

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

PENNSYLVANIA DEMOCRATIC PARTY,	:	
	:	
	:	Civil Action No. 2:16-cv-05664
	:	
	:	
Plaintiff,	:	
	:	
-versus-	:	
	:	
REPUBLICAN PARTY OF	:	
PENNSYLVANIA, DONALD J. TRUMP	:	
FOR PRESIDENT, INC., ROGER J.	:	
STONE, JR., and STOP THE STEAL, INC,	:	
	:	
Defendants.		

ORDER

AND NOW, this day of , 2016, upon consideration of the Motion of the Republican Party of Pennsylvania to Quash the Subpoena and Motion for a Protective Order, it is hereby **ORDERED** that the Motion is **GRANTED**. The subpoena issued to Robert Gleason, Chairperson of the Republican Party of Pennsylvania, is **QUASHED** and the Protective Order is **GRANTED**.

BY THE COURT:

Paul S. Diamond, J.

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

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STONE, JR., and STOP THE STEAL, INC,	:	
	:	
Defendants.		

**DEFENDANT REPUBLICAN PARTY OF PENNSYLVANIA’S
OBJECTIONS, MOTION TO QUASH SUBPOENA, AND MOTION FOR
PROTECTIVE ORDER**

The Republican Party of Pennsylvania, (“RPP”), files these Objections, Motion to Quash Subpoena served upon Robert A. Gleason, and Motion for Protective Order, and in support thereof, avers as follows:

1. On Sunday, October 30, 2016, Plaintiff Democratic Party of Pennsylvania (“Plaintiff”) initiated the above-captioned matter by filing of a

Complaint nine (9) days before the General Election of November 8, 2016 (the “Election”).

2. On November 3, 2016, Plaintiff filed a Motion requesting emergency relief, requesting this Honorable Court to issue an injunction precluding the Defendants from engaging in certain Election Day activities.

3. On November 4, 2016, Plaintiff filed a Witness list containing three categories of witnesses: (1) those they will call; (2) those they may call; and, (3) those they will seek to call.

4. Robert A. Gleason, Chairperson of the RPP, was listed in the third category of witnesses Plaintiff would “seek to call.”

5. At or about 5:09 p.m. on Friday, November 4, 2016, counsel for the Defendant RPP received an email from the Plaintiff, inquiring as to whether Robert A. Gleason was a witness for the RPP and, indicating that the Plaintiff would like to call Mr. Gleason as a witness.

6. Counsel for Defendant RPP advised Plaintiff that Mr. Gleason was not a witness for the RPP, and would be unavailable on Monday, November 7, 2016 for the Hearing.

7. On Sunday, November 6, 2016, Plaintiff served Mr. Gleason at his home in Johnstown, Pennsylvania, with a Subpoena Ad Testificandum and Duces

Tecum, directing his appearance in Philadelphia within twenty-four hours. A true and correct copy of the Subpoena is attached hereto as Exhibit A.

8. The Subpoena also requested the production of certain information and documents.

9. Pursuant to *Fed.R.C.P. 45(d)(1)*:

“Avoiding Undue Burden or Expense: Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction – which may include lost earnings and reasonable attorney’s fees – on a party or attorney who fails to comply.”

10. Plaintiff’s Subpoena served upon Mr. Gleason violates *Fed.R.C.P. 45(d)(1)* in that the same fails to allow a reasonable time to comply, particularly considering Mr. Gleason’s residency in Johnstown, and his obligations for Election Day as Chairperson of the RPP.

11. Plaintiff’s Subpoena served upon Mr. Gleason violates *Fed.R.C.P. 45(d)(1)* in that the same subjects Mr. Gleason to undue burden and extreme hardship with respect to travel and imposition upon his duties as Chairperson of the RPP the day before the Election.

12. Plaintiff failed to take reasonable steps to avoid imposing undue burden and expense on Mr. Gleason as required by *Fed.R.C.P. 45(d)(1)*.

13. Plaintiff's Subpoena was issued in bad faith, for an improper purpose, and to annoy, harass and oppress the RPP and Mr. Gleason, and intentionally interfere with Mr. Gleason's Election Day duties as Chairperson of the RPP.

14. Plaintiff's Subpoena also requests the production of irrelevant, confidential, intellectual business property, trade secrets, and privileged information relating to the Defendant RPP's poll watcher training and activities, which are legally allowed pursuant to 25 P.S. §2687.

15. For these reasons, Defendant RPP objects to both the testimony and production of documents requested pursuant to *Fed.R.C.P. 45(d)(2)(B)*.

16. For these reasons, Defendant RPP moves to quash the Subpoena pursuant to *Fed.R.C.P. 45(d)(3)*.

17. For these reasons, Defendant RPP moves for a protective order pursuant to *Fed.R.C.P. 45(e)(2)*.

18. For these reasons, Plaintiff is subject to sanctions, including reasonable attorney's fees, pursuant to *Fed.R.C.P. 45(d)(1)*.

WHEREFORE, the Republican Party of Pennsylvania respectfully requests this Honorable Court to:

- a) Grant its Objections;
- b) Grant its Motion to Quash Subpoena and relieve Mr. Gleason from compliance;

- c) Issue a protective Order precluding the disclosure of Defendant RPP's internal poll watcher training materials and communications;
- d) Declare that Plaintiff has violated its duty set forth in *Fed.R.C.P.* 45(d)(1), and enter sanctions against Plaintiff, including the imposition of attorney fees; and,
- e) Order such other relief as is necessary and proper.

Respectfully submitted,

/s/ Lawrence J. Tabas

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November 6, 2016

TABLE OF AUTHORITIES

Fed. R. Civ. P. 45	5
<u>NLRB v. Vista Del Sol Health Servs.</u> , 40 F. Supp. 3d 1238 (C.D. Cal. 2014)	8
<u>Alexander v. Jesuits of Mo. Province</u> , 175 F.R.D. 556 (D. Kan. 1997)	8
25 <u>P.S.</u> § 2687	9

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STONE, JR., and STOP THE STEAL, INC,	:	
	:	
Defendants.		

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF DEFENDANT
REPUBLICAN PARTY OF PENNSYLVANIA
TO QUASH THE SUBPOENA ISSUED BY PLAINTIFF PENNSYLVANIA
DEMOCRATIC PARTY AND GRANT THE MOTION FOR PROTECTIVE
ORDER**

A subpoena is the process by which an individual is compelled to appear at a particular court-related proceeding. A subpoena may also require the individual to bring documents and materials under his control. *See: Black's Law Dictionary*. The issuance of a subpoena is a powerful tool to compel witnesses to appear and testify, and also to produce documents related to pending court proceedings.

Federal Rule of Civil Procedure 45 addresses and controls the format, service, compliance and protections associated with subpoenas. Although attorneys are given authority to issue subpoenas, issuance is not without restrictions.

Specifically, attorneys are charged with certain obligations in issuing subpoenas:

“Avoiding Undue Burden or Expense: Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.”

Fed.R.C.P. 45(d)(1). The importance of these requirements is underscored by the power granted to the court when an attorney fails to comply:

“[t]he court for the district where compliance is required must enforce this duty and impose an appropriate sanction – which may include lost earnings and reasonable attorney’s fees – on a party or attorney who fails to comply.”

Id.

An individual served with a subpoena which commands the production of materials may file an objection, move to quash the Subpoena, and/or claim a privilege or protection. *See: Fed.R.C.P. 45(d)(2)(B), Fed.R.C.P. 45(d)(3), Fed.R.C.P. 45(e)(2)*. An individual directed to attend and testify may also move to quash a subpoena under certain circumstances. *Fed.R.C.P. 45(d)(3)*.

In the instant action, Plaintiff Democratic Party of Pennsylvania (“Plaintiff”) filed a Complaint on Sunday, October 30, 2016, which was nine (9) days before the General Election of November 8, 2016 is scheduled to occur. Several days later, on November 3, 2016, Plaintiff filed a Motion requesting emergency relief,

requesting this Honorable Court to issue an injunction precluding the Defendants from engaging in certain Election Day activities, including those that are statutorily authorized by Pennsylvania law relating to poll watchers. The Court scheduled a Hearing for Monday, November 7, 2016 to address the request for relief.

On November 4, 2016 – three (3) days before the scheduled Hearing -- Plaintiff filed a Witness list containing three categories of witnesses: (1) those they will call; (2) those they may call; and (3) those they will seek to call. Robert A. Gleason, Chairperson of the Republican Party of Pennsylvania (“RPP”), was listed in the third category of witnesses that Plaintiff would “seek to call.”

At or about 5:09 p.m. on Friday, November 4, 2016, counsel for the Defendant RPP received an email from Plaintiff inquiring as to whether Defendant RPP’s counsel “intended to bring Robert Gleason...as a witness at the TRO Hearing on Monday, November 7.” Plaintiff indicated it would like to call Mr. Gleason as a witness. In response, counsel for Defendant RPP advised Plaintiff that Mr. Gleason was not a witness for the RPP and would be unavailable on Monday, November 7, 2016 for the Hearing.

On Sunday, November 6, 2016, Plaintiff served Mr. Gleason at his home in Johnstown, Pennsylvania with a Subpoena Ad Testificandum and Duces Tecum, (“Subpoena”), directing his appearance in Philadelphia within twenty-four hours, and commanding the production of information regarding the Defendant RPP’s

training of its statutorily authorized poll watchers, and communication with the Trump campaign regarding the planning of poll watchers for the November 8, 2016 Election.

In response to Plaintiff's eleventh-hour tactic to disrupt Defendant RPP's Election operations, inconvenience the Chairperson of the RPP, and secure Defendant RPP's confidential strategy information, Defendant RPP files: objections to Plaintiff's request for materials; a motion to quash the Subpoena as it relates to Robert A. Gleason's attendance and production of materials; and a request for protective order.

Fed.R.C.P. 45(d)(3)(A)(i) requires a court, on timely motion, to quash or modify a subpoena that "fails to allow a reasonable time to comply." *Id.* Here, there can be no argument that Plaintiff's issuance of a Subpoena to Mr. Gleason in Johnstown, Pennsylvania, requiring his attendance in Philadelphia in twenty-four hours or less, is clearly lacking in reasonableness. This is especially so when one considers that Mr. Gleason's role as Chairperson of the RPP requires him to devote all of his time and attention to the Election, a fact well-known to Plaintiff. Compliance with the Subpoena is virtually impossible under these severe and real time constraints.

Fed.R.C.P. 45(d)(3)(A)(iv) similarly requires a court, on timely motion, to quash or modify a subpoena that "subjects a person to undue burden." *Id.*

Obviously, the court must engage a balancing test that considers the need of the Plaintiff for the information sought, versus the reasons and interests of the subpoenaed witness supporting the request to quash. In assessing the current situation, it is clear that Plaintiff, in relying on alleged statements made by Presidential candidate Mr. Trump several months ago, could have initiated its lawsuit well before the last week of the Election process, and procured this information in a timely fashion. Plaintiff failed to do so. Rather, Plaintiff waited until the week before the Election to file its Complaint, and one (1) day before the scheduled Hearing to Subpoena Mr. Gleason and certain materials. It is also apparent that Plaintiff's delay has imposed a tremendous burden upon Mr. Gleason, acting in his capacity as Chairperson of the RPP, who is in the midst of his last-minute and weighty obligations with respect to the Election. Mr. Gleason should not be subjected to such monumental inconvenience and burden when the urgency exists solely due to Plaintiff's untimely filing of this suit and service of the Subpoena upon Mr. Gleason at the last minute. *See NLRB v. Vista Del Sol Health Servs.*, 40 F. Supp. 3d 1238, 1266 (C.D. Cal. 2014); *Alexander v. Jesuits of Mo. Province*, 175 F.R.D. 556, 559 (D. Kan. 1997).

Plaintiff's demand for Defendant RPP's poll watcher training and communication with Mr. Trump regarding its poll watcher planning in Pennsylvania is particularly offensive. Pursuant to 25 P.S. §2687, political parties

and candidates are legally allowed to enlist individuals to act as poll watchers in every polling place in Pennsylvania. Furthermore, 25 P.S. §2687 specifies the lawful activities in which poll watchers may engage. Defendant RPP's internal strategy and training materials regarding poll watchers are confidential, intellectual business property, trade secrets, and proprietary information. Furthermore, communications regarding the same are likewise privileged and confidential. Plaintiffs are attempting to command disclosure of this information in order to undermine Defendant RPP's legal strategy and secure information to which they and the government are otherwise not entitled.

For these reasons, it is clear that the Plaintiff's issuance of a Subpoena Ad Testificandum and Duces Tecum is improper, untimely, unreasonable, burdensome, and in violation of *Fed.R.C.P. 45(d)(1)*. As such, this Honorable Court should quash the Subpoena, enter a protective order with regard to the materials requested, and "must enforce this duty [of reasonableness and avoiding undue burden] and impose an appropriate sanction" against Plaintiff for its violation, which should include reasonable attorney's fees in accordance with *Fed.R.C.P. 45(d)(1)*.

Respectfully submitted,

/s/ Lawrence J. Tabas

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Phone: 610 816 6414

Attorney for Republican Party of Pennsylvania

November 6, 2016

CERTIFICATE OF SERVICE

I certify that on this date I electronically filed the foregoing Proposed Order, Motion, Memorandum of Law, and Exhibit A using the Court's electronic filing system, making it available for download to counsel of record as indicated below:

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I certify that on this date I sent the foregoing Proposed Order, Motion, Memorandum of Law, and Exhibit A to all parties without counsel of record via overnight mail and to the listed email address on the Stop the Steal, Inc. website.

ROGER J. STONE, JR.
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info@stopthesteal.org

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/s/ Lawrence J. Tabas

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Phone: 717 221 1602
Attorney for Republican Party of Pennsylvania

November 6, 2016

Pennsylvania Democratic Party
Plaintiff
 v.
 Republican Party of Pennsylvania, et al.
Defendant

Civil Action No. 16-5664

**SUBPOENA TO APPEAR AND TESTIFY
 AT A HEARING OR TRIAL IN A CIVIL ACTION**

To: Robert A. Gleason
 552 Elkund Lane, Johnstown, PA 15905-2064

(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place set forth below to testify at a hearing or trial in this civil action. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: James A. Byrne United States Court House
 601 Market Street,
 Philadelphia, PA 19106

Courtroom No.: 6-B

Date and Time: 11/07/2016 10:00 am

You must also bring with you the following documents, electronically stored information, or objects *(leave blank not applicable)*:

Any training materials and written guidance currently in use for poll watchers.

Communication with the Trump Campaign since August 13, 2016 that relates to the planning of poll watcher activities for the Nov. 8, 2016 election.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/05/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

s/ Jason A. Levine

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Pennsylvania

Democratic Party

, who issues or requests this subpoena, are:

Jason A. Levine, Hangley Aronchick Segal Pudlin & Schiller, One Logan Square, 27th Floor, Philadelphia, PA 19103
 jlevine@hangley.com, 215-496-7038

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that do not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* The procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business and must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or form.

(C) *Electronically Stored Information Produced in Only One Form.* A person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

02/14) Subpoena to Appear and Testify at a Hearing of the

on No. 16-5664

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*received this subpoena for (name of individual and title, if any) Robert A. Gleason11/05/2016

I served the subpoena by delivering a copy to the named person as follows:

on (date) 11/06/2016 ; or

II returned the subpoena unexecuted because:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amo; 301.36are \$ 665.00 for travel and \$ 35.00 for services, for a total of \$ 701

I declare under penalty of perjury that this information is true.

11/06/2016Server's signatureSusan McShane - Process ServerPrinted name and title212 Collins Lane
Maple Shade, NJ 08052Server's address

Additional information regarding attempted service, etc.: