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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

League of Women Voters of Arizona,
Plaintiff,
vs.
Lions of Liberty LLC; Yavapai County
Preparedness Team; Jim Arroyo, Lucas
Cilano; Nicholas Cilano; Brian Mounsey;
Toby Fox; Bruce Mounsey; James Johnson;
Melody Jennings; Clean Elections USA;
John Does 1-10,
Defendants.

No. CV-22-08196-PCT-MTL

**PLAINTIFF’S MOTION FOR A
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION
AND MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFF’S
MOTION**

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PRELIMINARY STATEMENT

1
2 Defendant Melody Jennings and Defendant Clean Elections USA (“CE-USA”) are
3 the planners and coordinators of a scheme that is threatening the integrity of Arizona’s
4 elections. Defendants have spent months recruiting agents to execute their plan to surveil
5 Arizonans who vote at drop boxes, photograph their faces and license plates while they
6 vote, and baselessly accuse targeted individuals of voter fraud. They have sanctioned their
7 followers conducting this surveillance while masked, bearing firearms, and clothed in
8 tactical gear. Defendants and their agents have a right to their political beliefs, a right to
9 bear arms in the State of Arizona, and a right to wear whatever clothing they please—but
10 those rights are far from absolute. They do not have a right to station themselves as an
11 anonymous, threatening, armed militia looming over voting locations in the United States
12 of America. Such surveillance of voting is quintessentially intimidating and brazenly
13 threatens the voting processes central to most “fundamental political right[:]” the right to
14 vote. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). Defendants bear direct responsibility
15 for the scheme they have unleashed.

16 Plaintiff League of Women Voters of Arizona (the “League”) seeks a Temporary
17 Restraining Order and Preliminary Injunction pursuant to Federal Rule of Civil Procedure
18 65. A separate motion for similar preliminary relief is currently pending before this Court.
19 *Arizona Alliance for Retired Americans v. Clean Elections USA*, No. 2:22-cv-1823, ECF
20 No. 2 (hereinafter “AARA”). Plaintiff brings this parallel motion to present the Court with
21 important evidence relevant to the propriety (and urgency) of that relief, including
22 declarations from voters and Plaintiff’s members affected by Defendants’ drop box
23 surveillance and related conduct.¹ Plaintiff seeks an order barring Defendants, their co-

24
25 ¹ In addition to Defendants Jennings and CE-USA, Plaintiff’s complaint names the
26 Lions of Liberty, Yavapai County Preparedness Team, and its associated officers and
27 agents as defendants. Yesterday evening, Thursday, October 27, the officers of Yavapai
28 Defendants sent out “an Official Stand Down order” to their agents, volunteers and
followers, indicated that they were to “stepping down [their] sponsorship of Operation
Drop Box” in response to Plaintiff’s suit and due to concerns that other drop box
monitoring groups might be acting lawlessly. *See* Homer Decl., Ex. Y. In light of the

1 conspirators, and all of their volunteers and agents, from engaging in activity that is
2 actively intimidating voters. Plaintiff’s motion does not seek to enjoin all Arizonans from
3 engaging in constitutionally protected conduct in the wake of the voter intimidation crisis
4 caused by Defendants’ actions. Rather, Plaintiff seeks to constrain the agents, volunteers,
5 and confederates of Defendants from continuing an unlawful scheme that has had the
6 demonstrated effect of dissuading Arizonans from voting using lawful and secure
7 methods that the State has employed for years.

8 STATEMENT OF FACTS

9 Defendants’ campaign is inspired by a thoroughly discredited conspiracy theory
10 that so-called “mules” illegally deposited large numbers of ballots at drop boxes to steal
11 the 2020 election in various closely contested states, including Arizona. *See* Decl. of
12 Rachel F. Homer (“Homer Decl.”), Exs. A-B. As false claims in the documentary spread
13 online, viewers began to circulate viral images of drop box voters and election officials
14 portrayed in the film. *See Id.*, Ex. F. Some viewers began to post photos of individuals
15 who had purportedly voted illegally—but, in fact, had not—in turn subjecting those voters
16 to harassment and threats.

17 Defendants Jennings and CE-USA subscribe to the “mules” conspiracy theory and
18 launched “Dropbox Initiative 2022” in response. The goal of the campaign is to surveil
19 and harass voters at drop boxes and “gather video (and live witness evidence) of any
20 ballot tampering that takes place in real time.” *Id.*, Ex. K. Defendants are hoping to have
21 at least ten monitors at each drop box. *Id.* Defendants began organizing drop box
22 surveillance during the 2022 summer primary, referring to it as the campaign’s “first run”
23 before the general election. *Id.*, Ex. F. Defendant Jennings has stated that the objective of
24 the surveillance tactics she has indeed had an intimidating effect on voters during the
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27 _____
28 Stand Down Order, Plaintiff declines to seek emergency relief enjoining Yavapai
Defendants at this time. However, Plaintiff reserves the right to seek such relief in the
future from this Court.

1 primary, with one post declaring: “We ram [*sic*] one mule off just by being there”
2 *Id.*, Ex. Z.

3 As we approach the November 8 elections, Defendants activities are continuing
4 unabated—they are recruiting and coordinating with volunteers for their surveillance-
5 and-intimidation campaign on platforms used by election deniers and extremist groups.
6 For example, Defendants are actively recruiting volunteers on Truth Social, a social
7 media platform well-known for disseminating election-related conspiracy theories.
8 Further, on an October 17, 2022, appearance on Steve Bannon’s *War Room*, Defendant
9 Jennings made clear that she ensures all monitors are “one of us,” implying that she is
10 only recruiting volunteers who already believe in the “mules” conspiracy theory. *See*
11 Homer Decl., Ex. K.

12 Critically, neither Defendants nor any of their volunteers or other co-conspirators
13 have any good-faith basis to conclude that a voter who deposits multiple ballots is doing
14 so illegally, because Arizona law specifically permits voters to deposit multiple ballots in
15 a number of circumstances. *See* Ariz. Rev. Stat. § 16-1005(I). Nevertheless, Defendants
16 have accused voters, without evidence, of illegal activity. For example, on October 16,
17 Defendant Jennings posted a highly shared social media post showing camera footage of
18 a voter, implying (without evidence) that the voter was engaged in illegal activity. Homer
19 Decl., Ex. N. The next day, Defendant Jennings called for additional volunteers to surveil
20 drop boxes in Mesa and Phoenix, alleging that her “crew” had spotted a “mule.” *Id.*, Ex.
21 M.

22 In their TRO motion, the AARA plaintiffs have proffered evidence *inter alia*, that
23 (1) Defendants’ conspired to intimidate voters, (2) that Defendants actively intend to
24 “dox” voters for engaging in lawful voting, and (3) that Jennings affirmed that two
25 individuals who appeared at a Mesa, Phoenix drop box on Friday Oct. 21 were affiliated
26 with Defendants and sanctioned their use of masks, firearms, and tactical gear to surveil
27 polling places. To avoid duplication here, Plaintiff League of Women Voters of Arizona
28

1 adopts and incorporates the evidence and argument presented in the AARA plaintiffs'
2 TRO motion.

3 A series of serious incidents of voter harassment and intimidation occurred almost
4 immediately after Defendants' agents began conducting surveillance occurring during the
5 early voting period. Plaintiff has obtained additional evidence from voters who lodged
6 complaints of voter intimidation and members of the League about the impact of
7 Defendants' surveillance. *See* Decl. of Complainant 240 (redacted); Decl. of Daniel
8 Rivera; Decl. of Donald C. Overlock; Decl. of John I. Evans.

9 On the evening of Monday, October 17, the individual who later filed complaint
10 #240 drove with his wife to the drop box at Maricopa Juvenile Court in Mesa to deliver
11 their ballots. When they arrived they saw between six and nine individuals stationed in
12 the parking lot clearly filming and photographing voters as they deposited their ballots.
13 One of the monitors had a very large camera. Complainant #240's wife was afraid that
14 observers could use cameras to zoom in on personal information in their ballots and target
15 them for harassment. She wanted to leave instead of voting. Complainant #240 told his
16 wife he would cover the ballots under his shirt to prevent observers from obtaining
17 personal information. When he got out of his car to drop off his ballot, he was followed
18 by four individuals at a distance of about 30 feet. The observers asked him if he was a
19 "mule" and told him they were "hunting mules." Complainant #240 reversed his car away
20 from the drop box to prevent the observers from photographing it. Another vehicle then
21 tailed him down the road attempting to record Complainant #240's license plate.

22 Complainant #240 filed a complaint for voter intimidation with the Arizona
23 Secretary of State. News outlets obtained security camera footage of the interaction which
24 was subsequently posted online. Defendant Jennings and her agents posted about the
25 incident on social media with one of the monitors displaying photos of Complainant
26 #240's car, writing "Mule hunting tonight. This is a mule driving up to the outdoor
27 dropbox." The interaction was highly distressing to Complainant #240 and his wife. He
28

1 is understandably concerned about security after the attacks against him online and has
2 asked for his declaration to be filed under seal to prevent further threats and abuse.

3 On Wednesday, October 19th, 2022, John Evans drove to a drop box in downtown
4 Phoenix, to deliver ballot for himself and his wife. He immediately saw three people
5 monitoring the site with cameras and a tripod and tracking him with their cameras. He
6 found their presence disturbing. After seeing that they were taking pictures of his license
7 plate, he drove up to them and asked them to identify themselves. They refused to do so,
8 only saying that they were monitoring voting irregularities. Evans told them they did not
9 have his permission to photograph but they suggested that the County Recorder had given
10 them permission to be there. Evans checked with County staff who advised they hadn't
11 given this group permission but that they had experienced similar activity in the past, to
12 the point that employees had quit due to feeling intimidated by these groups. County staff
13 informed him that in some instances people from these groups had been brandishing guns
14 outside the voting location.

15 Evans felt like the monitors were harassing him by photographing him and his
16 license plate and that they were intentionally invading his privacy. He filed Complaint
17 #241 with the Secretary of State.

18 On Thursday, October 20th, 2022, Don Overlock drove with his wife to the Mesa
19 Juvenile Court to deposit their ballots. On arrival, he observed five or six men standing
20 around a truck in the second row of parking spaces directly across from the drop box's
21 location. Seeing that they were being monitored, Overlock and his wife went to
22 individually drop off their ballots. They had seen news coverage of people being
23 photographed for dropping off ballots and didn't want to be targeted.

24 Overlock noticed that the men started taking photos of their license plate and car
25 anyway. He confronted them and told him he would report them for voter intimidation
26 and harassment and took photographs of them. The drop box monitors became angry in
27 response. Overlockz reported the incident to the Arizona Secretary of State as Complaint
28 #243. He remains concerned that given how angrily the monitors reacted to being reported

1 for voter intimidation, they might use his license plate to try to find his address to harass
2 him and his wife.

3 On Saturday, October 22, 2022, Daniel Rivera went with his wife to drop off their
4 and their son's ballots at the drop box at the Maricopa Juvenile Court in Mesa. Rivera's
5 son had told him he was too scared to vote himself because he had heard about people
6 surveilling voters at drop boxes in Maricopa County. Rivera told his son he would drop
7 off his ballot for him.

8 At the drop box, Rivera, saw someone holding up a sign stating "I invoke my right
9 to vote" in front of a Range Rover about 35 feet away from the drop box. He could see a
10 man in the vehicle monitoring voters who were dropping off ballots. It also looked like
11 he was writing down information and had a recording device pointed at the drop box.
12 This surveillance from the Range Rover made Rivera and his wife very uncomfortable.
13 Rivera's wife was extremely concerned that the man might be armed and wanted to leave
14 without voting.

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22 he was writing down information and had a recording device pointed at the drop box.
23 This surveillance from the Range Rover made Rivera and his wife very uncomfortable.
24 Rivera's wife was extremely concerned that the man might be armed and wanted to leave
25 without voting. Rivera convinced his wife to let him drop off their ballots. He contacted
26 the Arizona Secretary of State to file Complaint #248 for voter intimidation.

27 Beyond these declarants, numerous other complaints have been filed with the
28 Secretary of State in response to Defendant's drop box surveillance.

1 Furthermore, Defendant’s surveillance activities have directly impacted the
2 League’s members. Four voters—Leslie Hanson, Lorna Banister, Karen Devine, and Lois
3 Hansen—all became too intimidated by Defendants’ conduct to vote using drop boxes.
4 All are Arizona residents and members of the League, and have voted in past elections.
5 All originally intended to vote at drop boxes. However, after they became aware of
6 Defendants’ intimidating conduct at drop boxes—dressing in tactical gear, watching
7 voters and photographing them, and verbally harassing and accosting voters—they felt
8 intimidated and afraid, and as a result of that intimidation, did not vote by drop box. *See*
9 Decl. of Leslie Hanson; Decl. of Lorna Banister; Decl. of Karen Devine; Decl. of Lois
10 Hansen.

11 LEGAL STANDARD

12 “A plaintiff seeking a preliminary injunction must establish [1] that he is likely to
13 succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of
14 preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an
15 injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008); *see*
16 *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). “A preliminary injunction may
17 also be appropriate if a movant raises ‘serious questions going to the merits’ and the
18 ‘balance of hardships . . . tips sharply towards’ it, as long as the second and third *Winter*
19 factors are satisfied.” *Disney Enterprises, Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th
20 Cir. 2017). The same legal standard governs both the issuance of preliminary injunctions
21 and temporary restraining orders. *Stuhlberg Int’l Sales Co., Inc. v. John D. Brush & Co.,*
22 *Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

23 As explained below, (1) Plaintiff is likely to succeed on the merits of its claims
24 under Section 11(b) of the Voting Rights Act, 52 U.S.C. § 10307(b), and the Ku Klux
25 Klan Act of 1871, 42 U.S.C. § 1985(3); (2) irreparable harm to Plaintiff, its members, and
26 other voters, will occur in the absence of immediate relief; (3) the balance of equities tips
27 in favor of temporary relief barring Defendants’ actions that intimidate voters; and (4) an
28 injunction barring such unlawful conduct is in the public interest.

1 **ARGUMENT**

2 **I. Plaintiff is likely to succeed on the merits**

3 **A. Plaintiff has standing.**

4 Plaintiff the League of Women Voters of Arizona (the “League”) has sufficiently
5 alleged standing. A plaintiff establishes standing by showing it has “(1) suffered an
6 injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and
7 (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v.*
8 *Robins*, 578 U.S. 330, 338 (2016).

9 First, the League has standing to sue on its own behalf. “[A]n organization has
10 direct standing to sue where it establishes that the defendant’s behavior has frustrated its
11 mission and caused it to divert resources in response to that frustration of purpose.”
12 *Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44 F.4th 867, 879–80 (9th Cir. 2022)
13 (citation omitted). The League easily satisfies this standard. The League’s mission is to
14 educate Arizona voters and encourage them to vote by providing Arizona voters with
15 information about their voting options, including options for early voting and voting by
16 mail. Decl. of Pinny Sheoran ¶¶ 8-10. This mission has been frustrated by Defendants’
17 actions, as reports of voter surveillance, intimidation, and harassment has curtailed
18 voters’ willingness to participate in the democratic process. *Id.* ¶ 11. Defendants’
19 actions have also caused the League to divert resources in response, including by
20 expending staff time and money and by repurposing its existing phone banking
21 program. *Id.* ¶¶ 14-20.

22 The League has also established associational standing on behalf of its members.
23 To establish associational standing, a plaintiff “must demonstrate that (a) its members
24 would otherwise have standing to sue in their own right; (b) the interests it seeks to
25 vindicate are germane to the organization’s purpose; and (c) neither the claim asserted
26 nor the relief requested requires the participation of individual members in the lawsuit.”
27 *Smith v. Pac. Prop. & Dev. Corp.*, 358 F.3d at 1101–02 (quoting *Hunt v. Wash. State*
28 *Apple Advertising Comm’n*, 432 U.S. 333, 343 (1977)). The League is a membership

1 organization with 900 members statewide, the vast majority of whom use early voting,
 2 including drop box voting. Sheoran Decl. ¶ 7. At least three of those members have
 3 changed their plans to vote by drop box because of Defendants' actions to intimidate
 4 voters at dropboxes. Devine Decl. ¶¶ 7-8, Banister Decl. ¶¶ 5-7, Hanson Decl. ¶¶ 5-6.
 5 Losing access to a particular voting method is an injury sufficient to establish standing
 6 for the individual and for an association of which that individual is a member. *See Dem.*
 7 *Nat'l Comm. v. Reagan*, 329 F. Supp. 3d 824, 841 (D. Ariz. 2018), *rev'd on other*
 8 *grounds, Dem. Nat'l Comm. v. Hobbs*, 948 F.3d 989 (9th Cir. 2020) (en banc).

9 **B. Plaintiff is likely to show that Defendants have violated Section 11(b)**
 10 **of the Voting Rights Act**

11 Plaintiff is likely to prevail on its claim that Defendants have violated Section
 12 11(b) of the Voting Rights Act, 52 U.S.C. § 10307(b). That statute provides in relevant
 13 part: “No person, whether acting under color of law or otherwise, shall intimidate,
 14 threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or
 15 attempting to vote.” 52 U.S.C. § 10307(b) (formerly 42 U.S.C. § 1973i(b)).²

16 To prove a claim under Section 11(b), Plaintiff must demonstrate that Defendants
 17 have intimidated, threatened, or coerced (or attempted to intimidate, threaten, or coerce)
 18 a voter or someone assisting a voter. *See Nat'l Coal. on Black Civic Participation v. Wohl*,
 19 498 F. Supp. 3d 457, 477 (S.D.N.Y. 2020) (“*Wohl I*”). The question is whether voters are
 20 intimidated, threatened, or coerced in any fashion. *See Dougherty County v. United States*,
 21 439 U.S. 32, 50 n.4 (1978) (through Section 11, “Congress imposed an unlimited
 22 proscription on activities affecting the voting rights of others.”).

23 ***Defendants' conduct is objectively intimidating.*** The operative words of the
 24 statute—“intimidate,” “threaten,” and “coerce,” or attempt to do so—should be given
 25 their plain meaning. *Leocal v. Ashcroft*, 543 U.S. 1, 8-9 (2004); *CISPES v. FBI*, 770 F.2d
 26

27 ² Section 11(b) affords a private right of action. *See Allen v. State Bd. of Elections*, 393
 28 U.S. 544, 555-56 & n.18 (1969); *Gray v. Main*, 291 F. Supp. 998, 999-1000 (M.D. Ala.
 1966); *see also* 28 U.S.C. § 1343(a)(4).

1 468, 476-77 & n.8 (5th Cir. 1985) (analogizing the statutory text at issue to Section 11(b)
 2 because it contains terms “obviously widely used and commonly understood in statutory
 3 contexts”).³ Merriam Webster defines “intimidate” as “to make timid or fearful”; “to
 4 compel or deter by or as if by threats.” It defines “threaten” as “to utter threats against,”
 5 “to hang over dangerously,” or “to cause to feel insecure or anxious.” And it defines
 6 “coerce” as “to restrain or dominate by force,” “to compel to an act or choice,” or “to
 7 achieve by force or threat.”⁴ The 1966 edition of Webster’s dictionary—nearly
 8 contemporaneous with the passage of Section 11(b)—defines “intimidation” as “to make
 9 timid and fearful” or to “inspire or affect with fear.” Webster’s New International
 10 Dictionary 1184 (3d ed. 1966). Thus, the text’s reach is broad, prohibiting voter
 11 intimidation in all its forms.

12 No physical violence or threat of physical violence is required to constitute
 13 intimidation. The text itself makes that plain: if “threats” were required for intimidation,
 14 that would render the words “threaten” and “intimidate” redundant. *See Bailey v. United*
 15 *States*, 516 U.S. 137, 146 (1995) (“We assume that Congress used two terms because it
 16 intended each term to have a particular, nonsuperfluous meaning.”). Thus, courts have
 17 explicitly held that Section 11(b) does not require any physical violence. *See, e.g., New*
 18 *York v. Horelick*, 424 F.2d 697, 700 (2d Cir. 1970) (Friendly, J.) (contrasting the Voting
 19 Rights Act to another provision of federal law that the court found applied only to “violent
 20 activity”); *Wohl I*, 498 F. Supp. 3d at 477; *League of United Latin Am. Citizens –*
 21 *Richmond Region Council 4614 v. Pub. Interest Legal Found.*, No. 18-cv-00423, 2018
 22 WL 3848404, at *4 (E.D. Va. Aug 13, 2018) (“LULAC”).⁵ The Department of Justice has

23 _____
 24 ³ *See also United States v. Shrader*, 675 F.3d 300, 310 (4th Cir.2012) (“ ‘Harass’ and
 25 ‘intimidate’ are not obscure words.”)

26 ⁴ [https://www.merriam-](https://www.merriam-webster.com/dictionary/intimidate#:~:text=transitive%20verb,tried%20to%20intimidate%20a%20witness)
 27 [webster.com/dictionary/intimidate#:~:text=transitive%20verb,tried%20to%20intimidate](https://www.merriam-webster.com/dictionary/intimidate#:~:text=transitive%20verb,tried%20to%20intimidate%20a%20witness)
 28 [%20a%20witness](https://www.merriam-webster.com/dictionary/intimidate#:~:text=transitive%20verb,tried%20to%20intimidate%20a%20witness) (intimidate); <https://www.merriam-webster.com/dictionary/threaten>
 (threaten); <https://www.merriam-webster.com/dictionary/coerce> (coerce).

⁵ Additionally, numerous courts have held conduct that does not include violence or
 threats of violence to be unlawful voter intimidation under Section 11(b) or similar laws

1 taken the same position. *See* DOJ brief in *Wohl*, No. 20-cv-08668-VM-OTW, ECF No.
2 235 at 4-12. In statutes outside the context of voting, Courts have also interpreted the
3 word “intimidation” to include non-violent actions. *See United States v. Gartman*, 1995
4 WL 265925, at *4 (4th Cir. May 9, 1995) (per curiam).

5 Defendants’ conduct is undoubtedly intimidating to voters. The drop box
6 monitors’ actions closely parallel conduct that courts have held constitute illegal voter
7 intimidation in the past. For example, in *Daschle v. Thune*, Senator Daschle challenged
8 conduct committed by supporters of his opponent as violating Section 11(b), namely:
9 “[f]ollowing Native American voters at [a] polling place . . . and standing two to three
10 feet behind Native American voters, and ostentatiously making notes”; “[f]ollowing
11 Native American voters out to their cars after they have voted, walking up to their
12 vehicles, and writing down their license plate numbers”; and “[h]aving a loud
13 conversation in a polling place, where Native Americans were voting, about Native
14 Americans who were prosecuted for voting illegally in Minnesota.” *Daschle v. Thune*,
15 Complaint at 5-6, No. 04-cv-4177 (D.S.D. Nov. 1, 2004)). The district court granted a
16 temporary restraining order and enjoining all “Defendant John Doe’s acting on behalf of
17 [Thune]” from “following Native Americans from the polling places” and copy[ing] the
18 license plates of Native Americans” driving to and from polling places. *Id.*

19 Defendants have directed their agents to engage in nearly identical conduct to that
20 enjoined in *Daschle*. As the voters’ declarations demonstrate, drop box monitors are
21 conspicuously filming and photographing voters and recording their license plate
22 numbers. Each of the voters testified that they felt harassed by this surveillance. In some
23 cases drop box monitors stalked voters and followed them very closely. The experience
24 of Complainant #240 is a stark and harrowing example of voter intimidation. This voter
25 sought to avoid revealing personally identifying information upon seeing an unnerving

26 _____
27 such as Section 131(b) or equivalent state voter intimidation laws. *See, e.g., LULAC*,
28 2018 WL 3848404, at *4 (defamation and doxxing are intimidation); *Consent Decree*,
United States v. N.C. Republican Party, 92-161-CIV-5-F (E.D.N.C. Feb. 27, 1992)
(mailings with false election information and warning of prosecution are intimidation).

1 group of individuals poised to videotape and photograph him. For the offense of trying to
2 protect the voter's privacy, Defendant's agents stalked and harassed Complainant #240
3 telling him they were "hunting mules." This is a pointed, unambiguous threat directed at
4 a lawful voter. It is the definition of voter intimidation.

5 Defendants speciously claim that their sole purpose is to detect unlawful voter
6 fraud. Even if that were true—and it is not—Defendant's surveillance campaign forces
7 voters into an untenable Catch-22: either (1) disclose identifying information, such as a
8 license plate number, to Defendants' agents who have a stated intention and demonstrated
9 history of doxxing individuals who have voted lawfully, or (2) try to avoid disclosing
10 identifying information to Defendants' agents and be attacked for being a "mule" and
11 having something to hide. The Voting Rights Act prohibits Americans from being put to
12 such a test.

13 Standing alone, Defendants' actions constitute textbook voter intimidation under
14 settled law, but Defendants' conduct has been far more threatening. After authorities
15 received complaints by voters about being surveilled at the Mesa drop box, Defendants'
16 agents responded on Friday, October 21, by showing up carrying firearms while wearing
17 masks, body armor, and tactical gear. *See* Homer Decl., Ex. V. Defendant Jennings
18 tweeted that the individuals were "our people" and sanctioned surveillance of voting
19 locations by armed, masked monitors in tactical gear. *Id.* Defendant Arroyo likewise
20 made clear in his planning sessions with drop box monitors that they could be armed
21 while conducting surveillance, and he urged them to wear Oathkeeper gear. *Id.*, Ex. I.

22 Any reasonable observer would view the prospect of voting under the surveillance
23 of armed, masked individuals wearing tactical gear as quintessentially intimidating. Such
24 conduct constitutes a barely veiled threat of violence—both from Defendants'
25 themselves, and from others incited by Defendants' conduct. This action thus violates the
26 prohibition on efforts to "threaten" as well as to "intimidate" voters. *See Wohl I*, 498 F.
27 Supp. 3d at 483.

28

1 The implied threat is increased even further given Defendants’ stated intention to
2 dox voters they suspect (without basis) of voting illegally. *See* Homer Decl., Ex. L. Every
3 complainant testified that they were deeply concerned that drop box monitors would use
4 photos of their faces and license plates to identify, dox, and harass them. That fear is
5 eminently reasonable, considering the use of that tactic by proponents of the 2000 mules
6 conspiracy theory. A reasonable voter would understand that the recording of their face
7 and license plate would present an immediate risk that their identity would be publicized
8 online alongside false accusations that they committed voter fraud, leading to threats of
9 violence against them. Courts have recognized that publishing a victim’s personal
10 information alongside accusations of illegal voting can constitute harassment. *See*
11 *LULAC*, 2018 WL 3848404, at *4; *see also King v. Cook*, 298 F. Supp. 584, 587 (N.D.
12 Miss. 1969) (“Reticence to apply for registration might have been intensified . . . by
13 publication in the local newspaper of the names and addresses of all applying for
14 registration[.]”); *Original Knights of the KKK*, 250 F. Supp. at 342 (describing
15 intimidating handbills posted to identify specific individuals and businesses that the KKK
16 was targeting).

17 Furthermore, numerous courts have also held that baselessly accusing voters of
18 violating the law, or warning of legal or other consequences for voting, is a well-
19 recognized form of unlawful voter intimidation. *See, e.g., Nguyen*, 673 F.3d at 1264-66
20 (letters sent to Hispanic voters warning of incarceration or deportation could have
21 “constituted a tactic of intimidation” under state voter intimidation law); *Nat’l Coal. on*
22 *Black Civic Participation v. Wohl*, 512 F. Supp. 3d 500, 509-11 (S.D.N.Y. 2021) 509-11
23 (*Wohl II*) (collecting cases); *McLeod*, 385 F.2d at 740-74 (“baseless arrests and
24 prosecutions”); *see United States v. Wood*, 295 F.2d 772, 781-82 (5th Cir. 1961) (arrests
25 of voting rights organizers); *United States v. Clark*, 249 F. Supp. 720, 728 (S.D. Ala.
26 1965) (similar); *Olagues*, 797 F.2d at 1522 (investigations of voters who requested
27 bilingual ballots); *People Helpers, Inc. v. City of Richmond*, 789 F. Supp. 725 (E.D. Va.
28 1992) (excessive investigations by a city rental agency); *LULAC*, 2018 WL 3848404, at

1 *4 (publishing voters’ names and personal information with allegations of felonious voter
2 registration “in a clear effort to subject the named individuals to public opprobrium.”).
3 Defendant’s demonstrated history of baselessly accusing voters of being “mules” runs
4 directly afoul of this settled precedent.

5 **Section 11(b) reaches private parties.** The plain language of the statute reaches
6 conduct by individuals “whether acting under color of law *or otherwise*” 52 U.S.C.
7 § 10307(b) (emphasis added). Section 11(b) “on its face prohibits *any* intimidation, threat,
8 or coercion, whether done by a public official or by a private individual.” *Whatley v.*
9 *Vidalia*, 399 F.2d 521, 526 (5th Cir. 1968). It is evident from the text that “the language
10 ‘or otherwise’ indicates Congressional intent to reach both government and private
11 conduct under § 11(b).” *LULAC*, 2018 WL 3848404, at *3; *Wohl I*, 498 F. Supp. 3d at
12 476 (“Section 11(b) undoubtedly applies to private conduct, and private individuals are
13 subject to its prohibitions).

14 **Section 11(b) does not require any showing of racial animus.** The text of Section
15 11(b) states that “[n]o person . . . shall intimidate, threaten, or coerce or attempt to
16 intimidate, threaten or coerce any person for voting or attempting to vote.” 52 U.S.C. §
17 10307(b). This language does not include any racial animus requirement, nor is there any
18 basis for reading in any such extra-textual requirement. As the House Report
19 accompanying the Voting Rights Act explained, “[t]he prohibited acts of intimidation
20 need not be racially motivated.” H.R. Rep. No. 89-439, at 30 (1965) *as reprinted in* 1965
21 U.S.C.C.A.N. 2437, 2462. Numerous courts have so held. *See, e.g., LULAC*, 2018 WL
22 3848404, at *4 (no showing “of specific intent or racial animus is required” when bringing
23 a claim under Section 11(b)); *Wohl I*, 498 F. Supp. 3d at 476-77 (“A plaintiff need not
24 show racial animus or discrimination to establish a violation of Section 11(b)”);
25 *Willingham v. County of Albany*, 593 F. Supp. 2d 446, 462 (N.D.N.Y. 2006) (“While the
26 purpose of the VRA was to eliminate racial discrimination in voting, [Section] 11(b) of
27 the act does not explicitly require proof that racial discrimination motivated the
28 intimidation, threats, or coercion.”)

1 **Section 11(b) does not require any showing of subjective intent.** Section 11(b)
2 was specifically written to *exclude* any intent requirement. Section 11(b) is a modification
3 of an earlier provision, Section 131(b) of the Civil Rights Act of 1957, which states: “No
4 person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce,
5 or attempt to intimidate, threaten, or coerce any other person *for the purpose of*
6 interfering” with the right to vote. 52 U.S.C. § 10101(b) (emphasis added). Section 11(b)
7 is identical, except it omits the phrase “for the purpose of”—thus making it abundantly
8 clear that Section 11(b) explicitly *excludes* a subjective intent requirement.

9 The legislative history confirms what the text makes plain: that Congress
10 intentionally declined to incorporate a *mens rea* requirement into Section 11(b). As then-
11 Attorney General Nicholas Katzenbach explained, excluding a *mens rea* requirement was
12 necessary to combat nefarious activity difficult to reach under older voting rights statutes:
13 “Since many types of intimidation, particularly economic intimidation, involve subtle
14 forms of pressure, this treatment of the purpose requirement [in Section 131(b)] has
15 rendered the statute largely ineffective.”⁶ Thus, “no subjective ‘purpose’ need be shown
16 . . . in order to prove intimidation under [Section 11(b)]. Rather, defendants would be
17 deemed to intend the natural consequences of their acts.” *Id.* The House Report
18 accompanying the Voting Rights Act echoes Katzenbach, stating that under Section
19 11(b), “no subjective purpose or intent need be shown.” H.R. Rep. No. 89-439, at 30
20 (1965), *as reprinted in* 1965 U.S.C.C.A.N. 2437.

21 This is why numerous courts have interpreted the plain language to not require any
22 showing of subjective intent. *See, e.g., Ariz. Democratic Party v. Ariz. Republican Party*,
23 No. 16-3752, 2016 WL 8669978, at *4 n.3 (D. Ariz. Nov. 4, 2016) (“[T]he plain language
24 of the statute does not require a particular *mens rea*.”); *LULAC*, 2018 WL 3848404, at *4
25 (“The text of § 11(b), unlike § 131(b), plainly omits ‘for the purpose of,’ suggesting §
26

27 ⁶Hearing on the Voting Rights Act of 1965 Before the H. Comm. on the Judiciary, 89th
28 Cong. 12 (1965) (statement of Nicholas Katzenbach, Att’y Gen. of the United States),
<https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/03-18-1965.pdf>.

1 11(b)'s deliberately unqualified reach."); *Daschle v. Thune*, No. 4:04-cv-4177, ECF No.
2 6, at *2 (D.S.D. Nov. 1, 2004) ("Whether the intimidation was intended or simply the
3 result of excessive zeal is not the issue, as the result was the intimidation of prospective
4 Native American voters."); *see also United States v. Clark*, 249 F. Supp. 720, 728 (S.D.
5 Ala. 1965) (concluding that the "inevitable effect" of challenged conduct would be to
6 deter voters).

7 However, since courts often look to Section 131(b) when applying Section 11(b),⁷
8 some courts have erroneously imported the *mens rea* requirement into Section 11(b). *See*,
9 *e.g., Willingham v. Cty. of Albany*, 593 F. Supp. 2d 446, 462 (N.D.N.Y. 2006).

10 In a since-vacated opinion, *Olagues v. Russoniello*, 797 F.2d 1511, 1522 (9th Cir.
11 1986) (en banc), the Ninth Circuit made this initial error. There, the Court considered a
12 claim under 52 U.S.C. § 10303(f)(2) (then 42 U.S.C. § 1973b(f)(2)), which did explicitly
13 include a *mens rea* requirement, and then assumed without any analysis that 52 U.S.C. §
14 10307(b) (then, 42 U.S.C. § 1973i(b)) also included a *mens rea* requirement. *Olagues* was
15 vacated on other grounds and thus is no longer binding on this Court. *Russoniello v.*
16 *Olagues*, 484 U.S. 806 (1987) (vacating and remanding). This Court should not extend
17 *Olagues*'s now-vacated error, and should instead apply the plain text of the statute.

18 In any event, this Court need not decide at this preliminary stage whether Section
19 11(b) requires a showing of subjective intent, because the evidence demonstrates both
20 that Defendants' conduct is objectively intimidating to a reasonable voter *and* that
21 Defendants' subjective intention was to intimidate voters. *See* Homer Decl, Ex. L
22 (Defendant Jennings's Truth Social post asserting that "ballot trafficking mules are about
23 to be completely doxxed and put on blast"). Thus, under either standard, Plaintiff is likely
24 to prevail.

25 _____
26 ⁷ Which is appropriate, to the extent the statutory text is identical, such as in the use of
27 the phrase "intimidate, threaten, or coerce." *See Smith v. City of Jackson*, 544 U.S. 228,
28 233 (2005) ("[W]hen Congress uses the same language in two statutes having similar
purposes . . . it is appropriate to presume that Congress intended that text to have the
same meaning in both statutes").

1 **C. Plaintiff is likely to prevail on its claim under the Ku Klux Klan Act,**
 2 **42 U.S.C. § 1985(3).**

3 Plaintiff is likely to prevail on its claim that Defendants have violated the Ku Klux
 4 Klan Act of 1871 (the “Klan Act”).

5 *The elements of a § 1985(3) clauses 3 and 4 claim.* Four clauses of what was once
 6 Section 2 of the Klan Act are now codified in 42 U.S.C. § 1985(3). Clauses 1 and 2 of
 7 Section 2 incorporate the concept of Equal Protection from the Fourteenth Amendment
 8 and are known as the “equal protection clauses”; clauses 3 and 4 do not—instead, these
 9 are the “support or advocacy” clauses, and they protect a citizen’s right to support or
 10 advocate for federal electoral candidates. Section 1985(3) provides:

11 If two or more persons in any State or Territory conspire . . .
 12 [1] for the purpose of depriving, either directly or indirectly, any person or
 13 class of persons of the equal protection of the laws, or of equal privileges
 14 and immunities under the laws; or

15 [2] for the purpose of preventing or hindering the constituted authorities of
 16 any State or Territory from giving or securing to all persons within such
 17 State or Territory the equal protection of the laws;

18 **or if two or more persons conspire**

19 **[3] to prevent by force, intimidation, or threat, any citizen who is**
 20 **lawfully entitled to vote, from giving his support or advocacy in a legal**
 21 **manner, toward or in favor of the election of any lawfully qualified**
 22 **person as an elector for President or Vice President, or as a Member of**
 23 **Congress of the United States; or**

24 **[4] to injure any citizen in person or property on account of such**
 25 **support or advocacy. . .**

26 the party so injured or deprived may have an action for the recovery of damages .
 27 . . against any one or more of the conspirators.

28 42 U.S.C. § 1985(3) (emphasis, brackets, and line breaks added).

 To prove a claim under clauses 3 and 4 of § 1985(3), a plaintiff must allege and
 prove four elements: (1) a conspiracy; (2) either to prevent a lawful voter from supporting
 a candidate in a federal election by force, intimidation, or threat; or to injure a lawful
 voter in person or in property for such support; (3) an act in furtherance of the conspiracy;

1 and (4) injury. *Wohl I*, 498 F. Supp. 3d at 487; *Ariz. Democratic Party*, 2016 WL
2 8669978, at *5; *LULAC*, 2018 WL 3848404, at *5-6 (E.D. Va. 2018).

3 This is distinct from claims under clauses 1 and 2 of § 1985(3) (known as the
4 “equal protection clauses”), which typically require a showing of an equal protection
5 violation. As the Supreme Court explained in *Kush v. Rutledge*, it is improper to import
6 equal protection elements into the clauses of Section 1985 that proscribe conspiracies to
7 interfere with federal functions that do not contain the equal protection language. 460
8 U.S. 719, 725 (1983) (explaining that “there is no suggestion” that the equal protection
9 language should apply to “any other portions of § 1985”)⁸; *Bray v. Alexandria Women’s*
10 *Health Clinic*, 506 U.S. 263, 267 n.13 (1993) (noting the centrality of the equal protection
11 language to *Kush’s* holding); *McCord v. Bailey*, 636 F.2d 606, 614 & n.12 (D.C. Cir.
12 1980) (holding that no showing of class-based animus is required where the text “does
13 not demand a denial of ‘equal protection of the laws’”); *Wohl I*, 498 F. Supp. 3d at 487.
14 Thus, there cannot be a class-based animus requirement for the “support or advocacy”
15 clauses for the simple reason that the clauses lack the statutory text that gives rise to that
16 requirement.⁹

17 _____
18 ⁸ See also *Arizona Democratic Party*, 2016 WL 8669978, at *5 n.4. (“the plain language
19 of the statute does not require” any racial animus showing, but “[t]he Court need not
20 read into the statute a racial animus requirement to resolve Plaintiff’s Motion”).

21 ⁹ Some courts have failed to properly distinguish between the “equal protection” clauses
22 and the “support or advocacy” clauses, and erroneously concluded that the “support or
23 advocacy” clauses are remedial and simply enforce the First Amendment (in the same
24 way that the “equal protection” clauses are remedial to enforce the Fourteenth
25 Amendment and rights found elsewhere). See *Federer v. Gephardt*, 363 F.3d 754, 760
26 (8th Cir. 2004). Those cases are wrongly decided. Not only do they make clauses 3 and
27 4 redundant with clauses 1 and 2—which courts should not do, see *Bailey*, 516 U.S. at
28 146—but also because they rely on an anachronism. When the Klan Act was passed in
1871, First Amendment rights could only be asserted against the *federal* government. It
wasn’t until a half-century later that the Supreme Court held that the First Amendment
applied to state governments as well. See *Stromberg v. California*, 283 U.S. 359 (1931)
(incorporating the First Amendment’s free speech clause against the states). Thus, if
cases like *Federer* are correct, then the “support or advocacy” clauses of the Klan Act
would not have provided a remedy against Nathan Bedford Forrest (the first Grand
Wizard of the Klan), thus defeating the key purpose of the Act—to provide a legal

1 ***Defendants have conspired and undertaken acts in furtherance of that***
2 ***conspiracy.*** Plaintiff is likely to succeed on the merits of its claim that Defendants have
3 engaged in a conspiracy. A conspiracy is “an agreement . . . to do an unlawful act . . .
4 between or among two or more” persons. *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1867 (2017).

5 As the Ninth Circuit has explained:

6 To be liable, each participant in the conspiracy need not know the exact
7 details of the plan, but each participant must at least share the common
8 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.

9 *Lacey v. Maricopa Cty.*, 693 F.3d 896, 935 (9th Cir. 2012).

10 Plaintiff is likely to prove that Defendants agreed, tacitly or explicitly, on a
11 “common objective”: to surveil drop boxes, deter voters from using drop boxes, and
12 intimidate voters. Indeed, Defendants statements and actions. detailed above show that
13 they intentionally and explicitly agreed on a common objective—and did so explicitly,
14 on their websites, social media pages, and other public statements. The objective was
15 explicit: to drive off “mules,” in other words, to intimidate voters. Defendants in fact have
16 already undertaken that activity by: them and their agents appearing at drop boxes (at
17 times with weapons, body armor, and cameras), verbally harrassed voters, photographed
18 voters, and posted those photographs online.

19 ***The purpose of Defendants’ conspiracy was to intimidate voters.*** Plaintiffs will
20 likely prove that Defendants’ conspiracy is directed at preventing lawful voters from
21 voting “by force, intimidation, or threat,” or injuring them for exercising the franchise.

22
23 _____
24 remedy against the Klan. Cases from near the time that the Klan Act was passed
25 confirm that the Act created causes of action against defendants other than federal
26 officials. *See Goldman*, 25 F. Cas. at 1351-53 (Reconstruction-era case recognizing a
27 properly alleged claim under the criminal equivalent of what is now Section 1985(3)
28 clause 3, with no examination of whether the defendant was a federal officer and
observing that the right to provide “support or advocacy” under the statute is broader
than merely the act of voting). *See also* Richard Primus & Cameron O. Kistler, *The*
Support-or-Advocacy Clauses, 89 Fordham L. Rev. 145, 157 (2020); Note, *The Support*
or Advocacy Clause of § 1985(3), 133 Harv. L. Rev. 1382, 1399-1400 (2020).

1 As detailed above, Defendants have directly stated—indeed celebrated—that their purpose
2 is to deter voter fraud in drop boxes. At the same time, they automatically target voters as
3 “mules” for dropping off more than one ballot—making no allowance for the fact that
4 Arizona law expressly permits individuals to assist, *e.g.*, family and household members
5 by depositing their ballots. Thus, Defendant’s conduct is not aimed at voter fraud or
6 illegal conduct—it is aimed at discouraging lawful voting using a method that they
7 disapprove of. The purpose is intimidation.

8 Finally, Plaintiff and its members have been injured, as detailed above, *see supra*
9 Part I.A.

10 **II. Plaintiffs will be irreparably harmed absent immediate relief**

11 There are “no do-overs in elections.” *League of Women Voters of N.C.*, 769 F.3d
12 at 247. For that reason, intimidation efforts that deter eligible voters from voting, like
13 those that Defendants are currently undertaking and will continue to undertake absent
14 injunctive relief, cause irreparable harm. Indeed, “when an alleged constitutional right is
15 involved,” such as the right to vote, “most courts hold that no further showing of
16 irreparable injury is necessary.” *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016). As
17 this circuit has explained, “it is well established that deprivation of constitutional rights
18 unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002
19 (9th Cir. 2012) (internal quotation marks omitted).

20 Because there is no “redress of a denial of the right to vote after an election, denial
21 of that right weighs heavily in determining whether plaintiffs would be irreparably
22 harmed absent an injunction.” *Fish*, 840 F.3d at 752; *see also Veasey v. Abbott*, 870 F.3d
23 387, 394 (5th Cir. 2017) (because the challenged actions “affect—or threaten to affect—
24 the plaintiffs’ right to vote . . . [they] have shown they will suffer an irreparable injury”);
25 *Tex. League of United Latin Am. Citizens v. Abbott*, 2020 WL 5995969, at *22 (W.D.
26 Tex. Oct. 9, 2020) (“We have already determined that the fundamental right to vote is
27 likely either threatened or in fact being impaired, on the eve of an election, and this
28

1 conclusion mandates a finding of irreparable injury.”¹⁰ In the absence of preliminary
2 relief, Defendants’ voter intimidation scheme already has and likely will continue to cause
3 irreparable harm to voters’ ability to exercise the franchise, including Plaintiff’s members,
4 and to Plaintiff by forcing it to divert resources to respond to Defendants’ actions.

5 **III. The balance of equities and public interest favor Plaintiff**

6 The final two factors—the balance of equities and the public interest—both favor
7 Plaintiff. Preventing voter intimidation is a critical public interest enshrined in federal
8 law. “[V]oter intimidation and coercion [are] . . . obvious harm[s] that federal law strongly
9 and properly prohibits.” *United States v. Madden*, 403 F.3d 347, 352 (6th Cir. 2005)
10 (Boggs, C.J., concurring in part and dissenting in part). Indeed, the constitutional interest
11 at stake in this litigation is the voters’ “most precious” “right . . . to cast their votes
12 effectively” and free of intimidation. *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968). The
13 interest in “protecting voters from confusion and undue influence” is “compelling,”
14 *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (plurality opinion of Blackmun, J.).

15 The weight of this interest is substantial in balancing the equities. *Council of*
16 *Alternative Political Parties v. Hooks*, 121 F.3d 876, 883-34 (3d Cir. 1997) (“[i]n the
17 absence of legitimate, countervailing concerns, the public interest clearly favors the
18 protection of constitutional rights, including the voting and associational rights of” voters
19 and candidates.); *League of Women Voters*, 769 F.3d at 247 (“By definition, [t]he public
20 interest . . . favors permitting as many qualified voters to vote as possible.”); *Purcell v.*
21 *Gonzalez*, 549 U.S. 1, 4 (2006) (the public has a “strong interest in exercising the

22
23 ¹⁰ See also *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (“A restriction
24 on the fundamental right to vote . . . constitutes irreparable injury.”); *Council of*
25 *Alternative Political Parties v. Hooks*, 121 F.3d 876, 883 (3d Cir. 1997 (“voting and
26 associational rights . . . cannot be alleviated after the election.”); *Williams v. Salerno*,
27 792 F.2d 323, 326 (2d Cir. 1986) (“The registration applicants in this case would
28 certainly suffer irreparable harm if their right to vote were impinged upon.”); *Cf. Elrod*
v. Burns, 427 U.S. 347, 374 & n.29 (1976) (“The loss of First Amendment freedoms, for
even minimal periods of time, unquestionably constitutes irreparable injury” because
“[t]he timeliness of political speech is particularly important”).

1 fundamental political right to vote”) (internal quotation marks omitted); *Husted*, 697 F.3d
 2 at 437 (“That interest is best served by favoring enfranchisement and ensuring that
 3 qualified voters’ exercise of their right to vote is successful.”); *Wash. Ass’n of Churches*
 4 *v. Reed*, 492 F. Supp. 2d 1264, 1271 (W.D. Wash. 2006) (“the public interest weighs
 5 strongly in favor of letting every eligible resident of Washington register and cast a vote”).

6 For all of these reasons, the balance of equities and the public interest would be
 7 advanced by the temporary restraining order and preliminary injunction sought here.
 8 Defendants cannot be permitted to engage in conduct that threatens the most basic right
 9 in American democracy—the right of voters to cast their votes free of coercion and
 10 intimidation. “[O]ther rights, even the most basic, are illusory if the right to vote is
 11 undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

12 **IV. The Proposed Injunction Raises No Constitutional Concerns**

13 **A. Enjoining Voter Intimidation Is Consistent with the First Amendment**

14 **1. Defendants’ conspiracy to intimidate voters is not protected 15 speech**

16 ***True Threats.*** The surveillance by Defendants’ agents carrying weapons, many
 17 of whom are wearing body armor and tactical gear, in combination with publicly
 18 accusing voters of voter fraud amount to “[i]ntimidation in the constitutionally
 19 proscribable sense of the word” because it contains a “threat to a person or group of
 20 persons with the intent of placing the victim in fear of bodily harm,” *Virginia v. Black*,
 21 538 U.S. 343, 360 (2003). Moreover, as explained above, the threat of “doxxing” voters
 22 along with accusations of felonious conduct and knowledge that this will almost
 23 certainly lead to violent threats online, is a true threat. *See LULAC*, 2018 WL 3848404,
 24 at *4. Courts have long recognized that publicizing voter information (even technically
 25 public information, such as their names), along with accusations of crimes or the
 26 implication the wrong people are voting, predictably and foreseeably leading to threats
 27 against those voters, is a form of threat and intimidation. *See King v. Cook*, 298 F. Supp.
 28 584, 587 (N.D. Miss. 1969); *Original Knights of the KKK*, 250 F. Supp. at 342; *see also*

1 *Wohl II*, 512 F. Supp. 3d 500, 513 (S.D.N.Y. 2021) (noting that a threatened injury need
2 not be physical or violent to constitute a “true threat” and that the prohibition on true
3 threats “protect[s] individuals from the fear of violence and the disruption that fear
4 engenders, as well as from the possibility that the threatened violence will occur”);
5 *United States v. Carmichael*, 326 F. Supp. 2d 1267, 1281 (M.D. Ala.) (a true threat is
6 determined by “the language itself”; the “context”; “the testimony of the recipient”
7 ((citing *Watts v. United States*, 394 U.S. 705, 708 (1969))).

8 **2. Enjoining An Unlawful Conspiracy Is Consistent With the** 9 **First Amendment.**

10 “[I]t has never been deemed an abridgement of freedom of speech or press to
11 make a course of conduct illegal merely because the conduct was in part initiated,
12 evidenced, or carried out by means of language, either spoken, written, or printed.”
13 *Rumsfeld v. Forum for Acad. & Institutional Rts.*, 547 U.S. 47, 62 (2006) (quoting
14 *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949)). Thus, “[i]t rarely has
15 been suggested that the constitutional freedom for speech . . . extends its immunity to
16 speech or writing used as an integral part of conduct in violation of a valid criminal
17 statute.” *New York v. Ferber*, 458 U.S. 747, 761–62 (1982) (quoting *Giboney*, 336 U.S.
18 at 498). The exception applies not only to speech integral to proscribed criminal conduct
19 but also to speech integral to civilly actionable conduct. *See Rumsfeld*, 547 U.S. at 62.
20 An injunction halting Defendants’ unlawful course of conduct¹¹ does not violate the
21
22
23

24 ¹¹ Even if Defendants’ actions were not part of an unlawful conspiracy, they are better
25 understood as conduct rather than speech. “Words can in some circumstances violate
26 laws directed not against speech but against conduct” *R.A.V. v. City of St. Paul, Minn.*,
27 505 U.S. 377, 389 (1992). Any “incidental[]” burden on speech due to an injunction
28 “directed at the conduct rather than the speech” is permissible. *See id.* at 389. But the
Court need not decide this issue, because Defendants’ actions are explicitly also part of
a conspiracy, which of course the Court can enjoin.

1 First Amendment, because Defendants’ actions are all part of unlawful conspiracies to
 2 intimidate voters, in violation of Section 11(b) and Section 1985(3).¹²

3 **3. The proposed order would survive even strict scrutiny**

4 Because there is “such a compelling interest in securing the right to vote freely
 5 and effectively,” the Supreme Court has never required that regulations of voting aimed
 6 at guarding against voter intimidation be “perfectly tailored.” *Burson v. Freeman*, 504
 7 U.S. 191, 199, 208-09 (1992). Instead, the Supreme Court and lower courts have
 8 regularly issued or upheld common-sense protections against voter intimidation and
 9 interference as passing constitutional muster. *See, e.g., id.* at 198–211 (upholding buffer
 10 zone on electioneering communications); *Firestone v. News-Press Pub. Co.*, 538 So. 2d
 11 457 (Fla. 1989) (upholding restriction on photographing in polling places); *Ohio*
 12 *Democratic Party v. Ohio Republican Party*, No. 16-CV-02645, 2016 WL 6542486, at
 13 *2 (N.D. Ohio Nov. 4, 2016) (entering injunction prohibiting unauthorized pollwatching

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 15 ¹² The specific element of the proposed order requiring Defendants to remove narrow,
 16 false claims about Arizona law and specific voters does not violate the First
 17 Amendment. It is not true that “[i]t is illegal in Arizona to put more than one ballot in
 18 the box other than your own.” Compl. ¶ 37 n.6. Instead, Arizona law provides several
 19 common circumstances in which depositing multiple ballots into a dropbox is legal,
 20 including when family members deposit one another’s ballots. *See* Ariz. Rev. Stat. § 16-
 21 1005(I)(2)(a), (c), (d). Stating otherwise, as Defendants’ know, is false and intended to
 22 mislead voters and the broader public about voting requirements and procedures.
 23 Similarly, posting specific identifying information about individuals in connection with
 24 a claim that that individual violated the law based solely on the fact that they deposited
 25 multiple ballots at a dropbox is defamatory. These knowing, narrow lies about the
 26 mechanics of voting and specific, unfounded accusations about individuals committing
 27 voter fraud are unprotected. *Minnesota Voters All. v. Mansky*, 201 L. Ed. 2d 201, 138 S.
 28 Ct. 1876, 1889 n.4 (2018) (clarifying that “messages intended to mislead voters about
 voting requirements and procedures” may be prohibited); *see* Richard Hasen, *Drawing
 the Line Between False Election Speech and False Campaign Speech*, Knight First Am.
 Instit. (Oct. 21, 2021) (same); *R.A.V.*, 505 U.S. at 383 (defamatory speech may be
 proscribed). Where it is determined that a plaintiff is likely to succeed in proving that
 speech is unprotected, a preliminary injunction directing a party to remove that speech
 does not violate the First Amendment. *See Pittsburgh Press Co. v. Pittsburgh Comm’n
 on Human Rel.*, 413 U.S. 376, 390 (1973); *Kramer v. Thompson*, 947 F.2d 666, 675 (3d
 Cir. 1991); *id.* at 675 n.25 (collecting authority); Eugene Volokh, *Anti-Libel Injunctions*,
 168 U. Penn. L. Rev. 73, 117–20 (2019).

1 within a buffer zone, loitering, and following and taking photos of voters); *New Jersey*
2 *Press Ass’n v. Guadagno*, No. CIV.A. 12-06353 JAP, 2012 WL 5498019 (D.N.J. Nov.
3 13, 2012) (upholding prohibition on photographs within a certain distance of polling
4 places).

5 **B. Enjoining ongoing voter intimidation by requiring Defendants to**
6 **refrain from carrying firearms within 250 feet of drop boxes does not**
7 **violate the Second Amendment**

8 The Second Amendment plainly permits restrictions on carrying firearms near
9 drop boxes because such restrictions are “consistent with this Nation’s historical
10 tradition of firearm regulation.” *New York State Rifle & Pistol Association, Inc. v.*
11 *Bruen*, 142 S. Ct. 2111 (2022). Prohibiting firearms in “sensitive places,” as the
12 Supreme Court has repeatedly recognized, is a “longstanding” type of regulation
13 permitted under the Second Amendment. *Id.*; *see also District of Columbia v. Heller*,
14 554 U.S. 570, 626 (2008). Just this year, the Court reaffirmed that “polling places” in
15 particular were historically considered “sensitive places” at which “weapons were
16 altogether prohibited.” *Bruen*, 142 S. Ct. at 2133; *see also Antonyuk v. Hochul*, 2022
17 WL 5239895, *15 (N.D.N.Y. Oct. 6, 2022). *Bruen* further explained that “sensitive
18 places” were not limited to those recognized at the founding, but that courts could
19 identify “*new and analogous sensitive places*” through historical analogy. *Bruen*, 142 S.
20 Ct. at 2133. In short, firearms may clearly be banned at polling places *and* their
21 modern-day analogues, like ballot drop boxes.

22 Enjoining the open carrying of firearms within 250 feet of drop boxes is
23 consistent with this recognized and permissible historical practice. Drop boxes are
24 analogous to “polling places,” because they are election-specific locations where
25 millions of citizens return their ballots to be counted. The historical record shows that
26 the Founding-era regulations of firearms at polling places swept broadly in order to
27 prevent violence and intimidation at the polls. For example, the 1776 Delaware
28 Constitution prohibited both firearms at polling places *and* armed militia within “*a*
mile” of polling places 24 hours before or after the election in order “[t]o prevent any

1 violence or force being used at . . . said elections.” Del. Const. art. 28 (1776) (emphasis
2 added). Maryland adopted similar provisions in its early constitutions. See Darrell A. H.
3 Miller, *Constitutional Conflict and Sensitive Places*, 28 Wm. & Mary Bill of Rights J.
4 459, 473 (2019) (citing Proceedings of the Conventions of the Province of Maryland,
5 Held at the City of Annapolis 1774, 1775, & 1776 185 (1836)). Similarly, a 1787 New
6 York statute provided that “all elections shall be free and that no person by force of
7 arms nor by malice or menacing or otherwise presume to disturb or hinder any citizen of
8 this State to make free election.” *Id.* (citing Act of Jan. 26, 1787, ch. 1, 1787 N.Y. Laws
9 345). Thus, historical regulation of firearms at “polling places” were drawn broadly to
10 mitigate the threat posed to free and fair elections by armed individuals. Limiting the
11 carrying of firearms within 250 feet of a drop box to only concealed carry is thus
12 entirely consistent with (and less burdensome than) these historical regulations.

13 **V. This Court Should Waive The Bond Requirement**

14 The Ninth Circuit has “recognized that Rule 65(c) invests the district court with
15 discretion as to the amount of security required, *if any*.” *Jorgensen v. Cassidy*, 320 F.3d
16 906, 919 (9th Cir. 2003). And “[t]he district court may dispense with the filing of a bond
17 when it concludes there is no realistic likelihood of harm to the defendant from enjoining
18 his or her conduct.” *Id.* Here, there is no harm to the Defendants from enjoining their
19 conduct and certainly no financial harm that would be remedied by a bond. This Court
20 should therefore waive the bond requirement.

21 **VI. CONCLUSION**

22 This Court should grant Plaintiff’s motion for preliminary injunctive relief.
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1 DATED this 28th day of October, 2022.

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