

2:16-cv-2415-RFB-NJK

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

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NEVADA STATE DEMOCRATIC PARTY,)	
)	Case No. 2:16-cv-2415-RFB-NJK
)	
Plaintiff,)	Las Vegas, Nevada
)	Thursday, November 3, 2016
vs.)	1:00 p.m.
)	
NEVADA REPUBLICAN PARTY,)	MOTION HEARING
DONALD J. TRUMP FOR)	
PRESIDENT, INC., ROGER J.)	
STONE, JR., and STOP THE)	
STEAL, INC.,)	
)	
Defendants.)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
THE HONORABLE RICHARD F. BOULWARE, II,
UNITED STATES DISTRICT JUDGE

APPEARANCES: See the next page

COURT REPORTER: Patricia L. Ganci, RMR, CRR
United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101

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

2:16-cv-2415-RFB-NJK

1 APPEARANCES:

2 For the Plaintiff:

DON SPRINGMEYER, ESQ.

3 **BRADLEY SCOTT SCHRAGER, ESQ.**

4 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN
3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89120
5 (702) 341-5200

6 **MICHAEL JULIAN GOTTLIEB, ESQ.**

7 BOIES, SCHILLER & FLEXNER, LLP
5301 Wisconsin Ave., Suite 800
Washington, DC 20015
8 (202) 237-9617

9 **BRUCE V. SPIVA, ESQ.**

10 PERKINS COIE LLP
700 13th Street, Suite 600
Washington, DC 20005
11 (202) 654-6203

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

BRIAN R. HARDY, ESQ.

14 MARQUIS AURBACH COFFING
10001 Park Run Drive
15 Las Vegas, Nevada 89145
16 (702) 382-0711

17

18

19

20

21

22

23

24

25

2:16-cv-2415-RFB-NJK

INDEX OF EXAMINATIONS

For the Defendant:

Witness Name	Direct	Cross	RD	RX	Voir Dire
Jesse R. Law	23	48			

DEFENDANT'S EXHIBIT INDEX

Exhibit No.	Admitted
1	29
2	29

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

--oOo--

P R O C E E D I N G S

THE COURT: Please be seated.

(Whereupon, courtroom is sealed and an ex parte conference was recorded, but not transcribed.)

(Whereupon, courtroom is unsealed.)

THE COURT: Okay. We are back on the record in this case, which is Docket No. 16-cv-2514, in the public portion of this hearing.

I had an ex parte portion of this hearing related to a document that was submitted to me in camera by the defendants. I don't find there to be a basis for disclosing that document at this time. And I'm not even sure that there would be a foreseeable reason to disclose it, but I do want to make a note of that generally.

So let's talk a little bit about where we are.

Mr. Spiva, I really want you to comment, actually, on the e-mail

2:16-cv-2415-RFB-NJK

1 that was sent out to the poll watchers in terms of what else do
2 we need to do? Right. As you all know, the Court had a concern
3 about this particular aspect of the PowerPoint. Again, I hadn't
4 heard Mr. Law's testimony yet, but had a concern about that. An
5 e-mail apparently was sent out, and I would imagine Mr. Law --
6 and we will receive testimony about the fact that it was sent
7 out and he would confirm that under oath. But assuming that he
8 does that, where are we after that? Because it seems to me that
9 addresses a great deal of what is the substance of this case.

10 Now, I know that you had said that you were going to
11 supplement with some additional connections to poll watchers
12 and, perhaps, the other defendants. And the Court's going to
13 issue this afternoon a separate scheduling order and hearing
14 date for the Stone defendants for tomorrow. So we're not
15 talking about the Stone defendants in the context of what I'm
16 asking you. I'm talking about the defendants who are here now,
17 which would be the Nevada Republican Party and the Donald Trump
18 Campaign.

19 It doesn't seem to me that there are significant
20 substantive issues remaining, but I'll hear from you as it
21 relates to the nature of your concerns for that -- for these
22 entities. Because, again, I looked at that particular
23 communication and, in fact, it goes beyond what's required in
24 some respects. It's actually not required of a campaign that
25 they confer with a particular person before making the

2:16-cv-2415-RFB-NJK

1 challenge, but that's what actually the directions are in the
2 context of this. And it wasn't compelled by the Court. And
3 there is a discussion about, in fact, many of the poll workers
4 or observers not even being placed in their own precincts, such
5 that it would create an issue.

6 And we haven't even discussed the fact that the Court
7 doesn't assume that the actual individuals working at the sites
8 themselves wouldn't nonetheless still have told the poll
9 observer for a particular campaign, You have to fill out this
10 form and here are the requirements for filling out the form.
11 Because our conversation occurred in the context of them not
12 having been trained on that law. But the fact is that there was
13 still the other part of that conversation, which is that there
14 are also trained employees of the various registrars who know
15 about the form and who would presumably require it. And I
16 haven't been presented with any information that would suggest
17 that they wouldn't do that or that they don't routinely do that.

18 So in light of that, Mr. Spiva, where are we in the
19 context of these particular defendants?

20 MR. SPIVA: Sure. And I can address it, Your Honor, I
21 just want to consult for a second to make sure I have clarity on
22 one factual point before I --

23 THE COURT: Sure. Take your time. Take your time.
24 Sure. Absolutely.

25 (Plaintiff's counsel conferring.)

2:16-cv-2415-RFB-NJK

1 MR. SPIVA: Okay. Thank you, Your Honor, for giving me
2 a moment. I just wanted to make sure I had something straight
3 in terms of which e-mails, and as I --

4 THE COURT: So, I'm sorry, I forgot to actually have
5 you all state your names for the record for the public portion
6 of this hearing. So if you could just state your names for the
7 record.

8 MR. SPIVA: Yes, Your Honor. My name is Bruce Spiva
9 from Perkins Coie for the plaintiffs and...

10 MR. SCHRAGER: Bradley Schrager of Wolf Rifkin, also
11 for the plaintiffs, Your Honor.

12 MR. HARDY: Brian Hardy with the law firm of Marquis
13 Aurbach Coffing on behalf of the Nevada Republican Party and
14 Donald J. Trump Campaign for President, Inc.

15 THE COURT: Okay. Thank you. Mr. Spiva, so...

16 MR. SPIVA: I can address your question now, Your
17 Honor. There are a lot of moving parts so I wanted to make sure
18 I was focusing on the right thing.

19 THE COURT: Absolutely.

20 MR. SPIVA: So I guess there are two e-mails, one that
21 was sent to we don't know exactly know who because it's redacted
22 this morning.

23 THE COURT: Well, what I would imagine Mr. Law is going
24 to say is that he sent it to all of the poll watchers who they
25 have listed as volunteers. I think you would agree that people

2:16-cv-2415-RFB-NJK

1 who sign up for a campaign, that association is in fact
2 protected by the First Amendment privilege. I think that's a
3 fairly clear exercise of that privilege that you don't get to
4 know the names of people who volunteered for the campaign,
5 right? I mean, you're not saying --

6 MR. SPIVA: That's not -- I'm not trying to do that.

7 THE COURT: Again, we're working through it step by
8 step, so I'm not saying that you are.

9 MR. SPIVA: Yeah. I'm saying --

10 THE COURT: Let me just finish for a second. What I
11 presume is that what's going to happen is -- and, again, this is
12 partly something that I want to make sure that we work through,
13 but I presume that Mr. Law will testify that that was sent to
14 the poll watchers that they have listed. And then my question
15 to you is, if that is the case and we have a declaration from
16 different individuals, Mr. Munoz, Mr. McDonald, about the Nevada
17 Republican Party, what else would we need to do in the context
18 of the hearing?

19 I'm still think it's going to be appropriate for
20 Mr. Law to actually take the stand to verify the information.
21 But assuming that he does, what else are we doing at this
22 hearing? Because I want to have some sense of what to expect
23 and what issues to be focussed on.

24 MR. SPIVA: Right. And I'll have a few questions for
25 Mr. Law based on the materials that were produced, but I think

2:16-cv-2415-RFB-NJK

1 going -- I think specifically to the question Your Honor was
2 asking what else is to be done in terms of this issue of not
3 properly advising poll observers about the need for personal
4 knowledge, etc., that this is clearly voluntary cessation and
5 it's obviously in reaction to the very lawsuit that we brought.

6 THE COURT: Okay. Let me say this. I haven't --
7 you're saying that. And I want to be clear about the fact that
8 I haven't made that finding.

9 MR. SPIVA: Right.

10 THE COURT: And I don't know that I would need to reach
11 that finding. And so, I will say that part of the issue is if
12 Mr. Law gets up there and says what I expect he's going to say,
13 I don't know that I need to reach that issue. And I'm asking
14 that because I don't know -- I don't want to spend extra time
15 for me simply to find something when I may find that the issue
16 is in fact moot.

17 Now, you have questions. You'll ask Mr. Law. This
18 will get teased out. But I think it's important for us to
19 understand the parameter of what may be left for what you think
20 would be appropriate injunctive relief. That's the question I'm
21 asking you, not so much what I would find in relation to this
22 document. But you can continue. I'm just saying that me asking
23 you that doesn't mean I'm going to find that necessarily, but it
24 does mean that I would probably find that it moots whatever
25 concerns that I had if it's verified in a way that we would

2:16-cv-2415-RFB-NJK

1 expect it to be.

2 So why don't you go forward from there.

3 MR. SPIVA: Okay. And I think it would still be
4 appropriate for Your Honor to enter an injunction, even if it
5 were the narrow injunction that I think is of the type -- I'm
6 not saying that Your Honor has found that you would enter it,
7 but you might conceivably enter or potentially enter regarding
8 this particular issue.

9 THE COURT: Okay. Well, so tell me about that because
10 why would I do that? If this information goes out, and it did
11 go out, my injunction would be based upon what? Because there
12 still would have to be a likelihood of success on the merits or
13 a serious question going to the issue, which is that other
14 standard in the context of the Ninth Circuit.

15 MR. SPIVA: To -- sorry, I didn't mean to interrupt.

16 THE COURT: I'm just saying that the Ninth Circuit has
17 these two different standards as it relates potentially to
18 obtaining an injunction, right. But the question remains is if
19 I were to find that this had gone out, is your argument that
20 there would still be irreparable harm that had been created
21 because it hadn't gone out initially? I'm not sure why -- or I
22 would be issuing an injunction and what would be the basis for
23 it if this plays out as we've discussed. And, again, I'm saying
24 that because I want to be able to focus the testimony or
25 whatever evidence we receive on those issues.

2:16-cv-2415-RFB-NJK

1 So what would be the basis for an injunction? If I --
2 if this notice went out to the poll watchers and I were to
3 credit that, right, and it appears to on the face of it clearly
4 comport with the law and indicate and highlight, in fact, the
5 issues that the Court was concerned about in terms of what might
6 have arisen by not including the PowerPoint -- and, again, I
7 didn't even find that it wasn't part of the training, but based
8 upon an initial review of the PowerPoint it wasn't included,
9 what else am I issuing the injunction about?

10 MR. SPIVA: Well, even for that, Your Honor, though,
11 there is a basis to do that to hold their feet to the fire.
12 Because when a party voluntary -- voluntarily stops illegal
13 conduct as a result of a lawsuit, I think it's still appropriate
14 to enter the junction to make sure that their feet are held to
15 the fire on Election Day in terms of the communications they
16 have with their poll workers. You know, beyond that, Your
17 Honor --

18 THE COURT: Okay. Well, hold on. Let's stop there for
19 a moment because I want to understand what that actually means.
20 You say hold their feet to the fire in the form of an injunction
21 that says what?

22 MR. SPIVA: Well, I mean, I would go back to our
23 proposed order, Your Honor, but, you know, they need to make
24 sure that people are only making these challenges, you know,
25 based on personal knowledge, that they are -- that they're doing

2:16-cv-2415-RFB-NJK

1 exactly what this letter says they're doing.

2 THE COURT: Okay. But, Mr. Spiva, I wanted you to be
3 specific.

4 MR. SPIVA: Yes.

5 THE COURT: I wouldn't enjoin them or direct them to do
6 what?

7 MR. SPIVA: I mean, Your Honor, I could read from the
8 language of the proposed order, but that's what we're asking
9 for.

10 THE COURT: No, but I've already -- we've discussed
11 previously that order is very broadly crafted. I don't find
12 that to be appropriate, right. And I focussed on particular
13 issues based upon the record that is before me, right. I don't
14 know that it's appropriate to simply issue an injunction that
15 says follow the law, unless there are specific findings about
16 how they're not following the law. And then injunctions are
17 narrowly tailored to address the ways in which the Court might
18 find that there are issues and focus on those issues.

19 So if you want me to then issue an injunction based
20 upon your belief that there is still the possibility of a voter
21 challenge misuse resulting in voter intimidation, what is it
22 that you would suggest an injunction would look like to address
23 whatever residual issues may be left over even after this notice
24 may have been sent? What exactly would I enjoin them from doing
25 or require them to do?

2:16-cv-2415-RFB-NJK

1 MR. SPIVA: And even with respect to this narrow issue,
2 Your Honor, leaving aside that, you know, of course we feel like
3 we have laid enough of a foundation for Your Honor to provide
4 the broader relief we've asked for. I understand Your Honor
5 disagrees with that and you're -- Your Honor is the fact finder
6 and the finder of the law here, but I'm just -- I just want to
7 make sure I'm not -- it's understood that I'm not conceding
8 that. We believe we have a record, and that's what we're asking
9 for.

10 But even with respect to this narrow issue, I think it
11 would be appropriate for Your Honor to issue an injunction that
12 says, still says, you know, You must make sure that your poll
13 workers, poll observers, challengers are following the law in
14 these respects in terms of, you know, only making challenges
15 based on personal knowledge --

16 THE COURT: Okay. So what I am asking you, though,
17 Mr. Spiva, is you know for an injunction to issue, it must be
18 manageable by the Court. So for me to say, Make sure they're
19 following that, I would have to give them some specific
20 directions about what that would mean, right. Because what they
21 will say is, We sent the e-mail. That's our compliance with
22 whatever concerns the Court had. So I need you to tell me what
23 else I would be directing them to do, right, in the course of
24 this case.

25 Now, you know, it may be that you say, Well, I want

2:16-cv-2415-RFB-NJK

1 something else sent out, I don't know that you do or you don't,
2 or I want some log kept. I don't know what it is, but what I'm
3 saying to you is it has to be specific. It can't simply be make
4 sure they follow the law as it relates to challenges because
5 that -- I don't know how I would manage that. That doesn't give
6 them specific direction because they're going to say, That's
7 what we're doing, right. We've done that. That's what we're
8 doing. What else could they do? So I think you have to give me
9 more than that. And that also would allow, you know, when
10 Mr. Law testifies for the Court to be able to ask him questions
11 about the process.

12 MR. SPIVA: Right.

13 THE COURT: And that's why we're doing this now before
14 he testifies because I don't want to have this conversation
15 after he testifies, and then we have to put him back on the
16 stand --

17 MR. SPIVA: Right.

18 THE COURT: -- to ask him about procedures. So if
19 there's something else that you want that you think would be
20 appropriate to address this particular remedy or this particular
21 issue, which the Court has identified as the main one that I
22 think would be appropriate at least for consideration, what
23 specifically would that be?

24 MR. SPIVA: Yeah. And part of this may depend, Your
25 Honor, once we hear the testimony of what -- who did this go to,

2:16-cv-2415-RFB-NJK

1 who had been at these trainings that got the wrong information,
2 that may inform that discussion. I also think that, you know,
3 if you have a situation in any context where people who are
4 slated to do an endeavor like poll watching or challenging and
5 they're given wrong information, simply sending out an e-mail to
6 them saying, Oops, don't -- actually, you know, there are a
7 couple of things we missed, make sure to do this, is probably
8 not sufficient to ensure that these folks who are not -- you
9 know, this is not their -- presumably, their professional job
10 that they do on a -- you know, day-in-day-out basis. Even if it
11 were, that probably would not be sufficient.

12 And so, you know, there should be more in terms of, you
13 know, monitoring the polls, monitoring the poll watchers,
14 following up, and making sure that they're doing what they're
15 doing. But I guess part of my answer to Your Honor, though, is
16 I think that the -- given the record I think that we've put in
17 here about what has gone wrong, somewhat -- some of the risk
18 really needs to fall on them because -- in terms of -- you know,
19 I do think it would be appropriate to have an injunction which
20 says, you know, Make sure nobody acts on the wrong guidance you
21 gave them before. And it's up to them to figure out how they
22 ensure that because --

23 THE COURT: But that's not the way injunctive relief
24 works, right. It has to be something that they actually can
25 clearly understand what the direction is; and if they don't

2:16-cv-2415-RFB-NJK

1 follow the Court's direction, that I could find that they hadn't
2 followed it, right. Because they're going to say, We took the
3 steps that we thought were appropriate, right. And that's why,
4 again, injunctions are specific so that if there is conduct that
5 violates the injunction, we have a specific record for that.

6 So, perhaps -- and we may just need to wait to hear
7 what Mr. Law says about the operation and that may give us
8 better information. I was hoping to be able to tease some of
9 that out beforehand, but why don't we have Mr. Law testify.

10 I will say this. On the record before me now, it
11 doesn't appear that there's sufficient information to find that
12 the Nevada Republican Party itself has independent poll
13 watchers. It doesn't appear to me that the Nevada Republican
14 Party is involved with poll watching/observing other than
15 providing at most supporting services. There's no indication
16 that they themselves created their own training program or that
17 they had their own training outline.

18 Do you have any evidence of any of that, Mr. Spiva?

19 MR. SPIVA: Well, I mean, there's some of it I think in
20 these documents that we've gotten, but --

21 THE COURT: Well, but the e-mails show things being
22 shared with them. Do you have anything that would suggest that
23 they crafted their own training program or had their own
24 parallel program with the Trump Campaign?

25 MR. SPIVA: Well, they hosted the training program.

2:16-cv-2415-RFB-NJK

1 THE COURT: I understand that. I'm not disputing that,
2 right.

3 MR. SPIVA: No. And the Trump Campaign is a defendant
4 here. So, I mean, that's --

5 THE COURT: I understand that, but the Nevada
6 Republican Party is also a defendant. What I am trying to do is
7 figure out which defendants -- to the extent that I would issue
8 an injunction -- we're focussed on and to the extent Mr. Law
9 testifies who we're talking about, right.

10 Absolutely the Trump Campaign is the defendant here as
11 is the Nevada Republican Party as are on the Stone entities, but
12 remember injunctions issue to a specific party and can impact
13 other parties. But if it's involving a specific party's
14 conduct, it has to address that party's conduct. And what I'm
15 saying to you is that it's not clear to me that there's anything
16 specifically involving the Nevada Republican Party doing
17 anything other than supporting what would appear to be the Trump
18 Campaign's program or process for poll observers.

19 But why don't we do this, why don't we just move to
20 Mr. Law's testimony. But before we do that, one thing is I
21 wanted to note that the Stone entities, as I understand, have
22 been served. Is that correct?

23 MR. SPIVA: Yes, Your Honor.

24 THE COURT: Mr. Hardy, you don't know whether or not
25 you're going to be representing them or not, do you?

2:16-cv-2415-RFB-NJK

1 MR. HARDY: I will not.

2 THE COURT: You will not be.

3 MR. HARDY: I would believe no and --

4 THE COURT: The reason why I ask that is just for
5 scheduling I'm going to be issuing an order setting scheduling,
6 so I was going to ask you for your convenience, Mr. Hardy, about
7 the timing of that.

8 MR. HARDY: I have no interest in representing them on
9 anything. They'll have their own counsel. They'll do their own
10 thing. They have no affiliations. We are not any part of that.

11 THE COURT: All right. Again, mostly that was just as
12 a scheduling convenience to you. If I was going to issue that
13 order, I wanted to make sure that you would be available. And
14 hopefully if Mr. Langhofer was going to be available, we'd have
15 him there, too, but he seems to be much in demand across this
16 country.

17 So, in any event, what I am going to do is I'm going to
18 set a time for the hearing tomorrow.

19 MR. SPIVA: Your Honor, we haven't had any
20 communications from the -- anybody who says that they're counsel
21 for either Mr. Stone or --

22 THE COURT: Well, and that may have separate
23 implications because there may be potential injunction that
24 issues against them. If they're not going to respond at some
25 point having been served, that's -- that could be an issue and

2:16-cv-2415-RFB-NJK

1 concern. I just want to put that out there. And also you
2 should be prepared, Mr. Spiva, and your clients and counsel to
3 be able to serve the order that I'm going to -- scheduling order
4 that I am going to be finalizing in the next hour or so while
5 we're doing also this testimony so that can be sent out for
6 possible hearing tomorrow with the Stone entities.

7 MR. HARDY: Am I going to be required to be a part of
8 that hearing tomorrow? I mean, that's my question because I've
9 got -- I've got clients that are flying in to town from out of
10 the country tomorrow, and I was hoping --

11 THE COURT: You mean you're a little busy at this
12 period of time, is that what you're telling me, Mr. Hardy?

13 So I wouldn't require you. What I will say is this. I
14 can't say, Mr. Hardy, that if something comes up that it might
15 not impact your clients. That's -- obviously you understand
16 that. That while injunctions are directed to specific parties
17 in terms of conduct, the injunctions can actually incorporate
18 other related entities who would be impacted and can nonetheless
19 be required to comply with an injunction, right.

20 So I can't promise you that if something came up, for
21 example, they come forward and say, We're working very closely
22 with the Trump Campaign. In fact, they've hired us to -- I'm
23 not saying that.

24 MR. HARDY: Yeah.

25 THE COURT: But if that happened and you weren't here,

2:16-cv-2415-RFB-NJK

1 right, that would have implications in the context of something
2 I might have to order based upon the record that I had. And so,
3 again, I'm not saying you have to be here. What I am saying is
4 I can't say that if something were to arise in the course of
5 evidence that the Court received, that it might not impact your
6 clients.

7 MR. HARDY: Well, can we set the hearing towards the
8 afternoon then? So I can -- I have meetings with them in the
9 morning. If we can do it in the afternoon, like after 1 or 2
10 o'clock, that would be perfect.

11 THE COURT: Sure, that's fine. So how about around 2
12 or 3 o'clock?

13 MR. HARDY: That would be perfect because I just
14 need -- I've got meetings in the morning.

15 THE COURT: That's fine. You don't have to explain
16 your schedule. But, again, part of the reason why I asked you
17 that is because, as you know, I can't promise that if something
18 came up that your client wouldn't be impact -- your clients
19 wouldn't be impacted by that. And I wanted to give you the
20 opportunity to be present if you wanted to.

21 MR. HARDY: And I will be present. I just need it
22 later in the afternoon then.

23 THE COURT: So how about 3 o'clock then?

24 MR. HARDY: Three o'clock will work.

25 THE COURT: Mr. Spiva?

2:16-cv-2415-RFB-NJK

1 MR. SPIVA: I'm sorry, Your Honor.

2 THE COURT: Three o'clock tomorrow afternoon?

3 MR. SPIVA: Yes. Yes, Your Honor.

4 THE COURT: This is for the Stone defendants. We'll
5 have a hearing as it relates to the Stone defendants. I mean,
6 all defendants can be present at that hearing. But this is
7 basically a similar order to what I had issued earlier as it
8 relates to this particular issue about poll observers or
9 watchers and training related to them, so...

10 MR. SPIVA: The only thing I would say, Your Honor, is
11 we made Herculean efforts to get a hold of them. And Mr. Stone
12 himself obviously knew. He had actual knowledge of this lawsuit
13 and has chosen not to appear at either of the hearings Your
14 Honor has set. We didn't -- we didn't actually formally get to
15 serve him, we've made several attempts beforehand, until
16 yesterday, but --

17 THE COURT: Well, I understand that, but once he has
18 been -- these entities have been served, which they have been,
19 then there are different implications for them not responding
20 and there may be different implications in the context of an
21 injunction. So that's what we'll discuss tomorrow as it relates
22 to those entities. And if they choose not to show up and you
23 think that an injunction should issue based upon the record that
24 we have, that's something that we can discuss tomorrow.

25 And I think it would be important for you, Mr. Hardy,

2:16-cv-2415-RFB-NJK

1 to think about how that might impact your client in the context
2 of what the injunction would look like in terms of identifying
3 at a particular, for example, poll or precinct location who is
4 working for what entity because it could end up being a fairly
5 crowded --

6 MR. HARDY: We're following the law.

7 THE COURT: No, it's not that. But, for example, if I
8 were to say I'm going to enjoin the Stone entities -- and I'm
9 not saying that I would -- from participating at all in poll
10 watching, it would be helpful obviously for you to participate in
11 how that order might be crafted such that it didn't interfere
12 with what your clients were doing or with what the Nevada
13 Democratic Party was doing.

14 So I say that again now so that -- that's an issue
15 where it seems to me that your input might actually have some
16 impact on a potential order that the Court would issue.

17 MR. HARDY: I'll be prepared for that, Your Honor.
18 Thank you.

19 THE COURT: Okay.

20 MR. SPIVA: Your Honor, we will obviously make every
21 effort to serve them with the order Your Honor is getting ready
22 to issue setting the hearing, but given how difficult it was to
23 actually serve the first set of papers, I can't guarantee that
24 we'll be able to --

25 THE COURT: Well, I'm not asking you to guarantee it.

2:16-cv-2415-RFB-NJK

1 I'm obviously -- the level of service and the attempts impact, I
2 believe, the arguments you can make about whether or not relief
3 should issue. So I certainly would urge you to make exhaustive
4 efforts because that's something the Court can consider in the
5 context of whether or not injunctive relief should in fact issue
6 based upon a potential evasion of service or other types of
7 issues that come up with respect to relief and the Court's
8 exercise of its equity jurisdiction.

9 So with that, why don't we bring up the young man who
10 has Law in his name who is not a lawyer to testify. And this is
11 an evidentiary hearing, but what I will say is this, Mr. Law.
12 You're going to be sworn in. I'm going to allow the lawyers to
13 ask leading questions because it will save time. And so the
14 rules of evidence will be followed, but they'll be lax.

15 So, Mr. Law, why don't you come forward and take the
16 stand.

17 COURTROOM ADMINISTRATOR: Please raise your right hand.

18 JESSE REED LAW, having duly been sworn, was examined
19 and testified as follows:

20 COURTROOM ADMINISTRATOR: Thank you.

21 THE COURT: Why don't you have a seat there and state
22 your full name for the record, please.

23 THE WITNESS: Jesse Reed Law.

24 THE COURT: Can you spell that, please?

25 THE WITNESS: J-E-S-S-E, R-E-E-D, L-A-W.

2:16-cv-2415-RFB-NJK

1 THE COURT: Thank you. Mr. Hardy, you may proceed.

2 MR. HARDY: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. HARDY:

5 Q. Mr. Law, can you tell us a bit of your background?

6 A. Sure. I'm a proud father of three. Studying classical
7 voice opera at the UNLV School of Music, intending to graduate
8 in two years. I've worked in politics. I started as an
9 activist and like a grassroots guy in 2008. And eventually I
10 started working professionally in 2010. I've held all of the
11 titles from field organizer to campaign manager. I was the
12 political director at the Nevada Republican Party for a spell in
13 2013 to general consultant. And as it is right now, I'm the
14 Director -- Election -- EDO Director, sorry, of the Election Day
15 Operations for the Trump Campaign here in this state.

16 Q. If I just refer to it as "the campaign," do you understand
17 what I'm talking about?

18 A. Yes, sir.

19 THE COURT: Excuse me, Mr. Hardy. Mr. Law, what does
20 Election Day operations actually mean? I know campaigns have
21 lots of titles, and I just want to make sure I understand what
22 that involves in terms of your regular activities.

23 THE WITNESS: Sure.

24 THE COURT: If there are any.

25 THE WITNESS: EDO is the fancy term.

2:16-cv-2415-RFB-NJK

1 THE COURT: Right.

2 THE WITNESS: And so that's the acronym. Essentially,
3 it is just the process by which a campaign is going to observe
4 the vote, make sure that there's integrity in the process. And
5 by "make sure," there's lawyers or those, you know, who are
6 familiar with that part of challenging through the system in a
7 war room, also on the ground, and then poll watchers.

8 In our situation, we have different lawyers from other
9 parts of the country also here that are local. We're going to
10 have them in our command center. Those who are familiar with
11 Las Vegas and how to navigate it are going to be out. And then
12 we have a volunteer program, which is our poll watchers. All
13 recruited from those who have expressed the interest to
14 participate. So it was a hurry up and do this in the last two
15 weeks.

16 Pretty proud of the results. You know, we've trained
17 over 100 in just this county and we've been deploying them.
18 We've been receiving feedback. And ultimately the goal is just
19 to observe the integrity of the process. But the nature of it
20 is that if we're observing the integrity, we must have that
21 integrity. And so it's been very important to me and I do my
22 best to hammer that point that we're the ones who follow the
23 law. And that's sort of the nature of the training.

24 THE COURT: So you supervise then sort of those two
25 groups. One would be the sort of lawyers who may get involved

2:16-cv-2415-RFB-NJK

1 in legal issues, like for things like machines aren't working
2 properly and we need to figure out how to fix that or we don't
3 have enough machines or the poll locations are closed down, what
4 are the legal implications, things like that, right. That's one
5 side of your team. And the other side is simply volunteers who
6 are just watching as lay people who are trained, but who are
7 watching just for general issues and integrity that were raised,
8 for example, in the context of the PowerPoint that you have
9 submitted?

10 THE WITNESS: Well, that's correct. And the only
11 proviso to that is of course while I'm supervising those who
12 are -- there is attorneys in a war room capacity. There are
13 certain things outside of my knowledge base.

14 THE COURT: Right. You're not a lawyer, right?

15 THE WITNESS: Right.

16 THE COURT: So, in other words, you don't supervise
17 them on legal matters you're saying?

18 THE WITNESS: But the logistics of the process. I
19 mean, if, you know, we have a phone system or something, I need
20 to make sure all of the train is moving on time, so...

21 THE COURT: Perfect. Thank you. Thank you, Mr. Hardy.

22 BY MR. HARDY:

23 Q. Couple of things. Were you trained -- let's go back.
24 You've got your experience that you just kind of testified
25 about. And I appreciate that Your Honor laying all of that

2:16-cv-2415-RFB-NJK

1 foundation for me.

2 Tell me about how you were trained after you -- or what
3 training was necessary for you after you came to work for the
4 campaign.

5 **A.** Well, I'm -- a lot of my experience has been grassroots. I
6 mean, I like it. I like meeting people at the door even. And
7 in all of the process of campaigning the amount of time I've
8 spent at polls and getting to know the county workers and their
9 process, whether it's Election Day or early voting, I am
10 familiar with the nature of the whole process, and I've poll
11 watched.

12 So when I was brought on, what was important to the
13 Trump Campaign was not that they just have a room full of
14 lawyers waiting for people to hopefully call, because if there
15 were no eyes and ears observing the process should there heaven
16 forbid be some kind of an issue, we would never know about it.
17 So I was instructed to take the volunteers that existed when --
18 they were people who signed up on the website or people who
19 volunteered regularly and said, I want to poll watch, I
20 communicated with them to bring them in for training.

21 And as soon as I had the training that was sent to me
22 by the gentleman who hired me, the National Director is Mike
23 Roman, and also sent simultaneously to Ms. Ann Browning who was
24 visiting from the Republican National Lawyers Association. Ann
25 was able to go through the slides. And a lot of it was review

2:16-cv-2415-RFB-NJK

1 with me, but when I'm brought on, I have an expertise in being
2 able to move people, large amounts of people -- motivating
3 people is a skill. But then also the history that I have in
4 terms of symposiums or trainings of people, there are fine
5 points that must be adhered to.

6 So Ms. Ann Browning is teaching me the slide, making
7 sure I understand the fine points and what is appropriate, what
8 is not appropriate, what we must drill down, and then I observed
9 her conduct the first training.

10 After that I was ready, especially due to the fact that
11 at times some of the Trump supporters would have lots of big
12 questions. I mean, I'm -- you know, I'm tailor made for that.

13 THE COURT: I'm sorry, Mr. Hardy, let me ask one thing.
14 Mr. Hardy, I'll let you finish now. You'll probably end up
15 getting my questions answered so why don't you go ahead then.

16 MR. HARDY: I'd like to have marked as exhibits, Your
17 Honor, this is the Exhibit 1 and Exhibit 2 to Document 39 that
18 was filed so that way he can utilize those to discuss.

19 THE COURT: Sure. You can utilize them. Do you have
20 physical copies you are going to give to the Court or do you
21 want the Court to use the copies that are on the...

22 MR. HARDY: I can give physical copies to the Court as
23 well if you like, Your Honor.

24 THE COURT: And we can try to set up the actually ELMO,
25 and then you can actually show him different sections of that.

2:16-cv-2415-RFB-NJK

1 MR. HARDY: However you want to do it. We can do
2 whatever.

3 THE COURT: Why don't we see if we can't turn that on.
4 But for now why don't you hand me the physical copy.

5 MR. HARDY: Okay.

6 THE COURT: And then we'll have that -- see if that can
7 just turn on.

8 MR. HARDY: Perfect.

9 THE COURT: Give us a second here.

10 MR. SPIVA: And I've got a copy, Your Honor, so it's no
11 problem from my part.

12 THE COURT: I think setting it up just may be easier to
13 review it with Mr. Law than having to sort of go back and forth.
14 So, you can, Mr. Hardy, simply put the page there and then he
15 can review that.

16 So is there any objection to admission of those
17 documents, Mr. Spiva?

18 MR. SPIVA: No objection, Your Honor.

19 THE COURT: Okay. So those will be admitted as
20 Defendant's Exhibit 1. And 1 would be which one?

21 MR. HARDY: One wouldn't be Exhibit 1 and two would be
22 Exhibit 2. How about that?

23 THE COURT: Okay. But can you describe them for me?

24 MR. HARDY: Sure. Exhibit 1 is the document that was
25 attached to our filing Document 39 in the docket. And Exhibit 2

2:16-cv-2415-RFB-NJK

1 would be our Exhibit 2 to Document 39 in the docket.

2 THE COURT: Okay. So those will be admitted and are as
3 described in the record. Thank you.

4 (Defendant Exhibit 1 and 2 are admitted.)

5 MR. HARDY: Turn this --

6 BY MR. HARDY:

7 Q. Mr. Law, are you familiar -- the Court ordered you to go
8 ahead and do a diligent search and look for certain documents.
9 Did you conduct that search?

10 A. I did.

11 Q. And in doing so, did you recover certain documents?

12 A. Yes.

13 Q. And are those documents the ones -- have you had an
14 opportunity to review Exhibit 1 and Exhibit 2?

15 A. I have.

16 Q. And does that accurately reflect the documents that you were
17 able to recover?

18 A. Yes.

19 Q. The first document in Exhibit 1 at the top is an e-mail that
20 was sent to you by Mike Roman. Who is Mr. Mike Roman?

21 A. He's the national EDO director for the Trump Campaign.

22 Q. And what did he send you?

23 A. He sent me a PowerPoint presentation tailored to Nevada as
24 well as a guide for the poll watchers that the -- those who take
25 the training would have a quick reference.

2:16-cv-2415-RFB-NJK

1 Q. Did you utilize that poll watcher training slide and the
2 poll watcher guide that was provided you by Mr. Mike Roman?

3 **A.** I did. It was what I was trained on as well.

4 Q. And I believe attached to that exhibit are copies of that
5 slide that you provided to the Court. Is that correct?

6 **A.** That's correct.

7 Q. And those are Exhibit 1A. Those are a part of Exhibit 1A.

8 THE COURT: I'm sorry?

9 MR. HARDY: That is the Court's Exhibit 1A. Now I want
10 to look at Exhibit 1B, because inside of Exhibit 1 there is a
11 number of levels, Your Honor. So I want to make sure everybody
12 can see it as we're going through the docket.

13 THE COURT: I understand that.

14 MR. HARDY: I want to make a clear record.

15 THE COURT: I understand that e-mail you just talked
16 about as being Exhibit 1A.

17 BY MR. HARDY:

18 Q. Okay. And 1B, you also produced this e-mail that had on it
19 an e-mail from you which is dated October 31st to Mr. Jon Staab.
20 Do you see that?

21 **A.** Yes.

22 Q. What was the purpose of this e-mail?

23 **A.** I was going to conduct some training remotely into Reno. I
24 have a few supporters that are up there that are poll watchers
25 from the website or they're known supporters. And I needed to

2:16-cv-2415-RFB-NJK

1 conduct that training remotely. So what I had done is I know
2 Jon is a pretty responsible guy. I've known him from years of
3 volunteerism, those kinds of things, and I asked him to
4 facilitate that by attending and basically turning on the slide
5 projector.

6 Q. And in particular, and this is important for me, is have you
7 attended or been a participant or done the training in nearly --
8 in every single instance where poll watching training has been
9 done?

10 A. Yes.

11 Q. In the campaign?

12 A. I have.

13 THE COURT: Has anyone else done the training besides
14 you?

15 THE WITNESS: Ann Browning was the first training, but
16 I will say I was a participant in that as part of that.

17 THE COURT: So there's no training that's occurred that
18 you either haven't done yourself or been present for?

19 THE WITNESS: Correct.

20 THE COURT: Okay.

21 BY MR. HARDY:

22 Q. And during every one of those trainings, were those slides
23 that we have seen before, were those utilized?

24 A. Yes. There was slight changes made as we moved forward,
25 though.

2:16-cv-2415-RFB-NJK

1 Q. Okay. And I want to take a look at some of those different
2 slides because one of the things the Court asked you to do is to
3 provide all of the versions that you had -- you may have used.
4 The first version you'll see is Exhibit -- is to Exhibit 2A.
5 That -- this is the initial version. Do you recall seeing that
6 version before?

7 A. Yes.

8 Q. Okay. In this version, did you ever utilize this version or
9 when was this version used?

10 A. That was used the first day of training, Monday, the 24th.
11 Sorry about the date. I think that's it. And that was when Ann
12 was actually going slide by slide, and in that one there was no
13 contact information on the last slide so that had not been
14 updated.

15 Q. So the last slide we just see that it says, Insert your name
16 and contact info?

17 A. Right. So verbally we said, Hey, we don't have our hotline
18 up yet. Please, you know, talk to Mr. Law. And then they gave
19 us the -- we gave the phone number for me.

20 MR. SPIVA: I have an objection, Your Honor. I'm a
21 little lost in terms of which of these he's referring to because
22 they're a couple of these in the deck, and I wasn't following.

23 MR. HARDY: Exhibit 2A.

24 THE COURT: And so when you say "2A," you're using the
25 same numbering system that's for the exhibits themselves when

2:16-cv-2415-RFB-NJK

1 they were filed in the record?

2 MR. HARDY: Correct.

3 MR. SPIVA: 2A to his declaration or to the response to
4 the documents?

5 MR. HARDY: 2A to Document 39.

6 THE COURT: Thirty-nine is the response, I believe.

7 MR. HARDY: Thirty-nine is the response.

8 MR. SPIVA: Yes. Okay. Thank you.

9 THE COURT: I'm sorry. Mr. Law, just to be clear, when
10 did the poll watching -- watcher/observer training start?

11 THE WITNESS: The recruitment started on Sunday, the
12 23rd. The actual training began the night of Monday, the 24th,
13 at 6 p.m.

14 BY MR. HARDY:

15 Q. And prior to that, had there been any poll watchers that had
16 been sent out by the campaign?

17 **A.** None.

18 Q. Exhibit --

19 THE COURT: Even on Monday, excuse, the 24th?

20 THE WITNESS: The 24th, unless I'm off, of October.

21 THE COURT: Okay. I just wanted to make sure I had
22 that.

23 Sorry, Mr. Hardy, go ahead.

24 BY MR. HARDY:

25 Q. Exhibit 2B shows another variation to that same poll watcher

2:16-cv-2415-RFB-NJK

1 training. Was it changed from the original that you had
2 received to this particular variation?

3 **A.** I added, of course, my name and my contact information.
4 Also, by that time we had the Nevada hotline, the number that we
5 would need for receiving incidents and then triaging them
6 through a protocol.

7 **Q.** Is that this last page that's before you right now?

8 **A.** That's correct.

9 THE COURT: And that was the only change?

10 THE WITNESS: Correct.

11 THE COURT: Okay.

12 BY MR. HARDY:

13 **Q.** So now I want to talk how it evolved from what we saw as 2B
14 to what we have as 2C. And I'll put 2C up so that you have it
15 in front of you, at least the beginning there. What changed in
16 this particular variation?

17 **A.** Well, we only added the line on the cover there, which is,
18 We are not the Republican National Committee.

19 **Q.** Why did you do that?

20 **A.** You know, working with grassroots guys for a long time, you
21 get kind of used to it. And, first of all, the passion's there
22 and the man hours is always impressive. But sometimes, you
23 know, they're going to get to a location -- in fact, in this
24 instance what I'd gotten was a nice old lady. Her name was
25 Onada. She'd gone to a location and explained that she was from

2:16-cv-2415-RFB-NJK

1 the Republican Party instead of Trump. And I'd gotten that
2 report back I believe because there were now issues coming up as
3 to what brought us here today.

4 And when I found that out, and it was Onada's name,
5 she's a very nice lady, I called her and I said, Well, what's
6 going on? And she says, Well, you know, I said -- I didn't want
7 to say I was from the Trump Campaign because I'd seen some
8 people on the news getting harassed and, really, I just -- I
9 just was trying to say I was, you know, a Republican.

10 There was another instance, though. I had another
11 lady. She was -- she lives down in Sun City in Henderson, a
12 senior community. It was the same situation. Her name is Joann
13 Mongerrelli, a very nice lady. She just simply said, Well, I
14 was just saying I was a Republican. And I had a conversation
15 while I was at dinner. She finally called back. And it was the
16 same kind of thing, you know, Well, how am I supposed to say I'm
17 Republican? I said, Listen, you can say that you're a
18 Republican. But the problem is you were trained by the Trump
19 Campaign and if you don't want to say Trump, you can say public
20 observer, but, you know, in no way have you been trained by the
21 Republican National Committee.

22 Q. So just a couple of people that were scared to announce that
23 they were with Trump because they were afraid of intimidation by
24 others?

25 A. Truly. And --

2:16-cv-2415-RFB-NJK

1 MR. SPIVA: That, I object to, Your Honor. I mean, I
2 know you said leading questions, but that was testifying.

3 THE COURT: I mean, he can -- Mr. Spiva, he can offer
4 his opinion, right. I'm not sure how relevant it is, Mr. Hardy.
5 And I appreciate the testimony, Mr. Law. I'm not sure how
6 relevant it is to the issue that we're talking about, which is
7 this issue about the poll watchers. It may be an interesting
8 story, but I'm not sure how relevant it is. So, I'd overrule
9 the objection, but I would ask you to move on.

10 MR. HARDY: We'll move forward.

11 BY MR. HARDY:

12 Q. So is that the only change that you made from variation B to
13 now C?

14 A. Yes.

15 Q. And the reason you did that was just to make sure -- the RNC
16 clarification, correct?

17 A. Correct.

18 Q. Let's go from the final variation that you have here. And
19 by the way, when did that variation from B to C occur?

20 A. I want to say it was Monday. And the reason why I'm fuzzy
21 on it is because I don't remember exactly when I spoke to Onada,
22 but I want to say it was Halloween night.

23 Q. Halloween night. Okay?

24 A. Yeah.

25 Q. Now, on the final variation that you submitted is this

2:16-cv-2415-RFB-NJK

1 variation right here. What difference --

2 THE COURT: What number is that again?

3 MR. HARDY: This is 2D.

4 THE COURT: 2D okay.

5 BY MR. HARDY:

6 Q. In 2D how does that vary from what you had in 2C?

7 **A.** Well, I left the hearing yesterday having to beat the
8 traffic to up to 40 people waiting for me. And I made it pretty
9 much on time. The concern I had was the Court's concern. There
10 were some, you know, rightful concerns over the process by which
11 we're talking about voter challenges and in our training. And
12 unilaterally I decided to make this change because I couldn't
13 consult counsel. I arrived with five minutes to go. It's not
14 like I can reach the national guys on a dime. Also, you -- any
15 counsel that I could have counseled with was in court.

16 So what I did was I interpreted the intention that was
17 expressed and I didn't want to repeat what -- while I don't
18 think that we were doing that, I know we weren't doing that, but
19 any perception of impropriety I wanted to put to rest.
20 Therefore, I had taken notes while we were back there and I
21 added three items. And so I made the change, it was Slide 12
22 about voter challenges. I had, you know, probably 20 attorneys
23 in the room from different, you know, recruitment processes, and
24 they were being trained now what the poll watchers were being
25 trained. That's why they were there. And so I just hammered

2:16-cv-2415-RFB-NJK

1 this slide.

2 And I said, you know, What we normally talk about with
3 this slide is that you're not going to see this problem. It is
4 the rarest thing in the world, let alone in Las Vegas where we
5 barely know our neighbors. We're not even putting our
6 volunteers in their own precincts, generally speaking. Maybe,
7 maybe.

8 But the fact is they have to have personal knowledge of
9 who they see, that they're misrepresenting their identity, or
10 personal knowledge that that person actually voted. And since
11 it's so rare, the comment I've always made is that this is not
12 something they're going to run across. Should they, they need
13 to call our command center. But I put it up on the screen and I
14 put things underlined. I put things in bold. And I said, Hey,
15 any willful violation -- and I didn't have all of the legal --
16 legalese I needed, but any willful violation of this is serious.
17 And I just drove the point home.

18 Q. Now, I appreciate that you put it on the slide, but had you
19 been discussing this particular issue in every training that
20 you'd given up to this point in time?

21 A. I had, yeah.

22 Q. Tell us what you were describing to those people when you
23 saw that -- when this slide would come up during your trainings
24 that predated this slide, what was your discussion?

25 A. Sure. Well, I mean, you know, if you think of the slide

2:16-cv-2415-RFB-NJK

1 presentation, it is an instruction of what you don't do, what an
2 observer is able to do, but also of voter's rights, what the
3 process is to a degree in the county. In fact, generally the
4 nature of the presentation is don't forget these county workers
5 are like you and me. They're basically volunteers in the
6 community trying to do the right thing, and they're going to be
7 busy. And at the point that you're real bossy, you're not going
8 to make them happy.

9 On this, this was informational. I've never been
10 instructed to actually have this be part of our program. In
11 fact, it was an informational slide. So even though the
12 language was never on the screen, I would say, Listen. In this
13 instance if you are in your own neighborhood, if, and you have
14 personal knowledge on that person's identity, if, and if you
15 have knowledge that they've already voted, if, fine. You can go
16 ahead and do that. But you're not going to be in that situation
17 99.9 percent of the time. What we're training you to look for
18 is not this. We're training you to look for all of the other
19 things.

20 And so, I -- oh. And, you know, one of the major
21 points ultimately is, Hey, we're looking for integrity in our
22 process. Keep integrity in the process yourself. Any
23 violations result in civil and criminal penalty.

24 Q. And they were fully informed of that in every presentation
25 that you were part of?

2:16-cv-2415-RFB-NJK

1 **A.** Absolutely. Yeah.

2 **Q.** The presentations which predated this?

3 **A.** Yes.

4 **Q.** And you intend to continue with that same process in all
5 those that postdate this?

6 **A.** Well, the answer is yes. But as an addendum, I had always
7 intended to have all of our volunteers back over the weekend.
8 Mostly because I've had -- well, you know, I'm not going to say
9 how many every day. I don't have that exact figure, but dozens
10 of people out every day having new incidents. I need to
11 basically compile that. And when it comes to Election Day, I
12 really want a honed incident process where we're not bothering
13 those who are busy with poll workers. We've got hundreds of
14 thousands of vote expected Tuesday.

15 **Q.** Are you confident that the individuals that you were
16 training understood?

17 **A.** Absolutely. You know, the only comment back is I got a
18 return e-mail this morning which was, Oh, that slide, I thought
19 you said we weren't doing anything with it, so... And that's
20 about it.

21 **Q.** The -- one of the other documents that you've produced --

22 **MR. HARDY:** And I'll go back now to Exhibit 1, Your
23 Honor. It's going to be Exhibit 1E.

24 **BY MR. HARDY:**

25 **Q.** After hearing yesterday in court that there were allegations

2:16-cv-2415-RFB-NJK

1 that you may be incorrectly doing some type of training, and
2 these are allegations that came from the plaintiffs, somehow
3 maybe what you were doing was inappropriate. How did that make
4 you feel?

5 **A.** You know, I take pride in my work in politics. In fact, I
6 gave it up for art, but you never really leave politics. But I
7 have a lot of conviction about how I approach things. I have
8 friends on both side of the aisle. One of my biggest issues in
9 politics is when you have some sort of dishonesty toward an
10 electorate or if you have volunteers and you're taking advantage
11 of them. And so what this was was an implication and accusation
12 that I've got hundreds of people that I didn't give all of the
13 facts to. I'm taking advantage of their man hours. And these
14 are decent people. And so the issue is I have agency over them,
15 and, you know, it's a -- the accusation betrays my intention, it
16 betrays all of my work, and it betrays my pride.

17 **Q.** Did you in turn send something out to them as a reminder to
18 reiterate what you taught?

19 **A.** Well, before I left the court yesterday, it was the first
20 thing I said. Yeah, I want to send something out because I
21 don't want this issue. I of course had to go and do the
22 training, and then we had to finish talking about everything,
23 you know, last night with the issues of the day and preparing
24 for Election Day. I didn't get an opportunity to fully send
25 that until this morning. I sent that. The intention was that

2:16-cv-2415-RFB-NJK

1 I -- these guys need to know -- if there is a potential for an
2 issue, I certainly want to head it off. I feel like the e-mail
3 did that. I am inviting everyone back already for the incident
4 training. This will be a main point. Further, I don't just
5 put -- send out an e-mail --

6 THE COURT: Mr. Law, let me just stop you there for a
7 moment because I want to make sure I understand that.

8 THE WITNESS: Sure.

9 THE COURT: So when you say bring everyone back for the
10 incident training, are you saying that there is a -- before
11 Election Day on the 8th you are going to bring all of the poll
12 watchers back for additional training or refresher training?
13 You said "incident training." I wasn't sure what that meant.

14 THE WITNESS: Sure. You know, it's a bit overkill, I
15 must say, because if you're moving a lot of people, it's
16 difficult to get them just to show up for meetings. They all
17 hate it, which is part of why I like to honor volunteers.

18 THE COURT: Right.

19 THE WITNESS: What I want is a process that is well
20 oiled. If there is an issue where they cannot report incidents
21 clearly, we're not honoring the time they're there, we're not
22 honoring the attorneys who have volunteered and come here, and
23 the system is breaking down. It's important enough for me that
24 I review the issues that we've observed, and then we implement
25 an appropriate process so when they're spending six or eight

2:16-cv-2415-RFB-NJK

1 hours on Election Day themselves, it's not a waste.

2 So that was always going to happen. And we would
3 then --

4 THE COURT: Can you describe for me what this
5 practically means? Does that mean you have a series of training
6 sessions where you bring in everyone who is signed up to be a
7 poll watcher and they have to sort of go through this incident
8 training or final training before they go out?

9 THE WITNESS: Logistically, I don't see how that's --
10 how it's reasonable that I mandate it if they've got a job, but
11 they have said -- but, yes, there are all invited.

12 THE COURT: So the goal is to get as many people who
13 are going to go out who are volunteers as possible to come back
14 through for this final training?

15 THE WITNESS: Yes. And in that process a secondary
16 notification via e-mail over all that we covered, so that's
17 updated.

18 But the final process is if I just told people where
19 they were going via e-mail, they wouldn't show up. They
20 wouldn't show up in droves. So we have a text process and we
21 have a phone call process to make sure people are showing up,
22 and we're going to do that all day Monday.

23 So, as part of that, it's going to be informational as
24 a main point, especially due to the gravity of the hearing, that
25 we pay attention to following the law. And, you know, of course

2:16-cv-2415-RFB-NJK

1 I'll make sure it's as concise and well crafted as possible to
2 maybe fit in a text, but that we're able to inform these guys on
3 following the law.

4 THE COURT: And, Mr. Law, what percentage would you say
5 of your volunteers actually have e-mail?

6 THE WITNESS: I'm only aware of two that don't.

7 THE COURT: Okay.

8 THE WITNESS: Yeah.

9 THE COURT: Okay. So a very small percentage?

10 THE WITNESS: Very small percentage.

11 THE COURT: All right. Thank you. Mr. Hardy.

12 BY MR. HARDY:

13 Q. Mr. Law, did you actually send this e-mail out to all poll
14 watchers other than the two you just referenced?

15 A. Correct.

16 Q. And those two that you've referenced --

17 THE COURT: I'm sorry, excuse me. Can you scroll down?
18 All I have is the blacked-out version of that, so if you want
19 to --

20 MR. HARDY: I can zoom that out.

21 THE COURT: So I have some text or something if
22 there's...

23 MR. HARDY: Yeah. What we've got is kind of the top
24 here. And I'll bring the next page, which has the text on it.

25 THE COURT: Okay.

2:16-cv-2415-RFB-NJK

1 MR. HARDY: I just want to focus real quick on this
2 date and time, if I can do that first?

3 THE COURT: Okay. Sure.

4 BY MR. HARDY:

5 Q. Mr. Law, did you actually send this e-mail out on November
6 3rd, 2016, at 7:51?

7 A. I did.

8 Q. And you sent it to all poll workers that you utilize?

9 A. I did, yes.

10 Q. And except for the two that you talked about, have you tried
11 to reach out to those two?

12 A. Correct. I've had instructions, but I've been busy with
13 this. But the instruction was I have some administrative
14 support and they've reached out.

15 Q. Now, the e-mail that you crafted, is this a fair and
16 accurate copy of that e-mail?

17 A. It is.

18 Q. Okay. I want to read this e-mail -- or if we can say -- why
19 don't you go ahead and read this e-mail to us so we can make
20 sure we get it clear.

21 A. As you may have heard, the Nevada State Democratic Party is
22 accusing the Nevada State Republican Party and the Trump
23 Campaign of voter intimidation. One of their main arguments is
24 that you may have been misled or confused during the poll
25 watcher training session and that on Election Day you might

2:16-cv-2415-RFB-NJK

1 challenge voters without justification. This is a very serious
2 accusation, which, as you know, is totally untrue. But because
3 they are making it, we wanted to reiterate something that all of
4 you already know about, the legal requirements for orally
5 challenging voters in Nevada and the need for you to call the
6 legal hotline before attempting to challenge anyone's
7 eligibility to vote.

8 As you will recall from your poll watcher training,
9 there are three legal requirements for oral challenges in
10 Nevada. No. 1, the challenger must reside in the same precinct
11 as the challenged voter. No. 2, the challenger must base his or
12 her challenge on personal knowledge that the challenged voter
13 either is not entitled to vote as claimed or has already voted
14 in the same election. And, 3, the challenger must submit an
15 affirmation concerning the challenge under penalty of perjury
16 and in the form prescribed by the Secretary of State. See
17 N.R.S. 293.303(1)(a), A frivolous or knowingly false challenge
18 may give rise to civil and/or criminal liability for the
19 challenger.

20 Because this process is technical and carries
21 significant risks for both the challenger and the challenged
22 voter, we reiterate that all poll watchers must confer with the
23 legal hotline before initiating any challenge. In almost all
24 instances, we will advise against challenging someone who is
25 trying to cast a vote.

2:16-cv-2415-RFB-NJK

1 For the most -- for the vast majority of you, this
2 won't come up at all and it won't be necessary to memorize the
3 details of the challenge procedures because you won't be
4 assigned to watch polls in your own precinct. So, you are not
5 eligible to challenge voters in the first place. But for the
6 few of you who may be watching polls in your own precinct, I
7 trust this message is sufficient to remind you of the legal
8 requirements for an oral voter challenge. Your job as poll
9 watchers is to quietly and respectfully observe the democratic
10 process in action. As we have explained to all of you, if you
11 see anything that causes concern, please let our legal hotline
12 know rather than try to correct the situation yourself.

13 If you have any questions on this topic, please do not
14 hesitate to call me at 702-715-1401 any time.

15 Best wishes, Jesse Law.

16 Q. In sending this -- this wasn't any type of acknowledgment
17 that you hadn't done training, correct?

18 A. That's correct.

19 Q. In fact, it specifically says that you want to give them
20 reminder of training they've already received?

21 A. That's correct.

22 Q. And with respect to this particular e-mail, do you intend to
23 send this off to any future trainees before they go ahead and
24 initiate any -- before they begin poll watching again?

25 A. I am going to hammer this point all the way through Tuesday.

2:16-cv-2415-RFB-NJK

1 I...

2 This is the last thing we're going to see from the
3 Trump Campaign. We have not trained our people to do this. We
4 will not train our people -- I'm sorry. We have not trained our
5 people to improperly violate these -- this voter challenge rule.
6 We will not. In fact, we will train them to follow the law and
7 also train them there are ramifications if they do not.

8 Q. When you say you will, you have, correct?

9 A. I have.

10 MR. HARDY: At this point in time, Your Honor, I don't
11 think I have anything further.

12 THE COURT: Thank you, Mr. Hardy.

13 Mr. Spiva.

14 CROSS-EXAMINATION

15 BY MR. SPIVA:

16 Q. Good morning, Mr. Law.

17 A. Good morning, sir.

18 Q. How are you doing?

19 A. Feel great.

20 Q. Good.

21 Mr. Law, you previously worked for the Nevada
22 Republican Party?

23 A. That's correct.

24 Q. What time period was that?

25 A. You know, I've been volunteering in the Republican Party,

2:16-cv-2415-RFB-NJK

1 whether it's the county or state, since 2008.

2 Q. You were the executive director of the Nevada Republican
3 Party for a period of time. Is that correct?

4 **A.** The official paid position was political director.
5 Executive director was more honorary during the period, but not
6 paid.

7 THE COURT: I'm sorry. So you were not a paid employee
8 of the Nevada Republican Party?

9 THE WITNESS: I was as a political director for about
10 eight months.

11 THE COURT: And that was what period of time?

12 THE WITNESS: 2013.

13 THE COURT: Just within that year?

14 THE WITNESS: Correct.

15 THE COURT: Okay.

16 BY MR. SPIVA:

17 Q. Did you hold a position with the Nevada Republican Party
18 within the last year?

19 **A.** You know, as a volunteer only.

20 Q. So you were no longer the political director within the last
21 year?

22 **A.** No.

23 Q. Okay. And when did you start working for the Trump
24 Campaign?

25 **A.** October the 21st.

2:16-cv-2415-RFB-NJK

1 Q. And did you hold any position with the Trump Campaign prior
2 to October 21st?

3 A. No.

4 Q. And I apologize if you answered this before, but what is
5 your title with the Trump Campaign?

6 A. Sure. Nevada EDO director, which is Election Day
7 Operations.

8 Q. Okay. And what kind of training did you receive to be the
9 Nevada Election Day training operations director?

10 A. Sure. Well, of course, you know, years in the field and
11 familiarity with the polls qualified me in terms of could I have
12 the capacity to understand and then further train and the social
13 interactions that are going to be necessary in a very tense and
14 busy time. But beyond that, specific direction was from the man
15 that hired me, Mike Roman. We had a conference call that
16 Friday, the 21st of October. I believe that's the date. And
17 then we circled back on Sunday when he sent the training
18 materials, and then again I sat for two hours with Ann Browning
19 from the Republican National Lawyers Association going over the
20 slides and making sure the points were there. And then finally
21 I observed her and participated in her training for the first
22 night and have carried forward since.

23 Q. And you -- in your years of working in the field, did you
24 gain familiarity with Nevada law concerning challenges to
25 voters?

2:16-cv-2415-RFB-NJK

1 **A.** Actually, that has never been something I've done. None of
2 my campaigns were interested. Essentially that is, you know,
3 that's something that's never come up.

4 **Q.** And so whatever instruction that you got, you got from the
5 Trump Campaign?

6 **A.** Correct.

7 **Q.** Let me ask you -- I want to ask you about one of the
8 documents that you were just talking about with counsel. And if
9 I could ask you to turn -- do you have a paper copy in front of
10 you of the response?

11 **A.** No, sir.

12 **MR. SPIVA:** It's on the ECF, Your Honor. I could
13 approach with a paper copy or I don't know if we can put it back
14 on the screen.

15 **THE COURT:** Well, if you have it, you can put it the
16 ELMO right there and it will show on his screen.

17 **MR. SPIVA:** Okay.

18 **THE COURT:** So if you want to do that, he can --
19 Mr. Law would be able to see it from there.

20 **MR. SPIVA:** Let me try to -- I apologize for juggling
21 the papers here.

22 **THE COURT:** That's all right.

23 **MR. SPIVA:** Thank you very much. I appreciate that.
24 Sorry. It's going to take me a minute.

25 **BY MR. SPIVA:**

2:16-cv-2415-RFB-NJK

1 Q. So I think this is Exhibit 1A or the first page of Exhibit
2 1A from the document responses that were filed this morning.
3 And I think you were asked some questions about this on your
4 direct examination. Do you remember that?

5 **A.** Yes.

6 Q. And this is something that you received -- you and other
7 people received on Sunday, October 23rd, from Mike Roman. Is
8 that correct?

9 **A.** Correct.

10 Q. And that -- what he was transmitting to you on the 23rd was
11 the PowerPoint presentation to be used in these trainings,
12 correct?

13 **A.** Correct.

14 Q. And who is -- I think you testified before about Ann
15 Browning. Does she have a position with the campaign?

16 **A.** She does not. She's a volunteer. So she's with the
17 Republican National Lawyers Association and they assist.

18 Q. Okay. And Heather Flick, it appears to be is also on here,
19 what organization is she with?

20 **A.** Also with the RNLA and she hadn't been to Las Vegas until --

21 THE COURT: Where in LA?

22 THE WITNESS: I'm sorry, she's from the RNLA. San
23 Francisco is where she's out of.

24 BY MR. SPIVA:

25 Q. Is that the Republican National Lawyers Association?

2:16-cv-2415-RFB-NJK

1 **A.** Yes.

2 THE COURT: Okay.

3 THE WITNESS: Apologies.

4 BY MR. SPIVA:

5 Q. And then, of course, you are also on this the e-mail?

6 **A.** Correct.

7 Q. And let me ask you -- it may be easier if I use a different
8 copy. Sorry.

9 And let me just ask you. I'll represent to you that
10 this is a page from that initial -- the document that was
11 attached to that e-mail.

12 THE COURT: This is the earlier version of the training
13 session -- the earlier version of the training session on poll
14 watcher challenges that didn't include the amendments.

15 MR. SPIVA: Yes. And let me get -- I'll ask him a
16 question to get clarification on that.

17 THE COURT: I'm just saying that because it seemed like
18 all of the earlier versions that we discussed, they all didn't
19 have the change, and there was only one, I think, if I'm
20 correct, Mr. Law, that you recently amended that had the change.
21 So all of the other earlier ones didn't have that change. Is
22 that right?

23 THE WITNESS: Correct.

24 THE COURT: Okay. Go ahead, Mr. Spiva.

25 BY MR. SPIVA:

2:16-cv-2415-RFB-NJK

1 Q. And I just want to verify, this is a page from the one that
2 you received on October 23rd, correct?

3 A. Correct.

4 Q. And this -- on the slide it informs the voter that poll
5 watchers generally are not permitted to the challenge the
6 qualifications of a voter, correct?

7 A. Correct.

8 Q. But it goes on to say that a poll watcher may, however,
9 challenge the voter if a poll watcher is a registered voter in
10 the precinct where he is serving as an observer, correct?

11 A. Correct.

12 Q. And it provides two permissible reasons for challenging the
13 voter?

14 A. Yes.

15 Q. Okay. But this page doesn't say anything about the need to
16 make those challenges based on personal knowledge, correct?

17 A. It does not appear that, no.

18 Q. Okay. And there's nothing in this version that you received
19 on October 23rd that says that the challenge must be based on
20 personal knowledge, correct?

21 A. There is not.

22 Q. And there's nothing on this page that says that a challenger
23 has to fill out an affidavit if they make a challenge, correct?

24 A. Correct.

25 Q. And there's nothing in this document that you received on

2:16-cv-2415-RFB-NJK

1 October 23rd that informs the poll observer that they have to
2 fill out this affidavit, correct?

3 **A.** Right.

4 **Q.** And this was produced by the Trump Campaign?

5 **A.** It was.

6 **Q.** Okay. And in the e-mail that you were sent on October
7 23rd -- let me just put it back up for a second. It says:
8 Created by HQ. I assume that stands for headquarters. Is that
9 right?

10 **A.** I assume so.

11 **Q.** Okay. Is that what you understood it to mean?

12 **A.** Of course, yes.

13 **Q.** And then it says, Please review, amend, and use as needed.

14 Did you do any amending or -- of the document after you
15 got that?

16 **A.** Only what Mr. Hardy and I have discussed.

17 **Q.** Okay. And then how many trainings have you had since
18 October 23rd?

19 **A.** If you'll grant me a moment to think?

20 **Q.** Well, let me ask you this --

21 THE COURT: Well, let him finish.

22 MR. SPIVA: Sure. Didn't mean to interrupt.

23 THE WITNESS: I'd say a dozen.

24 BY MR. SPIVA:

25 **Q.** A dozen? Do you hold them every day or...

2:16-cv-2415-RFB-NJK

1 **A.** Well, not Sunday, but some were twice a day, yeah.

2 **Q.** Twice a day.

3 Okay. And about how many people have you had at each
4 training?

5 **A.** We've had as many as 40.

6 **Q.** Ever have more than 40?

7 **A.** Probably.

8 **Q.** And so up through yesterday roughly you've trained about 400
9 people. Is that fair to say?

10 **A.** I think that's an overestimation, but, you know, definitely
11 over 100. We've had as many as 40. We've had few as two, but
12 that was a one-off, you know.

13 **Q.** Now, did you have an approximation of about how many people
14 you've trained through yesterday?

15 **A.** It's certainly over 100.

16 **Q.** And the deck that we were just reviewing, that was the
17 PowerPoint that you were using when you were training those
18 individuals?

19 **A.** What Mr. Hardy and I discussed and the changes on the dates
20 that we made, that was what I used to train all of them, yes.

21 **Q.** Okay. So that was the second one that was put up, you mean?

22 **A.** The second one was used all the way through, I believe,
23 Monday, the 31st.

24 And the third one was the 1st through the 2nd. And
25 then, of course, yesterday I made one change for the two

2:16-cv-2415-RFB-NJK

1 trainings I had yesterday.

2 Q. Okay. Thank you.

3 Do you hand out copies of the training after it's over?

4 **A.** No. What we provide is the training guide, and we treat
5 that as something as a bit of a review. And then of course we
6 say, Before you're interacting with the site managers or doing
7 any kind of action, we need you to talk to the command center.

8 Q. Okay. And let me ask you, have you -- I think you testified
9 on direct that you had dealt with a person named Onada Peterson.
10 Did I get that right?

11 **A.** Yes.

12 Q. And have you had reports that Ms. Peterson has been giving
13 out inaccurate information to people at certain polling
14 locations?

15 **A.** I had received a call from actually Mike Roman and he said,
16 Do you know Onada Peterson? And I said, Yeah. And I said, What
17 did she do? And.

18 It was that she was representing herself as a
19 Republican Party person. And I said, you know, Obviously all of
20 our stuff is branded Trump. So it was evening. I figured her
21 being older, getting up early, I would call the next morning.
22 Called the next morning. And, you know, she just said, Gosh,
23 you know, I thought that we were all Republicans and I didn't
24 want to say Trump, so...

25 Q. Was she one of the people who had gone through one of your

2:16-cv-2415-RFB-NJK

1 trainings?

2 **A.** She is.

3 **Q.** I should have asked you this before. Were there -- were
4 there any trainings before you came on board this election cycle
5 for poll watching?

6 **A.** In the State of Nevada, none.

7 **Q.** So the first ones that happened here happened under your
8 watch?

9 **A.** Correct.

10 MR. SPIVA: Excuse me one second.

11 BY MR. SPIVA:

12 **Q.** Now, I know you testified that you had heard that Onada
13 Peterson had been representing that she was with the Republican
14 Party. Did you hear reports that she told voters that they
15 couldn't early vote at an Albertsons, which was an early vote
16 location, if that was not in their precinct?

17 **A.** That would be something that I didn't hear until, you know,
18 these proceedings.

19 **Q.** Okay. And you would agree with me that that would be
20 incorrect, right, if somebody were to --

21 **A.** Incorrect.

22 **Q.** Sorry, let me get the whole question out. I appreciate you
23 answering.

24 But if somebody were to tell somebody at an early vote
25 center that they had been voting in their own precinct, that

2:16-cv-2415-RFB-NJK

1 would be incorrect information?

2 **A.** Totally incorrect.

3 **Q.** Okay. Did you get any reports that Ms. Peterson had told a
4 voter that he would need an I.D. to vote?

5 **A.** I had not, no.

6 **Q.** And you would agree with me that that also would be a
7 misinformation if -- if someone were told that they needed an
8 I.D. to vote in an early voting center?

9 **A.** There's only one instance that you're required to provide an
10 I.D. in Nevada, and that's if you an absentee ballot holder who
11 has never voted in person. And if you attend the location, you
12 must present I.D. And that is a pretty clear slide as well in
13 our training. So any representation beyond that doesn't add up,
14 no.

15 **Q.** Right. So if somebody were not in that particular
16 circumstance where it was a first-time voter presenting
17 themselves for the first time, they wouldn't need an I.D.,
18 right?

19 **A.** Correct.

20 **Q.** Have you also trained an individual named Kishana Holland?

21 **A.** No.

22 **Q.** Have you ever heard that name?

23 **A.** You know, I had somebody tell me about a Kishana. And I say
24 "somebody," one of our poll workers, our watchers. Also one of
25 the attorneys who's driven around had met Kishana.

2:16-cv-2415-RFB-NJK

1 Q. Okay. And does -- do you know whether Kishana Holland
2 volunteers for the Trump Campaign?

3 A. I know she does not. But I don't know who she is.

4 Q. And so if she were holding herself out as a volunteer for
5 the Trump Campaign, that would be an inaccurate representation
6 on her part?

7 A. Completely false.

8 Q. Do you require everybody who volunteers for the Trump
9 Campaign to go through one of your trainings?

10 A. There's no mechanism by which I could even assign them a
11 location if I don't have a form that they filled out. Because
12 what I do, I don't just take a list of names who are volunteers
13 and send them. They turn in a sheet and I do data entry or the
14 administrative support does. And it's that list based on that
15 data entry that gets told where to go.

16 Q. Okay.

17 THE COURT: Because you assigned them based upon them
18 being put into the system?

19 THE WITNESS: Correct.

20 BY MR. SPIVA:

21 Q. Do you make any -- as the -- sorry. Remind me of your title
22 again. I want to get it right.

23 THE COURT: EDO.

24 THE WITNESS: EDO director.

25 BY MR. SPIVA:

—2:16-cv-2415-RFB-NJK—

1 Q. Do you ever make out any kind of public calls for the public
2 at large to come go to polling sites and watch the polls to make
3 sure there's no fraud going on?

4 **A.** No. What I -- I'll tell you all of the activities that I've
5 done. You know, again, my directive was get as many in,
6 trained, and out as possible to have a successful EDO operation.
7 So we sent to those who expressed interest, either in person or
8 through the Donald Trump website. Beyond this, in recent days,
9 I've reached out to a few grassroots leaders myself just saying,
10 Hey, listen I know you have a seniors group or a women's group.
11 And then I've requested that they come in for training.

12 Now, I have requested that the campaign send out a mass
13 e-mail. And the response was, Listen, We have Get Out The Vote,
14 too. I'm not letting you take all of our volunteers. So there
15 is a balance. Unfortunately, if I was to do mass communication,
16 I could also detract from other operations within the campaign
17 and that's not what I should be doing.

18 Q. Would you have any concerns about a mass call for
19 individuals who hadn't been trained to go to the polls and
20 watch?

21 THE COURT: When you say "a mass call," I want to
22 clarify what that means. What does that mean to you, Mr. Law?

23 THE WITNESS: Well, what I hear is like maybe, you
24 know, an announcement. Maybe somebody took out an ad or on the
25 radio or in a YouTube video.

2:16-cv-2415-RFB-NJK

1 THE COURT: Do you have a mechanism to do sort of a
2 mass call, other than sort of an e-mail or like a robocall?
3 What are the ways that you can sort of logistically reach out to
4 volunteers?

5 THE WITNESS: Sure. Mr. Trump gets so much attention
6 that people go to his website and sign up. I can imagine that
7 database is vast. And they're going to, of course, in a state
8 boundary have access to who they want to communicate with
9 through e-mail. Beyond this, there are very sophisticated tools
10 using IP addresses that are tied to different zip codes.

11 THE COURT: I meant for you in terms of what you do,
12 not in terms of what the campaign does generally.

13 THE WITNESS: No.

14 THE COURT: But in terms of how you, for example, reach
15 out to your volunteers is e-mail, as you used in this instance,
16 a typical way that you would do that?

17 THE WITNESS: Yes. There's really no other way for me
18 to do, unless I was just to call in a radio station and hope
19 they put me on the air, which I've not done. So it's just
20 e-mail to the captive audience that exists.

21 THE COURT: Do you have the ability to do a global text
22 based upon cell phones?

23 THE WITNESS: If people in our program -- the only time
24 I've done texts is the people in our program who have signed up
25 and I needed to text a group in an area and explain, Look for

2:16-cv-2415-RFB-NJK

1 this. So I've not done anything outside of that or hired
2 anybody, just those who have signed up. And it's more
3 logistics.

4 THE COURT: Okay. Thank you.

5 MR. SPIVA: Thank you, Your Honor. I was just looking
6 for a clean copy of a document. I'll be right with you.

7 BY MR. SPIVA:

8 Q. Let me ask you, this is an e-mail from you to Jon Staab --
9 is that how you pronounce his name?

10 A. Staab.

11 Q. And this is from yesterday at 6:01 p.m., correct?

12 A. Yes.

13 Q. And Mr. Staab is with the Nevada Republican Party, I take
14 it?

15 A. Uh-hmm.

16 Q. And why were you sending him this e-mail which, as you may
17 recall from your direct, has the PowerPoint attached? Why did
18 you send him the PowerPoint last night?

19 A. I had asked Mr. Staab to be present for our training that
20 I'd be holding up in Reno, and since I couldn't be in Reno, to
21 basically turn on the lights, unlock the door, and project the
22 information on the screen, provide me logistical support while I
23 conduct training.

24 Q. And was that training done -- and I realize you weren't
25 physically there, but it was done at the Offices of the Nevada

2:16-cv-2415-RFB-NJK

1 Republican Party?

2 **A.** No.

3 **Q.** In Reno?

4 **A.** No, it was the Washoe County Republican Party. And there is
5 an SEC distinction and a Secretary State distinction between the
6 two.

7 **Q.** The Washoe County Republican Party is not a member of the
8 Nevada State Republican Party?

9 **A.** They're a member for sure and they make up that, but it
10 is -- they're not the same.

11 **Q.** Okay. And -- but Mr. Staab, he is an employee of the Nevada
12 Republican Party?

13 **A.** He is.

14 **Q.** Okay.

15 THE COURT: Mr. Spiva, how much more do you think you
16 have?

17 MR. SPIVA: I think no more than about, I would say 10
18 minutes, Your Honor.

19 THE COURT: Because I'm not really sure what the
20 relevance of some of these questions are and so I'm a little
21 concerned about where we're going with some of these questions.
22 I've given you a fair amount of latitude on the questions, but I
23 don't really know what else we need to have clarified as it
24 relates to the relationship.

25 I'm just going to tell you I just don't find there to

2:16-cv-2415-RFB-NJK

1 be a substantial degree of evidence connecting the Nevada
2 Republican Party to in any way directing or organizing the poll
3 watching training. I don't think there's evidence in the record
4 before me that supports that. I don't think that the e-mails
5 that I have are sufficient to establish that. And I don't know
6 that it really matters in the context of the injunctive relief
7 sought since it's clear that the Trump Campaign, which is
8 actually organizing logistically the poll watchers anyway.

9 So if I was going to order injunctive relief, to the
10 extent that I would order it, and I'm not saying I would, the
11 injunction would be directed at the Trump Campaign because they
12 would be the only defendant who could actually, at this point,
13 based upon the record before me, do anything as it relates to
14 whatever concerns might be raised.

15 So I think we should try to bring this to a close here.

16 MR. SPIVA: Yeah. I was going to -- most of my
17 questions were not directed at that issue, Your Honor, except
18 for the last one, obviously. But I was going to move into a
19 different area.

20 THE COURT: Okay. All right.

21 BY MR. SPIVA:

22 Q. Mr. Law -- actually, that should be very easy to remember,
23 right. Are you familiar with Stampede Consulting, LLC?

24 A. No. Except that I read the filings.

25 Q. Right. But prior to that, you had no knowledge of them?

2:16-cv-2415-RFB-NJK

1 **A.** I had not.

2 **Q.** Okay. And when you were the political director of the
3 Nevada Republican Party, I think this is probably obvious from
4 your last answer, but you never retained Stampede to do any work
5 for the Nevada Republican Party?

6 **A.** We didn't --

7 **MR. HARDY:** Your Honor, I think this is -- I just want
8 to make the objection that it's completely irrelevant at this
9 point in time and beyond the scope of anything I did in my
10 direct.

11 **THE COURT:** I think that's true. I'm going to sustain
12 it.

13 Let me ask this question, Mr. Law. Is the Trump
14 Campaign working with either as a paid vendor or as providing
15 some sort of services any other organization or entity in the
16 context of poll watching or observing?

17 **THE WITNESS:** We have no paid EDO program that exists
18 in our state except for me.

19 Now, we do receive support from the Republican Party
20 National Lawyers Association where they've just sent volunteer
21 lawyers. It is -- our program is managed --

22 **THE COURT:** Besides that -- I think you've already
23 mentioned that. Besides the lawyers from the Republican
24 national program, are there any other entities or organizations
25 or nonprofits with whom the Trump Campaign is working as it

2:16-cv-2415-RFB-NJK

1 relates to poll watching or observers?

2 THE WITNESS: None.

3 THE COURT: Okay.

4 MR. SPIVA: And my question, Your Honor, since there
5 was the objection and I think it was sustained is there's
6 evidence that we've put into the record that Stampede has
7 received funds from the Nevada Republican Party and that
8 Stampede is engaging in poll watching.

9 THE COURT: Right. But I don't know that he has --
10 Mr. Law has indicated in any way that he has been involved in
11 that.

12 MR. SPIVA: Understood. Understood. I got the answer.

13 THE COURT: And I don't think he said he was connected
14 to the Nevada Republican Party in the relevant time period.

15 MR. SPIVA: Right. And I understood that. I was
16 planning to move on, but that was the reason I was asking those
17 questions.

18 BY MR. SPIVA:

19 Q. Are you familiar with the Great America PAC?

20 MR. HARDY: Objection, Your Honor. I'm going to go
21 ahead and object again on relevance as well --

22 THE COURT: Again, Mr. Spiva, I'm not sure I
23 understand. He answered my question, which is to say that they
24 are not working with anyone else. So, why do we need to have
25 these questions?

2:16-cv-2415-RFB-NJK

1 MR. SPIVA: Well, this is a different question about
2 whether he's familiar with the Great America PAC.

3 THE COURT: Why is that relevant?

4 MR. SPIVA: Well, the reason it would be relevant is
5 there's been payment from them to Stampede.

6 THE COURT: From --

7 MR. SPIVA: From the Great America PAC.

8 THE COURT: Right. But he -- I asked him. I said, Is
9 there anyone else involved? Is there anyone that the campaign
10 is working with? He said no.

11 MR. SPIVA: That he knows of.

12 THE COURT: Which would address I think the questions
13 you're asking him.

14 Now, if you have some specific information that would
15 suggest that Mr. Law had that connection, that would be one
16 thing. But I asked him a very broad question to encompass these
17 smaller questions so we wouldn't have to go through a series of
18 questions. So I'm not sure why we would have to have separate
19 questions for each of these entities, given the fact that
20 Mr. Law has said, other than the Republican National Lawyers
21 Organization, he is not working with either on a volunteer basis
22 or paid basis through the campaign or otherwise any other
23 entity. Isn't that right, Mr. Law?

24 THE WITNESS: That's correct.

25 MR. SPIVA: I wasn't trying to suggest, Your Honor,

2:16-cv-2415-RFB-NJK

1 that he was working with them. But there is evidence, again
2 that we put in the record, that that organization has paid
3 Stampede. And so if he knows --

4 THE COURT: But he could only testify to what he has
5 personal knowledge of.

6 MR. SPIVA: And I was just asking the foundational
7 question, Your Honor.

8 THE COURT: Right. But I am saying is he doesn't have
9 the foundation. That was the purpose of my question was to find
10 out what foundation he would have for other -- answering
11 questions about other organizations. And I am saying that he
12 doesn't and I find that he doesn't. So I sustained the
13 objection and let's sort of move on from there.

14 MR. SPIVA: Okay.

15 BY MR. SPIVA:

16 Q. And then lastly, Mr. Law, are you familiar with statements
17 that Mr. Trump has made at various campaign rallies asking
18 people to go out and watch the polls?

19 MR. HARDY: Objection, Your Honor. That's outside --

20 THE COURT: Sustained.

21 MR. SPIVA: I don't have anything further, Your Honor.

22 THE COURT: Thank you.

23 Mr. Hardy, any redirect?

24 MR. HARDY: It's not necessary, Your Honor. Thank you.

25 THE COURT: All right. Thank you, Mr. Law.

2:16-cv-2415-RFB-NJK

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Is there any information or evidence that
3 either side wishes to present to the Court at this time?

4 Mr. Hardy?

5 MR. HARDY: I think Your Honor is astute in what is
6 taking place here today and what you have heard today. The only
7 thing that I would take objection on is there's been multiple
8 references to the fact that somehow by sending out the e-mail
9 earlier this morning it was some type of an admission that
10 there's been anything wrong or there was any wrongdoing
11 beforehand. I think we heard that today that there was training
12 that was done. That there were a number of things, including
13 even adding his name on a slide that wasn't there. And so I
14 don't think that there's any basis for the injunction relief and
15 we'd ask for that, Your Honor.

16 THE COURT: So let's move on then because I haven't
17 made any findings yet. And so let's move onto a discussion of a
18 possible injunction one way or the other. I find that the only
19 basis, at least that there might have been, for an injunction
20 potentially could have been this issue about the training. But
21 to the extent there was an issue about whether or not the
22 training actually incorporated or involved those areas in Nevada
23 law that were not explicitly referenced by printed material in
24 the training, there has been a subsequent e-mail that has been
25 sent out to all of the poll watchers, except for two, that were

2:16-cv-2415-RFB-NJK

1 previously trained.

2 It seems to me, Mr. Hardy, the only potential issue
3 would be the issue of -- to the extent the Court would issue an
4 injunction related to this follow-up training, whether or not
5 that would be necessary. I don't know that it is, but I
6 anticipate some discussion about that or at least an argument
7 about that. So what would be your response if there was a
8 request for that? Because I will say this. In terms of a basis
9 for an injunction -- and I'm not even saying that I found one.
10 To the extent there would be one, it would really be about this
11 potential missing information. And, again, I haven't even found
12 that in fact it was missing from the training.

13 But just so we can have a focussed conversation, what
14 would be your response to any potential injunction as it relates
15 to requiring that the incident training and the follow-up or
16 final training involve a reemphasis of this information?

17 MR. HARDY: Your Honor -- the law on this, Your Honor,
18 is abundantly clear. What they're asking for is an obey-the-law
19 injunction. And that's what they're asking you to give, and
20 that would be what you're giving is, Hey, guys. Obey the law.
21 Hey, go out and tell people obey the law.

22 THE COURT: Let's move from there to the other possible
23 argument, and I'll let Mr. Spiva make it, which they would make
24 is that there was potentially irreparable harm created by the
25 initial training, right, and that this e-mail doesn't fix that.

2:16-cv-2415-RFB-NJK

1 To me, that's potentially the only theoretical argument that
2 they would have left.

3 MR. HARDY: And it's nothing more than that,
4 theoretical, because we haven't seen and they've not provided a
5 single instance of a voter challenge that's happened up to this
6 point in time. So if it's -- if there's been no -- there's been
7 no instances of that, then what can we do today to rectify
8 something that hasn't happened?

9 What we've done is we've put out an e-mail and it's
10 made everybody abundantly clear. And we're going to follow the
11 law. And for this Court to give an obey-the-law injunction is
12 just inappropriate. Thank you.

13 THE COURT: Thank you, Mr. Hardy.

14 Mr. Spiva, two questions. One is to the extent that
15 there were concerns about the training that the Court had, even
16 if, for example, Mr. Law hadn't included discussion of the
17 requirements, which I'm not saying that I find, but let's just
18 say he had included them, the e-mail that was sent out based
19 upon the representation to all of the poll watchers -- and from
20 what we have in the record before us I have no reason to doubt
21 that the e-mail that was sent out to the poll watchers was
22 fairly clear about emphasizing what the requirements are for
23 making a challenge and, in fact, added a step not required under
24 Nevada law as it relates to calling the command center where
25 there are lawyers before making such a challenge.

2:16-cv-2415-RFB-NJK

1 And it's very clear in terms of the type and the bold
2 and the underlining as the emphasis to potential consequences
3 for knowingly or falsely challenging a voter. And so to the
4 extent that the Court may have had a concern or there may have
5 been a possibility for some harm, why has that not been
6 addressed by this e-mail?

7 MR. SPIVA: Yeah, I think two things, Your Honor. One,
8 I'm not actually sure that it went to everybody because we heard
9 testimony that there was over 100 people who went through this
10 training, and it didn't look like there was space enough there
11 to me for 100 e-mail addresses. The other thing is we don't
12 know how many of them received that. You know, there's nothing
13 that suggests that they had to do a read receipt or a response.
14 That could be a further issue, something -- further guidance
15 Your Honor could put forth through an injunction.

16 THE COURT: Okay. So you're saying that you think that
17 there isn't -- the e-mail is insufficient because we can't
18 establish that it actually may have corrected a misunderstanding
19 of the other workers who received it?

20 MR. SPIVA: Well, that's one reason, Your Honor. And
21 that --

22 THE COURT: And because the other thing, which the
23 e-mails says, which you didn't challenge, was the fact that
24 Mr. Law represented that most of the poll observers aren't even
25 going to be going to their own precinct, right. And,

2:16-cv-2415-RFB-NJK

1 presumably, if they went to a different precinct -- first of
2 all, they'd have to have evidence when they challenged the
3 person to present to the actual election worker that they were
4 from the precinct, one. Two, then they'd still have to sign the
5 form. So why would that not address or mitigate any, again,
6 irreparable harm, which is what the Court would have to find for
7 there to be an injunction issued?

8 MR. SPIVA: Right. And I guess two things on that,
9 Your Honor. First of all, I don't think, given that we have put
10 evidence into the record in the form of declarations, that a
11 particularly now-named individual, who was a trainee here, has
12 been making misrepresentations at these early vote centers that
13 actually are separate and apart from this whole issue of
14 challenges, I think shows that there's still a problem here in
15 terms of their training and in terms of the calls that Mr. Trump
16 has been making for people to aggressively challenge voters. So
17 that's one.

18 Two, in terms of this specific issue and this specific
19 training, it came at 6 o'clock last night after, basically, all
20 of the people had been trained. And an e-mail coming, you know,
21 you know, several days -- you know, after the fact when they've
22 actually done the bulk of the training. And this is something
23 that was put out by the Trump Campaign, right. And the
24 testimony was that the Trump Campaign developed this slide deck
25 tailored to Nevada law. And they -- and they say it's rare, but

2:16-cv-2415-RFB-NJK

1 they have a whole slide in there about this issue. And, yet,
2 they omit the critical element that you need in order to
3 challenge.

4 And so I think it's too late in the day to just say,
5 Well, we sent out an e-mail to correct it. And I guess what I
6 would -- you know, in order to cure the harm or to ensure -- and
7 that's what we have to show, right, that there is some
8 likelihood that there would be further harms. And I suggest to
9 you the fact that we've been able to point to two specific names
10 of people, one of whom has admittedly gone through this
11 training, who have been making misrepresentations to voters, and
12 the fact that this training had inaccuracies in it and it wasn't
13 corrected until most of the people had been trained --

14 THE COURT: Right. But the inaccuracy in that regard
15 wasn't actually with respect to what we're talking about, right.

16 MR. SPIVA: Well, but one --

17 THE COURT: It had to do with where you could early
18 vote, right.

19 MR. SPIVA: Right. Right. Right.

20 THE COURT: And that's not what -- I have in the record
21 before me where I had raised concerns was about what were
22 established materials that had been used in training, but that's
23 different from the Court taking one instance of someone who may
24 have at some point been affiliated with the campaign and
25 misinformed someone, and based upon that one instance making a

2:16-cv-2415-RFB-NJK

1 finding that the entire training was inappropriate. Because,
2 first of all, they didn't even start the training until after
3 early voting had already started, right.

4 We don't know that this particular individual, when she
5 may or may not have been trained, how much she was trained, when
6 she left or didn't leave. I mean, you're asking me to issue
7 injunctive relief on the basis of, one, an individual incident.
8 It's unconnected from the concern that I had as related to the
9 training.

10 MR. SPIVA: But it's not just that, Your Honor.

11 THE COURT: But it -- so it wouldn't establish that.
12 But -- so what other issues would you raise then to bring to my
13 attention?

14 MR. SPIVA: Well, I guess what I'd say, first of all,
15 in terms of that -- that instance, I mean, admittedly someone
16 who went through this training, you know, I would again say
17 that, you know, given all of these calls from Mr. Trump himself
18 to people to go out and aggressively monitor polls in certain
19 areas, that that is sufficient to warrant a broader injunction.

20 With respect to this specific issue, I think again it's
21 in the backdrop of all of these other statements that we've put
22 into the record that at least, at the very least, there should
23 be an injunction to ensure that all previously and future
24 trained poll workers have been instructed in a manner that
25 corrects the faults we've identified.

2:16-cv-2415-RFB-NJK

1 And so at the very least it seems like we ought to
2 demand some kind of receipt from the e-mail or a response from
3 the e-mail and some kind of follow-up. I understand the
4 testimony is that they are going to be having people in for a
5 training over the weekend. There was no assurance that it would
6 be everybody, but that they have to ensure that the word is
7 conveyed to everybody who's gone through the training and who's
8 going to be doing work at the polls on Election Day that they
9 understand the rules of the road here.

10 THE COURT: And what would that injunction look like?
11 What would I order? So you're saying that I issue an injunction
12 that says because there was a previous potential issue with the
13 training and even though this e-mail was sent out that may not
14 completely rectify the harm, and so therefore I should issue an
15 injunction which says there could be irreparable harm if Mr. Law
16 isn't instructed to remind poll watchers again about what are
17 the requirements for voter challenges.

18 MR. SPIVA: Well, and ensure that they've actually
19 gotten the word.

20 THE COURT: Let me ask you a question. Is there any
21 evidence in the record before me that in fact there has been a
22 single improper voter challenge?

23 MR. SPIVA: Well, in terms of a challenge because of
24 the two statutory reasons, no. But that -- again, we're in the
25 early voting period and so you wouldn't expect that. But there

2:16-cv-2415-RFB-NJK

1 has been -- there is evidence in the record of improper
2 statements to two voters by people affiliated with the Trump
3 Campaign.

4 THE COURT: And let me ask you a question about that.
5 The fact that someone may have at one time volunteered for the
6 campaign, does that make this campaign or any other campaign
7 responsible for them in terms of what the established policy or
8 training set forth? Right. I mean, people can on their own go
9 off and say and do things that are inconsistent with what
10 they've been trained to do. That happens not just in this
11 particular lecture; that happens frequently.

12 So how can that serve as a basis for an injunction
13 without some evidence that, in fact, they were directing people
14 to specifically do something?

15 So, for example, even if I looked at the statements you
16 asked me to look at from Mr. Trump, he doesn't say, as far as I
17 could see, I want you as my supporters to go to early voting
18 sites and misdirect people about where they should vote. He
19 doesn't say that, right. You don't have a statement that says
20 that?

21 MR. SPIVA: No, but he has lots of statements that say
22 you should harass and intimidate voters. And I don't think we
23 have to show that he --

24 THE COURT: Well, if you are asking for a specific
25 injunctive relief, you have to show that there is a specific

2:16-cv-2415-RFB-NJK

1 harm that can be addressed by the injunctive relief.

2 MR. SPIVA: The harm is improper intimidation of
3 voters, Your Honor. And so I think the statements of Mr. Trump,
4 the head of the campaign, basically encouraging that type of
5 activity, encouraging people to bring law enforcement out, you
6 know, encouraging them to aggressively go to certain areas
7 warrants an injunction that says, You got to make sure that that
8 doesn't happen because that would -- that's wrongful behavior.

9 THE COURT: Okay. And we go back to this make-sure
10 type of injunction, I'm not sure what that actually is. I mean,
11 your first -- so you're saying to me first the statements by
12 Mr. Trump that relate to the election being rigged or stolen and
13 the need for his supporters to stop this from happening, right,
14 and the sort of vague, yet suggestive nature of those statements
15 is sufficient for this Court to issue an injunction to the
16 campaign to say, You need to make sure that your poll watchers
17 follow the law or just the supporters?

18 Because I don't know that I have any evidence before me
19 that the poll watchers are actually engaging in any improper
20 conduct, right. It sounds to me like what you are saying is
21 that he's issued this general call that you find has influenced
22 people, maybe not even necessarily people who work for the
23 campaign, but people who may volunteer for the campaign. Has
24 influenced people to engage in improper and potentially unlawful
25 conduct that relates to voting.

2:16-cv-2415-RFB-NJK

1 If the case is that his words may have encouraged
2 people to do that, I'm not saying that I've made that finding,
3 you're saying that the Court should issue an injunction to the
4 campaign saying that it should stop these people how? I mean,
5 what would I say in an injunction?

6 MR. SPIVA: Well --

7 THE COURT: Because, again, I'm not sure what the
8 nature of that injunction would be. I've focussed on the
9 specific areas of concern in part because injunctions have to be
10 specific, and that's what is mandated by the Ninth Circuit in
11 the context of a very sort of narrowly tailored injunctive
12 relief. I'm just not sure what it is that you're asking in the
13 nature of an injunction other than an injunction that says
14 follow the law, right. Injunctions that say follow the law are
15 not injunctions that are favored in this circuit.

16 And then you're, I think, asking me for something that
17 says, Well, ensure that they follow the law. I'm not sure what
18 that actually means. Now, if you're saying to me that what you
19 were requesting is an injunction that says they have to be
20 instructed to specifically reference this information in this
21 follow-up training and that then they have to provide some
22 confirmation to the Court that in fact there was receipt of this
23 information, okay. I guess that's a specific injunction the
24 Court could at least consider. I'm not saying I would issue it,
25 but that would be specific enough.

2:16-cv-2415-RFB-NJK

1 MR. SPIVA: I think that would help, Your Honor. And I
2 understand Your Honor disagrees and Your Honor has the final
3 word on this obviously. I just want to make clear we think what
4 we have submitted would justify a much broader injunction and
5 would -- even if it could be characterized as a follow-the-law
6 injunction, it would be appropriate in this circumstance. But I
7 think the injunction that Your Honor -- with respect to this
8 specific issue, I think that the injunction that Your Honor just
9 mentioned would be helpful, would be a significant step in the
10 right direction.

11 THE COURT: Okay. And so what would be the basis -- so
12 let's back just so the record is clear. What would be the basis
13 for me issuing a broader injunction? Is the basis you're saying
14 that there has been a subtle encouragement by --

15 MR. SPIVA: Hasn't been subtle, Your Honor.

16 THE COURT: Well, I say subtle from the standpoint he
17 hasn't said explicitly, and in the law that matters, right, I
18 want you to go out and disrupt election polls. He hasn't
19 explicitly said that. Now --

20 MR. SPIVA: In the modern era you hardly ever get that.

21 THE COURT: Let me finish.

22 MR. SPIVA: Sorry, Your Honor.

23 THE COURT: Now, I agree with you that you don't have
24 to explicitly say things to directly encourage people; that you
25 can use indirect language that is nonetheless fairly directive

2:16-cv-2415-RFB-NJK

1 and encouraging. But what I am saying is that the Court has to
2 apply a different standard to that type of language, the
3 language that fairly clearly says you should go out and do
4 certain things when those things are in violation of the law.

5 In this case what you're asking me to do is interpret
6 what you think is suggestive language as it relates to voter
7 intimidation for Mr. Trump. And on the basis of that suggestive
8 language find that that suggestive language is going to lead his
9 supporters here in Nevada to improperly engage in voter
10 intimidation or coercion, right.

11 And so my question to you is, what evidence do you have
12 of the fact that that has been a significant or widespread
13 problem such that the Court should address it with injunctive
14 relief, apart from isolated incidents which could occur in any
15 context? What evidence do you have of that?

16 MR. SPIVA: Yeah, we don't have -- beyond the instances
17 we've pointed to, we don't have evidence of that having already
18 happened, Your Honor, but what we have shown is there is a
19 significance threat. It's perfectly predictable that what --
20 it's not only, by the way, Mr. Trump. It's also his Vice
21 Presidential candidate, Mr. Pence, and we cite those statements
22 in the record. It's perfectly predictable that what they are
23 calling for is likely to happen. And I don't think the
24 standard --

25 THE COURT: Okay. But, see, that's where the explicit

2:16-cv-2415-RFB-NJK

1 aspect of what they say matters, right?

2 MR. SPIVA: Yes.

3 THE COURT: So what is it that you say they're calling
4 for and why is that linked to Election Day?

5 MR. SPIVA: Can I just grab -- I have a note.

6 THE COURT: Sure. I mean, because the problem with
7 innuendo is that it can be equally misinterpreted by everyone
8 when you're using it, including the people you may or may not be
9 encouraging to engage in some action.

10 So if you're saying that these words are sort of going
11 to lead to a sort of perfect storm of voter intimidation, tell
12 me what evidence do we have that in fact this is going to
13 happen --

14 MR. SPIVA: Right.

15 THE COURT: -- on Election Day.

16 MR. SPIVA: And I would point Your Honor also to the
17 Nguyen case in the Ninth Circuit where you had a mailer sent out
18 saying if you commit -- to the Latino voters saying if you
19 commit fraud, you know, that's a felony. Perfectly true
20 statement. I mean, I don't have the words exactly right, but
21 there was a statement to that effect. If you -- you know, voter
22 fraud is a felony and if you vote -- if you are an illegal
23 immigrant or if you're here illegally, you could be prosecuted
24 or deported for that. True statement. But also found to be
25 voter intimidation in that case.

2:16-cv-2415-RFB-NJK

1 So it doesn't have to be, and you would rarely expect
2 to find in the modern era -- and I think the Supreme Court
3 Arlington Heights case also recognizes this, a -- I mean, we've
4 heard some pretty outrageous things from Mr. Trump, but you
5 wouldn't expect even Mr. Trump to say, Go into black and Latino
6 neighborhoods and disrupt the vote. But we've had things that
7 are pretty close. We've had --

8 THE COURT: Okay. So let me ask you a question. And
9 so part of this relates to again there are certain first
10 Amendment issues that the Court also has to take into the
11 context of a candidate speaking because he is the head of the
12 campaign which is one of the defendants here, but the Court has
13 to take that into consideration.

14 And so my question to you is in the case you cited
15 there was an explicit mailer that was directed at a particular
16 community with a specific threat of potential criminal sanction.
17 That actually was very specific.

18 And I'm trying to have you explain to me, do we have
19 anything like that in this case that the Court can rely upon and
20 if there's any other case law that would support in the context
21 of suggestive innuendo the issuance of an injunction?

22 MR. SPIVA: Right. And I think the language used in
23 Nguyen -- and I don't have it right in front of me, Your Honor,
24 but it is -- I don't know if suggestive is the word they used,
25 but it was subtle manipulation. I can get that language for

2:16-cv-2415-RFB-NJK

1 you. I think we quoted it in our brief.

2 THE COURT: Right. But the subtle manipulation was in
3 the context of specific statements made, which is different,
4 right?

5 MR. SPIVA: Right.

6 THE COURT: It's not that they were telling people not
7 to vote.

8 MR. SPIVA: Right.

9 THE COURT: But they made an explicit statement that
10 could clearly be interrupted as a threat, right. And so what I
11 am saying to you is that you're asking me to take one step
12 removed from that, which is that we don't have an explicit
13 statement from the campaign or from his representatives saying
14 something similar.

15 If you live in a high-crime neighborhood, the chances
16 are you're not going to be likely to vote because you associate
17 with felons, for example, if that was what was said. That might
18 target certain types of communities. There's nothing like that.

19 There is a -- the statements that you have referenced
20 -- these references that suggest people need to take some
21 action, they need to stop certain alleged rigging from
22 happening.

23 MR. SPIVA: Right, but --

24 THE COURT: But they don't really say how people are
25 supposed to do that and they don't provide a framework for how

2:16-cv-2415-RFB-NJK

1 people are supposed to do that. And it seems to me your only
2 argument is is that encouraging people without a framework
3 encourages, essentially, lawlessness in the context of what they
4 are being asked to do and that that could lead to voter
5 intimidation. That seems to me that's -- basically your
6 argument is that by telling people you should go do something to
7 stop this rigging, but not tell them that the legal way to do
8 that --

9 MR. SPIVA: Right.

10 THE COURT: -- that you are effectively encouraging
11 them to engage in illegal ways to do that because you're not
12 telling them how they are supposed to do that appropriately.

13 MR. SPIVA: Well, here's an example that's very
14 similar --

15 THE COURT: Hold on. Is that your argument?

16 MR. SPIVA: No, I don't think it is, Your Honor. I
17 think my argument is that they are actually asking or
18 encouraging people to engage in vigilantism and voter
19 intimidation, and that although some of their statements are
20 coded, they are pretty thinly coded. And certainly the Court
21 can, you know, as the fact finder could find that. I think -- I
22 mean, I don't know if Your Honor wants me to go -- I mean, I
23 know it's in our brief and I want to --

24 THE COURT: Why don't we do this. Give me an example
25 -- and I'll let Mr. Hardy respond, too -- some of what you think

2:16-cv-2415-RFB-NJK

1 would be your best examples of that type of improper
2 encouragement that would require injunctive relief.

3 MR. SPIVA: Sure. I mean, for instance, Mr. Trump
4 stated, you know, we have to call up at a rally encouraging
5 people to go check in other neighborhoods for voter fraud.

6 THE COURT: And the rally was where?

7 MR. SPIVA: This specific one I believe was in Altoona,
8 Pennsylvania, but he's made these speeches all over the country.

9 THE COURT: Okay.

10 MR. SPIVA: And he said, We have to call up law
11 enforcement. We have to have the sheriffs and the police chiefs
12 and everybody watching. So it -- very similar, I think, to the
13 example that Your Honor was giving a minute ago, you know, kind
14 of, you know, let's get law enforcement in certain areas, as he
15 says, to come in and keep watch over people. That's
16 intimidation.

17 He says at another rally -- and I don't have where this
18 one was. It's in our brief but... Watch other communities.
19 Everybody knows what I'm talking about. We do not want this
20 election stolen from us.

21 Mr. Pence in a -- sorry, another one from Mr. Trump.
22 You know, some of these cities, horrendous things are happening.
23 We have to go watch what's going on.

24 Mr. Pence also similarly -- although he used less
25 freighted language -- and I don't have the specific language

2:16-cv-2415-RFB-NJK

1 here. We did quote it in our brief. But he first says, We have
2 to stop crooked Hillary from stealing the election. And then
3 goes onto say, So we need to be -- we need to get involved in
4 our communities and watching the polls, etc.

5 THE COURT: So how does that lead to voter
6 intimidation? Why should I not interpret that as them saying
7 you should be using lawful means? What from those statements
8 suggests unlawful or improper attempts to stop what he may or
9 may not believe is legitimately as a rigged election? But he's
10 entitled to the belief, right, that it may be rigged or stolen.

11 MR. SPIVA: Of course.

12 THE COURT: Whether or not that's based upon facts or
13 not is not really for me to actually make a determination about.

14 The issue is he can make a claim that this is happening
15 and that it should be stopped. Why should I believe that those
16 sort of calls to action are necessarily going to lead to an
17 improper means of challenging or protesting votes? I mean,
18 there are legitimate ways in many states to do that, as in
19 Nevada. Why should I understand that as an encouragement to
20 unlawful or improper conduct?

21 MR. SPIVA: Right. And I just want to be clear, you
22 don't have to find that it necessarily will. It's just that
23 there's a likelihood. And I think to answer Your Honor's
24 question, when he calls on people to call out law enforcement --
25 in fact, at another rally he called on law enforcement

2:16-cv-2415-RFB-NJK

1 supporters to go and essentially intimidate people at the polls
2 and saying that, You should not just stay in your own
3 communities, but go and watch other communities. You know what
4 I'm talking about. Talking about cities and horrendous things
5 going on there.

6 I think as a fact finder it's pretty clear that that is
7 coded language for minority communities and going and
8 suppressing the vote in minority communities. And, by the way,
9 the fact that there is no evidence of voter fraud of the type
10 he's talking about in the country is relevant here because --

11 THE COURT: So let me ask you a question. Why
12 shouldn't we just wait? I mean, because the other thing that
13 could happen is we could wait. Have a hearing Tuesday
14 afternoon, right, or Tuesday morning. If these things start to
15 happen, you could ask for an injunction at that time directing
16 the Trump Campaign to cease all activities and withdraw all
17 workers from these sites.

18 MR. SPIVA: Well, and we may be back here on Tuesday
19 morning, Your Honor.

20 THE COURT: But my point is to the extent that it would
21 materialize, it's not clear to me that it has, and you're asking
22 me to speculate or at least to try to reach what you think is
23 actually not speculation, but a likely inclusion that it's going
24 to occur.

25 MR. SPIVA: I don't think it's speculation -- I'm

2:16-cv-2415-RFB-NJK

1 sorry, I didn't mean to interrupt.

2 THE COURT: But my point is that the other alternative
3 is to see what happens. Now, you're going to say there's going
4 to be irreparable harm because people will be intimidated when
5 that actually happens and may not go back and vote, and so then
6 it will be too late to address that.

7 MR. SPIVA: It may be too late, Your Honor.

8 THE COURT: But part of the issue is the Court
9 balancing that potentially with a very minimal evidentiary
10 showing of is there improper or illegal conduct in the context
11 of voter intimidation.

12 What you're basically asking me to find is that there's
13 likely to be voter intimidation based upon their statements,
14 although there has not been significant instances of that in
15 terms of number or duration at all during early voting in
16 Nevada. But that because of the nature of voting on Election
17 Day that can and may likely occur, and as a result of that I'm
18 going to issue an injunction to them to tell them to follow the
19 law.

20 MR. SPIVA: Well, I mean, it's interesting, Your Honor,
21 even during this early voting period where you wouldn't expect
22 as much of this to occur, we've been able to point to three
23 instances of people associated with the Trump Campaign, and one
24 of them they admit is associated with the Trump Campaign, who
25 have provided misinformation which if followed would have led to

2:16-cv-2415-RFB-NJK

1 the person losing their right to vote.

2 Now, I can't tell you that that was intentional, but I
3 can tell you that a lot of them are connected up with some of
4 the things that we hear Mr. Trump saying. For instance, the
5 woman telling somebody that they needed an I.D. to vote because
6 that's the type of fraud that he's constantly claiming is
7 occurring in the inner cities in the country.

8 And so, you know, it would be impossible -- I think an
9 impossible evidentiary burden at this stage in the early voting
10 period to be able to show that this has already happened. But I
11 guess all I can --

12 THE COURT: Well, why would that be impossible, right?
13 I mean, your client certainly has, I would imagine, poll
14 observers in some of these precincts now. The early voting
15 sites are actually -- are fewer than the actual precinct sites,
16 so they're easier to cover in terms of poll observers. And you
17 haven't presented to me any information or evidence that would
18 suggest that anyone working on behalf of the Democratic Party
19 has observed someone who was an acknowledged poll worker
20 misdirecting people. I think there may have been one instance
21 where someone -- where a poll observer was removed, and I think
22 that was sort of secondhand in terms of them observing officers
23 having to be called to a particular site and to remove a poll
24 worker, I think. That wasn't actually an official poll
25 worker/observer, but I'm not sure it was from the Trump --

2:16-cv-2415-RFB-NJK

1 MR. SPIVA: But he was yelling at voters, yes, Your
2 Honor.

3 THE COURT: Right. Not from the Trump Campaign.

4 MR. SPIVA: Yes.

5 THE COURT: But that was the one instance of that.

6 MR. SPIVA: Right. And --

7 THE COURT: And so I guess that's my concern is just
8 sort of the dearth of evidence in the record that this is a
9 problem because it could be a problem. Now, the type of
10 intimidation that you're talking about could occur -- if it were
11 going to encourage people, it could occur during early voting.
12 If you're saying that it essentially is encouraging
13 intimidation, that's nothing unique to early voting that would
14 stop people from threatening or yelling at people if that's what
15 was encouraged.

16 MR. SPIVA: And we've brought forward examples, Your
17 Honor, already, which that's remarkable that we've actually
18 already brought forward examples, even though there will be many
19 more people voting on Election Day. And they're predictable --
20 I don't know that there's much more that I could say probably to
21 convince Your Honor. But, you know, if you have a person
22 yelling fire in a crowded theater, I don't think you have to
23 wait until the stampede happens to do something about it, even
24 if what you would do is to say, You've got to stop doing that
25 and you got to make sure that anybody associated with you

2:16-cv-2415-RFB-NJK

1 doesn't yell fire anymore.

2 THE COURT: Well, let me ask you a question because I
3 want to make sure I have the record clear. How many instances
4 do you have of -- that you provide in the record of alleged
5 voter intimidation of individuals who may have been affiliated
6 with as volunteers with the Trump Campaign?

7 MR. SPIVA: We have three instances of either
8 intimidation or misinformation.

9 THE COURT: Those were the three that you initially
10 provided, right? And there's nothing else in your supplements
11 that's added --

12 MR. SPIVA: The supplements didn't add, but they
13 corroborated, I think, one of them. I don't think Ms. Peterson
14 was an addition. I think she was --

15 THE COURT: I think she was, too. But, again, I'm
16 trying to make sure in terms of considering your argument about
17 what the evidentiary basis would be potentially for the Court to
18 make such a determination, I want to make sure that I hadn't
19 missed anything in this fairly fast-moving litigation.

20 Okay. So your argument really, I think, comes down to
21 what you've talked to me about and then that the order would
22 somehow involve a directive to them to follow the law. And,
23 again, I have to look at the order again because it's just
24 not -- doesn't seem to be very specific as to -- even if I were
25 to find that. I mean, it seems to me that if I were to find

2:16-cv-2415-RFB-NJK

1 that there was sufficient instances of this, it seems to me that
2 the true remedy would be to simply enjoin them from sending
3 anyone to the polls, but that's why I'm saying that --

4 MR. SPIVA: We haven't gone that far in terms of --

5 THE COURT: No, but my point is I don't know what the
6 intermediate step would be. That's why I'm asking about the
7 level of the record. I don't know what else the Court could
8 order in the context of an injunction as it relates to the harm
9 that you might envision happening or that could happen, right.
10 So if the harm is that people are simply going to go to the
11 polling locations and intimidate people, if it reached a certain
12 threshold, it would seem to me the Court legally certainly could
13 order the campaign to withdraw its poll workers if there was a
14 pattern or an established sort of evidentiary record of that
15 happening.

16 And that's why I said to you certainly the Court would
17 at least consider the possibility of holding a hearing on
18 Election Day, right, if you thought that was appropriate, to see
19 whether or not that was happening. Because certainly the Court
20 could issue an injunction on that day early in the day to
21 prevent such things, if they actually happened, right.

22 So what about that as an approach to this circumstance?

23 MR. SPIVA: To reserve until Election Day?

24 I mean, you know, obviously we would -- you know, that
25 would certainly be a helpful thing if Your Honor were open to

2:16-cv-2415-RFB-NJK

1 being -- to us coming forward on Election Day to the extent that
2 this materializes, you know, and presenting evidence to that
3 you. That certainly would be helpful. You know, I've said -- I
4 don't want to be a broken record. I'm maintaining that we feel
5 like an injunction is warranted now. I understand Your Honor is
6 skeptical of that.

7 THE COURT: I'm not saying that. What I am saying
8 obviously is that voter intimidation in and of itself is a
9 serious harm. I'm not saying that I found it here, but I'm
10 saying it's serious enough and that it could happen quickly
11 enough that I would consider the possibility of setting
12 something for the day of the election.

13 So, let me hear from Mr. Hardy on that point.

14 MR. SPIVA: Thank you, Your Honor.

15 MR. HARDY: Your Honor, this is -- couple of things.

16 THE COURT: Well, first of all, let's break it down to
17 make it easier.

18 MR. HARDY: I want to get down to the very basics.

19 THE COURT: But let's focus on a few things. You don't
20 need to address the issue of the injunction. You've heard my
21 questions to the plaintiffs. You don't need to focus on that.

22 MR. HARDY: Okay.

23 THE COURT: I want you to focus on this issue of
24 potentially the Court having a hearing on Election Day.

25 MR. HARDY: Well --

2:16-cv-2415-RFB-NJK

1 THE COURT: And the reason why I say this, they could
2 file something anyway on Election Day. There's actually nothing
3 to stop them from doing it. The only reason why I might set a
4 hearing is to avoid scrambling at the last minute to do that.
5 But the fact of the matter is the Court could certainly set a
6 hearing on Election Day to the extent that the Court thought
7 that it might be appropriate to do so. So I'm giving you an
8 opportunity to respond.

9 MR. HARDY: And one of the things -- if you're going to
10 set that hearing or you're going to hold that, there needs to be
11 a basis for that. And in order for you to --

12 THE COURT: Let me stop you. Why do I need to have a
13 basis to set a hearing? I'm not making a finding, but why would
14 there need to be a basis for me to simply set a hearing?

15 MR. HARDY: The reason for that, Your Honor, is that
16 you would need to have something before you that gives you
17 evidence necessary to hold that hearing. And what we've got
18 here is they've got a preliminary injunction hearing that they
19 set to be heard. It's going to be heard today, and there's just
20 absolutely no basis -- I mean, they got to have -- they have a
21 clear burden. They have to have a clear showing. They have to
22 have a likelihood of success on the merits. You know all of the
23 elements of this. They're not even close -- they are not even
24 in the ballpark of making any of those things to be able to --
25 necessary to get an injunction.

2:16-cv-2415-RFB-NJK

1 And now they're saying, Hey, since we can't do it now,
2 let's punt it off a little bit. And I don't think they have a
3 basis to punt it off either because they're still not able to
4 establish, even today, the fact that there is going to be a
5 likelihood of an issue on that day.

6 One of the -- what we're relying on, what they're
7 asking you to rely upon, are these vague campaign rhetoric.

8 THE COURT: So let me -- let's differentiate between
9 two different things, Mr. Hardy. I don't know that on this
10 record that I would -- that I would find, I think I pretty
11 clearly stated, that there would be a basis for an injunction at
12 this point in time. And I've pressed them pretty hard. I'll go
13 back and look at the record, but I'm not sure there is enough
14 here, particularly given the e-mail that was sent out by
15 Mr. Law.

16 That's different, right, from the Court, for scheduling
17 reasons, given the issues they've raised, setting a status
18 hearing as it relates to issues that might arise. And I say
19 that, Mr. Hardy, not because I think they will arise. I don't
20 know. But to avoid a circumstance in which things are filed on
21 that day as it relates to this case and this issue and the Court
22 is unprepared to hear them in a timely fashion. Not because I
23 think that there's a basis for it, but for the Court's
24 convenience in addressing what might be filed.

25 And I'm saying that because in setting that I'm not

2:16-cv-2415-RFB-NJK

1 saying that I would find that there would in fact even be a
2 basis for it, but as you well know, things can be hectic on that
3 day.

4 MR. HARDY: I know.

5 THE COURT: Right. And if I were to do that, I would
6 certainly require certain things to be filed in the record
7 before the Court would hold the hearing to even justify it. But
8 what I don't want to have happen is we're all scrambling to do
9 something that they may think has arise and I have to address
10 and deal with on that day. We have no schedule. We have
11 nothing set, and then we're scrambling at the last minute for
12 something that isn't structured. And that I have seen and I'm
13 sure you have seen happen on Election Day. I want to avoid
14 that.

15 Without making a finding that in fact they're entitled
16 to relief, why couldn't I then set a schedule that said, You
17 have to file by noon, for example, on Election Day --

18 MR. HARDY: I think that's different.

19 THE COURT: Let me finish -- instances of what you
20 claim to be voter intimidation. I would set a hearing 12:30, 1
21 o'clock, right, provide -- come forward with it, right, or not.
22 And at that point we would make a determination or not. I mean,
23 we have -- we already have all of the law and everything that's
24 in the record. We wouldn't need anything more. To the extent
25 the Court would have to consider anything, it would be except

2:16-cv-2415-RFB-NJK

1 for these instances and just a determination as to whether or
2 not that would warrant any particular issue. And it seems to me
3 that that would have to happen by noon or 1:00 because otherwise
4 after that it's irrelevant in terms of its effect.

5 MR. HARDY: I think what the Court -- what you've just
6 described is that you would issue an order today that states,
7 There's no evidence for an injunction at this time, but if you
8 have more evidence that you would like to present on the day of
9 the election, you have to submit that evidence on or before 12
10 o'clock. And if you do, we will have a prescheduled hearing at
11 1 o'clock, 2 o'clock.

12 THE COURT: Right.

13 MR. HARDY: And it needs to be new evidence because
14 we've considered this other evidence and it's not -- there's not
15 a basis for that at that point in time. Give me new specific
16 instances, and if you can do it then at that time, then I may be
17 able to act. Then we can do that in an abundance of caution to
18 be able to do that. But, see, at that point --

19 THE COURT: That's what I'm talking about.

20 MR. HARDY: Yeah. I don't have a problem with that
21 necessarily, Your Honor. Because here's what I'm saying is that
22 that requires a new filing on their side.

23 THE COURT: No. Certainly. No, I wouldn't -- it
24 wouldn't be based upon them simply coming forward and
25 anecdotally sharing that information with me. Now, that being

2:16-cv-2415-RFB-NJK

1 said, they wouldn't have to bring in the exact person, but we'd
2 have to have some sworn statements or something that would say,
3 Here are the instances that we have documented thus far as it
4 relates to this particular activity, right. And then the Court
5 could make a determination based upon that one way or another.
6 And, again, in an abundance of caution.

7 I'm not saying that I find at this point in time that
8 there's a basis for issuing even a narrow injunction. What I am
9 saying that I don't want us to be in a situation where we're
10 caught, sort of, unprepared for something that could actually
11 occur on a hectic day. And that's my concern.

12 It isn't that in setting this I'm making some sort of
13 preliminary ruling that it's going to happen. This is for,
14 quite honestly, my convenience and the convenience of the
15 parties in understanding what the schedule would be so that also
16 they don't come to me at 3:30 or 4:00 trying to ask me to do
17 something, right. That we have to have time frames for things
18 that occur, otherwise it's a waste of everyone's time.

19 MR. HARDY: And I think what you're proposing is
20 probably appropriate. And I say appropriate because I can see
21 the inclination of where you're headed with this. And so what
22 needs to happen is it needs to say -- there needs to be an order
23 that says, There is no basis for an injunction at this point in
24 time. That needs to be abundantly clear. The parties need to
25 go forward. There is no basis for an injunction right now.

2:16-cv-2415-RFB-NJK

1 If there are instances, specific instances, that lead
2 to me to have a basis to do something on that day of the
3 election of November 8th and you file those before 12 o'clock,
4 we will have a prescheduled hearing set for 2 o'clock. But if
5 there's nothing filed before 12 o'clock, all parties are
6 released. You know, something along those lines because I'm
7 going to have to be -- I'm going to have to be with a bunch of
8 people. There are going to be undoubtedly a bunch of things
9 going on that day.

10 THE COURT: That's easy enough to accomplish. We can
11 certainly send our own e-mails, right, that would say the
12 hearing is cancelled. But I do think that in an election,
13 particularly this one, where there certainly has been a high
14 level of enthusiasm and a high degree of publicity around the
15 supporters for the various candidates, and then there can be
16 certain emotional things that might occur at the election that
17 it's worthwhile to at least have something preset that might --
18 that might be available in the context of something that could
19 occur. And, again, I'm going to issue a ruling one way or
20 another by tomorrow as it relates to the current preliminary
21 injunction request.

22 MR. HARDY: What I'm asking for is a ruling --

23 THE COURT: And when I did that, it might include this
24 additional setting. Even if I were to find that there wasn't a
25 basis for an injunction, I might nonetheless find that it would

2:16-cv-2415-RFB-NJK

1 be appropriate to set this schedule for Tuesday in an abundance
2 of caution to have something scheduled and available should
3 something arise.

4 MR. HARDY: I think it critical for the clarity of the
5 record that there is something that says there's no basis for an
6 injunction today. It needs to be very clear. I would also
7 advocate on behalf of the Nevada Republican Party that there
8 probably needs to be some basis to say that there's really no
9 basis for the Republican Party because it has no involvement in
10 a finding, has no involvement in the poll watching activities,
11 right. But in -- and then you can go ahead -- once you've said
12 that there's no basis for the injunction today, the Republican
13 Party really has no involvement inside of this poll watching
14 activity, but nevertheless in abundance of caution you are going
15 to get ahead and set a hearing for noon or 1 o'clock. And then
16 you're going to set a time on which specific instances, new,
17 because we've already reviewed all the rest of them, I don't
18 want to come to a hearing and rehash all that we just did, new
19 instances. Then maybe we can go ahead and entertain that.

20 THE COURT: Okay. All right. Because, again, that
21 seems to me something that may be appropriate in this
22 circumstance.

23 Thank you, Mr. Hardy.

24 So, well, let me ask you this question -- well, you
25 know what. We're all going to be here tomorrow. I've set the

2:16-cv-2415-RFB-NJK

1 order I think for 3 o'clock tomorrow. Is that right, Blanca?

2 And so we'll all be back tomorrow. I anticipate having
3 my ruling at that time. If not written, I'll read it into the
4 record and then file it at some point after that. But I
5 anticipate having my ruling by that point in time.

6 MR. SPIVA: Your Honor, may I -- I just -- Mr. Schrager
7 had some information I think that goes to what Your Honor was
8 proposing, which I think is an excellent idea. But he's
9 particularly situated to address that briefly, if he could. And
10 the other thing I just wanted to mention, I may not be able to
11 be the one here tomorrow, but obviously we will have someone
12 here. But I didn't want -- I apologize in advance.

13 THE COURT: That's all right. I know that you all
14 specialize in these things and you all can't be in all places at
15 the same time. So certainly. Mr. Schrager.

16 MR. SPIVA: But it's been a pleasure being in your
17 courtroom. I thank you.

18 MR. SCHRAGER: Thank you, Your Honor. Bradley Schrager
19 for the plaintiffs. I am in fact the general counsel for the
20 Nevada Democratic Party. In other words, I am the guy in the
21 war room. I will see every incident coming through as it's
22 reported on Tuesday.

23 THE COURT: I see.

24 MR. SCHRAGER: I would very much appreciate -- I would
25 be the best suited to be the contact person and to deal with it

2:16-cv-2415-RFB-NJK

1 on Tuesday. I would very much appreciate exactly what you're
2 talking about by perhaps 1 o'clock, you know, with the
3 submission. That gives a little less than half of Election Day
4 gone and a little more than half of Election Day still to go.
5 But I think what Your Honor is getting at is that we all have an
6 understanding that no matter how many election cycles we've been
7 through, we've not seen something quite like the emotions
8 associated with this one. That the risks of potential incidents
9 are objectively higher than they may have been previously.

10 And the worry is always that hours will be chewed up
11 trying to get to stand right here before someone like you to get
12 concerns addressed. And so if the system is set up -- and I'm
13 not saying something is going to happen, but if a system is set
14 up to address that possibility, it would surely expedite the
15 meting out of justice on the day. So I would appreciate that,
16 Your Honor.

17 THE COURT: Okay. Well, again, I haven't decided yet
18 how I'm going to rule. I have to say that I'm not -- it doesn't
19 seem to me at this point that there is a sufficient record for
20 the Court to issue the broad relief that is being requested by
21 the plaintiffs. And the Court, therefore, might issue an order
22 potentially on something very narrow, but I'm not even sure that
23 that would be warranted. I have to go back and look at the
24 record.

25 But, in any event, in the context of this the Court

2:16-cv-2415-RFB-NJK

1 may -- and it's likely to set a hearing on that day for some
2 time around 2:30, 3 o'clock with there being a filing. And that
3 would give the Court sufficient time to be able to review it,
4 digest it, and then send out an e-mail or alert to say, We need
5 to have a hearing or we don't need to have a hearing as it
6 relates to this issue.

7 And I do want to be clear, it will be clearer tomorrow,
8 to the extent that I would set such a hearing if I -- if I did
9 that after denying the injunction, it would be based upon the
10 possibility, but not a finding as to any potential improper
11 conduct on the part of the defendants. I haven't at this point
12 certainly found that. And in contemplating that, I want the
13 record to be clear that my contemplation of that is not based
14 upon a lesser degree of a finding that the defendants have
15 engaged in any improper conduct at this point. It is simply I
16 think an acknowledgment of the unique and special enthusiasm for
17 this year's election and how that might raise issues that are
18 unforeseen at this time that relate to this issue.

19 But I wanted it to be clear that in discussing that and
20 that in entertaining that, it's not based upon a finding at this
21 point that the defendants have engaged in any wrongdoing or have
22 encouraged at this point voter intimidation. And that's not to
23 comment on -- and the Court isn't in any way commenting on, and
24 I also want to be clear about this, the political speech that's
25 involved in the campaign generally, period, by anyone, right.

2:16-cv-2415-RFB-NJK

1 It's not actually the Court's role to assess political speech
2 except in the context of how it might impact the particular
3 claims here.

4 So the Court isn't in any way sort of condoning or
5 rejecting or commenting on the various statements that have been
6 made or connected to various individuals here. It is simply for
7 the Court to decide whether or not in the overall consideration
8 of the universe of evidence that it be appropriate for there to
9 be legal action.

10 So with that, is there anything else that we need to do
11 today? We will be back here tomorrow at 3:00 primarily to
12 review the Court's decision, if I don't issue it before then,
13 and then to talk about what will happen in the context of the
14 Stone defendants.

15 Now, I do think it would be appropriate, Mr. Hardy, for
16 you to think about how the Court might differentiate, to the
17 extent that it would issue an injunction against the Stone
18 defendants. Because that's a separate issue because if I were
19 to issue an injunction against, for example, the Stone
20 defendants, but not against your clients, I do want you to think
21 about how that might work in the context of poll locations.

22 And, obviously, Mr. Spiva, you and your colleagues will
23 be thinking about that.

24 But in the context of essentially what might be sort of
25 a split decision, Mr. Hardy, I think it's important for you to

—2:16-cv-2415-RFB-NJK—

1 think about what that would look like to be able to potentially
2 have the Court effectuate an injunction that it might issue.
3 And, again, I'm not saying that I would, but that it might
4 issue, but that would not interfere with what you think would be
5 the appropriate and legitimate activities of the Trump Campaign
6 and the Nevada Republican Party -- in this case primarily the
7 Trump Campaign -- in terms of poll observers.

8 And, again, I'm not saying that I am going to issue an
9 injunction, but I do like to let the parties know, as you all
10 can see, what issues that I foresee so that the parties can be
11 prepared. And that certainly seems to be one, Mr. Hardy, that
12 potentially may be something that you would want to think about.

13 MR. HARDY: Absolutely. I'll make sure that I have
14 some wording prepared for that, Your Honor.

15 THE COURT: Okay. And, Mr. Spiva, Mr. Schrager, I
16 think it would be appropriate, given the Court's guidance here,
17 for you all to think a little bit more about specific wording on
18 orders, particularly as it relates to the Stone defendants. If
19 you anticipate, for example, that they are not going to
20 participate, but you think there would still be a basis for the
21 Court to issue an order, I think it would be appropriate for you
22 to think about what that order would look like and how specific
23 it would be and what would be the nature of it, you know, how
24 general or not it should be or to whom it should be directed.

25 And so that would be helpful to have that prepared

2:16-cv-2415-RFB-NJK

1 tomorrow so that we're not scrambling late in the afternoon to
2 come up with some language.

3 MR. HARDY: Would it be appropriate for them to
4 circulate that to me so I can see it ahead of time and provide
5 input, Your Honor, as to how --

6 THE COURT: Certainly I think it would be helpful and
7 appropriate for that. I mean, they have already circulated the
8 other proposed order, so it doesn't seem to me that there would
9 be any reason not to do that. And it would certainly cut down
10 on time, to the extent the Court would issue the order, to be
11 able to issue it more quickly without having to also deal with
12 objections that could have been dealt with and resolved prior to
13 that. So I think it would be appropriate, Mr. Spiva, to submit
14 a proposed order before the hearing tomorrow and to circulate a
15 draft of that to Mr. Hardy before the hearing tomorrow,
16 specifically as it relates to the Stone defendants in this case.
17 Okay?

18 Anything else we need to do today?

19 MR. HARDY: Thank you so much for your time, Your
20 Honor.

21 MR. SPIVA: Nothing further, Your Honor. Thank you.

22 THE COURT: Hold on just a moment.

23 (Court conferring with law clerk.)

24 THE COURT: One thing, in talking with my staff, I
25 wanted to clarify as it related to the e-mails, Mr. Hardy -- and

2:16-cv-2415-RFB-NJK

1 you can certainly ask Mr. Law this question -- is my
2 recollection is that Mr. Law said that he had sent the e-mails
3 to all the people who they had in their system who were poll
4 observers and all of the poll observers had e-mails except for
5 the two that had to be contacted by other means. Is that right?

6 MR. HARDY: Correct. Yes. And that those individuals
7 had been contacted by his staff.

8 THE COURT: By other means, right. And so that I --
9 again, I just wanted the record to be clear. So, as far as
10 Mr. Law is aware, everyone who received the training also
11 received that e-mail?

12 MR. HARDY: All individuals who have been trained have
13 received that e-mail, and anybody who is -- nobody that will go
14 out as a poll worker will be somebody that's untrained. Does
15 that make sense?

16 THE COURT: No, that makes perfect sense. In other
17 words, in order to be a poll observer, you have to go through
18 the training.

19 MR. HARDY: Correct.

20 THE COURT: Everyone who went through the training had
21 either that e-mail -- received either the e-mail this morning or
22 were contacted in person?

23 MR. HARDY: Correct.

24 THE COURT: Okay.

25 All right. Then we are adjourned on this matter.

2:16-cv-2415-RFB-NJK

1 Thank you.

2 MR. SPIVA: Thank you, Your Honor.

3 MR. HARDY: Thank you, Your Honor.

4 (Whereupon the proceedings concluded at 3:37 p.m.)

5 --oOo--

6 COURT REPORTER'S CERTIFICATE

7

8 I, PATRICIA L. GANCI, Official Court Reporter, United
9 States District Court, District of Nevada, Las Vegas, Nevada,
10 certify that the foregoing is a correct transcript from the
11 record of proceedings in the above-entitled matter.

12

13 Date: November 5, 2016.

14

/s/ Patricia L. Ganci

15

Patricia L. Ganci, RMR, CRR

16

CCR #937

17

18

19

20

21

22

23

24

25