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NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Arizona Democratic Party,

10 Plaintiff,

11 v.

12 Arizona Republican Party, *et al.*,

13 Defendants.
14

No. CV-16-03752-PHX-JJT

ORDER

15 In response to what it alleges to be a call for the intimidation of voters in next
16 week's presidential election by Donald J. Trump for President, Inc. ("Trump
17 Campaign"), the Arizona Republican Party ("ARP"), Roger J. Stone, Jr., and Stop the
18 Steal, Inc., the Arizona Democratic Party ("ADP") filed this lawsuit a mere eight days
19 before the election. Plaintiff ADP seeks injunctive relief for violations of the Ku Klux
20 Klan Act of 1871, 42 U.S.C. § 1985(3), and Section 11(b) of Voting Rights Act of 1965,
21 52 U.S.C. § 10307(b). (Doc. 1, Compl.) After the Court set an expedited briefing and
22 hearing schedule (Doc. 7), Plaintiff filed a Motion for Temporary Restraining Order
23 and/or Preliminary Injunction (Doc. 10, Mot.), Defendants ARP and the Trump
24 Campaign filed a Response (Doc. 15, GOP Resp.), and Plaintiff filed a Reply thereto
25 (Doc. 22, Reply to GOP).

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

1 Hearing (*see* Doc. 22-1). On November 3, 2016, the Court held a Hearing on Plaintiff’s
2 Motion. (Doc. 24.) Stop the Steal and Mr. Stone appeared through counsel at the Hearing
3 for the purpose of contesting both service and the Court’s jurisdiction over them in this
4 matter. The Court denied Stop the Steal’s motion to dismiss and reserved judgment on
5 that of Mr. Stone. (Doc. 24.) The Court heard evidence and argument from all parties on
6 Plaintiff’s Motion and ordered briefing from Stop the Steal. (Doc. 24.) On November 4,
7 2016, Stop the Steal and Mr. Stone filed a Response (Doc. 27, STS Resp.), and Plaintiff
8 filed a Reply thereto (Doc. 28, Reply to STS).

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

12 **I. LEGAL ANALYSIS**

13 **A. Standing**

14 To bring a judicable lawsuit into Federal Court, Article III of the Constitution
15 requires that one have “the core component of standing.” *Lujan v. Defenders of Wildlife*,
16 504 U.S. 555, 560 (1992). To satisfy Article III’s standing requirements, a plaintiff must
17 show that he suffered a “concrete and particularized” injury that is “fairly traceable to the
18 challenged action of the defendant,” and that a favorable decision would likely redress
19 the injury. *Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc.*, 528
20 U.S. 167, 180 (2000). In the complaint, the plaintiff must “alleg[e] specific facts
21 sufficient” to establish standing. *Schmier v. U.S. Court of Appeals for Ninth Circuit*, 279
22 F.3d 817, 821 (9th Cir. 2002). Accordingly, courts should dismiss a plaintiff’s complaint
23 if he has failed to provide facts sufficient to establish standing. *See, e.g., Chandler v.*
24 *State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1123 (9th Cir. 2010).

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

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

5 In the Complaint, Plaintiff alleges it has standing to bring this action both on
6 behalf of itself and its members “because it is supporting many candidates in the
7 Presidential, Senate, House, and numerous statewide elections” and will suffer immediate
8 and irreparable injury if Defendants’ alleged conspiracy to intimidate voters “succeeds in
9 disrupting or changing the results of the election.” (Compl. ¶ 14.) This is sufficient to
10 establish Plaintiff’s standing, *see Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181,
11 189 n.7 (2008), and Defendants do not challenge Plaintiff’s standing to bring its claims in
12 this matter.

13 **B. Mr. Stone’s Motion to Dismiss for Lack of Service and Jurisdiction**

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

19 In order for a federal court to adjudicate a matter, it must have jurisdiction over the
20 parties. *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982).
21 The party bringing the action has the burden of establishing that personal jurisdiction
22 exists. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citing
23 *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 182-83 (1936)); *Data Disc, Inc.*
24 *v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977). When a defendant
25 moves, prior to trial, to dismiss a complaint for lack of personal jurisdiction, the plaintiff
26 must “come forward with facts, by affidavit or otherwise, supporting personal
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28 ¹ The Court denied a similar motion brought by Defendant Stop the Steal at the
Hearing. (Tr. at 52.)

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

3 Because there is no statutory method for resolving the question of personal
4 jurisdiction, “the mode of determination is left to the trial court.” *Data Disc*, 557 F.2d at
5 1285 (citing *Gibbs v. Buck*, 307 U.S. 66, 71-72 (1939)). Where, as here, a court resolves
6 the question of personal jurisdiction upon motions and supporting documents, the
7 plaintiff “must make only a prima facie showing of jurisdictional facts through the
8 submitted materials in order to avoid a defendant’s motion to dismiss.” *Id.* In determining
9 whether the plaintiff has met that burden, the “uncontroverted allegations in [the
10 plaintiff’s] complaint must be taken as true, and conflicts between the facts contained in
11 the parties’ affidavits must be resolved in [the plaintiff’s] favor.” *Rio Props., Inc. v. Rio*
12 *Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002) (citation omitted).

13 To establish personal jurisdiction over a nonresident defendant, a plaintiff must
14 show that the forum state’s long-arm statute confers jurisdiction over the defendant and
15 that the exercise of jurisdiction comports with constitutional principles of due process.
16 *Id.*; *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 269 (9th Cir. 1995).
17 Arizona’s long-arm statute allows the exercise of personal jurisdiction to the same extent
18 as the United States Constitution. *See* Ariz. R. Civ. Proc. 4.2(a); *Cybersell v. Cybersell*,
19 130 F.3d 414, 416 (9th Cir. 1997); *A. Uberti & C. v. Leonardo*, 892 P.2d 1354, 1358
20 (Ariz. 1995) (stating that under Rule 4.2(a), “Arizona will exert personal jurisdiction over
21 a nonresident litigant to the maximum extent allowed by the federal constitution”). Thus,
22 a court in Arizona may exercise personal jurisdiction over a nonresident defendant so
23 long as doing so accords with constitutional principles of due process. *Cybersell*, 130
24 F.3d at 416.

25 Due process requires that a nonresident defendant have sufficient minimum
26 contacts with the forum state so that “maintenance of the suit does not offend ‘traditional
27 notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310,
28 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)); *see also Data Disc*,

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

7 Here, Plaintiff contends that the Court has specific jurisdiction over Mr. Stone
8 through his actions in conjunction with and as a volunteer for Stop the Steal. The issue of
9 whether specific jurisdiction will lie turns on the extent of the defendant’s contacts with
10 the forum and the degree to which the plaintiff’s suit is related to those contacts. *Yahoo!*
11 *Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1210 (9th Cir.
12 2006). The Ninth Circuit uses the following approach in making this evaluation: (1) the
13 nonresident defendant must do some act in or consummate some transaction with the
14 forum, or perform some act by which it purposefully avails itself of the privilege of
15 conducting activities in the forum, thereby invoking the benefits and protections of its
16 laws; (2) the claim must be one which arises out of or results from the defendant's forum-
17 related activities; and (3) exercise of jurisdiction must be reasonable. *Data Disc*, 557 F.2d
18 at 1287. All three requirements must be satisfied for the exercise of jurisdiction to
19 comport with constitutional principles of due process. *Omeluk*, 52 F.3d at 270. The
20 plaintiff bears the burden of establishing the first two prongs of the test. *Schwarzenegger*
21 *v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). If the plaintiff does so, the
22 burden shifts to the defendant to set forth a “compelling case” that the exercise of
23 jurisdiction would be unreasonable. *Mavrix Photo, Inc. v. Brand Tech’s., Inc.*, 647 F.3d
24 1218, 1228 (9th Cir. 2011) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78
25 (1985)).

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

1 With regard to the first element, the plaintiff must show the defendant “either (1)
2 ‘purposefully availed’ himself of the privilege of conducting activities in the forum, or
3 (2) ‘purposefully directed’ his activities toward the forum.” *Pebble Beach Co. v. Caddy*,
4 453 F.3d 1151, 1155 (9th Cir. 2006) (quoting *Schwarzenegger*, 374 F.3d at 802). The
5 Ninth Circuit has explained that in cases involving tortious conduct, as here, the
6 purposeful direction analysis is most commonly applied. *Mavrix Photo*, 647 F.3d at 1228.
7 Purposeful direction is determined by using the “effects” test that was developed in
8 *Calder v. Jones*, 465 U.S. 783, 789-90 (1984). The effects test requires that “the
9 defendant allegedly must have (1) committed an intentional act, (2) expressly aimed at
10 the forum state, (3) causing harm that the defendant knows is likely to be suffered in the
11 forum state.” *Yahoo!*, at 1206.

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

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

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

5 **C. Plaintiff’s Motion for Injunctive Relief**

6 The Supreme Court has observed that “a preliminary injunction is an extraordinary
7 and drastic remedy, one that should not be granted unless the movant, *by a clear showing*,
8 carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)
9 (internal quotation and citation omitted). “A plaintiff seeking a preliminary injunction
10 must establish that he is likely to succeed on the merits, that he is likely to suffer
11 irreparable harm in the absence of preliminary relief, that the balance of equities tips in
12 his favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def.*
13 *Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted); *see also Garcia v. Google, Inc.*,
14 786 F.3d 733, 740 (9th Cir. 2015). The Ninth Circuit Court of Appeals, employing a
15 sliding scale analysis, has also stated that, where there are “serious questions going to the
16 merits” such that a plaintiff has not necessarily demonstrated a “likelihood of success,” “a
17 hardship balance that tips sharply toward the plaintiff can support issuance of an
18 injunction, assuming the other two elements of the *Winter* test are also met.” *Drakes Bay*
19 *Oyster Co. v. Jewell*, 747 F.3d 1073, 1085 (9th Cir. 2013) (internal quotations and
20 citations omitted).

21 **1. Likelihood of Success on the Merits**

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

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28 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

1 exclude a private right of action for injunctive relief, as Plaintiff has brought here. *Allen*
2 *v. State Bd. of Elections*, 393 U.S. 544, 555-56 & n.18 (1969); *see also* 28 U.S.C.
3 § 1343(a)(4).

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

10 Arizona law also includes an anti-voter intimidation provision, which states it is a
11 class 1 misdemeanor for a person, directly or indirectly, to knowingly “practice
12 intimidation” or “inflict or threaten infliction” of “injury, damage, harm or loss” in order
13 “to induce or compel” a voter “to vote or refrain from voting for a particular person or
14 measure at any election provided by law, or on account of such person having voted or
15 refrained from voting at an election.” A.R.S. § 16-1013. In addition, Arizona more
16 stringently controls the area within 75 feet of a polling place as posted by election
17 officials. A.R.S. § 16-515. At any time the polls are open (except for the purpose of
18 voting and for election officials), only “one representative⁵ at any one time of each

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20 vote. (GOP Resp. at 22 (citing *Olagues v. Russoniello*, 770 F.2d 791, 804 (9th Cir.
21 1985)).) Plaintiff argues that an action under Section 11(b) only requires that a defendant
22 intended to act, with the result that the actions intimidate, threaten or coerce or attempt to
23 intimidate, threaten or coerce a person for voting or attempting to vote. (Reply to GOP at
24 4 (citing Section 11(b) of the Voting Rights Act); Reply to STS at 7-9.) While the Court
25 agrees with Plaintiff that the plain language of the statute does not require a particular
26 *mens rea*, the Court need not decide this question to resolve Plaintiff’s Motion.

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28 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

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

15 For Plaintiff’s claim under the Voting Rights Act, Plaintiff must demonstrate that
16 Defendants acted or attempted to intimidate, threaten or coerce a person for voting or
17 attempting to vote; similarly, for Plaintiff’s claim under the Ku Klux Klan Act, Plaintiff
18 must demonstrate that Defendants conspired to prevent a person from voting through
19 force, intimidation or threat. Plaintiff claims that Defendants’ statements to their
20 constituents urging them to be present and observe the activities of other voters at polling
21 places, to follow other voters and interrogate them as to their votes, to record other
22 voters’ license plates, to photograph and video-record other voters, and to call 911 if they
23 suspect someone has engaged in voter fraud constitute at least an attempt to intimidate
24 and/or threaten voters for voting or attempting to vote. (*E.g.*, Compl. ¶¶ 49, 51, 58.)
25 Plaintiff also claims that the plan by Mr. Stone and Stop the Steal to conduct exit polls at
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28 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.”

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

3 **a. Statements of the Arizona Republican Party**

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

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

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28 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.)

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

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

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28 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.

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

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

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

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

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28 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.)

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

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

14 **b. Statements of the Trump Campaign**

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

28

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

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

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

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

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

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

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

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

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

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

23
24 ⁹ Indeed, among other evidence, Plaintiff produces a Tweet from a Trump
25 supporter in Florida stating he planned to be “wear’n red at polls,” “watch’n fer
26 shenanigans,” and “haul ya away,” accompanied by a photo of a pickup truck and a
27 person-sized cage built in the bed, surrounded by American flags. (Gonski Decl. Ex. 7.)
28 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.

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

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

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

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26
27 ¹⁰ The Court notes, as have other district courts considering similar matters, that
28 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.

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

9 **c. Statements of Stop the Steal and Mr. Stone**

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

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

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

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

28

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

3 **2. Likelihood of Irreparable Harm**

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

11 In doing so, it is clear that abridgement of the right to vote constitutes irreparable
12 injury. *Reynolds v. Sims*, 377 U.S. 533, 562 (the right to vote is “a fundamental political
13 right, because [it] is preservative of all rights”); *Melendres v. Arpaio*, 695 F.3d 990, 1002
14 (9th Cir. 2012) (“It is well established that the deprivation of constitutional rights
15 ‘unquestionably constitutes irreparable injury.’”) (quoting *Elrod v. Burns*, 427 U.S. 347,
16 373 (1976)); *Cardona v. Oakland Unified Sch. Dist., California*, 785 F. Supp. 837, 840
17 (N.D. Cal. 1992) (“Abridgement or dilution of a right so fundamental as the right to vote
18 constitutes irreparable injury.”); *see also Obama for Am. v. Husted*, 697 F.3d 423, 436
19 (6th Cir. 2012) (“A restriction on the fundamental right to vote . . . constitutes irreparable
20 injury.”) (internal citation omitted). Consequently, if potential members of the electorate
21 suffer intimidation, threatening conduct, or coercion such that their right to vote freely is
22 abridged, or altogether extinguished, Plaintiff would be irreparably harmed. Further, if
23 some potential voters are improperly dissuaded from exercising their franchise, it is
24 unlikely those voters can be identified, their votes cannot be recast, and no amount of
25 traditional remedies such as money damages would suffice after the fact. This factor
26 weighs in favor of a preliminary injunction.

3. Balance of Equities and the Public Interest

1
2 Because Plaintiff brings this action not only on behalf of the Arizona Democratic
3 Party, but also unidentified potential voters (*see, e.g.*, Mot. at 15-16), and ARP and the
4 Trump Campaign purport to oppose the injunction due to its effect on unknown third-
5 parties (GOP Resp. at 7-10), the Court will collapse the final two factors into a single
6 category. *See Arizona Dream Act Coal. v. Brewer*, 818 F.3d 901, 920 (9th Cir. 2016)
7 (analyzing both public interest and equities factors simultaneously); *Minard Run Oil Co.*
8 *v. U.S. Forest Serv.*, 670 F.3d 236, 256 (3d Cir. 2011) (“we consider together the final
9 two elements of the preliminary injunction framework—the public interest and the
10 balance of the equities”); *Merced v. Spano*, No. 16CV3054 (SJ) (SMG), 2016 WL
11 3906646, at *2 (E.D.N.Y. July 14, 2016) (“The remaining elements (irreparable harm,
12 balance of the equities and public interest) will be discussed together because in this
13 instance, they are intertwined.”). Analyzing factors three and four in unison, the Court
14 must balance both Plaintiff’s and the public’s interest in protecting voters from undue
15 influence, intimidation, or coercion, against Defendants’ poll observing rights and right to
16 free speech under the First Amendment.

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

1 On the other hand, the Court acknowledges that Plaintiff’s injunction, as
2 requested, raises First Amendment concerns. Just as the right to vote is a fundamental
3 one, so too is the right to political speech and the right to associate. *See, e.g., Mills v.*
4 *Alabama*, 384 U.S. 214, 218-19 (1966) (“there is practically universal agreement that a
5 major purpose of [the First] Amendment was to protect the free discussion of
6 governmental affairs . . . [including] discussions of candidates, structures and forms of
7 government, the manner in which government is operated or should be operated, and all
8 such matters relating to political processes”); *Lerman v. Bd. of Elections in City of New*
9 *York*, 232 F.3d 135, 146 (2d Cir. 2000) (“The right to political association also is at the
10 core of the First Amendment, and even practices that only potentially threaten political
11 association are highly suspect.”) (internal quotation and citation omitted). While the
12 Court may only enjoin Defendants and their co-conspirators, if any, the injunction may
13 nonetheless have a chilling effect on protected First Amendment speech by others.
14 Indeed, Plaintiff has not provided the Court with a narrowly tailored injunction that
15 would not unintentionally sweep within its ambit other activities that constitute exercise
16 of freedom of speech. *See, e.g., Rodriguez v. Robbins*, 715 F.3d 1127, 1133 (9th Cir.
17 2013) (“An overbroad injunction is an abuse of discretion.”); *Union Pac. R. Co. v.*
18 *Mower*, 219 F.3d 1069, 1077 (9th Cir. 2000) (“one basic principle built into Rule 65 is
19 that those against whom an injunction is issued should receive fair and precisely drawn
20 notice of what the injunction actually prohibits”) (quoting *Granny Goose Foods, Inc. v.*
21 *Brotherhood of Teamsters*, 415 U.S. 423, 444 (1974)); *Waldman Pub. Corp. v. Landoll,*
22 *Inc.*, 43 F.3d 775, 785 (2d Cir. 1994) (“an injunction should not impose unnecessary
23 burdens on lawful activity”).

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

1 fundamental right that enjoys distinct First Amendment protection and it does not carry
2 the same implications as the preceding rights. *See, e.g., Cotz v. Mastroeni*, 476 F. Supp.
3 2d 332, 364 (S.D.N.Y. 2007) (“poll watching is not incidental to this right and has no
4 distinct First Amendment protection”); *Turner v. Cooper*, 583 F. Supp. 1160, 1161–62
5 (N.D. Ill. 1983) (holding that the act of poll watching is not protected by the First
6 Amendment). Ultimately, each side implicates vital rights central to our system of
7 government. Because the right to vote is sacrosanct and preservative of all other rights,
8 the hardship balance and public interest factors weigh slightly in favor of granting
9 Plaintiff’s Motion.

10 **II. CONCLUSION**

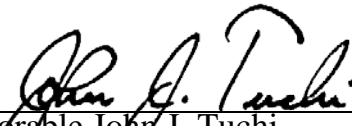
11 The Court finds that Defendant Mr. Stone has sufficient contacts with Arizona and
12 that Plaintiff’s claims arise from those contacts, such that the Court has jurisdiction over
13 Mr. Stone in this matter. The Court also finds that Plaintiff has not demonstrated it is
14 likely to succeed in showing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

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

28

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

4 Dated this 4th day of November, 2016.

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8 Honorable John J. Tuchi
9 United States District Judge
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