

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NATIONAL COALITION ON BLACK CIVIC
PARTICIPATION, MARY WINTER, GENE
STEINBERG, NANCY HART, SARAH
WOLFF, KAREN SLAVEN, KATE KENNEDY,
EDA DANIEL, and ANDREA SFERES,

Plaintiffs,

-and-

People of the STATE OF NEW YORK, by its
attorney general, LETITIA JAMES, ATTORNEY
GENERAL OF THE STATE OF NEW YORK,

Plaintiff-Intervenor,

v.

JACOB WOHL, JACK BURKMAN, J.M.
BURKMAN & ASSOCIATES, LLC, PROJECT
1599, and JOHN and JANE DOES 1-10,

Defendants.

Civil Action No. 20-cv-8668

**PLAINTIFFS' JOINT LOCAL CIVIL RULE 56.1
STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to Local Civil Rule 56.1 of the United States District Court for the Southern District of New York, Plaintiffs National Coalition on Black Civic Participation, Mary Winter, Gene Steinberg, Nancy Hart, Sarah Wolff, Karen Slaven, Kate Kennedy, Eda Daniel, Andrea Sferes, and Plaintiff-Intervenor People of the State of New York (collectively, "Plaintiffs") respectfully submit, in support of their Motion for Summary Judgment, this statement of material facts as to which there is no genuine issue to be tried.

Defendants sent a robocall urging voters to “beware of vote by mail.”

1. On August 26, 2020, Message Communications, Inc. transmitted a robocall from an account held by Defendant J.M. Burkman and Associates (“JMBA”) to approximately 85,000 phone numbers across the United States. Ex. 1 at MESSAGE0000035–36; Ex. 2 at 56:04-18, 58:03–64:25; Sawyer Decl. ¶¶ 2–3.¹

2. Among the recipients of the robocall were 5,494 phone numbers with New York area codes. Sawyer Decl. ¶ 2.

3. Caller ID showed that the robocall came from Defendant Jack Burkman’s personal phone number under his name. Ex. 3 at MESSAGE0007669; Ex. 4 at MESSAGE0007700; Ex. 1 at MESSAGE0000035–36; Ex. 5 ¶¶ 3, 5; Ex. 6 ¶ 3; Ex. 7 ¶ 4; Ex. 8 ¶ 4.

4. The robocall contained the following message: “Hi, this is Tamika Taylor from Project 1599, the civil rights organization founded by Jack Burkman and Jacob Wohl. Mail-in voting sounds great, but did you know that if you vote by mail, your personal information will be part of a public database that will be used by police departments to track down old warrants and be used by credit card companies to collect outstanding debts? The CDC is even pushing to use records for mail-in voting to track people for mandatory vaccines. Don’t be finessed into giving your private information to the man, stay safe and beware of vote by mail.” Ex. 9; Ex. 10 at DEF005683.

5. Project 1599 is an organization Burkman and Wohl founded to “influence the 2020 presidential election.” Ex. 11 at 57:22–58:02. Burkman described Project 1599 as “the center of election 2020,” and claimed in a Project 1599 press release that “the road to the Presidency runs through us.” Ex. 12 at 0:00-0:09; Ex. 13 at AFarragut-00000076.

¹ All cites to “Ex.” refer to the exhibits attached to the Declaration of Franklin Monsour Jr.

6. In 2019, Wohl drafted a “confidential brief” for the Arlington Center for Political Intelligence, “a conservative political intelligence and advocacy organization” that could “affect[] political outcomes” by targeting “important Demographics of Democrat voters,” including Black voters. Ex. 14 at DEF004340, 4347; Ex. 15. According to the brief, “the Russian Internet Research Agency proved in 2016[] building up leftwing internet properties that aim to ultimately suppress turnout is an effective strategy,” and proposed to conduct “a voter-suppression effort”; “[b]uild up left-wing online properties with a large following, only to have those properties direct followers to NOT vote come election day”; and “make shit up.” Ex. 14 at DEF004341, DEF004345, DEF004347.

7. On August 19, 2020, Wohl emailed Burkman, “we must HIJACK this boring election.” Ex. 16 at NYOAG0009794. Burkman responded, “yes America needs w b.” *Id.*

8. That same day, Burkman emailed Robert Mahanian saying that “[I]’d like to send another 1000 and buy more calls.” Ex. 17 at MESSAGE0007724. Mahanian replied to Burkman’s email with payment instructions, and Burkman responded “[c]heck to you Robert just went out in the 2 day pouch you will have in 2-3 days then we attack.” *Id.* at MESSAGE0007723.

9. Burkman paid Message Communications \$1,000 for the robocall with check number 19921 from the JMBA bank account at Chase Bank. Ex. 18 at DEF003635; Ex. 1 at MESSAGE0000035–36; Ex. 19 at 168:16-169:08. JMBA is Burkman’s lobbying firm. Ex. 19 at 24:03-12, 26:05-20.

10. Burkman subsequently emailed Mahanian multiple times to confirm whether Mahanian had received the check and told Mahanian that he and Wohl were “ready to begin the robo calls!!!” Ex. 20 at MESSAGE0007729; Ex. 4 at MESSAGE0007700. Mahanian later confirmed, “I did receive the check (Check # 19921) today and credited your account just a

moment ago. You are all set, thank you!” Ex. 4 at MESSAGE0007700. A record of account activity for the JMBA account at Message Communications shows that check number 19921 paid for the robocall. Ex. 1 at MESSAGE0000035–36.

11. On August 24, 2020, Wohl hired a voice actress named Jana Hunt to read “1599 Spot Script 1.dox,” a document with the text of the Project 1599 Robocall. Ex. 22 at DEF005559–60, DEF005562; Ex. 10 at DEF005683.

12. Wohl found Hunt through a Craigslist post titled “Los Angeles Black Female Voice Over,” and corresponded with Hunt via the email address nexcapitalmanagement@gmail.com. Ex. 22 at DEF005559–60. Nex Capital Management was the name of Wohl’s investment firm. Ex. 23 at 2.

13. Wohl paid Hunt a retainer fee of \$50 through Cash App with the memo “For voice over.” Ex. 24 at DEF005571. Hunt then sent Wohl a watermarked audio recording of her reading the robocall script. Ex. 22 at DEF005568; Ex. 25. Wohl responded, “This sounds wonderful. Please send normal file,” and paid Hunt \$200 via Cash App with the memo “For Vote By Mail VO, remaining payment.” Ex. 22 at DEF005569 (nexcapitalmanagement@gmail.com email to Jana Hunt); Ex. 24 at DEF005572 (Cash App screenshot to Jana Hunt). That day, Hunt sent Wohl a non-watermarked copy of the audio. Ex. 22 at DEF005570 (Email with Jana Vote By Mail VO.wav attached); Ex. 26.

14. On August 25 at 12:10 am, Wohl emailed Burkman an audio file named “1599 Vote By Mail Robo Call.wav” and wrote, “Attached is the audio file for the robo call. We should send it to black neighborhoods in Milwaukee, Detroit, Philadelphia, Charlotte, Richmond, Atlanta, and Cleveland.” Ex. 27 at DEF003283 (Email Wohl to Burkman). Burkman responded, “cleveland phila minn chicago nyc detroit.” *Id.* at DEF003284 (Burkman email to Wohl). The audio file was

the one that Wohl later uploaded as the Project 1599 Robocall and was identical to the one Hunt sent to Wohl. Ex. 25; Ex. 26; Ex. 9.

15. Later that day, Burkman logged into the JMBA Message Communications account from IP address 73.172.31.180 and set the system to send the robocall to ZIP codes in the following cities: Cleveland, Ohio (44104, 44108, 44112), Minneapolis, Minnesota (55454), Chicago, Illinois (60649, 60623, 60653), Pittsburgh, Pennsylvania (15218, 15219), Detroit, Michigan (48219, 48223, 48234), New York, New York (10004, 10001), Philadelphia, Pennsylvania (19132, 19133, 19120, 19121, 19134, 19135), and Arlington, Virginia (22209). Ex. 1 at MESSAGE0000035; Ex. 28 at MESSAGE0007929; Ex. 29 at MESSAGE0007675; Ex. 19 at 9:19-24. Burkman emailed Wohl with the message “data all loaded ready many zip codes,” and asked Wohl to “do me one favor just go in and upload the recording message communications.com account 12013 passcode 5202.” Ex. 27 at DEF003285.

16. On August 26, 2020, Wohl uploaded the Project 1599 Robocall’s audio, a file titled “1599VotebyMailRoboCall.wav,” to JMBA’s Message Communications’ account, account number 12013, and initiated the robocalls from the IP address 216.207.67.2. Ex. 1 at MESSAGE0000035–36. Wohl later emailed Mahanian and Burkman from the same IP address to confirm that the Project 1599 Robocall upload was successful. Ex. 30 at MESSAGE0007716–19 (email Wohl to Mahanian and Burkman).

17. Hours after the Project 1599 Robocall was broadcasted, Burkman emailed Wohl, “i love these robo calls getting angry black call backs win or lose the black robo was a great jw idea.” Ex. 31 at DEF003819.

18. Plaintiff National Coalition on Black Civic Participation (“NCBCP”) is a non-partisan nonprofit organization dedicated to increasing civic engagement and voter participation

in Black and underserved communities. Ex. 21 at NCBCP003. NCBCP seeks to engage people in all aspects of public life, including voting, and to encourage participation in a fair, just and barrier-free democracy. Ex. 21 at NCBCP003, 005. Black Women’s Roundtable (“BWR”) is a program run by NCBCP that “works to engage, educate, organize, and mobilize Black Americans of all ages to participate in our democracy.” Ex. 32 ¶ 4. The Metro Detroit chapter of BWR had been running a call center in the Detroit area to promote participation in the 2020 U.S. Census. *Id.* ¶¶ 6, 10; Ex. 33 at 25:19-25, 35:14-21, 53:17-22. Upon learning of Defendants’ robocall, the chapter knew that deceptive and false information about voting by mail would intimidate and scare the communities it serves, especially Black voters. Ex. 32 ¶¶ 7, 10; Ex. 33 at 77:08-15, 80:24-81:01. It diverted staff and resources from its census operation and instead used the call center instead to respond to the robocall. Ex. 32 ¶ 10; Ex. 33 at 53:09-54:05, 55:11-25, 59:05-60:10.

19. Plaintiff Mary Winter was a resident of and registered to vote in Rockland County, New York, when she received the robocall. Ex. 34 ¶¶ 3–4; Ex. 35 at 12:02-10; Ex. 36. Winter found the robocall to be “very scary and threatening.” Ex. 35 at 31:03-04. Winter had been taking precautions during the COVID-19 pandemic to protect herself and Plaintiff Gene Steinberg, including socially distancing from others and minimizing in-person interactions. Ex. 34 ¶ 8; Ex. 35 at 54:09-11. Winter had planned on voting by mail in the general election because she was afraid of contracting COVID-19, but because of the robocall she voted in person. Ex. 34 ¶¶ 9, 12–16; Ex. 35 at 30:23-31:06, 33:25-34:05, 39:05-06.

20. Plaintiff Gene Steinberg was a resident of and registered to vote in Rockland County, New York, when he heard the robocall. Ex. 37 ¶¶ 3–4; Ex. 38; Ex. 39 at 16:01-05, 63:12-13. Steinberg had been taking precautions during the COVID-19 pandemic to protect himself and Winter, including socially distancing from others and minimizing in-person interactions. Ex. 37

¶ 7; Ex. 39 51:06-18, 52:11-18, 56:24-57:04. Steinberg had planned on voting by mail in the general election because he was afraid of contracting COVID-19, but because of the robocall he voted in person. Ex. 37 ¶¶ 8, 11–12, 14–15; Ex. 39 at 21:08-16, 43:19-20. Steinberg has a past nonviolent criminal conviction. Ex. 37 ¶ 13. “The robocall was particularly traumatic” for Steinberg because of his past nonviolent criminal conviction, and the robocall’s threats regarding law enforcement caused him to “relive earlier traumas.” *Id.*; *see also* Ex. 39 at 12:25-13:04, 27:07-13, 28:06-17, 28:23-24, 45:01-13, 48:12-24, 57:13-60:16, 62:19-63:15, 66:14-15, 67:23-25. Steinberg further testified that, despite not missing a vote since age 18, he is no longer registered to vote and “requested to be removed from the Board of Elections” after moving because he does not want “someone to once again use my information to intimidate me.” Ex. 39 at 16:06-17:06, 62:19-63:15.

21. Plaintiff Eda Daniel was a resident of and registered to vote in East Cleveland, Ohio, when she received the robocall on her cordless landline phone. Ex. 6 ¶¶ 3–4; Ex. 40 at 14:20-15:03; Ex. 41. The robocall made her feel “angry,” “powerless,” and “threatened.” Ex. 6 ¶ 9; Ex. 40 at 32:08-18, 51:21-22, 59:17-25, 78:09-79:12. She is apprehensive of answering the phone when it rings. Ex. 6 ¶ 9; Ex. 40 at 32:18-33:03, 53:01-20, 70:17-25.

22. Plaintiff Andrea Sferes was a resident of and registered to vote in Westchester County, New York, when she received the robocall. Ex. 7 ¶ 3; Ex. 42 at 12:05-18; Ex. 43. Sferes had outstanding medical debt when she received the robocall. Ex. 7 ¶ 8. Sferes found the robocall “highly persuasive” and worried whether her information would be shared with debt collectors. *Id.* ¶¶ 7–8. Receiving the robocall caused her to feel “alarmed,” “anxious,” “angry,” and “scared.” Ex. 42 at 29:11-15, 43:01-08, 62:10-13.

23. Plaintiff Karen Slaven was a resident of and registered to vote in Cuyahoga County, Ohio, when she received the robocall on her and Plaintiff Kate Kennedy's cordless landline phone. Ex. 44 ¶¶ 3-4; Ex. 45 at 12:12-25; Ex. 46. The robocall angered her. Ex. 44 ¶ 7; Ex. 45 at 37:22-23. She was particularly angry and frustrated because she spends hours canvassing her neighborhood trying to educate people about voting, and the robocall detracted from her efforts. Ex. 45 at 85:23-86:14.

24. Plaintiff Kate Kennedy was a resident of and registered to vote in Cuyahoga County, Ohio, when she received the robocall on her and Slaven's cordless landline phone. Ex. 47 ¶¶ 3-4; Ex. 48 at 10:09-11:04; Ex. 46. The robocall upset and angered her. Ex. 47 ¶¶ 7-8; Kennedy Dep. 61:06-11, 81:12-18.

25. Plaintiff Sarah Wolff was a resident of and registered to vote in New York County, New York, when she received the robocall. Ex. 8 ¶¶ 3-4; Ex. 49 at 13:22-14:11; Ex. 50. The efforts to dissuade people from voting infuriated her. Ex. 8 ¶ 7; Ex. 49 at 47:18-48:13, 49:25-50:04.

26. Plaintiff Nancy Hart was registered to vote in Allegheny County, Pennsylvania, when she received the robocall on her cordless landline phone. Ex. 5 ¶¶ 2-3; Ex. 51 at 16:10-11; Ex. 52. Hart was "irate because of the robocall. Ex. 5 ¶ 7. The robocall particularly angered her because she spends a lot of time encouraging other people to vote and promoting voting as a civic duty, and the robocall sought to undermine confidence in the voting process. Ex. 5 ¶¶ 9-10; Ex. 51 at 71:24-72:22, 93:06-94:10.

27. On October 26, 2021, Burkman and Wohl admitted to the Court that they prepared the Project 1599 Robocall message and caused it to be sent. Ex. 53 at 12-13, 15. In a brief submitted in support of a motion to quash in Michigan, Burkman and Wohl's attorneys stated, "A couple months before the November 2020 election, Burkman and Wohl, two conservative

provocateurs, disseminated a robocall in the 313-area code.” Ex. 54 at 1. At a hearing in Michigan state court, Defendants’ attorney stated, “They outline in the e-mails why they did this robo call.” Ex. 55 at 10:19-20.

28. New York’s election law prohibits using information in the statewide voter registration for non-election purposes. N.Y. Election Law § 3-103(5); Declaration of Douglas Kellner (“Kellner Decl.”) ¶ 22. In New York, “there is no database that police departments, credit card companies, the Centers for Disease Control, or anyone else may access to show voters who used or applied for absentee ballots for any purpose other than the conduct of elections.” *Id.* ¶ 22.

29. During the 2020 election, in the middle of the COVID-19 pandemic, the State of New York adopted several measures to ensure that all voters could access the ballot without contracting COVID-19. Chief among these was ensuring that all eligible voters could vote by absentee or so-called vote-by-mail ballots. *Id.* ¶ 18. During the course of the election cycle, the State adopted numerous laws, regulations, and executive orders to expand absentee balloting, also known as vote-by-mail. *Id.* ¶¶ 10–16. Absentee ballots are an efficient and effective voting method and often the only viable method for voters who have difficulty or cannot vote in person at the polls. *Id.* ¶ 17.

30. Douglas Kellner, the commission of elections, stated that the Project 1599 Robocall “would have had the capacity to undermine, interfere, and conflict with the [New York] State Board’s and the local BOEs’ efforts to inform voters of their rights with respect to absentee ballots, as well as the State’s common-sense measures to expand the use of absentee ballots in light of the COVID-19 pandemic.” *Id.* ¶ 24.

Dated: New York, New York
July 29, 2022

Respectfully submitted,

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