

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

PENNSYLVANIA DEMOCRATIC
PARTY,

Plaintiff,

v.

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

Defendants.

Civil Action No. 1:16-cv-5664-PD

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

Plaintiff Pennsylvania Democratic Party submits this Response to Defendant Republican Party of Pennsylvania's (RPP) Objections, Motion to Quash Subpoena, and Motion for Protective Order filed on November 6, 2016.

I. BACKGROUND

Mr. Robert A. Gleason, Chairperson of the RPP, and his attorneys have been on notice for a week that Mr. Gleason is central to Plaintiff's claims. The Complaint, filed October 30, 2016, named as a defendant the organization that Mr. Gleason chairs, and personally quoted Mr. Gleason by name. ECF No. 1. Plaintiff's November 3, 2014 Memorandum of Law in Support of the Plaintiff's Motion for Temporary Restraining Order once again personally quoted Mr. Gleason. ECF No. 14.

Mr. Gleason and his attorneys were notified on Friday, November 4—the day the *Court* ordered each side to disclose witnesses, ECF No. 11—that the Plaintiff “*will seek to call*” Mr. Gleason. ECF No. 20 at 2 (emphasis added). In its Motion to Quash, the Defendant distorts the timeline of events in an effort to convince the Court that Mr. Gleason, and his attorneys, had only 24-hours' notice to appear in this hearing. The facts prove otherwise.

At 4:08 *p.m.* on November 4, not “at or about 5:09 *p.m.*” as the Defendant claims, ECF 32 at 2, the Plaintiff's wrote, in its entirety:

We wanted to touch base to find out if you intend to bring Robert Gleason, the Chair of the Republican Party, as a

witness at the TRO hearing on Monday, November 7. If not, we would like to call him as a witness. Are you willing to voluntarily produce him as a witness? And will you accept service of a subpoena on his behalf?

Please let us know when you have a moment.

Gottlieb Dec. Ex. A. Three hours later, at 7:16 p.m., Defendant's counsel responded, in its entirety:

I am responding to your email. I was only able to speak with Chairman Gleason today. We are not planning to call him as a witness and he is unavailable Monday. We are not authorized to accept a subpoena on his behalf.

Upon learning that Defendant's counsel neither would agree to produce Mr. Gleason, nor accept a subpoena on his behalf, the Plaintiff immediately began to prepare to subpoena Mr. Gleason. The process included determining Mr. Gleason's place of residence, drafting a subpoena, and locating and coordinating with a process server available on short notice during a weekend—all of which occurred after business hours. Still, Mr. Gleason was served early Sunday morning—only 36 hours after his counsel refused to voluntarily produce Mr. Gleason or accept service on his behalf.

Shortly before 9 p.m. Sunday evening, nearly 12 hours after Mr. Gleason was served, the Defendant filed this Motion. The Defendant did not attempt to meet and confer regarding its concerns with the Subpoena. Had it done so, the Plaintiff would have been happy to discuss alternatives to Mr. Gleason's live testimony, such as taking his testimony via telephone or video conference, to ease

any burden. Plaintiff remains open to such arrangements. As Counsel knows, similar forms of testimony are being elicited today in Nevada, where a witness is appearing telephonically.

The Defendant, with no substantiation, accuses Plaintiff of engaging in an “eleventh-hour tactic to disrupt Defendant RPP’s Election operations, inconvenience the Chairperson of the RPP, and secure Defendant RPP’s confidential strategy information.” ECF No. 32 at 11. First, the Court ordered the hearing take place the day before the Election Day; the Plaintiff did not request the hearing date, and would have been more than willing to appear for a hearing last week, as it did in other matters where complaints were filed the same night as this one. Second, the Plaintiff’s *sole* interest in this litigation is to ensure an election climate free of voter intimidation. That such an end would “disrupt” campaigning or cause “inconvenience” to Mr. Gleason barely moves the scales of hardships. Plaintiff is calling Mr. Gleason in regard to his public statements that are directly relevant to Plaintiff’s claims in this action asserting that the RPP is engaged in a conspiracy to intimidate voters in Democratic-leaning, predominantly minority communities in Philadelphia and elsewhere. Mr. Gleason should welcome the opportunity to address the Plaintiff’s claims, and explain why his actions will not result voter intimidation. Republican Party chairs in other States have done just

that—voluntarily appearing to testify despite similar election responsibilities, without resort to subpoenas.

Likewise, defendants in similar actions in other states have produced documents similar to those requested by the Plaintiff here. The defendants in a similar lawsuit in Arizona, who are represented by some of the same counsel as in this case, *voluntarily* produced training materials for poll watchers. They did so without a request for such information. Gottlieb Decl. Ex. B. In Nevada, the federal Court ordered Defendants to produce similar documents. Gottlieb Decl. Ex. C. By contrast, the Defendant claims that such documents are “confidential, intellectual business property, trade secrets, and proprietary information.” ECF No. 32 at 13. Pennsylvania voters are entitled to know that political leaders are training poll watchers to *protect* the right not vote, not suppress it.

II. THE DEFENDANT IS NOT ENTITLED TO ANY OF THE RELIEF IT SEEKS

“The party seeking to quash the subpoena bears the burden of demonstrating that the requirements of [Fed. R. Civ. P. 45] are satisfied.” *Malibu Media, LLC v. John Does 1-15*, 2012 WL 3089383, at *5 (E.D. Pa. Jul. 30, 2012). This is a “heavy burden” that is only satisfied if the movant “establish[es] that compliance with the subpoena would be unreasonable and oppressive.” *Pepsi-Cola Metro. Bottling Co. v. Ins. Co. of N. Am.*, No. CIV 10-MC-222, 2011 WL 239655, at *3 (E.D. Pa. Jan. 25, 2011). Moreover, the “burden is particularly heavy to support a

motion to *quash*” as opposed to modify a subpoena. *Id.* (emphasis added); *see also in re Domestic Drywall Antitrust Litig.*, 300 F.R.D. 234, 252 (E.D. Pa. 2014) (denying motion to quash, “subject to the modifications” made by the court). In deciding whether to grant the motion to quash, the district court must “balance the relevance of the discovery sought, the requesting party’s needs, and the potential hardship to the party subject to the subpoena.” *Pepsi-Cola*, 2011 WL 239655, at *3.

Mr. Gleason’s testimony is directly relevant to Plaintiff’s claims in this action, and necessary to Plaintiff’s ability to meet its burden of proof with respect thereto. As Chair of Defendant RPP, Plaintiff expects Gleason to have extensive direct knowledge regarding RPP’s efforts to recruit, train, and deploy poll watchers to monitor for purported voter fraud on Election Day. Plaintiff similarly expects Gleason to be familiar with RPP’s coordination with the Trump Campaign in regard to ballot security activities in Democratic-leaning communities in Philadelphia and elsewhere. As detailed in the Complaint, Gleason stated that he was “glad to hear” Trump had directed his supporters to “[g]o down to certain areas [in Pennsylvania] and watch and study” the voters there. Compl. ¶ 51. Further, Gleason can testify regarding the efforts he and the RPP took to act on Trump’s statements. These efforts include recruiting poll watchers in Philadelphia, and suing to invalidate longstanding Pennsylvania state law requiring poll watchers

to be registered voters in the same county in which they monitor voters. *Id.* ¶¶ 52-53. The express purposes of these actions were to increase the number of poll watchers that the RPP can deploy, and to permit large numbers of Trump’s supporters from anywhere in the State to descend upon its urban centers, including Philadelphia—precisely as Trump directed in several rallies in Pennsylvania.

Plaintiff respects the inconvenience to Mr. Gleason associated with appearing to testify. But merely being inconvenienced by Plaintiff’s request is not enough to demonstrate an undue burden. *SAJ Distributors, Inc. v. Sandox, Inc.*, Civil Action No. 08-1866(JAP), 2008 WL 2668953 at*3 (D. N.J. June 27, 2008). Moreover, had Defendant’s counsel worked in good faith to alleviate that inconvenience through telephonic appearance or other means, Plaintiff would have stood ready to accommodate Mr. Gleason in an appropriate manner. Yet without making any effort to meet and confer, or otherwise come to a mutually agreeable solution that minimized the burden on Mr. Gleason, Defendant chose to file this motion and seek sanctions. In light of these circumstances, Defendant’s claims of inconvenience ring hollow.

Finally, Defendant’s attempt to ascribe bad faith to the timing of the lawsuit is without basis. While Trump first spoke of the supposedly “rigged” nature of the election results in August, only very recently did evidence begin to mount that Trump’s supporters were responding to his exhortations by making plans for

direct, in-person voter intimidation at Pennsylvania polling sites. *See* Gottlieb Decl. Ex. 3 (“Trump Loyalists Plan Own Exit Poll Amid Claims of ‘Rigged’ Election,” dated Oct. 20, 2016); Ex. 17 (“Trump-Linked Voter Intimidation Group Releases New Script for ‘Citizen Journalists,” dated Oct. 26, 2016; Ex. 22 (“White Nationalists Plot Election Day Show of Force,” dated Nov. 2, 2016). In fact, even since this Complaint was filed, the evidence supporting a substantial likelihood of voter intimidation occurring in Philadelphia and elsewhere on Election Day has only grown.¹

RPP has argued that the Court should impose sanctions on Plaintiff pursuant to Federal Rule of Civil Procedure 45(d)(1) because the issuance of the subpoena to Mr. Gleason “is improper, untimely, unreasonable, [and] burdensome....” ECF No. 32 at 6. Rule 45(d)(1) provides that, “A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” It goes on to provide discretion to the district court to “impose an appropriate sanction – which may include lost earnings and reasonable attorney’s fees – on a party or attorney

¹ *See* Bill Wellock, *Area man seeks poll watchers; offers reward for catching fraud*, The Times Tribune, Nov. 4, 2016, available at <http://thetimes-tribune.com/news/area-man-seeks-poll-watchers-offers-reward-for-catching-fraud-1.2113139> (reporting plans by out-of-county Trump supporters “to travel to Philadelphia” to “follow” and “photograph” voters they suspect of fraud); *Report: Alt-right group says it plans to disrupt election in Philly with '40s and weed'*, The Inquirer, Nov. 3, 2016, available at <http://www.philly.com/philly/blogs/real-time/Alt-right-group-says-it-plans-to-disrupt-Election-Day-in-Philly-with-weed-40s.html>

who fails to comply.” *See also Mount Hope Church v. Bash Back!*, 705 F.3d 418, 425 (9th Cir.2012) (noting that Rule 45(d)(1) is discretionary).

Sanctions are generally awarded only in the most egregious of circumstances. *SAJ Distributors*, 2008 WL 2668953 at*3 (citing *Anderson v. Government of Virgin Islands*, 180 F.R.D. 284, 291-292 (D.Vi.1998) (granting attorney fees for repeat violations of Rule 45). Here, as established above, the RPP has not come close to meeting its burden of proving that Plaintiff did not take reasonable steps to avoid imposing an undue burden or expense on Mr. Gleason. Accordingly, the RPP is not entitled to sanctions.

November 7, 2016

Respectfully submitted,

/s/ Mark A. Aronchick

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From: "Tabas, Lawrence" <Lawrence.Tabas@obermayer.com>
Date: November 5, 2016 at 7:16:01 PM EDT
To: "'Callais, Amanda R. (Perkins Coie)'" <ACallais@perkinscoie.com>
Cc: "Warren, Rebecca" <rebecca.warren@obermayer.com>, "Banks Law (mbanks@thebankslawgroup.com)" <mbanks@thebankslawgroup.com>
Subject: RE: Witnesses - Nov. 7 Hearing - Pennsylvania Democratic Party v. Republican Party of Pennsylvania, et al., 16-5664

Dear Amanda: I am responding to your email. I was only able to speak with Chairman Gleason today. We are not planning to call him as a witness and he is unavailable Monday. We are not authorized to accept a subpoena on his behalf.

Lawrence

From: Callais, Amanda R. (Perkins Coie) [<mailto:ACallais@perkinscoie.com>]
Sent: Friday, November 04, 2016 4:08 PM
To: Tabas, Lawrence; Warren, Rebecca; mbanks@thebankslawgroup.com
Cc: marks@mslegal.com; tsullivan@mslegal.com; Kaul, Joshua L. (Perkins Coie); Michael Gottlieb; Aronchick, Mark A.
Subject: Witnesses - Nov. 7 Hearing - Pennsylvania Democratic Party v. Republican Party of Pennsylvania, et al., 16-5664

Dear Counsel,

We wanted to touch base to find out if you intend to bring Robert Gleason, the Chair of the Republican Party, as a witness at the TRO hearing on Monday, November 7. If not, we would like to call him as a witness. Are you willing to voluntarily produce him as a witness? And will you accept service of a subpoena on his behalf?

Please let us know when you have a moment.

Best,

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Arizona Democratic Party,

Plaintiff,

v.

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

Defendants.

Case No. CV-16-03752-JJT

**NOTICE OF FILING OF
DECLARATION OF WALT
OPASKA**

Notice is hereby given of the filing of a declaration by Walt Opaska, which is
attached to this notice.

RESPECTFULLY SUBMITTED this 3rd day of November, 2016.

TIMOTHY A. LA SOTA, PLC

By: /s/ Timothy A. La Sota

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 2016, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the District of Arizona by using the appellate CM/ECF system.

I certify that all counsel who are registered CM/ECF users will be served by the appellate CM/ECF system.

By: /s/ Timothy La Sota
Timothy A. La Sota

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Arizona Democratic Party

Plaintiff,

v.

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

Defendants.

Case No. CV-16-03752-JJT

**DECLARATION OF WALT
OPASKA IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING
ORDER AND/OR
PRELIMINARY INJUNCTION**

Under 28 U.S.C. § 1746, I, Walt Opaska, declare as follows:

1. I am over 18 years of age and am a resident of Maricopa County, Arizona.
2. I am a duly licensed attorney in the state of Arizona since 2004, and I serve as in-house counsel at a software company in the Phoenix area. I have personal knowledge of the matters set forth and can competently testify to their truth.

1 2. I serve as Second Vice Chairman of a group called the Arizona Republican
2 Lawyers Association and been a board member since the group was founded in 2009. Since
3 its formation, the Arizona Republican Lawyers Association has been responsible for
4 Republican poll watching efforts.

5 3. The Arizona Republican Party delegates the poll watching functions to the
6 Arizona Republican Lawyers Association. Though the Arizona Republican Lawyers
7 Association may consult with the Arizona Republican Party and works in concert with the
8 Arizona Republican Party on election day, the Arizona Republican Lawyers Association is
9 an independent group and has significant autonomy in conducting its poll watching efforts.

10 4. I am personally responsible for training the "poll watchers." Poll watchers are
11 formally appointed by the respective county chairs of the Republican Party and are allowed
12 by Arizona law to be inside the polling places on election day. Neither the Arizona
13 Republican Party nor the Arizona Republican Lawyers Association has any program to train
14 persons who are not official, statutory poll watchers who are credentialed as such pursuant
15 to statute.

16 5. Arizona law prescribes that a non-electioneering buffer extending for seventy-
17 five feet in each direction from each polling place be established. Access to the area within
18 the seventy-five foot limit, including the polling place, is strictly limited to voters, elections
19 officials, officially appointed poll watchers and a few other statutorily allowed groups of
20 people.

21 6. I have participated in the Arizona Republican Party's poll watching efforts since
22 2006, including conducting training on poll watching. I have participated in these efforts
23 in every general election since 2006. I have had primary responsibility for the Arizona
24 Republican Lawyers Association's poll watching efforts on behalf of the Arizona
25 Republican Party since the 2010.

26 7. Prior to each general election, I conduct several training sessions. These training
27 sessions focus on what poll workers can or should do, and what they can do. I have
28 conducted training sessions October 26, 2016, November 1, 2016, and November 2, 2016.

1 At each of these sessions, the document attached as Exhibit has been distributed to all
2 attendees that have received credentials as poll watchers. (Exhibit A, Arizona Republican
3 Party's Poll Watching Manual, 2016 General Election.) These three sessions have been
4 attended by approximately 200 to 300 people total.

5 8. The poll watching training I conduct has remained substantively the same for the
6 last several election cycles, with two exceptions. One exception is that we review our
7 training materials every cycle in order to make sure they are reflective of current law. The
8 other part that has been added to the training manual this election is the part on the so-called
9 "ballot harvesting" provisions of House Bill 2023, which was passed by the Arizona
10 Legislature and signed by the Governor earlier this year.

11 9. The ballot harvesting provisions of HB 2023 have been upheld by the United
12 States District Court and the Ninth Circuit Court of Appeals. These provisions limit the
13 ability of individuals to collect early ballots from voters. Generally, unless the person is a
14 family member or caregiver, the person may not collect early ballots from voters.

15 10. This new law has generated significant media interest, and poll watchers ask me
16 how to respond to this new law, and specially what to do if they see what they believe is a
17 crime being committed by a person violating the provisions of HB 2023.

18 11. In addressing HB 2023, as Exhibit A indicates, we advise poll watchers that they
19 may take certain non-invasive steps to report or document criminal activity if they think
20 they are witnessing unlawful ballot harvesting. We also tell poll watchers, both verbally at
21 our training sessions and in bold writing in the Poll Watching Manual, "You should NEVER
22 confront the person dropping off the ballots, do anything that might disrupt the orderly
23 conduct of the election, or potentially place you in risk of harm...voters [must] not perceive
24 your actions to be intimidating."

25 12. Our goal in providing this advice is to ensure that voters remain free of anything
26 that could reasonably be perceived as intimidation or threatening behavior, and yet at the
27 same provide guidance for individuals who may in fact be witnessing a crime in progress,
28 and how to respond to that.

1 13. In the past, members of the Arizona Democratic Party and groups affiliated with
2 the Arizona Democratic Party such as the Arizona Advocacy Network, have accused the
3 Arizona Republican Party conducting similar poll watching activities of attempting to
4 intimidate voters.

5 14. One example of these types of accusations occurred in the 2012 general election,
6 as the attached article from Cronkite News Online attests to. (Exhibit B, "Despite concerns,
7 no reports of problems with Arizona poll watchers", 11/6/12, Cronkite News Online,
8 [http://cronkitenewsonline.com/2012/11/despite-advocates-concerns-no-reports-of-](http://cronkitenewsonline.com/2012/11/despite-advocates-concerns-no-reports-of-problems-with-arizona-poll-watchers/)
9 [problems-with-arizona-poll-watchers/](http://cronkitenewsonline.com/2012/11/despite-advocates-concerns-no-reports-of-problems-with-arizona-poll-watchers/)).

10 15. After the 2012 general election, even officials of the Arizona Democratic Party
11 admitted that the concerns they had expressed prior to the election were unfounded.

12 16. In my now ten years of participating in poll watching in Arizona, I have yet to
13 hear of a credible report of a voter at an Arizona polling place being subject to threats,
14 coercion or intimidation by a Republican poll watcher. Our poll watching program is
15 designed to prevent just that, and it is my job to ensure that the program effectively does
16 that. It is designed to respect everyone's constitutional rights by legitimately providing
17 additional "eyes" to ensure that our voting process is a fair and transparent one.

18
19 I declare under penalty of perjury that the foregoing is true and correct to the best of my
20 knowledge and belief. I am aware that if any of the foregoing statements made by me are
willfully false, I am subject to punishment.

21 DATED: November 3, 2016

By: 

Walt Opaska

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 2016, I electronically filed the foregoing document and attachments with the Clerk of the Court for the United States District Court for the District of Arizona by using the appellate CM/ECF system.

I certify that all counsel who are registered CM/ECF users will be served by the appellate CM/ECF system.

By: /s/ Timothy La Sota
Timothy A. La Sota

EXHIBIT A

ARIZONA REPUBLICAN PARTY POLL WATCHER'S MANUAL

2016 General Election

QUESTIONS/INCIDENT REPORTING

Arizona Republican Lawyers Association
(AzRLA) Hotline: 1-888-680-6816

AZGOP Incident Report: <http://az.gop/edo/>

I. INTRODUCTION.

The purpose of our Republican poll watching program is to assure an honest and fair election. We are proud that our poll watching program helps to protect the right of every eligible person to vote, and to have his or her vote counted. Our program is carried out by volunteer poll watchers known as Party Representatives who are appointed by the County Chairmen. To prepare themselves for this important role, Poll watchers should read this Manual carefully and attend a training session prior to the election.

II. GENERAL INSTRUCTIONS.

A. **Republican Stand Against Voter Intimidation.** Our poll watchers help to make sure that election officials follow proper procedures both prior to and on Election Day, which protects the rights of all voters, regardless of party affiliation. We need to conduct ourselves in a way that provides no support for politically motivated allegations that our mere presence or the conduct of our legitimate activities somehow “intimidates voters.” We must do our best to assure that no voter feels unwelcome or insecure as a result of anything that we do.

Since our efforts are primarily directed toward election officials, *poll watchers should have little, if any, direct contact with voters.* If we see anything improper, we should quietly bring this to the attention of the Election Board (Marshall or Inspector) and ask them to take

appropriate steps to correct the situation and report it via the AzRLA Hotline or the az.gop/edo site. However, sometimes a situation might arise which cannot be completely shielded from the voters. For example, a third party representative might try to get into an argument with the Republican representative in order to interfere with our activities. This can usually be resolved simply by asking the third party representative to step outside to discuss his or her concerns. It is also possible that an election official at the polling place might react badly to a suggestion and cause a scene that could disturb voters. If you ever find yourself in such a situation, even if you are within your rights and have done nothing wrong, we recommend that you withdraw and call the AzRLA Hotline for guidance or backup, rather than remaining in a situation that could result in allegations against you or the party.

B. Equipment. On Election Day, poll watchers must have in their possession at all times the letter(s) of appointment signed by their COUNTY CHAIRMAN; and should be equipped with a clipboard with pen, a cell phone, and a copy of this Manual.

C. Work Periods. While we hope that poll watchers will work all day on Election Day – from before 6:00 a.m., when the polls open, until after 7:00 p.m., when they close – we appreciate any amount of time you are able to volunteer, even if only a couple of hours. For poll watchers who can only work for half of Election Day, we request that you work over the lunch hour, that is, from before 6:00 a.m. until about 1:00 p.m., or from 12:00 p.m. until after 7:00 p.m., in order to provide additional coverage during this very heavy voting period.

The busiest voting times are before work in the morning, over the lunch hour and after work. Because so many people are voting during these periods, it is especially important not to do anything that could disrupt the voting process. On the other hand, it is all the more important to insist that proper procedures be followed during these peak periods, when lots of votes could be affected.

D. Entering the Polling Place. When entering a polling place, you should have your letter of appointment completely filled in, including your own name and the name of the precinct, if necessary ready to hand the Inspector of the Election Board. Your "precinct inspections check list", which is described below, may also be visible. All other equipment should be inside a bag or briefcase.

E. Behavior. *Poll watchers should be polite and, as noted previously, should avoid confrontation whenever possible.* You are required to comply with all legal orders of the Inspector of the Election Board. On the other hand, you may insist upon your right to be present and observe the voting process as a duly appointed Republican Party Representative.

III. INSPECTION OF POLLING PLACES.

Attached as Exhibit A is a form entitled "Republican Poll Watcher's Precinct Inspection Checklist". This covers the most important things which you will need to check in order to assure that proper procedures are being followed at the polling place. Prior to Election Day, you should study the checklist carefully and read the statutory provisions that it refers to. ***Remember***

to be polite and non-confrontational and to address all questions or comments to the Inspector or, with the Inspector's permission, to other members of the Election Board. You should NEVER speak directly to the voters themselves or do anything that might disrupt the orderly conduct of the election.

IV. VOTE HARVESTING LAW.

In 2016, Arizona enacted H.B. 2023, now codified at A.R.S. § 16-1005(H)-(I), which limits who may possess another's early ballot. While this law was challenged in the courts, the Federal Court ruled in favor of the law on September 23, 2016, thereby making this law official and enforceable. H.B. 2023 provides:

- A person who knowingly collects (gain possession or control of) voted or unvoted early ballots from another person is guilty of a class 6 felony. This law does not apply to the following permitted exemptions: An election official, a United States Postal Service worker or any other person who is allowed by law to transmit United States mail is deemed not to have collected an early ballot if the official, worker or other person is engaged in official duties;
- A family member, defined as a person who is related to the voter by blood, marriage, adoption or legal guardianship;
- A household member, defined as a person who resides at the same residence as the voter;
- A caregiver of the voter, defined as a person who provides medical or health care assistance to the voter in a residence, nursing care institution, hospice facility, assisted living center, assisted living facility, assisted living home, residential care institution, adult day health care facility or adult foster care home;
- An election held by a special taxing district formed pursuant to title 48 for the purpose of protecting or providing services to agricultural lands or crops and that is authorized to conduct elections pursuant to title 48.

If you see someone dropping off a large number of ballots (i.e., more than three), please immediately inform the Inspector or another member of the Election Board. Please ask the Inspector to fill out an incident report. Additionally, please report the incident to the AzRLA hotline immediately.

You should NEVER confront the person dropping off the ballots, do anything that might disrupt the orderly conduct of the election, or potentially place you in risk of harm. If possibly, please take written notes on approximately how many ballots he/she dropped off, the physical characteristics of the person; and, if possible – and only while outside of the polling location –, get a picture of them or the license plate of their vehicle in the parking lot. It is important to remember that: (1) taking photographs/videos within the polling place is strictly forbidden; (2) you never put yourself in a potentially dangerous/risky/harmful situation; and (3) that voters do not perceive your actions to be intimidating.

V. INACTIVE VOTERS.

Prior to the election, the County Recorder has sent several letters to all voters. When these are returned as undeliverable, the Recorder places the voter on a separate list of so-called “inactive voters”. These are registered voters, and the statute provides that, if they come to the polling place, they “shall be allowed to vote”. However, they should be questioned by the Inspector and must “affirm” that they still reside at the same address shown in the registration. If so, they are allowed to cast a regular ballot. However, if their answers show that they have moved within the same precinct, they are to cast a “provisional ballot” (see below), and if they have moved to a different precinct, they are to be sent to their new precinct to vote a provisional ballot there, unless they moved after the close of registration (29 days prior to the election).

VI. EARLY BALLOTS.

Voters who fail to mail their early ballots early enough to assure that they will arrive at county headquarters in time to be counted (7:00 p.m. on Election Day) may bring them in person (or send them via an “agent” in compliance with the provisions of H.B. 2023) to any polling place in the county. A voter who brings in his/her unmarked early ballot may complete it at the polling place in lieu of turning it in to the Inspector and casting a provisional ballot. The statute requires early ballots received at the polling place to be deposited inside a secured compartment in the main ballot or in a separate sealed ballot box, which will be transported to county headquarters for processing.

Sometimes voters who have mailed in their early ballot will still come to vote in person, because they are not sure their ballot will be delivered on time. In some counties, anyone who comes in to vote at his/her polling place on Election Day and has received an early ballot is required to vote a provisional ballot. In these counties, such voters will be allowed to cast a provisional ballot, which will not be counted if their early ballot was received on time.

In other counties (e.g. Maricopa County), if the County Election Department has not received the voter’s Early Ballot by a certain day, the voter is allowed to cast a regular ballot at his/her assigned polling place and his/her Early Ballot will not be counted if later received.

VII. VOTER IDENTIFICATION

Before receiving a ballot, voters must show proof of identity at the polling place. *The information on the proof of identity must match the information in the precinct register in order to vote a regular ballot.* The proof of identity may be: (a) one form of identification with the voter’s name, address, and photograph (List 1); (b) two different forms of identification with the voter’s name and address (List 2); or (c) a combination of the first two (List 3).

A voter who is unable to show proof of identity shall receive a conditional provisional ballot (not just a provisional ballot) as described below.

Voter Identification List 1

Acceptable forms of identification with name, address, and photo (one required) include:

- Valid Arizona driver's license
- Valid Arizona non-operating identification license
- Tribal enrollment card or other form of tribal identification
- Valid United States federal, state, or local government issued identification

(A student ID, credit card, U.S. Military identification without an address, and/or passport are not an acceptable form of identification for List 1)

Voter Identification List 2

Acceptable forms of identification with name and address (two required) include:

- Utility bill dated within 90 days of the election
- Bank statement dated within 90 days of the election
- Valid Arizona vehicle registration
- Indian census card
- Property tax statement of the voter's residence
- Tribal enrollment card or other form of tribal identification
- Vehicle insurance card
- Recorder's Certificate
- Valid United States federal, state, or local government issued identification, including a voter registration card issued by the county recorder
- Any mailing to the elector marked "Official Election Material" with the voter's name and address on it.

Voter Identification List 3

Acceptable combinations of identification include:

- Any valid photo identification from List 1 in which the address does not reasonably match the precinct register accompanied by a non-photo identification from List 2 in which the address does reasonably match the precinct register;
- U.S. Passport without address and one valid item from List 2; or
- U.S. Military identification without address and one valid item from List 2

(A student ID and/or a credit card are not an acceptable form of identification for List 2 or 3)

A voter who identifies himself or herself as a member of a federally recognized Native American tribe and who does not provide the identification described above may receive a *provisional ballot* upon presenting one form of tribal identification that bears the voter's name. A voter who

identifies himself or herself as a member of a federally recognized Native American tribe but does not present the identification described above or a form of tribal identification that bears the voter's name shall receive a *conditional provisional ballot*.

VIII. PROVISIONAL VOTING.

There are several circumstances under which a ballot cast at the polling place must be kept separate and not mixed with other ballots until it can be verified at county election headquarters.

A Voter shall receive a **provisional ballot** if:

- (i) The voter has been issued an Early Ballot (see Early Ballot section above),
- (ii) the voter's name does not appear on the signature roster or inactive list, and the voter has not moved,
- (iii) the voter has moved within the precinct,
- (iv) the voter has moved into a new precinct within the same county,
- (v) the voter has changed his or her name, or
- (vi) the voter is challenged at the polling place.

In the counties which require votes be cast at the polling location assigned specifically to the voter's voting precinct, *if a voter casts a provisional ballot in the wrong polling location, it is likely that the vote will not be counted*. While the voter is permitted to vote a provisional ballot, the election official should notify the voter of the likelihood the vote will not be counted unless it is cast at the correct polling location and redirect the voter to his/her correct polling location.

A Voter shall receive a **conditional provisional ballot** if:

- (i) the voter has not provided sufficient identification at the polling location,

In order for a conditional provisional ballot to be counted, the voter must provide proof of identification to the county recorder's office by 5:00 p.m. on the fifth business day after the election. Conditional provisional ballots and provisional ballots must be kept separate.

Provisional ballots must not be mixed with the regular ballots but is to be placed in a separate sealed envelope and sent to county election headquarters. The county recorder uses the information on the provisional ballot envelope to verify whether the voter is validly registered and eligible to vote, and has not voted another ballot. If so, and if the voter's signature on the provisional ballot envelope matches the signature on the voter registration record, the ballot will be counted. Conditional provisional ballots will not be verified until identification is provided.

IX. CHALLENGING PROCEDURE.

As a general rule, we do not challenge voters. If you notice a problem, please let the Inspector know and/or call the AzRLA hotline if you cannot resolve the problem immediately. **Do Not challenge a voter or address any voters directly.**

Grounds for Challenging:

1. The Voter has Moved.
2. That the person is not the person whose name appears on the register.
3. That the person is not a qualified registrant under A.R.S. §16-101, which requires that he:
 - a. Must be a citizen of the US. (This should not used as a ground for challenging without documentary proof of non-citizenship.)
 - b. Must be at least eighteen years old.
 - c. Must have been a resident of Arizona for twenty-nine days preceding the election.
 - d. Must be able to write his name or make his mark, unless prevented from so doing by physical disability.
 - e. Must not have been convicted of treason or a felony, unless restored to civil rights.
 - f. Must not have been adjudicated an incapacitated person.

X. OTHER THINGS TO CONSIDER.

1. Poll watchers working on the morning shift should be present at a polling place prior to 6:00 a.m. to observe the process of setting up the voting equipment and opening the polls. It is also important for poll watchers to be present at 7:00 p.m. when the polls close. Anyone in line to vote at that time should be allowed to cast his or her ballot. Poll watchers may also wish to accompany the ballot boxes as they are transported from the polling places to county headquarters or other designated collection points.

2. If any election official intentionally fails or refuses to carry out his duties after you have specifically corrected him or explained the proper procedures, refer him to A.R.S. §16-1010 and submit a report via the az.gop/edo site or calling the AzRLA Hotline

3. Remember that advisors are available at the AzRLA Hotline which has been provided to you to help you either by phone or in person if necessary. Be sure to call the AzRLA Hotline or submit an incident report at az.gop/edo immediately if you have any questions or problems that you are unable/not equipped to resolve yourself.

REPUBLICAN POLL WATCHERS
Precinct Inspection Checklist

If you see any of the following occurring, please report immediately to the Inspector and the AzRLA Hotline and/or az.gop/edo site:

1. "Electioneering" occurring within 75' of the front door
2. Anyone within 75' of the front door (including persons inside the polling place) other than voters on business, Inspector, Judges, Clerks, the Marshal, or party representatives.
3. The Election Board is not checking for proper identification.
4. Voters are not being give conditional provisional ballots if they do not have proper identification
5. Voters are not being give provisional ballots if:
 - a. The voter has been issued an Early Ballot (see Early Ballot section above),
 - b. the voter's name does not appear on the signature roster or inactive list, and the voter has not moved,
 - c. the voter has moved within the precinct,
 - d. the voter has moved into a new precinct within the same county,
 - e. the voter has changed his or her name, or
 - f. the voter is challenged at the polling place.
6. Provisional ballots are being placed in the ballot machine with non-provisional ballots;
7. If the voter is at the wrong precinct, the voter is not being told his provisional ballot will not be counted.
8. Someone drops off more than three Early Ballots at the polling location.
9. The wait to cast a ballot is more than 15 minutes
10. Any disruptions or anything else odd or unusual.

QUESTIONS/INCIDENT REPORTING

Arizona Republican Lawyers Association
(AzRLA) Hotline: 1-888-680-6816

AZGOP Incident Report: <http://az.gop/edo/>

EXHIBIT B

Cronkite News

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Despite concerns, no reports of problems with Arizona poll watchers

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Tuesday, Nov. 6, 2012

By Natasha Khan and AJ Vicens

Cronkite News

Related content:



"Who Can Vote?" was produced by [News21 \(http://news21.com/\)](http://news21.com/), a national investigative reporting project involving college journalism students across the country and headquartered at the Walter Cronkite School of Journalism and Mass Communication at Arizona State University. News21 is funded by the Carnegie Corporation of New York and the John S. and James L. Knight Foundation.

For the complete Voting Rights in America project, visit [http://votingrights.news21.com. \(http://votingrights.news21.com/\)](http://votingrights.news21.com. (http://votingrights.news21.com/))

GUADALUPE – After Margarita Cota voted Tuesday in this mostly Latino community, she sat outside a market and talked politics with friends.

She said she barely noticed the half-dozen people – partisan poll watchers, along with federal election monitors – who kept an eye on those casting ballots.

"They're just sitting there quietly, not doing anything," said Cota, Guadalupe's former mayor. "It didn't bother me."

Cota, other voters and election workers at several precincts in majority-Latino areas of Phoenix, Tempe and Guadalupe said the presence of poll watchers wasn't a big deal.

Democrats and left-leaning voter-rights groups had raised concerns that poll watchers mobilized by conservative groups like True the Vote nationally and Verify the Vote in Arizona would lead to voter intimidation and vote-suppression.

But Sam Wercinski, head of the Arizona Advocacy Network, which trained and mobilized hundreds of its own poll watchers in response, said he didn't hear any reports of problems with poll watchers beyond isolated reports of people being rude.

"It doesn't seem as bad as we prepared for," Wercinski said.

Verify the Vote co-founder Jennifer Wright said she didn't hear of any problems with the poll watchers that her group trained and offered to the political parties. That lack of drama validates what Verify the Vote was trying to do, she said.

"The reason why we have poll watchers is showing that by having people there problems don't occur," she said. "That's the way voting should be."

Tim Sifert, a spokesman for the Arizona Republican Party, said he had "zero" reports of issues with poll watchers from any group.

"This is one of those no-news-is-good-news stories," Sifert said. "We have not heard anything at the Maricopa County level or any of the other counties about problems."

Joaquin Rios, research director and election protection coordinator for the Arizona Democratic Party, said the party was investigating a few minor incident involving poll watchers but added that there weren't nearly as many problems as expected.

"It was not the mass onslaught we were expecting," Rios said.

Barry Buhan was appointed as a poll watcher by the Maricopa County Republican Party Tuesday and worked most of the morning at Joseph Zito Elementary School in west Phoenix. He said he volunteered because wanted to ensure everybody's vote counts.

"That's all I'm there to do, to make sure either way," Buhan said mid-Tuesday morning. "So far I'm seeing it's run very well."

Linda Grim, a poll watcher trained by the Arizona Advocacy Network and appointed by the Democratic Party, said she saw minor issues but nothing major at the polling place at Peralta Elementary School in west Phoenix.

"Nothing I'm seeing that the poll workers can't take care of," Grim said.

The U.S. Justice Department deployed more than 780 federal observers across jurisdictions in 23 states, including Maricopa and Pima counties in Arizona. Their goal: ensuring that states comply with the Voting Rights Act of 1965, which bars election procedures that have racist or discriminatory effects.

Dena Iverson, a Justice Department spokeswoman, declined to comment Tuesday on what the federal monitors found nationally or in Arizona.

During a news conference Tuesday afternoon held in Washington, D.C., by Election Protection, a coalition of voting and civil rights groups, leaders said True the Vote didn't come close to mobilizing the 1 million poll watchers it claimed to be training.

"I think that True the Vote certainly attempted to have a significant effect on this election but ... they weren't as strong as they were claiming to be," Jon Greenbaum, chief counsel and senior deputy director for the Lawyers' Committee for Civil Rights, which is part of the coalition.

Greenbaum said in some cases election officials stopped True the Vote's efforts. For instance, he said, in Ohio's Franklin County election officials banned True the Vote from registering more than two dozen poll watchers because its applications weren't filed correctly.

"They sort of bungled it along the way," he said.

True the Vote didn't respond to multiple requests for comment Tuesday. But Catherine Engelbrecht, the group's founder, told conservative political website Brietbart.com that its poll watchers were blocked because candidates who originally sponsored the poll watchers for placement at the polling sites later rescinded their sponsorship.

Editor's Note: Cronkite News reporter Maryann Battle contributed reporting from Washington.



(<http://cronkitenews.asu.edu/assets/images/12/11/6-pollwatchers-buhan-full.jpg>)

Barry Buhan, a poll watcher registered with the Republican Party, stands outside a polling place at a west Phoenix school. "I'm just here to make sure everything runs smoothly," he said.

Photo by Natasha Khan



(<http://cronkitenews.asu.edu/assets/images/12/11/6-pollwatchers-woman-full.jpg>)

Linda Grim, a poll watcher registered with the Democratic Party, stands outside a polling place in west Phoenix.

Photo by Natasha Khan



(<http://cronkitenews.asu.edu/assets/images/12/11/6-pollwatchers-app-full.jpg>)

Sam Wercinski, executive director of the Arizona Advocacy Network, demonstrates an app the group uses to confirm the correct polling places for voters.

Photo by AJ Vicens

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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 NEVADA STATE DEMOCRATIC PARTY,

Case No. 2:16-cv-02514-RFB-NJK

7 Plaintiffs,

ORDER

8
9 v.

10 NEVADA REPUBLICAN PARTY, et al.,

11 Defendants.
12
13

14 On October 30, 2016, Plaintiffs Nevada State Democratic Party filed a complaint alleging
15 present and planned intimidation of voters in the 2016 general election in violation of federal law.
16 ECF No. 1. On November 1, 2016, Plaintiff filed an Emergency Motion for a Temporary
17 Restraining Order. ECF No. 6. Summons were executed on Defendants Nevada Republican Party
18 and Donald J. Trump for President, Inc., on November 1, 2016, and those Defendants appeared at
19 a hearing on November 2, 2016.

20 Summons was executed against Defendant Stop the Steal on November 2, 2016. ECF No.
21 43. Summons was executed against Defendant Roger J. Stone, Jr. on November 2, 2016. ECF No.
22 44.

23 A hearing regarding ECF No. 6 Emergency Motion for a Temporary Restraining Order as
24 to Defendant Stop the Steal will be held on Friday, November 4, 2016 at 3:00 PM in Las Vegas
25 Courtroom 7D before Judge Richard F. Boulware, II.

26 Defendants Stop the Steal, Inc. and Roger J. Stone, Jr, **SHALL APPEAR at this hearing,**
27 prepared to respond orally to the Motion for a Temporary Restraining Order.
28

1 Defendants Stop the Steal and Roger J. Stone, Jr are **ORDERED** to respond in writing to
2 the Motion for a Temporary Restraining Order by on November 3, 2016. Defendants are further
3 **ORDERED** to attach to their responsive pleading the following information:

4 a.) Training material provided to any individuals volunteering with the Defendants or
5 organized by the Defendants as poll watchers, poll observers, exit pollsters or any other
6 similarly tasked individuals. This includes, but is not limited to, the information sent
7 to “registered exit pollers” in Nevada, as represented in Exhibit 5 to Plaintiff’s Motion
8 for a Temporary Restraining Order – “Stop the Steal website home page”.

9 This attachment may be filed UNDER SEAL based upon a representation and supporting
10 legal authority that it may contain proprietary information.

11 Plaintiffs and Defendants Stop the Steal, Inc. and Roger J. Stone, Jr, **SHALL APPEAR**
12 at a hearing on Friday November 4, 2016 now set by this Court for 3:00 PM in Courtroom 7D.

13 Plaintiffs **SHALL SERVE** a copy of this Order on Defendants, no later than 11:00 AM on
14 Friday, November 4, 2016, but this order will be in effect even absent such service by precisely
15 11:00 AM.

16
17 **DATED:** November 3, 2016.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE