UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA DEMOCRATIC PARTY, Plaintiff, v. REPUBLICAN PARTY OF PENNSYLVANIA, DONALD J. TRUMP FOR PRESIDENT, INC., ROGER J. STONE, JR., and STOP THE STEAL, INC., Defendants.	)	Civil Action No. 2:16-cv-5664-PD

FILED
NOV – 7 2016
LUCY V. CHIN, Interim Clerk
By _____ Dep. Clerk

DECLARATION OF PAUL ROLF JENSEN IN SUPPORT OF DEFENDANTS ROGER J. STONE AND STOP THE STEAL'S OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

I, PAUL ROLF JENSEN, hereby declare as follows:

1. I am an attorney at law, duly licensed to practice before the Supreme Courts of the United States and of the State of California, as well as other federal courts, and am prepared to immediately file an application for admission pro hac vice in this case on behalf of Roger Stone and Stop the Steal.

2. Last Thursday I appeared for these same defendants, and opposite these same lawyers for Plaintiff Arizona Democratic Party, in United States District Court in Phoenix, where the identical relief was sought there as they are seeking here. On Friday, the Arizona Court issued its ruling. Attached hereto as Exhibit 1 is a true copy of that Order. So that the Court may see the identical nature of the complaint and motion there, I attach true copies of these as well, as follows: Exhibit 2: Plaintiff's Complaint; Exhibit 3: Plaintiff's Motion for a Restraining Order; Exhibit 4: Plaintiff's Memorandum of Law in Support of Motion for a Restraining Order; Exhibit 5: Plaintiff's Proposed Order; Exhibit 6: Declaration of Gronski in Support of Motion for a Restraining Order; Exhibit 7: Declaration of Mellman in Support of Motion for a Restraining Order.

2. Last Friday, in litigation brought by these same plaintiffs' lawyers identical in almost every respect to our litigation here in Pennsylvania, the District Court, without participation from Rogert Stone and Stop the Steal, GRANTED plaintiff Ohio Democratic Party the same injunction they are seeking in this case. Yesterday, Defendant Trump campaign sought an emergency stay of that injunction before the Sixth Circuit, and I filed a joinder in that emergency motion, and asked for the same relief.

3. At approximately 10:45 this morning Pacific Time I received the Order of the Sixth Circuit, which I attach hereto as Exhibit 8, staying that injunction.

I hereby declare under penalty of perjury of the laws of the United States, and of California, that the foregoing is true and correct of my own personal knowledge and that if called upon, I would and could so competently testify.

Executed at Costa Mesa, California on November 6, 2016

PAUL ROLF JENSEN

Dated November 6, 2016

Respectfully submitted,

PAUL ROLF JENSEN,
Application for admission pro hac vice to be filed immediately
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EXHIBIT 1 FOLLOWS

WO NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Arizona Democratic Party,

Plaintiff,

v.

Arizona Republican Party, *et al.*,

Defendants.

No. CV-16-03752-PHX-JJT

ORDER

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

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

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

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

I. LEGAL ANALYSIS

A. Standing

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

An organization has standing "to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy." *Warth v. Seldin*, 422 U.S. 490, 511 (1975). An organization also has "associational standing" to bring suit on behalf of its members "when its members would otherwise have standing to

sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc.*, 528 U.S. at 181 (citing *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)).

In the Complaint, Plaintiff alleges it has standing to bring this action both on behalf of itself and its members "because it is supporting many candidates in the Presidential, Senate, House, and numerous statewide elections" and will suffer immediate and irreparable injury if Defendants' alleged conspiracy to intimidate voters "succeeds in disrupting or changing the results of the election." (Compl. ¶ 14.) This is sufficient to establish Plaintiff's standing, *see Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008), and Defendants do not challenge Plaintiff's standing to bring its claims in this matter.

B. Mr. Stone's Motion to Dismiss for Lack of Service and Jurisdiction

At the Hearing, Mr. Stone, through counsel, moved to dismiss Plaintiff's claims against him for lack of service and lack of jurisdiction.[1] (Tr. at 43.) Since then, Plaintiff has filed a certificate of service with regard to Mr. Stone (Doc. 26), so the Court will deny as moot his motion with regard to service. The Court addresses his motion with regard to jurisdiction here.

In order for a federal court to adjudicate a matter, it must have jurisdiction over the parties. *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982). The party bringing the action has the burden of establishing that personal jurisdiction exists. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 182-83 (1936)); *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977). When a defendant moves, prior to trial, to dismiss a complaint for lack of personal jurisdiction, the plaintiff must "'come forward with facts, by affidavit or otherwise, supporting personal

[1] The Court denied a similar motion brought by Defendant Stop the Steal at the Hearing. (Tr. at 52.)

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

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

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

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

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

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

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[2] Plaintiff does not attempt to provide facts to support a finding of general jurisdiction over Mr. Stone.

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

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

Plaintiff alleges and proffers some evidence that Mr. Stone and Stop the Steal have "engaged in the recruitment of individuals to come into the State of Arizona for the purpose of engaging in election monitoring and exit poll activities on Election Day in Arizona," including signing up 107 volunteers as of November 1, 2016, and that Mr. Stone has publicly and repeatedly tied himself to Stop the Steal. (Tr. at 47-50; Reply to STS at 3-6.) Though Mr. Stone's counsel argued that Mr. Stone is distinct from Stop the Steal in terms of these actions (Tr. at 46), Mr. Stone produced no evidence to contradict Plaintiff's evidence. The Court finds that, through the acts of recruiting and organizing exit poll takers to come to Arizona polling places, Mr. Stone has sufficient contacts with Arizona. Furthermore, it is undisputed that Plaintiff's claims arise from

those contacts. Because Mr. Stone made no argument that the Court's exercise of jurisdiction would be unreasonable, the Court finds it has jurisdiction over Mr. Stone in this matter. Accordingly, the Court will deny Mr. Stone's oral motion to dismiss on that basis.

C. Plaintiff's Motion for Injunctive Relief

The Supreme Court has observed that "a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (internal quotation and citation omitted). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted); *see also Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). The Ninth Circuit Court of Appeals, employing a sliding scale analysis, has also stated that, where there are "serious questions going to the merits" such that a plaintiff has not necessarily demonstrated a "likelihood of success," "a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met." *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1085 (9th Cir. 2013) (internal quotations and citations omitted).

1. Likelihood of Success on the Merits

Plaintiff brings claims under both the Voting Rights Act and Ku Klux Klan Act. Section 11(b) of the Voting Rights Act provides, "No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote" or "for urging or aiding any person to vote or attempt to vote." 52 U.S.C. § 10307(b).[3] The statute does not

[3] ARP and the Trump Campaign argue that an action under Section 11(b) of the Voting Rights Act requires a showing that a defendant intended to intimidate, threaten or coerce or attempt to intimidate, threaten or coerce a person for voting or attempting to

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

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

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

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vote. (GOP Resp. at 22 (citing *Olagues v. Russoniello*, 770 F.2d 791, 804 (9th Cir. 1985)).) Plaintiff argues that an action under Section 11(b) only requires that a defendant intended to act, with the result that the actions intimidate, threaten or coerce or attempt to intimidate, threaten or coerce a person for voting or attempting to vote. (Reply to GOP at 4 (citing Section 11(b) of the Voting Rights Act); Reply to STS at 7-9.) While the Court agrees with Plaintiff that the plain language of the statute does not require a particular *mens rea*, the Court need not decide this question to resolve Plaintiff's Motion.

[4] ARP and the Trump Campaign argue that an action under 42 U.S.C. § 1985(3) requires a showing of racial animus and that the specific provision invoked by Plaintiff—the "support and advocacy clause"—cannot be applied against a non-state actor. (GOP Resp. at 17-19.) Plaintiff disagrees on both counts. (Reply to GOP at 4-8.) Again, the plain language of the statute does not require either of the elements proposed by ARP and the Trump Campaign. For the purpose of resolving Plaintiff's Motion, the Court presumes application of the "support and advocacy clause," like the other clauses in 42 U.S.C. § 1985(3), to ARP and the Trump Campaign as non-state actors. The Court need not read into the statute a racial animus requirement to resolve Plaintiff's Motion.

[5] For the purposes of this Order, the Court refers to these representatives provided

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

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

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for by statute and duly appointed as "credentialed poll watchers." The Court refers to those persons present to observe activities at a polling place who are not appointed under the statute as "uncredentialed observers."

carefully selected polling places is merely a pretext for intimidating minority voters. (*E.g.*, Compl. ¶¶ 36-39.)

a. Statements of the Arizona Republican Party

In conjunction with its claims against ARP, Plaintiff proffers evidence that, in a press release, ARP Chairman Robert Graham stated that the party's credentialed poll watchers "will be the eyes and ears of the GOP to look for those who show up with multiple ballots." (Doc. 11-2 at 6-8, Gonski Decl. Ex. 2.) Acknowledging that state law prohibits talking to voters or taking photographs in polling places, Mr. Graham stated that credentialed poll watchers are "still free to follow voters out into the parking lot, ask them questions, take their pictures and photograph their vehicles and license plate." (Gonski Decl. Ex. 2.) ARP spokesman Tim Sifert added that credentialed poll watchers are "free to go outside that 75-foot limit" and "[t]hat's where they can turn on their phone to take video or pictures or something like that." (Gonski Decl. Ex. 2.) Mr. Graham also stated that, if they believe a felony is in progress, credentialed poll watchers can call 911. (Gonski Decl. Ex. 2.) Plaintiff claims that these statements amount to a call for ARP's credentialed poll watchers to intimidate voters at polling places. Moreover, Plaintiff points to evidence that ARP is flooded with requests from people who would like to become credentialed poll watchers in the upcoming election—some of whom, Plaintiff asserts, the Trump Campaign recruited—to argue that ARP is cooperating with the Trump Campaign to intimidate voters on a wide scale.

Mr. Graham and Mr. Sifert made their statements in the context of a new Arizona law, A.R.S. § 16-1005(H)-(I), which prohibits a practice called "ballot harvesting," or collecting other people's ballots (with some exceptions, including family members and caregivers) and delivering them to polling places.[6] The press release makes the context of the ARP officials' statements clear; Mr. Graham states that the ARP's credentialed poll watchers are looking "for those who show up with multiple ballots." (Gonski Decl.

[6] The day after the Hearing, an *en banc* panel of the Ninth Circuit Court of Appeals ruled that the statute is constitutionally infirm and struck it down in Ninth Circuit Case No. 16-16698, Order dated Nov. 4, 2016. (*See* Reply to STS at 2.)

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

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

[7] After the Ninth Circuit did strike the ballot harvesting law, ARP filed a Notice (Doc. 30-2) that it was informing its credentialed poll watchers via its website not to follow or photograph voters suspected of ballot harvesting or, indeed, any voter.

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

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

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

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

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[8] After the Ninth Circuit struck the ballot harvesting law, ARP filed a Notice declaring that it removed the subject page from its website. (Doc. 30-2.)

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

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

b. Statements of the Trump Campaign

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

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

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

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

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

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

> "We have three major voter suppression operations under way," says a senior official. They're aimed at three groups Clinton needs to win overwhelmingly: idealistic white liberals, young women, and African Americans. Trump's invocation at the debate of Clinton's WikiLeaks e-mails and support for the Trans-Pacific Partnership was designed to turn off Sanders supporters. The parade of women who say they were sexually assaulted by Bill Clinton and harassed or threatened by Hillary is meant to undermine her appeal to young women. And her 1996 suggestion that some African American males are "super predators" is the basis of a below-the-radar effort to discourage infrequent black voters from showing up at the polls—particularly in Florida.

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

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

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

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

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[9] Indeed, among other evidence, Plaintiff produces a Tweet from a Trump supporter in Florida stating he planned to be "wear'n red at polls," "watch'n fer shenanigans," and "haul ya away," accompanied by a photo of a pickup truck and a person-sized cage built in the bed, surrounded by American flags. (Gonski Decl. Ex. 7.) An Ohio supporter stated, "it's called racial profiling. Mexicans. Syrians. People who can't speak American. I'm going to go right up behind them. I'll do everything legally. I want to see if they are accountable. I'm not going to do anything illegal. I'm going to make them a little bit nervous." (Gonski Decl. Ex. 6.) While these statements are deeply troubling, they do not illustrate an organized effort to intimidate voters in this jurisdiction, but rather appear to be outlier statements from other jurisdictions. Enjoining Defendants in this action is not likely to address those statements.

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

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

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

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[10] The Court notes, as have other district courts considering similar matters, that should evidence arise on or before November 8, 2016, demonstrating harm or likelihood of harm as a result of Defendants' actions, it would entertain renewal of Plaintiff's Motion.

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

c. Statements of Stop the Steal and Mr. Stone

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

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

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

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

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

2. Likelihood of Irreparable Harm

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

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

3. Balance of Equities and the Public Interest

Because Plaintiff brings this action not only on behalf of the Arizona Democratic Party, but also unidentified potential voters (*see, e.g.*, Mot. at 15-16), and ARP and the Trump Campaign purport to oppose the injunction due to its effect on unknown third-parties (GOP Resp. at 7-10), the Court will collapse the final two factors into a single category. *See Arizona Dream Act Coal. v. Brewer*, 818 F.3d 901, 920 (9th Cir. 2016) (analyzing both public interest and equities factors simultaneously); *Minard Run Oil Co. v. U.S. Forest Serv.*, 670 F.3d 236, 256 (3d Cir. 2011) ("we consider together the final two elements of the preliminary injunction framework—the public interest and the balance of the equities"); *Merced v. Spano*, No. 16CV3054 (SJ) (SMG), 2016 WL 3906646, at *2 (E.D.N.Y. July 14, 2016) ("The remaining elements (irreparable harm, balance of the equities and public interest) will be discussed together because in this instance, they are intertwined."). Analyzing factors three and four in unison, the Court must balance both Plaintiff's and the public's interest in protecting voters from undue influence, intimidation, or coercion, against Defendants' poll observing rights and right to free speech under the First Amendment.

As stated, the right to vote is a fundamental one, *Reynolds*, 377 at 562, the preservation of which is compelling. *See, e.g.*, *Burson v. Freeman*, 504 U.S. 191 (1992). Indeed, "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); *see also Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003) ("There is no doubt that the right to vote is fundamental . . ."). The Supreme Court has consistently held that the states, too, have a compelling interest in maintaining the integrity of the voting place and preventing voter intimidation and confusion. *Burson v. Freeman*, 504 U.S. 191, 198 (1992); *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 229 (1989); *Anderson v. Celebrezze*, 460 U.S. 780 (1983). Accordingly, both Plaintiff and the public have a strong interest in allowing every registered voter to do so freely.

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

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

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

II. CONCLUSION

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

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

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

Dated this 4th day of November, 2016.

Honorable John J. Tuchi
United States District Judge

EXHIBIT 2 FOLLOWS

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Arizona Democratic Party,

Plaintiffs,

v.

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

Defendants.

No. _____

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

Plaintiff Arizona Democratic Party hereby alleges as follows:

INTRODUCTION

1. The campaign of Donald J. Trump (the "Trump Campaign"), Trump's close advisor Roger J. Stone, Jr., Stone's organization Stop the Steal Inc., the Arizona Republican Party ("ARP"), and others are conspiring to threaten, intimidate, and thereby prevent minority voters in urban neighborhoods from voting in the 2016 election. The presently stated goal of the Trump Campaign, as explained by an unnamed official to Bloomberg News on October 27, is to depress voter turnout—in the official's words: "We have three major voter suppression operations under way" that target Latinos, African Americans, and other groups of voters. While the official discussed communications

strategies designed to decrease interest in voting, it has also become clear in recent weeks that Trump has sought to advance his campaign's goal of "voter suppression" by using the loudest microphone in the nation to implore his supporters to engage in unlawful intimidation at Arizona polling places. Trump's exhortations have been amplified by direct and tacit assistance from the ARP and Stone, who helped pioneer similar tactics in the 1980s before those efforts were blocked by the federal courts. All have sought to organize, fund, and assist Trump's supporters to carry out Trump's goals. And Trump's supporters have responded with pledges to descend upon polling places in "certain areas" where many minority voters live in order to interfere with their efforts to exercise the franchise.

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

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

a. "as a first resort, use established statutory procedures for challenging unqualified voters";

b. "comply with all applicable state and federal laws protecting the rights of duly qualified citizens to vote for the candidate(s) of their choice";

c. "refrain from giving any directions to or permitting their employees to campaign within restricted polling areas or to interrogate prospective voters as to their qualifications to vote prior to their entry to a polling place";

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

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

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

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

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

6. Immediate relief is necessary. There are only 8 days left until Election Day, and early in-person voting is already underway in Arizona. Trump's calls for unlawful intimidation have grown louder and louder, and the conspiracy to harass and threaten voters on Election Day has already resulted in numerous acts that threaten to interfere with the voting rights of registered Arizona voters. The Arizona Democratic Party, and untold numbers of Arizona voters, will suffer irreparable harm if the right to vote is imperiled by the same forms of virulent harassment that federal law has prohibited since shortly after the Civil War.

PARTIES

7. Plaintiff Arizona Democratic Party is a state party organization affiliated with the Democratic Party, headquartered in Phoenix, Arizona. *See* "Arizona Democratic Party," *available at* http://www.azdem.org.

8. Defendant Arizona Republican Party is a political organization with its principal place of business in Phoenix, Arizona. *See* "Arizona Republican Party," *available at* http://az.gop.

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

10. Defendant Stop the Steal Inc. is a "super PAC" formed by Stone on April 6, 2016, under Section 527 of the Internal Revenue Code. Stop the Steal Inc. is devoted to promoting Stone's conspiracy theories regarding voter fraud, and to using fears of a

"rigged" election to organize and recruit poll watchers to harass and intimidate perceived Democratic voters on Election Day. Stop the Steal Inc. is headquartered at 3843 South Bristol Street, Suite 312, Santa Ana, California.

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

JURISDICTION AND VENUE

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

13. Personal jurisdiction exists over Stone, Stop the Steal Inc., and the Trump Campaign because Defendants caused and/or will cause harm or tortious injury by an act or omission in this State or directed to this State. *See* Ariz. R. Civ. P. 4.2; *Meyers v. Hamilton Corp.*, 143 Ariz. 249, 251-52 (1984).

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

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

16. The allegations herein justify immediate temporary relief in order to prevent irreparable harm. An injunction against the Trump Campaign and its co-conspirators'

planned intimidation tactics is the only way to protect thousands of Arizona voters from harassment, threats, or intimidation that could discourage them from voting in the upcoming election.

FACTUAL ALLEGATIONS

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

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

18. The Klan Act, as currently codified in 42 U.S.C. § 1985(3), provides for damages and equitable relief "if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of . . . an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy." The Act further provides that an action will lie against the conspirators so long as "one or more persons engaged" in the conspiracy "do, or cause to be done, any act in furtherance of the object of such conspiracy." As the Supreme Court made clear in *Ex parte Yarbrough*, 110 U.S. 651 (1884), the constitutional basis for this broad provision—whose text requires no showing of racial intent or animus, only a conspiracy to intimidate voters—is the Constitution's Elections Clause.

19. Nearly a century later, in 1965, Congress again invoked its broad Elections Clause power to protect the franchise. Responding to numerous instances of intimidation in both elections and registration efforts in the Jim Crow South, including the killing of black and white activists seeking to register African Americans to vote, Congress passed Section 11(b) of the Voting Rights Act. Section 11(b) prohibits actual or attempted

"intimidation," "threats," or "coercion" against a person, either "for voting or attempting to vote" or "for urging or aiding any person to vote or attempt to vote." Section 11(b) authorizes private suits against private actors, even in the absence of any action by a state or state official.

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

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

21. In the months leading up to the 2016 election, Trump has made an escalating series of statements, often racially tinged, suggesting that his supporters should go to particular precincts on Election Day and intimidate voters—and that if they do not do so, he will lose the election because certain people, in certain precincts, will vote "15 times" for Secretary Hillary Rodham Clinton.

22. For example, Trump told a crowd in Altoona, Pennsylvania, in August that "I hope you people can . . . not just vote on the 8th, [but also] go around and look and watch other polling places and make sure that it's 100-percent fine. We're going to watch

Pennsylvania—go down to certain areas and watch and study—[and] make sure other people don't come in and vote five times. . . . The only way we can lose, in my opinion—and I really mean this, Pennsylvania—is if cheating goes on."

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

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

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

26. Trump's exhortations have grown more ominous and specific as the election draws closer. At an October 1 rally in Manheim, Pennsylvania, for example, Trump instructed his supporters to "go check out [other] areas because a lot of bad things happen, and we don't want to lose for that reason." Trump and Trump Campaign surrogates have told supporters that voters of color should be suspected of fraud. Trump has suggested that Latino voters are undocumented immigrants whom the federal government has allowed to "pour into this country" specifically to vote in the election. And in a nationally televised interview on October 16, former New York City Mayor and Trump surrogate Rudy Giuliani expressed that voter fraud is concentrated in predominantly minority communities in "inner cities" that support "Democrats," like "Philadelphia and Chicago."

27. While speaking in Ambridge, Pennsylvania, on October 11, Trump warned that it is "[s]o important that you watch other communities"—which, he clarified, meant Philadelphia—"because we don't want this election stolen from us . . . . And everybody knows what I'm talking about." Trump was referring in particular to stories he had circulated earlier in the summer about Philadelphia precincts comprised nearly exclusively of African-American voters in which Mitt Romney received no votes in 2012. At that same rally, a prominent Trump supporter, U.S. Representative Bill Shuster, made clear that Trump supporters should focus their voter intimidation in Philadelphia, stating: "The people in Western and Central Pennsylvania have to overcome what goes on down in Philadelphia—the cheating." Another prominent Trump supporter, former Speaker of the House Newt Gingrich, has similarly stated that the election might be "stolen" because of voter fraud in Democratic-leaning communities: "You look at Philadelphia, you look at St. Louis, you look at Chicago, I mean, again, I'm old enough, I remember when Richard Nixon had the election stolen in 1960 . . . . So to suggest that we have—that you don't have theft in Philadelphia is to deny reality."

28. At an October 29 rally in Phoenix, Trump repeated his claim that election is "rigged" against him and "the outcome is fixed." He later elaborated that the election is "rigged" because of "voter fraud," and instructed his supporters to "watch, watch, be careful, watch." Trump has further made clear: "This is what I mean when I say that our system is rigged. Be careful, watch for voter fraud." Trump was introduced at the Phoenix by Joe Arpaio, the Sheriff of Maricopa County, who is under federal civil rights investigation for racial profiling of Latino Americans and has been charged with contempt of court for failing to comply with court orders in that case.

29. Trump's vice presidential running mate, Indiana Governor Mike Pence, has joined in calling for Trump supporters to engage in voter intimidation, stating that "we're encouraging all our supporters . . . to be involved" in monitoring polling places for voter fraud.

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

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

32. At a rally in Golden, Colorado on October 29, 2016, Trump accused postal workers of throwing out ballots that they don't "like." Trump told the crowd, "I have real problems with ballots being sent. Does that make sense? Like people saying, 'Oh here's a ballot,' being, 'here's another ballot - throw it away, throw it away. Oh, here's one I like, we'll keep that one. I have real problems—so get your ballots in. We're trying to have some pretty good supervision out there. We got a lot of people watching you people that collect the ballots. We got a lot of people watching the people that collect the ballots. Now, the, you know, dishonest media will say 'oh, that wasn't nice. Everything is so honest. Everything in our country –' We have 1.8 million people that are dead registered to vote. Right? And some of them vote. I wonder how that happens. We have 2.7 million people on more than one state, they're registered two states, and sometimes more than that. And I could go on and on and on."

33. Stone has amplified Trump's message. Stone is a far-right-wing political operative who has served as a close advisor to Trump throughout his run for President.

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

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

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

36. Further, Stone and Stop the Steal Inc. are actively recruiting Trump supporters for "exit polling," specifically targeting nine Democratic-leaning cities with large minority populations. As of October 29, 2016, Stone claimed to have organized 2,177 volunteers to engage in this "exit polling" operation. That number includes at least 93 volunteers

signed up to participate throughout Arizona according to the website at https://stopthesteal.org/states/Arizona/.

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

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

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

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

41. Those statistics help explain why the courts that have examined the evidence have concluded that widespread voter fraud does not exist. In a challenge to Pennsylvania's voter ID law, for example, "[t]he parties [we]re not aware of any incidents of in-person voter fraud in Pennsylvania and d[id] not have direct personal knowledge of in person voter fraud elsewhere." *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988, at *57 (Pa. Commw. Ct. Jan. 17, 2014). A federal judge in North Dakota recently determined that "[t]he undisputed evidence before the Court reveals that voter fraud in North Dakota has been virtually non-existent." *Brakebill v. Jaeger*, No. 16-cv-00008 (DLH), Dkt. No. 50 (D.N.D. Aug. 1, 2016). A federal judge in Wisconsin has similarly observed that "[t]he Wisconsin experience demonstrates that a preoccupation with mostly phantom election fraud leads to real incidents of disenfranchisement, which undermine rather than enhance confidence in elections, particularly in minority communities." *One Wis. Inst. v. Thomsen*, No. 15-cv-324 (JDP) (W.D. Wis. July 29, 2016); *see also Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 194 (2008) ("The only kind of voter fraud that SEA 483 addresses is in-person voter impersonation at polling places. The record contains no evidence of any such fraud actually occurring in Indiana at any time in its history."); *Veasey v. Abbott*, 830 F.3d 216, 238 (5th Cir. 2016) ("[T]he evidence before the Legislature was that in-person voting, the only concern addressed by SB 14, yielded only two convictions for in-person voter impersonation fraud out of 20 million votes cast in the decade leading up to SB 14's passage."); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 246 (4th Cir. 2014) ("North Carolina asserts goals of electoral integrity and fraud prevention. But nothing in the district court's portrayal of the facts suggests that those are anything other than merely imaginable."); *Frank v. Walker*, 17 F. Supp. 3d 837, 848 (E.D. Wis. 2014) ("[I]t appears that there have been zero incidents of in-person voter-impersonation fraud in Wisconsin during recent elections."), *rev'd on other grounds*, 768 F.3d 744 (7th Cir. 2014); *Lee v. Va. State Bd. of Elections*, No. 3:15-cv-357-HEH, 2016 WL 2946181, at *23 (E.D. Va. May 19, 2016) ("evidence of actual voter impersonation-type fraud was scant").

42. The fact that widespread voter fraud is a myth does not prevent many people—particularly those who are listening most closely to the RNC, Trump, and their surrogates such as Stone—from believing it is real. As a recent Washington Post-ABC poll showed, nearly 70% of Trump's supporters (but less than half of all voters) believe that voter fraud happens "very often" or "somewhat often." This widespread belief, despite a total lack of evidence to support it, has been stoked for decades by certain elements of the Republican Party, including Stone and Trump's allies in the so-called "alt-right" media ecosystem, such as the Breitbart website that was run until recently by Trump Campaign CEO Steve Bannon. In the last few months alone, Breitbart has run dozens of articles on supposed voter fraud, with ominous headlines about "Obama forces" and "Soros-backed" cover-ups, and Stone has appeared on Breitbart-affiliated radio stations to echo Trump's fearmongering about a stolen election. Stone's "StopTheSteal" campaign has fanned these flames by widely distributing via social media and elsewhere the false claim that "the Democratic National Committee" and "the Clintons" "intend to flood the polls with illegals" and encouraging Trump supporters to "monitor for voting fraud" in "targeted localities." And, appearing on Face the Nation on October 23, 2016, RNC Chairman Reince Priebus declared that voter fraud "is real," and that what Trump is doing is "trying to also tell his folks to watch out for this fraud that might occur."

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

type of voter fraud the RNC is prevented from addressing by the Decree." *Democratic Nat'l Comm.*, 671 F. Supp. 2d at 578-79.

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

REPUBLICAN NATIONAL AND STATE COMMITTEES CONSPIRE WITH TRUMP AND STONE TO ENCOURAGE VOTER INTIMIDATION

45. As the Republican Party nominee for President, Trump and his campaign coordinate closely with the RNC and ARP on a wide variety of matters, including overall campaign strategy, public messaging, voter outreach, and field operations. It has been widely reported that the Trump Campaign "relinquished control over many of its tactical decisions" to the RNC. Shortly after Trump became the Republican nominee, the RNC met with the Trump Campaign to discuss what they described as "the merger." The Trump Campaign and RNC "negotiated a partnership," in which the RNC "buil[t] assets and infrastructure and the nominee gets to benefit from it."

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

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

48. The Trump Campaign's coordination with the RNC and ARP extends to efforts to monitor polling locations for purported voter fraud. Trump's running mate, Governor Mike Pence, publicly confirmed that the Trump Campaign is working directly with the RNC and state Republican parties on ballot security measures. At an August 3, 2016,

town hall rally in Denver, Colorado, Pence was asked "how is the Trump-Pence campaign going to . . . prevent" Secretary Clinton from "steal[ing] this election." Pence responded: "I will tell you that the Trump campaign and the Republican National Committee are working very very closely with state governments and secretaries of states all over the country to ensure ballot integrity. . . . We are working hard all over the country, the Republican National Committee is working all over the country, but I would encourage everyone within the sound of my voice, get involved, participate, be a poll worker on election day . . . be a part of that process, and uphold the integrity of one person one vote in America."

49. The RNC has delegated "ballot security" initiatives to its agents in the state parties. For example, Robert Graham, the chair of the Arizona Republican Party, recently remarked that individuals who are designated as Republican poll watchers "will be the eyes and ears of the GOP" to identify people who attempt to drop off multiple absentee ballots at early voting, polling locations, or the county recorder's office. Despite acknowledging that Arizona law limits what a party-designated observer can do—including restrictions on photography and talking to voters—Graham asserted that "they're still free to follow voters out into the parking lot, ask them questions, take their pictures and photograph their vehicles and license plate" as long as they are more than 75 feet outside a polling place.

50. Robert Graham is an RNC member and therefore its agent. He has been widely mentioned as a potential successor to Reince Priebus as Chair of the RNC. On October 10, 2016, Graham issued a press release stating: "It is my responsibility, as a member of the Republican National Committee, to elect our Republican nominees and defend our country against all enemies. Hillary Clinton is an enemy to our nation's security, general welfare and blessings of liberty. I will continue to work with passion, integrity and restlessness to stop Hillary Clinton and elect Donald J. Trump."

51. ARP's official spokesman, Tim Sifert, has similarly encouraged Republican poll watchers to ask purportedly suspicious voters to provide their names, and to "turn on their

phone to take video or pictures or something like that," including "a picture of the person" as well as "the license plate on the voter's car." Sifert reports that this year over 1,000 people have signed up to serve as poll observers for the ARP, more than 10 times the number of people who were interested in 2012. Sifert attributes this surge in volunteers directly to Donald Trump and his calls for citizens to monitor the polls.

52. Last week, Trump's campaign manager Kellyanne Conway confirmed that the Trump campaign is "actively working with" the RNC and other branches of the Republican Party apparatus, including the ARP, to engage in "ballot security" initiatives. The RNC and ARP have continued this close coordination even after Trump's widespread and racially charged pleas to his supporters to engage in voter intimidation in areas like Phoenix that contain large communities of racial minorities.

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

CO-CONSPIRATORS RESPOND WITH PROMISES TO INTIMIDATE VOTERS

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

> "Trump said to watch your precincts. I'm going to go, for sure," said Steve Webb, a 61-year-old carpenter from Fairfield, Ohio.
>
> "I'll look for . . . well, it's called racial profiling. Mexicans. Syrians. People who can't speak American," he said. "I'm going to go right up behind them. I'll do everything legally. I want to see if they are accountable. I'm not going to do anything illegal. I'm going to make them a little bit nervous."

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

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

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

58. Other examples of vigilantism and planned voter intimidation connected to Trump and Stone's call to action abound. For instance, as noted above, the ARP is training poll watchers to demand identifying information from voters dropping off multiple ballots, encouraging volunteers to follow suspected violators of Arizona's ballot collection law into parking lots, interrogate them, record their license plates, and even call 911 to report that a felony is in progress—regardless of whether the poll watcher actually knows whether the person is legally allowed to drop off the ballots.

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

60. In North Carolina, according to one report, "someone showed up to early voting with a badge saying 'poll observer' and was photographing and videotaping cars coming and going and 'generally being an intimidating factor there.'"

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

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

63. All the while, Trump continues to fan the flames of polling-place harassment targeting non-white voters in urban areas, and continues to invoke the baseless claim that the unlawful conduct that his supporters are planning, at his behest, is justified by "voter fraud." Trump and Stone's formalized efforts to organize these vigilantes through the

"Trump Election Observers" and "StopTheSteal" mechanisms remain mostly hidden from public view.

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

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

65. Arizona law provides that "one challenger for each political party may be present and act," after they have been designated by the county party chairman "by written appointment addressed to the election board." Ariz. Rev. Stat. § 16-590(A)-(B). But "not more than the number of party representatives for each party which were mutually agreed upon by each political party represented on the ballot shall be in the polling place at one time." Ariz. Rev. Stat. § 16-590(C).

66. Arizona law also provides that no one other than "election officials," "one representative at any one time of each political party represented on the ballot who has been appointed by the county chairman of that political party," "and the challengers allowed by law" may enter a 75-foot perimeter around polling places during voting "except for the purpose of voting." Ariz. Rev. Stat. § 16-515(A). "[N]o electioneering may occur within the seventy-five foot limit," and after voting, voters must "promptly move outside the seventy-five foot limit." *Id.* The officials and other persons permitted within the perimeter for purposes other than voting "shall not wear, carry or display materials that identify or express support for or opposition to a candidate, a political party or organization . . . or other political issue, and shall not electioneer" within the perimeter. Ariz. Rev. Stat. § 16-515(F). Photography and video recording within the limit is forbidden. Ariz. Rev. Stat. § 16-515(G).

67. Trump has urged his supporters to move beyond legitimate and lawful voter protection activity and engage in voter intimidation. *See* Ariz. Rev. Stat. § 16-1013(A) (making it generally illegal to "[d]irectly or indirectly . . . in any manner to practice intimidation upon or against any person, in order to induce or compel [a] person to vote or refrain from voting," and to "impede, prevent, or otherwise interfere with the free exercise of the elective franchise of any voter, or to compel, induce, or to prevail upon a voter either to cast or refrain from casting his vote at an election" by means of "any forcible or fraudulent device or contrivance whatever.").

68. Defendants' and their supporters who join in Defendants' concerted misinformation campaign are also in violation of Arizona's prohibition on "imped[ing], prevent[ing] or otherwise interfere[ing] with the free exercise of the elective franchise of any voter," or "compel[ling], induc[ing] or . . . prevail[ing] upon a voter either to cast or refrain from casting a his vote" by means of "any forcible *or fraudulent device or contrivance whatever*." Ariz. Rev. Stat. § 16-1013(A)(2).

* * *

69. It is unfortunate that this Complaint must be filed. What would be more unfortunate is if voter suppression and intimidation were allowed to undermine the democratic process. This Court should act quickly and firmly to ensure that the citizens of Arizona are able to vote free from intimidation in the 2016 election.

COUNT ONE: KU KLUX KLAN ACT

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

71. Defendants the Trump Campaign, Stone, Stop the Steal Inc., and the ARP have called on supporters to descend on polling places in "certain areas"—generally, the urban communities of color where they and their allies have stoked fabricated threats of massive voter fraud—in order to intimidate voters at the polls. Trump's calls to stake out polling places in those communities and to suspiciously, aggressively "watch" these minority

voters—"You know what I mean," he has clarified for his co-conspirators—have resulted in plans to engage in "racial profiling" and threaten lawful voters with the prospect of monitoring, questioning after voting under the guise of phony "exit polling" or by self-declared "citizen journalists," baseless legal action, and even possible physical harm, including unlawful detention because they have come out to cast a ballot.

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

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

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

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

COUNT TWO: VOTING RIGHTS ACT

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

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

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

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

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

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

COUNT THREE: INJUNCTIVE RELIEF

82. Based on Defendants' above-described violations of law, Plaintiff is entitled to an injunction enjoining the Defendants and others from any and all planned voter-intimidation activities. This activity includes but is not limited to:

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

b. Monitoring polling places, or permitting, encouraging, or assisting individuals to monitor polling places, if the proposed monitor does not meet the statutory requirements for service as a poll watcher;

c. Gathering or loitering within seventy five (75) feet of a polling place, or permitting, encouraging, or assisting any individuals to gather or loiter within seventy five (75) feet of a polling place, unless such person is one of the

appointed party representatives for each candidate or party who may be present in a polling place at any time;

d. Questioning, interrogating, or verbally harassing voters or prospective voters, or training, organizing, or directing others to do the same, for the purpose or with the effect of intimidating voters or prospective voters;

e. Following, taking photos of, or otherwise recording voters or prospective voters, those assisting voters or prospective voters, or their vehicles, or training, organizing, or directing others to do the same.

83. Defendants Stone and Stop the Steal should be enjoined from questioning, and from training, organizing, or deputizing any persons to question voters at Arizona polling locations under the guise of purported "exit polling" operations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray this Court:

a. Declare that the harassment or intimidation of voters at or outside the polls during the 2016 Election based on unsubstantiated beliefs in supposed voter fraud—including through aggressive questioning of those waiting to vote, threats or suggestions of legal or criminal action, or any other form of menacing or intimation of violence—is contrary to law.

b. Declare that Defendants' "exit polling" and "citizen journalist" initiatives are contrary to law.

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

d. Temporarily restrain and enjoin the ARP, the Trump Campaign, Stone, Stop the Steal Inc., and their affiliates and collaborators from organizing efforts to engage in voter intimidation.

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

f. Grant such other relief as this Court may deem proper.

October 30, 2016

Respectfully submitted,

/s/ *Sarah R. Gonski*

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* *Admission Pro Hac Vice Forthcoming*

CERTIFICATE OF SERVICE

☒ I hereby certify that on October 30, 2016, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/ *Sarah R. Gonski*

EXHIBIT 3 FOLLOWS

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Attorney of Record for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Arizona Democratic Party,

Plaintiff,

v.

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

Defendants.

No. CV-16-03752-PHX JJT

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiff Arizona Democratic Party hereby moves this Court for a Temporary Restraining Order and/or Preliminary Injunction granting the temporary and preliminary relief sought in Plaintiff's Complaint filed in this action on October 30, 2016. In particular, Plaintiff respectfully seeks a Temporary Restraining Order and/or Preliminary Injunction restraining and enjoining Defendants—as well as their agents, employees, successors, and attorneys, and all persons in active concert and participation with them—from advancing their conspiracy to intimidate, threaten, harass, or coerce voters in violation of Section 11(b) of the Voting Rights Act, 52 U.S.C. § 10307(b), and the Ku Klux Klan Act of 1871, 42 U.S.C. § 1985(3);.

Pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, Plaintiff has provided actual notice of this motion to Defendants Donald J. Trump For President and the Arizona Republican Party by providing them copies of all pleadings and papers filed

in this action to date. Plaintiff has also made extensive, good-faith efforts to provide notice to Defendants Stop The Steal Inc. and Roger J. Stone, Jr., including by directing a professional process server to travel to Stop The Steal Inc.'s business address, as identified in its official filings with the Department of Treasury. On information and belief, Defendants Roger J. Stone and Stop The Steal have actual knowledge of these proceedings. *See* Todd Ruger, *Democrats Sue Trump, GOP Amid Concerns of Voter Intimidation*, Oct. 31, 2016, available at http://www.rollcall.com/news/politics/democrats-sue-trump-gop-amid-concerns-voter-intimidation ("I'm honored but the lawsuit is without merit and the lawyers who filed it could face sanctions," Stone said in an email response to the lawsuits.").

November 1, 2016

Respectfully submitted,

s/ Sarah R. Gonski

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**Applications for Admission Pro Hac Vice Pending*

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2016, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/ *Sarah R. Gonski*

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Arizona Democratic Party,

Plaintiff,

v.

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

Defendants.

No. CV-16-03752-PHX-JJT

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

A temporary restraining order (TRO) is urgently needed to protect the right of Arizona's minority voters to vote free from intimidation, harassment, and coercion. As explained below, the allegations in the accompanying Complaint and material presented with this motion justify immediate temporary relief in order to prevent irreparable harm. An injunction against Defendants' planned intimidation tactics is the only way to protect countless lawfully registered voters from harassment, threats, and intimidation that will interfere with their ability to vote in the rapidly approaching election.

Relief should be granted because: Plaintiff is likely to succeed on the merits of its claims under Section 11(b) of the Voting Rights Act, 52 U.S.C. § 10307(b), and the Ku Klux Klan Act of 1871, 42 U.S.C. § 1985(3); irreparable harm to Plaintiff, candidates, and voters will occur in the absence of immediate relief; the balance of equities tips in favor of barring Defendants from carrying out their plans to intimidate, harass, and suppress voters; and an injunction barring such flagrantly unlawful conduct is in the public interest.

See Friends of the Wild Swan v. Weber, 767 F.3d 936, 942 (9th Cir. 2014); *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (noting that an injunction may issue under a "sliding scale" approach "so that a stronger showing of one element may offset a weaker showing of another," for example where "serious questions going to the merits were raised and the balance of hardships tips sharply in [plaintiff's] favor").

I. STATEMENT OF FACTS

Donald J. Trump for President, Inc., Trump's close adviser Roger J. Stone, Jr., Stone's organization Stop the Steal, Inc., and the Arizona Republican Party ("ARP") are conspiring to threaten, intimidate, and thereby prevent Democratic and minority voters in urban neighborhoods from voting in the 2016 election. The stated goal of the Trump Campaign, as explained by an unnamed official to Bloomberg News on October 27, is to depress voter turnout among constituencies likely to vote for Democrats, including minorities—in the official's words: "We have three major voter suppression operations under way." Declaration of Sarah R. Gonski, Esq. (hereinafter "Gonski Decl.") at Ex. 17. In recent weeks, Trump has sought to advance that goal by using the loudest microphone in the nation to implore his supporters to engage in unlawful intimidation at Arizona polling places. Trump's exhortations have been amplified by direct and tacit assistance from the ARP and from Stone, who helped pioneer similar tactics in the 1980s before those efforts were blocked by the federal courts. *See* Gonski Decl. at Ex. 24. All have sought to organize, fund, and assist Trump's supporters to carry out the conspiracy's goals. Trump's supporters have pledged to descend upon polling places in "certain areas" where many Democratic and minority voters live to inhibit their efforts to vote.

In the months leading up to the 2016 election, Trump has made an escalating series of statements, often racially tinged, suggesting that his supporters should intimidate voters—intimating that otherwise he will lose the election because of imagined voter fraud. Of course, voter fraud is practically nonexistent—but that has not stopped Trump from telling his supporters that certain people, in certain precincts, will vote "15 times" for Secretary Clinton. Gonski Decl. at Ex. 18. For example, Trump told a crowd in

Altoona, Pennsylvania in August that "I hope you people can … not just vote on the 8th, [but] go around and look and watch other polling places and make sure that it's 100-percent fine. . . . We're going to watch Pennsylvania—go down to certain areas and watch and study—[and] make sure other people don't come in and vote five times." Gonski Decl. at Ex. 19. Ten days later, at an Ohio speech, Trump explained that he did not just mean that supporters should "watch": "You've got to get everybody to go out and watch, and go out and vote," Trump said. "And when [I] say 'watch,' you know what I'm talking about, right?" Trump has explained that his "watchers" should act in a capacity similar to law enforcement (i.e., as vigilantes). *Id.* Trump and Trump Campaign surrogates like Rudy Giuliani have told supporters that voters of color should be suspected of fraud. Gonski Decl. at Ex. 21. Trump has suggested that Latino voters are undocumented immigrants whom the federal government has allowed to "pour into this country" specifically to vote in the election. Gonski Decl. at Ex. 22.

Meanwhile, the Trump campaign published a signup form on its website for supporters to be "Trump Election Observers" to stop "Crooked Hillary From Rigging This Election," further encouraging his supporters to join in a common plan to "watch" voters in "certain areas" of states like Arizona for voter fraud. Gonski Decl. at Ex. 3.

Trump now constantly repeats at rallies that the presence of fraud at the polls will prevent him from winning the November 8 election. His comments are consistently directed at Democratic-leaning communities in states like Arizona. At an October 29 rally in Phoenix, Trump repeated his claim that election is "rigged" against him and "the outcome is fixed." He later elaborated that the election is "rigged" because of "voter fraud," and instructed his supporters to "watch, watch, be careful, watch."[1] Trump has further made clear: "This is what I mean when I say that our system is rigged. Be careful, watch for voter fraud." Gonski Decl. at Ex. 12. Trump was introduced at the Phoenix by

[1] Full Speech: Donald Trump Rally in Phoenix on October 29, 2016 at 20:47-20:50, 35:25-35:35, *available at* https://www.youtube.com/watch?v=pf_2CGUSLHg (last accessed Nov. 1, 2016).

Joe Arpaio, the Sheriff of Maricopa County, who is under federal civil rights investigation for racial profiling of Latino Americans and has been charged with contempt of court for failing to comply with court orders in that case. *Id.*

Roger Stone, a key Trump advisor, has amplified Trump's message. Stone runs a website, through his organization, called "Stop The Steal" that is actively signing up Trump supporters to "volunteer" to fight "voter-fraud and election theft." Stop the Steal, https://stopthesteal.org/ (last visited Oct. 31, 2016). #StoptheSteal is a popular hashtag among Trump supporters on Twitter, and Stone's group maintains an active Facebook presence. Stone and his associates, including Stop the Steal Inc., have also widely disseminated messages via websites such as Stop the Steal and through social media under hashtags such as #stopthesteal. One image states: "HILLARY CLINTON CHEATED AND STOLE THE PRIMARY FROM BERNIE . . . WE THE PEOPLE CAN STOP HER FROM STEALING THE GENERAL." Gonski Decl. at Ex. 25. Through these and other messages, Mr. Stone has encouraged Trump supporters to engage in voter intimidation.

Stone and Stop the Steal Inc. are actively recruiting Trump supporters for "exit polling," specifically targeting Democratic-leaning cities with large minority populations. *See* Gonski Decl. at Ex. 4. Stone claimed in an appearance on the show "Info Wars" that the operation was necessary to stop Clinton from rigging the election, and that his plan was to present the results of his "exit polling" activities, conducted by his "army" of "Infowar Warriors" directly to Trump within hours of the election being over.[2] As of November 1, 2016, Stone's website claimed to have organized 2,603 volunteers to engage in this "exit polling" operation. That number includes at least 107 volunteers signed up to participate throughout Arizona. *See* https://stopthesteal.org/states/Arizona/. Stone's purported polling exercise serves no legitimate purpose. Stone does not run a polling

[2] Media Matters, "Trump Ally Roger Stone to Alex Jones: 'We Need An Army Of Infowar Warriors To Help Us' Conduct 'Exit Polls' At Polling Places," *available at* http://mediamatters.org/video/2016/10/25/trump-ally-roger-stone-alex-jones-we-need-army-infowar-warriors-help-us-conduct-exit-polls-polling/214105.

business, and legitimate "exit polling" cannot focus on Democratic-leaning or majority-minority districts—rather, legitimate exit polling by necessity must include monitoring contested and competitive districts rather than areas that vote overwhelmingly for one party. *See* Expert Report and Declaration of Mark S. Mellman at 1 ("The polling that [Stone] plans to conduct is unlikely to produce unbiased, reliable results, and, moreover, does not appear to be designed to meet such ends."). Stone's "exit polling" activities appear to be aimed chiefly at majority-minority communities, such as certain majority-minority communities in Arizona, with the purpose or effect of intimidating non-white persons from voting. *See id.* at 7 (Stone's "exit polling strategy appears only designed to intimidate voters in an attempt to influence the election and suppress the vote").

Stone has also recruited volunteers to watch polling places through a program called Vote Protectors. The Vote Protectors website permits any volunteer to download and print official-looking ID badges, and provides scripts for volunteers that instruct them on how to interrogate voters on Election Day. Gonski Decl. at Ex. 23. Stone's volunteers are permitted to tally up votes on the Stop the Steal website—for Trump or any other candidate—without any proof that they had spoken to voters or visited a polling site. *See* "Popular Vote (Citizen Exit Polls)," http://stopthesteal.org (last accessed Oct. 31, 2016). Vote Protectors and Stop the Steal discontinued some, but not all, of these practices after they were exposed by a national media outlet. Vote Protectors continues to encourage volunteers it styles "citizen journalists" to "approach voters at the polls," identify themselves as "reporting for Vote Protectors," and ask them about election fraud.

That voter fraud is a myth does not prevent many people—particularly those who are listening most closely to the Republican National Committee ("RNC"), Trump, and surrogates such as Stone—from believing it is real. As a recent poll showed, 69% of Trump's supporters (but less than half of all voters) believe individual voter fraud happens "very often" or "somewhat often." Gonski Decl. at Ex. 28. This widespread belief, despite a lack of supporting evidence, has been stoked for decades by certain elements of the Republican Party, including Stone and Trump's allies in the so-called "alt-right"

media ecosystem, such as the Breitbart website run until recently by Trump Campaign CEO Steve Bannon. Gonski Decl. at Ex. 26. Stone, Stop the Steal, and the Trump Campaign fan these flames by distributing messages via social media and elsewhere falsely claiming the election will be "rigged" by "illegals." Gonski Decl. at Ex. 5.

Trump's calls for unlawful vigilantism to stop purported voter fraud advance a coordinated effort to harass and intimidate voters at the polls. Voter intimidation efforts aimed at suppressing minority voters are often "ostensibly aimed at combatting voter fraud." *Ne. Ohio Coal. for the Homeless v. Husted*, No. 2:06-cv-896, 2016 WL 3166251, at *28 (S.D. Ohio June 7, 2016). Defendants are engaged in a concerted effort to engage in voter intimidation. As the Republican Party's nominee for President, Trump and his campaign coordinate closely with the RNC and ARP on a wide variety of matters, including overall campaign strategy, public messaging, voter outreach, and field operations. On May 17, 2016, the RNC created a joint fundraising committee with the Trump Campaign specifically to fund the Trump Campaign and its operations. Gonski Decl. at Ex. 1. The Trump Campaign has "relinquished control over many of its tactical decisions" to the RNC. Gonski Decl. at Ex. 17. Shortly after Trump became the Republican nominee, the RNC and the Trump Campaign met to discuss "the merger." *Id.* The Trump Campaign and RNC "negotiated a partnership" in which the RNC "buil[t] assets and infrastructure and the nominee gets to benefit from it." *Id.* The Trump Campaign has decided largely to refrain from setting up a parallel layer of offices and staff in Arizona and elsewhere, as past Republican Party nominees have done. Instead, the Trump Campaign is relying predominantly on the RNC and ARP to manage get-out-the vote operations in contested states such as Arizona. *See* Gonski Decl. at Ex. 20.

The Trump Campaign's coordination with the RNC and ARP extends to efforts to monitor polls for purported voter fraud. Trump's running mate, Governor Mike Pence, confirmed the Trump Campaign is working with the RNC and state Republican parties on ballot security measures. At an August 3, 2016 town hall rally in Denver, Colorado, Pence was asked "how is the Trump-Pence campaign going to . . . prevent" Hillary

Clinton from "steal[ing] this election." Pence responded: "the Trump campaign and the Republican National Committee are working very, very closely with state governments and secretaries of states all over the country to ensure ballot integrity. . . . We are working hard all over the country, the Republican National Committee is working all over the country, but I would encourage everyone within the sound of my voice, get involved, participate, be a poll worker on election day . . . be a part of that process, and uphold the integrity of one person one vote in America."[3]

The RNC has delegated "ballot security" initiatives to its agents in the state parties. For example, Robert Graham, the chair of the ARP, recently remarked that individuals who are designated as Republican poll watchers "will be the eyes and ears of the GOP" at polling places. Despite acknowledging that Arizona law limits what a party-designated observer can do—including restrictions on photography and talking to voters—Graham asserted that "they're still free to follow voters out into the parking lot, ask them questions, take their pictures and photograph their vehicles and license plate" as long as they are more than 75 feet outside a polling place.[4] Gonski Decl. at Ex. 2. The ARP's official spokesperson, Tim Sifert, has echoed that call, encouraging "good citizens" who suspect voter fraud "to do something about it," such as to approach voters outside the polls, question them, and take pictures and videos of them and their vehicles. *Id.*; Gonski Decl. at Ex. 29.

Just recently, Trump's campaign manager Kellyanne Conway confirmed that the Trump campaign is "actively working with" the RNC and other branches of the Republican Party apparatus, including the ARP, to "monitor precincts around the country." Gonski Decl. at Ex. 9. The RNC and ARP continued this close coordination

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[3] *Pence Denver Rally Town Hall*, http://trumptube.tv/donald-trump-rally-speech-video/video/pence-live-stream-town-hall-8-3-16/, at 16:22-17:27 (last acc. Oct. 28, 2016).

[4] Robert Graham is an RNC member and its agent. On October 10, 2016, Graham issued a press release stating: "It is my responsibility, as a member of the Republican National Committee . . . to work with passion, integrity and restlessness to stop Hillary Clinton and elect Donald J. Trump." Gonski Decl. at Ex. 8.

after Trump's widespread and racially charged pleas to his supporters to engage in voter intimidation in areas like Phoenix, which contains large communities of racial minorities. The Trump Campaign also recently distributed talking points to Republican Party surrogates directing them to "make points on rigged system," and encouraging them to claim "an increase in unlawful voting by illegal immigrants." Gonski Decl. at Ex. 10.

Trump's supporters are responding to his calls to engage in voter intimidation. The *Boston Globe* has reported on Trump supporters who plan to engage in unlawful voter intimidation, and who understand themselves to be doing so at Trump's behest:

> "Trump said to watch your precincts. I'm going to go, for sure," said Steve Webb, a 61-year-old carpenter from Fairfield, Ohio. "I'll look for . . . well, it's called racial profiling. Mexicans. Syrians. People who can't speak American," he said. "I'm going to go right up behind them. I'll do everything legally. I want to see if they are accountable. I'm not going to do anything illegal. I'm going to make them a little bit nervous."

Gonski Decl. at Ex. 6. Similarly, Harry Miller, purportedly of Palm Beach, Florida, tweeted in response to Trump's calls for election observers that he would be "wear'n red at polls. . . . We gonna be watch'n fer shenanigans . . . haul ya away." Gonski Decl. at Ex. 7. The tweet included a picture of a pickup truck and a person-sized cage built into the bed, surrounded by American flags. *See id.* Miller has over 20,000 Twitter followers and tweets almost exclusively about Trump, Secretary Clinton, and racially-charged political themes such as deporting "Muzzys."

II. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS

a. Defendants Have Violated Section 11(b) Of The Voting Rights Act.

Plaintiff is likely to prevail on its claim that Defendants have violated Section 11(b) of the Voting Rights Act, codified at 52 U.S.C. § 10307(b), which provides in relevant part: "No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote." 52 U.S.C. § 10307(b).[5] Section 11(b) was passed as part of

[5] Section 11(b) affords a private right of action. *See Allen v. State Bd. of Elections*,

the Voting Rights Act "to banish the plight of racial discrimination in voting," *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966), but Congress intentionally drafted Section 11(b) "not [to] require proof that racial discrimination motivated the intimidation, threats, or coercion," *Willingham v. Cnty. of Albany*, 593 F. Supp. 2d 446, 462 (N.D.N.Y. 2006).[6] Section 11(b) "on its face prohibits *any* intimidation, threat, or coercion, whether done by a public official or by a private individual." *Whatley v. Vidalia*, 399 F.2d 521, 526 (5th Cir. 1968); *see Jackson v. Riddell*, 476 F. Supp. 849, 859 (N.D. Miss. 1979) (Section 11(b) "is to be given an expansive meaning").

The operative words of Section 11(b)—to "intimidate," "threaten," and "coerce," or to attempt to do so—should be given their commonly understood meaning. *See, e.g.*, Merriam Webster ("intimidate": "to make timid or fearful"; "to compel or deter by or as if by threats"); *id.* ("threaten": "to utter threats against"; "to hang over dangerously"; "to cause to feel insecure or anxious"); *id.* ("coerce": "to restrain or dominate by force"; "to compel to an act or choice"; "to achieve by force or threat").[7]

Section 11(b)'s reach is not restricted to overt acts of violence. Courts assessing comparable language in other civil rights statutes have held that "intimidating" and "threatening" includes subtler conduct. For instance, the Ninth Circuit found that it constituted "intimidation" to send a mass mailing to 14,000 newly registered voters with Hispanic surnames warning them that if they voted in the election, their personal information would be collected and made available to organizations that were "against immigration." *United States v. Nguyen*, 673 F.3d 1259, 1261 (9th Cir. 2012) (interpreting a criminal voter intimidation provision of the California election code). As the Ninth Circuit held, "intimidation" is "not limited to displays or applications of force, but *can be achieved through manipulation and suggestion*," including "through subtle, rather than

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393 U.S. 544, 555-56 & n.18 (1969); *see also* 28 U.S.C. § 1343(a)(4).

[6] *See Cameron v. Johnson*, 262 F. Supp. 873, 884 n.9 (S.D. Miss. 1966) (same); H.R. Rep. No. 89-439, at 30 (1965) ("The prohibited acts of intimidation need not be racially motivated."), *as reprinted in* 1965 U.S.C.C.A.N. 2437, 2462.

[7] *Available* at http://www.merriam-webster.com/dictionary.

forcefully coercive means." *Id.* (emphasis added). Similarly, the Seventh Circuit found that conduct involving the writing of a racial slur on property was proscribed under the Fair Housing Act's provision prohibiting "intimida[tion]." *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d 327, 330 (7th Cir. 2004) (Posner, J.).

Courts assessing voter intimidation claims have looked to whether the conduct contemplated by Defendants would reasonably intimidate, threaten, or coerce voters. For example, during the 2004 election cycle, Senator Daschle argued that certain conduct committed by Republican candidate John Thune, the South Dakota Republican Party, and their agents violated Section 11(b): "[f]ollowing Native American voters at [a] polling place . . . and standing two to three feet behind Native American voters, and ostentatiously making notes"; "[f]ollowing Native American voters out to their cars after they have voted, walking up to their vehicles, and writing down their license plate numbers"; and "[h]aving a loud conversation in a polling place, where Native Americans were voting, about Native Americans who were prosecuted for voting illegally in Minnesota." Gonski Decl. at Ex. 14 (*Daschle v. Thune*, Complaint at 5-6, Civ. 04-4177 (D.S.D., Nov. 1, 2004)). Daschle claimed that "[t]he persons carrying out these activities are part of a large group of Republican Thune supporters who have come to South Dakota from across the country, and who are poised to repeat the same conduct in Native American voting places across South Dakota . . . on Election Day." *Id.* at 6. The district court granted a temporary restraining order and found Daschle was "likely to succeed" on his Section 11(b) claim, "as the Court finds that there was intimidation particularly targeted at Native American voters . . . by persons who were acting on behalf of John Thune." Gonski Decl. at Ex. 13 (TRO at 2, Civ. 04-4177 (D.S.D., Nov. 2, 2004)). Although Daschle alleged intentional intimidation, the court explained that "[w]hether the intimidation was intended or simply the result of excessive zeal is not the issue, as the result was the intimidation of prospective Native American voters." *Id.*; *see United States v. Clark*, 249 F. Supp. 720, 728 (S.D. Ala. 1965) (the "inevitable effect" of challenged conduct would deter voters).

The allegations in the Complaint and material supplied with this motion show that

the Trump Campaign, Stone, and their agents are engaged in a concerted effort to intimidate, threaten, and coerce lawful voters from exercising their right to vote. The ARP has embraced these suppression efforts. The Chair of the ARP, Robert Graham has called on his fellow Trump supporters to be the ARP's "eyes and ears" at polling places, directing them to "follow voters out into the parking lot, ask them questions, take their pictures and photograph their vehicles and license plate." Gonski Decl. at Ex. 2. This is textbook voter intimidation that violates Section 11(b). *See Daschle*, TRO at 2.

Plaintiffs need not show that Defendants' voter suppression efforts have been successful in order to obtain injunctive relief. Even if those efforts have not yet achieved success, Defendants have already *attempted* to induce fear and anxiety among minority voters in Arizona, and likewise taken steps designed to prevent minority voters from voting. *See supra*, at 3-5; Gonski Decl. at Ex. 1, 4, 17, 19. As described, Trump supporters are already responding to the candidate's call to intimidate voters. *See supra* at 7-8. Such planned conduct is indistinguishable from the allegations that the *Daschle* court found more than sufficient to constitute intimidation and threats in violation of Section 11(b) and therefore support a TRO. Plaintiffs need not wait for intimidators to arrive at polling stations in Arizona on Election Day—Section 11(b) authorizes relief against Defendants for attempting to fund, organize, and support their arrival.

b. Plaintiff Is Likely To Show Defendants Violated Klan Act.

For similar reasons, Plaintiff is likely to prevail on its claim that Defendants have violated the Ku Klux Klan Act of 1871 (the "Klan Act"). The relevant provision of the Klan Act, 42 U.S.C. § 1985, creates liability for several kinds of conspiracies. *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.3 (9th Cir. 1985) (en banc); *United Bhd. of Carpenters & Joiners of Am., Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 839 n.1 (1983) (Blackmun, J., dissenting). Plaintiff's claim arises under § 1985(3)'s provision barring conspiracies to suppress voters, which provides: "[I]f two or more persons conspire to prevent by force, intimidation or threat, any citizen who is lawfully entitled to vote, from giving his support

or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy," and "one or more persons engaged" in that conspiracy commit an act in furtherance of the conspiracy that injures a person or deprives that person of a federal right, "the party so injured or deprived may have an action . . . ." 42 U.S.C. § 1985(3).

The Ninth Circuit has referred to this type of § 1985(3) conspiracy as one "to interfere with federal elections." *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.3 (9th Cir. 1985) (en banc). And the Supreme Court has explained that the correct interpretive approach to "Reconstruction civil rights statutes" is "to accord them a sweep as broad as their language." *Griffin*, 403 U.S. at 97. A straightforward reading of the statutory text, coupled with case law interpreting the Klan Act, makes clear that Plaintiff's claim in this case is likely to succeed.[8] In construing § 1985(3) conspiracy claims under the statute's first clause, the Supreme Court explained that:

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

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

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[8] Plaintiff is not required to prove that Defendants are motivated by racial or other class-based animus, as is required for a claim for violations of the other two conspiracy bars in § 1985(3). *See Kush v. Rutledge*, 460 U.S. 719, 721 (1983) (analogizing the anti-voter suppression conspiracy bar to 42 U.S.C. § 1985(2), which does not require a racial or other class-based animus). But if it were required, the explicit targeting of minority areas and voters is sufficient to demonstrate a likelihood of success on that aspect as well.

First, Plaintiff is likely to succeed on the merits of its claim that Defendants have engaged in a conspiracy. "A civil conspiracy is a combination of two or more persons who, by some concerted action, intend to accomplish some unlawful objective for the purpose of harming another which results in damage." *Lacey v. Maricopa Cty.*, 693 F.3d 896, 935 (9th Cir. 2012). As the Ninth Circuit explained:

> To be liable, each participant in the conspiracy need not know the exact details of the plan, but each participant must at least share the common objective of the conspiracy. A defendant's knowledge of and participation in a conspiracy may be inferred from circumstantial evidence and from evidence of the defendant's actions.

Id. Plaintiff has alleged facts likely to prove that Defendants share the "common objective" to suppress voting by Democratic, and predominantly non-white, voters in the 2016 Election. *See supra*, at 2-8; Gonski Dec. at Ex. 4, 9; 17, 23. Trump's running mate, Indiana Governor Mike Pence, admitted in public that "the Trump Campaign and the Republican National Committee are working very very closely . . . all over the country to ensure ballot integrity." *See supra* at 6. Defendants have not only agreed on a common plan; they are boasting about it in public, and seeking to recruit others.[9]

Second, Plaintiff will likely prove the conspiracy is directed at preventing lawful voters from voting "by force, intimidation, or threat." For the reasons laid out above, Defendants' efforts are plainly designed to threaten, coerce, and intimidate minority and Democratic voters, and to encourage supporters to engage in activities barred in Arizona.

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[9] Defendants cannot rely on the First Amendment for permission to intimidate and harass voters, as "poll watching is not a fundamental right which enjoys First Amendment protection." *Dailey v. Hands*, No. 14-cv-423-KD-M, 2015 WL 1293188, at *4 (S.D. Ala. Feb. 20, 2015) *adopted* Mar. 23, 2015; *see DNC v. RNC*, 671 F. Supp. 2d 575, 596 (D.N.J. 2009) (rejecting as "meritless" the argument that consent decree bar on RNC "ballot security activities" "infringes on activity protected by the First Amendment"), *aff'd*, 673 F.3d 192 (3d Cir. 2012); *Cotz v. Mastroeni*, 476 F. Supp. 2d 332, 364 (S.D.N.Y. 2007) ("poll watching . . . has no distinct First Amendment protection"); *Turner v. Cooper*, 583 F. Supp. 1160, 1162 (N.D. Ill. 1983) (same). The "position of poll-watcher," rather, is "a mere creature of state statute," *Cotz*, 476 F. Supp. 2d at 364, so any individual's supposed "right" to be a poll-watcher "derive[s] solely from state law," *Turner*, 583 F. Supp. at 1162. Moreover, any hypothetical First Amendment right to engage in poll watching must give way to the compelling state interest in preventing voter intimidation.

Third, each co-conspirator has performed an act in furtherance of that conspiracy. Trump regularly issues warnings of vote-rigging and calls to "watch" "certain areas" of the country. Gonski Decl. at Ex. 11. Defendant ARP has undertaken concrete steps to advance the objectives, including by organizing poll watchers, encouraging Trump supporters to "follow" and harass voters, and supplying the Trump Campaign with personnel and resources to further its efforts. *See supra* at 6-7. Defendants Stone and Stop the Steal, Inc. have similarly adopted the objective and have taken concrete steps to advance it, including organizing an "exit polling" operation targeted at minority voters in locations including Phoenix, and recruiting "vote protectors" to patrol polling places where they believe voters are likely to vote for Secretary Clinton. Gonski Decl. at Exs. 4, 27. Each of these acts, and many others, has furthered the conspiracy to intimidate voters.

Finally, each of those acts has injured Plaintiff in its capacity as the Democratic Party organization in the State of Arizona, by harming its prospects in the election, and by depriving the lawful voters whose interests it represents of their legal right to vote without intimidation. In the absence of immediate relief, thousands of voters, if not more, will be deprived of their right to vote on account of Defendants' intimidation.

III. PLAINTIFF WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF PRELIMINARY RELIEF

In the absence of injunctive relief, Defendants' plans to intimidate Democratic and minority voters are likely to succeed, causing irreparable harm to Plaintiff. *See, e.g.*, *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 189 n.7 (2008) (citing *Crawford v. Marion County Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) ("The Democratic Party also has standing to assert the rights of those of its members who will be prevented from voting by the new law.")). U.S. political history suggests that Defendants' schemes are neither anomalous nor unthreatening—to the contrary, voter intimidation efforts have been known to compromise the integrity of both federal and state elections. *See, e.g.*, *Ne. Ohio Coal. for the Homeless*, 2016 WL 3166251, at *28 ("Poll watching, . . . although ostensibly aimed at combatting voter fraud, has a pernicious history of intimidation of

minority voters."); *DNC v. RNC*, 671 F. Supp. 2d 575, 578-79 (D.N.J. 2009) ("Voter intimidation presents an ongoing threat to the participation of minority individuals in the political process, and continues to pose a far greater threat to the integrity of that process than" alleged in-person "voter fraud"), *aff'd*, 673 F.3d 192 (3d Cir. 2012).

Defendants seek to intimidate and suppress Arizona voters, and "[i]t is clear that abridgment of the right to vote constitutes an irreparable injury." *Sanchez v. Cegavske*, No. 16-cv-00523 MMD WGC, 2016 WL 5936918, at *3 (D. Nev. Oct. 7, 2016); *see Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that deprivation of constitutional rights unquestionably constitutes irreparable injury.").[10]

IV. THE BALANCE OF EQUITIES FAVORS PLAINTIFF

a. Preventing Voter Intimidation Is A Strong Federal Interest.

"[V]oter intimidation and coercion [are] . . . obvious harm[s] that federal law strongly and properly prohibits." *United States v. Madden*, 403 F.3d 347, 352 (6th Cir. 2005) (Boggs, C.J., concurring in part and dissenting in part). The constitutional interest at stake in this litigation is the voters' "most precious" "right . . . , regardless of their political persuasion, to cast their votes effectively" and free of intimidation. *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968). The interest in "protecting voters from confusion and undue influence" is "compelling," *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (plurality op.), and laws that protect voters from intimidation safeguard the "fundamental political right . . . preservative of all rights," *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). The Constitution secures the "citizen's right to a vote free of arbitrary impairment by state action," including intimidation by poll-watchers. *Baker v. Carr*, 369 U.S. 186, 208 (1962).

The "right" to engage in poll-watching is a state-created interest, poll-watching in federal elections is permissible only insofar as it complies with federal laws proscribing

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[10] Courts find irreparable harm where, as here, the right to vote is threatened, even if the impingement is not yet complete. *See, e.g.*, *Lucas v. Townsend*, 486 U.S. 1301, 1305 (1988) (granting injunction enjoining a bond referendum election because "[p]ermitting the election to go forward [without statutory protection] would place the burdens of inertia and litigation delay on those whom the statute was intended to protect.")

voter intimidation. *See* 42 U.S.C. § 1985(3); 52 U.S.C. § 10307(b); *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247, 2257 (2013) ("the Elections Clause empowers Congress to regulate *how* federal elections are held"). And, as discussed, even activities that comply with state election procedures violate Section 11(b) where their purpose and effect is to interfere with the right to vote. *See Katzenbach*, 250 F. Supp. at 348 (noting that "acts otherwise lawful may become unlawful and be enjoined under [section 11(b)] if the purpose and effect of the acts is to interfere with the right to vote").

b. Widespread Or Systemic Voter Fraud Is A Myth.

The claimed rationale for the conspiracy in which Defendants are engaged is to combat alleged "voter fraud." But widespread voter fraud is a myth. One recent study discovered only "31 credible incidents" of in-person voter fraud – out of *one billion* votes cast. Gonski Decl. at Ex. 16. The actual frequency of substantiated claims of voter fraud reveal that mass coordinated efforts to combat it are misguided at best and pretextual at worse, with the true purpose to suppress voter turnout. Courts that have examined the evidence have concluded that widespread voter fraud does not exist. In a challenge to Pennsylvania's voter ID law, for example, "[t]he parties [we]re not aware of any incidents of in-person voter fraud in Pennsylvania and d[id] not have direct personal knowledge of in person voter fraud elsewhere. *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988, at *57 (Pa. Commw. Ct. Jan. 17, 2014). A federal judge in Wisconsin has similarly observed that "[t]he Wisconsin experience demonstrates that a preoccupation with mostly phantom election fraud leads to real incidents of disenfranchisement, which undermine rather than enhance confidence in elections, particularly in minority communities." *One Wis. Inst. v. Thomsen*, No. 15-civ-324 (JDP), 2016 WL 4059222, at *2 (W.D. Wis. July 29, 2016).[11]

[11] *See also, e.g.*, Gonski Decl. at Ex. 15 (*Brakebill v. Jaeger*, No. 16-civ-00008 (DLH), Dkt. No. 50, Aug. 1, 2016) ("The undisputed evidence before the Court reveals that voter fraud in North Dakota has been virtually non-existent."); *Veasey v. Abbott*, 830 F.3d 216, 238 (5th Cir. 2016) ("[T]he evidence before the Legislature was that in-person voting . . . yielded only two convictions for in-person voter impersonation fraud out of 20 million

V. A PRELIMINARY INJUNCTION IS IN THE PUBLIC INTEREST

The preliminary relief that Plaintiff seeks would clearly advance the public interest by enforcing federal law. As explained above, voter intimidation is expressly prohibited by Section 11(b) of the Voting Rights Act, 52 U.S.C. § 10307(b), and the Klan Act, 42 U.S.C. § 1985(3). Plaintiff's requested injunctive relief does no more than to effectuate the mandate of federal law. Plaintiff's requested relief would also further compliance with Arizona laws that protect Arizona's voters from vigilante poll watchers' unlawful interference with their votes. *See* Ariz. Rev. Stat. § 16-1013(A).

"In the absence of legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights, including the voting and associational rights of . . . candidates, and their potential supporters." *Hooks*, 121 F.3d at 883-84. "By definition, [t]he public interest . . . favors permitting as many qualified voters to vote as possible." *League of Women Voters*, 769 F.3d at 247; *see Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (the public has a "strong interest in exercising the fundamental political right to vote"). Against a backdrop of widespread past and threatened future voter intimidation and minimal evidence of voter fraud, Defendants must be enjoined from engaging in conduct that threatens the most basic right in American democracy—the right of voters to cast their votes free of coercion and intimidation. "[O]ther rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

VI. CONCLUSION

This Court should grant Plaintiff's motion for preliminary relief.

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votes cast in the decade leading up to SB 14's passage."); *League of Women Voters*, 769 F.3d at 246 ("North Carolina asserts goals of electoral integrity and fraud prevention. But nothing in the district court's portrayal of the facts suggests that those are anything other than merely imaginable."); *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 194 (2008) ("The only kind of voter fraud that SEA 483 addresses is in-person voter impersonation at polling places. The record contains no evidence of any such fraud actually occurring in Indiana at any time in its history."); *Frank v. Walker*, 17 F. Supp. 3d 837, 848 (E.D. Wis. 2014) ("there have been zero incidents of in-person voter-impersonation fraud in Wisconsin during recent elections."); *Lee v. Va. State Bd. of Elections*, No. 15-cv-357 (HEH), 2016 WL 2946181, at *23 (E.D. Va. May 19, 2016) ("evidence of actual voter impersonation-type fraud was scant").

November 1, 2016

Respectfully submitted,

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* *Applications for Admission Pro Hac Vice Pending*

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2016, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/ *Sarah R. Gonski*

EXHIBIT 5 FOLLOWS

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Arizona Democratic Party,

Plaintiff,

v.

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

Defendants.

No. CV-16-03752-PHX-JJT

[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

This matter comes before the Court on Plaintiff's Motion for a Temporary Restraining Order and/or Preliminary Injunction. For the reasons set forth below, the Motion is GRANTED.

Plaintiff Arizona Democratic Party brings this action under Section 2 of the Ku Klux Klan Act of 1871, 42 U.S.C. § 1985(3), and Section 11(b) of the Voting Rights Act of 1965, 52 U.S.C. § 10307(b). Plaintiff moves to temporarily restrain and preliminarily enjoin Defendants from (a) advancing their conspiracy to intimidate, threaten, harass, or coerce voters; (b) actually intimidating, threatening, harassing, or coercing—or attempting to intimidate, threaten, harass, or coerce—voters; (c) violating Arizona law with respect to poll-watching activities; and (d) engaging in any other conduct contributing to the intimidation, harassment, or coercion of voters.

Having considered all of the materials and argument that have been submitted in this matter, including Plaintiff's Complaint and Memorandum of Law, IT IS HEREBY

ORDERED THAT, effective immediately and extending until 11:59 p.m., November 8, 2016, or until voting in the 2016 Presidential Election is complete, Defendants—as well as their officers, agents, servants, employees, and attorneys, and those persons who are in active concert or participation with them—are RESTRAINED AND ENJOINED from engaging in any of their contemplated voter intimidation activity, including but not limited to:

1. Funding, encouraging, or otherwise supporting, including by training or organizing, individuals who are not officially appointed party representatives under Arizona law to be present at or around polling places or voter lines to challenge, investigate, interfere with, or otherwise act to prevent any person from voting, including but not limited to confronting potential voters and verifying their eligibility at the polls, distributing literature stating (and/or stating) to individuals that voter fraud is a crime, or describing the penalties under any State or Federal Statute for impermissibly casting a ballot.

2. Monitoring polling places, or permitting, encouraging, or assisting individuals to monitor polling places, including but not limited to confronting potential voters and verifying their eligibility at the polls, distributing literature stating (and/or stating) to individuals that voter fraud is a crime, or describing the penalties under any State or Federal Statute for impermissibly casting a ballot, if the proposed monitor does not comply with the statutory requirements for such monitoring activities under Arizona law; Gathering or loitering within seventy five (75) feet of a polling place, or permitting, encouraging, or assisting any individuals to gather or loiter within seventy five (75) feet of a polling place, unless such person is one of the appointed party representatives who may be present in a polling place at any time;

3. Questioning, interrogating, or verbally harassing voters or prospective voters, or training, organizing, or directing others to do the same, with the sole exception of questioning that is explicitly authorized by Arizona law;

4. Following, taking photos of, or otherwise recording voters or prospective voters, those assisting voters or prospective voters, or their vehicles, or training, organizing, or directing others to do the same.

5. Questioning, and training, organizing, or deputizing any persons to question, voters at Arizona polling locations under the guise of the purported "exit polling" or "citizen journalist" operations organized and encouraged by Defendants Stone and Stop the Steal;

6. Otherwise organizing efforts to engage in voter intimidation.

IT IS FURTHER ORDERED THAT this Order be publicized to all law enforcement and elections officials in advance of Election Day. Defendants shall bear reasonable costs of publication.

IT IS FURTHER ORDERED THAT Defendants shall show cause as to why a Preliminary and/or Permanent Injunction should not issue restraining and enjoining them from engaging in the conduct described above.

EXHIBIT 6 FOLLOWS

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Attorney of Record for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Arizona Democratic Party,

Plaintiff,

v.

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

Defendants.

No. CV-16-03752-PHX-JJT

DECLARATION OF SARAH R. GONSKI IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

I, SARAH R. GONSKI, declare as follows:

1. I am an attorney with the law firm of Perkins Coie LLP, and am counsel for Plaintiff the Arizona Democratic Party. I have personal knowledge of the matters set forth below and can competently testify to their truth.

2. Attached hereto as Exhibit 1 is a true and correct copy of the GOP Press Release (*RNC & Trump Campaign Announce Joint Agreements*) dated May 17, 2016.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Arizona Daily Star article (*Arizona Republicans Train Poll Workers to Document 'Ballot Harvesting'*) dated August 25, 2016.

4. Attached hereto as Exhibit 3 is a true and correct copy of the Volunteer to be a Trump Election Observer form.

15. Attached hereto as Exhibit 14 is a true and correct copy of the Complaint filed in *Daschle v. Thune*, No. 04-cv-4177 (D.S.D. Nov. 1, 2004).

16. Attached hereto as Exhibit 15 is a true and correct copy of the Order Granting Plaintiffs' Motion for Preliminary Injunction in *Brakebill v. Jaeger*, No. 16-cv-00008 (DLH), (D.N.D. Aug. 1, 2016).

17. Attached hereto as Exhibit 16 is a true and correct copy of the Washington Post article (*A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents Out of One Billion Ballots Cast*) dated August 6, 2014.

18. Attached hereto as Exhibit 17 is a true and correct copy of the Bloomberg Businessweek article (*Inside the Trump Bunker, with Days to Go*) dated October 27, 2016.

19. Attached hereto as Exhibit 18 is a true and correct copy of the Politico article (*Trump: Without ID Law, Voters Will Vote '15 Times' for Clinton*) dated August 9, 2016.

20. Attached hereto as Exhibit 19 is a true and correct copy of the Politico article (*How Hostile Poll-Watchers Could Hand Pennsylvania to Trump*) dated October 2, 2016.

21. Attached hereto as Exhibit 20 is a true and correct copy of the Atlantic article (*Donald Trump's Attacks on the Rights of Minority Voters*) dated October 13, 2016.

22. Attached hereto as Exhibit 21 is a true and correct copy of the Boston Globe article (*Giuliani, Gingrich Raise Specter of Voter Fraud Ahead of Election*) dated October 16, 2016.

23. Attached hereto as Exhibit 22 is a true and correct copy of the Hill article (*Trump: Government Bringing in Illegal Immigrants to Vote*) dated October 7, 2016.

24. Attached hereto as Exhibit 23 is a true and correct copy of the Huffington Post article (*Trump-Linked Voter Intimidation Group Releases New Script for 'Citizen Journalists'*) dated October 26, 2016).

25. Attached hereto as Exhibit 24 is a true and correct copy of the New Yorker article (*The Dirty Trickster*) dated June 2, 2008.

26. Attached hereto as Exhibit 25 is a true and correct copy of Twitter user @roycan79's tweet on October 17, 2016 at 9:53 a.m.

27. Attached hereto as Exhibit 26 is a true and correct copy of the Breitbart article (*Wikileaks: John Podesta Believed 'Obama Forces' Committed Voter Fraud*) dated October 15, 2016.

28. Attached hereto as Exhibit 27 is a true and correct copy of the StopTheSteal.org "Voter Protector Exit Poller" registration form.

29. Attached hereto as Exhibit 28 is a true and correct copy of the Washington Post article (*Poll: Nearly Half of Americans Say Voter Fraud Occurs Often*) dated September 15, 2016.

30. Attached hereto as Exhibit 29 is a true and correct copy of the KJZZ article (*Arizona GOP Training Poll Watchers To Spot Ballot Harvesting*) dated August 26, 2016.

I hereby certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: November 1, 2016

By: *s/ Sarah R. Gonski*
Sarah R. Gonski

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2016, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/ *Sarah R. Gonski*

EXHIBIT 7 FOLLOWS

Expert Report and Declaration of Mark S. Mellman

The Mellman Group
1023 31st Street, NW
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Washington, DC 20007

I. INTRODUCTION

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

II. SUMMARY OF OPINION

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

III. QUALIFICATIONS & EXPERTISE

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

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

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

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

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

IV. SOURCES

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

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

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

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

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

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

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

V. ANALYSIS

A. Background - Exit Polls

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mark Mellman

Mark S. Mellman

11/1/2016

Date

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

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EXHIBIT 8 FOLLOWS

No. 16-4268

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

OHIO DEMOCRATIC PARTY, Plaintiff-Appellee, v. DONALD J. TRUMP FOR PRESIDENT, INC., Defendant-Appellant OHIO REPUBLICAN PARTY; ROGER J. STONE, JR.; STOP THE STEAL, INC., Defendants.	)	ORDER

Before: BATCHELDER, ROGERS, and GRIFFIN, Circuit Judges.

Donald J. Trump for President, Inc. moves for a stay of the district court's temporary restraining order, dated November 4, 2016, enjoining Defendants Donald J. Trump for President, Stop the Steal and Roger J. Stone, Jr., their officers, agents, servants, and employees, and others not parties to this action, including groups associated with the Clinton for Presidency campaign, from engaging in various activities denominated by the district court as voter intimidation activity.

We review for abuse of discretion the district court's order granting a temporary restraining order. *Ohio Republican Party v. Brunner*, 543 F. 3d. 357, 361 (6th Cir. 2008). We review a motion to stay a temporary restraining order using the same factors that we consider in determining whether to grant a temporary restraining order or a preliminary injunction:

> (1) whether the movant has a strong likelihood of success on the merits, (2) whether the movant would suffer irreparable injury absent a stay, (3) whether granting the stay would cause substantial harm to others, and (4) whether the public interest would be served by granting the stay.

Id.

After reviewing the district court's order, the motion for an emergency stay of that order, and the Plaintiff's submission in response to the Petition for Initial En Banc Hearing, we conclude that the Plaintiff did not demonstrate before the district court a likelihood of success on the merits, and that all of the requisite factors weigh in favor of granting the stay.

Accordingly, the motion for an emergency stay is **GRANTED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk