

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

OHIO DEMOCRATIC PARTY,)
)
Plaintiff,) Judge Gwin
) Cleveland, Ohio
vs.)
) Civil Action
OHIO REPUBLICAN PARTY,) Number 1:16CV2645
)
et al,)
)
Defendants.

- - - - -
TRANSCRIPT OF PROCEEDINGS HAD BEFORE
THE HONORABLE JAMES GWIN
JUDGE OF SAID COURT,
ON FRIDAY, NOVEMBER 4, 2016
- - - - -

Official Court Reporter: Shirle M. Perkins, RDR, CRR
U.S. District Court
801 West Superior, #7-189
Cleveland, OH 44113-1829
(216) 357-7106

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

1 APPEARANCES:

2 For the Plaintiff:

STEVEN S. KAUFMAN, ESQ.,
CHARLES COOPER, ESQ.,
Kaufman & Company
Suite 1710
1001 Lakeside Avenue
Cleveland, OH 44114
(216) 912-5500

DAWN SMALLS,
GREG DOBINSKY, ESQ.,
Boies Schiller & Flexner -
New York
7th Floor
575 Lexington Avenue
New York, NY 10022
(212) 446-2300

DONALD J. McTIQUE, ESQ.,
McTigue & McGinnis
545 East Town Street
Columbus, OH 43215
(614) 263-7000

N. ZACHARY WEST, ESQ.,
Ohio Democratic Party
340 East Fulton Street
Columbus, OH 42315
(614) 221-6563

17 For the Defendants:

MARIA ARMSTRONG,
CHRISTOPHER M. ERNST, ESQ.,
Bricker & Eckler
100 South Third Street
Columbus, OH 43215
(614) 227-8821

22 For Donald J. Trump for
President, Inc.:

CHAD A. READLER
Jones Day -Columbus
Suite 600
325 John H. McConnell Blvd.
P.O. Box 165017
Columbus, OH 43216-5017
(614) 469-3939

1 FRIDAY SESSION, NOVEMBER 4, 2016, AT 10:06 A.M.

2 THE COURT: We're here on Case 2016CV2645,
3 Ohio Democratic Party versus Ohio Republican Party and
4 others.

10:07:02 5 The case is here today. The Court had received an
6 application for a temporary restraining order, together with
7 a preliminary injunction.

8 The Court had set this up for a hearing. It was
9 somewhat unclear as to whether it would be a preliminary
10:07:23 10 injunction hearing and/or whether it would strictly go
11 forward as to an argument on the restraining order request.

12 But, given the time line, it would seem in some ways,
13 that it's kind of a distinction -- it's a distinction
14 without a real difference because of the fact that if a
10:07:43 15 restraining order was issued, given the 14-day period, it
16 would largely be over anyways in terms of the issues through
17 the election. So I had not originally envisioned that there
18 would be witnesses, but we got a request, I believe
19 yesterday afternoon, and I thought it was from somebody on
10:08:05 20 the Ohio Republican Party making inquiry generally as to
21 whether witnesses would be permitted. And we reached out, I
22 believe, to both parties, my Deputy did, asking whether they
23 had believed witnesses would be appropriate and whether they
24 had any.

10:08:29 25 So I'm kind of -- and I've been advised that there has

1 been some witnesses identified as potential.

2 Do you have any comment on that, Mr. Kaufman, in terms
3 of whether this should go forward on the restraining order
4 and affidavits or whether it should go forward with
10:08:49 5 witnesses or some combination?

6 MR. KAUFMAN: Your Honor, thank you very much.

7 And it was our understanding that we were going to go

8 forward on a temporary restraining order. We certainly

9 intend to rely upon the declarations that we filed in

10:09:08 10 support of that. We do not intend to duplicate those with

11 live witnesses, although we have a witness to supplement the

12 information that we provided in the declarations.

13 I understand the Court's point, but we're -- we're

14 here with the evidentiary record that we'd like to present

10:09:26 15 to the Court, and then argue, and any additional witnesses

16 we thought were part of the TRO process, but we don't have

17 to call a witness for purposes of our TRO application. So

18 that is really where we're coming from today.

19 THE COURT: Okay.

10:09:44 20 Let me ask Mr. Ernst, I mean do you have a preference
21 one way or the other?

22 MS. ARMSTRONG: Your Honor, Maria Armstrong
23 with Bricker & Eckler as well.

24 We were simply trying to comply with the Court's order

10:09:58 25 and tried to bring a witness. We do have witnesses here.

1 She is willing to and prepared to testify here as to the TRO
2 and the injunction.

3 THE COURT: Okay. The reason being, of
4 course, is that temporary restraining orders almost never
10:10:13 5 have evidentiary witnesses. Frequently, preliminary
6 injunction will be advanced and consolidated with the
7 evidentiary, you know, record created with witnesses, but
8 it's -- it's somewhat unusual, typically for temporary
9 restraining orders.

10:10:33 10 MS. ARMSTRONG: Yes, your Honor.

11 THE COURT: I'll afford the parties an
12 opportunity, if they have witnesses, but I'm not sure it's
13 necessary. But, do you have a position one way or the
14 other, Readler?

10:10:49 15 MR. READLER: No, your Honor. Thank you for
16 hearing us today. We do not have witnesses.

17 THE COURT: Okay.

18 MR. READLER: So I will defer to our
19 co-parties.

10:10:57 20 THE COURT: Okay.

21 Well, why don't we go forward. If you feel a need to
22 offer witnesses, you know, we'll receive those, and -- but,
23 let me ask Mr. Kaufman or anybody else from the Plaintiff's
24 side who wants to make opening statements.

10:11:19 25 MR. KAUFMAN: Yes, your Honor. I want to

1 introduce Dawn Smalls, who's lead counsel for the
2 Plaintiffs.

3 THE COURT: Okay.

4 MR. KAUFMAN: And she's going to be presenting
10:11:27 5 the argument today. Mr. Greg Dobinsky is with her from her
6 firm, Mr. Don McTigue is also counsel of record and will
7 probably address some issues and possibly a witness.
8 Mr. Chad Cooper's here from my firm and Zack West may very
9 well present a witness.

10:11:43 10 THE COURT: This case is kind of the Full
11 Employment Bill for attorneys.

12 (Laughter.)

13 MR. KAUFMAN: No comment, your Honor.

14 THE COURT: Does anybody here practice in
10:11:51 15 Chicago that hated city?

16 (Laughter.)

17 THE COURT: Well, they sometimes -- there's a
18 local rule in Chicago courts that no rulings are ever made
19 on paper submissions. And so if you move the Court for an
10:12:11 20 additional three days to answer a complaint, there has to be
21 a hearing, and they refer to it as the Full Employment for
22 Attorney Rule because it keeps people at the courthouse.

23 (Laughter.)

24 THE COURT: So why don't you go ahead, Ms.
10:12:27 25 Small.

1 MR. KAUFMAN: Thank you, your Honor.

2 MS. SMALLS: Thank you, your Honor.

3 THE COURT: And it might be better for the
4 Court Reporter if you would go to the podium.

10:12:36 5 MS. SMALLS: Great. Okay.

6 OPENING STATEMENTS ON BEHALF OF THE PLAINTIFF

7 MS. SMALLS: Your Honor, Plaintiffs are here
8 today to enjoin what we believe is a concerted effort of
9 voter intimidation; specifically against nonwhite and
10:13:03 10 minority voters that Defendants believe support our
11 Plaintiff's candidates and Plaintiff's initiatives.

12 We believe that we have established on the strength of
13 our papers that we have a likelihood of success on our claim
14 under the Voting Rights Act, Section 11(b), as well as the
10:13:33 15 Ku Klux Klan Act, which both were established to assure that
16 all voters, but specifically voters of color and
17 African-Americans, were able to exercise unencumbered one of
18 the most fundamental rights; the right to vote.

19 Defendants have acted in concert to broadly encourage
10:13:56 20 their supporters to come from other parts of the state,
21 rural, exurban and suburban parts of the city to descend on
22 urban centers where they believe that there are high
23 concentrations of nonwhite voters.

24 THE COURT: In the, you know, the opposition
10:14:15 25 to the temporary restraining order, it sounds like Defendant

1 Republican Party makes the argument that evidence against it
2 is relatively minimal, even if there's significant evidence
3 against the other Defendants.

4 MS. SMALLS: And --

10:14:35 5 THE COURT: What specifically do you think --
6 other than the general notion that there will be a
7 coordination between the Trump Campaign and the National and
8 State Parties, what more specific evidence do you have as to
9 the State Party?

10:14:52 10 MS. SMALLS: Thank you, your Honor.

11 The state -- the distinction of the State Party is
12 trying to distinguish between the National Party and the
13 Trump Campaign.

14 T-HE COURT: They're all separate
10:15:03 15 institutions.

16 MS. SMALLS: They are, that have joint
17 fundraising agreement, that live in the same campaign
18 offices, that are inextricably coordinated as part of a
19 coordinated campaign. And we would offer that you cannot
10:15:21 20 distinguish the State Party from the efforts of the National
21 Party and the Trump Campaign. Alternatively --

22 THE COURT: If they're not individually trying
23 to solicit people to harass voters --

24 MS. SMALLS: That --

10:15:36 25 THE COURT: -- what difference does the State

1 Party make?

2 MS. SMALLS: Right.

3 Well the -- under Ohio law, the State Party is
4 necessary to actually certify or appoint poll observers. So
10:15:49 5 they're a necessary party to this lawsuit, notwithstanding.

6 THE COURT: Well, I'm still not sure I --
7 where that goes. So they certified the -- what is it, one
8 poll watcher from the Democrats and one from the Republicans
9 at each polling location?

10:16:04 10 MS. SMALLS: I'm sorry. I didn't understand
11 the question.

12 THE COURT: I thought the -- so do the -- does
13 the State Republican Party and the State Democratic Party
14 each certify one poll observer for each location?

10:16:20 15 MS. SMALLS: I think it's more than that.
16 But, they -- they each have the ability to certify poll
17 observers for each polling.

18 THE COURT: But, you're not really concerned
19 about that, right?

10:16:30 20 MS. SMALLS: Well, we want to make sure that
21 the poll observers are properly trained and are not
22 challenging or questioning voters' ability to be there. I
23 mean the Ohio law specifically prescribes what is proper
24 activity for a poll observer.

10:16:44 25 And it's not as, you know, the head of the --

1 Republican head of the Board of Elections called being watch
2 dogs. We've already had incidences of people showing up to
3 early vote sites calling themselves poll observers or --

4 THE COURT: Were they people certified by the
10:17:03 5 State Republican Party?

6 MS. SMALLS: They were not because they were
7 turned away. But, this is -- this gets to the crux of why
8 we're here.

9 THE COURT: I guess I thought your principal
10:17:15 10 argument was that state law gave the Republican Party and
11 the Democratic Party the ability to appoint poll observers
12 and that those poll observers sufficiently and accurately
13 avoided election fraud and that the real concern was people
14 in addition to those poll observers interfering with voters
10:17:42 15 attempt to vote.

16 MS. SMALLS: I think it's two-fold.

17 So you're correct. There is a -- a very large concern
18 about people that are outside of the official certified poll
19 observers, that they not be encouraged to come to polling
10:18:01 20 locations, that they not be told that they're poll observers
21 and watch dogs, and that they are somehow deputized to
22 question and challenge people that do not look like them
23 about whether they have the right to vote. I think it's the
24 second concern -- sorry.

10:18:17 25 THE COURT: What specific injunction are you

1 seeking against the people who have been designated as poll
2 observers?

3 MS. SMALLS: Well, we would ask the Court to
4 enjoin any -- any activity that would be seen to harass or
10:18:37 5 intimidate voters. They are entitled to observe. They are
6 entitled to go to the Board of Elections official and ask
7 questions. They are not entitled to go up to individual
8 voters, but they don't like the looks of, and ask whether
9 they have a right to be there.

10:18:57 10 THE COURT: Okay.

11 So what you're seeking then is an injunction against
12 those -- against any designated poll worker from doing any
13 of that?

14 MS. SMALLS: Yes.

10:19:11 15 Again, under Ohio law, they're observers. They're
16 not -- and there are very specific activities that are
17 allowed as an observer. Some of the things that Defendants
18 have encouraged their supporters to do, we believe, goes
19 beyond the permissible activities that are allowed as an
10:19:33 20 observer under Ohio law.

21 THE COURT: Okay.

22 MS. SMALLS: So -- sorry. I lost my train of
23 thought.

24 So as I said, the argument is two-fold. And back to
10:19:48 25 your question about the Ohio Republican Party, you know, the

1 Trump Campaign, unless they're joined before the candidates,
2 does not have the right to certify, or any poll observers.
3 It has to be done by the State Party. We have -- and I
4 think we offered in as an exhibit, you know, on the Trump
10:20:10 5 website saying, "Sign up as a poll observer," using the
6 language under Ohio law, "Sign up as a poll observer."
7 Where does that information go? I would proffer it goes to
8 the State parties, that they can contact these people and
9 presumably get them certified.

10:20:26 10 So the distinction between the State Party and the
11 Trump Campaign and the National Republican Party really is a
12 very false one for these purposes. They are a necessary --
13 they are playing a critical role in the Trump Campaign's
14 calls, calls to action to their supporters, to, you know, be
10:20:54 15 a watch dog at the polls.

16 I would also offer to your Honor that these are not
17 just citizens that are seeking to fulfill their civic duty.
18 These are people that are specifically reacting to the
19 racially tinged and racially charged language, and that
10:21:15 20 these are the people that are being fed to the State Party,
21 not, you know, Republicans of a normal year, that would feel
22 compelled to sign up as a poll observer, you know.

23 In our briefs, we talked about -- I think his name is
24 Steve Webb from Fairfield, Ohio, that thought he was
10:21:34 25 deputized to go around, and I'm going to look for anybody --

1 THE COURT: We're within the -- there's an
2 11-day designation, right, 11 days before the --

3 MS. SMALLS: That's correct, your Honor.

4 THE COURT: Has he been designated as a poll
5 observer by the State Republican --
10:21:48

6 MS. SMALLS: We have no way of checking that.
7 We did seek to check that beforehand, but that would be a
8 great question to ask.

9 So he has specifically deputized himself in response
10 to Trump's calls to action saying, "I'm going to hold them
11 accountable. I'm going to make sure that they're doing
12 everything right."

13 Who is this man? Has he been certified? Is he
14 qualified to be a poll observer? And it's one thing to have
15 these calls to action and know that these people -- and
16 incite them and encourage them to come and then look the
17 other way and say I don't know why they're there.
10:22:15

18 THE COURT: Okay.

19 With regard to the Trump Campaign, what's the -- going
20 forward, what would be the remedy you're seeking as to them?
10:22:33

21 MS. SMALLS: Well, I think the remedy that
22 we're seeking, again, to your first point, your Honor, about
23 these broad calls to action for people that -- Ohio law is
24 very clear about who can be a poll observer, who -- and what
10:22:54 25 the process is to be certified as a poll observer.

1 THE COURT: Yeah.

2 MS. SMALLS: Encouraging people -- sorry.

3 THE COURT: Is that the one we talked about
4 where you have to be designated 11 days before?

10:23:03 5 MS. SMALLS: That's right. So their continued
6 exhortations to try to get people that do not -- the 11 days
7 is done. We're a few days before the election. There
8 should be nobody -- we know who the poll observers are.

9 THE COURT: As far as you know, is that
10:23:18 10 sign-up page still existent?

11 MS. SMALLS: As far as I know. But we would
12 need to check that, your Honor.

13 THE COURT: Okay.

14 So your argument, some evidence that Trump is trying
10:23:31 15 to solicit people to --

16 MS. SMALLS: To troll the polls, yes.

17 THE COURT: Okay. So as to the remedy on
18 that, what would it be?

19 MS. SMALLS: Well, I think that we could, you
10:23:45 20 know, we have asked for an injunction that would make clear
21 to anybody that they are communicating with that only
22 specified people that have met the requirements under Ohio
23 law and have already been certified pursuant to the 11-day
24 requirement are allowed at the polls to watch and observe.

10:24:12 25 You know, people are also allowed to check the voter

1 list. We understand that, that any Ohio voter can go and
2 check the roles and see who's voted. We're not -- but,
3 solely for that purpose. They have to come in, look at the
4 list and leave; not talk to anybody and ask them and
10:24:28 5 challenge. Them, photograph them, I mean the things that
6 the Defendants are talking about doing are really, really
7 disturbing.

8 And so we have examples of their supporters in their
9 own words of what they are planning to do, which is in
10:24:45 10 contravention of the federal law and the protections under
11 the Voting Rights Act. So what we are specifically
12 asking -- you know, the head of the Board of Elections says
13 he's worried about instability on Election Day, given these
14 racially charged calls to action for these people that think
10:25:06 15 that they're going to act like vigilantes and take the law
16 into their own hands and ensure that the integrity of the
17 election -- -

18 THE COURT: So with regard to -- is it similar
19 relief you're seeking as to the Stone group?

10:25:22 20 MS. SMALLS: Yes. We're asking for them to
21 cease again with respect to Ohio. It is very clear that who
22 wants to, can't just show up and challenge another voter
23 about why they're there.

24 And so these increasing calls, the incitement to come
10:25:42 25 and look for people that don't look like them, we are -- we

1 are asking for an injunction to stop those calls and to make
2 clear that the only people that are allowed to show up at
3 the polls are people that are certified as official poll
4 watchers, and these are the prescribed activities that are
5 allowed as an observer.

6 THE COURT: Okay.

7 Is there anything else? Because I'll give counsel for
8 the Defense an opportunity to --

9 MS. SMALLS: I think my counsel has a few
10 points that he'd like to make about Ohio law if that's
11 permissible.

12 THE COURT: Well, it's usually one person each
13 side.

14 MS. SMALLS: Okay. All right.

15 THE COURT: So I'll give you a chance when we
16 finish if he wants to make an argument or suggest an
17 argument to you at that time.

18 MS. SMALLS: Okay. Thank you, your Honor.

19 THE COURT: Okay.

20 On behalf of the State Party?

21 OPENING STATEMENTS ON BEHALF OF THE DEFENSE

22 MS. ARMSTRONG: Thank you, your Honor. Maria
23 Armstrong on behalf of the State Party.

24 I'm feeling a little lonely over here, but I am joined
25 by my co-counsel, Christopher Ernst, from Bricker and

1 Eckler, and Dan Gibson from Bricker and Eckler as well.

2 THE COURT: Before you get started, Stone was
3 served; is that what you filed this morning?

4 MS. SMALLS: I did.

10:26:58 5 THE COURT: Has anybody here entered an
6 appearance or is anybody appearing on behalf of him? Okay.

7 Why don't you go ahead, Ms. Armstrong.

8 MS. ARMSTRONG: Thank you, your Honor.

9 It would be an understatement to say that this was an
10:27:14 10 unusual election. It would be an understatement to say it
11 was contentious. There have been problems on both sides,
12 but as the questions from your Honor pointed out already
13 this morning, it is unfair and inaccurate to lump all of the
14 Defendants in as one.

10:27:30 15 THE COURT: Let me ask -- so you designated
16 all the poll observers that you have already?

17 MS. ARMSTRONG: As of --

18 THE COURT: Already designated the poll
19 observers for each location?

10:27:44 20 MS. ARMSTRONG: Yes, sir, that was completed
21 11 days before the --

22 THE COURT: Did you -- are these kind of local
23 party people or did you use the Trump list to do that?

24 MS. ARMSTRONG: Poll observers come from a
10:27:57 25 wide variety of places, including all of the Republican

1 candidates and local.

2 THE COURT: Was there a coordination? Did you
3 receive any names from the Trump Campaign as recommended
4 poll observers?

10:28:10 5 MS. ARMSTRONG: There's a witness here to
6 testify to that, but yes.

7 THE COURT: I mean what -- what percentage of
8 the poll observers can you -- came at the request of Trump?

9 MS. ARMSTRONG: Your Honor, I couldn't tell
10:28:20 10 you.

11 THE COURT: Ball park? I mean 5 percent, 50,
12 75 percent?

13 MS. ARMSTRONG: I really have no idea. I
14 could ask our witness, she's here, if you want me to get
10:28:29 15 that information, but I really have no idea. I can --

16 THE COURT: It sounds like the Plaintiff's
17 complaint principally deals with limited number of polling
18 locations; specifically, it sounds like Cleveland, you know,
19 the major cities, and at issue where there may be a greater
10:28:49 20 Hispanic or African-American population. Any idea what
21 percentage of the poll observers in those locations were
22 suggested by Trump?

23 MS. ARMSTRONG: No, I don't know specifically.
24 Our witness may. I can tell you that we have poll observers
10:29:10 25 in every poll location identified. I can also tell you that

1 they were vetted and trained and duly certified by the
2 Boards of Elections in those counties.

3 THE COURT: So trained not to say anything to
4 anybody, right?

10:29:23 5 MS. ARMSTRONG: Very most definitely. They
6 were trained. There are training manuals we're prepared to
7 present here today that speak exactly to that.

8 THE COURT: Okay.

9 MS. ARMSTRONG: So, your Honor, a careful
10:29:36 10 examination of the Plaintiff's memorandum, their motion,
11 their complaint reveals not one single statement by the Ohio
12 Republican Party, not one tweet, not one campaign speech
13 that implicates anything the ORP has done in furtherance of
14 any kind of a voter intimidation effort here, including the
10:29:56 15 11th-hour affidavit that was filed by the Chairman of the
16 Ohio Democratic Party last night, even knowing that this was
17 a significant weakness. Pointed out in the Republican
18 Party's pleadings, that affidavit contains a number of
19 wonderful public policy statements but still not a single
10:30:14 20 statement as to what the ORP has done in furtherance of the
21 complaint of activities.

22 Your Honor, a political party simply cannot be held
23 liable for the hyperbole statements, words of the supporters
24 of its candidates, of its voters, of its contributors, or
10:30:33 25 even of its candidates.

1 THE COURT: I mean you -- I'm not sure who the
2 Ohio Republican Party is, but that's mostly Husted's
3 position, right, that there is not voter fraud in Ohio?

4 MS. ARMSTRONG: Husted is the Ohio Secretary
10:30:49 5 of State. He's an elected official. And, yes, he is
6 charged with the duty to make sure that Ohio elections run
7 correctly.

8 THE COURT: But, he's a Republican.

9 MS. ARMSTRONG: Yes, he is. So he is one of
10:31:00 10 the people who is represented by and assisted by the Ohio
11 Republican Party.

12 THE COURT: But, hasn't he stated that there
13 is no election fraud in Ohio?

14 MS. ARMSTRONG: I believe he has stated
10:31:10 15 something to that effect, yes.

16 THE COURT: I mean do you have any evidence
17 that there is?

18 MS. ARMSTRONG: Our witnesses do not. As Ms.
19 Small has referenced --

10:31:18 20 THE COURT: Has anybody ever been charged or
21 convicted in the last five years of identity theft or
22 election fraud?

23 MS. ARMSTRONG: I am not aware of any, your
24 Honor. And even in this particular election, in the last
10:31:31 25 few weeks when we've had early voting, we're not aware of

1 any.

2 THE COURT: Okay.

3 Well, we'll get an argument on behalf of Readler, but
4 it -- the Plaintiffs are suggesting that it was largely
10:31:45 5 racially tinged. And, you know, I suppose the question
6 becomes whether Hispanics or illegal immigrants are voting
7 at high numbers. But, you don't have any information that
8 they do?

9 MS. ARMSTRONG: Absolutely vehemently not. To
10:32:12 10 the contrary, our witness will be able to present the kind
11 of training and talk about these issues.

12 There is absolutely no evidence presented. There's no
13 indication, no intention, and Ohio laws do prohibit the
14 Republican Party from engaging in that type of activity.

10:32:27 15 THE COURT: So they've sought injunctive
16 relief as to apparently designated observers. What happens
17 at a polling location if a designated observer violates the
18 directions that have been given him or her regarding not
19 approaching electors?

10:32:52 20 MS. ARMSTRONG: First of all, observers are so
21 advised both by us in our training as well as by Secretary
22 of State manuals and laws. I think that would be up to the
23 individual poll workers who are deputized to be on scene and
24 eventually the Board of Elections.

10:33:09 25 THE COURT: Well, what would happen if

1 somebody starts accosting voters, or demanding
2 identification, or demanding that the people submit a
3 provisional ballot or something of that nature? What would
4 happen to the particular polling location?

10:33:29 5 MS. ARMSTRONG: Our poll workers are
6 specifically trained.

7 THE COURT: No, I'm not -- I appreciate and I
8 think that --

9 MS. ARMSTRONG: So if we had a rogue poll
10:33:38 10 worker despite the training and --

11 THE COURT: Right.

12 MS. ARMSTRONG: -- it would be up to the
13 election officials at the precinct and the Board of
14 Elections to deal with that. However our poll workers,
10:33:50 15 observers are specifically trained to look for that, to
16 absolutely refrain from that, and to take any activity they
17 see by others engaged in that manner to the official Board
18 of Elections workers and employees.

19 THE COURT: Say that happens, what happens at
10:34:06 20 the polling location? Say, irrespective of the training,
21 some poll worker starts either individually or
22 systematically impeding voters, what would happen at a
23 particular poll location?

24 MS. ARMSTRONG: Well, your Honor, you're
10:34:28 25 asking me to speculate. I can only tell you that Ohio law

1 prohibits it, that Board of Elections workers, the actual
2 deputized people who sit there and have folks sign in when
3 they come, are trained by the Secretary of State office to
4 call law enforcement if necessary to enforce Ohio law.

10:34:46

5 THE COURT: Okay.

6 MS. ARMSTRONG: Our poll workers, observers
7 are trained similarly.

10:34:56

8 THE COURT: Would that be the same if there's
9 somebody wearing political buttons or wearing political
10 shirts?

11 MS. ARMSTRONG: Absolutely, your Honor. Yes
12 or within 100 feet. There's a litany of things prohibited
13 in Ohio law and the Board of Elections officials have the
14 authority to stop that activity.

10:35:12

15 THE COURT: Okay.

16 So it would be a local -- at each polling location, is
17 there one person who is in some ways kind of in charge of
18 the whole operation?

10:35:26

19 MS. ARMSTRONG: I believe so, your Honor, and
20 at the Board of Elections as well. I would hesitate to say
21 that it's one person because everything is done on a
22 bipartisan basis. When it comes to poll observers, poll
23 workers, people who have these kind of checks and balances
24 all the way out throughout the system is in a bipartisan
25 basis so it would be two people.

10:35:43

1 THE COURT: Okay. Any other thoughts or
2 comments?

3 MS. ARMSTRONG: Yes, your Honor.

4 The Plaintiff here is asking you essentially to
10:35:54 5 restrain the Republican Party from undertaking action that
6 it is statutorily permitted to undertake, without any
7 evidence or indication that anything has happened to the
8 contrary.

9 It is a very slippery slope if we start applying --

10:36:12 10 THE COURT: You said statutorily authorized to
11 undertake. So I thought they were seeking in some ways to
12 restrain people from, for example, approaching prospective
13 voters within the 100 feet of the polling location. I
14 thought that was -- so is that statutorily authorized if
10:36:35 15 somebody wants to campaign or solicit or harass somebody
16 within 100 feet of a polling location?

17 MS. ARMSTRONG: Yes, your Honor. That's
18 absolutely prohibited.

19 THE COURT: It's prohibited. So why -- if the
10:36:48 20 order went out that nobody was to do that, why would that be
21 restraining you or your supporters from something they're
22 entitled to do?

23 MS. ARMSTRONG: Your Honor, we will -- we are
24 very hesitant and reluctant to agree to any kind of an
10:37:05 25 order. There has been no showing here that the Republican

1 Party --

2 THE COURT: No, let me take you back to
3 where I think you started. The Plaintiff here is asking you
4 essentially to restrain the Republican Party from
5 undertaking action that is statutorily permitted, that it is
6 statutorily permitted to undertake. So I thought what they
7 were trying to avoid was somebody being accosted within
8 proximity to the voting location.

9 MS. ARMSTRONG: My understanding of their
10 complaint is that that is one of about a dozen things that
11 they're seeking to restrain.

12 THE COURT: Okay.

13 So you would agree that you don't have a right to
14 accost somebody, or your supporters don't have a right to
15 accost somebody within 100 feet?

16 MS. ARMSTRONG: I would agree that Ohio law
17 prohibits anyone from accosting someone within 100 feet. I
18 would disagree that our supporters or Defendants cover the
19 Ohio Republican Party. To the extent there should be a TRO
20 issued, it should be against the actors who are engaged in
21 this activity.

22 I have an exhibit here that shows the training that we
23 undergo, your Honor, which I can present to you now or later
24 with a witness that specifically addresses this point.

25 THE COURT: Okay. But -- so looking at

1 3501.35(A)(2), individuals are restrained, or forbidden
2 from, in any manner, hindering or delaying the elector
3 reaching or leaving a place fixed for casting the elector's
4 ballot.

10:39:11 5 So are you agreed with me that Ohio law says you can't
6 restrain an elector from either coming in or leaving the
7 polling place?

8 MS. ARMSTRONG: Yes, that's what Ohio law
9 says.

10:39:26 10 THE COURT: And so I'm not sure what your
11 argument -- are you seeking -- is there -- earlier you seem
12 to be saying that the Plaintiffs are seeking to restrain
13 conduct that is allowed under Ohio law.

14 MS. ARMSTRONG: Your Honor, I was referring to
10:39:44 15 the appointment of poll observers.

16 At that time, we were talking about appointment of
17 poll observers. That is something which both parties engage
18 in every election.

19 THE COURT: Yeah. Okay. And you don't
10:39:55 20 dispute that, do you?

21 MS. SMALLS: No, your Honor. We're not trying
22 to seek being -- an injunction against the Republican
23 Party's right to appoint poll observers. We're only trying
24 to enjoin very clear indications of voter intimidation.

10:40:16 25 THE COURT: Okay.

1 MS. ARMSTRONG: And, your Honor, in the
2 absence of any evidence that the ORP has engaged in voter
3 intimidation or training for same, it's inappropriate to
4 include us in a TRO that would, you know, include the
10:40:30 5 Republican Party in any kind of activity which it doesn't
6 engage in, hasn't engaged in, isn't training people to
7 engage in and isn't proven that falls squarely under the
8 Perez case as an advisor and type of TRO and obey the law
9 type of TRO, and we would object to being included in that.

10:40:46 10 THE COURT: Okay. Thank you.

11 Let me ask for an opening statement from Mr. Readler.

12 MR. READLER: Thank you, your Honor. May it
13 please the Court. Chad Readler on behalf of the Trump
14 Campaign and my colleague, Ken Gross, here with me today.

10:41:13 15 I think I'll start on one point that I suspect
16 everyone in the room can agree with, and that is that our
17 democratic system is unparalleled around the world. We all
18 respect that. And there are two critical pieces of that
19 process that are at issue today.

10:41:24 20 One is the right, anyone's right, everyone in Ohio's
21 right to engage in political speech. And the other one is
22 the fact that change in this country comes at the ballot
23 box. It doesn't come by stone or gun or otherwise. We
24 change things at the ballot box, and Ohio has a prescribed
10:41:41 25 system for how that change will occur.

1 THE COURT: What's the -- so 11 days before
2 the election observers are designated, what's the -- what's
3 the purpose of signing people up on your web site before
4 that?

10:42:00 5 MR. READLER: That's a very good question,
6 your Honor, and my friend from New York may not appreciate
7 this. I know Mr. McTigue would, but 3505.21, which
8 addresses this issue, allows the parties to amend that list
9 up until 4:00 P.M., the day before the election. So both
10:42:16 10 campaigns --

11 THE COURT: Given his comments, you know, that
12 are in the record, Trump's comments, I mean doesn't those
13 comments say we need people to come sign up with the
14 Republican Party to offer to serve as designated poll
10:42:34 15 observers?

16 MR. READLER: Your Honor, he says -- I mean
17 most commonly quoted phrase is we're looking for poll
18 watchers. Now, in Ohio the people registered to go inside
19 the poll to monitor, one Republican, one Democrat, they're
10:42:47 20 called poll observers. But in many other states, they're
21 called poll watchers.

22 THE COURT: But, he uses the poll watcher
23 language in Ohio, in Delaware --

24 MR. READLER: Correct. He uses that language
10:42:56 25 around the country. Probably more common --

1 THE COURT: That's the -- there's a difference
2 between observers under the statute and watchers generally.
3 Right?

4 MR. READLER: The statute just refers to
10:43:07 5 observers, and that's what we call them in Ohio.

6 THE COURT: Why would they ever be called poll
7 observers in some other state?

8 MR. READLER: Because that's by statute what
9 they're called. In fact, other states have different rules,
10:43:18 10 and there's another case pending in Nevada. In Nevada, the
11 poll watchers can actually challenge the voter. And there's
12 a process there and criminal penalties on another one. Our
13 process is much different. It's highly regulated. And the
14 concern that we have is that, you know, a few days before
10:43:33 15 the election, the Plaintiffs have come in to try to upset
16 that process.

17 THE COURT: What -- I mean the whole kind of
18 gist of this whole thing is his call to -- that there's
19 fraud in Ohio and fraud in other states. What's your best
10:43:48 20 argument, what support does Trump have that there's been
21 fraud in the casting of Ohio ballots?

22 MR. READLER: My first response, your Honor,
23 is we can disagree about how much fraud there is.

24 THE COURT: No, what's the best -- what's the
10:44:01 25 best conviction you have?

1 MR. READLER: Footnote 2 in the briefing filed
2 late last night or early this morning, Page 11. It cites
3 five newspaper articles that report convictions in the state
4 of voter fraud.

10:44:15 5 THE COURT: How many ballots?

6 MR. READLER: How many ballots?

7 THE COURT: Yeah. How many ballots in the
8 state? What percentage of the ballots would have resulted
9 in convictions?

10:44:23 10 MR. READLER: Very small amount.

11 THE COURT: So how many people vote in Ohio,
12 probably three million?

13 MR. READLER: I think that's right.

14 THE COURT: So you've got how many
10:44:31 15 convictions, three?

16 MR. READLER: Well, there are five articles.
17 One of the articles, for example, one person was had -- was
18 convicted of voting eight times.

19 THE COURT: I'm sorry.

10:44:41 20 MR. READLER: One person convicted of voting?
21 Eight times.

22 THE COURT: Eight times against what 3 or 4
23 million votes each time?

24 MR. READLER: And in the last election,
10:44:50 25 Secretary of State Husted reported about 100 instances of

1 suspected voter fraud.

2 THE COURT: Suspected?

3 MR. READLER: I'm not here to debate the
4 numbers. The numbers mcoull be low, the numbers could be
10:44:59 5 high.

6 THE COURT: This is in some ways argument. Do
7 you actually believe, as an officer of the court, that there
8 is such a thing as voter fraud that impacts elections?

9 MR. READLER: Your Honor, I think there are
10:45:13 10 reported cases of --

11 THE COURT: No, I didn't ask you that. I
12 asked you, as an officer of the court.

13 MR. READLER: Well --

14 THE COURT: Would you represent to a court
10:45:21 15 that there is any chance that voter fraud would impact an
16 election in Ohio?

17 MR. READLER: Your Honor, I don't know. I'm
18 not a political scientist, and we do have elections that --
19 we've had elections that come down to coin flips because
10:45:36 20 they're tied. In that race, if one vote was illegal, that
21 illegal vote decided the race.

22 Now the presidential level, I admit it's less likely.
23 But, really the fundamental point I want to make is this --

24 THE COURT: Kind of goes to -- they're
10:45:48 25 suggesting that this is all code words, that it's really an

1 incitement to harass democratic leaning, but more
2 specifically, African-American or Hispanic voters.

3 MR. READLER: Your Honor, and there's no
4 evidence of that. And I think it was telling that in
10:46:07 5 Ohio --

6 THE COURT: Why would -- I guess some
7 evidence, why would your -- the words come from Trump's
8 mouth, why would he make those arguments?

9 MR. READLER: Well, your Honor, he's not a
10:46:16 10 fair characterization of --

11 THE COURT: It's been kind of a central
12 cornerstone of his campaign that there's this huge voter
13 fraud, which is kind of either a suggestion that he is
14 afraid he's going to lose and wants an excuse or suggestion
10:46:34 15 that the way to win is to somehow stop the vote by
16 repressing voter turn out.

17 MR. READLER: Well, he's never used the words
18 repress voter turn out. He never used racial words --

19 THE COURT: What's he talking about when he
10:46:49 20 talks about certain parts of cities having a long history of
21 voting?

22 MR. READLER: Well, Mr. Trump is obviously of
23 the view that there is voter fraud in this country, and he
24 may be right or wrong about that. That is a political
10:47:04 25 issue.

1 THE COURT: It's not a political issue. It's
2 a fact issue, isn't it?

3 MR. READLER: Well, it's both but --

4 THE COURT: Motivation issue. It's a --
10:47:12 5 whether an inference can be drawn that by using that
6 language, he's trying to impede people from voting by
7 harassing them.

8 MR. READLER: That's true, that issue is
9 before the Court, and I would say two things. One,
10:47:27 10 Mr. Trump, like every other American, has the right to free
11 political speech. And that -- as the nominee of a major
12 party, he's engaging in that political speech. That's what
13 he's doing. But, second, your Honor, I know you wouldn't do
14 that without some evidence, some actual evidence that people
10:47:41 15 have been -- people have not voted because they were
16 confronted by someone harassing, left the poll. And in
17 Ohio, we've been voting for over three weeks. Talk about
18 Election Day, the election is very important, but almost
19 nearly 400,000 people have voted in Ohio, your Honor. And
10:47:56 20 so far, we're not aware of one --

21 THE COURT: Isn't there a different dynamic
22 between absentee voting and voting at the Board of
23 Elections?

24 MR. READLER: There is, your Honor, but I was
10:48:05 25 referring to --

1 THE COURT: So in Ohio -- my apologies for my
2 ignorance on this. Early voting would be what, either
3 through early mail voting or going to -- is it restricted to
4 the Board of Elections or are there other sites?

10:48:24 5 MR. READLER: One voting center I think in all
6 major counties.

7 THE COURT: So what inference can you draw
8 from that?

9 MR. READLER: Quite a bit, your Honor, because
10:48:31 10 that's structured very much like a precinct. There are --
11 there's a voting manager, which every precinct has, but
12 there's a vetting manager, there are precinct officials,
13 some Republican, some Democrat, and there also poll
14 observers, some Republican, some Democrat. That's happened
10:48:49 15 in every center, most of the centers around the state. And
16 of course, people are free to be more than 100 feet from the
17 polling place, free to express their political message,
18 whether it was pro-Clinton, pro-Strickland, pro-Portman,
19 whatever the message, people are free 100 feet away from
10:49:03 20 those centers as well. So in many ways, it's very much like
21 the voting, except there are a number of people voting
22 because these are one location County-wide. So quite a few
23 people there, and no instances that we know of, of problems.
24 And don't take my word for it. Chairman --

10:49:18 25 THE COURT: I think you're right, but the

1 question is how analogous is that to -- how many voting
2 locations in -- how many voting locations in Cuyahoga County
3 or the State of Ohio?

4 MR. READLER: I think there's one in the
10:49:32 5 County. But, if someone --

6 THE COURT: No. What I'm getting to in the
7 general election, how many individual voting locations would
8 there be in the State of Ohio.

9 MR. ERNST: 8,887 precincts, I think.

10:49:44 10 THE COURT: In Ohio. And there's what, 88
11 counties? So 88 places where early voting's taking place?

12 MR. READLER: Correct. And I think density is
13 quite a bit higher because that's 100th of the number. So
14 there are more -- there are more people coming to these
10:49:58 15 centers now.

16 And, again, I guess Mr. Pepper agreed with me in the
17 statement he made to The Enquirer and the statement he
18 submitted to this Court. He's not aware of anything that's
19 happened. So to grant an injunction on the basis of no
10:50:09 20 evidence that -- an injunction request, it is important to
21 remind you that an injunction request is that we follow Ohio
22 law.

23 And I say two things: One, the observers are trained
24 to follow Ohio law. That's a critical function of the
10:50:20 25 training. There's no good to be done by having observers

1 violate the law. And in fact, your Honor, asked what the
2 procedure would be. If an observer steps out of line, the
3 voting location manager or the precinct officials can rein
4 them in, and if can't can, they can call law enforcement.

10:50:36 5 In our brief, we cited the Ohio statute that requires
6 law enforcement to detain anybody who is violating Title 31
7 of the Revised Code.

8 THE COURT: What about conduct outside the
9 election spot?

10:50:49 10 MR. READLER: So anything within 100 feet of
11 course is prohibited by Ohio law.

12 THE COURT: So if there's five observers that
13 get within 100 feet or get right on the line of 100 feet, if
14 there's no restraining order, what's the remedy for it?

10:51:08 15 MR. READLER: There's a couple things. First,
16 the voting manager can come out, precinct official can come
17 out ask them to move. And the second is law enforcement.
18 And as my friends on the other side noted, all of the
19 counties around the state are on notice about this election.
10:51:20 20 Everyone knows it's an important election, deeply contested
21 election. And the Board of Elections Chairman here in
22 Cuyahoga County, he doesn't say he was concerned about the
23 election because of racial concerns. He just said that he
24 has a heated election, and so he has law enforcement on
10:51:32 25 notice in case an issue does arise, they can address it

1 quickly.

2 And we've had elections for years and years and years,
3 of course, in Ohio, and that's the process that's carried us
4 forward.

10:51:44 5 THE COURT: So there's been intimation
6 specifically with regard to Stone, that there's going to be
7 some polling or impediment created by polling, with
8 confession that I don't particularly understand this. Why
9 would anybody ever do polling after an election?

10:52:04 10 MR. READLER: Two things, your Honor. One,
11 the Trump Campaign is not doing any exit polling. So it's
12 not something we're doing. I think it's done mostly by the
13 media. So you turn on the TV at 7:00 on election night and
14 they want to start giving us early returns, and they'll give
10:52:18 15 us, for example --

16 THE COURT: No. I understand why the news
17 media does it. But why would a campaign do it? Or why
18 would Stone do it or why would Stone, in cooperation with
19 Trump, do it?

10:52:29 20 MR. READLER: First of all, Trump's not doing
21 it. As an officer of the Court, you have my statement
22 that --

23 THE COURT: What's Stone -- by the way, what's
24 Stone's relationship; an advisor to Trump?

10:52:39 25 MR. READLER: To my knowledge, they have no

1 relationship. There's one statement in their complaint that
2 says he's been a long time advisor to Trump.

3 THE COURT: Has he been an advisor to Trump?

4 MR. READLER: To my knowledge, that is
10:52:49 5 completely false. And I see no evidence to the contrary.
6 And Mr. Stone actually -- I know he's not here. I think he
7 sent out a press statement. He disavowed any affiliation
8 with the Trump Campaign. I don't know much about him, but I
9 know he has nothing to do with the campaign.

10:53:04 10 THE COURT: He made me feel -- made me feel
11 old when I heard that he was around at the time of the '68
12 campaign, which sadly I'm old enough to generally remember,
13 so.

14 (Laughter.)

10:53:20 15 MR. READLER: Well, I'm going to stay silent
16 on that one.

17 (Laughter.)

18 MR. READLER: But --

19 THE COURT: Best argument is in spite of all
10:53:29 20 your client's comments about the, you know, fraud and so
21 forth, that people won't really kind of fall out of the
22 intimation that the election's being stolen?

23 MR. READLER: Well, your Honor, these are
24 political statements that are calling --

10:53:44 25 THE COURT: Why would you say it? I mean why

1 would anybody say it unless they're trying to incite people
2 to come out and impede the election?

3 MR. READLER: Your Honor, people say a lot of
4 things to get their voters out to the polls.

10:53:55 5 THE COURT: Why would you -- if you're
6 coaching the Indians, and you're in the middle of the ninth
7 inning, you're going to bat, why would you go out and say to
8 somebody the game's been stolen from us, and if we lose,
9 it's because it's been stolen?

10:54:17 10 MR. READLER: On the context of a political
11 campaign, there are a lot of ways to energize your base.
12 Let's use that phrase. And all parties do it. Lots of
13 different things. Certainly the Democrats are --

14 THE COURT: Why would that energize a base?
10:54:30 15 Wouldn't you be more in a position where you would depress
16 your base by telling people no matter what you do, it's
17 going to be stolen anyways? So isn't the -- doesn't that
18 lead to a conclusion why should I vote?

19 MR. READLER: You might be right. I'm not
10:54:47 20 saying it's a good strategy. I'm not a political
21 consultant.

22 THE COURT: Unless the strategy is to
23 encourage people to impede.

24 MR. READLER: Again, there's no word, no quote
10:54:57 25 of impeding or threatening or coerce. Those are the words

1 of the statute that they're trying to have you enforce.
2 That requires harassment, intimidation, coercion. Nothing,
3 no language of the sort. And the language again is
4 encouraging people to get to the polls. If the message is
10:55:13 5 we think it's going to be a close election that could be
6 stolen, Mr. Trump doesn't have trust in the system. But
7 that goes beyond elections. That goes to sort of the way in
8 which the country is run. That's been his message
9 throughout the campaign, and the message that in different
10:55:25 10 ways, he's been stating to his supporters.

11 THE COURT: I thought he made some comment
12 down in Delaware, something to the impact of, "We've got to
13 get everybody to go out and watch and go out and vote. And
14 when I say watch, you know what I'm talking about, right?"
10:55:48 15 What's he trying to say there?

16 MR. READLER: Well, your Honor, again, poll
17 watching is the sort of --

18 THE COURT: No, it's not the poll watching.
19 It's the followup, "And when I say watch, you know what I'm
10:56:00 20 talking about, right?"

21 MR. READLER: It's says two things to me.
22 Either one, it's the poll watchers because he references the
23 poll watchers in the prior sentence. And again, that's the
24 term of art used in many other states.

10:56:11 25 THE COURT: What's he mean when he says, "You

1 know what I mean."

2 MR. READLER: His view is that the system is
3 rigged against a certain interest, and he's running against
4 those interests. Again, I'm not a campaign manager,
10:56:21 5 political scientist, but encouraging his base to get out
6 there.

7 THE COURT: What's your understanding --
8 what's he saying when he says, "And you know what I mean"?

9 MR. READLER: Well, again I think one or two
10:56:32 10 things: Either about encouraging poll watchers or getting
11 his voters out to vote.

12 THE COURT: Why would you use the phrase, "And
13 you know what I mean," if he's trying to encourage poll
14 watchers?

10:56:42 15 MR. READLER: Well, he's either trying to
16 encourage that or trying to --

17 THE COURT: Encourage what?

18 MR. READLER: Either trying to encourage
19 people to volunteer --

10:56:50 20 THE COURT: He said that in the sentence
21 before. Why would he put the caveat or the qualifier, "You
22 know what I mean"?

23 MR. READLER: Well, your Honor, again, I think
24 it's a political message, as all the statements are --

10:57:01 25 THE COURT: How do we understand that? What's

1 the -- I mean that language, what do you -- how else could
2 you understand that?

3 MR. READLER: Well, I think that -- that's the
4 great beauty of speech, is it could be understood in
10:57:14 5 different ways by different people, and we don't restrict
6 political speech for that very reason because we like an
7 open exchange of ideas.

8 THE COURT: That's true, but we're talking
9 here about whether it's presented as a threat. And the
10:57:26 10 question is, "And you know what I mean," how else do you
11 take that?

12 MR. READLER: Again, two answers, your Honor.
13 The first is I think, again, this is the political message
14 of the campaign; that the voters need to be active, either
10:57:39 15 volunteers of the polls or have a right -- voters have a
16 right to be 100 feet outside of a polling place. They don't
17 have a right to intimidate or coerce anyone but that -- I
18 don't read that language to say that and, your Honor, if
19 that is what he was encouraging, then I suspect we would
10:57:54 20 have seen examples of this at the 88 polling places around
21 the country or around the state, where over 400,000 people
22 have voted. And there's not -- no evidence of anything
23 happening inside the poll or outside of it.

24 So to grant a TRO based upon this statement, I think
10:58:10 25 reasonable minds can disagree about what it means or the

1 conclusion may be right, but reasonable minds could disagree
2 about this. To grant a TRO based upon no evidence -- and
3 the TRO, again, is basically we have to follow the law, and
4 I have a couple issues with that: One, courts typically
10:58:24 5 don't grant injunctions that follow the law. Two --

6 THE COURT: Looking at Pence's statement at
7 378, what's he mean?

8 MR. READLER: I'm not -- sorry. I don't have
9 that in front of me.

10:58:38 10 THE COURT: If you've not yet volunteered to
11 participate in the electoral process of respectfully
12 providing accountability at the polling place, come Election
13 Day, then you haven't done all that you can do. So when
14 he's saying, "To provide accountability at an election
10:58:57 15 place" --

16 MR. READLER: That's a great -- I mean as I
17 started my statement, there are three ways in which voters
18 get involved: One, they vote. But two, Republicans and
19 Democrats both serve -- one serves as precinct judges. So
10:59:13 20 the officials who are paid to work a precinct. And also
21 poll observers. And both parties go out to recruit people
22 to perform those critical functions. I suspect that's what
23 he's talking about. And if there's one thing the national
24 media has talked about in the election is the fact the
10:59:27 25 ground game by the Democrats is a much stronger one.

1 We can debate whether that's true or not, but the fact
2 is the Trump Campaign has had to recruit volunteers in a
3 different way and often done at the behest of the national
4 candidates asking for supporters to get out and help work
10:59:40 5 the polls. I think that's the very reason --

6 THE COURT: This was apparently a statement on
7 October 16th, and I guess it was before the 11 --

8 MR. READLER: Again, that list --

9 THE COURT: The 11th day.

10:59:53 10 MR. READLER: That list could be amended
11 Monday. That was the first point I started with. That list
12 could be amended. So new names can be added, taken off.
13 There are over 8,000 names on that list. I mean it's a huge
14 list that covers the entire state. And, of course, there
11:00:05 15 are going to be changes here to that list before election.

16 THE COURT: Any vacancies on the list? Do you
17 know?

18 MR. READLER: I think the entire list is full
19 that we submitted. Now, it may well be we have, you know,
11:00:16 20 someone who can't be -- of all the 9,000 people, surely some
21 won't be available and there will have to be some switching.
22 But every precinct in the state, the names have been
23 presented to be observers.

24 I want to emphasize, this relief remarkably sought
11:00:33 25 against the supporters of the Republican Party, I guess, and

1 that is -- first of all, those people aren't in front of the
2 court today. Second of all, that is remarkably broad. I
3 have no idea how we define who is a supporter, who is not.

4 My friend from New York talked about sort of this
11:00:48 5 being an election involving more, not the normal
6 Republicans, but I guess abnormal ones. And I don't know
7 how we segregate out --

8 THE COURT: You mean if an injunction had been
9 issued, sounds like your suggestion is it should forbid
11:01:01 10 harassing, intimidating, or impeding conduct by either
11 Democrats or Republicans.

12 MR. READLER: If the Court was going to do it,
13 that would be the way to do it, but the fact is Ohio law,
14 that's verbatim Ohio law, it already requires all those
11:01:16 15 things, allows law enforcement to get involved.

16 THE COURT: I know -- I understand, but
17 there's a lot of things that the injunctive relief's given,
18 even though there's available legal remedies. So I'm not
19 sure that argument takes you very far.

11:01:30 20 MR. READLER: A couple things. One is there's
21 evidence also. I don't think this issue is actually even
22 ripe for the Court because they haven't presented you with
23 any evidence of actual intimidation or coercion in Ohio to
24 suggest that this is going to be ramped up on Election Day,
11:01:44 25 according to Federal Court's intervention today.

1 THE COURT: I mean as you know, we get
2 temporary restraining orders all the time. And you know,
3 they seek to restrain businesses or other things. And
4 almost invariably, there's -- the restraint is sought to
5 prevent harm, not restraint sought to remedy a harm. Under
6 Rule 65, you know, restraining orders are -- injunctions are
7 less tied to whether there's a recoverable harm at this
8 point.

9 MR. READLER: That's true, but there are two
10 things to point out. One, it's extraordinary relief, and I
11 think many are sought, but few are granted because it is
12 extraordinary in nature. And two, the test of whether there
13 will be a likelihood of success on the claims and likelihood
14 of irreparable harm. And again, that turns on what evidence
15 has been presented, how imminent a threat is. And that's
16 just lacking here.

17 You have straight -- many of which are not in front of
18 the Trump Campaign in the record. You have no evidence of
19 actual evidence of intimidation. And again, Mr. Pepper
20 seems to agree that he's seen no actual instances. If
21 something occurs on Election Day, certainly, there's law
22 enforcement to turn to, there's the precinct judges to turn
23 to, this Court to turn to. Not uncommon for parties to
24 litigate issues.

11:03:06 25 THE COURT: How would this Court have any

1 authority if there's not a restraining order? So if there's
2 a restraining order, there would be the contempt sanction,
3 but there's not a restraining order, how would this Court
4 have any?

11:03:18 5 MR. READLER: The Court can issue one -- if
6 something actually happens -- and we have three days before
7 the election, but if something actually happens, the Court
8 can quickly --

9 THE COURT: Probably three too many, probably
11:03:28 10 30 too many.

11 (Laughter.)

12 MR. READLER: Maybe another point we can all
13 agree on. But, a lot of remedies available to the Court and
14 I just -- I mean essentially a TRO in this context, in
11:03:39 15 addition to all the things I stated, would see essentially
16 federalize Ohio law, and I don't see a need for that in this
17 context as well.

18 And one other concern. I mean the language of the --
19 what exactly this prohibits and doesn't prohibit, especially
11:03:55 20 outside the 100 feet, is very difficult to understand
21 because they talk about limits on being able to take
22 photographs, for example. And I guess the concern would be
23 that someone's going to photograph something going to the
24 poll. But, that would also prohibit someone standing 100
11:04:12 25 feet away from the precinct, taking a selfie of themselves

1 to say they voted that day. Maybe they voted for Clinton,
2 Trump, who knows. But, this injunction request sweeps so
3 broadly, it's going to bring in so much protected speech.
4 And there's one example, I mean they have one case -- they
5 have one case in their brief out of South Dakota that
6 involved the election of Tom Daschle.

7 THE COURT: Yeah, you're correct. I think it
8 is distinguishable but kind of goes to the, you know,
9 whether it's going to threaten people with --

10 MR. READLER: That case, there was evidence
11 that Native Americans were being followed to the polls, that
12 photographs were being taken of their license plates, and
13 being followed away from the polls, and that no one condones
14 that conduct for the Court to get involved, but there's
15 nothing like that here. So to request extraordinary
16 intervention by a federal court into an area that is
17 primarily regulated by the State, where there's no evidence
18 of wrongdoing so far in my mind, that would really exceed
19 the appropriate bounds of Rule 65.

20 THE COURT: Okay.

21 MR. READLER: So I think unless there's
22 another question from --

23 THE COURT: No. I'm going to allow -- do you
24 have any witnesses you want to call?

25 MR. McTIGUE: May we have a moment, your

Howse - Direct

1 Honor?

2 MS. SMALLS: We do, your Honor; just need to
3 check and make sure she's here.

4 MR. MCTIGUE: We're going to call State
11:06:00 5 Representative Howse.

6 THE COURT: Ma'am, you want to come forward.
7 And if you'll raise your right hand.

8 STEPHANIE HOWSE,
9 of lawful age, a witness called by THE PLAINTIFFS,

11:06:14 10 being first duly sworn, was examined

11 and testified as follows:

12 DIRECT EXAMINATION OF STEPHANIE HOWSE

13 THE COURT: If you'll take a seat. And once
14 you get seated, pull yourself close to the microphone. Tell
11:06:27 15 us your name and tell us how you spell your last name.

16 THE WITNESS: Hi. My name is Stephanie Howse.
17 That's S-T-E-P-H-A-N-I-E. Last name is H-O-W-S-E.

18 THE COURT: It's Mr. Alias?

19 MR. WEST: No. Mr. Zack West, your Honor.

11:06:56 20 THE COURT: Okay. Why don't you go ahead and
21 proceed. I'm sorry.

22 MR. WEST: Yes, your Honor.

23 THE COURT: Insulting him or insulting you, I
24 don't know who, but why don't you go ahead and proceed.

11:07:07 25 (Laughter.)

Howse - Direct

1 MR. WEST: Thank you, your Honor.

2 BY MR. WEST:

3 Q. Representative Howse, can you state your employment,
4 please?

11:07:12 5 A. I am the Ohio State Representative for the 11th
6 District that covers, let's say the east inner part of
7 Cleveland, Garfield Heights and Newburgh Heights.

8 Q. Okay. And how long have you held that office?

9 A. Eighteen months, no about 20 months, 22 months. I'm
11:07:31 10 sorry. It's almost two years. Sorry.

11 Q. And how long have you lived in that district?

12 A. Pretty much all of my life, outside of college.

13 Q. Okay. And, in fact, did your mother represent that
14 same district?

11:07:45 15 A. She did from 2000 to 2006.

16 Q. Were you involved in her campaigns?

17 A. Yes.

18 Q. Okay. Can you describe your district?

19 A. So when you look at Cleveland, I represent the
11:07:57 20 communities of Central, Fairfax, Slavic Village, St. Clair
21 Superior, Hough, Buckeye, Shaker, a sliver of Mt. Pleasant,
22 Union, Miles, and then the two entering suburbs of
23 Middleburg Heights and Newburgh Heights, African-American
24 and low income communities.

11:08:17 25 Q. And based on your experiences as a state rep, working

Howse - Direct

1 on your mother's campaign, and having lived in the district
2 most of your life, would you say you're able to speak
3 knowledgeably about your district's political behavior and
4 voting behavior?

11:08:29

5 **A.** Yes.

6 **Q.** Okay.

7 And to the best of your knowledge, are attitudes of
8 voters in your district and behavior of voters in your
9 district typical of most predominantly African-American
10 communities?

11:08:40

11 **A.** Yes.

12 **Q.** Okay.

13 As you know, today's case deals with voter
14 intimidation. Let me start by asking whether you're aware
15 of any past efforts at voter intimidation, especially in
16 your district? And for the sake of time, let's restrict it
17 to 2012 to the present.

11:08:48

18 **A.** Right.

19 So in the last presidential election, and it was like
20 in October, there was specifically a billboard that was
21 placed in the Central community. Specifically, they talked
22 about voter fraud and if you commit voter fraud, you would
23 be subjected to certain penalties of fines and imprisonment.

24 **Q.** And you saw this billboard for yourself?

11:09:20

25 **A.** Yes, I did.

Howse - Direct

1 Q. Okay. And you said it was placed in the Central
2 Community?

3 A. Correct.

4 Q. Is that the name of the neighborhood?

11:09:27 5 A. It's the name of the neighborhood. It was on 36th and
6 Community College.

7 Q. And can you describe that neighborhood?

8 A. That is the area that has the highest concentration of
9 public housing here in Northeast Ohio, overwhelmingly
11:09:41 10 African-American and low income, low income community
11 members.

12 Q. Okay.

13 And are you aware of whether any other billboards were
14 placed --

11:09:50 15 A. Yes. There was one that was on East 1085th, kind of
16 like the -- kind of where the Glenville area, they did
17 redistricting. So I'm a little confused on where
18 specifically, but it was on the east side, like East 185th
19 Street.

11:10:04 20 Q. Okay.

21 And were any of these billboards placed in
22 predominantly white communities?

23 A. No.

24 MR. READLER: Objection.

11:10:11 25 THE COURT: Overruled.

Howse - Direct

1 Q. And what were -- did you speak to any of the residents
2 in your district about these billboards?

3 A. Well, Councilwoman Phylis, and then senator Nina
4 Turner, they were receiving several calls, people had talked
11:10:29 5 about it at the ward, specifically Ward 5 about people's
6 anger and frustration of being targeted and dispatched
7 during an election season.

8 Q. Okay.

9 Did anyone say they were concerned or intimidated by
11:10:44 10 the billboards?

11 A. Yes.

12 MR. READLER: Your Honor --

13 THE COURT: Sustained.

14 Q. All right.

11:10:50 15 Based on your experience as a candidate and working on
16 your mother's campaigns and your knowledge of your
17 district's political views and voting behavior, what affect
18 did the billboards have on residents in your district?

19 A. It caused the people and it had people being very
11:11:07 20 hesitant to participate in the electoral process.

21 If you actually look at this, it is an area that is
22 already, you know, struggling to get people to be active
23 participants. And you have many return citizens and many
24 communities specifically in the African-American community,
11:11:27 25 when it comes to law enforcement and understanding now the

Howse - Direct

1 criminal justice reform that this country is going through,
2 justice is not necessarily very -- specifically when it
3 looks at African-Americans, and when there are issues of
4 intimidation that happened in 2012.

11:11:44 5 Q. I'm sorry. I would -- I phrased that poorly.
6 Specifically, what affect did the billboards have on
7 residents?

8 A. You have people that were very hesitant to actually
9 vote.

11:11:54 10 Q. Okay.

11 And as you may know, the Defendants in this case have
12 been encouraging their supporters to become poll watchers.
13 For instance, last month, Mr. Trump said you've got to go
14 out, and you've got to get your friends and you've got to
11:12:06 15 get everybody you know and you've got to watch the polling
16 booths, how would you interpret that statement?

17 A. Basically, go out and specifically watch in
18 communities that aren't supportive of the candidate to make
19 sure it's not a rigged election as to candidate,
11:12:23 20 specifically said several times.

21 Q. Okay.

22 And when he tells largely white audiences that it is,
23 quote, "Important that you watch other communities because
24 we don't want this election stolen from us," how would you
11:12:34 25 interpret that statement?

Howse - Direct

1 **A.** To go to the black communities.

2 **Q.** And based on your knowledge of your district's
3 political views, how would others in your district interpret
4 that?

11:12:42 5 **A.** Go look at the black community, come to our
6 communities.

7 **Q.** And when Mr. Trump told supporters at a rally in Akron
8 that, "You have to get everybody to go out and watch. And
9 when I say watch, you know what I'm talking about, right,"
11:12:56 10 do you know what he's talking about?

11 **A.** He's specifically talking about going out and watching
12 the black communities.

13 **Q.** Okay. And --

14 **A.** And that is how it's interpreted by many people that
11:13:05 15 look like me.

16 MR. READLER: Your Honor, objection.

17 THE COURT: I'll sustain the objection as to
18 how other people interpreted it, but overrule as to how she
19 interprets it.

11:13:14 20 MR. READLER: Thank you very much.

21 **Q.** All right.

22 And we discussed Mr. Trump's statements. I also like
23 to discuss some of the things that his supporters have said.

24 For instance, at an Ohio rally in August or September,
11:13:27 25 I believe, a Trump supporter said that he planned on quote,

Howse - Direct

1 "Well it's called racial profiling. I'm going to go right
2 up behind them. I'll do everything legally. I want to see
3 if they're accountable. I'm not going to do anything
4 illegal. I'm going to make them a little bit nervous."

11:13:41 5 Based on your knowledge of your district resident's voting
6 behavior, how would residents in your district react if they
7 were followed into the polling place by someone who wants
8 to, quote, make them a little bit nervous?

9 **A.** They would be --

11:13:53 10 THE COURT: Well, I think it's opinion
11 testimony. I'll allow her to answer.

12 MR. READLER: Also object to foundation.

13 THE COURT: Okay.

14 Well, you know, whether it's a Trump supporter or just
11:14:02 15 somebody off the street, I think that goes to weight. So go
16 ahead and answer.

17 THE WITNESS: First of all, I think that
18 people in my district would be very offended and that will
19 cause people hesitation. And I think that would lead to
11:14:21 20 confrontation, unnecessary confrontation.

21 **Q.** And what about being questioned about their
22 eligibility to vote on the way in or out of the polls?

23 **A.** Again, that would not go well with people. And again,
24 I believe other people would share that information on
11:14:36 25 social media, and it's a technologically savvy generation,

Howse - Direct

1 people put stuff on social media.

2 Q. Someone handing out literature outside a polling place
3 saying voter fraud is a crime or purporting to define voter
4 fraud?

11:14:54 5 A. That would be something people would be very hesitant
6 to understand why they're getting the information.

7 Q. Okay.

8 And what about if somebody wasn't interacting with
9 voters but instead was a self-described citizen journalist,
11:15:06 10 who was just standing there outside of a polling place with
11 a camera or recording people going in and out or recording
12 cars coming into the parking lot?

13 A. Again, I think that's something that people would be
14 very, you know, upsetting to the voters in the community;
11:15:23 15 again, why is a person doing this and who else may be
16 getting this type of treatment.

17 Q. Okay.

18 Do many people in your district view social media in
19 whatever form?

11:15:32 20 A. I would say yes.

21 Q. And if this sort of activity occurs at a polling
22 place, would they post about it on social media?

23 A. Yes.

24 Q. Okay.

11:15:41 25 And, again, based on your knowledge of your district's

Howse - Direct

1 voting behavior, if they read about these incidents
2 occurring at their polling place, what likelihood would it
3 have?

4 **A.** It would definitely hinder people's ability, the
11:15:56 5 people that are already hesitant in this election cycle, to
6 exercise their right to vote because, again, not wanting
7 confrontation.

8 MR. WEST: I have nothing further at this
9 time, your Honor.

11:16:07 10 THE COURT: Cross-examination, Ms. Armstrong
11 or Mr. Ernst?

12 MS. ARMSTRONG: Your Honor, we have no
13 questions.

14 THE COURT: Okay. Mr. Readler, do you have
11:16:16 15 questions?

16 MR. READLER: Just a couple, your Honor.
17
18
19
20
21
22
23
24
25

Howse - Cross

1 CROSS-EXAMINATION OF STEPHANIE HOWSE

2 BY MR. READLER:

3 **Q.** Representative, it's nice to meet you. And thank you
4 for your service?

11:16:30 5 **A.** Thank you for your service, too.

6 **Q.** Thank you.

7 I'd like to ask you about the billboard that you saw
8 on 2012. It's not still up today in that neighborhood,
9 correct?

11:16:39 10 **A.** Correct. It was taken down. That was after -- it was
11 taken down after cries from the Mayor, the residents, and
12 City Council, and clear channel --

13 MR. READLER: May I strike that as
14 nonresponsive?

11:16:55 15 THE COURT: Overruled.

16 BY MR. READLER:

17 **Q.** Ms. Howse, do you agree that voter fraud is illegal?

18 **A.** Yes.

19 **Q.** And in the 2012 election -- sounds like you have a
11:17:12 20 good sense of your district. Generally, I think that
21 election was thought to have the highest turn out of
22 African-American voters of any election in history. Was
23 there also a very high turn out of African-American voters
24 in your district?

11:17:26 25 **A.** I would say higher than usual.

Howse - Cross

1 Q. Representative Howse, are you planning on voting this
2 year?

3 A. I've already voted.

4 Q. Okay.

11:17:42 5 Were you dissuaded from voting by anything you've
6 heard in the media this year?

7 A. No.

8 Q. And you said you're familiar with social media?

9 A. Correct.

11:17:54 10 Q. And you're familiar with social media posts from
11 people in your district?

12 A. Yes.

13 Q. And to your knowledge, no one has posted on social
14 media postings that they have not voted this year because of
11:18:04 15 some kind of intimidation or coercion, correct?

16 A. I actually received a post, a post from an older woman
17 in the St. Clair/Superior Avenue, and there was a young man
18 who returned, a citizen, they forwarded me a post about --
19 it was like there is a post that's currently going on about
11:18:23 20 a woman that was talking about she voted and then the voted
21 for a candidate Hillary Clinton, and it was switched to
22 Donald Trump. And several people within my community have
23 sent that to me; which again, it was like, see there's going
24 to be funny business going on in the election. Again,
11:18:43 25 without full context. And I had to explain to them about

Howse - Cross

1 early voting, how it happens in Ohio, that we're not doing
2 electronic voting. So this is something that's currently
3 going on here, and that two specific of the residents that I
4 represent sent the information to me via social media.

11:19:01 5 **Q.** To be clear, that was an example of something
6 happening actually in the voting booth or --

7 **A.** Correct.

8 MR. READLER: Your Honor, I have no further
9 questions.

11:19:10 10 THE COURT: Do you have any redirect?

11 MR. WEST: No, your Honor.

12 THE COURT: Okay. Thank you. Thanks, ma'am.

13 THE WITNESS: Thank you.

14 THE COURT: Would you call your next witness.

11:19:22 15 MR. KAUFMAN: We have no further witnesses
16 your Honor.

17 THE COURT: Okay. And do you move the
18 admission of the exhibits that were attached to the
19 retraining order, motion?

11:19:33 20 MR. KAUFMAN: We would.

21 THE COURT: Any objection to those? Okay.
22 I'll receive those.

23 Would you call your first witness, Ms. Armstrong?

24 MS. ARMSTRONG: Yes, your Honor. Thank you.

11:19:45 25 We would very briefly like to call Katie Eagan to the stand.

Eagan - Direct

1 THE COURT: Okay.

2 MR. KAUFMAN: Your Honor, I may clarify we've
3 also submitted a declaration last night. It wasn't attached
4 to the filing, but it was filed last night.

11:19:57 5 THE COURT: Okay. I had not seen that.
6 But --

7 MR. KAUFMAN: Mr. Pepper's declaration.

8 THE COURT: Okay. Ma'am, would you come
9 forward. Would you --

11:20:04 10 KATIE EAGAN,
11 of lawful age, a witness called by THE DEFENSE,
12 being first duly sworn, was examined
13 and testified as follows:

14 DIRECT EXAMINATION OF KATIE EAGAN

11:20:15 15 THE COURT: If you'll take a seat. Get
16 yourself close to the microphone. Tell us your name and
17 tell us how you spell your last name.

18 THE WITNESS: My name is Katie Eagan,
19 K-A-T-I-E, Eagan, E-A-G-A-N.

11:20:38 20 THE COURT: Ms. Armstrong.

21 MS. ARMSTRONG: Thank you, your Honor.

22 BY MS. ARMSTRONG:

23 Q. Mr. Eagan, could you tell us your current position?

24 A. Executive Director of the Ohio Republican Party.

11:20:47 25 Q. And how long have you been in that position?

Eagan - Direct

1 **A.** Since March of 2015.

2 **Q.** Could you just very briefly talk about your experience
3 with political activity in the party prior to your current
4 position?

11:21:00 5 **A.** I've been politically active in Republican politics in
6 Ohio since 2000. So for 16 years.

7 **Q.** I am going to hand you what, with the Court's
8 indulgence, what I'd like to have marked as Exhibits 1 and
9 2.

11:21:16 10 THE COURT: Okay.

11 MS. ARMSTRONG: Thank you.

12 THE COURT: Have you given a copy to them?

13 MS. ARMSTRONG: Absolutely.

14 BY MS. ARMSTRONG:

11:21:46 15 **Q.** Mr. Eagan, if you would please tell me what is Exhibit
16 1?

17 **A.** Exhibit 1 is a piece of information that we provided
18 to the volunteers that had signed up to be poll observers.
19 It is kind of a document that explains the role of the
11:22:05 20 observers, the do's and the do not's and explicitly explains
21 what an observer can and cannot do in their role.

22 **Q.** Can you tell us then what is Exhibit 2?

23 **A.** Exhibit 2 is a document outlining voter ID guidelines.
24 It also talks about -- it also actually reiterates what poll
11:22:25 25 observers can and cannot do in their role.

Eagan - Direct

1 Q. Turning to Exhibit 1, there is several headings there,
2 always, never, following, must always be reported to.

3 Could you please summarize what a poll worker never
4 does --

11:22:43 5 THE COURT: Wait. I'm sorry. Are you
6 referring --

7 MS. ARMSTRONG: I'm sorry.

8 THE COURT: Did I get a copy of Exhibit 1?

9 MS. ARMSTRONG: I believe so.

11:22:49 10 THE COURT: I got 2. Okay. Thanks. Why
11 don't you go ahead.

12 THE WITNESS: A poll observer can never
13 attempt to interfere with a person's attempt or ability to
14 vote. They cannot seek to sway someone's vote. They cannot
11:23:08 15 seek to intimidate or harass someone voting. They're there
16 to simply observe and not to interfere with the goings on of
17 voting during the day.

18 Q. Are these the instructions that are given to every
19 poll observer?

11:23:24 20 A. Yes, they are.

21 Q. And are poll observers also trained --

22 A. Yes.

23 Q. -- on these tactics?

24 I'll turn to the never part of Exhibit 1.

11:23:35 25 Does it prohibit poll workers from confronting any

Eagan - Direct

1 voter, elected official, or anyone else?

2 **A.** It does, yes.

3 **Q.** Does it prohibit from using a camera or any type of
4 recording device?

11:23:47 5 **A.** Yes.

6 **Q.** Does it prohibit them from campaigning or advocating
7 for a candidate within 100 feet?

8 **A.** Yes.

9 **Q.** Ms. Eagan, will you tell us a little bit, please, how
11:24:00 10 poll workers or poll observers, I'm sorry, are identified by
11 the party?

12 **A.** Sure.

13 We are -- we participate with all of our Republican
14 candidates to obtain volunteers who are interested in poll
11:24:14 15 observing. We then certify those poll observers to the
16 Board of Elections and the Board of Elections provide a
17 certificate to the certified poll observers that they are to
18 present, upon arriving at their poll on Election Day.

19 **Q.** To your knowledge, is that the same general procedure
11:24:36 20 used in previous elections?

21 **A.** Yes, it is.

22 **Q.** To your knowledge, does the Democratic Party also
23 appoint poll observers?

24 **A.** I'm unaware of their plans for this election, but yes,
11:24:46 25 they have in the past.

Eagan - Direct

1 Q. Thank you.

2 Have you or anyone in the Republican Party or any of
3 the trainings ever asked a poll worker or a poll observer to
4 wear a red shirt?

11:25:00 5 A. Absolutely not.

6 Q. To intimidate, coerce, or threaten a voter?

7 A. No.

8 Q. How about to approach voters before or after they
9 vote?

11:25:07 10 A. Definitely not.

11 Q. How about asking voters about their eligibility to
12 vote?

13 A. No, absolutely not.

14 Q. Distributing literature of any kind?

11:25:16 15 A. No.

16 Q. Advising voters about criminal laws or describing
17 penalties about voting violations?

18 A. No.

19 Q. What about filming, recording, following voters,
11:25:26 20 taking pictures of voters?

21 A. No.

22 Q. Engaging in exit polls or serving as a citizen
23 journalist?

24 A. No.

11:25:33 25 Q. Otherwise engaging in any kind of intimidation,

Eagan - Direct

1 harassment, coercion?

2 **A.** Absolutely not.

3 MS. ARMSTRONG: Thank you, Ms. Eagan.

4 **Q.** Has the Ohio Republican Party had any communication
11:25:44 5 with Roger J. Stone or Stop the Steal?

6 **A.** We have not.

7 **Q.** Has the party had any communication with Trump or its
8 representatives about intimidating voters or engaging in
9 voter harassment?

11:25:58 10 **A.** We have not.

11 **Q.** Did you tell me poll observers have been placed in the
12 early voting centers?

13 **A.** Yes, they are -- they have.

14 **Q.** How long have they been there?

11:26:09 15 **A.** They were there, certified to be there, starting on
16 October 12th, the first day of early voting.

17 **Q.** So roughly three weeks?

18 **A.** Um-hum.

19 **Q.** Do you have any idea how many people have voted during
11:26:20 20 those three weeks?

21 **A.** In-person voting numbers, we are between 700,000 and
22 one million voters.

23 **Q.** Have you heard of any single instance of voter
24 intimidation problems, complaints at those early voting
11:26:36 25 centers?

Eagan - Direct

1 **A.** Not one.

2 **Q.** I asked you earlier to check on a number of Ohioans
3 listed in the pleadings that were prepared here and
4 presented here.

11:26:48 5 Can you tell me did you check the list of approved
6 poll observers that your organization's put together?

7 **A.** I did.

8 **Q.** Did you find Steve Webb there?

9 **A.** No.

11:27:01 10 **Q.** Did you find Leon Nisias there?

11 **A.** No.

12 **Q.** Mildred (unintelligible)?

13 **A.** No.

14 **Q.** James Pinell?

11:27:07 15 **A.** No.

16 **Q.** Anyone with any kind of a moniker, deplorable patriot?

17 **A.** No.

18 **Q.** What about Lady Liberty?

19 **A.** No.

11:27:14 20 **Q.** So none of those individuals are any part of the Ohio
21 Republican Party poll watcher, poll observers?

22 **A.** That's correct. And we've taken measures to ensure
23 that if they attempt to become a poll worker, they will not
24 be certified by the party.

11:27:30 25 **Q.** Ms. Eagan, can you tell me a little bit more about the

Eagan - Direct

1 types of training, I believe you testified that all of the
2 observers have actually been trained. Did you sit in on any
3 of those trainings?

4 **A.** I have sat in on trainings, yes.

11:27:44 5 **Q.** Approximately how many?

6 **A.** One.

7 **Q.** How many people were there approximately?

8 **A.** I would say between 50 and 60, approximately.

9 **Q.** At the training that you actually observed in relation
11:27:55 10 to the training materials, were any of these items
11 discussed, was there ever any training that would border on
12 voter intimidation or harassment?

13 **A.** No, not at all.

14 **Q.** Okay.

11:28:06 15 **MS. ARMSTRONG:** Your Honor, if I could have a
16 minute, please.

17 **THE COURT:** Um-hum.

18 **MS. ARMSTRONG:** Your Honor, we would move
19 Exhibits 1 and 2 into evidence.

11:28:22 20 **THE COURT:** Okay.

21 Well, do you have any other questions? We usually
22 move the admission of exhibits when you close your case.

23 **MS. ARMSTRONG:** Sorry. Getting ahead of
24 myself. No other questions. Thank you.

11:28:31 25 **THE COURT:** Cross-examination.

Eagan - Direct

1 MR. McTIGUE: Thank you, your Honor.

2 CROSS-EXAMINATION OF KATIE EAGAN

3 BY MR. McTIGUE:

4 Q. Ms. Eagan, my name is Don McTigue for the Ohio
11:28:50 5 Democratic Party.

6 As you know, the deadline for listing observers was 11
7 days before the election, correct?

8 A. Um-hum.

9 Q. Okay.

11:29:03 10 How many people -- how many names were submitted 11
11 days before the election by the Ohio Republican Party?

12 A. I don't have an exact figure for that, but the number
13 was in the very high 100s of names.

14 Q. Okay. And to clarify --

11:29:27 15 THE COURT: So for state-wide, it was only
16 high hundreds.

17 THE WITNESS: I would say the number probably
18 bordered, you know, a thousand.

19 THE COURT: Okay.

11:29:36 20 Just -- and I apologize for interrupting. There had
21 been some talk that names are sometimes supplemented,
22 perhaps when somebody can't serve for some late reason.

23 Any idea how frequently that happens?

24 THE WITNESS: Your Honor, I'm not aware how
11:29:53 25 frequently that happens.

Eagan - Direct

1 THE COURT: Okay. Mr. McTigue, why don't you
2 go ahead.

3 MR. McTIGUE: Thank you.

4 Q. Ms. Eagan, is it -- do you appoint one observer per
11:30:07 5 precinct or one per polling location?

6 A. We observe one per precinct ideally.

7 Q. Right.

8 So if there are, say three or four precincts within a
9 polling location, you could appoint three or four observers
11:30:23 10 if you --

11 A. We could, um-hum.

12 Q. Okay.

13 And you have until actually Monday, the day before the
14 election, to swap out any of the people that you appointed
11:30:36 15 on the 11th day; is that correct?

16 A. Yes, that's correct.

17 Q. Okay.

18 And of the people that you appointed on the 11th day,
19 we don't know the exact number, but -- any of those, do you
11:30:48 20 anticipate any of those people simply being place holders
21 that will be swapped out for other people?

22 A. There are likely some place holders on the list, yes.

23 Q. Okay.

24 Do you have any idea how many of the individuals are
11:31:02 25 likely place holders?

Eagan - Direct

1 **A.** Not -- not offhand, I do not.

2 **Q.** Okay.

3 And, in fact, you can say, for example, let's say you
4 were going to appoint 11 days before the election 100
11:31:16 5 observers for 100 different precincts, that could actually
6 be all one person and then you could swap out all 100 or 99,
7 correct?

8 **A.** We are allowed to do that under Ohio law.

9 **Q.** Okay.

11:31:30 10 Do you happen to know of the number that you
11 submitted, how many of those people on the list were
12 appointed for more than one precinct?

13 **A.** I don't have that number at hand.

14 **Q.** Okay.

11:31:43 15 Now, I'm going to read you a statement from Exhibit 2,
16 which is attached to the declaration -- declaration of
17 evidence submitted with the motion for a temporary
18 restraining order, which is an article from the New York
19 Times, and it states that -- and this is in quotes at the
11:32:12 20 beginning, "The numbers this year," and it's referring to
21 the numbers of people asking to be appointed as observers,
22 "are on par with the numbers we saw in 2012, said Ms. Katie
23 Eagan, the Executive Director of the Ohio Republican Party,
24 which is handling the appointment of poll watchers for the
11:32:36 25 Trump Campaign throughout the state."

Eagan - Direct

1 So is that a fair statement that the Republican Party
2 of Ohio is handling the appointment of poll watchers for the
3 Trump Campaign throughout the state?

11:32:56

4 **A.** We're handling the appointment of observers for all of
5 our campaigns. They've all provided volunteers to take part
6 in this, in these roles.

7 **Q.** And how many have -- how many names have been
8 submitted by the Trump Campaign?

9 **A.** I don't have that exact figure.

11:33:09

10 **Q.** Okay.

11 THE COURT: What's the ball park?

12 THE WITNESS: I would say if I had to guess a
13 number, I would say probably 2 or 300 names.

11:33:27

14 THE COURT: And how would that compare to
15 other state-wide candidates?

16 THE WITNESS: They have submitted obviously
17 the state-wide campaign center. Portman's team has also
18 submitted a similar number of --

19 THE COURT: Okay.

11:33:40

20 THE WITNESS: -- names.

21 BY MR. McTIGUE:

22 **Q.** Ms. Eagan, are you aware of Mr. Trump's comments
23 throughout the campaign alleging that the election is rigged
24 or if he doesn't win, that's because it was stolen?

11:34:06

25 **A.** Yes.

Eagan - Direct

1 Q. And you're also aware of his many comments about there
2 being voter fraud?

3 A. I am aware those comments have been made.

4 Q. By both Mr. Trump and Governor Pence, correct?

11:34:27 5 A. Yes, that's correct.

6 Q. Okay.

7 And are you -- are you personally aware of any voter
8 fraud?

9 A. No, I am not.

11:34:39 10 Q. All right. And -- when Mr. Trump says or urges people
11 to go to the polls and watch what's going on, and says, "You
12 know what I mean," do you, how do you interpret that?

13 A. I can't speak to the intention of what Mr. Trump is
14 saying.

11:35:08 15 Q. But, you are aware of his many exhortations for his
16 supporters to go to polling locations to watch and make sure
17 that there's no fraud and that the election is not stolen,
18 correct?

19 A. I'm aware of his statements to encourage his
11:35:27 20 supporters to take part in this election, yes.

21 Q. Well, that wasn't really my question.

22 Can I have the Court Reporter read it back so we can
23 give it to you exactly?

24 THE COURT: But, are you aware of his many
11:35:52 25 requests that supporters go to polling locations to walk and

Eagan - Direct

1 make sure that there's no fraud and that the election is not
2 stolen?

3 THE WITNESS: Yes, I'm aware of those
4 statements.

11:36:04

5 Q. And you also are aware of his statements encouraging
6 individuals who are willing to do this to go to polling
7 places in urban areas?

8 A. I'm not aware of any specific direction to urban
9 areas.

11:36:24

10 Q. Are you aware of his statements encouraging them to go
11 to polling places to watch what's going on in areas where
12 fraud is likely to occur?

13 A. I'm aware that Mr. Trump has made statements
14 encouraging his supporters to observe the goings on at the
15 polls. I am not aware of any statements in which he
16 specifically directs to any certain polling locations.

11:36:46

17 Q. Now, have -- with regard to the -- I think you said
18 you were estimating about 2 to 300 names have been submitted
19 by the Trump Campaign to the Ohio Republican Party to be
20 appointed as observers, correct?

11:37:14

21 A. Um-hum.

22 Q. Okay. And did the Ohio Republican Party reject any of
23 those?

24 A. I believe some have been rejected. Exact numbers, I
25 do not have. We have done the vetting process on these

11:37:32

Eagan - Direct

1 individuals.

2 Q. And -- but again, you don't know how many?

3 A. I don't have that number.

4 Q. Or any particular names of who was rejected?

11:37:48 5 A. Not off -- not at hand, no.

6 Q. Let me turn to Exhibits 1 and 2, which I think are
7 still up there. These are, I think you described these as
8 training materials of the Ohio Republican Party, correct?

9 A. That is correct.

11:38:04 10 Q. And these are provided to every person who's an
11 observer?

12 A. Yes, that's correct.

13 Q. Okay.

14 Would that include the individuals who are swapped in
11:38:19 15 on Monday, the day before the election?

16 A. Yes.

17 Q. Okay.

18 And are the -- you also mentioned something about
19 doing training. In addition to these two -- providing these
11:38:34 20 two documents.

21 A. Yes.

22 Q. How was that training done?

23 A. In-person trainings.

24 Q. Okay.

11:38:40 25 A. Um-hum.

Eagan - Direct

1 Q. And is there in person training planned for Monday
2 before the election?

3 A. For individuals that have to be swapped in, we've done
4 phone trainings.

11:38:51 5 Q. Um-hum.

6 And with regard to the automatic of -- well, let me
7 back up one second. The Trump Campaign is relying upon the
8 Ohio Republican Party to name the observers, correct?

9 A. Yes.

11:39:20 10 Q. Because the Trump Campaign, under Ohio law, cannot do
11 that on its own correct?

12 A. Correct, only the state parties can.

13 MR. MCTIGUE: Your Honor, if I could have a
14 second.

11:39:39 15 THE COURT: Do you have any redirect?

16 MR. MCTIGUE: I have no further questions,
17 your Honor.

18 THE COURT: Okay. Do you have any redirect?

19 MS. ARMSTRONG: No, your Honor. No other
11:39:45 20 questions.

21 THE COURT: Okay. Thank you, ma'am.

22 THE WITNESS: Thank you very much.

23 THE COURT: And would you call your next
24 witness.

11:39:50 25 MS. ARMSTRONG: Your Honor, we have no other

1 witnesses.

2 THE COURT: Do you move the admission of
3 Defense Ohio Republican Party's Exhibits 1 and 2?

4 MS. ARMSTRONG: Yes, please, your Honor.

11:40:00 5 MR. KAUFMAN: Your Honor, I have an extra copy
6 for you of the declaration of Mr. Pepper.

7 THE COURT: I received that, so.

8 MR. KAUFMAN: You did. Okay.

9 THE COURT: So is there any objection to Ohio
11:40:13 10 Republican Party 1 or 2?

11 MR. KAUFMAN: No.

12 THE COURT: Those will be received.

13 Do you have any other witness then?

14 MS. ARMSTRONG: No, your Honor.

11:40:19 15 THE COURT: And on behalf of Defendant Trump,
16 do you have any witnesses?

17 MR. READLER: We do not have any witnesses,
18 your Honor.

19 THE COURT: Okay.

11:40:27 20 MR. READLER: Can I -- just to clarify, the
21 Pepper declaration was moved into evidence?

22 MR. KAUFMAN: I did move it into evidence
23 earlier.

24 THE COURT: Okay. Yeah. And I'll receive
11:40:37 25 that.

1 MR. READLER: Okay. And we have no exhibits.

2 THE COURT: All right.

3 Do you have any final argument?

4 MS. SMALLS: Yes, your Honor.

11:40:43 5 THE COURT: Why don't you go to the podium.

6 CLOSING ARGUMENTS ON BEHALF OF THE PLAINTIFF

7 MS. SMALLS: Your Honor, counsel for the Trump
8 Campaign calls the relief that we are requesting
9 extraordinary, and I would proffer to the Court that this is
11:41:06 10 an extraordinary election.

11 We sued under the Ku Klux Klan Act in a year where the
12 Ku Klux Klan has officially endorsed Donald Trump for
13 president.

14 We have -- we are in a setting where Neo-Nazi leaders
11:41:23 15 and white nationalist leaders have called on their
16 supporters, really building on Trump's statements to come
17 out and watch the polls. And it is really remarkable to sit
18 in this courtroom and watch everybody, one, try to distance
19 themselves from the statements of Mr. Trump.

11:41:48 20 He is the Republican nominee for president. He is --
21 has a joint fundraising activity and committee with the
22 Republican National Committee. The State Party is a member
23 an agent of the Republican National Committee, and the
24 efforts of Defendants and Mr. Trump are really inextricably
11:42:15 25 linked.

1 THE COURT: Let me ask with regard to
2 Defendant Ohio Republican Party, what do you envision the
3 irreparable injury would be?

4 So individual precincts or polling locations, there's
11:42:35 5 one observer, perhaps for each precinct.

6 If there's some conduct of either approaching or
7 otherwise campaigning or otherwise harassing of voter, isn't
8 that fairly easily remedied?

9 MS. SMALLS: No, your Honor. I direct you to
11:42:59 10 our Exhibit 38 and our declaration where we have an article
11 that interviews and quotes Calendar Election Director Pat
12 McDonald, who, quote, says, "We've never had this rhetoric
13 coming out of the candidates where Trump is basically
14 telling his supporters to be watch dogs of the polling
11:43:25 15 locations."

16 THE COURT: I guess what I'm wondering, isn't
17 it a more controlled atmosphere in the actual voting -- the
18 precinct or the polling location? And so you've got one
19 Republican observer, one Democratic observer. Somebody
11:43:48 20 starts to act out. Is there an irreparable injury if they
21 have to call the County Sheriff and have the Trump supporter
22 removed?

23 MS. SMALLS: Yes, your Honor. And that would
24 be on the basis that any interference with a voter's right
11:44:08 25 to vote, the focus should be on the voter, not the person

1 that seeks to be a watch dog. There's no constitutional
2 right to being a poll watcher. There is a -- you know, it's
3 the right that preserves all other rights to vote free and
4 unencumbered. We have indications that this is coming.

11:44:28 5 THE COURT: What do you -- what evidence is
6 there that there's been instructions given to designated
7 poll workers to impair peoples's vote?

8 MS. SMALLS: Well, I can only rely on -- and
9 this is where I was going before. I'm sorry I took a little
11:44:49 10 too long to get there. But, the Republican person that is
11 responsible for running the elections says that he is
12 worried about more instability this year than in other
13 years. So this isn't speculation. The person that's
14 actually responsible for the integrity of elections is
11:45:10 15 saying that he has concerns. And so with those concerns and
16 the charged rhetoric and the incidences which he cites in
17 his article of Trump supporters showing up at polling
18 locations saying that they are poll watchers, and having to
19 be turned away, this is at early vote where things are
11:45:30 20 slower, that there is more of an inability to deal with
21 that.

22 There has been, I'll use the word rogue, but you know,
23 noncertified poll observers that have shown up to early vote
24 sites and said that they are poll watchers. You know, when
11:45:51 25 we go from 88 locations to over 8,000, the ability to deal

1 with that in real time in a way that does not, you know,
2 impede on a voter's right to vote I think would be seriously
3 limited, so.

4 THE COURT: What would be the injunctive
11:46:11 5 relief you would try to give to the Republican Party?

6 MS. SMALLS: Well, your Honor, I'll start
7 where I said in my opening statement. It's clearly in their
8 training materials. Nevers and don'ts, but some things that
9 aren't there. I don't think there's a statement about
11:46:34 10 photographing people, you know. There are other -- I
11 don't -- I didn't have a chance to fully read an
12 internalized exhibit, but there is -- there's clearly
13 behavior that people have been encouraged to do that is
14 impermissible, and I don't know whether that training is
11:46:56 15 prophylactic.

16 THE COURT: Exhibit 1 does direct the poll
17 worker not to use a camera inside the polling location. So
18 it does seem to say they -- photographs shouldn't be taken.

19 MS. SMALLS: And, you know, you zeroed in on
11:47:16 20 this point early on. We are in no way trying to interfere
21 or enjoin with the State Republican Party's right to appoint
22 poll observers in the proper activity of poll observers for
23 Republicans and Democrats. Our position is that you cannot
24 carve out the State Republican Party. I mean from the
11:47:44 25 statements that were made, you would think that they hadn't

1 met the Trump Campaign; whereas in reality, they -- they
2 have staff they share. They're in shared offices, that
3 there is a -- it is very hard to draw a hard line between
4 the State Party and the broader efforts of the Trump
5 Campaign.

6 THE COURT: Okay.

7 So with regard to the Trump Campaign, what injunctive
8 relief are you seeking as to that Defendant?

9 MS. SMALLS: Well, we are seeking broad
10 injunctive relief that is, I should say, tailored on
11 injunctive relief.

12 THE COURT: Slip of the tongue, right?

13 MS. SMALLS: Yep, slip of the tongue.

14 (Laughter.)

11:48:34 15 MS. SMALLS: To publicize and make clear what
16 is allowable, going to stop encouraging people to act as a
17 poll watcher. We've confirmed while we've been in court
18 that the web site is still up, encouraging people to sign up
19 and show up as poll observers on the Trump web site. So
11:48:58 20 that's Point Number 1. We've had the certification process.
21 I understand they can be subbed out, but they have a mirror
22 of a thousand people. I'm not sure what the -- what the
23 benefit is of continuing to encourage people that may be
24 coming for less than civic reasons, that have not been
11:49:21 25 trained and will not have an opportunity to be trained

1 before Election Day. So I'd say that is point 1.

2 Point 2, there are very clearly examples of what
3 people are saying they will do in terms of voter
4 intimidation. And so enjoining any acts -- and again, it is
11:49:44 5 an Ohio law, what is permissible and not permissible, but we
6 have both the statement from the man that runs elections, we
7 have statements from supporters saying that they are going
8 to do things that are textbook examples of voter
9 intimidation, and enjoin any of those acts so that is clear.

11:50:02 10 THE COURT: Would this be trying to enjoin
11 those acts both within and outside the 100-foot, you know
12 voting area?

13 MS. SMALLS: It would be limited by the 100,
14 the buffer zone.

11:50:19 15 THE COURT: So you're only trying to stop them
16 from approaching or accosting or campaigning within the
17 100 --

18 MS. SMALLS: Well, I mean I would say, your
19 Honor, that you know, we're not trying to enjoin anyone from
11:50:34 20 taking a selfie, but we've had examples in other states
21 where Trump supporters stand at whatever that buffer zone is
22 and really harass and scream at people and charge for a
23 fight, voters saying that they were, based on those
24 experiences, they were afraid to leave their car to go vote
11:50:55 25 because they were afraid that they were going to be

1 vandalized while that happened. And these are real life --
2 so I mean, the activity within the buffer zone is already
3 prohibited, but there's also the potential to just stand
4 right at the buffer zone and do some of these prohibited
11:51:15 5 activities.

6 THE COURT: Okay. And then with regard to
7 Stone, what's the remedy sought?

8 MS. SMALLS: I think again, the continued call
9 for people who are not certified as -- as poll watchers, and
11:51:37 10 will not be trained -- will not know the boundaries of what
11 is permissible or not, counsel made the statement that there
12 was no relationship between the Trump Campaign and Stone.
13 Stone was a staff member on the Trump Campaign and, you
14 know, there are news reports that he was fired at some point
11:51:56 15 and continues to be as supportive as he can as the
16 candidate, but it really is quite a statement to say that
17 there is no relationship between Stone and Trump. And so,
18 you know, as we allege in our papers that we -- we believe
19 whether everyone is aware of every element that every other
11:52:21 20 conspirator is doing, that they are acting in concert for,
21 you know, a voter suppression strategy. And again, it's
22 cited in our papers, but a senior Trump official used those
23 words, said, "Our campaign strategy is a three-prong
24 strategy of voter suppression; white liberals, young women,
11:52:42 25 and African-Americans," out of their mouth.

1 So I have to take them at their word. I have to take
2 them at, you know, their supporters at their word.

3 THE COURT: I mean that same article would
4 largely be to dissuade African-Americans by pointing out
11:52:59 5 Clinton's statement.

6 MS. SMALLS: That's right. And it was largely
7 a profile of Trump's Communications Director, but I would
8 proffer that voter fraud is not a lay term.

9 THE COURT: Yeah. And so --

11:53:13 10 MS. SMALLS: And so, I would be surprised if
11 that person came up with it on their own.

12 THE COURT: Okay. Let me afford Mr. Readler.

13 MR. KAUFMAN: May I have just a moment with
14 Ms. Smalls for just one moment.

11:53:25 15 THE COURT: Yeah.

16 (Counsel conferring.)

17 MS. SMALLS: Your Honor my colleagues also
18 pointed out that Stone is the only Defendant that is
19 actually putting forward the proposed exit polling strategy
11:53:58 20 that, you know --

21 THE COURT: Yeah.

22 MS. SMALLS: So that -- that is also why he is
23 a critical part of the injunction. It doesn't -- I mean as
24 we lay out in our papers and in our declaration, it has no
11:54:13 25 basis in any scientific -- doesn't resemble in any fashion

1 any actual poll.

2 So without Stone and Stop the Steal, those efforts
3 would continue and are, on their face, facially improper.

4 And, you know, Election Day is Election Day. We have --

11:54:33 5 we're all going to vote ourselves. Many of us have been
6 involved in campaigns. Things happen quickly, and it can be
7 very, very hard to get redress in real time. And, you know,
8 calling law enforcement, or whatever remedies, you know,
9 it -- it often, as someone who has done elections, I can
11:54:56 10 tell you that things are often imperfect. They don't happen
11 as you would outline them to, just because, you know, a
12 panoply of just things that occur on Election Day.

13 You know, the redress that, you know, Defendants
14 offer, it's just going to be too slow, and it's not going to
11:55:19 15 prevent the irreparable harm that will occur if a voter is
16 dissuaded or somehow interfered with. And as we heard from
17 our witness, you know, people understand, I know what it
18 means, she knows what it means, when he says, "Do you know
19 what it means," and we have an ability to respond to that,
11:55:43 20 and to enjoin further calls for people that also know what
21 that means from coming to the polls and interfering.

22 THE COURT: With regard to Trump?

23 MS. SMALLS: Yes, sir.

24 THE COURT: So are you seeking to enjoin the
11:56:05 25 sign up to be an observer? I mean how do you restrain that?

1 I mean isn't that -- I mean there's a lot of intimations
2 what he's really doing is trying to get people to sign up so
3 he can sell their names and e-mail addresses for family
4 profit. I mean how do you stop him from doing that?

11:56:26 5 MS. SMALLS: I don't know, your Honor. I mean
6 I think --

7 THE COURT: Isn't that fairly First Amendment
8 if somebody wants to give his e-mail address out to some
9 commercial enterprise that --

11:56:39 10 MS. SMALLS: That's true, but it doesn't mean
11 that those people then get a pass to Defendant to -- the
12 State Ohio Republican Party.

13 THE COURT: Probably getting pretty late for
14 that, isn't it?

11:56:52 15 MS. SMALLS: It's not because --

16 THE COURT: When's the final list three days
17 before? When's the final --

18 MR. READLER: It's Monday at 4:00.

19 THE COURT: Monday at 4:00. Okay. I mean
11:57:07 20 restrain him today from operating the, "Give me your name
21 and e-mail address." I mean how much time do they have to
22 collect more names to either make a profit on or forward to
23 the Republican Party?

24 MS. SMALLS: Your Honor, I would also proffer
11:57:26 25 that an injunction -- I mean we have been months of --

1 THE COURT: You're not -- as silly as his
2 statements may be about voter fraud, under First Amendment
3 privileges, isn't it kind of incumbent upon voters to parse,
4 you know, what's ridiculous and what's not ridiculous? How
11:57:54 5 do you restrain his campaign from making, you know, comments
6 about voter fraud with --

7 MS. SMALLS: Your Honor, we're not -- we did
8 not sue Donald Trump as an individual.

9 THE COURT: I mean with the campaign.

11:58:10 10 MS. SMALLS: Right, right.

11 I take your point. But, I would offer --

12 THE COURT: Are you seeking any kind of
13 injunctive relief against him continuing to say there's
14 voter fraud?

11:58:23 15 MS. SMALLS: No, we're not, your Honor.

16 THE COURT: Okay. And I apologize for perhaps
17 misunderstanding.

18 MS. SMALLS: No.

19 THE COURT: Anything else?

11:58:31 20 MS. SMALLS: No, your Honor.

21 THE COURT: Okay.

22 MS. SMALLS: Thank you.

23 THE COURT: Mr. Readler.

24

25

1 CLOSING ARGUMENTS ON BEHALF OF THE DEFENSE

2 THE COURT: I'm going to ask a question just
3 out of curiosity, which has got little or nothing to, you
4 know -- but, how against the statutory or election
11:58:57 5 procedures in Ohio, how do you do voter fraud? So the Board
6 of Elections maintains a list of voters, right? A voter has
7 to come to the list, has to come to the precinct, voting
8 place, right?

9 MR. READLER: Correct.

11:59:21 10 THE COURT: And he then has to present a photo
11 or some ID?

12 MR. READLER: Correct.

13 THE COURT: And he then has to sign the
14 sign-in sheet, right?

11:59:33 15 MR. READLER: Yes.

16 THE COURT: And that sign-in sheet is then
17 compared against signature on file?

18 MR. READLER: Yes, they have that in front of
19 them.

11:59:41 20 THE COURT: How do you -- how -- what's
21 Trump's theory on how you -- how do people -- how do you
22 commit fraud? How do people impersonate others against that
23 backdrop?

24 MR. READLER: Well, look, I'm not a voting
11:59:59 25 fraud expert, but there are examples of --

1 THE COURT: Tell me just give me -- and I'm
2 not asking you for a particular case, but how do you -- how
3 do you do that, how does Trump say you do that? I mean you
4 go to your polling place or my polling place or somebody
5 else's.

12:00:19

6 MR. READLER: A couple responses. First of
7 all, if there's something in question --

8 THE COURT: I'm sorry.

9 MR. READLER: If there's something in question
10 about the voter, they oftentimes wrote provisionally.

12:00:26

11 That's one way we try to curve voter fraud. If there's a
12 concern the address doesn't look correct or the wrong
13 precinct or name doesn't match up, they can vote
14 provisionally. And those are ballots that are under
15 question because there's some lack of conformity, and those
16 reviewed after the election. And that -- there are a
17 number, I mean there are thousands of those every election.

12:00:41

18 THE COURT: But, that typically involves, you
19 know, an address or some change.

12:00:55

20 MR. READLER: Correct, most of those, there's
21 no problem with. Although there was a problem at the poll.
22 But, it's possible -- I mean some of those potentially
23 could -- someone could not be the person they purport to be.

24 THE COURT: So with an explanation that I've
25 properly presided over 30 mail fraud cases, how do you --

12:01:08

1 you're paid to be a -- fraudulently vote for somebody who's
2 dead, okay. How --

3 MR. READLER: Hypothetically?

4 (Laughter.)

12:01:29 5 THE COURT: So say you're paid. You park your
6 car, you go into the polling station, you wait around, you
7 go through the thing. What are the chances that you're able
8 to impersonate the deceased voter's signature? I mean if
9 you had -- even if you'd seen that signature ten minutes
12:01:58 10 before you approached the table, how likely is it that you
11 could duplicate that signature, such that the poll workers
12 wouldn't catch you?

13 MR. READLER: With all due respect to the
14 volunteer poll workers who volunteer probably twice a year
12:02:15 15 for this function and form a critical public service but
16 they're not handwriting experts.

17 THE COURT: The handwriting, name and
18 signatures, it's not real hard to distinguish.

19 MR. READLER: I mean there are -- I've seen
12:02:26 20 them, as I'm sure you have. There are photocopies of your
21 signature. So even then, they're not reproduced all that
22 well for comparison purposes. Hypothetically, if you're a
23 parent of the same sex passed away, maybe they lived in your
24 home, it would be easy to take a bill or something, showing
12:02:40 25 their name and address. You could -- I think you could

1 forge anyone's --

2 THE COURT: The cases I've had, what they've
3 typically done is they've taken an actual signature and
4 because it's so difficult to duplicate a signature, they've
12:02:55 5 taken an actual signature, put it against the glass pane,
6 put a check or something else on top of that, and then
7 traced the signature over an exemplar that was immediately
8 underneath it.

9 It's -- I mean I think most handwriting experts would
12:03:16 10 tell you it's near impossible.

11 MR. READLER: I think a post-election review
12 -- and they do happen from time to time at the polling
13 sites, a number of people coming in, I think it's more
14 difficult -- I'm not having -- I'm not --

12:03:32 15 THE COURT: Let's go back. Say you even could
16 get somebody who found out that somebody was dead, and
17 somehow manufactured an ID to vote for that person, and then
18 somehow worked for some period of time to duplicate that
19 person's signature, and then went in and voted. How many of
12:04:06 20 those is your -- is Trump's version that you could complete
21 in a day?

22 MR. READLER: Your Honor, I have no idea.

23 THE COURT: I mean could you do -- what's his
24 theory? You could do two an hour or -- because you couldn't
12:04:21 25 do -- you couldn't do the same polling location, right?

1 They'd want to know if you came back an hour later with a
2 different ID, wouldn't they?

3 MR. READLER: Most likely.

4 THE COURT: So you have to go to a different
12:04:33 5 polling location?

6 MR. READLER: That's true.

7 THE COURT: And so how many can you do in a
8 day even if you could pull off duplicating the signature,
9 getting the ID, knowing who's dead?

12:04:47 10 MR. READLER: Your Honor, I have no idea.

11 THE COURT: Well, then what's -- what's his
12 theory on how his election's being stolen by people voting,
13 you know, numerous times during the same election?

14 MR. READLER: Well, your Honor, we're not here
12:05:04 15 on a case that's been brought by Mr. Trump to somehow prove
16 voter fraud.

17 THE COURT: But, it motivates these people to
18 intimidate voters under some fear that it's occurring.

19 MR. READLER: Two responses to, that your
12:05:21 20 Honor. First of all, we discussed earlier, our positions
21 that these are political messages to get Mr. Trump's
22 supporters to the polls; one, to vote, and two, if they're
23 able to come in as a public service.

24 THE COURT: I kind of return to what we talked
12:05:35 25 about before, but that doesn't persuade. I mean it would

1 just the opposite. If you had a chance to go to the Indians
2 game and somebody came to you and said it's already been
3 fixed, the umpires have already decided to give it to
4 Chicago, is it more likely you're going to go to the game or
12:05:58 5 is it less likely?

6 MR. READLER: Again, your Honor, I don't know,
7 and I --

8 THE COURT: I would think it's less likely.
9 And I don't think it's plausible to say more likely.

12:06:07 10 MR. READLER: You may well be right.

11 THE COURT: Unless they're going to intimidate
12 people, what's the purpose of -- how do you incentivize
13 people, more of your supporters, to go to the polls by
14 selling them that it's not going to matter what you vote
12:06:21 15 because it's going to be stolen anyways?

16 MR. READLER: Well, your Honor, I think --
17 you're right. This cuts right to the chase here, which is
18 these are political messages.

19 THE COURT: What's the message if it's not to
12:06:32 20 stir up people to intimidate voters?

21 MR. READLER: Exactly as I said it is; to get
22 Mr. Trump's supporters --

23 THE COURT: I thought you just agreed with me
24 that voters would be less likely to go out if they knew that
12:06:46 25 their vote wouldn't matter because it was going to otherwise

1 be stolen.

2 MR. READLER: Your Honor, I said that's
3 possible. And again, these are political messages. They
4 may not be effective political messages. The message may
12:06:57 5 have the exact impact that you're predicting. And if so,
6 that will not be helpful to Mr. Trump's election. But, the
7 point is these are political messages that candidates engage
8 in all the time. Sometimes you motivate voters --

9 THE COURT: Who else is engaged in similar
12:07:11 10 type of time after time arguments that elections have been
11 stolen? Which was the last campaign where that was
12 dominated?

13 MR. READLER: Well, this has been -- I mean
14 the issue --

12:07:23 15 THE COURT: You just said it happens all the
16 time. Which was the last one you --

17 MR. READLER: Well, your Honor, I said
18 political messages.

19 THE COURT: No, you just said it happens all
12:07:31 20 the time in political campaigns. I've asked you a question.
21 When was the last campaign that that happened?

22 MR. READLER: Your Honor, where election fraud
23 occurred?

24 THE COURT: No. When somebody stood before
12:07:45 25 voters and said that you've got to get out to the polls and,

1 "You know what we mean because elections are stolen. My
2 election's going to be stolen"?

3 MR. READLER: I mean this may -- this may be
4 the first one. I'm not certain.

12:08:00 5 THE COURT: Your statement to me was the point
6 is these are political messages that candidates engage in
7 all the time. So I'm asking you which was the last campaign
8 that used that type of message?

9 MR. READLER: Your Honor, I'm saying this is a
12:08:16 10 political message I'm not saying every candidate has used
11 this precise political message here, but at the end of the
12 day --

13 THE COURT: No. Your statement to me, just a
14 second ago, these are political messages that candidates
12:08:26 15 engage in all the time.

16 MR. READLER: Candidates engage in sending
17 political messages. I apologize if I misspoke. I wasn't
18 referring to this specific political message.

19 THE COURT: So you don't have any other
12:08:38 20 candidate that said, "My campaign's being stolen to -- or my
21 election's being stolen"?

22 MR. READLER: Richard Nixon may have said that
23 in 1960, but you know, I don't think there's a history of
24 that. I really don't know, your Honor. I'm not a political
12:08:52 25 scientist. My point to you is that these are -- that is a

1 political message among many political messages communicated
2 to voters by candidates on all sides of the aisle and
3 whether they effectively work, get people out to vote for
4 that candidate is left probably to study after the election,
12:09:09 5 but that is plainly protected by the First Amendment.
6 There's no doubt about that.

7 But, your Honor, if -- if we're going to proceed along
8 the line of your thinking, this may be some way to
9 discourage people from voting. You heard no evidence today
12:09:25 10 of a single Ohio voter who has not voted or is thinking
11 about not voting because of a message they heard from
12 Mr. Trump.

13 The only thing you heard was apparently in 2012, it
14 was worse. Apparently in 2012, obviously not Mr. Trump,
12:09:41 15 obviously someone put up a sign here in an inner city
16 neighborhood about voter fraud. Setting aside, as the
17 witness agreed, voter fraud is illegal. That sign is not
18 there anymore. If there was a problem, it was in 2012.

19 THE COURT: Apparently what -- part of what
12:09:57 20 they're seeking to restrain is the handing out of leaflets
21 or otherwise, saying these are the voter fraud laws and you
22 can be subject to criminal penalty. I thought that -- I
23 thought that was what they're, in part, seeking to restrain.
24 And I thought that's what her testimony was offered in
12:10:20 25 support of.

1 MR. READLER: I don't think there's evidence
2 that that's actually happening or that has happened.

3 THE COURT: Of course, it couldn't have
4 happened if they're handed out at the polls.

12:10:29 5 MR. READLER: It could have happened with the
6 40,000 people who already voted across the state.

7 THE COURT: You're correct about that.

8 MR. READLER: No evidence that happened, and I
9 think it goes to the extraordinary request here. Despite
10 the fact that there's been no evidence, and despite the fact
11 the witness today, Mr. Pepper in his declaration, there's
12 been no actual evidence. The argument is you should still
13 somehow enter a TRO with no evidence, essentially saying
14 that Ohio law has to be followed in this election. And,
12:10:57 15 your Honor, this is not the first election we've had. Some
16 of the testimony -- you would think this is the first time
17 there's ever been voting in Ohio. We've had voting for
18 years and years and years. At every election, there's
19 hiccups, some problems along the line at every election.
12:11:12 20 And I think people are more prepared for this election than
21 any time in our history. If you look at the article
22 referred to from Mr. McDonald here from the Board of
23 Elections in Cleveland, he says exactly that. He's in touch
24 with his board --

12:11:25 25 THE COURT: Republican official, correct?

1 MR. READLER: Correct.

2 THE COURT: And he's contending he thinks --
3 hasn't he asked for more security?

4 MR. READLER: He has.

12:11:33 5 THE COURT: He has a fear.

6 MR. READLER: Well, first of all, he has
7 contacted the Sheriff to make sure that things are --

8 THE COURT: Yeah, but that means it's
9 expressing some concern that there's more than a small
10 likelihood of an issue.

11 MR. READLER: I mean the rules are the rules
12 every time. You can never do this. The police are always
13 allowed to arrest people for this. The point is -- first of
14 all, his statement, I think you suggested earlier
15 somehow that Mr. McDonnell said something about there's a
16 racial component to this.

17 There's nothing in that article that talks about a
18 racial component to what he says. He just says that this is
19 more a fervent election than in the past, and he wants to be
20 prepared. Thank goodness he's prepared, and we're all
21 prepared.

22 THE COURT: So going to the Rule 65 standards,
23 what's your argument whether the Plaintiff would suffer any
24 irreparable injury if injunction has not been given?

12:12:35 25 MR. READLER: First of all, there's no --

1 THE COURT: So if something comes up and
2 there's a bunch of people outside the 100 feet or something
3 in close proximity, and they get into a major issue, I mean
4 how do you repair that?

12:12:55 5 MR. READLER: There's a number of ways. First
6 of all, the election, precinct judges there at the time,
7 Republican and Democrat, and the manager, they can resolve
8 the issue. If they can't, the Board of Elections can
9 resolve, including Mr. McDonnell here in Cuyahoga County.
12:13:10 10 If they can't, law enforcement will get it resolved. That's
11 how every election has been done.

12 THE COURT: What if it's happening at 25
13 different locations?

14 MR. READLER: Well, we have -- I mean we have
12:13:23 15 law enforcement all around the state, all around the County.

16 THE COURT: What if it's coordinated and
17 there's 100 locations? How do you repair that?

18 MR. READLER: There are a lot of hypotheticals
19 that we could run through. But, the fact is, one, there's
12:13:36 20 no evidence of that; and two, Ohio law already prohibits all
21 the things you're talking about.

22 THE COURT: So if there's a restraint on
23 people harassing people, at or near the -- restraint on
24 Trump-related people from facilitating, harassing of people
12:13:58 25 within the 100 feet or immediately outside it, what

1 substantial harm would occur to Trump?

2 MR. READLER: Well, a couple things. First of
3 all, 100 -- it's already prohibited within 100 feet.

4 THE COURT: Yeah, but if the restraining order
12:14:15 5 enforces it, he's not to set up some kind of coordinated
6 accosting of voters.

7 MR. READLER: First of all, you're enjoining
8 one party from engaging in conduct that apparently the other
9 party isn't being engaged in.

10 THE COURT: So say it's joint, say it's -- the
11 thing is a joint order no one accosts voters?

12 MR. READLER: Well, again, first of all, Ohio
13 law bars that. Second of all, what you mean by what's meant
14 by accost?

15 THE COURT: Where I'm going to -- one of the
16 factors you pointed out we need consider is whether the
17 issuance of an order would substantially harm Trump, and.

18 MR. READLER: Correct. And it does have -- so
19 the concern is, first of all, the proposed injunction. And
12:15:02 20 again, this seems to go to the moving target in terms of
21 what's trying to be enjoined, I'm not exactly sure, but for
22 the position you're talking about, one concern is that this
23 applies to his -- actually Republican supporters and
24 volunteers. And who exactly those people are, we don't
12:15:18 25 know. Those people are not here in front of the Court.

1 And, unfortunately, the message -- because this is -- I
2 suspect there's some attention to the media to this hearing
3 today. The message would be that a Federal Judge has
4 ordered Republicans to stay away from the polls and to not
12:15:32 5 harass people. And that, in my mind, is significant harm to
6 Republicans, to lots of people in this state, even if not
7 Republicans who want to get involved. It's a chill on their
8 activity, and again --

9 THE COURT: What kind of activity does he want
12:15:45 10 to do that's going to be chilled?

11 MR. READLER: Well, people, anyone in Ohio is
12 allowed to come and stand more than 100 feet from a precinct
13 and hand out voting cards.

14 THE COURT: Under Ohio law, are they in any
12:15:57 15 way allowed to impede voters coming in or going out, whether
16 within 100 feet or outside?

17 MR. READLER: Yes, that is illegal under Ohio
18 law.

19 THE COURT: So he's restrained from doing
12:16:08 20 that. What's the -- what's the harm?

21 MR. READLER: Well, one question is why you
22 would do that because there's no evidence to -- been no
23 evidence presented to suggest that it's imminent or likely.

24 THE COURT: You got him going on and on about
12:16:25 25 it everyday.

1 MR. READLER: But the --

2 THE COURT: He's apparently doing it long
3 after you would think he would be assembling the list of
4 observers.

12:16:35 5 MR. READLER: Actually I think most of the
6 quotes that have been referred to, many are taken out of
7 context but are not -- like this week, for example --

8 THE COURT: October 16th. I don't know,
9 probably some after that.

12:16:46 10 MR. READLER: The -- it's still both in Ohio
11 and nationally, it is still appropriate to be soliciting
12 volunteers, observers, but --

13 THE COURT: Back to the Rule 65 issue. I'm
14 not sure I understand your response. What's the substantial
12:17:03 15 harm to him if injunctive relief is granted? Say you know
16 basically allowing ingress, egress without harassment?

17 MR. READLER: Two things; one, that's Ohio
18 law, but two, there are a lot of people on both sides of the
19 aisle who engage in protected political activity 100 feet
12:17:24 20 from the poll. So that could include, for example, asking
21 someone when they come to the poll are you Republican or
22 Democrat. And when you find that out, if you're from that
23 party and you have the slate card, you hand them a slate
24 card so they have that to go into the poll to know who to
12:17:36 25 vote for with that party. The injunction has the

1 possibility of chilling that kind of activity because what's
2 the line between encouragement versus -- I mean that is
3 you're questioning someone. When does that become conduct
4 that someone might consider illegal? We don't know. And
12:17:53 5 that's one of the reason courts are careful in the First
6 Amendment context issue, this kind of extraordinary relief.
7 And if we had a record of things actually happening, that
8 would be one thing, but that is completely absent here. So
9 this hypothetical idea of what kind of speech we might
12:18:08 10 restrict, I mean it's a real concern in terms of how far
11 this would reach. And speech --

12 THE COURT: So back to the substantial harm
13 that the injunction would impose. Are you indicating that
14 there might be somebody giving out cards to Republican
12:18:27 15 voters who might be dissuaded because of concern that they
16 would be cited for contempt?

17 MR. READLER: Absolutely, your Honor. And
18 there's also --

19 THE COURT: Is there any other substantial
12:18:41 20 harm that would --

21 MR. READLER: Yes, your Honor. For example,
22 people -- not everyone's coming with a slate card, but maybe
23 a group of supporters want to, or anyone wants to stand more
24 than 100 feet from the poll and chant, "Make America great
12:18:56 25 again."

1 Now, is that considered a threat? I think it's pretty
2 clearly protected speech, but one could be concerned if a
3 Federal Judge issues an injunction that limits the seemingly
4 protected activity outside of 100 feet of the precinct.

12:19:12 5 They don't know what their rights are in that context. And
6 I think the most likely, they don't show up. So you --

7 THE COURT: If the restraining order is only
8 limited giving within ten feet of voters or only limited
9 them from impeding ingress or egress, how would they be --
12:19:34 10 how would there be substantial harm to them, or to Trump,
11 specifically?

12 MR. READLER: You can't hand someone, neither
13 Democrat or Republican, even if the requirement's as long as
14 mine, you can't hand someone a card within ten feet. So
12:19:50 15 there is a restriction. I'm not sure where the ten feet
16 comes from, but in that example, that is a low restriction
17 from actually making voter contact. There's nothing wrong
18 with making voter contact. In fact, our country's
19 encouraged that for centuries.

12:20:02 20 That is the whole point of our political system and --

21 THE COURT: And admittedly, my experience is
22 not part of the record, but when was the last time you voted
23 that somebody was waiting outside to hand you a ballot card?

24 MR. READLER: I often vote absentee.

12:20:22 25 THE COURT: When was the last time you

1 requested the absentee0, when was the last time you voted in
2 person?

3 MR. READLER: I've seen it -- I actually live
4 in the City of Columbus. And I have had people I approach,
12:20:36 5 it's a very active polling place and people ask me which,
6 you know, which party I'm with. And if I say the right
7 party, they'll give me a card. And if I don't, they don't
8 give me one. So those voter cards, slate cards are
9 extremely common. Both parties engage in that actively to
12:20:53 10 help people when they're voting.

11 So the concern here is the broad sweep of this
12 injunction that affects a host of parties not before the
13 Court and has a real chance of chilling the First Amendment
14 rights. Balanced against no evidence in front of the Court
12:21:08 15 and then balanced against a general prohibition or refrain,
16 or at least significant apprehension before we issue an
17 injunctive emergency injunctive relief in the First
18 Amendment context.

19 THE COURT: Finally, the issue as to whether
12:21:23 20 the public interests would be served.

21 MR. READLER: I think the answer is no for the
22 reasons I just explained. This country honors and cherishes
23 political involvement and political activity and political
24 speech. Perhaps nothing more than that.

12:21:39 25 And an injunction from the Court, especially if it's

1 one-sided, but even if it goes to everyone, actually doubles
2 the effect of it having the likelihood of discouraging
3 people from engaging in ordinary political conduct they
4 would engage in --

12:21:55 5 THE COURT: Ohio Revised Code, I mean it --
6 isn't the general motion that we approach polling places and
7 we like vote -- we let our citizens vote without impediment
8 or harassment?

9 MR. READLER: Absolutely. And if there are
12:22:14 10 problems, they get corrected, just like in any other year.

11 THE COURT: Okay.

12 MR. READLER: And, again, you haven't heard --
13 only example you heard today, someone was at a poll and were
14 voting and something happened in the voting booth where a
12:22:28 15 vote was changed, but we've heard no evidence of any of this
16 stuff happening. And I think it would be remarkable in this
17 context, always extraordinary relief, but especially in this
18 context. Things you've heard are -- first of all, a lot of
19 this has been exaggerated.

12:22:41 20 THE COURT: They're all your client's
21 comments.

22 MR. READLER: Correct.

23 THE COURT: I mean you're not much in a
24 position to complain about the comments. The comments that
12:22:50 25 they've cited to are Trump's comments.

1 MR. READLER: No. And my friend aside, in
2 closing, references to Neo-Nazis and the KKK. Mr. Trump's
3 made no reference --

4 THE COURT: That's fair and you're correct. I
12:23:05 5 think that -- that evidence is of, you know, only marginal
6 importance.

7 MR. READLER: And even the suppression point
8 that you caught on and I very much appreciate; there's an
9 anonymous quote from an anonymous official associated with
12:23:20 10 the campaign talking about voter suppression. But when you
11 read the article, it was political messages that would make
12 people, who are traditionally Hillary Clinton supporters, to
13 be disinclined to vote for them.

14 THE COURT: I think the argument at least --
12:23:33 15 they'll correct me if I'm wrong, but their argument is that
16 Trump's targeted to keep probably college educated, targeted
17 to keep Hispanics, African-Americans from voting. And then
18 he's accompanied that with his stolen election theory. And
19 are those -- are those two parts of the same sandwich?

12:24:01 20 MR. READLER: Can I take on the first part,
21 the idea that Trump has targeted these people to stop them
22 from voting?

23 THE COURT: Not stop, discourage them to vote.

24 MR. READLER: Either way, what is the evidence
12:24:10 25 that Mr. Trump is targeting these people to stop them from

1 voting?

2 THE COURT: I agree there's a hearsay issue,
3 but it sounds like it was your -- somebody associated with
4 your campaign. Bloomberg isn't lying.

12:24:24 5 MR. READLER: Again, the -- words from
6 Mr. Trump's mouth, we have the poll watching. Talked about
7 that quite a bit. With respect to that article, the article
8 was somewhat talking about political messages, for example
9 we want to tell white liberal voters that Secretary
12:24:41 10 Clinton's in favor of TPP. Again, if that's a good or bad
11 political message, I don't know, but the notion was to let
12 her, you know, constituent voters know a message they may
13 not agree with. And exact same thing is happening on the
14 other side. Certainly, a big focus of Mrs. Clinton's
12:24:57 15 campaign this time is to find Republican voters who may not
16 agree with the message of their candidate, and this is
17 completely appropriate and it's going to be an incredibly
18 interesting election to see how it turns out, but this -- a
19 whole bunch of messages regarding political themes are being
12:25:12 20 exchanged this year. This is a unique election in that
21 sense but certainly not one in this record that requires
22 injunctive relief. There is an -- I mean there have been
23 other cases filed which I'd like to know. This case is not
24 unique, which I think is telling.

12:25:31 25 The Democrats picked five states that all happen to be

1 very close this year in the election. They filed
2 essentially the exact same lawsuit in each of those cases.
3 They did so right before the election. I mean keep in mind
4 if the concern was that somehow poll observing is a bad
12:25:48 5 thing, that it would have -- disincentivize from voting,
6 they could oppose the constitution of that law any time
7 since it's been in existence for ten years, so.

8 THE COURT: Kind of back to -- and I'll give
9 them a chance to respond, but -- so poll watching, if you're
12:26:10 10 not interacting with a voter, what's Trump's theory? So if
11 you're standing outside the 100 feet, and you're just
12 watching, how does that -- how is his campaign benefited?

13 MR. READLER: Some people may go to stand
14 outside 100 feet to watch because they're interested in his
12:26:36 15 voting or they -- Election Day and want to be a part of
16 voting, but most people that do that is for a reason, to
17 help promote the candidate of their choice.

18 THE COURT: How does that help you stand 100
19 feet away and you don't -- you don't, in any way, interact
12:26:53 20 with the voter?

21 MR. READLER: Well, that is the last
22 opportunity after -- we all agree this is a long election.
23 That is the last opportunity to reach that voter before that
24 voter goes to cast.

12:27:06 25 THE COURT: But, you are not interacting with

1 them. How are you reaching the voter?

2 MR. READLER: You are interacting, allowed to
3 ask who they're voting for, allowed to wear a Clinton or
4 Trump T-shirt. You can give them information about a
12:27:20 5 particular candidate, ask them if they care about taxes. If
6 they do, you give them a pamphlet on tax issues that might
7 influence their vote. A myriad of ways to do that. Very
8 common. Every precinct has had, in a general election, has
9 had someone campaigning legally within 100 feet of the
12:27:38 10 campaign. That's very common, and I think if you ask
11 Mr. McTigue --

12 THE COURT: You're not sworn in and I'm not.

13 MR. READLER: That's true. That's a good
14 thing.

12:27:46 15 THE COURT: I've never seen it.

16 MR. READLER: Maybe you can ask Mr. McTigue
17 because I'm pretty sure he's a dealer in this area, that he
18 can tell you about the type of things completely legitimate
19 that both parties do outside election places.

12:27:58 20 THE COURT: Okay. Do you want to respond?

21 MS. SMALLS: Yes, your Honor. Would you like
22 me to do so from here or --

23 THE COURT: Why don't you go to the podium.

24 MS. SMALLS: Okay.

12:28:17 25 Your Honor, counsel for the campaign mentioned that we

1 have filed other lawsuits, and we have. We filed lawsuits
2 in Nevada, Arizona, Ohio, and Pennsylvania. And there are
3 many -- while the -- there are very contested elections in
4 each of those states. We -- there are many more
5 battleground states than those four states. We chose where
6 we initiated action based on where we -- where the Donald
7 Trump made his statements. Where he was directing his
8 supporters, so I mean he specifically mentioned cities when
9 he's talking about with large majority of minority
10 populations, just in case anybody didn't get the thrift --
11 the thrust of what he was saying in the first instance. And
12 so that is the basis of where we have chosen to bring this
13 action is based on where we've seen the evidence, where
14 this -- the candidate and his surrogates have made these
15 charged states where they have directed them, and where we
16 have seen incidences of his supporters responding in kind.

17 THE COURT: So you're seeking to stop engaging
18 in any poll watching or poll monitoring inside or outside
19 the polling places, so only seeking to watch -- restrain
20 this poll watching within 100 feet?

21 MS. SMALLS: Your Honor we -- we are -- we are
22 seeking to enjoin what's called the vigilante poll watchers.

23 THE COURT: I'm sorry. I missed that.

24 MS. SMALLS: The vigilante poll watchers that,
25 by every indication, will descend on polling locations,

1 whether it's in direct coordination --

2 THE COURT: You say they do, but they stay
3 away from the voters, how -- how -- why should they be
4 restrained?

12:30:46 5 MS. SMALLS: I don't think they have any
6 intention of staying away from voters. They specifically
7 said I'm going --

8 THE COURT: Say they're restrained from
9 interfering with the voter, how is the mere presence -- he
12:30:59 10 made the argument that they've got a right to be outside the
11 100 feet and have a right to, you know, in some ways
12 peacefully demonstrate out there.

13 MS. SMALLS: I would agree with that, your
14 Honor. They have a right to --

12:31:15 15 THE COURT: So your concern is some kind of
16 interaction with the voter.

17 MS. SMALLS: Activity can be legal if used to
18 intimidate or coerce a voter. So we're not disputing what
19 is lawful behavior. What we are disputing is what we
12:31:35 20 believe will be used to intimidate and coerce voters.
21 Nothing wrong with standing outside a poll.

22 THE COURT: What specifically --

23 MS. SMALLS: Well, I gave you the example;
24 again, didn't happen in the state, but again, we filed
12:31:50 25 multiple lawsuits in tracking the incidents across the

1 country. There was a group of Trump supporters that stopped
2 a truck entering a polling location, asked him who he was
3 voting for, wanted to talk about Trump, he didn't want to.
4 He tried to drive around, they started screaming at him.
12:32:07 5 One of the Trump supporters tore off his T-shirt, charging
6 for a fight. And this is the kind of stuff and this
7 happened at an early vote location in Florida, and we have a
8 declaration from the poll observer, the poll watcher that
9 had to be engaged in that specific incident in Florida.

12:32:25 10 So again, they were at the entrance of a polling
11 location. Nobody is disputing their ability -- their right
12 to be there, but how they actually conducted themselves at
13 that egress and to the point where that voter said he did
14 not want to go in to vote any longer because he was afraid
12:32:45 15 that the Trump supporter would have vandalized his car.

16 THE COURT: It's the conduct that you're
17 trying to restrain rather than the presence?

18 MS. SMALLS: That's correct, your Honor.

19 THE COURT: Okay.

12:32:56 20 And what's -- he's not seeking to, in some ways, take
21 down the vote for the web site, right?

22 MS. SMALLS: I'm sorry; Stop the Steal or what
23 do you mean?

24 THE COURT: You're not trying to take that
12:33:12 25 down or take down the Trump sign-up page, are you?

1 MS. SMALLS: They're welcome to have their
2 page up. But, in terms of -- I think there is a direct
3 connection between Trump's calls to action, which I think on
4 its face are racially tinged, and then connecting these
12:33:35 5 people with being poll observers.

6 So to that extent those people are not being placed
7 with a certification or a badge inside polling locations,
8 and there are measures that are taken that -- you know, the
9 people that are signing up in response to Trump's calls for
12:34:00 10 action, you know, we have an issue.

11 THE COURT: Okay.

12 MS. SMALLS: I also want to respond to
13 something that counsel for the campaign said about both
14 campaigns do it or engage in political speech. This is a
12:34:15 15 highly contested election, and you know, campaigns are
16 fighting very hard for their candidates. As an officer of
17 the court, I will state that we are not engaged in any modes
18 of concerted efforts of misinforming to tell our voters that
19 they can vote by text --

12:34:37 20 THE COURT: But, you would agree that we don't
21 get into -- well, if a restraining order was issued, it
22 would be general. So if there were democratic voters
23 engaging in some threatening behavior, they should be cited
24 for contempt, the same as if Republican?

12:34:53 25 MS. SMALLS: That's correct, your Honor.

1 THE COURT: Okay. So -- okay.

2 MS. SMALLS: Thank you.

3 THE COURT: Thank you.

4 Anything else you want to say?

12:35:03 5 MR. KAUFMAN: Your Honor, the only thing I
6 would add into the -- it's in the record, but we submitted
7 electronically on the second form of TRO, the order itself
8 that was very particularized, what we were seeking to enjoin
9 and how and that -- that defines and limits what it is that
12:35:21 10 we're asking for.

11 THE COURT: Yeah. Okay.

12 You know, I have considered, and I thank the parties
13 for their offer. But, I have considered all the things.
14 What I'm going to do is I'm going to deny the TRO as against
12:35:38 15 the Ohio Republican Party. I think there's insufficient
16 evidence to support the issuance of an injunction as against
17 them.

18 I am going to grant a restraining order as against the
19 Trump Campaign and Stone. And I reviewed your proposed
12:35:56 20 order. I think it's overbroad. I'm going to limit it, and
21 I hope to get something out this afternoon. I think your
22 requested injunctive relief is overly broad. And so I'm
23 going to try to restrict that, but the main intent is going
24 to be to try to avoid the assemblage of harassing or
12:36:21 25 intimidating conduct -- well, first of all, to forbid that

1 within the polling location; second of all, to forbid that
2 within the 100 feet and also to forbid that for people
3 attempting to enter the polling location or leave the
4 polling location.

12:36:44 5 So the requested remedy will be narrower than that you
6 had requested. And I'll try to get something out regarding
7 that this afternoon.

8 If we have time, we'll try to prepare an opinion on
9 it, but it more likely than not, it would not come out until
10 12:37:09 early next week.

11 So I'll -- do you have any argument regarding bond in
12 this?

13 MR. KAUFMAN: We don't think that a bond is
14 really necessary, and I think --

12:37:25 15 THE COURT: I'm surprised. I'm shocked you
16 would make that argument.

17 From the Trump Campaign, any particular argument
18 regarding bond?

19 MR. READLER: I don't think so at the moment,
12:37:38 20 your Honor. We're not --

21 THE COURT: Okay. I'm not sure what damages
22 would flow if it was ultimately found to have been
23 improperly issued. But, I'll more likely than not impose a
24 \$1,000 bond, something in that range.

12:37:55 25 I'll try to get an order out some time this afternoon,

1 though.

2 MR. KAUFMAN: And, your Honor, the only thing
3 I would just add, and it's in the proposed order that we did
4 submit, in addition to whatever parties are enjoined, those
12:38:08 5 acting in concert or participating with them, we would, you
6 know, ask you to consider that language regardless of who
7 the parties are.

8 THE COURT: You'll have the -- and with regard
9 to any contempt sanction, you'd have the problem of showing
12:38:21 10 some notice to be able to have somebody held in contempt.

11 MR. KAUFMAN: Right. I understand that, and
12 you know, I take counsel for the party at their word. I
13 respect your Honor's decision as to them. Obviously, if the
14 party did do something that constituted a participation,
12:38:40 15 which they're saying they wouldn't, then they would have --

16 THE COURT: You mean the Ohio Republican
17 Party?

18 MR. KAUFMAN: Yes. In other words, they may
19 not be enjoined, but they might, through some actions that
12:38:49 20 haven't occurred yet, participate or act in concert, then we
21 would deal with them. Not suggesting they will, but anybody
22 acting in concert, even if they're not a Defendant, would be
23 subject to the Court's order if they have notice.

24 THE COURT: Okay.

12:39:03 25 MR. READLER: Your Honor may, I address that

1 point? This was really one of the fundamental points I
2 tried to address. These are not parties before the Court
3 for one, and two, I'm not sure how we identify or how
4 someone's supposed to know if they're a supporter,
12:39:16 5 volunteer, or interested party. It's an incredibly valiant
6 request, and I really don't know how we're supposed to
7 police that, who's to know they're subject to it or not.

8 THE COURT: The order did -- my intent on the
9 order would be it would be more generic. I think I
12:39:31 10 mentioned this a moment ago. And so I'm not -- I think the
11 order would be with regard to any harassing conduct, whether
12 it's a Democrat harassing a Republican voter or a Republican
13 voter harassing a democratic voter.

14 It wouldn't be any attempt to particularly identify
12:39:53 15 someone as being a Trump supporter or not. So I thought
16 your point was well argued that it should be more evenly
17 balanced, and we're not trying to pick one side or the
18 other. They should come under the same rules. So I think
19 that is what you're going at, right?

12:40:16 20 MR. READLER: May I, for the record, may I --
21 obviously, our primary position is we don't think it's an
22 issue, but the Court is issuing it, that's the better
23 course. But, I just want to preserve my first position in
24 case we have to argue this somewhere else.

12:40:28 25 THE COURT: You're probably the first party

1 appearing before me in all these years that has not agreed
2 with something I've decided.

3 (Laughter.)

4 MR. KAUFMAN: Your Honor, the only other item
12:40:39 5 is the Stone and Stop the Steal Defendants, which we believe
6 we properly served them. Ms. Smalls submitted a very
7 detailed declaration as to what we have done. We certainly
8 know they know about the suit because they've been talking
9 about it in the media. I think you've seen that. So we
12:40:56 10 would ask that they be enjoined as well.

11 THE COURT: Well, the injunction would go as
12 against them as well, but again, I'm going to try to
13 restrict specific conduct or, you know, facilitating certain
14 conduct as opposed to just simply taking positions. Okay?

12:41:16 15 Thanks, everyone.

16 MR. KAUFMAN: Thank you, your Honor.

17 (Proceedings adjourned at 12:41 p.m.)
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DIRECT EXAMINATION OF STEPHANIE HOWSE	49
CROSS-EXAMINATION OF STEPHANIE HOWSE	59
DIRECT EXAMINATION OF KATIE EAGAN	62
CROSS-EXAMINATION OF KATIE EAGAN	70
OPENING STATEMENTS ON BEHALF OF THE PLAINTIFF	7
OPENING STATEMENTS ON BEHALF OF THE DEFENSE	16
CLOSING ARGUMENTS ON BEHALF OF THE PLAINTIFF	79
CLOSING ARGUMENTS ON BEHALF OF THE DEFENSE	90

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/Shirle Perkins
Shirle M. Perkins, RDR, CRR
U.S. District Court - Room 7-189
801 West Superior Avenue
Cleveland, Ohio 44113
(216) 357-7106