Expert Report and Declaration of Mark S. Mellman

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I.   INTRODUCTION

I have been retained by plaintiffs to prepare a report outlining the accepted standard industry purpose, methodology, and use of exit polling in U.S. elections and provide my opinion as to whether to the exit polling that Roger Stone intends to use for the 2016 General Election comports with the same. I am being compensated for my work on this matter at a rate of $500 per hour.

II.   SUMMARY OF OPINION

Based on 34 years of work as a public opinion researcher, communication strategist, and political pollster, it is my conclusion that the "Exit Poll" that Roger Stone purports to be employing in the 2016 General Election is not in keeping with the accepted methodology, purpose, or practices in this field. The polling that he plans to conduct is unlikely to produce unbiased, reliable results, and, moreover, does not appear to be designed to meet such ends. Mr. Stone's effort seems oblivious to the fundamental techniques accepted throughout the industry as based on reliable principles and methods, as well as very basic well-known facts about exit polling. Given Mr. Stone's stated political biases and the methodology he has employed—i.e., targeting Democratic and minority precincts—his exit polling strategy appears only designed to intimidate voters in an attempt to influence the election and suppress the vote.

III. QUALIFICATIONS & EXPERTISE

I am the President and CEO of The Mellman Group, a firm dedicated to providing opinion research and strategic advice to political leaders, government agencies, corporations, and public interest groups for nearly thirty -five years. For our work in these areas The Mellman Group has been named "Pollster of the Year" and leading strategists and pollsters have cited my company as one of the most accurate polling companies in the United States.

As part of my work, I routinely design and implement polls to project the results of elections and have designed, implemented, and executed such polls nationwide and have worked with exit poll data in real time for over 20 years. I have helped guide the campaigns of 29 U.S. Senators, two dozen members of Congress, and 10 governors. I have also assisted candidates and campaigns at the local and state level as well as internationally. I also perform polling and surveys for public interest organizations such as the Leadership Conference on Civil Rights, Alliance for American Manufacturing, The Bipartisan Policy Center, the League of Conservation Voters, as well as for corporate clients. I have served as a consultant on politics for CBS News, PBS, The Hotline, and National Journal's daily briefing on politics.

I received my B.A. in Politics from Princeton and graduate degrees in Political Science from Yale. I also taught as a Lecturer in the Yale Political Science Department and served on the

faculty of George Washington University's Graduate School of Political Management. I am President of the American Association of Political Consultants.

I served as an expert in on behalf of the Defendants in *McConnell v. Fed. Election Commission,* a case that was brought in the United States District Court for the District of Columbia. My expert report in that case primarily relied on a research poll that I conducted. *See McConnell v. Fed. Election Comm'n*, 251 F. Supp. 2d 176, 870-71 (D.D.C. 2003).

IV.   SOURCES

In addition to drawing upon my many years of experience and expertise as a pollster and political polling consultant, this report draws upon standard sources in political science, statistics, and polling methods, including scholarly journals, articles, reports, and newspaper articles. Specific sources referenced for my discussion of exit polling principles are listed in the accompanying bibliography.

All information regarding Roger Stone's polling methodology and program was gathered from the sources cited herein, including the following:

- Stone's Defend the Donald – Stop the Steal, https://stopthesteal.org/defenddonald/ (last visited Nov. 1, 2016);

- Christina Wilkie, "Trump-Linked Voter Intimidation Group Releases New Script For 'Citizen Journalists,'" The Huffington Post, Oct. 26, 2016, available at: http://www.huffingtonpost.com/entry/vote-protectors-citizen-journalists_us_58111180e4b064e1b4b04a85 (last visited Nov. 1, 2016);

- Oliver Laughland and Sam Thielman, "Trump Loyalists Plan Own Exit Poll Amid Claims of 'Rigged' Election," The Guardian, Oct. 20, 2016, available at: https://www.theguardian.com/us-news/2016/oct/20/citizens-for-donald-trump-exit-poll-roger-stone-rigged-election-claim (last visited Nov. 1, 2016);

- Stop the Steal, http://stopthesteal.org (last visited Nov. 1, 2016);

- https://sentinelblog.com/2016/09/04/stealing-the-election-from-donald-trump-roger-stone-and-stefan-molyneux-youtube/.

V.   ANALYSIS

A.   Background - Exit Polls

Exit polls are scientific surveys conducted with a random sample of voters shortly after they have cast their ballots.[1] Traditionally voters have been interviewed just after exiting their polling places, and that is still the case in much of the country. However, with the advent of early voting and vote by mail in some states, in order for exit polls to be accurate, it has been necessary to identify means of interviewing those voters as well.

Exit polls are usually, but not always, sponsored by news organizations, and are designed to:

a. Assist news organizations in "projecting" the results of specific election contests after the polls have closed but before all, or even most of the ballot shave been counted;

b. Help determine which segments of the population supported which candidate or party; and/or

c. Help assess why voters cast their ballots the way they did.

Scholars also use exit poll data in furthering their understanding of election dynamics.

The major exit poll in the United States is conducted by the National Election Pool (NEP), which is comprised of: ABC, CBS, CNN, Fox, NBC and the Associated Press. Other entities such as the *Wall Street Journal* subscribe to the NEP. This exit polls looks at the Presidential, Senate, Gubernatorial and Congressional elections and occasionally at ballot measures.

Conducting exit polls is a difficult, laborious and highly technical process that requires considerable expertise and training. Meaningful exit polling requires months of planning and substantial funding, as well as careful deployment of random sampling techniques to determine which precincts are included and to randomly select voters within each precinct. Exit polls typically keep their sampled precincts confidential to prevent anyone from intervening to alter the results.

When designing an exit poll, one key consideration is that the interviewers conducting the polling must be thoroughly non-partisan and rigorously trained. Past errors in exit polls have been attributed in part to inadequate training and, as such, it has become a key part of designing a successful and reputable poll. Training programs for interviewers almost always involve multiple interactions between poll organizers, interviewers and supervisors.

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[1] All sources are listed in the bibliography accompanying this declaration.

Another hallmark of legitimate exit polling is guaranteeing respondents' privacy, confidentiality and anonymity. Exit polls should be as secret a ballot as the actual vote, and the pollster should not know the voters' responses. No exit poll should require the respondent to publicly state their choices.

True exit polls also seek to project the results of the election as a whole, meaning that to conduct a proper exit poll a significant effort is made to account for absentee, early, and mail voters who do not vote on election day, but comprise 50%-100% of the electorate in some states. No exit poll can be accurate without a process for interviewing these individuals, who will, by definition not be at polling places.

Exit poll interviewing must occur during the entire time the polls are open, in order to account for any time of day effects. Some demographic groups are more likely to vote before or after work, for instance, while others might vote in the middle of the day–and it is important that any biases observed during those times be mitigated by coverage throughout the day.

Moreover, throughout the polling process exit pollsters must employ a methodology that adjusts for non-response bias. If a voter sampled for interviewing is missed for any reason (they refuse, for example) the pollster must have an approach to overcoming this problem.

All polls have statistical margins of error and other non-sampling error. No one can be certain that any poll is 100% accurate. The network polls become more accurate because the projections they display on the air take into account both poll results and actual precinct result. Only by blending these data sources do network exit polls become highly accurate.

B.   Comparison of Stone "Exit Polls" to Accepted Exit Poll Methodology

As demonstrated above, conducting exit polls requires considerable expertise and training. Mr. Stone's so-called "exit poll operation" reflects none of these characteristics.

First, meaningful exit polling—polling designed to capture the likely outcome of a potential election—requires months of planning. For example, the planning and execution process for network exit polling in the U.S. takes over a year and substantial funding.[2] In other countries, it can take three to six months to plan and execute exit polls. Mr. Stone's exit poll enterprise, which purports to be a nationwide survey and that appears to be akin to network exit polling, seems to have begun just 2 weeks ago and he admits it is "underfunded." *See* Stop the Steal, http://stopthesteal.org (last visited Nov. 1, 2016); Stone Cold Truth, Genesis Communications Network, 10/29/16.

Further, as discussed, exit polling requires careful deployment of random sampling techniques to determine which precincts are included and to randomly sample voters within each

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[2] Network exit polling refers to polling performed collaboratively by major news networks to project election results.

precinct. Failure to employ proper sampling methods renders any poll, including an exit poll, completely invalid.

Mr. Stone appears to have no sampling method. From his own accounts of his polling, he is herding his followers to specific precincts he has selected, apparently without even an attempt at a random process. *See* Stop the Steal, http://stopthesteal.org (last visited Nov. 1, 2016) (explaining that Stone is conducting exit polling in targeted Democratic states and localities, rather than randomly selected locations).

Moreover, exit polls typically keep their sampled precincts confidential to prevent anyone from intervening to alter the results. Mr. Stone has done just the opposite and publicized the locations he wants his so-called "interviewers" to go to. Oliver Laughland and Sam Thielman, "Trump Loyalists Plan Own Exit Poll Amid Claims of 'Rigged' Election," The Guardian, Oct. 20, 2016, *available at*: https://www.theguardian.com/us-news/2016/oct/20/citizens-for-donald-trump-exit-poll-roger-stone-rigged-election-claim.

And, most importantly, in typical exit polls interviewers themselves must be thoroughly non-partisan and rigorously trained. Past errors in exit polls have been attributed in part to inadequate training. Training programs for exit poll interviewers almost always involve multiple interactions between poll organizers, interviewers, and supervisors. In fact, the U.S. network exit polls began their recruitment and training for interviewers for the 2016 General Election as early as August 2016, at least three months before the election. Mr. Strone's program, only 2 weeks old, does not appear to have a clearly defined training element and it appears that he is still recruiting interviewers—hardly leaving them enough time to be trained before Election Day. Stop the Steal- Citizen Toolbox, https://stopthesteal.org/register-from-toolbox/?redirect_to=https://stopthesteal.org/citizen-toolbox/ (last visited Nov. 1, 2016).

Perhaps most obvious, legitimate exit pollsters make use of non-partisan interviewers who are obligated to avoid displaying any clothing or paraphernalia which may betray their personal political beliefs and to refrain from engaging in political discussions with respondents.

As his website makes clear, Mr. Stone's plan is precisely the opposite. He is recruiting mostly partisan individuals to conduct his interviews. *See* Stop the Steal, http://stopthesteal.org (last visited Nov. 1, 2016).   Legitimate exit polls are not in any way biased. Yet, Mr. Stone enters the arena with an avowedly partisan purpose—to help Donald Trump's campaign. *See* Stop the Steal, http://stopthesteal.org (last visited Nov. 1, 2016). Further, because he has not made public the questions he is asking, there is no way to know how biased or misleading they might be, but it is clear that any exit poll with an avowedly partisan purpose will not produce the type of unbiased, neutral results that exit polls are designed to reflect

Another hallmark of legitimate exit polling is guaranteeing the respondents' privacy, confidentiality and anonymity. Exit polls should be as secret a ballot as the actual vote, and the

pollster should not know the voters' responses. No exit poll should require the respondent to publicly state their choices. It is unclear whether Mr. Stone is planning to meet that obligation.

As noted proper exit polls make significant efforts to deal with absentee, early, and mail voters who do not vote on Election Day. No exit poll can be accurate without a process for interviewing these individuals, who will, by definition not be at polling places. Mr. Stone appears to be completely ignoring this vital aspect of obtaining accurate exit poll results. *See* Stop the Steal- Citizen Toolbox, https://stopthesteal.org/register-from-toolbox/?redirect_to=https://stopthesteal.org/citizen-toolbox/ (last visited Nov. 1, 2016).

Both at the polling place and with early and mail voters, exit pollster must employ a methodology that adjusts for non-response bias. If a voter sampled for interviewing is missed for any reason (they refuse, for example) the pollster must have an approach to overcoming this problem.

Mr. Stone lacks the training or experience required to develop and implement solutions to this problem and it is not clear anyone working with him brings the required expertise. In particular, Mr. Stone is not a statistician, experienced pollster, or social scientist. Stonezone-About Roger Stone, http://stonezone.com/about.php (last visited Nov. 1, 2016). He claims in some places to be associated with a Dr. Richard Davis who apparently has a distinguished career in the US Navy, but does not appear to be statistician, pollster or social scientist. He is rather an MD, "an accomplished serial entrepreneur with a background in Aerospace Engineering, Chemistry, and Medicine." Poll Mole- About, http://www.pollmole.vote/about/ (last visited Nov. 1, 2016). This is plainly inadequate to ensure adjustments for non-response bias in exit polling.

Additionally, exit poll interviewing must occur during the entire time the polls are open, in order to account for any time of day effects. Some demographic groups are more likely to vote before or after work, for instance, while others might vote in the middle of the day–and it is important that any biases observed during those times be mitigated by coverage throughout the day.[3] Again, Mr. Stone's plan seems to lack any mechanism for insuring continuous coverage, particularly given his on-going recruitment problems and the low number of interviewers recruited to this point. *See* Stop the Steal- Total Participation Goal, https://stopthesteal.org/ (last visited Nov. 1, 2016).

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[3] This is also why it is important to account for people during the early and absentee voting periods as some demographic groups, particularly African Americans, are known to utilize early and weekend voting more than others.

Perhaps most important, Mr. Stone's avowed purpose in conducting the poll is to insure there is no election fraud.[4] Exit polls cannot fulfill that objective. Exit polls are conducted to project the outcome of an election as accurately as possible, not to prevent fraud.

Further, all polls have statistical margins of error and other non-sampling error. No one can be certain that any poll is 100% accurate. Indeed, the intricately crafted exit polls used by the networks have had meaningful bias in their results for many years.

The network polls become more accurate because the projections they display on the air take into account both poll results and actual precinct results—the kind of data Mr. Stone seems determined to challenge. Stop the Steal, http://stopthesteal.org (last visited Nov. 1, 2016).

Only by blending these data sources do network exit polls become highly accurate.

On whole, Mr. Stone's effort seems oblivious to the fundamental techniques of, and facts about exit polling and is plainly not designed to achieve the accepted purpose of an exit poll. Rather, given Mr. Stone's stated political biases and the methodology he has employed—i.e., targeting Democratic and minority precincts—it appears only designed to intimidate voters in an attempt to influence the election and suppress the vote.

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

Mark Mellman

Mark S. Mellman

11/1/2016

Date

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[4] *See* https://sentinelblog.com/2016/09/04/stealing-the-election-from-donald-trump-roger-stone-and-stefan-molyneux-youtube/ (discussing purpose of exit polling as being designed to stop the election from being "rigged").

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- Social Science Research Council, *A Review of Recent Controversies Concerning the 2004 Presidential Election Exit Polls*," *available at*: http://isites.harvard.edu/fs/docs/icb.topic134510.files/ExitPollReport031005.pdf