsible for conducting an election in the second senatorial district of the Commonwealth of Pennsylvania had conspired with one of the two candidates to cause numerous illegally obtained absentee ballots to be cast. Based on that finding, the district court issued a preliminary injunction which enjoined the candidate who participated in the conspiracy from exercising any of the authority of the office of state senator and directed the board of elections to certify the result of the election based solely on the votes cast at the voting machines. The effect of the preliminary injunction was to require the decertification of the candidate previously declared to be the winner and the certification of his opponent.

In this appeal from the preliminary injunction, we are asked to declare that the district court abused its discretion by refusing to abstain and by fashioning an unreasonable interim remedy.

I. *INTRODUCTION*

Republican Bruce Marks ("Marks") and Democrat [**4] William Stinson ("Stinson") ran in an election conducted on November 2, 1993, to represent Pennsylvania's second senatorial district. This election was held to fill the remaining portion of a term expiring in December 1994, and was of particular significance to both Republicans and Democrats because control of the Pennsylvania Senate was at stake. According to the certified results of the Philadelphia County Commissioners, sitting as the County Board of Elections ("the Board") [1], of the 38,818 votes cast [*876] on the voting machines on election day, 19,691 were cast for Marks, while 19,127 were cast for Stinson. However, of the 1,767 absentee ballots cast, Marks received only 371 votes, while Stinson received 1,396 votes. When all votes were added together, Stinson won by a final count of 20,523 to 20,062. The Board, therefore, certified Stinson as the winner of the election and he was subsequently sworn in as a Pennsylvania state senator.

1 In Philadelphia County, the Board is made up of two Democratic County Commissioners (Alexander Z. Talmadge, Jr., and Margaret M. Tartaglione) and one Republican County Commissioner (John F. Kane).

[**5] Marks, the Republican State Committee, and eight named voters who reside in the second senatorial district (two of whom are residents who voted at the polling place in the election at issue, and six of whom are Latino residents of this same district who voted by absentee ballot) brought this suit alleging violations of the Voting Rights Act and the Civil Rights Act in connection with the election. The defendants are Stinson, the Stinson

campaign, unnamed individuals who worked for the Stinson campaign, the Board, and Board members Margaret M. Tartaglione, John F. Kane, and Alexander Z. Talmadge, Jr. Defendants are joined as appellants by ten intervenors who are voters who legally cast absentee ballots and who allege that the preliminary injunction disenfranchised them.

Under Pennsylvania law, a qualified elector may vote by absentee ballot if he or she is, inter alia, absent from the Commonwealth or county of residence "because his duties, occupation or business require him to be elsewhere during the entire period the polls are open" or is physically unable to go to the polls. *25 P.S. § 3146.1(j)* & *(k)*. An elector who wishes to vote by absentee ballot must submit to the appropriate [**6] board of election an absentee ballot application, including a statement that the elector expects to be out of the county on election day or that the elector is physically unable to go to the polls, with a declaration stating the nature of the disability and the name, address, and telephone number of the attending physician. *25 P.S. § 3146.2(a)* & *(e)(1)* & *(e)(2)*. The absentee ballot application requires that the elector provide a "post office address to which [the] ballot is to be mailed." The deadline for the receipt of applications is 5:00 p.m. on the Tuesday before the election. *25 P.S. § 3146.2a*.

Absentee ballots applications are processed by the local board of elections to determine if the applicant possesses all necessary qualifications. If the board is satisfied that the applicant is a qualified elector, the application is marked "approved." *25 P.S. § 3146.2b(a)*. If the board concludes that the applicant is not qualified, it must immediately notify the applicant. *25 P.S. § 3146.2b(d)*. After approving an absentee ballot application, the board of elections is required to "mail or deliver" an absentee ballot package to the elector at the address listed on the application. *25 P.S.* [**7] *§ 3146.5*. The absentee ballot package consists of an outer envelope in which is enclosed a declaration envelope, an inner envelope, and instructions. *25 P.S. § 3146.4*.

The elector must mark the ballot "in secret," seal the ballot in the inner envelope, seal the inner envelope in the declaration envelope, and execute the declaration on the declaration envelope. *25 P.S. § 3146.6(a)*. An elector may legally receive assistance in filling out the absentee ballot only if the elector has a physical disability that "renders him unable to see or mark . . . the ballot." *25 P.S. § 3146.6(a)*. The elector must then "send by mail" or deliver "in person" the executed declaration package to the board of elections. *25 P.S. § 3146.6*. To be valid, all absentee ballots must be received by 5:00 p.m. on the Friday before the election. 25 P.S.

§ 3146.6(a). If an elector who sent in an absentee ballot becomes able to get to the polls on election day, the absentee ballot is void as a matter of law, and the elector has a duty to go to the polls and void the ballot. *25 P.S. § 3146.6(b)*.

Election day pollwatchers for each candidate may challenge any absentee ballot at the polling place at the time the polls [**8] close. *25 P.S. § 3146.8(e)*. The unchallenged absentee ballots are canvassed after the polls close by opening the declaration envelopes, removing, mixing, and opening the sealed inner envelopes, and then counting the ballots. 25 P.S.

§ 3146.8. All challenges are heard by the county board of elections within seven days and the board's decision is appealable [*877] to the Court of Common Pleas. *25 P.S. § 3146.8(e)*.

II. *THE DISTRICT COURT'S DECISION*

A. Findings of Fact

Following a three day hearing during which extensive testimony was presented, the district court issued detailed findings of fact which we now summarize.

The Stinson campaign sent its workers into divisions of the district where a majority of the residents were white to solicit voter registration applications and absentee ballot applications. The goal was to obtain twenty absentee ballot applications from each division. Those who expressed a hesitancy to register because they did not wish to go to a polling place were told by campaign workers that they could fill out an absentee ballot application and obtain an absentee ballot as a matter of convenience. Many improper applications were received based on this misrepresentation. [**9] These absentee ballot applications stated that the basis for voting absentee was that the applicant would be out of the county at the time of the election, despite the fact that the applicant had no reason to believe that

this would be the case. To conceal the fact that many of these improper absentee ballot applications were solicited several months before election day, Stinson campaign workers told canvassers not to fill in the true date on the application. The absentee ballots that the Stinson campaign obtained in this way were then submitted directly to Commissioner Tartaglione's office and the corresponding absentee ballot packages were provided directly to the Stinson campaign. According to the testimony of one campaign worker, Stinson was aware of the improper conduct regarding the absentee ballots, yet he permitted the conduct to continue and even admonished campaign workers who questioned its legality.

About three weeks before the election, the Stinson campaign learned that a Democratic State Committee poll showed Marks running ahead of Stinson by four percentage points. The campaign responded by saturating the Hispanic and African-American areas of the district with absentee [**10] ballot applications using tactics similar to those earlier employed. This time, however, campaign workers solicited absentee ballot applications in person and by telephone by telling the Latino and African-American voters that there was a "new way to vote" from the convenience of one's own home. Campaign workers were paid $ 1.00 for each application or ballot that they were able to obtain in this way, and the campaign dispensed at least $ 500 to $ 700 dollars in this effort.

The Stinson campaign obtained approximately 1,000 absentee ballots applications from the minority sections of the district. The applications were then delivered by Stinson campaign workers directly to Commissioner Talmadge, and he provided the absentee ballot packages directly to the Stinson campaign. Stinson campaign workers then took the absentee ballots directly to applicants' homes. In numerous instances, Stinson workers executed applications, ballots and declarations without the voter understanding the nature of the document. In other instances, Stinson workers instructed the voter to check certain places on the ballot, or filled out and forged the ballot. Voters were also assisted in completing applications [**11] and declaration packages after the statutory deadline for receipt by the Board had passed, and such ballots were counted by the Board. Many voters who cast absentee ballots testified that they were unaware that they had signed absentee ballot applications.

Almost 400 of the absentee ballot applications submitted by the Stinson campaign were rejected by the Board because they came from unregistered voters. These rejected applications were returned directly to Commissioner Talmadge, who then returned them to a Stinson campaign worker. Contrary to state law, no record was kept of the rejected applications.

Commissioners Tartaglione and Talmadge and Board employees working with them were aware of the absentee ballot campaign of Stinson and his workers and assisted that campaign by delivering hundreds of absentee ballot packages directly to Stinson workers rather than mailing or delivering them to the electors whose names and addresses appeared [*878] on the applications. This assistance was designed to aid the Stinson campaign in obtaining more votes through personal contact between the electors and the Stinson campaign workers. No such assistance was provided to Marks or the Marks campaign. [**12] During regular office hours, employees of the Board mailed all absentee ballot packages to the voters whose applications they had approved. The Board's assistance to the Stinson campaign was covert and was not disclosed to Republican Commissioner Kane at the time.

B. *Conclusions of Law*

After setting forth its factual findings, the district court concluded that the plaintiffs had established a likelihood of success on their claims. Specifically, the court found a likelihood of success on the claims that the defendants' conduct violated: "i. the *First Amendment* rights of Plaintiffs by illegally discriminating in favor of Democrat Stinson over Republican Marks. . . . ii. the equal protection rights of Plaintiffs by illegally discriminating in favor of Democrat Stinson over Republican Marks with no rational reason or purpose [, and] the substantive due process right of Plaintiffs to a free and fair election." The district court also found that a likelihood of success had been shown with respect to the plaintiffs' Voting Rights Act claims. Finally, the district court concluded that plaintiffs, "and even the entire state," suffer irreparable injury when an "improperly seated . . [**13] . representative" of

the people exercises the powers of his office and when "constitutional freedoms" are lost.

Having determined that a preliminary injunction should be issued, the district court turned to the form of the interim relief to be granted. The court stated in part:

> In light of the massive scheme of Candidate Stinson and the Stinson Campaign, and in light of the failure of the Board to fairly conduct its duties, it would be grossly inequitable to allow Stinson to remain in office and for the Board to continue to conduct business as it did during the 1993 Election. . . .
>
> The votes cast at the voting machines were not affected by the improper conduct of the Stinson Campaign or the Board, and no evidence indicates that the machine returns do not reflect the will of the electorate. The District should not be denied representation in the State Senate based on the efforts taken by the Stinson Campaign and the Board to conceal certain conduct relating to the absentee balloting procedures. . . .
>
> The will of the electorate is reflected in the votes cast on the voting machines. The public interest will be served by having Marks, the candidate who prevailed on the [**14] undisputed legal votes, serve the remaining months of the term, which expires in December, 1994, rather than declaring the seat vacant and scheduling a new election at the May primary.

Marks v. Stinson, 1994 U.S. App. LEXIS 4602, slip op. at 32-33 (E.D. Pa. 1994). [2]

2 Defendants Tartaglione and Talmadge maintain that they were without notice that preliminary injunctive relief against them was being sought in federal court. They point out that plaintiffs' motion for preliminary injunctive relief was directed solely to Stinson, as were the amended complaint and the pre-hearing memorandum. Notice, however, is required under *Fed. R. Civ. P. 65(a)* which provides: "No preliminary injunction shall be issued without notice to the adverse party." The order and findings of the district court therefore should be vacated, according to these defendants.

We disagree. At the preliminary injunction hearing on February 7, the plaintiffs' attorney made clear that plaintiffs would be attacking the Board's conduct and seeking injunctive relief against the Board:

> The County Board of Commissioners aided and abetted the Democratic Party in the facilitating of this fraud by making . . . absentee ballots . . . available in quantities in the hundreds, when the statute says that they should be mailed to the voter or delivered in person and they shall be received back by the voter in person. . . .
>
> * * *
>
> We will also produce for Your Honor on the same issue with respect to the abuse by the Democratic County Commissioners evidence that this was not a unique area. . . . We will produce evidence that the standard practice [was] hand[] delivery of a ballot to somebody, waiting while they vote and giving them literature, and that the facilitating of that problem was designed by the County Board of Commissioners in permitting the statute to be violated in that gross, unlawful manner.

> The second issue is that the application to vote absentee is in English, English only. . . . [We will show that this is illegal] under the Voting Rights Act and the Civil Rights Act. . . .
>
> We will take the position that those acts and that surrounding what I talked to the Court about with respect to the facilitation of votes in the hands of a worker who's committed to get the vote for the client, is a discriminatory practice and *we will ask the Court to enjoin the County Board of Commissioners* from violating that practice in the future. . . . We expect to be using Monday and Tuesday on the fraud issue and Wednesday and Thursday on wrapping up the issues with respect to the County Board of Commissioners.

2 App. 1075-78 (emphasis added). The counsel for the Board, in his remarks at the opening of the preliminary injunction hearing on February 7, acknowledged the plaintiffs' accusations and his intent to put forth a defense:

> Our . . . interest is in responding to the very scurrilous attacks directed . . . at the Commissioners. . . . We will meet those challenges. . . . I am here to defend my clients. I cannot tell the Court how long that defense will take because we do not know what the plaintiffs' case will be. I will work with the Court to make our defense as concise as possible, but because of the nature of the attacks mounted against my clients, I owe them a full defense to meet these scurrilous charges.

2 App. 1087-89. Our review of the record has satisfied us that the members of the Board participated fully in the expedited discovery ordered by the district court and that all of the issues resolved by the court were litigated with the consent of all the parties, including the members of the Board.

[**15] [*879] III. *THE STATE PROCEEDINGS*

The evidence and the factual findings of the district court clearly support its conclusion regarding the existence of irreparable injury and the likelihood of success on plaintiffs' Civil Rights Act claims, i.e., that the defendants operating under color of state law violated plaintiffs' rights under the *First* and *Fourteenth Amendments*. [3] As a result, the briefing and oral arguments in these appeals have focused primarily on defendants' contentions that the district court should have abstained and should not have granted the relief which it did. In order to understand the first of these issues, some knowledge of the state proceedings in this controversy is required.

> 3 Defendants vigorously deny that a likelihood of success has been demonstrated with respect to plaintiffs' Voting Rights Act claims. We have no occasion to reach that issue and express no opinion thereon.

On November 1, Marks appeared before Judge Gregory E. Smith of the Philadelphia County Court of Common Pleas with a [**16] Petition for Emergency Relief and Temporary Restraining Order. Marks requested that all absentee ballots in the district "be held impounded and deemed challenged" because "numerous voters were told they could vote by absentee ballots based on convenience." Stinson's lawyers opposed Marks' request and Judge Smith refused to hear Marks' evidence of fraud, instead referring the matter to the election day judge.

On election day, November 2, Marks appeared before Judge Edward J. Maier of the Philadelphia

County Court of Common Pleas with a Petition for Emergency Relief. Stinson's lawyers opposed Marks' request, as did the Democratic City Committee and the Board, and Judge Maier refused to hear Marks' evidence of fraud. Judge Maier, however, retained jurisdiction. Also on election day, the Marks campaign attempted to challenge 551 absentee ballots at polling places in accordance with *25 P.S. § 3146.8(e)*, but 351 absentee ballots were opened in apparent violation of *25 P.S. § 3146.8(a)*.

On November 3, Judge Maier began to consider Marks' absentee ballot challenges in contravention of 25 P.S.

§ 3146.8(e) which provides that the Board is to hear initial challenges. Also represented before [**17] Judge Maier were Stinson, the Board, the Senate Republican Campaign Committee, the Democratic City Committee, and a public interest group known as the Committee of the Seventy. Judge Maier found that Marks' challenges to all but 11 absentee ballots were meritless and, on November 9, the Board proceeded to open the 200 challenged absentee ballots that had not yet been unsealed.

Marks and the Republican State Committee filed an emergency petition with the Pennsylvania Supreme Court on November 10 to stay further proceedings. The Supreme Court granted Marks' motion on November 13. On November 17, the Supreme Court ruled that Judge Maier lacked jurisdiction [*880] over initial consideration of absentee ballot challenges under *25 P.S. § 3146.8(e)*. The matter was thus remanded to the Board.

On November 18, voters from the second senatorial district began an election contest pursuant to *25 P.S. § 3401*. Also on November 18, the Board convened to consider Marks' challenge to the absentee ballots pursuant to 25 P.S.

§ 3146.8(e). Stinson, the Republican State Committee, and the Democratic City Committee, along with Marks, were represented before the Board. Marks attempted to present evidence of electoral [**18] fraud, but the Board heard from only one witness before determining that it could only consider testimony from authorized pollwatchers. None being present, the Board rejected all 551 challenges to the absentee ballots and certified Stinson as the winner.

The federal district court made the following finding of fact with respect to the Board's November 18th certification of Stinson:

> 99. On November 18, 1993, the Board certified Candidate Stinson as the winner of the election from the Second Senatorial District. However, this was done during the course of a public hearing prior to concluding the Board's findings of fact and conclusions of law. The decision to certify Stinson was made on November 18, 1993 when all other candidates for Election in the County of Philadelphia were certified on November 22, 1993.
>
> 100. The Board certified Stinson during the hearing even though Commissioner Talmadge knew that the Election Code provided two days to appeal a decision of the Board with respect to challenges and even though he knew Marks was going to appeal. Marks did appeal. *25 P.S. § 3146.8(e)* requires the County Board to suspend any action in canvassing, computing, and certifying [**19] the winner pending the 48 hour period during which Marks had a right to appeal the City Commissioners' decision and *25 P.S. § 3157* requires the Board to suspend certification pending such appeal.
>
> 101. The actions of the Board were designed to, and did in fact, prevent any realistic opportunity to appeal the certification in the State court system. The Board applied the Election Code in a discriminatory manner designed to favor one candidate. Certifying Stinson in this manner would end inquiries into the election abuse in which Commissioners Tartaglione and Talmadge participated. The Board conducted nothing more than mock hearings and intentionally reached de-

> cisions that would not reveal their involvement in the ongoing absentee ballot voting scheme. . . .
>
> The appeal and challenge structure is grounded in the rudimental supposition that the process is fair and not inherently flawed. The Stinson Campaign activities relating to the absentee ballots were improper. Nonetheless, this abuse should have been corrected by the Board. The improper actions of the Board deprived the plaintiffs from ever having their claims heard. Based on the Board's decision with reference to the challenges, [**20] the Board deprived the Court of Common Pleas of jurisdiction to consider plaintiffs' substantive claims. In short, the Board participated in an improper scheme and were then called upon to sit in judgment of that very conduct.

Marks v. Stinson, No. 93-6157, slip op. at 22-24 (E.D. Pa. Feb. 17, 1994).

On November 19, Marks and the Republican State Committee appealed the Board's dismissal of the absentee ballot challenge to Common Pleas Court. In addition, Marks filed an emergency petition with the Pennsylvania Supreme Court to request a stay to prevent Stinson from voting when the Pennsylvania Senate reconvened. The Pennsylvania Supreme Court refused to entertain a hearing or grant a stay.

On November 22, the Pennsylvania Senate reconvened. The President of the Senate, Lt. Gov. Mark S. Singel, a Democrat, ruled that Stinson was properly seated. Sen. Robert. C. Jubelirer, a Republican, objected, claiming that the Board's certification of Stinson was invalid. The Senate voted 25-24 that Stinson was "eligible to vote on his own seating in the Senate," with Stinson casting the decisive vote. The Senate then voted 25-24 that Stinson was "properly seated as a member of the Pennsylvania [**21] Senate," with [*881] Stinson again casting the decisive vote. *See Jubelirer v. Singel*, *1994 Pa. Commw. LEXIS 68* (Pa. Commw. Ct. Feb. 9, 1994) (*en banc*).

The appeal from the Board's dismissal of the absentee ballot challenge was heard on December 14 before Judge Mark I. Bernstein of the Philadelphia Court of Common Pleas. Marks and the Republican State Committee understood their appeal to be authorized under *25 P.S. § 3146.8* & *§ 3157* and attempted to present evidence of electoral fraud, but Judge Bernstein found that he could consider only what had been presented to the Board:

> [Marks and the Republican State Committee] . . . ask[] the Court to assume plenary jurisdiction over any and all electoral abuses. . . . This the Court may not do. Jurisdiction is limited to reviewing the decisions of the County Board from which an appeal was taken; and if erroneously made, reversing those decisions. . . . Challenges to absentee ballots must initially be presented to the County Board for determination. If their determination was proper, this Court has no jurisdiction to go further.

In re General Election Contest Second Pennsylvania State Senatorial District, [**22] Court of Common Pleas of Philadelphia County (Civ. Div., Nov. Term 1993, No. 2887, issued Jan. 10, 1994), slip op. at 12-13. Judge Bernstein accordingly affirmed the Board's certification of Stinson.

Judge Bernstein also was assigned the election contest being pursued under *25 P.S. § 3401*. He ruled that the voters were required to post a $ 50,000 bond under *25 P.S. § 3459*. The bond was not raised and, on January 10, Judge Bernstein dismissed the contest without providing a hearing on the merits. With respect to election contest petitioners Steck and Lorenzo, the district court found that they "were not given a 'realistic opportunity to fully and fairly litigate' constitutional claims in state court if they were required to post a $ 50,000 bond to proceed." *Marks v. Stinson*, No. 93-6157, slip op. at 4 (E.D. Pa. Feb. 7, 1994).

Marks and the Republican State Committee have appealed Judge Bernstein's dismissal of the

absentee ballot challenge to the Pennsylvania Supreme Court. That appeal is currently pending. Marks has appealed the dismissal of the election contest to the Pennsylvania Senate which has scheduled no proceedings thereon. [4]

4 Under Pennsylvania law, only the candidate has standing to appeal an election contest to the legislature. *See* 25 P.S. § 3507.

[**23] IV. *ABSTENTION*

"Federal courts lack the authority to abstain from the exercise of jurisdiction that has been conferred." *New Orleans Pub. Serv., Inc. v. New Orleans, 491 U.S. 350, 358, 105 L. Ed. 2d 298, 109 S. Ct. 2506 (1989)*. "Underlying [this] assertion[] is the undisputed constitutional principle that Congress, and not the Judiciary, defines the scope of federal jurisdiction within the constitutionally permissible bounds." *Id.* (*citing Kline v. Burke Constr. Co., 260 U.S. 226, 234, 67 L. Ed. 226, 43 S. Ct. 79 (1922)*). "However, because federal courts do have discretion in determining whether to grant certain types of *relief*, abstention is appropriate in a few carefully defined situations." *Gwynedd Properties, Inc. v. Lower Gwynedd Township, 970 F.2d 1195, 1199 (3d Cir. 1992)*. "Thus, there are some classes of cases in which the withholding of authorized equitable relief because of undue interference with state proceedings is 'the normal thing to do.'" *New Orleans Pub. Serv., 491 U.S. at 359* [**24] (*quoting Younger v. Harris, 401 U.S. 37, 45, 27 L. Ed. 2d 669, 91 S. Ct. 746 (1971)*). Abstention, nevertheless, is the exception and not the rule. "The federal courts' obligation to adjudicate claims within their jurisdiction [is] 'virtually unflagging.'" *Id.* (citing *Deakins v. Monaghan, 484 U.S. 193, 203, 98 L. Ed. 2d 529, 108 S. Ct. 523 (1988)*).

In *Younger v. Harris, 401 U.S. 37, 27 L. Ed. 2d 669, 91 S. Ct. 746 (1971)*, the Supreme Court held that federal courts should abstain from enjoining state criminal prosecutions absent extraordinary circumstances. The [*882] Supreme Court has since expanded the reach of *Younger* to noncriminal judicial proceedings in which important state interests are involved. *Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432, 73 L. Ed. 2d 116, 102 S. Ct. 2515 (1982)*. *Younger* abstention "reflects a strong federal policy against federal-court interference with pending state judicial proceedings." [**25] *Id. at 431*.

Although *Younger* abstention is founded on notions of comity, "the [mere] pendency of an action in state court is no bar to proceedings concerning the same subject matter in the Federal court having jurisdiction." *Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817, 47 L. Ed. 2d 483, 96 S. Ct. 1236 (1976)*. "The presence of two parallel suits . . . does not run afoul of *Younger*." *Schall v. Joyce, 885 F.2d 101, 112 (3d Cir. 1989)*. This is true even in cases where there exists a "potential for conflict in the results of adjudications." *Colorado River, 424 U.S. at 816*; *Moses H. Cone Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 74 L. Ed. 2d 765, 103 S. Ct. 927 (1983)*. A federal court will only consider *Younger* abstention when the requested equitable relief would constitute federal interference in state judicial or quasi-judicial proceedings. *Middlesex, 457 U.S. at 431*; [**26] *Huffman v. Pursue, Ltd., 420 U.S. 592, 599-600, 43 L. Ed. 2d 482, 95 S. Ct. 1200 (1975)*. Thus, while a proponent of abstention must show (1) there are ongoing state proceedings involving the would-be federal plaintiffs that are judicial in nature, (2) the state proceedings implicate important state interests, and (3) the state proceedings afford an adequate opportunity to raise the federal claims, *Middlesex County, 457 U.S. at 432*, such a showing does not require that the federal court abstain. "Where federal proceedings parallel but do not interfere with the state proceedings, the principles of comity underlying *Younger* abstention are not implicated." *Gwynedd Properties, 970 F.2d at 1201*. [5]

5 Even if the equitable relief asked of the federal court would involve intervention in an ongoing state proceeding, the court must not abstain "if the state proceedings are being undertaken in bad faith, or if there are other extraordinary circumstances such as where the state proceedings are based on a flagrantly unconstitutional statute." *Gwynedd Properties, 970 F.2d at 1200* (citation omitted). Neither of these circumstances exists here.

[**27] Before proceeding to the facts of this case, it is also important to recognize that a person

with a federal Civil Rights Act claim has no duty to exhaust state remedies before pursuing his or her claim in the federal courts. *Patsy v. Board of Regents, 457 U.S. 496, 73 L. Ed. 2d 172, 102 S. Ct. 2557 (1982)*. *Younger* principles must be applied in a manner consistent with this well established proposition. As we noted in *Monaghan v. Deakins, 798 F.2d 632, 638 (3d Cir. 1986), aff'd in part and vacated in part, 484 U.S. 193, 98 L. Ed. 2d 529, 108 S. Ct. 523 (1988)*, "in no case has the Supreme Court or this court ever turned the propriety of a *Younger* dismissal upon the mere availability of a state judicial proceeding." Thus, the plaintiffs in this proceeding could have proceeded in federal court without having resorted to the state's judicial process. [6] In the [*883] absence of a showing of some potential for interference with an ongoing state proceeding, *Younger* principles do not bar a Civil Rights Act plaintiff from going forward in a federal forum simply because [**28] there are unexhausted possibilities for state litigation over the same subject matter.

6 Other forms of abstention may require a would-be federal plaintiff to seek relief in the state system. *See Grode v. Mutual Fire, Marine & Inland Ins. Co., 8 F.3d 953 (3d Cir. 1993)* (reviewing *Burford* abstention, *Pullman* abstention, and *Colorado River* abstention). Defendants raise only one of those doctrines here, arguing that the district court should have abstained under *Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496, 85 L. Ed. 971, 61 S. Ct. 643 (1941)*. We note initially that defendants did not ask the district court to abstain under *Pullman* and raised the issue for the first time on appeal. Moreover, *Pullman* abstention would have been inappropriate here.

The *Pullman* doctrine provides that "when a federal court is presented with both a federal constitutional issue and an unsettled issue of state law whose resolution might narrow or eliminate the federal constitutional question, abstention may be justified under principles of comity in order to avoid needless friction with state policies." *Chez Sez III Corp. v. Township of Union, 945 F.2d 628, 631 (3d Cir. 1991)* (internal quotations and citations omitted), *cert. denied, 117 L. Ed. 2d 493, 112 S. Ct. 1265 (1992)*.

Defendants insist that it is uncertain whether Pennsylvania election law allows an election board to permit campaign workers to deliver absentee ballots to voters. Defendants also argue that it is uncertain whether an election board must wait two days after rejecting absentee ballot challenges before certifying a winner in order to permit an appeal. Abstention therefore would be appropriate, according to defendants, because "a definitive state court ruling on the election laws would narrow the scope of the constitutional issues now before the Court." Stinson Brief 31.

We disagree. While the phrase "mail or deliver" in *25 P.S. § 3146.5* may be ambiguous as applied in some contexts, we are confident that the Pennsylvania courts would not construe it as authorizing an election board to give ballots to a candidate for delivery to voters, much less to one candidate and not his or her opponent. With respect to the waiting period, we find *25 P.S. §§ 3146.8* and *3157* neither ambiguous nor material to the federal issues presented in this case. As the Supreme Court has noted:

> [*Pullman* abstention] contemplates that deference to state court adjudication only be made where the issue of state law is uncertain. If the state statute in question, although never interpreted by a state tribunal, is not fairly subject to an interpretation which will render unnecessary or substantially modify the federal constitutional question, it is the duty of the federal court to exercise its properly invoked jurisdiction.

Harman v. Forssenius, 380 U.S. 528, 535, 14 L. Ed. 2d 50, 85 S. Ct. 1177 (1965) (citations omitted).

[**29] This principle is equally applicable where the plaintiff previously has been involved in state proceedings. Every state has a process for enforcing merits judgments entered by its courts and that process is, of course, an integral part of the state's judicial process for *Younger* purposes. *Younger* thus bars a federal plaintiff from securing relief against the enforcement of an adverse judgment against him on the merits. *See e.g. Huffman, 420 U.S. at 592* (*Younger* abstention appropriate where plaintiff sought injunctive relief in federal court rather than appealing state trial court judgment within the state system); *Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 95 L. Ed. 2d 1, 107 S. Ct. 1519 (1987)* (abstention under *Younger* required where plaintiff requested an injunction enjoining the execution of a state judgment). Such relief would constitute a direct intervention of the federal court in the state judicial process and the federal plaintiff can proceed in federal court in such a situation, if at all, only after securing a reversal of the judgment in [**30] the state courts.

This does not mean, however, that failure to exhaust state appellate remedies will always bar access to the federal courts under *Younger*. Exhaustion of appellate remedies is required by *Younger* only when the federal proceedings seek effectively to annul the state judgment. In *Wooley v. Maynard, 430 U.S. 705, 51 L. Ed. 2d 752, 97 S. Ct. 1428 (1977)*, the Supreme Court distinguished *Huffman* on precisely this basis. The federal plaintiff there sought prospective relief against an allegedly unconstitutional statute under which he had been convicted. The federal defendants urged that *Younger* was applicable because the plaintiff had not appealed his conviction. The Court observed:

> Appellants, however, point out that Maynard failed to seek review of his criminal convictions and cite *Huffman v. Pursue, Ltd., supra*, for the propositions that "a necessary concomitant of *Younger* is that a party in appellee's posture must exhaust his state appellate remedies before seeking relief in the District Court," *420 U.S. at 608*, [**31] and that "*Younger* standards must be met to justify federal intervention in a state judicial proceeding as to which a losing litigant has not exhausted his state appellate remedies," *id., at 609*. *Huffman*, however, is inapposite. There the appellee was seeking to prevent, by means of federal intervention, enforcement of a state-court judgment declaring its theater a nuisance. We held that appellee's failure to exhaust its state appeals barred federal intervention under the principles of *Younger*: "Federal post-trial intervention, in a fashion designed to annul the results of a state trial . . . deprives the States of a function which quite legitimately is left to them, that of overseeing trial court dispositions of constitutional issues which arise in civil litigation over which they have jurisdiction." *Ibid*.
>
> [*884] Here, however, the suit is in no way "designed to annul the results of a state trial" since the relief sought is wholly prospective, to preclude further prosecution under a statute alleged to violate appellees' constitutional rights.

Wooley, 430 U.S. at 710-11. [**32]

This is not a case in which the federal plaintiffs [7] are seeking relief which will in any way impair the ability of the state courts of Pennsylvania to adjudicate anything that is currently before them. When this suit was filed, plaintiffs Marks, Steck, and Lorenzo had instituted two proceedings challenging the election, both of which were then before the Court of Common Pleas. The federal suit did not directly or indirectly ask the court for any relief with respect to those state proceedings. The plaintiffs were simply pursuing parallel tracks seeking consistent relief in the federal and state systems.

> 7 Throughout this section, we refer to the federal plaintiffs collectively. Our doing so does not reflect a rejection of their substantial arguments that they should each be regarded as separate entities for *Younger* purposes. The plaintiffs who describe them-

selves as "Latino plaintiffs" have been a party to *no* state proceeding. Plaintiffs Steck and Lorenzo were denied access to the only proceeding they sought to join when they failed to post a $ 50,000 bond and they had no right to appeal from that denial. It is only Marks and the Republican State Committee who are currently parties to any state proceeding. The plaintiffs other than Marks argue that they are entitled to go forward even if Marks cannot. The defendants, on the other hand, insist that abstention is appropriate as to all plaintiffs under *Doran v. Salem Inn, Inc., 422 U.S. 922, 45 L. Ed. 2d 648, 95 S. Ct. 2561 (1975)*. The Supreme Court there recognized that there are "some circumstances in which legally distinct parties are so closely related that they should be subject to *Younger* considerations which govern any one of them." *Id. at 928-29*. This court has never had occasion to rule on whether voters and the candidate of their choice are such "closely related" parties and we decline to do so here. Since we conclude that Marks may go forward, we reserve that decision for another day.

[**33] In retrospect, plaintiffs' decision to pursue parallel tracks seems to have been a prudent strategy. By the time the district court was asked to abstain on *Younger* grounds and to decline to entertain plaintiffs' motion for a preliminary injunction, the Court of Common Pleas had refused in both proceedings before it to hear the evidence upon which plaintiffs' federal claims are based. In one instance, the court held that its jurisdiction was limited to the scope of the review the Election Board chose to conduct. In the other, it held that it could not go forward unless the plaintiffs posted a $ 50,000 bond. In the meanwhile, Stinson had been certified as the winning candidate, had been seated as a member of the State Senate based on his own vote, and had been exercising the prerogatives of that office for three months, a substantial portion of the term for which he was elected. With four months having passed without even a hearing in the state court at which they could present their evidence, the federal plaintiffs understandably turned to the federal court for relief. The interim relief they sought, once again, did not involve any restraint, direct or indirect, on the state's [**34] judicial process.

It is true, as defendants stress, that when the district court declined to abstain, one appeal was pending in the Supreme Court of Pennsylvania and another appeal, Marks' appeal in the election contest proceeding, was pending in the State Senate. As we have explained, however, *Younger* does not require federal plaintiffs to exhaust their appellate remedies unless the relief being sought from the federal court involves disruption of the state's judicial process. Insofar as *Younger* is concerned, the passage of time here has only served to cast doubt on the adequacy, for these plaintiffs at least, of any remedy the Pennsylvania Supreme Court may find to be available in the Court of Common Pleas. [8] The situation remains the same for *Younger* purposes as it was at the time of the filing of the federal complaint; the plaintiffs are still [*885] doing nothing more than pursuing a parallel track and the relief that they have sought and received does not in any way interfere with the judicial process of the state. This is true even if one assumes, as we do solely for the purposes of this opinion, that the election contest in the Senate should be regarded as a judicial [**35] proceeding for *Younger* purposes. The plaintiffs have asked only that Stinson be decertified and that Marks be certified by the Board. The certification of Marks would not preclude an election contest in the Senate, any more than the prior certification of Stinson precluded one. [9]

8 Since plaintiffs' evidence has not been heard by a state court, the appeal in the Supreme Court of Pennsylvania appears to offer plaintiffs only the hope of securing a ruling that the Court of Common Pleas did have jurisdiction to hear their complaint. At the time the district court declined to abstain, the Supreme Court had not noted probable jurisdiction or set a briefing schedule. While it has since done so, the most that can be expected after the appeal is fully litigated is a pass back to square one -- the Court of Common Pleas and an evidentiary hearing in which their claims can be pursued.

9 By so noting, we do not suggest that a federal court would be without power to enjoin an election contest in the Senate upon finding a violation of the Voting Rights Act

> or the Civil Rights Act, or that the Senate would not be required to give full faith and credit to a final district court judgment in this case. Those issues are not before us and we express no opinion thereon.

[**36] We believe our observations in *Kentucky West Virginia Gas Co. v. Pennsylvania Pub. Util. Comm'n, 791 F.2d 1111, 1117 (3d Cir. 1986)*, are equally pertinent here:

> "In the typical *Younger* case, the federal plaintiff is a defendant in ongoing or threatened state court proceedings seeking to enjoin continuation of those state proceedings." *Crawley v. Hamilton County Comm'rs, 744 F.2d 28, 30 (6th Cir. 1984)*. In this case, on the other hand, the federal plaintiffs--Kentucky West and Equitable Gas-- are also the state plaintiffs. Moreover, they are not seeking to enjoin any state judicial proceeding; instead, they simply desire to litigate what is admittedly a federal question in federal court, having agreed to dismiss their pending state appeal if the district court assumes jurisdiction over the merits of their complaint. . . .
>
> Under the circumstances, then, we believe that the balance of state and federal interests tips decidedly away from abstention under *Younger*. *New Jersey Educ. Ass'n*, 579 F.2d at 771-72. As a result, the district court abused its discretion when it dismissed [**37] the companies' complaint on this basis. To deny Kentucky West and Equitable Gas access to a federal forum simply because of their pending state appeal would be at odds with a fundamental premise of our federal judicial system: that is, "that where Congress has granted concurrent jurisdiction, a plaintiff is free to bring suit in both the state and federal forums for the same cause of action." *Id. at 769*.

While the federal plaintiffs in our case have not, so far as we are aware, agreed to abandon their state proceedings if the district court grants them relief, that is not essential to the principle articulated in *Kentucky West Virginia Gas*. A federal plaintiff may pursue parallel actions in the state and federal courts so long as the plaintiff does not seek relief in the federal court that would interfere with the state judicial process. Moreover, since parallel proceedings always involve a likelihood that a final merits judgment in one will effectively terminate the other, it necessarily follows that the mere fact that a judgment in the federal suit might have collateral effects in the state proceeding is not interference for *Younger* purposes. [10] *See, e.g., Gwynedd Properties, Inc. v. Lower Gwynedd Township, 970 F.2d 1195, 1200-1203 (3d Cir. 1992)*. [**38]

> 10 The defendants have not asserted before us that there is a final judgment of the Court of Common Pleas that bars the federal plaintiffs from going forward here on their Voting Rights Act and Civil Rights Act claims. *See* Wright, Miller & Cooper, *Federal Practice* § 4435 (a final judgment "on the merits" is a necessary predicate for claim and issue preclusion).

The district court did not err in refusing to abstain. [11]

> 11 The defendants also urge that the district court lacked jurisdiction under the *Rooker-Feldman* doctrine. The district court rejected this argument, finding that *Rooker-Feldman* did not bar it from hearing the fraud and constitutional claims of any of the parties involved. The *Rooker-Feldman* doctrine embodies the principles set forth by the Supreme Court in *District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 75 L. Ed. 2d 206, 103 S. Ct. 1303 (1983)*, and *Rooker v. Fidelity Trust Co., 263 U.S. 413, 68 L. Ed. 362, 44 S. Ct. 149*, (1923): "lower federal courts lack subject matter jurisdiction to engage in appellate review of state court determinations or to evaluate constitutional claims that are 'inextricably intertwined with the state court's [decision] in a judicial proceeding.'" *Port Auth. PBA v. Port*

Auth. of N.Y. & N.J., 973 F.2d 169, 177 (3d Cir. 1992) (citing *Feldman, 460 U.S. at 483 n.16*). We agree with the district court that *Rooker-Feldman* principles are not applicable here.

First, *Rooker-Feldman* did not bar the district court from hearing the claims of the Latino plaintiffs because they were not parties to any of the state court proceedings on the matter. *Valenti v. Mitchell, 962 F.2d 288, 297 (3d Cir. 1992)* ("The *Rooker-Feldman* doctrine has a close affinity to the principles embodied in the legal concepts of claim and issue preclusion . . .. The basic premise of preclusion is that non-parties to a prior action are not bound. A non-party is not precluded from relitigating matters decided in a prior action simply because it passed by an opportunity to intervene.").

Second, the court was not barred under *Rooker-Feldman* from hearing the constitutional and fraud claims of Marks and the Republican State Committee ("RSC") because these claims had not been determined by the state court, nor were they inextricably intertwined with a prior state court decision. Specifically, the court of common pleas dismissed Marks' and the RSC's claims without reaching the merits. Therefore, the district court was not faced with a situation where it was asked to review a determination of the state court. Furthermore, a "federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state court judgment." *Centifanti v. Nix, 865 F.2d 1422, 1430 (3d Cir. 1989)* (quoting *Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 25, 95 L. Ed. 2d 1, 107 S. Ct. 1519 (1987)* (concurring opinion)). Here, the district court could (and did) find that Marks' and the RSC's fraud and constitutional claims had merit without also finding that the court of common pleas erred when it dismissed their proceedings. *Id.*

Finally, *Rooker-Feldman* did not bar the district court from hearing the claims of plaintiffs Steck and Lorenzo, the Election Contest petitioners. Because the court of common pleas did not reach the merits of their claims, the district court did not sit in review when it heard them. Nor are the claims of Steck and Lorenzo inextricably intertwined with the state court's decision to dismiss because the district court need not reverse this decision before granting Steck and Lorenzo federal relief.

[**39] [*886] V. *REMEDY*

Having concluded that the district court properly exercised its jurisdiction and that the record supports its findings on the probability of success and irreparable injury, we now turn to the remedy issue. The state elections process recognized Stinson as the winner of the election. While the district court found for purposes of plaintiffs' preliminary injunction motion that wrongdoing affected the election, it did not find, even for that limited purpose, that Stinson's election was attributable to wrongdoing. The district court did not find that Stinson failed to receive a plurality of the legally cast votes.

On the other hand, contrary to plaintiffs' strenuously pressed argument, [12] we do not understand the district court to have concluded that Marks received a plurality of the legally cast ballots. Nor did the district court address the problem created by the fact that some electors who cast tainted absentee ballots undoubtedly would have cast valid votes at the polls had they not been misled (by a conspiracy knowingly supported by state actors) into believing there was a "new way to vote." Thus, while the district court concluded that "no evidence indicates that [**40] the machine returns do not reflect the will of the electorate," slip op. at 32, it did not affirmatively conclude that the winner of the machine vote would have won a plurality of the legal votes cast if the wrongdoing had not occurred.

12 At oral argument, plaintiffs insisted that the district court implicitly had found that Marks won a plurality of votes cast legally

> both at the polls and through absentee ballots. Central to plaintiffs' contention was the $ 685 that the Stinson campaign supposedly spent in furtherance of the absentee ballot fraud. See 10 App. 5186-98. Each dollar, say plaintiffs, represented one vote, and when 685 votes are subtracted from Stinson's total, Marks prevails. The district court, however, found that the money was spent soliciting both applications for absentee ballots *and* absentee ballots, with $ 1 being paid "per application *or* ballot." *Marks v. Stinson*, No. 93-6157 (E.D. Pa. Feb. 17, 1994), slip op. at 16 (emphasis added). No conclusion thus can be drawn about how many votes were obtained from the expending of $ 685.

[**41] The district court did conclude, with ample record support, that the wrongdoing was substantial, that it *could* have affected the outcome of the election, and that it rendered the certified vote count an unreliable indicator of the will of the electorate. Having so concluded for the purposes of the preliminary injunction motion, we cannot say that the district court abused its discretion in [*887] restraining Stinson from exercising the powers of the office *pendente lite*.

The integrity of the election process lies at the heart of any republic. The people, the ultimate source of governmental power, delegate to their elected representatives the authority to take measures which affect their welfare in a multitude of important ways. When a representative exercises that authority under circumstances where the electors have no assurance that he or she was the choice of the plurality of the electors, the legitimacy of the governmental actions taken is suspect. Accordingly, where there is substantial wrongdoing in an election, the effects of which are not capable of quantification but which render the apparent result an unreliable indicium of the will of the electorate, courts have frequently [**42] declined to allow the apparent winner to exercise the delegated power. *See, e.g., Bell v. Southwell, 376 F.2d 659 (5th Cir. 1967)*. Having tentatively found the facts that it did, we cannot fault the district court for restraining Stinson from exercising the powers that are delegated to a senator by the people, even though the court was not able to find that he received less than a plurality of the legally cast votes.

However, the district court's tentative findings that there was "massive absentee ballot fraud, deception, intimidation, harassment and forgery," and that "many" of the absentee votes were tainted, do not, we conclude, justify its decision to order the certification of Marks. Marks' only claim of authority to exercise the people's delegated power rests upon his receiving a majority of the votes cast on the voting machines. Equating the machine vote with the will of the electorate disenfranchises the voters who cast legal absentee ballots. Moreover, it fails to take into account the will of electors who would have voted at the polling places but who unknowingly cast illegal absentee ballots relying on the assurances that were an integral [**43] part of the scheme which "the Board participated in and later tried to conceal." Slip op. at 26.

In the circumstances which confronted the district court, we believe the same principle that justified the unseating of Stinson dictates that Marks not be certified on the basis of the machine vote only. For the actions of a democratically elected body of representatives to be legitimate, the electorate must be assured that each of the representatives was the choice of the electorate. It follows, we believe, that Marks should not be certified unless and until the district court is satisfied that Marks would have won the election but for the wrongdoing.

As the Supreme Court has stated:

> Undeniably, the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, *Ex parte Yarbrough, 110 U.S. 651, 28 L. Ed. 274, 4 S. Ct. 152*, [**44] and to have their votes counted, *United States v. Mosley, 238 U.S. 383, 59 L. Ed. 1355, 35 S. Ct. 904*.

Reynolds v. Sims, 377 U.S. 533, 554, 12 L. Ed. 2d 506, 84 S. Ct. 1362 (1963). These rights are potentially violated, however, whenever an individual is sworn in as an elected representative without a demonstration that he or she was the choice of a plurality of the electorate. This is so because the possibility is left open that some other candidate actually received more votes than the declared winner, which would mean that each of the votes cast for this other candidate was ignored."

Plaintiffs argue that to require certainty of results here would be unfair to Marks. They note that the district court tentatively found that the wrongdoing of Stinson and the other appellants may have made it impossible to determine who would have won a fair election. Assuming that it is in fact impossible to determine a certain winner, Marks will be forced to endure the hardship of running again if he still wishes to fill the senate seat. Therefore, plaintiffs argue that Marks will, in effect, be [**45] punished for the wrongdoing of the appellants. Plaintiffs suggest that the way to deal with election results that are uncertain as a result of fraud is to have the "punishment" fall on the party who perpetrated the fraud. Plaintiffs' arguments, however, [*888] miss the mark. Our primary concern here is not to punish any individual candidate or party, but to promote the public's interest in having legislative power exercised only by those to whom it has been legally delegated. This interest is not served by arbitrarily ignoring the absentee vote, a substantial but undetermined portion of which was either legally cast or came from voters who would have gone to the polls but for the fraud. Just punishment for any wrongdoing that has been perpetrated may be pursued in other proceedings; it is not the objective here.

We find the decision of the Court of Appeals for the First Circuit in *Griffin v. Burns, 570 F.2d 1065* (lst Cir. 1978), instructive here. That case involved a primary election to select a Democratic candidate for a vacancy on the Providence City Council. Rhode Island law provided for absentee ballots in elections of municipal officers but was silent regarding [**46] their use in party primaries for municipal office candidates. The officials responsible for the election distributed absentee ballots, and all absentee ballots cast by qualified voters in the manner directed by the board of elections were counted in certifying the winner. In the ensuing litigation the Supreme Court of Rhode Island concluded that there was "no constitutional or statutory basis for allowing . . . absentee voters to cast their votes in a primary election." *Id. at 1068*. The court directed the decertification of the previously declared winner, and the board of canvassers certified a new winner based solely on the machine cast ballots.

A civil rights class action was commenced in federal court by the absentee voters alleging that the failure to count their ballots constituted a violation of the *due process clause of the Fourteenth Amendment*. The district court found such a violation, stressing that the plaintiffs had followed the instructions of the officials charged with running the election, and ordered a new election. The Court of Appeals affirmed, observing with respect to the constitutuional violation:"

> While . . . local election irregularities, including even claims of official misconduct, do not usually rise to the level of constitutional violations where adequate state corrective [**47] procedures exist, there remain some cases where a federal role is appropriate. The right to vote remains, at bottom, a federally protected right. If the election process itself reaches the point of patent and fundamental unfairness, a violation of the due process clause may be indicated and relief under § 1983 therefore in order. Such a situation must go well beyond the ordinary dispute over the counting and marking of ballots; and the question of the availability of a fully adequate state corrective process is germane. But there is precedent for federal relief where broad-gauged unfairness permeates an election, even if derived from apparently neutral action.
>
> * * *
>
> The present situation, judged in light of the standards we have discussed, presented a due process viola-

> tion for which relief under § 1983 was appropriate. The district court was not asked to examine the validity of individual ballots or to supervise the administrative details of a local election. It was asked to remedy a broad-gauged unfairness that infected the results of a local election.

Id. at 1077, 1078.

The candidate who won the machine vote argued that the plaintiffs [**48] failed to establish that "enough of the disenfranchised absentee voters would have voted in person to have altered the result." *Id. at 1079.* The court rejected this argument and affirmed the order requiring an election, reasoning:

> Given the evidence of some voters -- including two who were severely handicapped
>
> -- that they would have voted in person, and the importance of the right to vote, the court could infer that it was more likely than not that a very significant proportion of those voting by absentee ballot would have gone to the polls had such ballots not been available. While the "outcome" test provides a sensible guideline for determining when federal judicial invalidation of an election might be warranted [citations omitted], it is not a principle requiring mathematical certainty. In cases of outrageous racial discrimination some courts have chosen not to apply it at all, but to invalidate the election simply for [*889] its lack of integrity.
>
> . . . Here, the closeness of the election was such that, given the retroactive invalidation of a potentially controlling number of the votes cast, a new primary was warranted.

Id. at 1080. [**49]

While *Griffin*, [13] unlike this case, did not involve a "massive absentee ballot fraud," that distinction does not diminish its helpfulness here. Several points are worthy of note in the context of this case. First, the court concluded that rejection of a ballot where the voter has been effectively deprived of the ability to cast a legal vote implicates federal due process concerns. Second, the court's focus was not upon the alleged prejudice to a candidate who endured the rigors of electioneering and who *may* have been the choice of the electorate, but rather upon the right of the electors to vote and to have their votes counted. Finally, even in the absence of fraud, where it was not feasible to establish who would have won a properly conducted election, a new election was appropriate to restore the integrity of the electoral process.

> 13 Griffin is also distinguishable from this case because there has been no finding here that the voters who cast legally unauthorized absentee ballots were reasonable in believing they were proceeding in a legally authorized manner. While the district court's findings of fact make clear that two members of the Board knowingly aided Stinson's "new way to vote" program, there is no finding that those casting unauthorized absentee ballots relied on express or implied representations of election officials as occurred in Griffin. Nothing in Griffin suggests that a new election is required in all instances in which voters, reasonably or unreasonably, make a mistake about the place or manner in which they are authorized to vote. Nor do we so suggest."

We are mindful of the fact that our decision to sustain the preliminary injunction insofar as it relates to Stinson and to vacate it insofar as it relates to Marks will likely result in the voters of the second senatorial district being without representation in the Pennsylvania Senate during the pendency of this litigation. That prospect justifiably [**50]

concerned the district court and was a primary reason for its ordering the certification of Marks. We think that concern justified the district court in expediting these proceedings and instructing the parties to prepare for an immediate trial on the merits. As we have noted, we do not think that concern justified the certification of a candidate who had not established his credentials.

Interim periods during which the voters of an area are without representation are inevitable. Vacancies periodically occur for a variety of reasons, and the process necessary to select someone to fill those vacancies necessarily takes time. Among the numerous factors that can make that period substantial are irregularities in the voting process and ensuing litigation. While substantial periods without representation are regrettable, the consequences of placing political power in unauthorized hands are of far graver concern.

We urge the district court to reach a final resolution of this case as soon as possible. The character and timing of further proceedings are, of course, left to its discretion. Those proceedings and the court's final judgment, however, should be consistent with this opinion. In [**51] particular, the district court should not direct the certification of a candidate unless it finds, on the basis of record evidence, that the designated candidate would have won the election but for wrongdoing. [14]*See, e.g., Curry v. Baker, 802 F.2d 1302 (11th Cir. 1986), stay denied, 479 U.S. 1301, 93 L. Ed. 2d 1, 107 S. Ct. 5, cert. denied, 479 U.S. 1023, 93 L. Ed. 2d 819, 107 S. Ct. 1262 (1986).*

> 14 We do not suggest that such a finding would have to be made with mathematical precision. Courts, with the aid of expert testimony, have been able to demonstrate that a particular result is worthy of the public's confidence even though not established solely by applying mathematics to the record evidence. *See eg. Curry, 802 F.2d at 1317-19.* What is required is evidence and an analysis that demonstrate that the district court's remedy is worthy of the confidence of the electorate.

If the district court finds a constitutional violation, it will have authority [**52] to order a special election, whether or not it is able to determine what the results would have been in the absence of that violation. The district court need not exercise this authority, however. Depending on the circumstances existing at the time these proceedings are concluded, [*890] a special election to fill the vacancy for the remainder of the year may not be justifiable in terms of the expense to the state and the burden on the candidates, voters, and election officials. The district court may exercise its own discretion in light of the circumstances then existing or it may simply invalidate the election, declare that there is a vacancy, and leave the decisions concerning a special election and the timing thereof to the appropriate state authorities.

VI. *CONCLUSION*

We will vacate that portion of the district court's preliminary injunction that required the Board of Elections to certify Marks. The remainder of the preliminary injunction will remain in effect until further order of the district court.

The Washington Post

Post Nation

Pennsylvania Attorney General Kathleen Kane resigns after criminal conviction

By Amy B Wang August 16

Kathleen Kane, once a rising star in Pennsylvania politics, said Tuesday that she will resign as the state's attorney general after she was found guilty of nine criminal charges, including two felony perjury counts.

"I have been honored to serve the people of Pennsylvania and I wish them health and safety in all their days," the first-term Democrat said in a statement the afternoon after her conviction.

Kane, who was elected in 2012, was accused of leaking information to the media about a 2009 grand jury probe as a way to get back at Frank Fina, a political rival and former state prosecutor.

Prosecutors said Kane masterminded the leak and a subsequent coverup — and then lied to a grand jury about it.

After hearing days of dramatic testimony, a 12-person jury in Pennsylvania's Montgomery County agreed with prosecutors, finding Kane guilty Monday of two counts of felony perjury, as well as obstruction, false swearing and other misdemeanor charges.

Kane, 50, faces up to seven years in prison on each of the felony perjury charges. Under state law, she was required to resign by the day of her sentencing.

"It seemed we had somebody who felt she was above the law," Montgomery County District Attorney Kevin Steele told reporters outside the courtroom after the verdict was delivered. "This was about the defendant going before a grand jury in Montgomery County and lying to that grand jury. The evidence was overwhelming in that regard."

Calls for Kane to resign had mounted soon after the verdict was delivered late Monday.

Pennsylvania Gov. Tom Wolf (D) called it a "sad day" for the state and said "there should be no question" Kane should resign immediately, according to PennLive.com.

Assistant District Attorney Michelle Henry joined the chorus of those denouncing Kane's actions.

"What she did while she was the attorney general, the fact she would commit criminal acts while the top prosecutor, is a disgrace," Henry said after the verdict.

On Tuesday, after Kane's announcement, Wolf, the governor, said "her decision to resign is the right one, and will allow the people of Pennsylvania to finally move on from this situation."

Kane showed little emotion as the verdict was read, according to the Associated Press.

"The conviction on all counts was a crushing blow — I'm not going to say otherwise," said Gerald Shargel, an attorney for Kane.

The defense intentionally did not have Kane testify. Nor did her legal team call witnesses over the six days of the trial.

"It's a strategy," Shargel said. "Obviously we thought that it would work, but I'll be the first person to say we were wrong."

Judge Wendy Demchick-Alloy warned she would jail Kane if there was evidence of retaliation against witnesses who had testified against her, including two of Kane's former aides.

Demchick-Alloy also took Kane's passport, implying she was a flight risk, according to the Philadelphia Inquirer.

The conviction seemed the final career fall for the state's highest-ranking law enforcement officer.

Once a rising star, Kane was the first Democrat and first woman elected as the state's top lawyer. (The job became an elected position in 1980.)

"It's the role of the attorney general to be an independently elected voice," Kane said in 2012, the day after winning the state attorney general's race. "People see politics as a close-knit, good ol' boy network, and I want to change that starting Day One."

But the scandal mounted, and Kane lost her law license — and will now leave her job: The attorney general's office said Kane's resignation will be effective by the end of the day Wednesday.

Wolf, the governor, said in a statement Tuesday that he would "work with both Republicans and Democrats in the Senate regarding any potential appointment of an Attorney General."

Pennsylvania voters will elect a new attorney general in November, to be sworn in Jan. 17, 2017.

As The Washington Post's Juliet Eilperin reported in 2013, Kane beat establishment figures in both her own party and the GOP.

> She defeated Rep. Patrick Murphy (D-Pa.) in the party primary, despite his endorsements from union officials and many of the state's elected Democrats. President Bill Clinton did a fundraiser for Kane, who she had worked on Hillary Clinton's 2008 presidential bid; Murphy responded by securing the endorsement of Obama adviser David Axelrod.

In 2013, during a training seminar for female candidates sponsored by the Democratic political action committee Emily's List, which backs female candidates who support abortion rights, Kane noted that politics is a rough-and-tumble business.

In fact, she warned other political aspirants, when it comes to running for office, "it is a dirty business, there is no doubt."

Amy B Wang is a general assignment reporter for The Washington Post. Follow @amybwang

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http://www.philly.com/philly/news/politics/20150218_McCord_set_to_plead_guilty_to_extortion.html

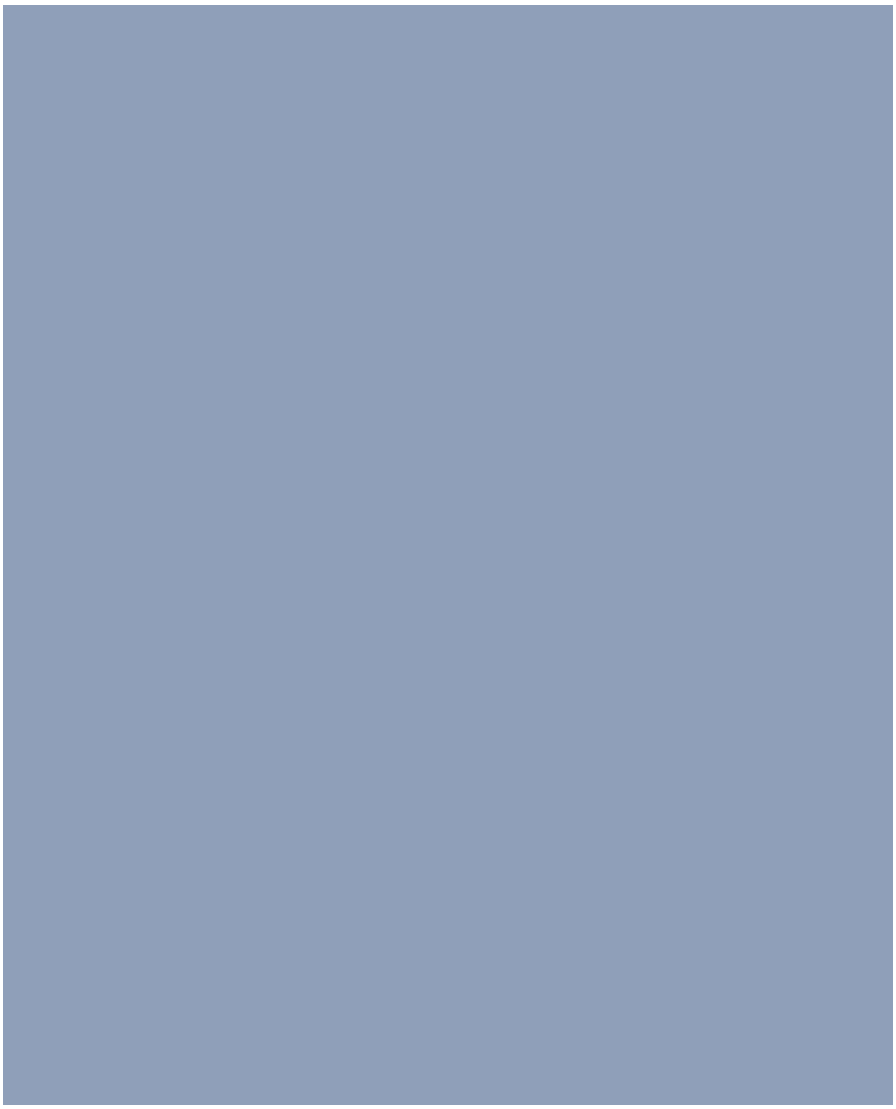
McCord admits trying to extort campaign donations

Updated: FEBRUARY 18, 2015 — 1:07 AM EST

Disgraced former Pennsylvania State Treasurer Rob McCord leaves Federal Court in Harrisburg after pleading guilty to two counts of extortion Feb. 17, 2014. (CLEM MURRAY / Staff Photographer)

by **Angela Couloumbis and Jeremy Roebuck**, Inquirer Staff Writers

HARRISBURG - Former State Treasurer Rob McCord kept his answers short and his head bowed Tuesday morning.



McCord admits trying to extort campaign donations

As he pleaded guilty to two counts of attempted extortion in federal court, McCord gave uncharacteristically clipped responses to a judge's questions: Yes, he understood the charges against him. Yes, he realized that he could be giving up certain rights by pleading guilty.

And, yes, he tried to strong-arm campaign donors during his unsuccessful run for governor last year.

The Montgomery County Democrat's guilty plea capped a whirlwind month that saw the onetime gubernatorial candidate resign in the middle of his second term and publicly apologize for his actions.

During the nearly hour-long hearing , McCord, 55, acknowledged his guilt to U.S. District Judge John E. Jones III. Jones did not set a sentencing date but scheduled a presentencing conference in June.

Beyond answering routine questions from the judge, the former treasurer known for his glibness and frenetic pace said little during the hearing. Asked about any health problems, McCord volunteered that he once had been treated for attention deficit disorder.

But he offered no new details about his crimes or the investigation that toppled him.

He arrived at the courthouse more than an hour before his hearing was to start and sat quietly in the courtroom, his head buried in a book.

He declined to comment after the hearing as he left with his lawyer, Robert E. Welsh Jr.

Welsh, too, was guarded. Asked whether McCord's plea could spare him prison time, Welsh said: "I can't say. Nobody knows at this point."

The maximum penalty McCord could face on each charge is 20 years in prison and a $250,000 fine, although federal guidelines are likely to result in a considerably lighter sentence.

Welsh did signal that more information about McCord and his crimes would come at sentencing: "In the fullness of time . . . you will have a lot to write about."

Though not a surprise - McCord signaled his intention to plead guilty last month - his plea comes amid an ongoing investigation that has left major donors and contractors wondering if there are more shoes to drop.

FBI agents have interviewed several of McCord's donors about contracts they hold for government work, according to sources with knowledge of the investigation. Late last year,

agents subpoenaed McCord's former office looking for records relating to a list of major donors, contract-holders, and fund-raising committees across the state.

Whether McCord, a former venture capitalist from Bryn Mawr, is playing any role in the continuing probe remains unclear. His agreement with prosecutors makes no mention of whether he has agreed to cooperate, and Welsh would not comment when asked about it Tuesday.

The charges stem from McCord's bid last spring to raise money while running for the Democratic nomination for governor.

At the time, Tom Wolf had become the unexpected front-runner, having launched a series of early and successful television ads and after pouring millions of his own money into the campaign. McCord put more than $2 million of his own into the race, but by spring had begun to panic about his inability to gain any traction in the four-candidate race.

In documents filed with his plea agreement, McCord acknowledged that he tried to strong-arm officials at two companies - one an unnamed Western Pennsylvania contractor, the other an unnamed Philadelphia law firm - for campaign contributions.

In one instance quoted in court filings, McCord threatened the managing partner of the Philadelphia firm if the company did not make a sizable contribution to his campaign.

He told the partner, a supporter of former Gov. Tom Corbett's, that he could still harm the firm in his position as the treasurer, where he managed the state's money and investments.

"At the very least, I'm still going to be the freaking treasurer," McCord said in the conversation apparently recorded by federal agents or cooperating witnesses, court records show.

Around the same time, McCord directed one of his campaign "bundlers" - people who solicit contributions from friends, business associates, and others - to squeeze the Western Pennsylvania property-management firm for $100,000.

In a telephone conversation with the bundler, McCord complained that the principals of the property-management firm were "rich as gods," and urged the bundler to call them and say the things that "I don't want to say."

The firm had received benefits and other incentives from the state that were approved in part by McCord.

The court documents say McCord counseled the bundler to "get them learning" that as treasurer, McCord was a "fiscal watchdog" - the inference being that he could stop state benefits from flowing to the company.

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Philly congressman Chaka Fattah found guilty of racketeering

Paul Singer, USA TODAY 2 p.m. EDT June 21, 2016

(Photo: Matt Rourke, AP)

Longtime Rep. Chaka Fattah, D-Pa., was convicted in a federal court Tuesday of taking bribes and stealing charitable funds and federal money.

Fattah — who was defeated in a Democratic primary in April in his bid for a 12th term in Congress — was convicted of steering federal funds to non-profits he controlled and then skimming that money to pay off debts for his unsuccessful run for mayor of Philadelphia in 2007.

Fattah and several co-conspirators were named in a 29-count indictment (/www.justice.gov/usao-edpa/file/641241/download) filed last July. Fattah has proclaimed his innocence throughout the case. "I haven't committed any crime," he said in a court appearance last August. He told reporters, “I understand their desire to come after me ... but to take innocent people, to take people in my family and to smear their good name — that says a lot about character, so I think that's the most unfortunate part about this entire process."

Fattah's lawyer argued during the court case that it was his campaign consultants, acting without Fattah's knowledge, who concocted the scheme to move money around.

The congressman was also found guilty of having accepted bribes from one of his top supporters in exchange for lobbying the Obama administration to appoint the supporter to an ambassadorial post.

He is scheduled to be sentenced Oct. 4.

House rules state that a lawmaker who has been convicted should refrain from voting in committees or on the House floor until they have been cleared through an appeal or re-elected. But Fattah can remain in Congress unless the House votes to expel him.

White House Press Secretary Josh Earnest declined to comment on the facts of the case, but said it proved the independence of federal prosecutors.

“Congressman Fattah was a supporter of President Obama's presidential campaigns. That’s just a fact,” Earnest said. “Obviously, I think this is pretty good evidence that the Department of Justice is faithful to their mandate to pursue justice irrespective of political affiliations.”

Assistant Attorney General Leslie R. Caldwell said, "Today’s convictions should send a message that the Justice Department will vigorously investigate and prosecute political corruption wherever it takes place, and uphold the principles of honesty and integrity that are the foundation of our government."

Contributing: Gregory Korte

USA TODAY

Rep. Fattah charged with conspiracy

(http://www.usatoday.com/story/news/politics/2015/07/29/rep-fattah-charged-conspiracy/30828955/)

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News (Http://Www.Philly.Com/News)

— Politics (http://www.philly.com/philly/news/politics)

Washington pleads guilty to conflict-of-interest charges

Updated: OCTOBER 31, 2014 — 1:08 AM EDT

State Sen. LeAnna Washington puts her hand up to a reporter asking questions as she walks into court on Thursday, October 20, 2014. (MICHAEL BRYANT / Staff Photographer)

by **Tricia L. Nadolny and Jessica Parks**, Inquirer Staff Writers

In her own words - at least according to an aide - LeAnna Washington was "the f--ing senator" who could do whatever she wanted.

Washington pleads guilty to conflict-of-interest charges (http://www.philly.com/philly/news/politics/201410 viewGallery=y)

Even after she was charged this year with ordering state Senate staff to plan her birthday party fund-raiser, the longtime Democrat representing Philadelphia and Montgomery Counties showed little remorse. She skipped some hearings, and when she did attend she seemed stoic - if defiant - shaking her head as a former staffer described her office as toxic.

On Thursday, Washington finally spoke. She pleaded guilty to conflict-of-interest charges, and then, choking back tears, told reporters in Norristown she was always known "to stand up for what I believe in and what is right."

Judge Steven O'Neill suggested that might change. As he ordered her to serve house arrest and repay the state, he told Washington that history would probably remember her for "how you left office - under this cloud."

Washington called the outcome the best for her constituents. But the deal also spares the 69-year-old senator jail time and preserves her pension.

She already lost a reelection bid this year and will resign effective Friday, said her lawyer, Henry E. Hockeimer Jr.

The brief hearing marked the first conviction of a legislator by Attorney General Kathleen G. Kane's office, and the downfall of a lawmaker who for two decades had represented the region in Harrisburg.

Under the deal, Washington pleaded guilty to felony conflict of interest and agreed to cooperate in other investigations. Prosecutors dropped a charge of felony theft, which if proved could have cost the senator her pension, and agreed to no jail time.

O'Neill ordered her to spend three months on home confinement, an additional 57 months on probation, and pay $200,000 in restitution. Senior Deputy Attorney General Susan DiGiacomo said the restitution covers the public money Washington was accused of stealing plus her legal fees that had been covered by the Senate.

Prosecutors alleged Washington used her staff to plan her annual birthday party campaign fund-raisers from 2005 to 2013, using up to $100,000 in taxpayer money for political gain.

A grand jury report said Washington berated her chief of staff when he questioned the propriety of ordering her staff to do political work on government time. "I am the f-ing senator, I do what the f- I want, and ain't nobody going to change me," she told him, according to his grand jury testimony. "I have been doing it like this for 17 years. So stop trying to change me."

DiGiacomo declined to discuss how Washington was cooperating with her office - part of the arrangement that's helping her keep her pension.

Based on Washington's salary and years of service, it appears she would be entitled to about $55,000 a year for the rest of her life. (Officials with the State Employees' Retirement System said they could not calculate members' pensions until after they retire.)

Washington is among 32 public employees charged with wrongdoing by the Attorney General's Office since Kane was inaugurated in 2013.

O'Neill said he wasn't privy to details of the cooperation arrangement. But in a harsh rebuke of Washington, he said other former legislators were serving jail terms for the same crime she committed.

He said he accepted the plea because he trusted the prosecutor's judgment, then used the platform to warn others engaged in the same behavior.

"Take notice," he said. "These very types of crimes have brought down people who were given public trust."

To Washington, the judge said her crimes not only ruined her own reputation but were ones "that will taint, that will cloud, that will obscure," the work of good legislators.

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The Philadelphia Inquirer

Philly DA

A New Day/ A New DA.

PA STATE REP. LOUISE WILLIAMS BISHOP PLEADS TO CHARGES

By Philadelphia District Attorney's Office
Special investigation has led to a total of five pleas

PHILADELPHIA (Dec. 16, 2015) – Philadelphia District Attorney R. Seth Williams today announced that PA State Rep. Louise Williams Bishop has pled to one count of Statement of Financial Interest which is an ungraded misdemeanor in violation of 65 Pa.C.S. § 1105. She will be placed on six months of probation, agree to resign from office immediately, and pay $1,500 in restitution and $5,000 in prosecution costs.

"The withdrawal of the defense's motion of selective prosecution based on race clearly shows that the investigation and prosecution of these elected officials was never based on race. The plea and subsequent conviction of Ms. Bishop shows that I have done what my office has been charged by the citizens of Philadelphia to do: fight corruption and make this city safe," said District Attorney Williams. "Personally, today's announcement has marked the end of a difficult chapter in this special investigation because I've known Rep. Bishop since I was four years old and tremendously respect her and her work as a community leader, elected official, radio personality and member of the clergy, but she did the right thing today by not contesting the facts we presented in court and withdrawing her motion."

Recorded evidence showed that Bishop accepted and did not report a gift of $1,500. The same special investigation has yielded pleas from the following elected officials:

- » Former President Judge of the Philadelphia Traffic Court Thomasine Tynes on December 15, 2014, plead to Conflict of Interest and Conspiracy charges. She was ordered to serve 11 ½ to 23 months in prison and pay $2,500 in prosecution costs;
- » Former PA State Rep. Harold James on June 1, 2015, plead to one count of Conflict of Interest. He was ordered to pay $750 in restitution and $2,000 in prosecution costs, resign from office and was placed on 12 months of reporting probation;
- » Former PA State Rep. Michelle Brownlee on June 1, 2015, plead to one count of Conflict of Interest. She was ordered to pay $2,000 in restitution and $3,500 in prosecution costs, resign from office and was placed on 18 months of reporting probation; and
- » Former PA State Rep. Ronald Waters on June 1, 2015, plead to nine counts of Conflict of Interest. He was ordered to pay $8,750 in restitution and $5,000 in prosecution costs, resign from office and was placed on 23 months of reporting probation.

The remaining elected official charged in the District Attorney's ongoing investigation is PA State Rep. Vanessa Lowery Brown. Rep. Lowery Brown's next listed court date is January 11, 2016.

Today's hearing, which took place in Dauphin County, was presided over by the Hon. Scott Evans of the Court of Common Pleas. Assistant District Attorneys Mark Gilson and Brad Bender prosecuted the elected officials as a result of the office's special investigation and the grand jury's recommendation of charges.

This entry was posted on December 16, 2015 at 6:15 am and is filed under Press Release. You can follow any responses to this entry through the RSS 2.0 feed. Both comments and pings are currently closed.

4th Pa. official pleads guilty in legislative sting case

BY BRAD BUMSTED | Monday, June 8, 2015, 9:13 a.m.

HARRISBURG — A Democratic state lawmaker on Monday pleaded guilty to accepting money from an undercover informant and became the fourth official convicted in a bribery-related probe.


Rep. Michelle Brownlee, 195th Legislative District, Philadelphia County

Rep. Michelle Brownlee of Philadelphia pleaded guilty to conflict of interest. Dauphin County Judge Scott Evans sentenced her to 18 months' probation. She agreed to resign the House seat she's held since 2010. Brownlee was ordered to make $2,000 in restitution and pay $3,500 for the cost of prosecution to the Philadelphia district attorney's office.

Brownlee admitted to accepting $2,000 wrapped in a napkin while providing the informant posing as a "lobbyist" special access to her office. The lobbyist was undercover operative Tyron B. Ali, who videotaped 113 encounters with various officials.

Brownlee admitted to agreeing to official acts for the money, prosecutors said.

The so-called sting case was abandoned by Attorney General Kathleen Kane, who called it "unprosecutable" because she claimed it was legally flawed. Philadelphia District Attorney Seth Williams took the case and charged six officials with crimes.

"As we've been saying, the evidence was clear, convincing and compelling," said Philadelphia Assistant District Attorney Mark Gilson.

Neither Brownlee nor her lawyer, Mia Perez, made any comment leaving court. In court, Perez said Brownlee is a mother of three and "a good person."

Brownlee cooperated fully and "early on," Gilson said.

Last week, Rep. Ron Waters, D-Philadelphia and ex-Rep. Harold James, D-Philadelphia, pleaded guilty to accepting money from Ali. They entered pleas to conflict of interest in lieu of bribery charges. Both received probation, and Waters resigned his seat.

Thomasine Tynes, former president judge of traffic court, admitted to taking a $2,000 bracelet. She also pleaded guilty to conflict of interest.

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Rep. Vanessa Brown, D-Philadelphia, another defendant in the case who withdrew her guilty plea last week, allegedly helped convince Brownlee that Ali was a "good guy" and a lobbyist, the indictment claims.

Rep. Louise Bishop, D-Philadelphia, is fighting the charges. Both Bishop and Brown are charged with bribery and conflict of interest. Bishop's attorney is arguing "racial targeting" of defendants because all are black.

That was one of Kane's arguments in dropping the case. She says it was dormant when she took office in 2012.

Williams is the first black district attorney in Pennsylvania. The lead investigator, Claude Thomas, who used to work for the attorney general, is black.

There was absolutely no racial targeting, Gilson said. Evans has yet to rule on the racial targeting claim in Bishop's case.

Brad Bumsted is a Trib Total Media staff writer. Reach him at 717-787-1405 or bbumsted@tribweb.com (mailto:bbumsted@tribweb.com).

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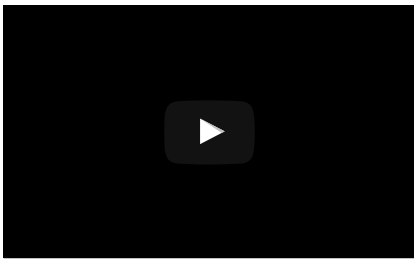

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Two more Dems plead guilty in sting case

Updated: JUNE 2, 2015 — 1:07 AM EDT

Former State Rep. Harold James (L) and State Rep. Ronald Waters. (Bradley C. Bower / Philadelphia Inquirer)

by **Angela Couloumbis and Craig R. McCoy**, Inquirer Staff Writers

HARRISBURG - A member of the state House and a former colleague pleaded guilty to corruption charges Monday, bringing to three the number of Philadelphia Democrats convicted in the resurrected "sting" case.

Two more Dems plead guilty in sting case (http://www.philly.com/philly/news/politics/201506 viewGallery=y)

State Rep. Ronald Waters, 65, and former Rep. Harold James, 72, accepted deals that spared them prison and meant they will likely keep their government pensions.

Waters, who resigned his seat immediately after Monday's hearing, pleaded guilty to nine counts of conflict of interest and was sentenced to 23 months on probation. He was ordered to pay $8,750 in restitution to the state - the amount in bribes he accepted - and $5,000 to the Philadelphia District Attorney's Office for the cost of prosecution.

In court, the longtime legislator apologized to his constituents and said he regrets what he did.

"I got caught up and I don't know where my mind was," Waters told Judge Scott Arthur Evans of Dauphin County.

"I'm not trying to make any excuses," he added. "The only thing I ask is, please look at the whole man."

James, his voice barely audible, pleaded guilty to one count of conflict of interest. He was sentenced to 12 months' probation and ordered to pay $750 in restitution and $2,000 for the cost of prosecution.

Another defendant, State Rep. Vanessa Lowery Brown, decided at the last minute not to enter a guilty plea, though she had signed a plea deal, prosecutors said.

Her lawyer, Michael J. Diamondstein, would not comment, saying only that "there are some issues that need to be resolved."

Brown, 48, is scheduled to reappear on July 13 in Dauphin County Court, where the case would be tried.

With Monday's pleas, three of six public officials, all Democrats from Philadelphia, have been convicted in the sting, during which a confidential informant offered cash or money orders in exchange for official favors. The case was resurrected last summer by Philadelphia District Attorney Seth Williams.

As The Inquirer first reported last year, Pennsylvania Attorney General Kathleen G. Kane, a Democrat, secretly ended the sting operation in 2013 without bringing any criminal charges.

She said the investigation was poorly handled and marred by a lack of a clear quid pro quo for the payments. She also said she had evidence that the undercover operative, Tyron B. Ali, had been ordered to focus only on African American targets.

Assistant District Attorney Mark Gilson, who together with city prosecutor Brad Bender led the reinvestigation of the sting, said Monday that "there is not a scintilla of evidence that anyone was targeted."

"This was a case that the chief law enforcement officer for the State of Pennsylvania said was dead on arrival, non-prosecutable - and today, two defendants plead guilty," said Gilson. "I think that tells you everything you need to know about the strength and quality of this case."

With three guilty pleas in hand, Williams, also a Democrat, said the convictions showed that Kane had misjudged the merit of the sting investigation.

"Clearly," he said, "it was a prosecutable case."

Kane spokesman Chuck Ardo said the attorney general "stands by her decision not to prosecute these African American legislators. She also stands by the grounds on which she made that decision."

Waters and James join the first person charged in the case by Williams' office - Thomasine Tynes, 72, a former Traffic Court judge - in entering guilty pleas.

Tynes, who accepted a $2,000 Tiffany bracelet from Ali, was sentenced to 23 months in prison, but that term is concurrent with the two-year federal prison term she is serving in an unrelated ticket-fixing case.

Besides Brown, two other members of the Philadelphia delegation to the state House charged in the case are still awaiting trial: Michelle Brownlee and Louise Williams Bishop.

Prosecutors have charged Brownlee, 59, with accepting $2,000 wrapped in a napkin during a walk with Ali outside a Harrisburg restaurant. She is scheduled to appear in Dauphin County Court next week.

Though Brown and Brownlee have yet to enter pleas, both have admitted wrongdoing in testimony before a grand jury, Williams has said.

So far, the only defendant to mount a defense is Bishop, 81.

Prosecutors say Ali gave Bishop a total of $1,500 during three meetings.

During the last exchange of cash, they say, Bishop was taped saying: "That's a great help. That's a biggie."

Her lawyer, A. Charles Peruto Jr., has subpoenaed six current or former members of the Attorney General's Office to testify Friday at a court hearing for Bishop. Peruto said last week that he hoped to prove Kane was correct in saying the case was tainted by racial

prejudice. Peruto has not subpoenaed Kane.

Williams said Peruto's argument troubled him.

"I recognize he is just trying to represent a client. But it does a total disservice to the cause of criminal justice when people make false claims of racism," Williams said, "because the system historically has been full of racism, racist actions, and racist conclusions.

"So when rational and reasonable people throw that out there, it's really like throwing gasoline on a fire."

He said the sting informant and his handlers had thrown their net widely. He also noted that some officials, such as State Rep. W. Curtis Thomas, a Democrat from North Philadelphia, had rejected overtures from the undercover operative.

"About half the people they spoke with were Democrats; half were Republicans. Half were black, half were white. Some were Hispanic," Williams said. "Some of them, like Curtis Thomas, told the confidential informant in no uncertain terms to get the hell out of the office."

Waters, first elected to his legislative seat 15 years ago, had been a quiet backbencher in Harrisburg. Despite the news of the sting, he breezed to his ninth term last November. He had no opponent in either the primary or the general election.

James, a former Philadelphia police officer, represented a South Philadelphia legislative district for almost two decades until 2008. He returned to the legislature in 2012 - the year he accepted the money from Ali - serving for six months to fill the unexpired term of a lawmaker who had resigned.

He is a former president of the Guardian Civic League, an organization for African American Philadelphia police officers.

Of six Democratic elected officials charged so far in the sting case, Waters accepted the most money: $8,750 in nine payments in 2010, 2011, and 2012.

After pocketing one payment of $1,000, Waters was captured on tape saying, "Happy birthday to Ron Waters."

James received two money orders worth a total of $750 in campaign contributions. Unlike Waters, he reported the money on his campaign-finance reports.

But prosecutors said James' corrupt intent was demonstrated when he reached out to the informant later and asked how he could help him while in office.

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Published: June 1, 2015 — 12:08 PM EDT | **Updated:** June 2, 2015 — 1:07 AM EDT
The Philadelphia Inquirer

Newspapers.com Philadelphia Daily News (Philadelphia, Pennsylvania) · Thu, Sep 22, 2016 · Main Edition · Page 27

NEWS | COURTS

Judge unseals limited parts of Acosta docket

By Jeremy Roebuck
STAFF WRITER

A FEDERAL JUDGE on Tuesday unsealed a court docket entry in State Rep. Leslie Acosta's money-laundering conspiracy case that offered official acknowledgment that she had pleaded guilty in March to the felony crime.

But documents detailing the North Philadelphia Democrat's admission of guilt — including a memo outlining her plea agreement with prosecutors and a summary of her crimes — remain under a court seal.

The unsealing order by U.S. District Judge Joel Slomsky came four days after the Inquirer first reported on the representative's case and the guilty plea she had kept secret from her constituents and House colleagues for more than six months, even while running unopposed for reelection in November.

Although top Democrats have called for her to resign and withdraw from the ballot, Acosta, 45, has vowed to remain and fight to keep her job even after her sentencing, scheduled for January.

Prosecutors charged Acosta last year with aiding in an embezzlement scheme involving her former boss at the Fairhill mental health clinic where she worked years prior to taking office in 2015. Sources familiar with the case say Acosta is cooperating with the government and could testify against her former boss at a trial scheduled for November.

Acosta's lawyer, Christopher Warren, has said he asked for the sealing order shielding details of his client's guilty plea from public view, but he declined to say why.

Acosta, whose district includes Fairhill, Hunting Park and parts of North Philadelphia, has not spoken publicly about her case, citing the advice of her lawyer. ■

Clipped By:

ycherepanova
Sun, Nov 6, 2016

Philly DA

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New Election Fraud Task Force

By Tashaj4

November 3, 2014: Philadelphia District Attorney Seth Williams has created a new task force that will investigate and prosecute all allegations of criminal activity during elections. The new Election Fraud Task Force is part of the office's Special Investigations Unit (SIU), and is comprised of ADAs and detectives who will be specially assigned to Election Day allegations. In the past the investigation and prosecution of Election Day crimes were assigned based on where and when the complaints came into the office.

"This Task Force is another tool for my office to ensure that all crime in Philadelphia is investigated thoroughly, and prosecuted swiftly," said District Attorney Seth Williams. "For far too long it has been assumed that Election Day in Philadelphia involves inappropriate actions at the polls. I want those assumptions to end now. The new Election Fraud Task Force helps guarantee that my office will not only thoroughly investigate Election Day complaints, we arrest and prosecute the culprits."

"No eligible Philadelphia voter should be impeded from casting a ballot," said Ellen Mattleman Kaplan Interim President and CEO of the Committee of Seventy. "The Committee of Seventy applauds the District Attorney's Office for taking aggressive and prompt action to investigate and, if appropriate, prosecute anyone who engages in elections-related criminal conduct."

"The District Attorney has shown a real commitment to making the integrity of elections a priority," added City Commissioner Al Schmidt. "The creation of the Election Fraud Task Force will help Philadelphians be confident that elections in our city are conducted in a fair manner."

Today, the Election Fraud Task Force charged 64-year-old Oxana Turetsky of the 1200 block of Unruh Avenue with Tampering with Records, Criminal Mischief and Tampering with Voting Machines. Ms. Turetsky is scheduled to turn herself in to authorities later today.

On May 20, 2014, police responded to a complaint at the polling location for the 53rd Ward, 13th Division of Philadelphia on the 6900 block of Summerdale Avenue. The Judge of Elections there notified police that Oxana Turetsky had written her name in ink on the voting machine at that location. Upon inspection, the officer confirmed that the name "Oxana Turetsky" was handwritten on the machine next to the box for "write in" candidates. Turetsky, a write-in candidate for committeeman, later admitted to writing her name on the voting machine.

In February of this year, the Election Fraud Task Force charged 65-year-old Dianah Gregory with Fraud by Election Officers, Tampering with Records, Criminal Mischief, and Tampering with Voting Machines for her actions during the November 5, 2013 election. Dianah Gregory pleaded guilty to Tampering with

a Voting Machine in an open plea on May 27, 2014. She was sentenced by the Honorable Michael Erdos to fifteen (15) months of probation.

The investigation into Dianah Gregory began when the Philadelphia District Attorney's Office received a complaint on Election Day at the Ethel Allen School polling site located at 31st & Lehigh Avenue. On location, a candidate for "Judge of Election," William Thompson, explained that a voter left the polling site visibly upset after Dianah Gregory reportedly entered the voting booth and attempted to make a "write in" vote on the voter's behalf.

The voting booth was then examined as part of the investigation. The detective observed the name "Dianah Gregory" was written in marker on the voting booth. The name was scrawled next to the button to select a "write in" candidate. Still on location, Dianah Gregory admitted that she wrote her name on the voting machines, as she explained, for voters to know how to spell her name.

This entry was posted on November 3, 2014 at 5:48 am and is filed under Press Release. You can follow any responses to this entry through the RSS 2.0 feed. Both comments and pings are currently closed.

Philly DA

A New Day/ A New DA.

PHILADELPHIA DISTRICT ATTORNEY ISSUES WARRANTS FOR THE ARREST OF THREE PHILADELPHIA ELECTION OFFICIALS FOR VOTER FRAUD

By City Of Philadelphia

PHILADELPHIA (June 24, 2015) – Philadelphia District Attorney R. Seth Williams today announces the arrest of three elections officials, two from the 33rd Ward 5th Division and one from the 36th Ward 10th Division, and charged them with election fraud and related charges. The infractions were made respectively during the 2015 and 2014 Primary Elections.

"I continue to be outraged that our election officials, after they clearly know the rules, think that they can just walk into the voting booth and vote multiple times or vote as someone else," said District Attorney Seth Williams. "What these three have done is clearly a crime and will be prosecuted. I hope that their wrongdoing reminds everyone who is entrusted with putting on and protecting our elections that my Election Fraud Task Force is real and will continue to find and arrest people who break our election laws."

On Election Day, May 19, 2015, the Philadelphia District Attorney's Election Fraud Task Force was called to the polling place for the 33rd Ward 5th Division (Castor Avenue and Cayuga Street) to investigate complaints of illegal election activity. When interviewed, witnesses said that they saw Robin Trainor, who was serving as the division's Judge of Elections, go into the voting booth with her husband, William Trainor Sr. After a short time, the witnesses said that they saw Robin Trainor come out of the booth, talk to Laura Murtaugh who was the division's Minority Elections Inspector and sign the Election District Register under the name William Trainor Jr. She then went and reset the voting machine and returned to the voting booth with her husband. After examining the Election District Register, William Trainor's signature did not match the officially known registration signature, and when interviewed, Robin Trainor said that she went into the voting booth to tell her husband who to vote for and then signed the Election District Register as her son in order to cast a second vote.

Robin Trainor (date of birth Sept. 21, 1959) is charged with Forgery, Tampering with Public Records or Information, Conspiracy, Repeat Voting at Elections, Interference with Primaries and Elections, Fraud, Conspiracy, Fraud by Election Officers, Unlawful Assistance in Voting, and Failure to Perform Duty. Laura Murtaugh (date of birth Dec. 6, 1958) is charged with Interference with Primaries and Elections, Fraud, Conspiracy, Fraud by Election Officers, and Failure to Perform Duty.

On Election Day, May 20, 2014, the Philadelphia District Attorney's Election Fraud Task Force was called to the polling place for the 36th Ward 10th Division (1410 S. 20th St.) to investigate complaints of illegal election activity. When asked, Cheryl Ali admitted that she voted on behalf of her mother because she was ill. After examining the Election District Register, Ali's mother's signature did not match the officially known registration signature. Ali had previously voted for herself at the 36th Ward 40th Division. Ali served as the 36th Ward 8th Division's Machine Inspector for the following general election despite not living in that division.

Cheryl Ali (date of birth: Dec. 22 1958) is charged with Forgery, Tampering with Public Records or Information, Repeat Voting at Elections, and Qualifications of Election Officers.

Last year, Williams created an Election Fraud Task Force to investigate and prosecute allegations of Election Day criminal activity. The task force continues to be part of the District Attorney's Special Investigations Unit and is staffed by assistant district attorneys and detectives.

In May of 2015, the District Attorney issued arrest warrants for four election officials from Philadelphia's 18th Ward, 1st Division. In addition to committing election fraud, three of the four arrested lived in a different division than the one they were working in, which is a violation of the Election Code. The infractions were made during the 2014 General Election.

Trainor, Murtaugh and Ali have all turned themselves in today.

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This entry was posted on June 24, 2015 at 6:51 am and is filed under Press Release. You can follow any responses to this entry through the RSS 2.0 feed. Both comments and pings are currently closed.

Philly DA

A New Day/ A New DA.

Philadelphia District Attorney Issues Warrants for the arrest of Four Philadelphia election officials for voter fraud in advance of the May 19 primary election

By City Of Philadelphia

PHILADELPHIA (May 18, 2015) – Philadelphia District Attorney R. Seth Williams today issued arrest warrants for four election officials from Philadelphia's 18th Ward, 1st Division. In addition to committing election fraud, three of the four arrested lived in a different division than the one they were working in, which is a violation of the Election Code. The infractions were made during the 2014 General Election.

"There's no legally justifiable reason to vote multiple times and you cannot falsely certify that you live in a particular ward and division in order to work the polls and collect a check," said District Attorney Seth Williams. "Our democracy rests on free and fair elections, but it also relies on the fact that they are conducted properly, which is why these four individuals deserve to be arrested for what they did."

The election officials include:

- » **Sandra Lee** (date of birth 4/26/55) who served as the division's Judge of Elections is charged with: Conspiracy, Tampering with Records, Unsworn Falsification, Tampering with Public Records, Obstructing Justice, Failure to Perform Duty, Repeat Voting and Frauds by Election Officers;

- » **Alexia Harding** (date of birth 4/21/93) who served as the division's Minority Inspector is charged with: False Swearing, Unsworn Falsification to Authorities and Qualifications of Election Officers; and

- » **James Collins** (date of birth 12/8/46) and **Gregory Thomas** (date of birth 4/3/55) who both served as the division's Machine Inspectors are charged with: Conspiracy, Tampering with Record, False Swearing, Unsworn Falsification, Tampering with Public Records, Obstructing Justice, Failure to Perform Duty, Repeat Voting, Frauds by Election Officers and Qualifications of Election Officers.

On February 16, 2015, a detective from the District Attorney's Office Special Investigations Division interviewed a certified poll watcher who saw the division's election board collaborate to correct a discrepancy between the number of votes cast and the number of voters who signed in to vote.

Once the polling place, which was located at the Hancock Recreation Center – 1401 N. Hancock St., had closed, the four election officials worked together to add an additional six votes to one of the machines to make the votes cast and sign-in books match. The complainant stated that Collins was holding the voting machine curtain open while Thomas was at the rear of the machine. Collins then registered numerous votes on the machine after the polls closed. After each vote he stated, "one more time" and Thomas would reset the machine for Collins to register new votes. The complainant stated that there were no voters inside the polling place, and the doors were locked while the votes were cast. An examination of the voting cartridge verified the complainant's testimony.

Additionally, the print-out tally indicates the number of votes cast for each candidate/ballot question on the ballot was certified, via signature, by each of the election board members. There were also no blank ballots, which means that the additional votes cast after the polls closed by the poll workers were for candidates and/or ballot questions on the ballot.

A review of Harding's, Collins' and Thomas' home address, as recorded by the Philadelphia Commissioner's Office, shows that they did not live nor were they registered to vote in the 18th Ward, 1st Division, which is illegal. However, the Election Day payroll indicates that they still collected $125 in compensation.

A new election board will be in place for tomorrow's primary election.

This entry was posted on May 18, 2015 at 9:47 am and is filed under Press Release. You can follow any responses to this entry through the RSS 2.0 feed. Both comments and pings are currently closed.

http://www.philly.com/philly/news/politics/20161104_Meehan_claims__criminal_conspiracy__in_Delco_voter_registration_probe.html

State police raid Philly office as voter registration probe grows

Updated: NOVEMBER 4, 2016 — 1:08 AM EDT

- 

CHARLES FOX / STAFF PHOTOGRAPHER
State police carry out boxes of evidence from the offices of Field Works in East Falls on Nov. 3, 2016.

by **Caitlin McCabe, Craig R. McCoy, and Angela Couloumbis**, STAFF WRITERS

Days after searching the Delaware County office of a Democratic grassroots organization for evidence of voter-registration fraud, state police on Thursday raided a second office - this one in Philadelphia.

Agents executed the warrant at FieldWorks LLC's office in North Philadelphia after 5 p.m., seeking, among other things, forms that could be used to "construct fraudulent voter registration

forms" and "completed voter registration forms containing same or similar identifying information of individuals on multiple forms," court documents show.

As in the raid in Norwood, the latest warrant said investigators from the Pennsylvania Attorney General's Office suspected "tampering with public records or information" or violations of an act that regulates military and overseas ballots.

No charges have been filed against FieldWorks, a Washington-based organization, and it has pledged to cooperate with investigators. People familiar with the probe say there is currently no evidence pointing toward an effort to cast illegal or fraudulent ballots in next week's election.

At a meeting with the Inquirer's editorial board Thursday, Attorney General Bruce Beemer declined to discuss specifics of the FieldWorks case. But he said most voter-registration probes focus on canvassers caught "cutting corners when it comes to registering individuals or doing stuff to meet a quota."

Still, the latest raid signaled a widening probe into the organization - one that has drawn scrutiny in other states before - and came hours after Rep. Patrick Meehan, a Republican congressman and former prosecutor, accused FieldWorks or its employees of a "criminal conspiracy" in connection with disputed registration forms in Delaware County.

According to its website, FieldWorks recruits hourly workers nationwide, requiring no previous experience. Founded in 2001, it works with "progressive advocacy organizations, federal and state Democratic campaigns," and others.

Its website doesn't specifically say employees face quotas, though independent job review sites about the organization mention their existence. In both the search warrants, copies of which were filed in court, investigators said they were also seeking information including " 'quota' information" or bonuses.

At the Philadelphia office Thursday, in a converted factory along the 3500 block of Scotts Lane, plainclothes investigators and uniformed state troopers executed the warrant.

FieldWorks employees on site declined to talk. A spokesman for the company referred to a statement it released earlier this week in which the firm said it has "zero tolerance for fraud" and vowed to work with authorities "to seek the prosecution of anyone involved in wrongdoing."

Republican presidential candidate Donald Trump has ignited a conversation about voter fraud after claiming the election, specifically in Pennsylvania, will be rigged.

Officials say it would be difficult for newly registered voters who used a false name, address, or driver's license number to cast a fraudulent ballot in Pennsylvania, because such voters must provide identification that matches registration information at the polls.

In the past, executives of FieldWorks have acknowledged that its business model means some of its canvassers will likely commit fraud.

In 2012, Christopher Gallaway, one of the firm's owners, testified before the board of elections for the Cincinnati area after his group flagged hundreds of possibly fraudulent registration applications.

"As an entity that hires, you know, several thousand temporary hourly employees every year . . . we have come to realize that despite out best efforts to screen people . . . there are going to be . . . employees that we hire who unfortunately try to lie to us, steal from us by getting paid for no work and commit fraud," he said, according to a hearing transcript.

Gallaway added: "We know it's going to happen, we want to be the firm that fires them right away."

He said the firm attempts to check the background of its hires and equips them with a phone with a tracking device so the company can confirm they are working. Under the law, Gallaway testified, the firm is required to submit all forms. But, he said, the group is careful to alert officials to any troubling ones.

After a news conference Thursday in Media, Meehan, whose district includes Delaware County, said that while the alleged registration fraud by FieldWorks did not necessarily mean fraud on Nov. 8, "a clear pattern of registration fraud opens the door" to that possibility.

Alongside county Republican Party Chairman Andy Reilly, the former county prosecutor and U.S. Attorney lambasted FieldWorks, alleging that the organization operates "with a different set of rules than anyone else."

Meehan questioned 7,000 registration forms that he said FieldWorks "jammed down the throats" of county officials - possibly after the registration deadline passed Oct. 11.

According to Meehan, Delaware County - long a GOP stronghold - received on Oct. 14 and Oct. 17 the 7,000 forms from the Department of State without postmark, questioning if the state received them on time.

Of those, Meehan also cited applications from 52 voters registered at Delaware County addresses that he said do not exist, and forms from one apparent voter who appeared to be registered nine times at five different addresses.

The forms Meehan shared with reporters included some showing that FieldWorks suspected some of the forms it filed were incomplete or deserved more scrutiny. But by law, it contended, it had to submit them.

Delaware County Democratic Party Chair David Landau - who said neither he nor any county candidates have worked with FieldWorks - responded by lambasting Meehan and Reilly, claiming their actions were a "blatant attempt at voter suppression."

"When you register 7,000 people, there are going to be inadvertent mistakes," he said. ". . . But with the question of timeliness, they are trying to deprive 7,000 people" from voting.

Meehan disputed that challenging the registration forms amounted to voter suppression. Republicans said they did not know the party designations listed on the contested forms.

State elections officials maintain they would not forward registration applications to counties that had been delivered or postmarked after the state deadline. "The Department of State received voter registrations from FieldWorks by the deadline," a spokeswoman reiterated Thursday.

The issue will get new life again Friday. That's when the Delaware County Voter Registration Commission - composed of two Republicans and one Democrat - has called a meeting to discuss the 7,000 forms in question.

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http://www.philly.com/philly/news/politics/presidential/20161106_Fearing_a_Trump_presidency__they_traveled_from_Europe_to_help_Clinton_s_campaign.html

Fearing a Trump presidency, they traveled from Europe to help Clinton's campaign

Updated: NOVEMBER 6, 2016 — 1:08 AM EST

A group of young adults from the Netherlands have come here to lend a hand to Hillary Clinton campaign volunteers because they are so afraid of what a Trump presidency would mean for the future of their country and the European Union. The group of about 30 people from the Netherlands volunteered at a Clinton field office at St. Matthews AME Church in Philadelphia, PA on November 5, 2016. DAVID MAIALETTI / Staff Photographer

by **Dan Geringer**, Staff Writer

Thirty politically passionate millennials from the Netherlands who came to Philadelphia to help get out the vote for Hillary Clinton spent Saturday knocking on doors with like-minded canvassers.

Fearing a Trump presidency, they traveled from Europe to help Clinton's campaign

Peter Black from Groningen said all the Dutch visitors are members of the Route 66 Association, a "liberal, progressive, Democratic" group of 25- to 33-year-old professionals from the Netherlands' D66 Party.

"We came partly out of curiosity about this election," Black said.

And they came partly out of fear of a Donald Trump victory, said Talitha Stam of Rotterdam. "If Hillary Clinton doesn't win, we are scared of the other option. He is dangerous, not just for America, but for our country and other countries as well."

"He wants to pull out of NATO," said Ilana Rooderkerk from Amsterdam. "He has the final vote on going to war and on using nuclear weapons. We don't want him to have the button to push."

Rooderkerk said she would also like to help elect America's first female president.

The visitors focused their election efforts Saturday on the blocks around St. Matthew AME Church on 57th and Race Streets in West Philadelphia.

Christopher Parren, also from Amsterdam, said that as the Route 66 group followed Trump's ascendancy to the Republican nomination, "we saw a populist with no political experience running for president of the biggest Western democracy. And that is scary."

Parren said that when the group was following the Republican primaries from their Netherlands homes, "it was hard to imagine how this happened. We wanted to see for ourselves."

He and Rooderkerk said that while knocking on doors of registered Democrats, they encountered several residents who believed the Republican primaries were rigged "because how else could Trump have become the candidate."

After a long day of election work, the Dutch politicos became ordinary young people again, talking and laughing in a corner park near the church, awaiting rides to Katy Perry's "Get Out the Vote" free concert at the Mann Center, featuring an appearance by Clinton herself.

"I don't care about Katy Perry," Parren said. "I just want to see Hillary and hear what she has to say."

"You don't care about Katy Perry?" Stam asked. "She's really good!"

They will end their weeklong visit spending Sunday in Washington and election night in New York City. Then they head home to help their D66 Party candidates campaign for the Netherlands parliamentary elections in March.

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MORE COVERAGE

http://www.cnn.com/2016/11/04/politics/foreign-workers-us-elections/

These Australians crossed the ocean to knock on doors for Hillary Clinton

By Shachar Peled, CNN
Updated 11:31 AM ET, Sun November 6, 2016

A trip across the ocean to campaign for Hillary Clinton 03:02

Story highlights

- Stephen Donnelly and his four friends, aged between 39-42, met through Australian campus politics
- This year they embarked on a trip to the US for what they call "the NBA of political election campaigns"

(CNN) They cannot vote. They cannot give money. They cannot accept a paycheck or make decisions for the campaign. Yet they have traveled about 10,000 miles to arrive on American voters' doorsteps, and knock.

"We are all Labor Party people, Social Democrats who noticed the world is getting smaller," says Stephen Donnelly, the assistant secretary of the Australian Labor Party. "People feel a kinship between the social democrats of the world and we like going to help our sister parties when we get a chance."

Donnelly and his four friends, aged between 39-42, met through Australian campus politics in the late 1990s. This year they embarked on a trip to the US for what they call "the NBA of political election campaigns." Their goal is to get as many Americans involved in the electoral process, and encourage them to vote for Hillary Clinton.

Their journey in a minivan -- dubbed "The Truck of Justice" -- has taken them from the deep south of Tennessee, Louisiana, Alabama and Georgia, through South Carolina and North Carolina, and all the way up to Virginia, Pennsylvania and New York, for Election Night.

"We're starting in Republican territory because we want to see all sides of the country," Donnelly explains. "Even Republicans appreciate we're here, they're fascinated, and that warmth and welcoming nature is a testament to the country," adds journey mate Steve Cusworth.

In a small Democratic campaign office in Charleston, South Carolina, the Australian group immediately stands out, with "Aussies for Hillary" t-shirts and matching swag, including beer holders they gift to the local party chairman, Brady Quirk-Garvan, for hosting them.

"We get emails and calls from people who want to volunteer all the time, most of them live within 10-15 miles of the office," Quirk-Garvan says. "This is our first group of people who have come to this office from out of the country to volunteer, but the great part is it shows

the importance of this election, how critical it is that people are willing to spend their own time and their own money and travel to help elect Hillary Clinton and other Democrats."

This isn't the first time the politically passionate volunteers have been around to campaign in the US. In October 2008, "Aussies for Obama: a road trip you can believe in" kicked off a three-week journey that culminated in the group attending a Barack Obama rally and shaking the future president's hand. Donnelly says he was also inspired by American campaigning tactics, which he later brought back to his homeland and utilized to win the electoral campaign for state government of Victoria, Australia

This time around their aim to "Make America Australia Again," is both a pun on Trump's slogan and a wishful hope of preventing the US from going down "a silly path," says team member Matt Nurse.

Worldwide volunteers

The Aussies are not alone. During the final stretch of the American presidential campaigns, it is not unusual to come across a growth in politically-minded volunteers from across the world.

"We believe that the outcome of the presidential election has huge ramifications for international relations," says Victoria Desmond, who leads the delegation for the British Young Fabians.

The group of 10 delegates from the United Kingdom ranges from teenagers to 30-year-olds, and they are currently helping with the "Get Out the Vote" campaign in Florida, making calls and canvasing the towns. "We are very concerned by the rhetoric of Donald Trump and his particularly stance on Mexico and comments on the Muslim community," Desmond adds.

"As civil rights activists, we believe electing the first female President of the United States is a huge step forward for women across of the globe," she says.

According to the US Federal Election Commission, "even though a foreign national cannot make campaign contributions or expenditures (including advances of personal funds), he or she can serve as an uncompensated volunteer for a campaign or political party," with the exception of a decision-making or management role.

The Trump camp is also receiving support from people all over the world. "Our plan is to explain to French people that Donald Trump is a solution to US problems, but also to European problems (with terrorism, Russia, and so on)," the managers of "France for Donald Trump" Facebook group write in a message.

They present themselves as two young Frenchmen and asked to remain anonymous "as it is quite bad seen to support Donald Trump in France, and especially to support both Trump and Le Pen," they write, referring to far-right French politician Marine Le Pen.

Meanwhile, the Israeli group "Trump White & Blue" is organizing a November 7, Trump support rally in Jerusalem, which will include Trump yarmulkes and prayer "for the success of Mr. Trump as the next president."

But taking it a step further and crossing the ocean to meet American voters face-to-face sparks a different kind of conversation and helps better understand the various community voices, the Australian volunteers say. And as for reactions, Donnelly says that other than a slight accent barrier, people are either intrigued by their presence or simply "too busy to notice."

Back at home, the group says their family and friends are mostly supportive, though not everyone understands the drive. "My wife knows I'm a political tragic," Nurse laughs, "but my little daughter, who's four, said, 'Why are you going to America, why are you doing that?' and my boss is looking forward for me coming back and tell him exactly why I did this."

"There's a lot of curiosity because it is a bit different," Nurse says, "but I think going out there and giving up your labor to a serious cause is just as good as sitting on a beach for a day."

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA DEMOCRATIC PARTY, Plaintiff,	:	
v.	:	**Civ. No. 16-5664**
REPUBLICAN PARTY OF PENNSYLVANIA; DONALD J. TRUMP FOR PRESIDENT, INC.; ROGER J. STONE, JR.; and STOP THE STEAL INC., Defendants.	:	

CERTIFICATE OF SERVICE

I, Thomas C. Sullivan, Esq., hereby certify that a true and correct copy of the foregoing Defendant Donald J. Trump for President, Inc.'s Sur-Reply to the Motion for a Temporary Restraining Order has been served via United States District Court for the Eastern District of Pennsylvania electronic filing system as follows:

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