

BOIES, SCHILLER & FLEXNER LLP

5301 Wisconsin Avenue N.W. \* Washington, DC 20015-2015 \* PH 202.237.2727 \* FAX 202.237.6131

November 7, 2016

Michael E. Kunz, Clerk of the Court  
United States District Court for the Eastern District of Pennsylvania  
601 Market St  
Rm 2609  
Philadelphia, PA 19106

*Re: Pennsylvania Democratic Party v. Republican Party of Pennsylvania, Civil  
Action No. 2:16-cv-05664*

Dear Mr. Kunz:

On November 6, 2016, Defendants Roger J. Stone (Stone) and Stop the Steal served Plaintiff with an opposition brief to Plaintiff's motion for injunctive relief. Also on November 6, 2016, Defendant Donald J. Trump for President, Inc. (Trump) filed a surreply brief to Plaintiff's motion for injunctive relief. Both briefs accuse Plaintiff of filing cookie cutter lawsuits across the country and purport to update the Court on the outcomes of those cases. Defendants' recitation of the developments in the cases filed by the state democratic parties in Ohio, Arizona, Nevada, North Carolina, and Michigan is woefully incomplete.

In Ohio, the district court granted a temporary restraining order (TRO) against Defendants Trump, Stone, and Stop the Steal, restraining and enjoining them from engaging in voter intimidation activity. *Ohio Democratic Party v. Ohio Republican Party, et al.*, No. 16-CV-02645, at 2-3 (N.D. Ohio Nov. 4, 2016) (attached hereto as Exhibit 1). The court denied the request for a TRO as against the Ohio Republican Party. *Id.* at 2. On appeal, the Sixth Circuit Court of Appeals granted a stay of the TRO. *Ohio Democratic Party v. Donald J. Trump, et al.*, No. 16-4268, (6th Cir. Nov. 11, 2016) (attached hereto as Exhibit 2). An application to vacate the stay is pending before the United States Supreme Court. (Attached here to as Exhibit 3).

In Arizona, the case proceeded against the background of litigation concerning Arizona's "ballot harvesting law," Ariz. Rev. Stat. § 16-1005(H), which makes it a felony for someone to "knowingly collect[] voted or unvoted early ballots from another person." *Id.* That law was an important source of concern about voter intimidation in Arizona, because Defendants had trained its "poll watchers" to monitor voters perceived to be in violation of the ballot harvesting law by following and photographing voters, and uploading those photographs and other evidence of perceived illegal activity to the Arizona Republican Party's (ARP) website. The evidence and testimony at the hearing held on November 3 before the Arizona district court focused in significant part on that ballot harvesting law. Subsequent to the hearing, on November 4, the Ninth Circuit sitting *en banc* enjoined the enforcement of the ballot harvesting law. *See Feldman v. Arizona Sec'y of State*, No. 16-16698 (9th Cir. Nov. 4, 2016). After the Ninth Circuit struck down the ballot harvesting law, but before the District Court ruled, the ARP filed notice 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. *Ariz. Democratic Party v. Ariz. Republican Party*, No. 16-cv-03752-JJT, at 11 n.7 (D. Ariz. Nov. 4, 2016) (attached hereto Exhibit 4). Additionally, the ARP filed a notice declaring that it removed from its website a page to which members of the general public could upload documentary evidence, including photographs, of voters suspected of acting illegally. *Id.* at 13 n.8.

The district court in Arizona denied the TRO in light of all of the factual circumstances of the case, including that the ARP had voluntarily ceased certain activities that formed the basis of the complaint. Nonetheless, the court still held that Plaintiff *had* managed to carry much of its burden under the standards for issuing a preliminary injunction, including overcoming any potential First Amendment obstacles to relief. *Id.* at 23-24. The district court also observed that “[b]ecause the right to vote is sacrosanct and preservative of all other rights,” both the balance of equities and the public interest favored an injunction, notwithstanding the “state-created rights or freedoms regarding poll observation” that would be restricted. *Id.* at 23-24. Importantly, the court explained that it would entertain renewed motions arising from any “additional, material evidence” that might emerge between November 4 and the end of Election Day. *Id.* at 24.

In Nevada, the district court granted limited discovery, which revealed that training materials used by the Trump Campaign to train its poll watchers were “deficient and incomplete with respect to voter challenges.” *Nevada State Democratic Party v. Nevada Republican Party*, No. 2:16-cv-2415-RFB-NJK, at 4 (D. Nev. Nov. 4, 2016) (attached hereto as Exhibit 5). The Trump Campaign addressed the deficiencies by explaining the requirements for voter challenges and possible consequences for improper or false challenges. *Id.* at 5. Following those corrections, the district court denied the motion for a TRO against the Nevada Republican Party and the Trump Campaign. *Id.* at 3. The district court set a hearing for November 7, 2016 to hear evidence regarding Stone and Stop the Steal. The district court also found what it called worrisome “energy and emotion around this election cycle,” “remain[ed] concerned about the possibility of voting disruptions” on Election Day, and accordingly scheduled a hearing for Election Day to address any new issues. *Id.* at 7. At that hearing, the court plans to address any additional filings arising from incidents of voter intimidation or “voting disruptions” on Election Day itself. *Id.*

In North Carolina, the district court is scheduled to hold a hearing on November 7, 2016. (Attached hereto as Exhibit 6 is the complaint in *North Carolina Democratic Party v. North Carolina Republic Party*, Civil Action, No. -- (M.D. N.C. Nov. 3, 2016).)

In Michigan, the case is pending but no hearing has been set. (Attached here to as Exhibit 7 is the complaint filed in *Michigan Democratic Party v. Michigan Republican Party*, 2:16-cv-13924-MAG-RSW (E.D. Mich. Nov. 4, 2016).)

Sincerely,

s/ Michael J. Gottlieb

Michael J. Gottlieb

*Counsel for Pennsylvania Democratic Party*



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.<sup>1</sup>

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

As evidence, the Plaintiff points to Donald Trump’s comments encouraging rally attendees to monitor “certain areas,”<sup>5</sup> as well as promises from Mr. Trump’s supporters to aggressively patrol polling places.<sup>6</sup> Defendants respond that there is no evidence of Defendants

<sup>1</sup> [Doc. 1](#), at 27-29; [Doc. 8](#).

<sup>2</sup> 42 U.S.C. § 1985(3).

<sup>3</sup> 52 U.S.C. § 10307(b).

<sup>4</sup> [Doc. 1](#) at 1-2.

<sup>5</sup> *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.’”

<sup>6</sup> *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

Case No. 16-CV-2645

Gwin, J.

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

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.<sup>9</sup> 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.<sup>10</sup> 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

---

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."

<sup>7</sup> [Doc. 24](#) at 3.

<sup>8</sup> [Doc 10](#), At 3.

<sup>9</sup> [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)).

<sup>10</sup> 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").

Case No. 16-CV-2645

Gwin, J.

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")<sup>11</sup>, or within ten feet of a voter standing in a line extending beyond the buffer zone.<sup>12</sup>

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;

---

<sup>11</sup> See O.R.C. 3501.30(A)(4).

<sup>12</sup> See O.R.C. 3501.35(A)(2).

Case No. 16-CV-2645

Gwin, J.

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.<sup>13</sup>

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

---

<sup>13</sup> 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.

ORDER

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:



16-4268

- 2 -

(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

No. \_\_\_\_\_

---

IN THE

**Supreme Court of the United States**

---

OHIO DEMOCRATIC PARTY,

*Petitioner,*

v.

DONALD J. TRUMP FOR PRESIDENT, INC.,

*Respondent,*

OHIO REPUBLICAN PARTY, ROGER STONE, STOP THE  
STEAL INC.,

*Defendants.*

---

**EMERGENCY APPLICATION TO VACATE SIXTH  
CIRCUIT STAY OF TEMPORARY RESTRAINING  
ORDER OR, IN THE ALTERNATIVE, PETITION  
FOR WRIT OF CERTIORARI AND VACATUR, OR  
INJUNCTION PENDING RESOLUTION**

---

**Directed to Honorable Elena Kagan, Associate  
Justice of the Supreme Court of the United States  
and Circuit Justice for the Sixth Circuit**

---

MARC E. ELIAS  
*Counsel of Record*  
BRUCE V. SPIVA  
PERKINS COIE LLP

STEVEN KAUFMAN  
KAUFMAN & COMPANY LLC  
101 Lakeside Avenue  
Suite 1710

700 13th Street, Suite 600  
Washington, DC 20005  
Telephone: (202) 434-1609  
Fax: (202) 654-9126  
melias@perkinscoie.com

MICHAEL J. GOTTLIEB  
JESSICA PHILLIPS  
GREG DUBINSKY  
RYAN PARK  
BOIES, SCHILLER & FLEXNER LLP  
5301 Wisconsin Avenue, NW  
Suite 800  
Washington, DC 20015  
Telephone: (202) 237-2727  
Fax: (202) 237-6131  
mgottlieb@bsfllp.com  
jphillips@bsfllp.com  
gdubinsky@bsfllp.com  
rpark@bsfllp.com

DAWN SMALLS  
LAURA HARRIS  
575 Lexington Avenue  
New York, NY 10022  
Telephone: (212) 446-2300  
Fax: (212) 446-2350  
dsmalls@bsfllp.com  
lharris@bsfllp.com

Columbus, OH 44144  
Telephone: (216) 912-5500  
Fax: (216) 912-5501  
steve.kaufman@kaufman-  
company.com

DONALD MCTIGUE  
MCTIGUE & COLOMBO LLC  
545 East Town Street  
Columbus, OH 43215  
Telephone: (614) 263-7000  
Fax: (614) 263-7078  
dmctigue@electionlawgroup.com

N. ZACHARY WEST  
OHIO DEMOCRATIC PARTY  
340 East Fulton Street  
Columbus, OH 43215  
Telephone: (614) 221-6563  
zwest@ohiodems.com  
dmctigue@electionlawgroup.com

November 6, 2016

*Attorneys for Petitioner Ohio Democratic Party*

**STATEMENT PURSUANT TO SUPREME COURT RULE 29.6**

Pursuant to Supreme Court Rule 29.6, the undersigned states that none of the Applicants has a parent corporation, and no publicly held corporation holds 10 percent or more of any Applicant's stock.

## TABLE OF CONTENTS

STATEMENT PURSUANT TO SUPREME COURT RULE 29.6 .....	I
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES .....	iii
EMERGENCY APPLICATION TO VACATE STAY.....	1
BACKGROUND.....	2
REASONS TO VACATE THE STAY .....	9
I.    THE STAY ENTERED BY THE COURT OF APPEALS HAS NO BASIS IN LAW.....	9
a.    The Court of Appeals Followed Inadequate Procedures Prior To Issuing Its Stay Of The TRO. ....	9
b.    The Appropriate Remedy, If Any, For Overbreadth Or Tailoring Inadequacies In The TRO Would Be To Vacate The Stay And Remand To The District Court.....	13
II.   THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN GRANTING THE TRO .....	14
CONCLUSION.....	27

## TABLE OF AUTHORITIES

### Cases

<i>Ammlung v. City of Chester</i> , 494 F.2d. 811 (3d Cir. 1974) .....	21
<i>Applewhite v. Commonwealth</i> , No. 330 M.D. 2012, 2014 WL 184988 (Pa. Commw. Ct. Jan. 17, 2014) .....	17
<i>Baker v. Carr</i> , 369 U.S. 186 (1962) .....	13
<i>Brakebill v. Jaeger</i> , No. 16-civ-00008 (DLH), Dkt. No. 50 (D.N.D. Aug. 1, 2016).....	17
<i>Bretz v. Kelman</i> , 773 F.2d 1026 (9th Cir. 1985) (en banc) .....	20
<i>Burson v. Freeman</i> , 504 U.S. 191 (1992) .....	13, 15, 28
<i>Cameron v. Johnson</i> , 262 F. Supp. 873 (S.D. Miss. 1966) .....	19
<i>Coleman v. Paccar</i> , 424 U.S. 1301 (1976) .....	10
<i>Cotz v. Mastroeni</i> , 476 F. Supp. 2d 332 (S.D.N.Y. 2007).....	27
<i>Crawford v. Marion Cty. Election Bd.</i> , 472 F.3d 949 (7th Cir. 2007) .....	12
<i>Crawford v. Marion Cty. Election Bd.</i> , 553 U.S. 181 (2008) .....	12, 18
<i>Crookston v. Johnson</i> , No. 16-2490, 2016 WL 6311623 (6th Cir. Oct. 28, 2016) 15, 16	
<i>Dailey v. Hands</i> , No. 14-cv-423-KD-M, 2015 WL 1293188 (S.D. Ala. Feb. 20, 2015) .....	26, 27
<i>Davis v. Richmond, Fredericksburg &amp; Potomac R. Co.</i> , 803 F.2d 1322 (4th Cir. 1986) .....	25
<i>Democratic Nat’l Comm. v. Republican Nat’l Comm.</i> , 673 F.3d 192 (3d Cir. 2012). 26	
<i>Democratic Nat’l Comm. v. Republican Nat’l Comm.</i> , 671 F. Supp. 2d 575 (D.N.J. 2009) .....	26

<i>EEOC v. Wooster Brush Co. Employees Relief Association</i> , 727 F.2d 566 (6th Cir. 1984) .....	25
<i>Eu v. S.F. Cty. Democratic Cent. Comm.</i> , 489 U.S. 214 (1989).....	28
<i>Frank v. Walker</i> , 17 F. Supp. 3d 837 (E.D. Wis. 2014).....	18
<i>Frank v. Walker</i> , 768 F.3d 744 (7th Cir. 2014).....	18
<i>Guste v. Jackson</i> , 429 U.S. 399 (1977) .....	14
<i>Hooks v. Hooks</i> , 771 F.2d 935 (6th Cir. 1985).....	21
<i>Jackson v. Riddell</i> , 476 F. Supp. 849 (N.D. Miss. 1979) .....	19
<i>Keyes v. Sch. Dist. No. 1., Denver, Colo.</i> , 396 U.S. 1215 (1969) .....	13
<i>League of Women Voters of North Carolina v. North Carolina</i> , 769 F.3d 224 (4th Cir. 2014) .....	18
<i>Lee v. Va. State Bd. of Elections</i> , No. 15-cv-357 (HEH), 2016 WL 2946181 (E.D. Va. May 19, 2016) .....	18
<i>Lucas v. Townsend</i> , 486 U.S. 1301 (1988) .....	13
Ohio Rev. Code §§3501.30(A)(4) .....	14
Ohio Rev. Code. §3501.90(A)(1)(a) .....	15
<i>One Wis. Inst. v. Thomsen</i> , No. 15-civ-324 (JDP), 2016 WL 4059222 (W.D. Wis. July 29, 2016) .....	17
<i>Perrin v. United States</i> , 444 U.S. 37 (1979).....	19
<i>Purcell v. Gonzalez</i> , 549 U.S. 1 (2006) .....	10, 11
<i>Schenck v. Pro-Choice Network of W. N.Y.</i> , 519 U.S. 357 (1997) .....	28
<i>Schmidt v. Lessard</i> , 414 U.S. 473 (1974).....	14
<i>Swift &amp; Co. v. United States</i> , 196 U.S. 375 (1905) .....	24
<i>Turner v. Cooper</i> , 583 F. Supp. 1160 (N.D. Ill. 1983).....	27

<i>United B'hd. of Carpenters &amp; Joiners of Am., Local 610 v. Scott</i> , 463 U.S. 825 (1983)	20, 21
<i>United Food &amp; Commercial Workers Local 1099 v. City of Sidney</i> , 364 F.3d 738 (6th Cir. 2004)	14
<i>United States v. Madden</i> , 403 F.3d 347 (6th Cir. 2005)	15
<i>United States v. Nguyen</i> , 673 F.3d 1259 (9th Cir. 2012)	19, 26
<i>United States v. Philip Morris USA Inc.</i> , 566 F.3d 1095 (D.C. Cir. 2009)	26
<i>Veasey v. Abbott</i> , 830 F.3d 216 (5th Cir. 2016)	17
<i>Western Airlines, Inc. v. Int'l Bd. of Teamsters</i> , 480 U.S. 1301 (1987)	11
<i>Whatley v. Vidalia</i> , 399 F.2d 521 (5th Cir. 1968)	19
<i>Williams v. Rhodes</i> , 393 U.S. 23 (1968)	12
<i>Yick Wo v. Hopkins</i> , 118 U.S. 356 (1886)	13

## Statutes

42 U.S.C. §1985	2, 20
52 U.S.C. §10307	2, 19
Ohio Rev. Code §3501.30	8
Ohio Rev. Code §3501.35	8, 14
Ohio Rev. Code §3501.90	8, 15
Ohio Rev. Code §3599.24	8, 14

## Rules

Fed. R. App. P. 27	12
Fed. R. App. P. 8	12
Fed. R. Civ. P. 65(d)	24



### **Emergency Application to Vacate Stay**

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

Applicant respectfully requests that this Court vacate the order issued by the Court of Appeals for the Sixth Circuit on November 6, 2016, staying a temporary restraining order (“TRO”) issued by the U.S. District Court for the Northern District of Ohio on November 4, 2016, that enjoined Donald J. Trump for President, Inc. (“the Trump Campaign”) and associated persons from engaging in activities that would otherwise have the effect of intimidating, harassing, or coercing voters. The Sixth Circuit ordered the stay notwithstanding that it did not call for or receive a substantive response brief from Applicant and, by its own admission, had not yet reviewed the critical evidence on which the District Court relied.

This extraordinary departure from the most basic requirements of appellate procedure led the Sixth Circuit to issue a cursory order with no basis in law. A Court of Appeals cannot conclude that a lower court has abused its discretion without first reviewing and considering the actual *evidence* on which the lower court’s decision was based. Yet the Sixth Circuit somehow found that the District Court had abused its discretion before it had even received the transcript of the evidentiary hearing, at which live witnesses presented testimony that informed the District Court’s decision. Crucially, that decision was stayed even though it required compliance with specific, clear, and unchallenged provisions of Ohio election law. If left in place, the Court of Appeals’ stay will, in the words of the

Republican Director of the Cuyahoga County Board of Elections, put the “safety and well-being” of Ohio voters at risk from Trump-encouraged and unauthorized “watchdogs” at the polls. 415A. The Court of Appeals’ unprecedented stay should be vacated without delay.

### **Background**

Judge Gwin of the U.S. District Court for the Northern District of Ohio, after examining a wide variety of evidence submitted by the parties, including live witness testimony, determined that Petitioner Ohio Democratic Party (“the Democratic Party”) is likely to prevail on the merits of its claim that Respondent Trump Campaign is conspiring to deprive minority voters of their right to vote free from intimidation and harassment. *See* 42 U.S.C. §1985(3) (Ku Klux Klan Act of 1871); 52 U.S.C. §10307(b) (Section 11(b) of the Voting Rights Act). That decision was fully consistent with governing Supreme Court and Sixth Circuit precedent. The documentary and testimonial evidence in the record was more than adequate to support the TRO entered by the District Court.

Over the past several months, Donald J. Trump has warned that the 2016 election will be stolen from him unless supporters in Ohio and elsewhere swarm urban communities and “watch,” “[a]nd when [I] say ‘watch,’ you know what I’m talking about, right?” 312A. Trump has said “[t]he only way we can lose . . . and I really mean this . . . is if cheating goes on.” 312A.

Accordingly, the Trump Campaign has hosted a form on its website for supporters to sign up to be “Trump Election Observers” in order to “Stop Crooked

Hillary From Rigging This Election!” 174A. (“Volunteer to be a Trump Election Observer”), further encouraging his supporters to join in a common plan to “watch” voters in “certain areas” of states like Ohio for voter fraud. The Trump Campaign provided the Ohio Republican Party with about 200 to 300 names for poll observers. 762A.<sup>1</sup>

The record evidence shows that Trump’s call to action has resulted in concrete actions in Ohio likely to result in voter intimidation. For example, the record contained evidence that Trump supporters have already appeared at elections board offices in Cuyahoga County (where Cleveland is located) and identified themselves as poll observers, despite not being appointed as required by Ohio law. Another Trump supporter in Ohio announced his intention to go “watch” as “Trump said,” which he understood to involve “racial profiling” of “Mexicans,” “Syrians,” and those “who can’t speak American”: “I’m going to go right up behind them. . . . I’m going to make them a little bit nervous.” 199A. Yet another Ohio supporter announced his intention to leave his rural county to engage in unauthorized poll-watching in the county containing Columbus, Ohio because “[f]raud’s more likely up there.” 440A.

Those developments have caused deep concern among Ohio state officials responsible for ensuring the integrity of the 2016 election. Pat McDonald, the Republican director of the Cuyahoga County Board of Elections, observed that

---

<sup>1</sup> Citations are to the rough draft of the hearing transcript because the final version was unavailable until shortly before filing. With the Court’s leave, we will file a corrected version of the application as soon as possible.

Trump “is basically telling his supporters to be watchdogs of the polling locations,” and stated that he is “concerned” about “the safety and well-being of . . . the voters.” McDonald has “never” seen “rhetoric” like that coming from Trump—rhetoric that concerns him there will be instability at the polls. He is in touch with law enforcement in an attempt to prepare for Trump supporters acting on their candidate’s call for voter intimidation. 414A-415A.

Despite Trump’s repeated claims that aggressive poll monitoring is necessary to prevent the election from being stolen from him, the Republican Secretary of State of Ohio has denied voter fraud will affect the election, and the Executive Director of the Ohio Republican Party testified before the District Court she had no personal knowledge of any voter fraud. 763A.

In addition, counsel for the Ohio Republican Party conceded it had no evidence of voter fraud, and counsel stated she was “not aware of *any*” documented voter fraud in the last five years or, for that matter, “in the last few weeks when we’ve had early voting.” 711A (emphasis added). Even counsel for the Trump Campaign—when asked as an “officer of the court”—conceded that it is “less likely” that fraud could determine a presidential election. 721A-722A.

The District Court found, on the record before it, that there was no plausible factual basis to expect significant voter fraud, let alone the massive fraud Trump claims will cause the election to be stolen from him. 779A-787A.

The District Court further found that the lack of concrete evidence of widespread voter fraud, let alone vote “rigging,” revealed a pretextual justification

designed to facilitate voter suppression in urban areas. In light of the complete absence of voter fraud, Trump's claims appear to be "all code words . . . really an incitement to harass [D]emocratic leaning but more specifically African-American or Hispanic voters." 722A. Rejecting the argument by counsel for the Trump Campaign that Trump's claim the election will be stolen from him without aggressive poll monitoring was simply an attempt to encourage Trump supporters to vote, Judge Gwin explained:

"If you had a chance to go to the Indians game and somebody [c]ame to you and said it's already been fixed, the umpires have already decided to give it to Chicago, is it more likely that you're going to go to the game or less likely? . . . I would think it's less likely. . . . And I don't think it's plausible to say more likely."<sup>2</sup> 784A.

The District Court concluded there was no plausible reason for Trump to claim widespread voter fraud other than "to incite people to come out and impede the election." 728A. Trump's call (issued in Ohio) for his supporters to "watch," "[a]nd when [I] say 'watch,' you know what I'm talking about, right?" is part of the Campaign's attempt "to stir people up to intimidate voters." 785A.

Meanwhile, Ohio State Representative Stephanie Howse testified before the District Court that the activities encouraged by Trump are likely to intimidate voters and suppress turnout. She explained the intimidating effect of a billboard, describing voter fraud as illegal and warning about imprisonment, placed in an "overwhelmingly African American" neighborhood in her district during the 2012

---

<sup>2</sup> The rough transcript inaccurately attributes that last statement ("And I don't think it's plausible to say more likely") to counsel for the Trump Campaign. The Judge made that particular comment.

election cycle. 742A. Representative Howse testified that the billboard made her constituents “very hesitant to actually vote.” 743A. If there were literature distributed at polling places “saying voter fraud is a crime or purporting to define voter fraud,” voters would be confused and “very hesitant.” 746A.

Similarly, if Trump supporters seek to make minority voters “a little bit nervous” by “go[ing] right up behind them” (as one supporter has said he will do), minority voters would experience “hesitation” and nervousness, and there would be “unnecessary confrontation.” 745A-746A. And if voters and their vehicles were recorded going in and out of polling places, that would be very “upsetting to the voters.” 746A-747A.

Moreover, Representative Howse testified that even a small number of events involving suppression or intimidation could have a disproportionately large effect on voter turnout, because voters “would post about it on social media,” and the result would be that “[i]t would definitely hinder people’s ability, the people that already hesitant in this election cycle to exercise their right to vote.” 746A.

Representative Howse also testified that she and her constituents interpret Trump’s exhortations for his mostly white supporters to “watch” urban areas as a direction “[t]o go to the black communities.” Based on her knowledge of her district, Representative Howse testified that minority voters there would similarly interpret those statements as a direction to “[g]o look at the black community, come to our communities.” 744A.

In light of the evidence in the record, the District Court entered a tailored injunction requiring compliance with Ohio's established election procedures. The District Court explained:

“[T]he 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.” 44A.

The TRO provides, as relevant, that the Trump Campaign and associated persons are “enjoined from engaging in voter intimidation activity,” which includes:

“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’), or within ten feet of a voter standing in a line extending beyond the buffer zone. 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;

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.” 44A-46A.

The TRO orders compliance with specific Ohio statutory provisions, the constitutionality of which has not been challenged in this litigation. *See* Ohio Rev. Code §§3501.30(A)(4) (no electioneering, loitering, or congregating within 100-foot buffer zone around polls), 3501.35(A)(1) (same prohibition within buffer zone or within ten-foot bubble around any voter waiting in line if line extends beyond the 100-foot buffer), 3501.35(A)(2) (no “hinder[ing] or delay[ing]” a voter “in reaching or leaving” polling places); 3501.90(A)(1)(a) (no “harassment,” which includes any “practice or attempt tending to obstruct, intimidate, or interfere” with a voter); 3599.24(A)(5) (no loitering “in or about” a polling place “so as to hinder, delay, or interfere” with the voting process).

Critically, the District Court also noted: “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.” 46A. The TRO does not prevent the Ohio Republican Party from following the normal procedures under Ohio law allowing appropriately authorized, party-endorsed poll observers to be present at polling places.

That same day, the Trump Campaign filed a motion to stay the District Court’s TRO and a motion for initial hearing *en banc*. 630A-634A. The Trump Campaign’s motion to stay was over 30 pages—accompanied by a motion for an



extension of the page limit—and the motion for initial hearing *en banc* was 11 pages and incorporated the arguments from the motion to stay. The following day, November 5, 2016, the Sixth Circuit requested a 10-page submission from the Ohio Democratic Party responding to the Trump Campaign’s motion for initial hearing *en banc*, which Applicant filed as directed. On November 6, 2016, without any notice to the Ohio Democratic Party, the Sixth Circuit issued a 2-page order summarily staying the District Court’s TRO “[a]fter 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.” 689A. The Court of Appeals provided no notice to Applicant that it would be considering the stay request on the merits, and offered no opportunity for Applicant to submit a brief, or present oral argument, on the request. After it stayed the TRO, the Court of Appeals denied the Trump Campaign’s request for initial hearing *en banc*.

This application for vacatur of the stay issued by the Sixth Circuit followed.

### **Reasons to Vacate the Stay**

#### **I. THE STAY ENTERED BY THE COURT OF APPEALS HAS NO BASIS IN LAW**

##### **a. The Court of Appeals Followed Inadequate Procedures Prior To Issuing Its Stay Of The TRO.**

The Sixth Circuit, by its own admission, reviewed none of the evidence before the District Court before it issued its extraordinary order. Moreover, it did not request any opposition to the motion for stay. See 689A. (the Sixth Circuit “review[ed] the district court’s order, the [Trump Campaign’s] motion for an

emergency stay of that order, and [the Ohio Democratic Party’s] submission in response to the Petition for Initial En Banc Hearing”). In so doing, the Sixth Circuit opened the floodgates for Trump supporters to act on the Campaign’s concerted plans to intimidate voters on Election Day—a threat a top Ohio elections official believes could well result in greater instability at the polls. See *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (“Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequence incentive to remain away from the polls.”).

“[I]f the record convincingly demonstrates that the Court of Appeals could not have considered” the factors of irreparable harm and probable success on the merits and “the effect of its decision is shown to pose a danger of irreparable harm impairing this Court’s ability to provide full relief in the event it ultimately reviews the action of the Court of Appeals on the merits,” the Court “should afford the interim relief sought.” *Coleman v. Paccar*, 424 U.S. 1301 (1976) (Rehnquist, J., in chambers); see *Western Airlines, Inc. v. Int’l Bd. of Teamsters*, 480 U.S. 1301, 1305 (1987) (O’Connor, J., in chambers) (a “Circuit Justice has jurisdiction to vacate a stay where it appears that the rights of the parties to a case pending in the court of appeals . . . may be seriously and irreparably injured by the stay, and the Circuit Justice is of the opinion that the court of appeals is demonstrably wrong in its application of accepted standards in deciding the issue of the stay”) (citation omitted).

That standard is met here for several reasons. First and foremost, the Sixth Circuit admittedly “could not have considered” the relevant factors in determining whether a TRO should be stayed because it did not review the record evidence. As in *Purcell*, there is “no indication that” the Sixth Circuit gave “deference to the discretion of the District Court,” as it was required to do. *Id.* at 5. “[B]y failing to provide any factual findings or indeed any reasoning of its own the Court of Appeals [leaves] this Court in the position of evaluating the Court of Appeals’ bare order in light of the District Court’s ultimate findings.” *Id.* Because “[t]here has been no explanation given by the Court of Appeals showing the ruling and findings of the District Court to be incorrect,” this Court should vacate the stay and reinstate the District Court’s Order. *Id.*

The Sixth Circuit also flouted its own established procedure by failing to provide an opportunity for the non-movant to respond, which is highly disturbing in the context of a forcefully contested lawsuit about a concerted attempt at voter intimidation on the eve of the presidential election. Federal Rule of Appellate Procedure 27 provides that “[a]ny party may file a response to a motion” “within 10 days after service of the motion,” and “[a] motion” to stay an “order of a district court pending appeal” “may be granted before the 10-day period only if the court gives reasonable notice to the parties that it intends to act sooner.” Fed. R. App. P. 27(a)(3)(A); see Fed. R. App. P. 8. Nothing in the Sixth Circuit’s local rules alters those requirements. Yet the Sixth Circuit gave absolutely no notice to the Ohio

Democratic Party that it intended to grant the Trump Campaign's motion before considering a response.

The Sixth Circuit's stay will cause irreparable harm to the Ohio Democratic Party, its candidates, and most importantly thousands of voters who are exposed to intimidation, harassment, and coercion from Trump-incited illegal "watchdogs" at the polls. The Ohio Democratic Party brought this litigation to vindicate the constitutional rights of voters to exercise the franchise free from intimidation. See, e.g., *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008) (citing *Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) ("The Democratic Party also has standing to assert the rights of those of its members who will be prevented from voting by the new law.")).

The right to vote is a fundamental right whose deprivation constitutes an irreparable injury. Indeed, the constitutional interest at stake in this litigation is the voters' "most precious" "right . . . , regardless of their political persuasion, to cast their votes effectively" and free of intimidation. *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968). The interest in "protecting voters from confusion and undue influence" is "compelling," *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (plurality), and laws that protect voters from intimidation safeguard the "fundamental political right . . . preservative of all rights," *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). The Constitution secures the "citizen's right to a vote free of arbitrary impairment by state action," including intimidation by self-appointed poll-watcher vigilantes. *Baker v. Carr*, 369 U.S. 186, 208 (1962).

The Sixth Circuit's disregard for the Federal Rules of Appellate Procedure in its rush to stay the District Court's TRO, as well as its failure to review the record evidence, are highly prejudicial to Applicant. Further, such a rush to judgment, undermines public confidence in the Judiciary's ability to operate regularly during times of heightened national attention when there is a commensurately heightened need for judicial solicitude for core constitutional rights. See *Keyes v. Sch. Dist. No. 1, Denver, Colo.*, 396 U.S. 1215, 1215-16 (1969) ("Where a preliminary injunction has issued to vindicate constitutional rights, the presumption in favor of the District Court's action applies with particular force."); see also *Lucas v. Townsend*, 486 U.S. 1301, 1305 (1988) (KENNEDY, J., in chambers) (granting injunction enjoining a bond referendum election because "[p]ermitting the election to go forward [without statutory protection] would place the burdens of inertia and litigation delay on those whom the statute was intended to protect").

**b. The Appropriate Remedy, If Any, For Overbreadth Or Tailoring Inadequacies In The TRO Would Be To Vacate The Stay And Remand To The District Court.**

With the benefit of extensive briefing and an evidentiary hearing, the District Court entered a TRO that was tailored to the threats to the integrity of the electoral process. The appropriate remedy for any overbreadth or tailoring inadequacies is to remand to the District Court, which has the benefit of the full record before it. See *Schmidt v. Lessard*, 414 U.S. 473, 477 (1974) (remanding to district court to determine "precise bounds" of injunction); see also *Guste v. Jackson*, 429 U.S. 399, 399 (1977) (remanding to district court for further consideration of injunction's scope). By entering a stay, however, the Court of Appeals deprived the District

Court of jurisdiction to consider modifications to its order, or to address emergency issues that may arise in the coming days.

## **II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN GRANTING THE TRO**

Separate and apart from the Sixth Circuit’s procedural improprieties, the District Court’s TRO is appropriately tailored to match the variety of evidence in the record indicating that voter intimidation and disruption is likely on Election Day.

First, the TRO indisputably prohibits conduct that is not protected speech. It bars “hinder[ing] or delay[ing] a voter or prospective voter from reaching or leaving the polling place” and orders compliance with the unchallenged Ohio laws creating a 100-foot buffer zone free from electioneering and unauthorized poll observing activities, as well as Ohio’s similar proscriptions applicable to ten-foot bubbles around voters standing in a polling-place line extending beyond the buffer zone. See Ohio Rev. Code §§3501.30(A)(4), 3501.35(A)(2), 3599.24; see also *United Food & Commercial Workers Local 1099 v. City of Sidney*, 364 F.3d 738, 748 (6th Cir. 2004) (“[A] state may require persons soliciting signatures to stand 100 feet from the entrances to polling places without running afoul of the Constitution.”).

Similarly, Ohio law proscribes loitering at a polling location “so as to hinder, delay, or interfere with the conduct of the registration or election,” id. §3599.24(A)(5), and “harassment,” which includes any “practice or attempt tending to obstruct, intimidate, or interfere with an elector . . . in voting,” id. §3501.90(A)(1)(a).

Indeed, the fact that the TRO is precisely tailored to require adherence with Ohio law, while giving specific examples of proscribed conduct, illustrates why the Campaign has no substantial interest or protected right in the conduct that the TRO enjoins. The TRO is justified under the State’s “compelling interest in protecting the right of [United States] citizens to vote freely for the candidates of their choice.” *Burson*, 504 U.S. at 198 (upholding polling-place buffer zone). “[V]oter intimidation and coercion [are] . . . obvious harm[s] that federal law strongly and properly prohibits.” *United States v. Madden*, 403 F.3d 347, 352 (6th Cir. 2005) (Boggs, C.J., concurring in part and dissenting in part).

The TRO’s proscription on “[f]ollowing, taking photos of, or otherwise recording” voters or “their vehicles at or around a polling place” is similarly justifiable, and in any event is warranted in light of the evidence. As an initial matter, that proscription is likely encompassed by Ohio’s bar on harassment and intimidation. Ohio Rev. Code. §3501.90(A)(1)(a). More importantly, the Sixth Circuit has just upheld Michigan’s ban on photography of marked ballots, partly because it “advances [the] serious governmental interes[t] . . . [of] preventing voter intimidation.” *Crookston v. Johnson*, No. 16-2490, 2016 WL 6311623, at \*3 (6th Cir. Oct. 28, 2016) (upholding ban on ballot selfies as “content-neutral regulation that reasonably protects voters’ privacy”). “[P]osing for a ballot selfie could compromise the secrecy of another’s ballot [and] distract other voters.” *Id.* at \*2. The Court likewise rejected the “argument that [there is] no evidence of ballot photography

being used . . . to intimidate voters,” and concluded that any “expressive rights” in such conduct are “outweigh[ed]” by “the privacy interests of other voters.” *Id.* at 3.

In any event, that portion of the TRO—and the entirety of the TRO—is justified by the strength of the evidence, which is compelling. Trump has exhorted supporters in Ohio and elsewhere to swarm majority-minority communities and “watch,” “[a]nd when [I] say ‘watch,’ you know what I’m talking about, right?” In response, Trump supporters have appeared at elections board offices and identified themselves as poll observers, despite not being appointed as such pursuant to Ohio law. Pat McDonald, the Republican director of the Cuyahoga County Board of Elections, explained that Trump “is basically telling his supporters to be watchdogs of the polling locations,” and that he is “concerned” about “the safety and well-being of . . . the voters.” As Judge Gwin observed at the hearing: “It’s been kind of a central cornerstone of [the Trump] campaign that there’s this huge voter fraud which is kind of either a suggestion that he is afraid he’s going to lose and wants an excuse or suggestion that the way to win is to somehow stop the vote by repressing voter turn out.” Hearing Trans. at 31: 20-25.

Trump has no factual basis for his claims of voter fraud, as Judge Gwin found at the hearing and as Ohio’s Republican Secretary of State Jon Husted has plainly acknowledged. Indeed, Husted rejected the notion of widespread in-state voter fraud, saying there is “no evidence” of widespread voter fraud in Ohio, and that “there are no facts that support” Trump’s claims to the contrary. 427A. Moreover, both the Executive Director for the Ohio Republican Party and the Party’s counsel



represented to the District Court that they had no knowledge of *any* voter fraud. 763A. Even counsel for the Trump Campaign—when asked as an “officer of the court”—acknowledged that it was “less likely” that voter fraud would affect the presidential election. 721A-722A.

It is therefore unsurprising that the courts that have examined the evidence have concluded that widespread voter fraud does not exist. In a challenge to Pennsylvania’s voter ID law, for example, “[t]he parties [we]re not aware of any incidents of in-person voter fraud in Pennsylvania and d[id] not have direct personal knowledge of in person voter fraud elsewhere. *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988, at \*57 (Pa. Commw. Ct. Jan. 17, 2014). A federal judge in North Dakota recently determined that “[t]he undisputed evidence before the Court reveals that voter fraud in North Dakota has been virtually non-existent.” *Brakebill v. Jaeger*, No. 16-civ-00008 (DLH), Dkt. No. 50 (Aug. 1, 2016). A federal judge in Wisconsin has similarly observed that “[t]he Wisconsin experience demonstrates that a preoccupation with mostly phantom election fraud leads to real incidents of disenfranchisement, which undermine rather than enhance confidence in elections, particularly in minority communities.” *One Wis. Inst. v. Thomsen*, No. 15-civ-324 (JDP), 2016 WL 4059222, at \*2 (W.D. Wis. July 29, 2016); see also *Veasey v. Abbott*, 830 F.3d 216, 238 (5th Cir. 2016) (“[T]he evidence before the Legislature was that in- person voting, the only concern addressed by SB 14, yielded only two convictions for in-person voter impersonation fraud out of 20 million votes cast in the decade leading up to SB 14’s passage.”);

*League of Women Voters of North Carolina v. North Carolina*, 769 F.3d 224, 246 (4th Cir. 2014) (“North Carolina asserts goals of electoral integrity and fraud prevention. But nothing in the district court’s portrayal of the facts suggests that those are anything other than merely imaginable.”); *Crawford*, 553 U.S. at 194 (“The only kind of voter fraud that SEA 483 addresses is in-person voter impersonation at polling places. The record contains no evidence of any such fraud actually occurring in Indiana at any time in its history.”); *Frank v. Walker*, 17 F. Supp. 3d 837, 848 (E.D. Wis. 2014) (“[I]t appears that there have been zero incidents of in-person voter-impersonation fraud in Wisconsin during recent elections.”), *rev’d on other grounds*, 768 F.3d 744 (7th Cir. 2014); *Lee v. Va. State Bd. of Elections*, No. 15-cv-357 (HEH), 2016 WL 2946181, at \*23 (E.D. Va. May 19, 2016) (“evidence of actual voter impersonation-type fraud was scant”).

As the District Court explained, the lack of evidence of voter fraud “suggests that this is all code words, that [Trump’s rhetoric is] really an incitement to harass [D]emocratic leaning but more specifically African-American or Hispanic voters.” 722A. The District Court concluded there was no reason for Trump to make unsubstantiated claims of voter fraud other than “to incite people to come out and impede the election.” 728A.

Finally, the Campaign is not likely to prevail in its challenge to the Democratic Party’s showing that the Campaign has or will violate Section 11(b) of the Voting Rights Act and the Ku Klux Klan Act of 1871. Section 11(b) directs that no “[n]o 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.” 52 U.S.C. §10307(b). The statutory terms cover not only the most powerful levers of the state, such as “arrest and prosecution,” see *Cameron v. Johnson*, 262 F. Supp. 873, 897 (S.D. Miss. 1966), but also plainly apply to threatening, intimidating, and coercive acts carried out by private individuals. Section 11(b) “on its face prohibits any intimidation, threat, or coercion, whether done by a public official or by a private individual.” *Whatley v. Vidalia*, 399 F.2d 521, 526 (5th Cir. 1968). Moreover, the undefined statutory terms should be given their “ordinary, contemporary, common meaning.” *Perrin v. United States*, 444 U.S. 37, 42 (1979); see *Jackson v. Riddell*, 476 F. Supp. 849, 859 (N.D. Miss. 1979) (Section 11(b) “is to be given an expansive meaning”).

For instance, the Ninth Circuit found that it constituted “intimidation” to send a mass mailing to 14,000 newly registered voters with Hispanic surnames warning them that if they voted in the election, their personal information would be collected and made available to organizations that were “against immigration.” *United States v. Nguyen*, 673 F.3d 1259, 1261 (9th Cir. 2012) (interpreting a criminal voter intimidation provision of the California election code). As the Ninth Circuit held, “intimidation” is “not limited to displays or applications of force, but can be achieved through manipulation and suggestion,” including “through subtle, rather than forcefully coercive means.” *Id.* (emphasis added).

The above evidence, taken together, demonstrates that the Trump Campaign cannot show it is likely to prevail against the Democratic Party’s claim that the

Campaign has violated the Ku Klux Klan Act of 1871. The relevant provision of the Klan Act, codified at 42 U.S.C. §1985(3), creates liability for three different kinds of conspiracies. See *United B'hd. of Carpenters & Joiners of Am., Local 610 v. Scott*, 463 U.S. 825, 839 n.1 (1983) (Blackmun, J., dissenting); *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.3 (9th Cir. 1985) (en banc). The Ohio Democratic Party's claim arises under §1985(3)'s provision barring conspiracies to suppress voters, which provides: "[I]f two or more persons conspire 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; or to injure any citizen in person or property on account of such support or advocacy," and "one or more persons engaged" in that conspiracy commit an act in furtherance of the conspiracy that injures a person or deprives that person of a federal right, "the party so injured or deprived may have an action . . . ." 42 U.S.C. §1985(3).

The Ninth Circuit has referred to this type of a §1985(3) conspiracy as "a conspiracy to interfere with federal elections." *Bretz*, 773 F.2d at 1027 n.3. A straightforward reading of the statutory text, coupled with case law interpreting other Klan Act claims, makes clear that the Ohio Democratic Party's claim is likely to succeed.

In construing §1985(3) conspiracy claims, this Court has explained that:

to make out a violation of § 1985(3), as construed in *Griffin v. Breckenridge* [which construed the section's first clause], the plaintiff must allege and

prove four elements: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.

*United B'hd. of Carpenters*, 463 U.S. at 828-29. It follows that to make out a violation of the latter part of §1985(3) at issue here, a plaintiff must allege and prove the following four elements: (1) a conspiracy; (2) to prevent a lawful voter from supporting a candidate in a federal election by force, intimidation, or threat; and (3) an act in furtherance of the conspiracy; (4) whereby a person is injured in his person or property or deprived of any right or privilege of a citizen of the United States.

First, the Ohio Democratic Party is likely to succeed on the merits of its claim that the Trump Campaign have engaged in a conspiracy. “A civil conspiracy is combination of two or more persons to an unlawful or criminal act or to do a lawful act by unlawful means or for an unlawful purpose.” *Ammlung v. City of Chester*, 494 F.2d. 811, 814 (3d Cir. 1974). As the Sixth Circuit has elaborated,

[a] civil conspiracy is an agreement between two or more persons to injure another by unlawful action. Express agreement among all the conspirators is not necessary to find the existence of a civil conspiracy. Each conspirator need not have known all of the details of the illegal plan or all of the participants involved. All that must be shown is that there was a single plan, that the alleged coconspirator shared in the general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy that caused injury to the complainant.

*Hooks v. Hooks*, 771 F.2d 935, 943-44 (6th Cir. 1985).

Plaintiff has alleged facts likely to prove that the Trump Campaign—along with Defendants Roger Stone and Stop the Steal Inc.—have agreed, tacitly and

explicitly, to a “single plan” to suppress voting by Democratic, and predominantly non-white, voters in the 2016 Election, and that each individual Defendant shares in the “general conspiratorial objective.”

A “senior official” at the Trump Campaign recently admitted to Bloomberg Businessweek that the Campaign is engaged in “major voter suppression operations” designed to prevent minority and Democratic-leaning voters from casting lawful ballots. 292A-308A. Trump has repeatedly warned his followers that the election will be “rigged,” and exhorted his followers to monitor other voters. 311A-325A. The Boston Globe has reported on Trump supporters who are planning to engage in unlawful voter intimidation, and who understand themselves to be doing so at Trump’s behest: “Trump said to watch your precincts. I’m going to go, for sure,” said Steve Webb, a 61-year-old carpenter from Fairfield, Ohio.

“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 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.”

192A-204A.

Similarly, Stone and his organization Stop the Steal Inc. have amplified Trump’s recruiting call, by signing up Trump supporters to “volunteer” to fight “voter fraud,” spreading false claims and encouraging his audience to engage in unlawful voter intimidation, and encouraging “exit pollers” to intimidate minority voters. 176A-178A. These efforts have the backing of the ORP and RNC. 207A-213A.

Second, Plaintiffs will likely prove that the conspiracy is directed at preventing lawful voters from voting “by force, intimidation, or threat.” For the reasons laid out above, the Trump Campaign’s efforts are plainly designed to threaten, coerce, and intimidate Democratic and minority voters, and to encourage Trump’s supporters to engage in activities outside of the ordinary election procedures established by Ohio law.

Third, each co-conspirator has performed an act in furtherance of that conspiracy. See 165A-167A; 179A-191A; 216A-219A; 292A-308A. Each of these acts, and many others, has furthered the conspiracy to prevent lawful voters from voting, by intimidation.

Finally, each of those acts has injured the Ohio Democratic Party, both by harming its prospects in the upcoming election, and by depriving the lawful voters whose interests it represents of their legal right to vote in that election free of intimidation. Without immediate relief, Ohio voters will face the deprivation of their right to vote on account of the co-conspirators’ intimidation.

The District Court’s Order was also appropriate under Federal Rule of Civil Procedure 65(d). Consistent with that rule, the TRO carefully enumerates the conduct it prohibits. Fed. R. Civ. P. 65(d) (“Every order granting an injunction and every restraining order must: (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail . . . the act or acts restrained or required.”). The Trump Campaign and its agents therefore were “informed, as accurately as the case permits, what they are forbidden to do.” *Swift & Co. v. United States*, 196 U.S. 375, 401 (1905).

The TRO is a stark contrast to the broad prohibitions that fall short of Rule 65's requirements. See, e.g., *EEOC v. Wooster Brush Co. Employees Relief Association*, 727 F.2d 566 (6th Cir. 1984) (enjoining defendants "from discriminating against women on the basis of their gender"); *Davis v. Richmond, Fredericksburg & Potomac R. Co.*, 803 F.2d 1322, 1328 (4th Cir. 1986) (vacating a paragraph of an injunction that directs the enjoined party to "obey the statute"). In contrast to those vague and indefinite injunctions, the TRO here provides that "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." 44A.

The TRO does not merely command the Trump Campaign to abide by the terms of Section 11(b) of the Voting Rights Act and the Ku Klux Klan Act of 1871, or enjoin the Campaign from merely "intimidating" voters. Instead, it proscribes specifically enumerated voter intimidation tactics, including "hindering or delaying a voter or prospective voter from reaching or leaving the polling place," "[i]nterrogating, 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," and engaging in "unauthorized poll watching activities inside of polling places" or within the defined buffer zone, which the Court defined to include "challenging or questioning voters or prospective voters about their eligibility to vote, or training, organizing, or directing others to do the same." 45A.



Those proscriptions do not “abstractly enjoin” the Trump Campaign; instead, they identify specific areas of concern on the basis of a full factual record. *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1137-38 (D.C. Cir. 2009) (affirming injunction that did not “abstractly enjoin Defendants from violating RICO or making false statements, but instead specified the matters about which Defendants are to avoid making false statements or committing racketeering acts: the manufacturing, marketing, promotion, health consequences, and sale of cigarettes, along with related issues that Defendants have reason to know are of concern to cigarette consumers”). “[W]here there is a legitimate possibility that particular laws may be imminently violated, ordering compliance with those laws is appropriate.” 44A.

Nor do prohibitions against voter intimidation such as the TRO entered by the District Court “run[] afoul of the First Amendment.” *Tan Duc Nguyen*, 673 F.3d at 1266. As an initial matter, the Campaign cannot rely on the First Amendment for permission to intimidate and harass voters under the guise of poll-watching, because “poll watching is not a fundamental right which enjoys First Amendment protection.” *Dailey v. Hands*, No. 14-cv-423-KD-M, 2015 WL 1293188, at \*4 (S.D. Ala. Feb. 20, 2015), report and recommendation adopted, Mar. 23, 2015; see *Democratic Nat’l Comm. v. Republican Nat’l Comm.*, 671 F. Supp. 2d 575, 596 (D.N.J. 2009) (rejecting as “meritless” the argument that consent decree bar on RNC “ballot security activities” “infringes on activity protected by the First Amendment”), *aff’d*, 673 F.3d 192 (3d Cir. 2012), *cert. denied*, 133 S. Ct. 931 (2013);

*Cotz v. Mastroeni*, 476 F. Supp. 2d 332, 364 (S.D.N.Y. 2007) (“poll watching . . . has no distinct First Amendment protection”); *Turner v. Cooper*, 583 F. Supp. 1160, 1162 (N.D. Ill. 1983) (“no authority” for “the proposition that” a person has “a first amendment right to act as a pollwatcher”). The “position of poll-watcher,” rather, is “a mere creature of state statute.” *Cotz*, 476 F. Supp. 2d at 364; see *Dailey*, 2015 WL 1293188, at \*5 (rejecting the argument that “poll watching is actually a First Amendment right that ‘transcends’ merely serving as a poll watcher”).

Even if the TRO abridges some protected speech, which the Ohio Democratic Party disputes, the order is properly tailored to withstand First Amendment scrutiny. Contrary to what the Trump Campaign suggests, the TRO is not content-based. The TRO provisions enjoin individuals from, inter alia, “[h]indering or delaying a voter or prospective voter”; “[e]ngaging in any unauthorized ‘poll watching’ activities”; “[i]nterrogating, admonishing, interfering with, or verbally harassing voters or prospective voters”; and “following, taking photos of, or otherwise recording voters.” These provisions do not turn on the content or viewpoint of any individual message. Read as a whole, the TRO is a content-neutral prohibition against voter intimidation or threat, as the District Court explained. See *Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357, 364 n.1 (1997) (acknowledging narrow construction of a TRO provision by the courts below).

Because the TRO is content-neutral, the *Schenck* test applies. This Court must determine “whether the challenged provisions . . . [1] burden no more speech than necessary [2] to serve a significant government interest.” *Id.* at 372. The TRO

complies with both elements. The Supreme Court repeatedly has held that preventing voter intimidation and coercion is a compelling interest. See, e.g., *Burson*, 504 U.S. at 198; *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 229 (1989). And, as stated above, the TRO is tailored precisely to match the evidence in the record of the plans by the Campaign and its supporters to disrupt the voting process and intimidate voters. See *supra* Section I.A.

### CONCLUSION

For the foregoing reasons, the Court should vacate the Sixth Circuit's November 6, 2016 stay of the TRO issued by the U.S. District Court for the Northern District of Ohio on November 4, 2016.

In the alternative, Applicant respectfully requests the Court to grant a writ of certiorari and to vacate and remand, or grant injunctive relief pending disposition of the petition.

Dated: November 6, 2016

Respectfully submitted,

/s/ Marc Elias

Marc E. Elias  
*Counsel of Record*  
Bruce V. Spiva  
Perkins Coie LLP  
700 13th Street, Suite 600  
Washington, DC 20005  
Telephone: (202) 434-1609  
Fax: (202) 654-9126  
melias@perkinscoie.com

Michael J. Gottlieb  
Jessica Phillips

Greg Dubinsky  
Ryan Park  
Boies, Schiller & Flexner LLP  
5301 Wisconsin Avenue, NW  
Suite 800  
Washington, DC 20015  
Telephone: (202) 237-2727  
Fax: (202) 237-6131  
mgottlieb@bsfllp.com  
jphillips@bsfllp.com  
gdubinsky@bsfllp.com  
rpark@bsfllp.com

Dawn Smalls  
Laura Harris  
Boies, Schiller & Flexner LLP  
575 Lexington Avenue  
New York, NY 10022  
Telephone: (212) 446-2300  
Fax: (212) 446-2350  
dsmalls@bsfllp.com  
lharris@bsfllp.com

Steven Kaufman  
Kaufman & Company LLC  
101 Lakeside Avenue, Suite 1710  
Columbus, OH 44144  
Telephone: (216) 912-5500  
Fax: (216) 912-5501  
steve.kaufman@kaufman-company.com

Donald McTigue  
McTigue & Colombo LLC  
545 East Town Street  
Columbus, OH 43215  
Telephone: (614) 263-7000  
Fax: (614) 263-7078  
dmctigue@electionlawgroup.com

N. Zachary West  
Ohio Democratic Party  
340 East Fulton Street  
Columbus, OH 43215  
Telephone: (614) 221-6563

zwest@ohiodems.com  
dmctigue@electionlawgroup.com

*Counsel for Ohio Democratic Party*

1 **WO**

NOT FOR PUBLICATION

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Arizona Democratic Party,  
10 Plaintiff,

11 v.

12 Arizona Republican Party, *et al.*,  
13 Defendants.  
14

No. CV-16-03752-PHX-JJT

**ORDER**

15 In response to what it alleges to be a call for the intimidation of voters in next  
16 week's presidential election by Donald J. Trump for President, Inc. ("Trump  
17 Campaign"), the Arizona Republican Party ("ARP"), Roger J. Stone, Jr., and Stop the  
18 Steal, Inc., the Arizona Democratic Party ("ADP") filed this lawsuit a mere eight days  
19 before the election. Plaintiff ADP seeks injunctive relief for violations of the Ku Klux  
20 Klan Act of 1871, 42 U.S.C. § 1985(3), and Section 11(b) of Voting Rights Act of 1965,  
21 52 U.S.C. § 10307(b). (Doc. 1, Compl.) After the Court set an expedited briefing and  
22 hearing schedule (Doc. 7), Plaintiff filed a Motion for Temporary Restraining Order  
23 and/or Preliminary Injunction (Doc. 10, Mot.), Defendants ARP and the Trump  
24 Campaign filed a Response (Doc. 15, GOP Resp.), and Plaintiff filed a Reply thereto  
25 (Doc. 22, Reply to GOP).

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

1 Hearing (*see* Doc. 22-1). On November 3, 2016, the Court held a Hearing on Plaintiff's  
 2 Motion. (Doc. 24.) Stop the Steal and Mr. Stone appeared through counsel at the Hearing  
 3 for the purpose of contesting both service and the Court's jurisdiction over them in this  
 4 matter. The Court denied Stop the Steal's motion to dismiss and reserved judgment on  
 5 that of Mr. Stone. (Doc. 24.) The Court heard evidence and argument from all parties on  
 6 Plaintiff's Motion and ordered briefing from Stop the Steal. (Doc. 24.) On November 4,  
 7 2016, Stop the Steal and Mr. Stone filed a Response (Doc. 27, STS Resp.), and Plaintiff  
 8 filed a Reply thereto (Doc. 28, Reply to STS).

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

## 12 **I. LEGAL ANALYSIS**

### 13 **A. Standing**

14 To bring a judicable lawsuit into Federal Court, Article III of the Constitution  
 15 requires that one have "the core component of standing." *Lujan v. Defenders of Wildlife*,  
 16 504 U.S. 555, 560 (1992). To satisfy Article III's standing requirements, a plaintiff must  
 17 show that he suffered a "concrete and particularized" injury that is "fairly traceable to the  
 18 challenged action of the defendant," and that a favorable decision would likely redress  
 19 the injury. *Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc.*, 528  
 20 U.S. 167, 180 (2000). In the complaint, the plaintiff must "alleg[e] specific facts  
 21 sufficient" to establish standing. *Schmier v. U.S. Court of Appeals for Ninth Circuit*, 279  
 22 F.3d 817, 821 (9th Cir. 2002). Accordingly, courts should dismiss a plaintiff's complaint  
 23 if he has failed to provide facts sufficient to establish standing. *See, e.g., Chandler v.*  
 24 *State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1123 (9th Cir. 2010).

25 An organization has standing "to seek judicial relief from injury to itself and to  
 26 vindicate whatever rights and immunities the association itself may enjoy." *Warth v.*  
 27 *Seldin*, 422 U.S. 490, 511 (1975). An organization also has "associational standing" to  
 28 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.<sup>1</sup> (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

---

<sup>1</sup> The Court denied a similar motion brought by Defendant Stop the Steal at the Hearing. (Tr. at 52.)



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

3 Because there is no statutory method for resolving the question of personal  
4 jurisdiction, “the mode of determination is left to the trial court.” *Data Disc*, 557 F.2d at  
5 1285 (citing *Gibbs v. Buck*, 307 U.S. 66, 71-72 (1939)). Where, as here, a court resolves  
6 the question of personal jurisdiction upon motions and supporting documents, the  
7 plaintiff “must make only a prima facie showing of jurisdictional facts through the  
8 submitted materials in order to avoid a defendant’s motion to dismiss.” *Id.* In determining  
9 whether the plaintiff has met that burden, the “uncontroverted allegations in [the  
10 plaintiff’s] complaint must be taken as true, and conflicts between the facts contained in  
11 the parties’ affidavits must be resolved in [the plaintiff’s] favor.” *Rio Props., Inc. v. Rio*  
12 *Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002) (citation omitted).

13 To establish personal jurisdiction over a nonresident defendant, a plaintiff must  
14 show that the forum state’s long-arm statute confers jurisdiction over the defendant and  
15 that the exercise of jurisdiction comports with constitutional principles of due process.  
16 *Id.*; *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 269 (9th Cir. 1995).  
17 Arizona’s long-arm statute allows the exercise of personal jurisdiction to the same extent  
18 as the United States Constitution. *See* Ariz. R. Civ. Proc. 4.2(a); *Cybersell v. Cybersell*,  
19 130 F.3d 414, 416 (9th Cir. 1997); *A. Uberti & C. v. Leonardo*, 892 P.2d 1354, 1358  
20 (Ariz. 1995) (stating that under Rule 4.2(a), “Arizona will exert personal jurisdiction over  
21 a nonresident litigant to the maximum extent allowed by the federal constitution”). Thus,  
22 a court in Arizona may exercise personal jurisdiction over a nonresident defendant so  
23 long as doing so accords with constitutional principles of due process. *Cybersell*, 130  
24 F.3d at 416.

25 Due process requires that a nonresident defendant have sufficient minimum  
26 contacts with the forum state so that “maintenance of the suit does not offend ‘traditional  
27 notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310,  
28 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)); *see also Data Disc*,

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

7 Here, Plaintiff contends that the Court has specific jurisdiction over Mr. Stone  
8 through his actions in conjunction with and as a volunteer for Stop the Steal. The issue of  
9 whether specific jurisdiction will lie turns on the extent of the defendant’s contacts with  
10 the forum and the degree to which the plaintiff’s suit is related to those contacts. *Yahoo!*  
11 *Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1210 (9th Cir.  
12 2006). The Ninth Circuit uses the following approach in making this evaluation: (1) the  
13 nonresident defendant must do some act in or consummate some transaction with the  
14 forum, or perform some act by which it purposefully avails itself of the privilege of  
15 conducting activities in the forum, thereby invoking the benefits and protections of its  
16 laws; (2) the claim must be one which arises out of or results from the defendant’s forum-  
17 related activities; and (3) exercise of jurisdiction must be reasonable. *Data Disc*, 557 F.2d  
18 at 1287. All three requirements must be satisfied for the exercise of jurisdiction to  
19 comport with constitutional principles of due process. *Omeluk*, 52 F.3d at 270. The  
20 plaintiff bears the burden of establishing the first two prongs of the test. *Schwarzenegger*  
21 *v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). If the plaintiff does so, the  
22 burden shifts to the defendant to set forth a “compelling case” that the exercise of  
23 jurisdiction would be unreasonable. *Mavrix Photo, Inc. v. Brand Tech’s., Inc.*, 647 F.3d  
24 1218, 1228 (9th Cir. 2011) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78  
25 (1985)).

---

26  
27  
28 <sup>2</sup> Plaintiff does not attempt to provide facts to support a finding of general  
jurisdiction over Mr. Stone.

1 With regard to the first element, the plaintiff must show the defendant “either (1)  
2 ‘purposefully availed’ himself of the privilege of conducting activities in the forum, or  
3 (2) ‘purposefully directed’ his activities toward the forum.” *Pebble Beach Co. v. Caddy*,  
4 453 F.3d 1151, 1155 (9th Cir. 2006) (quoting *Schwarzenegger*, 374 F.3d at 802). The  
5 Ninth Circuit has explained that in cases involving tortious conduct, as here, the  
6 purposeful direction analysis is most commonly applied. *Mavrix Photo*, 647 F.3d at 1228.  
7 Purposeful direction is determined by using the “effects” test that was developed in  
8 *Calder v. Jones*, 465 U.S. 783, 789-90 (1984). The effects test requires that “the  
9 defendant allegedly must have (1) committed an intentional act, (2) expressly aimed at  
10 the forum state, (3) causing harm that the defendant knows is likely to be suffered in the  
11 forum state.” *Yahoo!*, at 1206.

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

19 Plaintiff alleges and proffers some evidence that Mr. Stone and Stop the Steal have  
20 “engaged in the recruitment of individuals to come into the State of Arizona for the  
21 purpose of engaging in election monitoring and exit poll activities on Election Day in  
22 Arizona,” including signing up 107 volunteers as of November 1, 2016, and that  
23 Mr. Stone has publicly and repeatedly tied himself to Stop the Steal. (Tr. at 47-50; Reply  
24 to STS at 3-6.) Though Mr. Stone’s counsel argued that Mr. Stone is distinct from Stop  
25 the Steal in terms of these actions (Tr. at 46), Mr. Stone produced no evidence to  
26 contradict Plaintiff’s evidence. The Court finds that, through the acts of recruiting and  
27 organizing exit poll takers to come to Arizona polling places, Mr. Stone has sufficient  
28 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).<sup>3</sup> The statute does not

---

<sup>3</sup> 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

1 exclude a private right of action for injunctive relief, as Plaintiff has brought here. *Allen*  
 2 *v. State Bd. of Elections*, 393 U.S. 544, 555-56 & n.18 (1969); *see also* 28 U.S.C.  
 3 § 1343(a)(4).

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

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

19  
 20 vote. (GOP Resp. at 22 (citing *Olagues v. Russoniello*, 770 F.2d 791, 804 (9th Cir.  
 21 1985)).) Plaintiff argues that an action under Section 11(b) only requires that a defendant  
 22 intended to act, with the result that the actions intimidate, threaten or coerce or attempt to  
 23 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.

24 <sup>4</sup> ARP and the Trump Campaign argue that an action under 42 U.S.C. § 1985(3)  
 25 requires a showing of racial animus and that the specific provision invoked by Plaintiff—  
 26 the “support and advocacy clause”—cannot be applied against a non-state actor. (GOP  
 27 Resp. at 17-19.) Plaintiff disagrees on both counts. (Reply to GOP at 4-8.) Again, the  
 28 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.

<sup>5</sup> For the purposes of this Order, the Court refers to these representatives provided

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

15 For Plaintiff’s claim under the Voting Rights Act, Plaintiff must demonstrate that  
16 Defendants acted or attempted to intimidate, threaten or coerce a person for voting or  
17 attempting to vote; similarly, for Plaintiff’s claim under the Ku Klux Klan Act, Plaintiff  
18 must demonstrate that Defendants conspired to prevent a person from voting through  
19 force, intimidation or threat. Plaintiff claims that Defendants’ statements to their  
20 constituents urging them to be present and observe the activities of other voters at polling  
21 places, to follow other voters and interrogate them as to their votes, to record other  
22 voters’ license plates, to photograph and video-record other voters, and to call 911 if they  
23 suspect someone has engaged in voter fraud constitute at least an attempt to intimidate  
24 and/or threaten voters for voting or attempting to vote. (*E.g.*, Compl. ¶¶ 49, 51, 58.)  
25 Plaintiff also claims that the plan by Mr. Stone and Stop the Steal to conduct exit polls at  
26

27  
28 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.<sup>6</sup> 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.

---

<sup>6</sup> 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.)

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

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

---

27  
28 <sup>7</sup> 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.



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

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

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

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

---

27  
28 <sup>8</sup> 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.)

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

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

14 **b. Statements of the Trump Campaign**

15 In its pleadings, moving papers and presentation to the Court, Plaintiff identified  
16 various statements made by the candidate, his surrogates and campaign officials that, it  
17 argues, show both an intent on the part of the Trump Campaign to intimidate voters and  
18 intimidation in fact. Plaintiff pointed to an unnamed Trump Campaign official recently  
19 telling reporters that “[w]e have three major voter suppression operations under way,”  
20 which Plaintiff summarized as targeting “Latinos, African Americans, and other groups  
21 of voters.” (Compl. at 1.) It introduced news articles relating Mr. Trump’s own  
22 statements at campaign rallies and before the media that the election is “rigged” and that  
23 widespread voter fraud will favor his opponent. Plaintiff relates additional statements by  
24 Mr. Trump to his supporters that, “[a]s opposed to somebody coming up and voting 15  
25 times for Hillary[,] I will not tell you to vote 15 times. I will not tell you to do that. You  
26 won’t vote 15 times, but people will. They’ll vote many times, and how that could have  
27 happened is unbelievable.” (Gonski Decl. Ex. 18.)  
28

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

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

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

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

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

11 "We have three major voter suppression operations under  
12 way," says a senior official. They're aimed at three groups  
13 Clinton needs to win overwhelmingly: idealistic white  
14 liberals, young women, and African Americans. Trump's  
15 invocation at the debate of Clinton's WikiLeaks e-mails and  
16 support for the Trans-Pacific Partnership was designed to turn  
17 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.

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

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

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

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

---

23  
 24 <sup>9</sup> Indeed, among other evidence, Plaintiff produces a Tweet from a Trump  
 25 supporter in Florida stating he planned to be “wear’n red at polls,” “watch’n fer  
 26 shenanigans,” and “haul ya away,” accompanied by a photo of a pickup truck and a  
 27 person-sized cage built in the bed, surrounded by American flags. (Gonski Decl. Ex. 7.)  
 28 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.

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

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

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

---

25  
26  
27 <sup>10</sup> The Court notes, as have other district courts considering similar matters, that  
28 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.



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

9 **c. Statements of Stop the Steal and Mr. Stone**

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

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



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

18 Plaintiff has also produced evidence that Stop the Steal and Mr. Stone recruited  
19 and mobilized groups of volunteers known as "vote protectors," who are encouraged to  
20 identify themselves as reporting for vote protectors, approach voters at the polls, and  
21 inquire about election fraud. (Gonski Decl. at Ex. 23; <http://stopthesteal.org>.) Plaintiff  
22 also alleges that Mr. Stone is using social media to urge potential uncredentialed  
23 observers to wear red shirts on Election Day. (Compl. ¶ 35.) However, there is no  
24 prohibition regarding the clothing of uncredentialed observers at polling locations, nor  
25 has Plaintiff provided any legal precedent holding that such activity is unconstitutional,  
26 likely to intimidate voters, or will otherwise hinder voter participation. Neither the  
27 encouragement of the activities alleged, nor the activities themselves are *per se*  
28

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

## 3                   **2.       Likelihood of Irreparable Harm**

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

11           In doing so, it is clear that abridgement of the right to vote constitutes irreparable  
12 injury. *Reynolds v. Sims*, 377 U.S. 533, 562 (the right to vote is “a fundamental political  
13 right, because [it] is preservative of all rights”); *Melendres v. Arpaio*, 695 F.3d 990, 1002  
14 (9th Cir. 2012) (“It is well established that the deprivation of constitutional rights  
15 ‘unquestionably constitutes irreparable injury.’”) (quoting *Elrod v. Burns*, 427 U.S. 347,  
16 373 (1976)); *Cardona v. Oakland Unified Sch. Dist., California*, 785 F. Supp. 837, 840  
17 (N.D. Cal. 1992) (“Abridgement or dilution of a right so fundamental as the right to vote  
18 constitutes irreparable injury.”); *see also Obama for Am. v. Husted*, 697 F.3d 423, 436  
19 (6th Cir. 2012) (“A restriction on the fundamental right to vote . . . constitutes irreparable  
20 injury.”) (internal citation omitted). Consequently, if potential members of the electorate  
21 suffer intimidation, threatening conduct, or coercion such that their right to vote freely is  
22 abridged, or altogether extinguished, Plaintiff would be irreparably harmed. Further, if  
23 some potential voters are improperly dissuaded from exercising their franchise, it is  
24 unlikely those voters can be identified, their votes cannot be recast, and no amount of  
25 traditional remedies such as money damages would suffice after the fact. This factor  
26 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.

1           On the other hand, the Court acknowledges that Plaintiff's injunction, as  
2 requested, raises First Amendment concerns. Just as the right to vote is a fundamental  
3 one, so too is the right to political speech and the right to associate. *See, e.g., Mills v.*  
4 *Alabama*, 384 U.S. 214, 218-19 (1966) ("there is practically universal agreement that a  
5 major purpose of [the First] Amendment was to protect the free discussion of  
6 governmental affairs . . . [including] discussions of candidates, structures and forms of  
7 government, the manner in which government is operated or should be operated, and all  
8 such matters relating to political processes"); *Lerman v. Bd. of Elections in City of New*  
9 *York*, 232 F.3d 135, 146 (2d Cir. 2000) ("The right to political association also is at the  
10 core of the First Amendment, and even practices that only potentially threaten political  
11 association are highly suspect.") (internal quotation and citation omitted). While the  
12 Court may only enjoin Defendants and their co-conspirators, if any, the injunction may  
13 nonetheless have a chilling effect on protected First Amendment speech by others.  
14 Indeed, Plaintiff has not provided the Court with a narrowly tailored injunction that  
15 would not unintentionally sweep within its ambit other activities that constitute exercise  
16 of freedom of speech. *See, e.g., Rodriguez v. Robbins*, 715 F.3d 1127, 1133 (9th Cir.  
17 2013) ("An overbroad injunction is an abuse of discretion."); *Union Pac. R. Co. v.*  
18 *Mower*, 219 F.3d 1069, 1077 (9th Cir. 2000) ("one basic principle built into Rule 65 is  
19 that those against whom an injunction is issued should receive fair and precisely drawn  
20 notice of what the injunction actually prohibits") (quoting *Granny Goose Foods, Inc. v.*  
21 *Brotherhood of Teamsters*, 415 U.S. 423, 444 (1974)); *Waldman Pub. Corp. v. Landoll,*  
22 *Inc.*, 43 F.3d 775, 785 (2d Cir. 1994) ("an injunction should not impose unnecessary  
23 burdens on lawful activity").

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

1 fundamental right that enjoys distinct First Amendment protection and it does not carry  
2 the same implications as the preceding rights. *See, e.g., Cotz v. Mastroeni*, 476 F. Supp.  
3 2d 332, 364 (S.D.N.Y. 2007) (“poll watching is not incidental to this right and has no  
4 distinct First Amendment protection”); *Turner v. Cooper*, 583 F. Supp. 1160, 1161–62  
5 (N.D. Ill. 1983) (holding that the act of poll watching is not protected by the First  
6 Amendment). Ultimately, each side implicates vital rights central to our system of  
7 government. Because the right to vote is sacrosanct and preservative of all other rights,  
8 the hardship balance and public interest factors weigh slightly in favor of granting  
9 Plaintiff’s Motion.

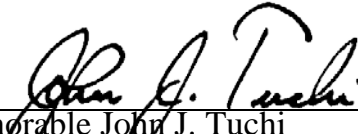
## 10 **II. CONCLUSION**

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

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

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

4           Dated this 4th day of November, 2016.

5  
6             
7           \_\_\_\_\_  
8           Honorable John J. Tuchi  
9           United States District Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2:16-cv-2415-RFB-NJK

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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

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  
333 Las Vegas Boulevard South, Room 1334  
Las Vegas, Nevada 89101

Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.

2:16-cv-2415-RFB-NJK

1 APPEARANCES:

2 For the Plaintiff:

**DON SPRINGMEYER, ESQ.**

3 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN  
4 3556 E. Russell Road, Second Floor  
Las Vegas, Nevada 89120  
(702) 341-5200

**MICHAEL JULIAN GOTTLIEB, ESQ.**

6 BOIES, SCHILLER & FLEXNER, LLP  
7 5301 Wisconsin Ave., Suite 800  
Washington, DC 20015  
(202) 237-9617

9 For Defendants Nevada Republican Party and Donald J. Trump for  
President, Inc.:

**BRIAN R. HARDY, ESQ.**

10 MARQUIS AURBACH COFFING  
11 10001 Park Run Drive  
Las Vegas, Nevada 89145  
12 (702) 382-0711

**KORY LANGHOFER, ESQ.**

13 STATECRAFT PLLC  
14 649 North Fourth Avenue, Suite B  
Phoenix, Arizona 85003  
15 (602) 382-4078

16 For Defendants Roger J. Stone, Jr. and Stop the Steal, Inc.:

**ADAM ROSS FULTON, ESQ.**

17 JENNINGS & FULTON, LTD.  
18 6465 W. Sahara Ave., #103  
Las Vegas, Nevada 89146  
19 (702) 979-3565

**PAUL ROLF JENSEN, ESQ.**

20 JENSEN & ASSOCIATES, APC  
21 650 Town Center Drive, 12th Floor  
Costa Mesa, California 92626  
22 (714) 662-5528



2:16-cv-2415-RFB-NJK

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

2 --oOo--

3 P R O C E E D I N G S

4  
5 THE COURT: Okay. So at this point in time the Court  
6 is going to deny the motion for a Temporary Restraining  
7 Order/Preliminary Injunction without prejudice as to the Nevada  
8 Republican Party and the Donald J. Trump Campaign. After  
9 reviewing the record in the case, the Court does not find that  
10 the plaintiffs have met their burden to be entitled to the  
11 injunctive relief that they seek. After reviewing the record  
12 and testimony in the case, the Court preliminarily makes the  
13 following findings.

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

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

25 The Court finds that the Trump Campaign does have an

2:16-cv-2415-RFB-NJK

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

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

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

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

2:16-cv-2415-RFB-NJK

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

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

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

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

2:16-cv-2415-RFB-NJK

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

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

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

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

2:16-cv-2415-RFB-NJK

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

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

17           Therefore, the Court will set a hearing for Tuesday at  
18 2:30 to address any new issues raised by parties in any filing  
19 done by Tuesday at 1 p.m. If no such filing occurs, the Court  
20 will vacate the hearing at that time.

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

2:16-cv-2415-RFB-NJK

1 MR. HARDY: No, Your Honor.

2 MR. GOTTLIEB: No, Your Honor.

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

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

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

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

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

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

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

2:16-cv-2415-RFB-NJK

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

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

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

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

18 THE COURT: Mr. Gottlieb?

19 MR. GOTTLIEB: No, Your Honor.

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

2:16-cv-2415-RFB-NJK

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

6 Are we clear about that?

7 MR. SPRINGMEYER: Yes, Your Honor.

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

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

12 (Court conferring with courtroom administrator.)

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

14 (Court conferring with law clerks.)

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

17 (Whereupon the proceeding concluded at 4:06 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25



2:16-cv-2415-RFB-NJK

--oOo--

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

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

NORTH CAROLINA DEMOCRATIC  
PARTY,

Plaintiff,

v.

Civil Action No. - \_\_\_\_\_

NORTH CAROLINA REPUBLICAN PARTY,  
DONALD J. TRUMP FOR PRESIDENT, INC.,  
ROGER J. STONE, JR., and STOP THE  
STEAL INC.,

Defendants.

**VOTER INTIMIDATION COMPLAINT PURSUANT TO THE VOTING  
RIGHTS ACT OF 1965 AND THE KU KLUX KLAN ACT OF 1871**

Plaintiff North Carolina Democratic Party hereby alleges as follows:

**INTRODUCTION**

1. The campaign of Donald J. Trump, Trump’s close advisor Roger J. Stone, Jr., Stone’s organization Stop the Steal Inc., the North Carolina Republican Party (“NCRP”), and others are conspiring to threaten, intimidate, and thereby prevent minority voters in North Carolina from voting in the 2016 election. The presently stated goal of the Trump Campaign, as explained by an unnamed official to Bloomberg News on October 27, is to depress voter turnout—in the official’s words: “We have three major voter suppression operations under way” that target African Americans and other groups of voters. While the official discussed communications strategies designed to decrease interest in voting, it has also become clear in recent weeks that Trump has sought to advance his campaign’s goal of “voter suppression” by

using the loudest microphone in the nation to implore his supporters to engage in unlawful intimidation at North Carolina polling places. Trump's exhortations have been amplified by direct and tacit assistance from the NCRP and Stone, who helped pioneer similar tactics in the 1980s before those efforts were blocked by the federal courts. All have sought to organize, fund, and assist Trump's supporters to carry out the Trump Campaign's goals. And Trump's supporters have responded with pledges to descend upon polling places in "certain areas," including North Carolina, where many minority voters live in order to interfere with their efforts to exercise the franchise.

2. In North Carolina, a Trump supporter who is also a poll worker has been spotted carrying a baseball bat marked "TRUMP." It has been reported that, in North Carolina, "someone showed up to early voting with a badge saying 'poll observer' and was photographing and videotaping cars coming and going and 'generally being an intimidating factor there.'" And it has been reported that "a cadre" of Trump supporters "plan to be in Charlotte" as "part of" Defendant Roger Stone's "Stop the Steal" movement. Intimidating voters at polls – including by photographing and videotaping them – violates federal law.

3. In the aftermath of previous voter suppression efforts in our history, Congress responded forcefully by enacting laws that unequivocally prohibit voter intimidation. In the 1870s, in response to threats of political violence and harassment against former slaves and their white supporters by the newly formed Ku Klux Klan, Congress banned private conspiracies to intimidate or threaten voters. In the 1960s, in response to the menacing of African Americans who sought their full rights at the ballot box, Congress prohibited any threats or intimidation against any and all persons engaged in the democratic process.

4. Voter intimidation is especially pernicious when it is condoned or encouraged by a candidate or political party. The Republican National Committee (“RNC”) recognized the dangers and illegality of party-sponsored efforts to intimidate voters in resolving a 1981 lawsuit, which alleged that it “enlisted the help of off-duty sheriffs and police officers to intimidate voters by standing at polling places in minority precincts during voting with ‘National Ballot Security Task Force’ armbands” and visible firearms, in violation of the Voting Rights Act of 1965. *Democratic Nat’l Comm. v. Republican Nat’l Comm.*, 673 F.3d 192, 196 (3d Cir. 2012). In a 1982 Consent Decree settling that lawsuit, the RNC and the New Jersey Republican State Committee agreed, *inter alia*, to:

- a. “as a first resort, use established statutory procedures for challenging unqualified voters”;
- b. “comply with all applicable state and federal laws protecting the rights of duly qualified citizens to vote for the candidate(s) of their choice”;
- c. “refrain from giving any directions to or permitting their employees to campaign within restricted polling areas or to interrogate prospective voters as to their qualifications to vote prior to their entry to a polling place”;
- d. “refrain from undertaking any ballot security activities in polling places or election districts where the racial or ethnic composition of such districts is a factor in the decision to conduct, or the actual conduct of, such activities there and where a purpose or significant effect of such activities is to deter qualified voters from voting”; and
- e. “refrain from having private personnel deputized as law enforcement personnel in connection with ballot security activities.”

*Id.* at 196-97 (internal citations and quotation marks omitted).

5. The Consent Decree has been updated, affirmed against challenge, and enforced by several courts, including the U.S. Court of Appeals for the Third Circuit. *See id.* at 220. In rejecting the RNC's 2009 request that the Consent Decree be set aside, the District Court for the District of New Jersey held that "[v]oter intimidation presents an ongoing threat to the participation of minority individuals in the political process, and continues to pose a far greater danger to the integrity of that process than the type of voter fraud the RNC is prevented from addressing by the Decree." *Democratic Nat'l Comm. v. Republican Nat'l Comm.*, 671 F. Supp. 2d 575, 578-79 (D.N.J. 2009), *aff'd*, 673 F.3d 192 (3d Cir. 2012). On October 26, 2016, citing the RNC's coordination with the Trump Campaign's voter intimidation efforts, the Democratic National Committee moved to hold the RNC in contempt of the Consent Decree. *See Democratic Nat'l Comm. v. Republican Nat'l Comm.*, No. 81-cv-3876 (JMV), Dkt. No. 95 (D.N.J. Oct. 26, 2016).

6. In this action, Plaintiff alleges Defendants' coordinated campaign of vigilante voter intimidation also violates the Ku Klux Klan Act of 1871 and the Voting Rights Act of 1965.

7. Immediate relief is necessary. There are only 5 days left until voting begins in North Carolina. Trump's calls for unlawful intimidation have grown louder and louder, and the conspiracy to harass and intimidate voters on Election Day has already resulted in acts that threaten the voting rights of registered North Carolina voters. The North Carolina Democratic Party, and untold numbers of North Carolina voters, will suffer irreparable harm if the right to vote is imperiled by the same forms of harassment that federal law has prohibited since shortly after the Civil War.

## **PARTIES**

8. Plaintiff North Carolina Democratic Party is a state party organization affiliated with the Democratic Party, headquartered in Raleigh, North Carolina. The North Carolina Democratic Party works to increase awareness about Democrats participating in local, county, state, and federal elections. *See* “Our Candidates,” <http://ncdp.org/candidates/> (last visited Nov. 1, 2016).

9. Defendant North Carolina Republican Party is a political organization with its principal place of business in Raleigh, North Carolina. The NCRP works to increase awareness about Republicans participating in local, county, state, and federal elections. *See* “Principles of the North Carolina Republican Party,” <http://nc.gop/about/> (last visited Nov. 1, 2016).

10. Defendant Roger J. Stone, Jr., is a resident of Florida. Stone is a Republican political operative and longtime associate of Trump’s. Stone is a vocal proselytizer of Trump’s false voter fraud claims and his calls for vigilante action, including through Stone’s “super PAC,” Stop the Steal Inc., its website [stopthesteal.org](http://stopthesteal.org), and many forms of social media. Stone has encouraged Trump supporters to wear red shirts on Election Day, in large part to menace voters. Stone was a key advisor to the 1981 campaign of former New Jersey Governor Thomas Kean, in which a “ballot security” force wearing black armbands engaged in widespread voter intimidation in Democratic areas of the state, leading to the above-described nationwide Consent Decree barring supposed ballot security efforts by the Republican Party.

11. Defendant Stop the Steal Inc. is a “super PAC” formed by Stone on April 6, 2016, under Section 527 of the Internal Revenue Code. Stop the Steal Inc. is devoted to promoting Stone’s conspiracy theories regarding voter fraud, and to using fears of a “rigged” election to organize and recruit poll watchers to harass and intimidate perceived Democratic voters on

Election Day. Stop the Steal Inc. is headquartered at 3843 South Bristol Street, Suite 312, Santa Ana, California.

12. Defendant Donald J. Trump for President, Inc. (the “Trump Campaign”) is the campaign of Donald J. Trump for the presidency of the United States. The Trump Campaign is headquartered at 725 Fifth Avenue, New York, New York.

### **JURISDICTION AND VENUE**

13. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because this action arises under federal law, specifically Section 2 of the Ku Klux Klan Act of 1871, 42 U.S.C. § 1985(3), and Section 11(b) of the Voting Rights Act of 1965, 52 U.S.C. § 10307(b).

14. Personal jurisdiction exists over Defendants pursuant to the North Carolina General Statute section 1-75.4 because certain Defendants are “engaged in substantial activity within this State,” causing injury to person or property “arising out of an act or omission within this State,” and other Defendants are causing injury to person or property “within this State arising out of an act or omission outside this State” by means of “[s]olicitation or services activities [] carried on within this State by or on behalf of the defendant.” N.C. Gen. Stat. Ann. § 1-75.4(2)-(4).

15. The North Carolina Democratic Party has standing in this action because it is supporting many candidates for office in the election to be held on November 8, 2016, including Democratic candidates in the Presidential, Senate, House, and numerous statewide elections. The Party is threatened with immediate and irreparable injury if the vigilante voter intimidation campaign by Trump, Stone, and their co-conspirators succeeds in disrupting or changing the results of the election by means of an unlawful conspiracy. The North Carolina Democratic Party has standing on behalf of itself and its supporters.

16. Venue is proper in this district under 28 U.S.C. § 1391(b) because significant events giving rise to this action occurred in this district.

17. The allegations herein justify immediate temporary relief in order to prevent irreparable harm. An injunction against the Trump Campaign and its co-conspirators' planned intimidation tactics is the only way to protect thousands of North Carolina voters from harassment, threats, or intimidation that could discourage them from voting in the upcoming election.

### FACTUAL ALLEGATIONS

#### **I. CONGRESS REGULATES VOTER INTIMIDATION FOR OVER A CENTURY IN RESPONSE TO POLLING PLACE VIGILANTISM**

18. The Ku Klux Klan Act of 1871 (the "Klan Act") was the last of the Enforcement Acts—legislation passed during Reconstruction to protect the suffrage rights of newly freed slaves, including by protecting them and their supporters from violence and harassment. President Grant requested the legislation in order to empower him to stamp out the first generation of the Ku Klux Klan, which Congress granted within a month of the request.

19. The Klan Act, as currently codified in 42 U.S.C. § 1985(3), provides for damages and equitable relief "if two or more persons conspire 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 . . . an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy." The Act further provides that an action will lie against the conspirators so long as "one or more persons engaged" in the conspiracy "do, or cause to be done, any act in furtherance of the object of such conspiracy." As the Supreme Court made clear in *Ex parte Yarbrough*, 110 U.S. 651 (1884), the constitutional basis for this broad provision—whose text



requires no showing of racial intent or animus, only a conspiracy to intimidate voters—is the Constitution’s Elections Clause.

20. Nearly a century later, in 1965, Congress again invoked its broad Elections Clause power to protect the franchise. Responding to numerous instances of intimidation in both elections and registration efforts in the Jim Crow South, including the killing of black and white activists seeking to register African Americans to vote, Congress passed Section 11(b) of the Voting Rights Act. Section 11(b) prohibits actual or attempted “intimidation,” “threats,” or “coercion” against a person, either “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). Section 11(b) authorizes private suits against private actors, even in the absence of any action by a state or state official. *Id.*

21. Congress has thus enacted two broad statutes to prevent voter intimidation. As courts have made clear, it violates Section 11(b) to follow voters around, stand behind them taking notes, follow them into the parking lot, or loudly discuss voter fraud laws in their presence. *See, e.g.,* Temporary Restraining Order, *Daschle v. Thune*, No. 04-cv-4177, Dkt. No. 6 (D.S.D. Nov. 2, 2004) (entering a Temporary Restraining Order prohibiting a Republican Senate candidate and his supporters from continuing to “follow[] Native Americans from the polling places,” “copy the license plates of Native Americans driving to the polling places” and record “the license plates of Native Americans driving away from the polling places”). Invasions of physical space and intimations of possible future violence, prosecution, or legal action based on a voter’s presence at the polls constitute unlawful voter intimidation. And even as to those persons who do not directly participate in those activities, the Klan Act makes it unlawful to conspire with others to promote, organize, and facilitate those efforts.

**II. TRUMP AND STONE ISSUE A CALL TO INTIMIDATE VOTERS IN THE 2016 ELECTION ON THE BASIS OF BOGUS CLAIMS OF VOTER FRAUD**

22. In the months leading up to the 2016 election, Trump has made an escalating series of statements, often racially tinged, suggesting that his supporters should go to particular precincts on Election Day and intimidate voters—and that if they do not do so, he will lose the election because certain people, in certain precincts, will vote repeatedly for Secretary Hillary Rodham Clinton.

23. For example, 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.”

24. In a speech ten days later in Ohio, Trump explained that he did not just mean that supporters should “watch”: “You’ve got to get everybody to go out and watch, and go out and vote,” Trump said. “And when [I] say ‘watch,’ you know what I’m talking about, right?” Trump has explained that his “watchers” should act in a capacity similar to law enforcement, even though they will not in fact be acting in a law-enforcement capacity. In other words, Trump is encouraging his supporters to act as vigilantes.

25. Trump has specifically encouraged his supporters who work in law enforcement to use their official authority to assist in “watching” Democratic-leaning communities. For example, he stated at the Altoona rally in August that to protect against supposed voter fraud, “[w]e have to call up law enforcement” and “we have to have the sheriffs and the police chiefs and everybody watching.”

26. In the midst of these comments, the Trump Campaign rolled out a form on its website for supporters to sign up to be “Trump Election Observers” in order to “Stop Crooked Hillary From Rigging This Election!”

27. Trump’s exhortations have grown more ominous and specific as the election draws closer. At an October 1st rally in Manheim, Pennsylvania, for example, Trump instructed his supporters to “go check out [other] areas because a lot of bad things happen, and we don’t want to lose for that reason.”

28. Trump and Trump Campaign surrogates have told supporters that voters of color should be suspected of fraud. Trump has suggested that Latino voters are undocumented immigrants whom the federal government has allowed to “pour into this country” specifically to vote in the election. And in a nationally televised interview on October 16, former New York City Mayor and Trump surrogate Rudy Giuliani expressed that voter fraud is concentrated in predominantly minority communities in “inner cities” that support “Democrats,” like “Philadelphia and Chicago.”

29. While speaking in Ambridge, Pennsylvania, on October 11, Trump warned that it is “[s]o important that you watch other communities”—which, he clarified, meant Philadelphia—“because we don’t want this election stolen from us . . . . And everybody knows what I’m talking about.” Trump was referring in particular to stories he had circulated earlier in the summer about Philadelphia precincts comprised nearly exclusively of African American voters in which Mitt Romney received no votes in 2012. At that same rally, a prominent Trump supporter, U.S. Representative Bill Shuster, made clear that Trump supporters should focus their voter intimidation in Philadelphia, stating: “The people in Western and Central Pennsylvania have to overcome what goes on down in Philadelphia—the cheating.” Another prominent

Trump supporter, former Speaker of the House Newt Gingrich, has similarly stated that the election might be “stolen” because of voter fraud in Philadelphia and other Democratic-leaning communities: “You look at Philadelphia, you look at St. Louis, you look at Chicago, I mean, again, I’m old enough, I remember when Richard Nixon had the election stolen in 1960 . . . . So to suggest that we have—that you don’t have theft in Philadelphia is to deny reality.”

30. Trump’s vice presidential running mate, Indiana Governor Mike Pence, has joined in Trump’s calls, stating that “we’re encouraging all our supporters . . . to be involved” in monitoring polling places for voter fraud.

31. Trump asserts at rallies that the presence of fraud at the polls will prevent him from winning the November 8 election. His comments are consistently directed at Democratic-leaning communities with large minority populations. For example, at an October 18 rally in Colorado Springs, Colorado, Trump warned his supporters about voter fraud: “[T]ake a look at Philadelphia, what’s been going on, take a look at Chicago, take a look at St. Louis. Take a look at some of these cities, where you see things happening that are horrendous.”

32. At an October 20 rally in Delaware, Ohio, Trump told the crowd that Secretary Clinton is “truly capable of anything, including voter fraud.” At the same rally, Trump repeated what he called “terrible, frightening statistics” (which also happen to be false), like the claim that “fourteen percent of non-citizens are registered to vote,” or that “1.8 million people are dead, but they’re registered to vote, some of whom voted even though they’re dead. Which is really a hard thing to do. But it’s easy, if fraud is involved. . . . One was a Republican, and after death, became a Democrat. It’s true!”

33. At a rally in Golden, Colorado on October 29, 2016, Trump accused postal workers of throwing out ballots that they don’t “like.” Trump told the crowd, “I have real

problems with ballots being sent. Does that make sense? Like people saying, ‘Oh here’s a ballot,’ being, ‘here’s another ballot—throw it away, throw it away. Oh, here’s one I like, we’ll keep that one. I have real problems—so get your ballots in. We’re trying to have some pretty good supervision out there. We got a lot of people watching you people that collect the ballots. We got a lot of people watching the people that collect the ballots. Now, the, you know, dishonest media will say, ‘Oh, that wasn’t nice. Everything is so honest. Everything in our country—’ We have 1.8 million people that are dead registered to vote. Right? And some of them vote. I wonder how that happens. We have 2.7 million people on more than one state, they’re registered two states, and sometimes more than that. And I could go on and on and on.” See “Full Speech: Donald Trump Rally in Golden, Colorado,” at 43:05-44:02, YouTube, (Oct. 29, 2016), [https://www.youtube.com/watch?v=\\_6I1xXf\\_QmE](https://www.youtube.com/watch?v=_6I1xXf_QmE).

34. Stone has amplified Trump’s message. Stone is a far-right-wing political operative who has served as a close advisor to Trump throughout his run for President. Stone has a history of engaging in voter intimidation, racist and misogynist hate speech, and incitement. Stone has publicly called for the execution of Secretary Clinton, Senator Bernie Sanders, and George Soros, among others. He has referred to Herman Cain as a “mandingo,” to former presidential candidate Ben Carson as an “Uncle Tom,” and Representative Allen West as an “arrogant know-it-all negro.” He is also the peddler of numerous widely discredited conspiracy theories, just a few of which include that the Bush family tried to assassinate President Reagan, that President Lyndon Johnson orchestrated the assassination of President John F. Kennedy, and that Senator Ted Cruz’s father was tied to the Kennedy assassination.

35. Stone’s super PAC, Stop the Steal Inc., is currently running a website called “StopTheSteal.org,” through which Stone is actively signing up Trump supporters to “volunteer”

to fight “voter fraud.” #StopTheSteal is a popular hashtag among Trump supporters on Twitter, and Stone’s group maintains an active Facebook presence. Stone and his organization also have widely disseminated messages via websites such as stopthesteal.org and through social media under hashtags such as #StopTheSteal. One image disseminated by Stop the Steal falsely states: “HILLARY CLINTON CHEATED AND STOLE THE PRIMARY FROM BERNIE . . . WE THE PEOPLE CAN STOP HER FROM STEALING THE GENERAL.” Another states that “25% of Votes needed to win, is decided by illegals” and that hundreds of “electoral votes [are] at RISK of being RIGGED.” Through these and other messages, Stone has sought to encourage Trump supporters to engage in unlawful voter intimidation.

36. Stone is also using social media to promote the common plan that Trump supporters—and particularly those who have agreed to engage in vigilante “ballot security” efforts—wear red shirts on Election Day.

37. Further, Stone and Stop the Steal Inc. are actively recruiting Trump supporters for “exit polling,” specifically targeting nine Democratic-leaning areas with large minority populations, including in North Carolina. As of October 29, 2016, Stone claimed to have organized 2,177 volunteers to engage in this “exit polling” operation.

38. Stone’s purported polling exercise serves no legitimate purpose. Stone does not run a polling firm, and effective “exit polling” requires focusing on competitive electoral districts rather than areas that vote overwhelmingly for one party. On information and belief, the purpose and effect of these so-called “exit polling” activities, which are focused on minority communities such as certain areas in North Carolina, is to discourage or intimidate urban and minority voters from casting ballots.

39. Through an organization called “Vote Protectors,” Stone has also recruited hundreds of volunteers to watch polling places. The Vote Protectors website permits any volunteer to download and print official-looking identification badges, and asks that volunteers “commit to go out in November and Youtube and Periscope streams to the [Vote Protectors] website.” The website offers detailed instructions for posting videos of voters online but provides few instructions for conducting legitimate exit polling. Instead, volunteers are permitted to tally up votes on the Vote Protectors website—for Trump or any other candidate—without any proof that they had spoken to voters or visited a polling site. Vote Protectors discontinued some, but not all, of these practices after they were exposed by a national media outlet.

40. As recently as October 26, 2016, Vote Protectors encouraged volunteers it styles “citizen journalists” to “approach voters at the polls,” identify themselves as “reporting for Vote Protectors,” and ask them about election fraud.

41. The notion of widespread voter fraud in modern American politics is itself a fraud. Every attempt to verify the presence of voter fraud has proven fruitless. *See generally* Lorraine C. Minnite, *The Myth of Voter Fraud* (2010) (concluding that the notion of widespread voter fraud is a “myth”). One 2014 study found 241 potentially fraudulent ballots had been cast nationwide over a fourteen-year period—*out of 1 billion ballots cast*.

42. Those statistics help explain why the courts that have examined the evidence have concluded that widespread voter fraud does not exist. In a challenge to Pennsylvania’s voter ID law, for example, “[t]he parties [we]re not aware of any incidents of in-person voter fraud in Pennsylvania and d[id] not have direct personal knowledge of in person voter fraud elsewhere.” *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988, at \*57 (Pa. Commw. Ct.

Jan. 17, 2014). A federal judge in North Dakota recently determined that “[t]he undisputed evidence before the Court reveals that voter fraud in North Dakota has been virtually non-existent.” *Brakebill v. Jaeger*, No. 16-cv-00008 (DLH), Dkt. No. 50 (D.N.D. Aug. 1, 2016). A federal judge in Wisconsin has similarly observed that “[t]he Wisconsin experience demonstrates that a preoccupation with mostly phantom election fraud leads to real incidents of disenfranchisement, which undermine rather than enhance confidence in elections, particularly in minority communities.” *One Wis. Inst. v. Thomsen*, No. 15-cv-324 (JDP), 2016 WL 4059222, at \*2 (W.D. Wis. July 29, 2016); *see also Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 194 (2008) (“The only kind of voter fraud that SEA 483 addresses is in-person voter impersonation at polling places. The record contains no evidence of any such fraud actually occurring in Indiana at any time in its history.”); *Veasey v. Abbott*, 830 F.3d 216, 238 (5th Cir. 2016) (“[T]he evidence before the Legislature was that in-person voting, the only concern addressed by SB 14, yielded only two convictions for in-person voter impersonation fraud out of 20 million votes cast in the decade leading up to SB 14’s passage.”); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 246 (4th Cir. 2014) (“North Carolina asserts goals of electoral integrity and fraud prevention. But nothing in the district court’s portrayal of the facts suggests that those are anything other than merely imaginable.”); *Frank v. Walker*, 17 F. Supp. 3d 837, 848 (E.D. Wis. 2014) (“[I]t appears that there have been zero incidents of in-person voter-impersonation fraud in Wisconsin during recent elections.”), *rev’d on other grounds*, 768 F.3d 744 (7th Cir. 2014); *Lee v. Va. State Bd. of Elections*, No. 3:15-cv-357-HEH, 2016 WL 2946181, at \*23 (E.D. Va. May 19, 2016) (“evidence of actual voter impersonation-type fraud was scant”).

43. The fact that widespread voter fraud is a myth does not prevent many people—particularly those who are listening most closely to the RNC, Trump, and their surrogates such as



Stone—from believing it is real. As a recent Washington Post-ABC poll showed, nearly 70% of Trump’s supporters (but less than half of all voters) believe that voter fraud happens “very often” or “somewhat often.” This widespread belief, despite a total lack of evidence to support it, has been stoked for decades by certain elements of the Republican Party, including Stone and Trump’s allies in the so-called “alt-right” media ecosystem, such as the Breitbart website that was run until recently by Trump Campaign CEO Steve Bannon. In the last few months alone, Breitbart has run dozens of articles on supposed voter fraud, with ominous headlines about “Obama forces” and “Soros-backed” cover-ups, and Stone has appeared on Breitbart-affiliated radio stations to echo Trump’s fear-mongering about a stolen election. Stone’s “StopTheSteal” campaign has fanned these flames by widely distributing via social media and elsewhere the false claim that “the Democratic National Committee” and “the Clintons” “intend to flood the polls with illegals” and encouraging Trump supporters to “monitor for voting fraud” in “targeted localities.” And, appearing on Face the Nation on October 23, 2016, RNC Chairman Reince Priebus declared that voter fraud “is real,” and that what Trump is doing is “trying to also tell his folks to watch out for this fraud that might occur.”

44. Voter intimidation efforts aimed at suppressing minority voters have frequently been “ostensibly aimed at combatting voter fraud.” *Ne. Ohio Coal. for the Homeless v. Husted*, No. 2:06-cv-896, 2016 WL 3166251, at \*28 (S.D. Ohio June 7, 2016), *aff’d in part, rev’d in part on other grounds*, No. 16-3603, 2016 WL 4761326 (6th Cir. Sept. 13, 2016); *see also Veasey*, 830 F.3d at 237 (“[T]he record shows that Texas has a history of justifying voter suppression efforts such as the poll tax and literacy tests with the race-neutral reason of promoting ballot integrity.”). As the New Jersey District Court held in rejecting the RNC’s 2009 request to vacate the Consent Decree, “[v]oter intimidation presents an ongoing threat to the participation of

minority individuals in the political process, and continues to pose a far greater danger to the integrity of that process than the type of voter fraud the RNC is prevented from addressing by the Decree.” *Democratic Nat’l Comm.*, 671 F. Supp. 2d at 578-79.

45. North Carolina has a sad history of race-based voter suppression, including even state-sponsored suppression. *See, e.g., N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 223 (4th Cir. 2016) (“The record is replete with evidence of instances since the 1980s in which the North Carolina legislature has attempted to suppress and dilute the voting rights of African Americans.”) In North Carolina’s 1990 Senate election, for example, concrete evidence surfaced that the Republican Party of North Carolina and Republican Senator Jesse Helms’ campaign committee mailed intimidating postcards to African American voters. Specifically, the two groups acted in concert to mail approximately 125,000 postcards providing “false information about voter eligibility” and warning recipients that “vote fraud was punishable by imprisonment.” The postcards incorrectly told recipients that they could not vote if they have not lived in their precinct for at least the previous 30 days. Ninety-seven percent (97%) of the recipients were African American. Judge Debevoise of the District of New Jersey found that the North Carolina Republican Party was directly involved with the dissemination of the intimidating materials. He also “criticized the Republican National Committee as failing to do enough to insure that the party’s efforts to deter voter fraud did not become an effort to intimidate minority voters.”

46. Similarly, in 2013, Pasquotank Republican Party Chair, Richard Gilbert targeted intimidation tactics towards young, minority college students. Gilbert challenged the registration of fifty-eight (58) college voters—all of whom were African American students attending

Elizabeth City State University, a local historically black university. Two (2) of the fifty-eight (58) were able to successfully regain the right to vote through a hearing.

47. Most recently, in 2016, state officials have been sued over a similar voter suppression scheme. As one media outlet reported, “[t]he North Carolina chapter of the NAACP, along with a handful of individual voters, sued the state's elections board and three county elections boards Monday over an alleged voter purge that it claims disproportionately affected African Americans.” The State’s most recent voter suppression scheme has the potential to affect thousands of minority voters, including a 100-year-old African American woman who has lived in North Carolina her entire life and voted regularly for the last twenty-four years.

48. This case comes on the heels of *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016). In that case, the Fourth Circuit addressed the intentional effort by members of the 2013 Legislature to suppress African American voting, in large part based on the pretext of preventing virtually nonexistent in-person voter fraud. The Fourth Circuit noted, “the State has failed to identify even a single individual who has ever been charged with committing in-person voter fraud in North Carolina.” *Id.* at 235. Ultimately, the plaintiffs succeeded in their request for an injunction for all challenged provisions.

49. Trump’s calls for unlawful vigilantism to stop purported voter fraud are calculated to advance a coordinated effort to harass and intimidate voters at the polls. Many of the Trump Campaign’s supporters have responded to Trump’s call to action.

### **III. REPUBLICAN NATIONAL AND STATE COMMITTEES CONSPIRE WITH TRUMP AND STONE TO ENCOURAGE VOTER INTIMIDATION**

50. As the Republican Party nominee for President, Trump and his campaign coordinate closely with the RNC and NCRP on a wide variety of matters, including overall

campaign strategy, public messaging, voter outreach, and field operations. It has been widely reported that the Trump Campaign “relinquished control over many of its tactical decisions” to the RNC. Shortly after Trump became the Republican nominee, the RNC met with the Trump Campaign to discuss what they described as “the merger.” The Trump Campaign and RNC “negotiated a partnership,” in which the RNC “buil[t] assets and infrastructure and the nominee gets to benefit from it.”

51. On May 25, 2016, the RNC created a joint fundraising committee with the Trump Campaign specifically to fund the Trump Campaign and its operations, and to elect Republicans up and down the ballot.

52. The Trump Campaign has decided largely to refrain from setting up its own offices and staff in North Carolina and elsewhere, as past Republican Party nominees have done. Instead, as has been widely reported, the Trump Campaign is relying predominantly on the RNC and Republican state party entities (such as the NCRP) to manage get-out-the-vote operations in contested states such as North Carolina.

53. The Trump Campaign’s coordination with the RNC and NCRP extends to efforts to monitor polling locations for purported voter fraud. Trump’s running mate, Governor Mike Pence, publicly confirmed that the Trump Campaign is working directly with the RNC and state Republican parties on ballot security measures. At an August 3, 2016, town hall rally in Denver, Colorado, Pence was asked “how is the Trump-Pence campaign going to . . . prevent” Secretary Clinton from “steal[ing] this election.” Pence responded: “I will tell you that the Trump campaign and the Republican National Committee are working very very closely with state governments and secretaries of states all over the country to ensure ballot integrity. . . . We are working hard all over the country, the Republican National Committee is working all over the

country, but I would encourage everyone within the sound of my voice, get involved, participate, be a poll worker on election day . . . be a part of that process, and uphold the integrity of one person one vote in America.”

54. As reflected in the comments of Pence, the Trump Campaign is coordinating with the RNC. The RNC, in turn, coordinates with state Republican parties, including the NRCP. The RNC has delegated “ballot security” initiatives to its agents in North Carolina. The NRCP has urged supporters to act as “eyes and ears on the ground.” Michael Williams, the Election Day Operations Director for the NRCP, sent an email to supporters to be on the lookout for anything that is “off” or “awry” at your polling place. The NRCP’s calls to action are not made in a vacuum. Rather, they are made in the wake of Trump’s repeated calls that the election is “rigged,” that his supporters must therefore “watch” other polling places, and that when Trump says, “‘watch,’ you know what I’m talking about, right?” Just as Trump is encouraging voter intimidation, so, too, is the NRCP.

55. In fact, Charles Hellwig, Vice Chair of the Wake County Republican Party, recently “urged Republican activists to work as poll observers on the lookout for ‘fraudulent, illegal and even outrageous voting violations by the left.’” Inciting his audience, Hellwig wrote “[n]early every day we see some new example of voter fraud or their attempt to subvert the will of the people, and we have to prepare ourselves for the onslaught of illegal activity that is sure to be attempted at the polls.”

56. In addition, consistent with the Trump Campaign, the NRCP has used unsubstantiated allegations of “voter fraud” to restrict and suppress voting. Dallas Woodhouse, the NCRP Executive Director and agent of the RNC, disseminated an email to Republican county board members and other party members, to “empower[]” them to “make party line

changes to early voting” in order to restrict access to the polls in a manner that will suppress votes of minority communities. Woodhouse’s email echoes sentiments expressed throughout the Trump campaign. Specifically, it states that his call to action was to prevent “voter fraud” and to “promote safe and secure voting and for rules that are fair to *our* side.” (Emphasis added.)

57. Recently, Trump’s campaign manager Kellyanne Conway confirmed that the Trump campaign is “actively working with” the RNC and other branches of the Republican Party apparatus, including the NCRP, to engage in “ballot security” initiatives. The RNC and NCRP have continued this close coordination even after Trump’s widespread and racially charged pleas to his supporters to engage in voter intimidation in areas like North Carolina that contain large communities of racial minorities.

58. Recently, the Trump Campaign distributed talking points to Republican Party surrogates directing that they “[m]ust make points on rigged system,” and encouraging them to claim there has been “an increase in unlawful voting by illegal immigrants.”

#### **IV. CO-CONSPIRATORS RESPOND WITH PROMISES TO INTIMIDATE VOTERS**

59. The available evidence suggests that Trump’s supporters are responding to his calls to engage in voter intimidation. The *Boston Globe* has reported on Trump supporters who are planning to engage in unlawful voter intimidation, and who understand themselves to be doing so at Trump’s behest:

“Trump said to watch your precincts. I’m going to go, for sure,” said Steve Webb, a 61-year-old carpenter from Fairfield, Ohio.

“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 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.”

60. Notwithstanding Mr. Webb’s pledge not to do “anything illegal,” the conduct in which he plans to engage on Trump’s behalf—deliberately targeting of minority voters via

“racial profiling” in order to “make them a little bit nervous” while they are attempting to vote—unequivocally violates Section 11(b) of the Voting Rights Act. *See, e.g.*, Temporary Restraining Order, *Daschle*, No. 04-cv-4177, Dkt. No. 6.

61. Similarly, Harry Miller, purportedly of Palm Beach, Florida, tweeted in response to Trump’s calls for election observers that he would be “wear’n red at polls... We gonna be watch’n fer shenanigans...& haul ya away...” The tweet included a picture of a pickup truck with Florida plates and a person-sized cage built into the bed, surrounded by American flags. Miller has over 20,000 Twitter followers and tweets almost exclusively about Trump, Secretary Clinton, and racially charged political themes such as deporting “Muzzys.” A typical tweet asserts that “Our Muzzy Commander in Chief” is “shov’n Sharia Law down our throats.... & Crooked Hiltlery follow’n his every move...”

62. At a “poll watcher training” class for Trump supporters organized by the Republican Party of Virginia, would-be watchers expressed their belief that “there is going to be massive voter fraud, and it definitely will be to ensure Hillary Clinton wins.” The leader of the class listed purported voter-fraud schemes “orchestrated by liberal groups,” including “civil rights leaders coercing severely disabled people into voting.” One Trump supporter seeking to be a poll watcher said her “biggest concern” was “[i]lllegals voting,” and noted as an example of said phenomenon that in 2012 she saw voters who did not appear to speak English.

63. According to several newspapers, Trump supporters holding similar beliefs about voter fraud plan to conduct “exit polling” in North Carolina as part of Stone’s “Stop the Steal” movement.

64. Other examples of vigilantism and planned voter intimidation connected to Trump and Stone’s call to action abound. For instance, on October 13, 2016, two armed Trump

supporters staged a purported “protest” in front of the office of a Virginia Democratic candidate for Congress, Jane Dittmar. The armed Trump supporters, one of whom wore a signature Trump campaign hat, stood for nearly twelve hours outside Dittmar’s campaign office, turning sideways so that those inside could see that they were carrying firearms.

65. There have, specifically, been acts of intimidation in North Carolina, where early voting is well underway. One North Carolina Trump supporter and one Board of Education candidate for the upcoming election have armed themselves with a baseball bat, which is marked “TRUMP” for all to see. The Trump supporter, who is also a poll worker, has been spotted walking “directly across the street from the Board of Elections office,” where early voting takes place, carrying the baseball bat. And, the Board of Education candidate, Sherry-Lynn Womack, who is also a Republican, has been spotted walking behind the poll worker carrying the “TRUMP” baseball bat and posing for photos holding the “TRUMP” baseball bat.

66. Also in North Carolina, according to one report, “someone showed up to early voting with a badge saying ‘poll observer’ and was photographing and videotaping cars coming and going and ‘generally being an intimidating factor there.’”

67. Trump supporters have also sought to sow misinformation among supporters of Secretary Clinton. For example, Joshua Lorenz, a Republican City Councilman from Murrysville, Pennsylvania, posted on Facebook an image with the phrase: “Vote Hillary November 8th” and “YOU CAN VOTE AT HOME COMFORTABLY ONLINE!” with instructions for how only Clinton supporters could purportedly vote online. Lorenz included with his post a statement: “More proof that the election process is rigged. Only Hillary supporters can vote from their smartphones or in the comfort of their own homes.” A similar image being circulated online features a photo of Clinton and the statement: “Did you know?



Pennsylvania now has online voting?” in a font that is similar to that used in official Clinton campaign advertising. Of course, these statements are false.

68. Stone has participated directly in this misinformation campaign. On October 23, 2016, Stone sent out a message via his Twitter feed deliberately designed to mislead Democratic voters by representing—using Secretary Clinton’s likeness and logo—that supporters can “VOTE the NEW way on Tues. Nov 8<sup>th</sup>” by texting “HILLARY to 8888,” after which voters will apparently “receive official confirmation.”

69. Due to the aforementioned rhetoric and suppression tactics, North Carolina voters are suffering irreparable harm at the polling place. Reports of the following have surfaced.

- a. Upon information and belief, Craven County Republicans have been intimidating African American voters outside an early voting location and calling Hillary a crook.
- b. Upon information and belief, in Craven County, a former Republican official catcalled and intimidated women who came to vote.
- c. Media outlets have gathered additional instances of voter suppression in North Carolina. *See e.g.*, Joe Killian, “Election watchdogs worry voter intimidation could depress turnout,” NC Policy Watch (Nov. 2, 2016), <http://www.ncpolicywatch.com/2016/11/02/election-watchdogs-worry-voter-intimidation-depress-turnout/>.

70. All the while, Trump continues to fan the flames of polling-place harassment targeting non-white voters in urban areas, and continues to invoke the baseless claim that the unlawful conduct that his supporters are planning, at his behest, is justified by “voter fraud.”

Trump and Stone's formalized efforts to organize these vigilantes through the "Trump Election Observers" and "StopTheSteal" mechanisms remain mostly hidden from public view.

**V. DEFENDANTS' PLANNED ACTIONS ARE NEITHER LEGITIMATE NOR LAWFUL MEASURES TO PROTECT AGAINST VOTER FRAUD**

71. Trump's calls for his supporters to travel en masse outside their counties of residence and engage in vigilante voter intimidation bears no possible relationship to legitimate efforts to protect against voter fraud. In fact, Trump has directed his supporters to engage in activity forbidden by North Carolina state election law.

72. North Carolina law sets forth detailed and comprehensive measures designed to protect against voter fraud. Specifically, Article 5 of the North Carolina Election and Election Laws permits the chair of each political party, the candidate, or the candidate's campaign manager to appoint poll "observers" who have the right to "attend each voting place," to make "observation," to "take notes," and to "obtain . . . a list of the persons who have voted in the precinct." N.C. Gen. Stat. Ann. § 163-45

73. Article 5 imposes strict limits on the number, qualifications, and appointment process for poll watchers. Each political party chair may only "designate two observers to attend each voting place," and "designate ten additional at-large observers . . . who may attend any voting place in that county." Further, only "two observers from the same political party [and one of the at-large observers from each party] shall be permitted in the voting enclosure at any time." Poll observers must be "registered voters of the county for which appointed and must have good moral character." All poll observers must be appointed and have their names submitted to the chief judge of each precinct prior to the election.

74. While Article 8 permits any registered voter of the county to exercise the right of a challenge, challengers must "retire [from the voting enclosure] as soon as the challenge is

heard.” Furthermore, “no person or group of persons shall hinder access, harass others, distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity in the voting place or in a buffer zone which shall be prescribed by the county board of elections around the voting place.” The buffer zone must be between fifty and twenty-five feet.

75. Trump Campaign supporters who heed the call to travel from outside their counties of residence to minority communities in North Carolina to “watch other communities” are directly violating North Carolina election law’s detailed scheme to ensure the integrity of the state’s elections. In encouraging such behavior, Trump has urged his supporters to move well beyond legitimate and lawful voter protection activity and engage in voter intimidation. *See* N.C. Gen. Stat. Ann. § 163-274 (making it generally illegal to “intimidate or oppose any legally qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which he may have failed to cast” or to “break up or by force or violence to stay or interfere with the holding of any primary or election”).

76. Defendants and their supporters who join in Defendants’ concerted misinformation campaign are also in violation of North Carolina’s prohibition on “misrepresent[ing] the law to the public through mass mailing or any other means of communication where the intent and the effect is to intimidate or discourage potential voters from exercising their lawful right to vote.” N.C. Gen. Stat. Ann. § 163-275(17).

\* \* \*

77. It is unfortunate that this Complaint must be filed. What would be more unfortunate is if voter suppression and intimidation were allowed to undermine the democratic

process. This Court should act quickly and firmly to ensure that the citizens of North Carolina are able to vote free from intimidation in the 2016 election.

### **COUNT ONE: KU KLUX KLAN ACT**

78. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

79. Defendants the Trump Campaign, Stone, Stop the Steal Inc., and the NCRP have called on supporters to descend on polling places in “certain areas”—generally, the urban communities of color where they and their allies have stoked fabricated threats of massive voter fraud—in order to intimidate voters at the polls. Trump’s calls to stake out polling places in those communities and to suspiciously, aggressively “watch” these minority voters—“You know what I mean,” he has clarified for his co-conspirators—have resulted in plans to engage in “racial profiling” and threaten lawful voters with the prospect of monitoring, questioning after voting under the guise of phony “exit polling” or by self-declared “citizen journalists,” baseless legal action, and even possible physical harm, including unlawful detention because they have come out to cast a ballot.

80. The Trump Campaign, Stone, and Stop the Steal Inc. have engaged in online organizing and mobilization efforts to support their plan.

81. The RNC and Defendant NCRP are providing financial, personnel, and other organizational support to the voter intimidation efforts launched by the Trump Campaign, Stone, and Stop the Steal Inc. in violation of the Ku Klux Klan Act, which prohibits “conspir[ing] 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,” and provides a cause of action against any of the conspirators to anyone “deprived of having and exercising any right or privilege of a citizen of the United States.” 42 U.S.C. § 1985(3).

82. Absent declaratory and injunctive relief, voters will be subjected to intimidation, threats, and perhaps even force at the hands of vigilante “poll watchers” and “ballot integrity” volunteers on Election Day, and many may suffer unwarranted delays or denials of their right to cast a ballot in the approaching elections.

83. Plaintiffs are entitled to a declaration that the NCRP, the Trump Campaign, Stone, Stop the Steal Inc., and their co-conspirators have violated the Ku Klux Klan Act through their conspiracy to intimidate voters, and an injunction enjoining Defendants and others from any further activity to advance their conspiracy.

### **COUNT TWO: VOTING RIGHTS ACT**

84. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

85. Following Trump’s urging, Defendants have called for—and their supporters have promised—polling-place activity that is objectively likely to instill fear in voters. Such intimidation includes racial targeting, invasions of physical space, aggressive questioning and other forms of menacing, suggestions of possible criminal prosecution, and veiled or actual threats of physical violence or harm.

86. The RNC and Defendant NCRP have provided financial, personnel, and organizational support to the efforts of the Trump Campaign, Stone, and Stop the Steal Inc. to organize people to engage in intimidation efforts in North Carolina.

87. This planned course of intimidation constitutes a violation of Section 11(b) of the Voting Rights Act, which prohibits all actual or attempted “intimidation,” “threats,” or “coercion” against a person, either “for voting or attempting to vote.”

88. Absent declaratory and injunctive relief, voters will be subjected to intimidation, threats, and perhaps even force at the hands of vigilante “poll watchers” and “ballot integrity”

volunteers on Election Day, and many may suffer unwarranted delays or denials of their right to cast a ballot in the approaching elections.

89. Plaintiffs are entitled to a declaration that the NCRP, the Trump Campaign, Stone, Stop the Steal, and their co-conspirators have violated Section 11(b) of the Voting Rights Act.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray this Court:

a) Declare that the harassment or intimidation of voters at or outside the polls during the 2016 Election—including through aggressive questioning of those waiting to vote, threatening or suggesting legal or criminal action, or any other form of menacing or intimation of violence—is contrary to law.

b) Declare that Defendants’ “exit polling” and “citizen journalist” initiatives are contrary to law.

c) Temporarily restrain and enjoin any such conduct effective through November 8, 2016.

d) Temporarily restrain and enjoin the NCRP, the Trump Campaign, Stone, Stop the Steal Inc., and their affiliates and collaborators from organizing efforts to engage in voter intimidation. These efforts include but are not limited to:

1. Funding, encouraging, or otherwise supporting, including by training or organizing, individuals who are not officially appointed poll watchers under North Carolina law to be present at or around polling places or voter lines for the purpose of engaging in poll watching activities;

2. Monitoring polling places, or permitting, encouraging, or assisting individuals to monitor polling places, if the proposed monitor does not meet the statutory requirements for service as a poll watcher;
3. Gathering or loitering within fifty (50) feet of a polling place, or permitting, encouraging, or assisting any individuals to gather or loiter within fifty (50) feet of a polling place, unless such person is one of the identified poll watchers for each candidate or party who may be present in a polling place at any time;
4. Questioning, interrogating, or verbally harassing voters or prospective voters, or training, organizing, or directing others to do the same, for the purpose or with the effect of intimidating voters or prospective voters;
5. Following, taking photos of, or otherwise recording voters or prospective voters, those assisting voters or prospective voters, or their vehicles, or training, organizing, or directing others to do the same.

e) Temporarily restrain and enjoin Defendants Stone and Stop the Steal from questioning, and from training, organizing, or deputizing any persons to question, voters at North Carolina polling locations under the guise of purported “exit polling” operations.

f) Publicize the Order to all law enforcement and elections officials in advance of Election Day.

g) Grant such other relief as this Court may deem proper.

11/03/2016

Respectfully submitted,

/s/ John R. Wallace

---

John R. Wallace (NC Bar No. 7374)  
WALLACE & NORDAN L.L.P.  
3737 Glenwood Ave., Suite 260  
Post Office Box 12065 (27605)  
Raleigh, North Carolina 27612  
Telephone: (919) 782-9322  
Facsimile: (919) 782-8113  
[JRWallace@WallaceNordan.com](mailto:JRWallace@WallaceNordan.com)

Marc E. Elias  
PERKINS COIE LLP  
700 Thirteenth Street N.W., -Suite 600  
Washington, D.C. 20005-3960  
Telephone: (202) 654-6200  
Facsimile: (202) 654-6211  
[MElias@perkinscoie.com](mailto:MElias@perkinscoie.com)

Michael J. Gottlieb  
BOIES, SCHILLER & FLEXNER LLP  
5301 Wisconsin Ave, N.W.  
Washington, DC 20015  
(202) 237-2727  
[mgottlieb@bsflp.com](mailto:mgottlieb@bsflp.com)

Dawn L. Smalls  
Bret Vallacher  
BOIES, SCHILLER & FLEXNER LLP  
575 Lexington Avenue  
New York, NY 10022  
(212) 446-2300  
[dsmalls@bsflp.com](mailto:dsmalls@bsflp.com)  
[bvallacher@bsflp.com](mailto:bvallacher@bsflp.com)



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

MICHIGAN DEMOCRATIC PARTY,

Plaintiff,

v.

MICHIGAN REPUBLICAN PARTY,  
DONALD J. TRUMP FOR  
PRESIDENT, INC., ROGER J. STONE,  
JR., and STOP THE STEAL INC.,

Defendants.

Hon. \_\_\_\_\_

Case No. \_\_\_\_\_

**VOTER INTIMIDATION COMPLAINT PURSUANT TO THE  
VOTING RIGHTS ACT OF 1965 AND THE KU KLUX KLAN  
ACT OF 1871 FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Michigan Democratic Party hereby alleges as follows:

**INTRODUCTION**

1. The campaign of Donald J. Trump (“Trump Campaign”), Trump’s close advisor Roger J. Stone, Jr., Stone’s organization Stop the Steal Inc., the Michigan Republican Party (“MRP”), and others are conspiring to threaten, intimidate, and thereby prevent minority voters in urban neighborhoods from voting in the 2016 election. The presently stated goal of the Trump Campaign, as explained by an unnamed official to Bloomberg News on October 27, 2016, is to

depress voter turnout—in the official’s words: “We have three major voter suppression operations under way” that target African Americans and other groups of voters. It has also become clear in recent weeks that Trump has sought to advance his campaign’s goal of “voter suppression” by using the loudest microphone in the nation to implore his supporters to engage in unlawful intimidation at Michigan polling places. Trump’s exhortations have been amplified by direct and tacit assistance from the MRP and Stone, who helped pioneer similar tactics in the 1980s before those efforts were blocked by the federal courts. Defendants have sought to organize, fund, and assist Trump’s supporters to carry out the Trump Campaign’s goals. And Trump’s supporters have responded with pledges to descend upon polling places in “certain areas” where many minority voters live in order to interfere with their efforts to exercise the franchise.

2. In the aftermath of previous voter suppression efforts in our history, Congress responded forcefully by enacting laws that unequivocally prohibit voter intimidation. In the 1870s, in response to threats of political violence and harassment against former slaves and their white supporters by the newly formed Ku Klux Klan, Congress banned private conspiracies to intimidate or threaten voters. In the 1960s, in response to the menacing of African Americans who sought their full rights at the ballot box, Congress prohibited any threats or intimidation against any and all persons engaged in the democratic process.

Through these actions, Congress created tools in federal law to ensure that our elections will be free from harassment and intimidation at the polls.

3. Voter intimidation is especially pernicious when it is condoned or encouraged by a candidate or political party. The Republican National Committee (“RNC”) recognized the dangers and illegality of party-sponsored efforts to intimidate voters in resolving a 1981 lawsuit alleging that it “enlisted the help of off-duty sheriffs and police officers to intimidate voters by standing at polling places in minority precincts during voting with ‘National Ballot Security Task Force’ armbands” and visible firearms, in violation of the Voting Rights Act of 1965. *Democratic Nat’l Comm. v. Republican Nat’l Comm.*, 673 F.3d 192, 196 (3d Cir. 2012). In a 1982 Consent Decree settling that lawsuit, the RNC and the New Jersey Republican State Committee agreed, *inter alia*, to:

- a. “as a first resort, use established statutory procedures for challenging unqualified voters”;
- b. “comply with all applicable state and federal laws protecting the rights of duly qualified citizens to vote for the candidate(s) of their choice”;
- c. “refrain from giving any directions to or permitting their employees to campaign within restricted polling areas or to

interrogate prospective voters as to their qualifications to vote prior to their entry to a polling place”;

d. “refrain from undertaking any ballot security activities in polling places or election districts where the racial or ethnic composition of such districts is a factor in the decision to conduct, or the actual conduct of, such activities there and where a purpose or significant effect of such activities is to deter qualified voters from voting”; and

e. “refrain from having private personnel deputized as law enforcement personnel in connection with ballot security activities.”

*Id.* at 196-97 (internal citations and quotation marks omitted).

4. The Consent Decree has been updated, affirmed against challenge, and enforced by several courts, including the U.S. Court of Appeals for the Third Circuit. *See id.* at 220. In rejecting the RNC’s 2009 request that the Consent Decree be set aside, the District Court for the District of New Jersey held that “[v]oter intimidation presents an ongoing threat to the participation of minority individuals in the political process, and continues to pose a far greater danger to the integrity of that process than the type of voter fraud the RNC is prevented from addressing by the Decree.” *Democratic Nat’l Comm. v. Republican Nat’l Comm.*,

671 F. Supp. 2d 575, 578-79 (D.N.J. 2009), *aff'd*, 673 F.3d 192 (3d Cir. 2012). On October 26, 2016, citing the RNC's coordination with the Trump Campaign's voter intimidation efforts, the Democratic National Committee moved to hold the RNC in contempt for violating the Consent Decree. *See Democratic Nat'l Comm. v. Republican Nat'l Comm.*, No. 81-cv-3876 (JMV), Dkt. No. 95 (D.N.J. Oct. 26, 2016).

5. In this action, Plaintiff alleges Defendants' coordinated campaign of vigilante voter intimidation also violates the Ku Klux Klan Act of 1871 and the Voting Rights Act of 1965.

6. There are only 5 days left until Election Day. Trump's calls for unlawful intimidation have grown louder and louder, and the conspiracy to harass and threaten voters on Election Day already has resulted in numerous acts that threaten the voting rights of registered Michigan voters. The Michigan Democratic Party, and untold numbers of Michigan voters, will suffer irreparable harm if the right to vote is imperiled by the same forms of virulent harassment that federal law has prohibited since shortly after the Civil War.

### **PARTIES**

7. Plaintiff Michigan Democratic Party is a state party organization affiliated with the Democratic Party, headquartered in Lansing, Michigan. *See*

<http://www.michigandems.com/>. It is working to elect Secretary Hillary Rodham Clinton for President and other “Democrats across the state.” *Id.*

8. Defendant Michigan Republican Party (“MRP”) is a political organization and a Michigan limited liability company affiliated with the Republican Party with its principal place of business in Lansing, Michigan. *See* <https://www.migop.org/>. The MRP is working to elect Donald J. Trump as President of the United States. *See* <https://www.migop.org/about/our-candidates>.

9. Defendant Roger J. Stone, Jr., is a resident of Florida. Stone is a Republican political operative and longtime associate of Trump’s. He is currently an operative for Trump and his campaign. Stone is a vocal proselytizer of Trump’s false voter fraud claims and his calls for vigilante action, including through Stone’s “super PAC” Stop the Steal Inc., its website [stopthesteal.org](http://stopthesteal.org), and many forms of social media. Stone has encouraged Trump supporters to wear red shirts on Election Day, in order to menace voters. Stone was a key advisor to the 1981 campaign of former New Jersey Governor Thomas Kean, in which a “ballot security” force wearing black armbands engaged in widespread voter intimidation in Democratic areas of the state, leading to a nationwide federal consent decree barring supposed ballot security efforts by the Republican Party.

10. Defendant Stop the Steal Inc. is a “super PAC” formed by Stone on April 6, 2016, under Section 527 of the Internal Revenue Code. Stop the Steal Inc.

is devoted to promoting Stone’s conspiracy theories regarding voter fraud, and to using fears of a “rigged” election to organize and recruit poll watchers to harass and intimidate perceived Democratic voters on Election Day. Stop the Steal Inc. is headquartered at 3843 South Bristol Street, Suite 312, Santa Ana, California.

11. Defendant Donald J. Trump for President, Inc. (the “Trump Campaign”) is the campaign of Donald J. Trump for the presidency of the United States. The Trump Campaign is headquartered at 725 Fifth Avenue, New York, New York.

### **JURISDICTION AND VENUE**

12. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 and 28 U.S.C. 1343 (3) and (4) because this action arises under federal law, specifically Section 2 of the Ku Klux Klan Act of 1871, 42 U.S.C. § 1985(3), and Section 11(b) of the Voting Rights Act of 1965, 52 U.S.C. § 10307(b).

13. Specific personal jurisdiction exists over the Trump Campaign, Stone, and Stop the Steal Inc., because they are transacting or transacted business in Michigan, and/or have caused or will cause tortious acts to be done, or consequences to occur, in Michigan. Mich. Comp. Laws §§ 600.705, 600.715; *see, e.g., Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 888-889 (6th Cir. 2002). Defendants purposefully directed their activities toward Michigan, this

Complaint relates to Defendants' Michigan-related activities, and jurisdiction here is reasonable. *See id.*

14. The Michigan Democratic Party has standing in this action because it is supporting many candidates for office in the election to be held on November 8, 2016, including Democratic candidates in the Presidential, Senate, House, and numerous statewide elections. The Party is threatened with immediate and irreparable injury if the vigilante voter intimidation campaign by Trump, Stone, and their co-conspirators succeeds in disrupting or changing the results of the election by means of an unlawful conspiracy. The Michigan Democratic Party has associational standing on behalf of itself and its supporters.

15. Venue is proper in this district under 28 U.S.C. § 1391(a) and (c) because significant events giving rise to this action occurred in this district.

16. The allegations herein justify injunctive relief in order to prevent irreparable harm. An injunction against the Trump Campaign and its co-conspirators' planned intimidation tactics is the only way to protect thousands of Michigan voters from harassment, threats, or intimidation that could discourage them from voting in the upcoming election.



## FACTUAL ALLEGATIONS

### I. CONGRESS REGULATES VOTER INTIMIDATION FOR OVER A CENTURY IN RESPONSE TO POLLING PLACE VIGILANTISM

17. The Ku Klux Klan Act of 1871 (the “Klan Act”) was the last of the Enforcement Acts—legislation passed during Reconstruction to protect the suffrage rights of newly freed slaves, including by protecting them and their supporters from violence and harassment. President Grant requested the legislation in order to empower him to stamp out the first generation of the Ku Klux Klan, which Congress granted within a month of the request.

18. The Klan Act, as currently codified in 42 U.S.C. § 1985(3), provides for damages and equitable relief “if two or more persons conspire 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 . . . an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy.” The Act further provides that an action will lie against the conspirators so long as “one or more persons engaged” in the conspiracy “do, or cause to be done, any act in furtherance of the object of such conspiracy.” As the Supreme Court made clear in *Ex parte Yarbrough*, 110 U.S. 651 (1884), the constitutional basis for this broad provision—whose text requires no showing of racial intent or

animus, only a conspiracy to intimidate voters—is the Constitution’s Elections Clause.

19. Nearly a century later, in 1965, Congress again invoked its broad Elections Clause power to protect the franchise. Responding to numerous instances of intimidation in both elections and registration efforts in the Jim Crow South, including the killing of black and white activists seeking to register African Americans to vote, Congress passed Section 11(b) of the Voting Rights Act. Section 11(b) prohibits actual or attempted “intimidation,” “threats,” or “coercion” against a person, either “for voting or attempting to vote” or “for urging or aiding any person to vote or attempt to vote.” Section 11(b) authorizes private suits against private actors, even in the absence of any action by a state or state official.

20. Congress has thus enacted two broad statutes to prevent voter intimidation. As courts have made clear, it violates Section 11(b) to follow voters around, stand behind them taking notes, follow them into the parking lot, or loudly discuss voter fraud laws in their presence. *See, e.g.*, Temporary Restraining Order, *Daschle v. Thune*, No. 04-cv-4177, Dkt. No. 6 (D.S.D. Nov. 2, 2004) (entering a Temporary Restraining Order prohibiting a Republican Senate candidate and his supporters from continuing to “follow[] Native Americans from the polling places,” “copy the license plates of Native Americans driving to the polling places” and record “the license plates of Native Americans driving away from the polling

places”). Invasions of physical space and intimations of possible future violence, prosecution, or legal action based on a voter’s presence at the polls constitute unlawful voter intimidation. And even as to those persons who do not directly participate in those activities, the Klan Act makes it unlawful to conspire with others to promote, organize, and facilitate those efforts.

## **II. TRUMP AND STONE ISSUE A CALL TO INTIMIDATE VOTERS IN THE 2016 ELECTION ON THE BASIS OF BOGUS CLAIMS OF VOTER FRAUD**

21. In the months leading up to the 2016 election, Trump has made an escalating series of statements, often racially tinged, suggesting that his supporters should go to particular precincts on Election Day and intimidate voters—intimating that otherwise, he will lose the election because of imagined voter fraud. It does not matter that voter fraud is practically nonexistent. That reality has not stopped Trump from telling his supports that certain people, in certain precincts, will vote “15 times” for Secretary Clinton.

22. For example, Trump told a crowd in Altoona, Pennsylvania, in August 2016 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.”

23. Ten days later, at a speech in Ohio, Trump explained that he did not just mean that supporters should “watch”:

“You’ve got to get everybody to go out and watch, and go out and vote,” Trump said. “And when [I] say ‘watch,’ you know what I’m talking about, right?”

Trump has explained that his “watchers” should act in a capacity similar to law enforcement, even though they will not in fact be acting in a law-enforcement capacity. In other words, Trump is encouraging his supporters to act as vigilantes.

24. In the midst of these comments, the Trump Campaign rolled out a form on its website for supporters to sign up to be “Trump Election Observers” in order to “Stop Crooked Hillary From Rigging This Election,” further encouraging his supporters to join in a common plan to “watch” voters in “certain areas” of states like Michigan for voter fraud.

25. Trump has specifically encouraged his supporters who work in law enforcement to use their official authority to assist in “watching” Democratic-leaning communities. For example, he stated at the Altoona rally in August 2016 that to protect against supposed voter fraud, “[w]e have to call up law enforcement” and “we have to have the sheriffs and the police chiefs and everybody watching.”

26. Trump’s exhortations have grown more ominous and specific as the election draws closer. At an October 1, 2016 rally in Manheim, Pennsylvania, for

example, Trump instructed his supporters to “go check out [other] areas because a lot of bad things happen, and we don’t want to lose for that reason.” Trump and Trump Campaign surrogates like former New York City Mayor Rudy Giuliani have told supporters that voters of color should be suspected of fraud. Trump has suggested that Latino voters are undocumented immigrants whom the federal government has allowed to “pour into this country” specifically to vote in the election. And Trump’s closest advisors – who are prominent Trump Campaign surrogates – have echoed Trump’s statements, asserting that urban voters routinely commit voter fraud in cities like Detroit, and that the only way Trump will lose is if the election is “rigged.” For example, in a nationally televised interview on October 16, 2016, former Trump surrogate Rudy Giuliani expressed that voter fraud is concentrated in predominantly minority communities in “inner cities” that support “Democrats,” like “Philadelphia and Chicago.”

27. While speaking in Ambridge, Pennsylvania, on October 11, 2016, Trump warned that it is “[s]o important that you watch other communities”—which, he clarified, meant Philadelphia—“because we don’t want this election stolen from us . . . . And everybody knows what I’m talking about.” Trump was referring in particular to stories he had circulated earlier in the summer about Philadelphia precincts comprised nearly exclusively of African-American voters in which Mitt Romney received no votes in 2012. At that same rally, a prominent

Trump supporter, U.S. Representative Bill Shuster, made clear that Trump supporters should focus their voter intimidation in Philadelphia, stating: “The people in Western and Central Pennsylvania have to overcome what goes on down in Philadelphia—the cheating.” Another prominent Trump supporter, former Speaker of the House Newt Gingrich, has similarly stated that the election might be “stolen” because of voter fraud in Philadelphia and other Democratic-leaning communities:

“You look at Philadelphia, you look at St. Louis, you look at Chicago, I mean, again, I’m old enough, I remember when Richard Nixon had the election stolen in 1960 . . . . So to suggest that we have—that you don’t have theft in Philadelphia is to deny reality.”

28. Trump now asserts at rallies that the presence of fraud at the polls will prevent him from winning the November 8 election. His comments are consistently directed at Democratic-leaning communities with large minority populations in states like Michigan, Ohio, and Pennsylvania. For example, at an October 18 rally in Colorado Springs, Colorado, Trump warned his supporters about voter fraud:

“[T]ake a look at Philadelphia, what’s been going on, take a look at Chicago, take a look at St. Louis. Take a look at some of these cities, where you see things happening that are horrendous.”

29. At an October 20, 2016 rally in Delaware, Ohio, Trump told the crowd that Secretary Clinton is “truly capable of anything, including voter fraud.” At the same rally, Trump repeated what he called “terrible, frightening statistics”

(which also happen to be false), like the claim that “fourteen percent of non-citizens are registered to vote,” or that:

“1.8 million people are dead, but they’re registered to vote, some of whom voted even though they’re dead. Which is really a hard thing to do. But it’s easy, if fraud is involved. . . . One was a Republican, and after death, became a Democrat. It’s true!”

30. At an October 17, 2016 rally in Ohio, Governor Pence urged Trump supporters to sign up to be poll watchers to combat purported voter fraud, claiming that the media is trying to “rig” this election “with their biased coverage.” Pence explained that any Trump supporter who has not volunteered to participate to provide “accountability at a polling place” has not “yet done all that you can do.”

31. At a rally in Golden, Colorado on October 29, 2016, Trump accused postal workers of throwing out ballots that they don’t “like.” Trump told the crowd,

“I have real problems with ballots being sent. Does that make sense? Like people saying, ‘Oh here’s a ballot,’ being, ‘here’s another ballot - throw it away, throw it away. Oh, here’s one I like, we’ll keep that one. I have real problems—so get your ballots in. We’re trying to have some pretty good supervision out there. We got a lot of people watching you people that collect the ballots. We got a lot of people watching the people that collect the ballots. Now, the, you know, dishonest media will say ‘oh, that wasn’t nice. Everything is so honest. Everything in our country –’ We have 1.8 million people that are dead registered to vote. Right? And some of them vote. I wonder how that happens. We have 2.7 million people on more than one state, they’re registered two states, and sometimes more than that. And I could go on and on and on.”

32. Defendant Stone has amplified Trump’s message. Stone is a far-right-wing political operative who has served as a close advisor to Trump throughout his run for President. Stone has a history of engaging in voter intimidation, racist and misogynist hate speech, and incitement to violence. Stone has publicly called for the execution of Secretary Clinton, Senator Bernie Sanders, and George Soros, among others. He has referred to Herman Cain as a “mandingo,” to former presidential candidate Ben Carson as an “Uncle Tom,” and Representative Allen West as an “arrogant know-it-all negro.” He is also the peddler of numerous widely discredited conspiracy theories, just a few of which include that the Bush family tried to assassinate President Reagan, that President Lyndon Johnson orchestrated the assassination of President John F. Kennedy, and that Senator Ted Cruz’s father was tied to the Kennedy assassination.

33. Through his super PAC Stop the Steal, Stone is currently running a website called “StopTheSteal.org,” which is actively signing up Trump supporters to “volunteer” to fight “voter fraud.” #StopTheSteal is a popular hashtag among Trump supporters on Twitter, and Stone’s group maintains an active Facebook presence. Stone and his associates, including Stop the Steal Inc., have also widely disseminated messages via websites such as stopthesteal.org and through social media under hashtags such as #StopTheSteal, falsely claiming that Secretary Clinton rigs elections. One image states: “HILLARY CLINTON CHEATED



AND STOLE THE PRIMARY FROM BERNIE . . . WE THE PEOPLE CAN STOP HER FROM STEALING THE GENERAL.” Another states that “25% of Votes needed to win, is decided by illegals” and that hundreds of “electoral votes [are] at RISK of being RIGGED.” Through these and other messages, Stone has sought to encourage Trump supporters to engage in unlawful voter intimidation.

34. Stone is also using social media to promote the common plan that Trump supporters—and particularly those who have agreed to engage in vigilante “ballot security” efforts—wear red shirts on Election Day.

35. Further, Stone and Stop the Steal Inc. are actively recruiting Trump supporters for “exit polling,” specifically targeting nine Democratic-leaning cities with large minority populations, including Detroit. Oliver Laughland and Sam Thielman, *Trump Loyalists Plan Own Exit Poll Amid Claims of ‘Rigged’ Election*, The Guardian, Oct. 20, 2016. As of November 3, 2016, Stone claimed to have organized 2,883 volunteers to engage in this “exit polling” operation. That number includes volunteers signed up to participate throughout Michigan, with dozens statewide. Stone’s purported polling exercise serves no legitimate purpose. Stone does not run a polling business, and effective “exit polling” does not focus merely on Democratic-leaning or majority-minority districts—rather, legitimate exit polling ordinarily focuses on competitive districts rather than areas that vote overwhelmingly for one party. Stone’s “exit polling” activities appear to be aimed

chiefly at majority-minority communities, such as certain majority-minority areas in Michigan, with the purpose or effect of intimidating non-white persons and Democrats from voting.

36. Through an organization called “Vote Protectors,” Stone has also recruited volunteers to watch polling places. The Vote Protectors website permits any volunteer to download and print official-looking identification badges, and provides scripts for volunteers that instruct them on how to interrogate voters on Election Day. Stone’s operation is not a legitimate exit poll. Instead, volunteers are permitted to tally up votes on the Vote Protectors website—for Trump or any other candidate—without any proof that they had spoken to voters or visited a polling site. Vote Protectors and Stop the Steal discontinued some, but not all, of these practices after they were exposed by a national media outlet.

37. The notion of widespread voter fraud in modern American politics is itself a myth. *See generally* Lorraine C. Minnite, *The Myth of Voter Fraud* (2010) (concluding that the notion of widespread voter fraud is a “myth”). One 2014 study found that only 241 potentially fraudulent ballots had been cast nationwide over a fourteen-year period—*out of 1 billion ballots cast*.

38. Those statistics help explain why the courts that have examined the evidence have concluded that widespread voter fraud does not exist. In a challenge to Pennsylvania’s voter ID law, for example, “[t]he parties [we]re not aware of any

incidents of in-person voter fraud in Pennsylvania and d[id] not have direct personal knowledge of in person voter fraud elsewhere.” *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988, at \*57 (Pa. Commw. Ct. Jan. 17, 2014). A federal judge in North Dakota recently determined that “[t]he undisputed evidence before the Court reveals that voter fraud in North Dakota has been virtually non-existent.” *Brakebill v. Jaeger*, No. 16-cv-00008 (DLH), Dkt. No. 50 (D.N.D. Aug. 1, 2016). A federal judge in Wisconsin has similarly observed that “[t]he Wisconsin experience demonstrates that a preoccupation with mostly phantom election fraud leads to real incidents of disenfranchisement, which undermine rather than enhance confidence in elections, particularly in minority communities.” *One Wis. Inst. v. Thomsen*, No. 15-cv-324 (JDP), 2016 WL 4059222, at \*2 (W.D. Wis. July 29, 2016); *see also Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 194 (2008) (“The only kind of voter fraud that SEA 483 addresses is in-person voter impersonation at polling places. The record contains no evidence of any such fraud actually occurring in Indiana at any time in its history.”); *Veasey v. Abbott*, 830 F.3d 216, 238 (5th Cir. 2016) (“[T]he evidence before the Legislature was that in-person voting, the only concern addressed by SB 14, yielded only two convictions for in-person voter impersonation fraud out of 20 million votes cast in the decade leading up to SB 14’s passage.”); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 246 (4th Cir. 2014)

(“North Carolina asserts goals of electoral integrity and fraud prevention. But nothing in the district court’s portrayal of the facts suggests that those are anything other than merely imaginable.”); *Frank v. Walker*, 17 F. Supp. 3d 837, 848 (E.D. Wis. 2014) (“[I]t appears that there have been zero incidents of in-person voter-impersonation fraud in Wisconsin during recent elections.”), *rev’d on other grounds*, 768 F.3d 744 (7th Cir. 2014); *Lee v. Va. State Bd. of Elections*, No. 3:15-cv-357-HEH, 2016 WL 2946181, at \*23 (E.D. Va. May 19, 2016) (“evidence of actual voter impersonation-type fraud was scant”).

39. The fact that widespread voter fraud is a myth does not prevent many people—particularly those who are listening most closely to the RNC, Trump, and their surrogates such as Stone—from believing it is real. As a recent Washington Post-ABC poll showed, 69% of Trump’s supporters (but less than half of all voters) believe that voter fraud happens “very often” or “somewhat often.” This widespread belief, despite a total lack of evidence to support it, has been stoked for decades by certain elements of the Republican Party, including Stone and Trump’s allies in the so-called “alt-right” media ecosystem, such as the Breitbart website that was run until recently by Trump Campaign CEO Steve Bannon. In the last few months alone, Breitbart has run dozens of articles on supposed voter fraud, with ominous headlines about “Obama forces” and “Soros-backed” cover-ups, and Stone has appeared on Breitbart-affiliated radio stations to echo Trump’s

fearmongering about a stolen election. Stone’s “StopTheSteal” campaign has fanned these flames by widely distributing via social media and elsewhere the false claim that the election will be “rigged” by “illegals.” And, appearing on Face the Nation on October 23, 2016, RNC Chairman Reince Priebus declared that voter fraud “is real,” and that what Trump is doing is “trying to also tell his folks to watch out for this fraud that might occur.”

40. Trump’s calls for unlawful vigilantism to stop purported voter fraud advance a coordinated effort to harass and intimidate voters at the polls. Voter intimidation efforts aimed at suppressing minority voters have frequently been “ostensibly aimed at combatting voter fraud.” *Ne. Ohio Coal. for the Homeless v. Husted*, No. 2:06-cv-896, 2016 WL 3166251, at \*28 (S.D. Ohio June 7, 2016), *aff’d in part, rev’d in part on other grounds*, No. 16-3603, 2016 WL 4761326 (6th Cir. Sept. 13, 2016); *see also Veasey*, 830 F.3d at 237 (“[T]he record shows that Texas has a history of justifying voter suppression efforts such as the poll tax and literacy tests with the race-neutral reason of promoting ballot integrity.”). As the New Jersey District Court held in rejecting the RNC’s 2009 request to vacate the Consent Decree, “[v]oter intimidation presents an ongoing threat to the participation of minority individuals in the political process, and continues to pose a far greater danger to the integrity of that process than the type of voter fraud the

RNC is prevented from addressing by the Decree.” *Democratic Nat’l Comm.*, 671 F. Supp. 2d at 578-79.

41. Michigan itself has experienced a specific, recent history of efforts at vote suppression targeted at minority and non-Republican voters. In the 2008 election cycle, the Democratic National Committee and others sued various national and Michigan Republican entities to prevent them “from implementing a mass challenge to the eligibility of voters who reside at properties that have appeared on lists of foreclosed properties,” which amounted to “a new version of an old tactic” known as “caging.” Mot. for Prelim. Inj., *Maletski v. Macomb Cty. Republican Pty.*, No. 08-cv-13982 (E.D. Mich. filed Sept. 25, 2008), at 1, *available at* <http://moritzlaw.osu.edu/electionlaw/litigation/documents/Maletski-Motion-9-25-08.pdf>. That litigation resulted in a settlement, in which the parties agreed “that the existence of a person’s address on a foreclosure list does not provide a reasonable basis for challenging the person’s eligibility to vote.” Settlement Agreement, *Maletski v. Macomb Cty. Republican Pty.*, No. 08-cv-13982 (E.D. Mich. Oct. 20, 2008), *available at* <http://moritzlaw.osu.edu/electionlaw/litigation/documents/Maletski-Settlement.pdf>.

42. More recently, the Sixth Circuit Court of Appeals upheld an injunction against a 2016 Michigan law that would have outlawed the practice of straight-ticket voting that has been used in the state for over a Century. *Michigan*

*State A. Philip Randolph Institute v. Johnson*, 833 F.3d 656 (6th Cir. 2016). As the Court of Appeals explained, the law “placed a burden on voters—particularly African–American voters,” in whose communities “straight-party voting is prominent and where lines are often already long.” *Id.* at 659, 666.

### **III. REPUBLICAN NATIONAL AND STATE COMMITTEES CONSPIRE WITH TRUMP AND STONE TO ENCOURAGE VOTER INTIMIDATION**

43. As the Republican Party nominee for President, Trump and his campaign coordinate closely with the RNC and MRP on a wide variety of matters, including overall campaign strategy, public messaging, voter outreach, and field operations. On May 17, 2016, the RNC created a joint fundraising committee with the Trump Campaign specifically to fund the Trump Campaign and its operations, and to elect Republicans “up and down the ballot.” The Trump Campaign has “relinquished control over many of its tactical decisions” to the RNC. Indeed, shortly after Trump became the Republican nominee, the RNC met with the Trump Campaign to discuss what they described as “the merger.” The Trump Campaign and RNC “negotiated a partnership,” in which the RNC “buil[t] assets and infrastructure and the nominee gets to benefit from it.”

44. The Trump Campaign has decided largely to refrain from setting up a parallel layer of offices in staff in Michigan and elsewhere, as past Republican Party nominees have done. Instead, as has been widely reported, the Trump

Campaign is relying predominantly on the RNC and Republican state party entities (here, the MRP) to manage get-out-the-vote operations in contested states such as Michigan.

45. The Trump Campaign has made public statements indicating that its coordination with the RNC and MRP extends to efforts to monitor polling locations for purported voter fraud (although it is now trying to walk back the RNC-related aspects of these statements in the context of the ongoing RNC consent decree litigation). Trump’s running mate, Governor Mike Pence, publicly stated that the Trump Campaign is working with the RNC and state Republican parties on ballot security measures. At an August 3, 2016, town hall rally in Denver, Colorado, Pence was asked “how is the Trump-Pence campaign going to . . . prevent” Secretary Clinton from “steal[ing] this election.” Pence responded:

“I will tell you that the Trump campaign and the Republican National Committee are working very very closely with state governments and secretaries of states all over the country to ensure ballot integrity. . . . We are working hard all over the country, the Republican National Committee is working all over the country, but I would encourage everyone within the sound of my voice, get involved, participate, be a poll worker on election day . . . be a part of that process, and uphold the integrity of one person one vote in America.”

46. The RNC has delegated “ballot security” initiatives to its agents in Michigan. On September 30, 2016, Trump appeared at rally in Michigan and instructed his supporters to “go pick some other place and go sit there with your friends and make sure it’s on the up and up. Because you know what, [voter fraud



is] a big, big problem in this country and nobody wants to talk about it.” Just ten days later, the chair of the MRP, who is also a member of the RNC and therefore its agent, announced a “massive statewide anti-voter fraud effort” to prevent Hillary Clinton from “stealing” the election from Trump. According to an MRP spokesperson, this will include “roving poll watchers in places like Detroit.” The chair of the MRP recently submitted a declaration in the RNC consent decree litigation that, while denying coordination of “ballot security” efforts with the RNC, confirmed that “the Michigan GOP is engaged in poll watching and ballot security activities for this election,” and that the MRP chair has disregarded the advice of the RNC General Counsel that RNC members such as the MRP chair are “encourage[d] not to engage in ‘ballot security’ activities even in your personal, state party, or campaign capacity.”

47. MRP-affiliated poll-watchers in Michigan are being trained that urban areas of Michigan, including places with higher concentrations of Democratic and minority voters, are more likely to involve voter fraud. For example, one MRP regional field director has trained Republican poll watchers in Michigan that the party is “very well aware” that “Pontiac is higher voter fraud” than other parts of Oakland County, and that “[i]f you’re in a place like Pontiac or Detroit or Warren, . . . that’s a little nastier.” Poll-watchers are also being trained to focus on “challeng[ing] voters whose eligibility is suspect,” and to prevent anyone from

getting in line to vote after 8:00 p.m. by “invit[ing] the precinct captain and any other party’s challenger to identify the last person in line at closing time and affix a paper ‘X’ to the final voter’s back.”

48. In other words, MRP and RNC agents in Michigan have responded directly to Trump’s public comments by directing resources and personnel to Trump-focused “ballot security initiatives.” Such initiatives continue to be encouraged and bolstered by the Trump Campaign itself. On October 17, 2016, Pence directed attendees at a Macomb County Republican Party event to “[m]ake sure you’re out there standing with your neighbors and your friends to turn out the vote, and uphold the integrity of the vote, all across Michigan.” And on October 19, 2016, Trump’s Michigan campaign director publicly fanned the flames of Trump’s claims of likely widespread voter fraud, including in Michigan.

49. Trump’s campaign manager Kellyanne Conway recently confirmed that the Trump campaign is “actively working with” the RNC and other branches of the Republican Party apparatus, including the MRP, to “monitor precincts around the country.” (Although she too is now trying to walk away from the RNC aspect of these comments in the context of the RNC consent decree litigation.) The RNC and MRP have continued this close coordination even after Trump’s widespread and racially charged pleas to his supporters to engage in voter

intimidation in areas like Detroit that are home to large communities of racial minorities.

50. The Trump Campaign also recently distributed talking points to Republican Party surrogates directing that they “[m]ust make points on rigged system,” and encouraging them to claim there has been “an increase in unlawful voting by illegal immigrants.”

#### **IV. CO-CONSPIRATORS RESPOND WITH PROMISES TO INTIMIDATE VOTERS**

51. The conspiracy reaches beyond the Defendants. Trump’s supporters in Michigan, and elsewhere, are responding to his calls to engage in voter intimidation, thereby creating an immediate threat of harm to Michigan voters.

52. *Politico* reported on November 2, 2016 that, “[e]nergized by Trump’s candidacy and alarmed by his warnings of a ‘rigged election,’ white nationalist, alt-right, and militia movement groups are planning to come out in full force” on Election Day. According to that report, “Neo-Nazi leader Andrew Anglin plans to muster thousands of poll-watchers across all 50 states,” and “his partners at the alt-right website ‘the Right Stuff’ are touting plans to set up hidden cameras at polling places in Philadelphia and hand out liquor and marijuana in the city’s ‘ghetto’ on Election Day to induce residents to stay home.” Anglin wrote that he is “sending an army of Alt-Right nationalists to watch the polls” in “urban areas.” Anglin continued: “We also will have stationary cameras hidden at polling locations in

Philadelphia . . . . [W]e set up a hidden camera in the school cafeteria [used for polling.] ”

53. The *Boston Globe* has reported on Trump supporters who are planning to engage in unlawful voter intimidation, and who understand themselves to be doing so at Trump’s behest:

“Trump said to watch your precincts. I’m going to go, for sure,” said Steve Webb, a 61-year-old carpenter from Fairfield, Ohio.

“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 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.”

54. Notwithstanding Mr. Webb’s pledge not to do “anything illegal,” the conduct in which he plans to engage on Trump’s behalf—deliberately targeting of minority voters via “racial profiling” in order to “make them a little bit nervous” while they are attempting to vote—unequivocally violates Section 11(b) of the Voting Rights Act. *See, e.g.*, Temporary Restraining Order, *Daschle*, No. 04-cv-4177, Dkt. No. 6.

55. Similarly, Harry Miller, purportedly of Palm Beach, Florida, tweeted in response to Trump’s calls for election observers that he would be “wear’n red at polls . . . . We gonna be watch’n fer shenanigans . . . & haul ya away . . . .” The tweet included a picture of a pickup truck with Florida plates and a person-sized cage built into the bed, surrounded by American flags. Miller has over 20,000

Twitter followers and tweets almost exclusively about Trump, Secretary Clinton, and racially charged political themes such as deporting “Muzzys.” A typical tweet asserts that “Our Muzzy Commander in Chief” is “shov’n Sharia Law down our throats . . . & Crooked Hiltlery follow’n his every move. . . .”

56. At a “poll watcher training” class for Trump supporters organized by the Republican Party of Virginia, would-be watchers expressed their belief that “there is going to be massive voter fraud, and it definitely will be to ensure Hillary Clinton wins.” The leader of the class listed purported voter-fraud schemes “orchestrated by liberal groups,” including “civil rights leaders coercing severely disabled people into voting.” One Trump supporter seeking to be a poll watcher said her “biggest concern” was “[i]llegals voting,” and noted as an example of said phenomenon that in 2012 she saw voters who did not appear to speak English.

57. In Virginia, on October 13, 2016, two armed Trump supporters staged a purported “protest” in front of the office of a Virginia Democratic candidate for Congress, Jane Dittmar. The armed Trump supporters, one of whom wore a signature Trump campaign hat, stood for nearly twelve hours outside Dittmar’s campaign office, turning sideways so that those inside could see that they were carrying firearms.

58. Trump supporters have also sought to sow misinformation among supporters of Secretary Clinton. For example, Joshua Lorenz, a Republican City

Councilman from Murrysville, Pennsylvania, posted on Facebook an image with the phrase: “Vote Hillary November 8th” and “YOU CAN VOTE AT HOME COMFORTABLY ONLINE!” with instructions for how only Clinton supporters could purportedly vote online. Lorenz included with his post a statement: “More proof that the election process is rigged. Only Hillary supporters can vote from their smartphones or in the comfort of their own homes.” A similar image being circulated online features a photo of Clinton and the statement: “Did you know? Pennsylvania now has online voting?” in a font that is similar to that used in official Clinton campaign advertising. Of course, these statements are false.

59. Stone has participated directly in this misinformation campaign. On October 23, 2016, Stone sent out a (now deleted) message via his Twitter feed deliberately designed to mislead Democratic voters by representing—using Secretary Clinton’s likeness and logo—that supporters can “VOTE the NEW way on Tues. Nov 8<sup>th</sup>” by texting “HILLARY to 8888,” after which voters would apparently “receive official confirmation.”

60. All the while, Trump continues to induce his supporters to engage in polling place harassment targeting non-white voters in urban areas, and continues to invoke the baseless claim that the unlawful conduct that his supporters are planning, at his behest, is justified by fictitious “voter fraud.”

**V. DEFENDANTS’ PLANNED ACTIONS ARE NEITHER  
LEGITIMATE NOR LAWFUL MEASURES TO PROTECT  
AGAINST VOTER FRAUD**

61. Trump’s calls for his supporters to travel en masse outside their counties of residence and engage in vigilante voter intimidation bear no possible relationship to legitimate efforts to protect against voter fraud. In fact, Trump has directed his supporters to engage in activity forbidden by Michigan state election law.

62. Michigan law sets forth measures designed to protect the integrity of Michigan elections. For example, Michigan law makes it unlawful, whether inside a polling place or within 100 feet of the entrance of a building with a polling place, to “solicit votes,” Mich. Comp. Laws § 168.931(1)(k); to “persuade or endeavor to persuade a person to vote for or against any particular candidate or party ticket or for or against any ballot question that is being voted on at the election,” Mich. Comp. Laws § 168.744; to “place or distribute stickers, other than stickers provided by the election officials pursuant to law,” *id.*; to “solicit donations, gifts, contributions, purchase of tickets, or similar demands, or request or obtain signatures on petitions,” *id.*; or to “post, display, or distribute . . . any material that directly or indirectly makes reference to an election, a candidate, or a ballot question” (other than official material required to be posted), *id.*

63. Voter intimidation is a felony under Michigan law, Mich. Comp. Laws § 168.932(a), punishable by a prison sentence of up to five years, *id.* § 168.935. Law enforcement officials have a duty under Michigan law to institute proceedings against those who violate this and other Michigan election law provisions. *Id.* § 168.941.

64. Michigan does allow “any interested person” to observe elections in a “‘public area’ of the polling place where they will not interfere with the voting process.” *Managing Your Precinct on Election Day*, Mich. Dep’t of State, Bureau of Elections (Jan. 2016) (“SOS Guide”), at 19, *available at* [https://www.michigan.gov/documents/sos/Managing\\_Your\\_Precinct\\_on\\_Election\\_Day\\_391790\\_7.pdf](https://www.michigan.gov/documents/sos/Managing_Your_Precinct_on_Election_Day_391790_7.pdf). However, that general rule is subject to several important limitations:

- a. First, Michigan law restricts the ability to *challenge* another voter’s eligibility to vote to a “registered elector” in Michigan who has been officially designated by a political party or qualified interest group and authorized by state election officials. Mich. Comp. Laws § 168.730. All challengers must have in their “possession a ‘challenger card’ issued by the party or organization” represented. SOS Guide at 15.



- b. Second, any challenge to a voter’s qualifications must be based on a “good reason to believe [the voter] is not a registered elector,” Mich. Comp. Laws § 168.733(1)(c), and thus cannot be based upon a voter’s appearance, race, gender, or national origin. “A challenger does not have the right to issue a challenge based on an ‘impression’ that the voter may not be eligible to vote in the precinct due to the voter’s manner of dress, inability to read or write English, perceived race or ethnic background or need for assistance with the voting process. Similarly, a challenger does not have the right to issue a challenge due to any physical or mental disability the voter may have or is perceived to have.” SOS Guide at 17. Michigan law penalizes “[a] person who challenges a qualified elector for the purpose of annoying or delaying the voter.” *Id.* at 8.
- c. Third, Michigan law provides that challengers “shall not threaten or intimidate an elector while the elector is entering the polling place, applying to vote, entering the voting compartment, voting, or leaving the polling place.” Mich. Comp. Laws § 168.733(4). They also may be expelled by election inspectors for “disorderly conduct.” *Id.* § 168.733(3).

“Challengers do not have the authority to approach voters or talk to voters for any reason.” SOS Guide at 16.

- d. Fourth, non-challenger members of the public observing elections in Michigan “are subject to the same ‘conduct standards’ as challengers,” SOS Guide at 19, including the prohibition on any threats or intimidation of voters, *id.* at 16.
- e. Fifth, with a limited exception for news media, “the use of video cameras, still cameras and recording devices by voters, challengers and poll watchers is prohibited in the polls during the hours the polls are open for voting” in Michigan. SOS Guide at 4.

65. “Michigan election law does not specifically regulate exit polling.” SOS Guide at 14. However, Michigan elections officials “recommend[] that exit pollsters 1) must remain at least **20 feet** away from the entrance of the building in which the polling place is located 2) not enter the building in which the polling place is located and 3) not question any person **entering** the building in which the polling place is located.” *Id.* They also have stated that “[i]t is important to note that exit polling is the questioning of voters **after they have left the polls.**” *Id.*

\* \* \*

66. It is unfortunate that this Complaint must be filed. What would be more unfortunate still is if the harms against which Congress acted in the 1870s and the 1960s were allowed to return to undermine the democratic process. This Court should act quickly and firmly to ensure that the citizens of Michigan are able to vote free from intimidation in the 2016 election.

### **COUNT ONE: KU KLUX KLAN ACT**

67. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

68. Defendants the Trump Campaign, Stone, Stop the Steal Inc., and the MRP have called on supporters to descend on polling places in “certain areas”—generally, the urban communities of color where they and their allies have stoked fabricated threats of massive voter fraud—in order to intimidate voters at the polls. Trump’s calls to stake out polling places in those communities and to suspiciously, aggressively “watch” these minority voters—“You know what I mean,” he has clarified for his co-conspirators—have resulted in plans to engage in “racial profiling” and threaten lawful voters with the prospect of monitoring, questioning after voting under the guise of phony “exit polling,” baseless legal action, and even possible physical harm, including unlawful detention because they have come to the polling place to cast a ballot.

69. The Trump Campaign, Stone, and Stop the Steal Inc. have engaged in online organizing and mobilization efforts to support their plan.

70. The RNC and Defendant MRP are providing financial, personnel, and other organizational support to the voter intimidation efforts launched by the Trump Campaign, Stone, and Stop the Steal Inc. in violation of the Ku Klux Klan Act.

71. Absent declaratory and injunctive relief, voters will be subjected to intimidation, threats, and perhaps even force at the hands of vigilante “poll watchers” and “ballot integrity” volunteers on Election Day, and many may suffer unwarranted delays or denials of their right to cast a ballot in the approaching elections.

72. Plaintiffs are entitled to a declaration that the MRP, the Trump Campaign, Stone, Stop the Steal Inc., and their co-conspirators have violated the Ku Klux Klan Act through their conspiracy to intimidate voters, and an injunction enjoining Defendants and others from any further activity to advance their conspiracy.

## **COUNT TWO: VOTING RIGHTS ACT**

73. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

74. Following Trump’s urging, Defendants have called for—and their supporters have promised—polling-place activity that is objectively likely to instill fear in voters. Such intimidation includes racial targeting, invasions of physical space, aggressive questioning and other forms of menacing, suggestions of possible criminal prosecution, and threats of physical violence or harm.

75. The RNC and Defendant MRP have provided financial, personnel, and organizational support to the efforts of the Trump Campaign, Stone, and Stop the Steal Inc. to organize people to engage in intimidation efforts in Michigan.

76. This planned course of intimidation constitutes a violation of Section 11(b) of the Voting Rights Act, which prohibits all actual or attempted “intimidation,” “threats,” or “coercion” against a person, either “for voting or attempting to vote.”

77. Absent declaratory and injunctive relief, voters will be subjected to intimidation, threats, and perhaps even force at the hands of vigilante “poll watchers” and “ballot integrity” volunteers on Election Day, and many may suffer unwarranted delays or denials of their right to cast a ballot in the approaching election.

78. Plaintiffs are entitled to a declaration that the MRP, the Trump Campaign, Stone, Stop the Steal Inc., and their co-conspirators have violated Section 11(b) of the Voting Rights Act.

### **COUNT THREE: INJUNCTIVE RELIEF**

79. Based on Defendants' above-described violations of law, Plaintiff is entitled to an injunction enjoining the Defendants, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, from any of their contemplated voter-intimidation activity.

This activity includes but is not limited to:

- a. Funding, encouraging, or otherwise supporting, including by training or organizing, individuals who are not officially appointed challengers under Michigan law to be present at or around polling places or voter lines to challenge, investigate, interfere with, or otherwise act to prevent any person from voting, including but not limited to confronting potential voters and verifying their eligibility at the polls, distributing literature stating to individuals that voter fraud is a crime, or describing the penalties under any state or federal statute for impermissibly casting a ballot;
- b. Monitoring polling places, or permitting, encouraging, or assisting individuals to monitor polling places, including but not limited to confronting potential voters and verifying their eligibility at the polls, distributing literature stating to

individuals that voter fraud is a crime, or describing the penalties under any state or federal statute for impermissibly casting a ballot, if the proposed monitor does not comply with the statutory requirements for such monitoring activities under Michigan law;

- c. Gathering or loitering outside of any polling place for the purpose or with the effect of interfering with or intimidating voters;
- d. Questioning, interrogating, or verbally harassing prospective voters or voters, or training, organizing, or directing others to do the same, for the purpose or with the effect of intimidating prospective voters or voters;
- e. Following, taking photos of, or otherwise recording prospective voters or voters, those assisting prospective voters or voters, or their vehicles, or training, organizing, or directing others to do the same;
- f. Questioning, or training, organizing, or deputizing any persons to question, prospective voters or voters at Michigan polling locations under the guise of purported “exit polling” or “citizen

journalist” operations organized and encouraged by Defendants  
Stone and Stop the Steal.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray this Court:

- a) Declare that the harassment or intimidation of voters at or outside of Michigan polling locations based on unsubstantiated beliefs in supposed voter fraud—including through tactics such as the aggressive questioning of those waiting to vote, threats or suggestions of legal or criminal action, or any other form of menacing or intimation of violence—is contrary to law.
- b) Declare that Defendants’ “exit polling” and “citizen journalist” initiatives are contrary to law.
- c) Restrain and enjoin any conduct alleged above.
- d) Restrain and enjoin the MRP, the Trump Campaign, Stone, Stop the Steal Inc., and their affiliates and collaborators from organizing efforts to engage in voter intimidation.
- e) Publicize the declaratory judgment and/or injunctive Order to all law enforcement and elections officials.
- f) Award Plaintiff the expenses, including attorneys’ fees and costs, incurred in prosecuting this action.
- g) Grant such other relief as this Court may deem proper.



Respectfully submitted,

/s/ Mary Ellen Gurewitz

Mary Ellen Gurewitz (P25724)  
SACHS WALDMAN, P.C.  
2211 E. Jefferson Ave., Ste. 200  
Detroit, MI 48207  
Tel: 313-496-9441  
[megurewitz@sachswaldman.com](mailto:megurewitz@sachswaldman.com)

/s/Andrew Nickelhoff

Andrew Nickelhoff (P37990)  
SACHS WALDMAN, P.C.  
2211 E. Jefferson Ave., Ste. 200  
Detroit, MI 48207  
Tel: 313-496-9429  
[anickelhoff@sachswaldman.com](mailto:anickelhoff@sachswaldman.com)

*Counsels for Plaintiff*

OF COUNSEL:

Marc E. Elias  
PERKINS COIE LLP  
700 13th Street, Suite 600  
Washington, DC 20005  
Tel: (202) 434-1609/Fax: (202) 654-9126  
[melias@perkinscoie.com](mailto:melias@perkinscoie.com)

Michael J. Gottlieb  
BOIES, SCHILLER & FLEXNER LLP  
5301 Wisconsin Ave, N.W.  
Washington, DC 20015  
Tel: (202) 237-2727/Fax: (202) 237-6131  
[mgottlieb@bsflp.com](mailto:mgottlieb@bsflp.com)

Dawn L. Smalls  
BOIES, SCHILLER & FLEXNER LLP  
575 Lexington Avenue  
New York, NY 10022  
Tel: (202) 754-4216/Fax: (212) 446-2350  
[dsmalls@bsflp.com](mailto:dsmalls@bsflp.com)

Date: November 4, 2016