

**STATE OF MICHIGAN
IN THE SUPREME COURT**

APPEAL FROM THE COURT OF APPEALS
LETICA, P.J., AND REDFORD AND RICK, JJ.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN MACAULEY BURKMAN,

Defendant-Appellant.

Supreme Court No. 164638

Court of Appeals No. 356600

Circuit Court No. 20-004636 FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACOB ALEXANDER WOHL,

Defendant-Appellant.

Supreme Court No. 164639

Court of Appeals No. 356602

Circuit Court No. 20-004637 FH

**DEFENDANT-APPELLANTS'
APPENDIX TO BRIEF ON APPEAL**

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STATE OF MICHIGAN
IN THE 36th DISTRICT COURT FOR THE CITY OF DETROIT

PEOPLE OF THE STATE OF MICHIGAN,
-vs- DC# 20-060911, 20-060910
JOHN MACAULEY BURKMAN, CC# 20-004636-01-fh
JACOB ALEXANDER WOHL, 20-004637-01-fh

Defendants:

_____ /

**PRELIMINARY EXAMINATION
BEFORE THE HONORABLE KENNETH J. KING**

36TH District Court Judge
Detroit, Michigan - October 29, 2020

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Preliminary examination transcript

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Detroit, Michigan
October 29, 2020
1:10 p.m.

* * *

THE COURT: Calling case number 20-60910, People of the State of Michigan versus Jacob Alexander Wohl. Also calling case number 20-060911, People Of the State of Michigan versus John McCauley Burkman. Each of the defendants are charged in separate cases. In Count 1, election log bribing, intimidating voters; Count 2, conspiracy to commit election law bribing the voter; Count 3 computers, using to commit a crime, maximum imprisonment four years or more, but less than ten years; Count 4 computers, using commit a crime, maximum imprisonment, four years or less than ten years.

Appearances for the record, please.

MR. CUNNINGHAM: Good afternoon, your Honor. May it please the Court, Richard Cunningham, P-29735, Assisstant Attorney General on behalf of the People.

MR. NAOUM: May it please the Court, Wisam Naoum, P-83335, Assistant Attorney General appearing on behalf of People.

MR. AMADEO: Good afternoon, may it please

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1 the Court, William Amadeo, P-76194 on behalf of Jacob
2 Wohl, who is present via Zoom and waives his right to
3 be present in person. Thank you.

4 MR. GRABEL: Good afternoon, your Honor,
5 Scott Grabel, P-53310, on behalf of John Burkman, also
6 via Zoom and we already waived his appearance in
7 person, your Honor previously. Thank you.

8 THE COURT: Today is the date and time set
9 for preliminary examination. Do we have any matters
10 to discuss before we get started with the exam?

11 MR. CUNNINGHAM: Your Honor, very briefly,
12 I had submitted a motion to modification. As I
13 indicated in the motion, there's been an order by
14 Federal Court that appears to be in conflict with the
15 order issued by this Court. For purposes of keeping
16 the matter a little cleaner, I wanted to resolve any
17 conflict by making it clear that it would not be a
18 violation of the Michigan Law if they were to comply
19 with the statute. Now I have no skin in the game in
20 regard to that New York Statute as to whether or not
21 it's enforcing or should be enforced, but I think that
22 it's incumbent to make it clear that if, in fact,
23 there was an action on that remedial order, it would
24 not be in violation of Michigan Court Rule.

25 THE COURT: All right. Mr. Amadeo, Mr.

1 Grabel, any objection?

2 MR. AMADEO: Well, yes, your Honor. I do
3 object. I do not feel that the bond should be
4 modified. I did send an answer to Mr. Cunningham's
5 emergency bond motion --

6 THE COURT: Let me make sure I understand
7 because as I understand it, Mr. Cunningham's
8 modification of the bond, actually benefits your
9 client in that they wouldn't -- in following the
10 Federal Court's order violates this Court's bond
11 condition.

12 MR. AMADEO: Your Honor, if they follow
13 the federal case in New York, which is by way civil
14 litigation and is going to be appealed, it would
15 actually be admission of guilt with procured phone
16 call, so I would appreciate that we would not be
17 violating your bond, but I do not want them following
18 the New York issues and we are addressing that.

19 THE COURT: You'll have to address that
20 with New York, but so far as putting these defendants
21 in jeopardy in violating this Court's bond if they
22 were to follow that or made to follow that, I don't
23 think that would be fair to your clients.

24 MR. GRABEL: Well, your Honor, the only
25 thing I'm asking is that you don't order them to make

Preliminary examination transcript

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1 a curative call. That's --

2 THE COURT: I'm not ordering them to do
3 anything.

4 MR. GRABEL: The bond violation, I just
5 don't want an order saying that the -- saying that New
6 York has to do what this Court --

7 MR. CUNNINGHAM: I never asked for anything
8 like that.

9 THE COURT: No, I'm not ordering them to do
10 anything. I'm not ordering them to follow some other
11 Court's order. That's up to that particular court,
12 but what I don't want to do is to put these defendants
13 in jeopardy by following another court's order that's
14 in conflict with this Court's order.

15 MR. AMADEO: I understand, Judge.

16 THE COURT: So the Court will modify the
17 bond as such in that it would not be a violation for
18 them to use robo calling and the like for that purpose
19 of following that Court's order, if that Court's order
20 is indeed enforceable.

21 My court reporter asked if you guys can
22 keep your voices up. It's a little difficult on Zoom
23 to hear.

24 All right. Anything else?

25 MR. CUNNINGHAM: Nothing from the People.

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1 MR. GRABEL: Just to clarify, obviously
2 only robo call that they make has to be pursuant to,
3 that could not do any type of robo call unless it was
4 court ordered by another judge. I'm just clarifying
5 that understanding.

6 THE COURT: Thank you for that, Mr. Grabel.
7 That's exactly what I'm saying.

8 MR. GRABEL: Thanks, your Honor
9 (inaudible).

10 THE COURT: Keep your voice up just a
11 little louder, Mr. Grabel.

12 MR. GRABEL: Thank you, your Honor. I
13 think that clarifies that issue.

14 THE COURT: All right. Thank you. So
15 there is no issue as it relates to the proposed 404 B
16 motion; is that right?

17 MR. AMADEO: No, Judge.

18 MR. GRABEL: At this point, we'll hear the
19 proofs. We may object to it after the proofs are
20 offered, but I think certainly if the Court wants to
21 hear the proofs and rule on the admissibility after
22 preliminary examination purposes, I have no objection
23 to that, your Honor. We're not waiving the objection.
24 After I hear the testimony, I may argue after I hear
25 the testimony, if that's acceptable to the Court.

Preliminary examination transcript

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1 THE COURT: That is acceptable.

2 How many witnesses do you have, Mr.
3 Cunningham?

4 MR. CUNNINGHAM: Yes, your Honor. I would
5 like to make the comment that I may choose not to
6 present that 404 B, depending on how the other
7 testimony goes.

8 THE COURT: Okay. How many witnesses do
9 you intend on calling?

10 MR. CUNNINGHAM: At this point in time,
11 three witnesses, your Honor.

12 THE COURT: Okay. Are your three
13 witnesses present?

14 MR. CUNNINGHAM: Yes, your Honor, they
15 are. We will be alternating examination of the
16 witnesses. Mr. Naoum will do the first witness, I
17 will do the second and he will do the third.

18 THE COURT: Okay. Who is your first
19 witness?

20 MR. GRABEL: Your Honor, I would just ask,
21 even if on Zoom, I would ask for sequestration of
22 witnesses.

23 THE COURT: Yeah, I plan on putting those
24 witnesses in the waiting room. That's why I asked who
25 the first witness is.

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1 MR. GRABEL: Thank you.

2 THE COURT: Who is the first witness?

3 MR. AMADEO: Your Honor, that will be
4 Derrick Thomas.

5 THE COURT: Okay. Now I see a Jeff
6 Campbell. Where is your third witness?

7 MR. CUNNINGHAM: I'm sorry, Mr. Campbell
8 is the officer in charge, Special Agent Jeff Campbell.
9 I would ask that he be exempt from the sequestration
10 order as the officer in charge.

11 MR. GRABEL: I have no objection to that.

12 MR. AMADEO: Neither do I.

13 THE COURT: So you already sequestered your
14 other witnesses, Mr. Cunningham?

15 MR. CUNNINGHAM: Yes, your Honor. We have
16 counseled the witnesses in regard to the sequestration
17 order and the first witness is ready to go. The third
18 witness will be called when it's time for her to
19 testify.

20 THE COURT: First witness name again is
21 what?

22 MR. CUNNINGHAM: Derrick Thomas.

23 THE COURT: Mr. Thomas, I need you to
24 unmute yourself and please raise your right hand.

25 D E R R I C K T H O M A S,

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1 after been first duly sworn to tell the truth, the
2 whole truth and nothing but the truth, was examined
3 and testified as follows:

4 THE WITNESS: Yes.

5 THE COURT: Tell us your name and spell it
6 for us, please.

7 THE WITNESS: D-e-r-r-i-c-k, t-h-o-m-a-s.

8 THE COURT: Mr. Cunninham, Mr. Naoum,
9 whichever one is going first, you may proceed.

10 MR. NAOUM: Thank you, sir.

11 DIRECT EXAMINATION

12 BY MR. NAOUM:

13 Q. Mr. Thomas, what city do you reside in?

14 A. City of Detroit, Michigan.

15 Q. Are you employed?

16 A. No, I'm retired.

17 Q. When did you retire?

18 A. I retired in March 2nd, 2018.

19 Q. And what was your career beforehand?

20 A. I was a firefighter.

21 Q. Okay. And where were you a firefighter?

22 A. Firefighter in the City of Detroit.

23 Q. Okay. Great. Are you a registered voter?

24 A. Yes, sir, I am.

25 Q. How long have you been registered to vote?

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1 MR. GRABEL: Objection, I don't see how
2 long registered to vote is relevant.

3 THE COURT: It's not terribly relevant. It
4 sounds foundational. I'll give you a little latitude.
5 Let's get to the point. Overruled at this time.

6 MR. NAOUM: Okay.

7 BY MR. NAOUM:

8 Q. Do you vote regularly?

9 A. I do vote regularly.

10 Q. Okay. Are you familiar with robo calls?

11 A. Yes, I am.

12 Q. Can you describe what a robo call is?

13 A. Well, a robo call is a call being made by some type of
14 prerecording call being made by computer or robot, so
15 to speak, disseminating throughout to reach a lot of
16 people.

17 Q. Okay. And to your knowledge are they prerecorded
18 messages?

19 A. Yes.

20 Q. Have you been receiving any robo calls during election
21 season?

22 A. Yes, I have.

23 Q. Now what kind of phones do you have?

24 A. I have a landline and I have a cell phone.

25 Q. Okay. And is the landline the one that you have at

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1 home?
2 A. Yes, I have a landline at home.
3 Q. Is it like a cordless phone? Can you describe that?
4 A. Well, it has a base. My landline you're speaking of?
5 Q. Yes.
6 A. My landline has a base and there are several other
7 remotes, handsets that goes with it throughout the
8 house, but it has a base.
9 Q. And does that phone have a caller I.D. feature?
10 A. Oh, yes, it does.
11 Q. Does that phone also have a voicemail recording
12 machine?
13 A. Yes, it does.
14 Q. Okay. Does the voicemail recording machine play the
15 message while it's recording?
16 A. It has that option, yes and I keep it on that option,
17 yes.
18 Q. So presumably you can hear a voicemail live as it's
19 recording?
20 A. Correct.
21 Q. Now Mr. Thomas, I'm going to direct your attention to
22 the date of August 26th, 2020. Do you recall what
23 you were doing that morning?
24 A. Yes, I do. I was actually preparing my day to -- my
25 wife has a lot of things for me to do since I retired

1 so I prepare my day, trying to get a lot of my honey-
2 do list done that day.

3 Q. Okay. And do you get a call on that landline that
4 morning?

5 A. I did.

6 Q. Did you answer that call?

7 A. No, I didn't answer the call. I generally don't
8 answer calls that I don't know.

9 Q. Okay.

10 A. I had the option of picking it up if I recognize it.

11 Q. Did that missed call begin leaving a voicemail?

12 A. Yes.

13 Q. Was it recording live?

14 A. It was recording live.

15 Q. Okay. And were you able to hear it as it was
16 recording live?

17 A. I was.

18 Q. If we were to play that recording for you would you
19 be able to identify it?

20 A. Yes.

21 MR. AMADEO: Your Honor, I'm going to begin
22 to play the recording of that robo call.

23 THE COURT: Are you moving for the
24 admission?

25 MR. GRABEL: No objection.

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1 MR. AMADEO: No objection, your Honor.

2 THE COURT: Admitted.

3 MR. GRABEL: Other than him verifying, we
4 have no objection.

5 MR. CUNNINGHAM: Okay.

6 MR. NAOUM: I'm going to play audio.

7 (Playing audio recording)

8 BY MR. NAOUM:

9 Q. Okay. Mr. Thomas, were you able to hear that?

10 A. Yes, I was.

11 Q. Okay. Was this the voice message that you received
12 on August 26th?

13 A. Yes, it was.

14 MR. NAOUM: Your Honor, the People move it
15 to admit this recording as Exhibit 1 for the record.

16 THE COURT: Any objection?

17 MR. GRABEL: No objection.

18 MR. AMADEO: No objection, Judge.

19 THE COURT: Admitted.

20 MR. GRABEL: For preliminary exam.

21 THE COURT: Admitted for exam purposes
22 only. You may proceed.

23 BY MR. NAOUM:

24 Q. Now Mr. Thomas, how did you feel about this robo call?

25 MR. GRABEL: Objection, your Honor. I'm

1 not sure his feelings, positive or negative are
2 relevant to this case.

3 THE COURT: Response?

4 MR. NAOUM: Your Honor, laying foundation
5 as to how this is relevant.

6 THE COURT: Admitted. Sorry, say that
7 again.

8 MR. NAOUM: We're simply laying foundation
9 for how this got to us.

10 MR. GRABEL: How it got to you is relevant
11 to the charges? How it got to the attorney general?
12 I'm not sure it has any probative or material value.

13 THE COURT: I'll sustain the original
14 objection. I'll take how it did get to them though or
15 as to what he did after receiving that call.

16 MR. NAOUM: Okay.

17 BY MR. NAOUM:

18 Q. What did you do after you received that call, Mr.
19 Thomas?

20 A. After I received the call, at first I tried to contact
21 Detroit Election Commission. I was trying to alert
22 someone as to me receiving this type of call and after
23 being on hold for quite some time, close to half hour,
24 without speaking to anyone, I got off the phone and
25 it occurred to me to try to call my news radio 950.

1 That's what I did and I spoke with someone who showed
2 some interest in the call.

3 Q. Why did you do that?

4 A. I did that because I was appalled.

5 MR. GRABEL: Objection, relevance to
6 whether he was appalled or not, not relevant to the
7 elements of the charges.

8 THE COURT: Sustain.

9 BY MR. NAOUM:

10 Q. Did you -- to your knowledge, were those claims in the
11 robo call fake?

12 MR. GRABEL: Objection, need to be a
13 foundation laid that this witness has the expertise to
14 answer those questions based on the (inaudible) of the
15 call. Unless he is going to call Mr. Thomas as an
16 expert witness, I'm not sure it would be proper to ask
17 him these questions, obviously whether the statements
18 were true or not.

19 THE COURT: Your objection is foundation?

20 MR. GRABEL: That's correct.

21 THE COURT: Sustain. Lay a foundation.

22 MR. GRABEL: I would ask for the ability
23 to voir dire this witness on his expertise.

24 THE COURT: I sustained the objection.

25 MR. GRABEL: Thank you.

1 BY MR. NAOUM:

2 Q. Did you think it was possible that more Detroit
3 residents received this call?

4 MR. AMADEO: Objection.

5 MR. GRABEL: Objection, speculation.

6 THE COURT: Does call for speculation,
7 sustain.

8 BY MR. NAOUM:

9 Q. Was there a record of robo calls on your caller I.D.,
10 Mr. Thomas?

11 A. Yes, it was and I believe it still is.

12 Q. Can you tell us what that number was?

13 A. The number, yes, number was 703-795-5364.

14 Q. Thank you. And when you sent this to the media, how
15 did you do that?

16 A. After I talked to the radio station and they showed
17 interest, I was told that I would receive a call back
18 and when I did get a call back, they gave me interview
19 and they were asking me what --

20 MR. GRABEL: Object, what somebody told
21 him is not -- is hearsay.

22 THE COURT: Not offered for the truth of
23 the matter asserted, but offered to show why he took
24 whatever action he is taking. I'll take it for that
25 limited purpose. Overruled. You may proceed.

1 BY MR. NAOUM:

2 Q. Go ahead, Mr. Thomas.

3 A. Yes. So I was told I would get a call back and I did
4 get the call back. I was asked whether -- what I
5 remembered about the call and I did make it known that
6 my answering machine had picked up the call and
7 recorded it and I still had it. I was then asked
8 permission to record-- that they record from my actual
9 answering machine the message that I received and I
10 gave them permission. I was also told that the news
11 radio, they would follow-up and see if there is a
12 case.

13 MR. NAOUM: Okay. Well, thank you, Mr.
14 Thomas. People have no further questions at this
15 time.

16 THE COURT: Cross exam.

17 MR. AMADEO: Thank you.

18 CROSS-EXAMINATION

19 BY MR. AMADEO:

20 Q. Good afternoon, Mr. Thomas. My name is William
21 Amadeo. I'm the attorney for Jacob Wohl. I know
22 we're on Zoom, so if you can't hear me or need
23 clarification, please let me know and I'll cooperate
24 with that. Just a few questions, sir. You spoke to
25 950 A.m., WWJ; is that correct?

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- 1 A. I spoke to the radio station. I didn't speak --
2 someone from the radio station.
- 3 Q. Okay. Someone from the radio station. Who did you
4 speak to, do you know?
- 5 A. The first gentleman's name was Zack.
- 6 Q. Do you know his last name?
- 7 A. I don't remember his last name.
- 8 Q. All right.
- 9 A. I did take a few notes, but didn't take copious notes.
- 10 Q. Now you said you spoke to a few people. Who else,
11 besides Zack did you speak to?
- 12 A. I did speak to radio personality Burton-- Sandra
13 McNeil.
- 14 Q. Did you ever speak to the attorney general?
- 15 A. To the attorney -- on that call?
- 16 Q. Yes.
- 17 A. No.
- 18 Q. How did you end up meeting with the attorney general
19 in this matter?
- 20 A. My -- I was contacted from, I believe, someone from
21 the radio station, if my memory serves me correctly,
22 said that they were to try to forward the information
23 that they had received to the State Attorney Generals'
24 Office and was it okay for me -- for them to call me.
- 25 Q. Okay. So you never actually initiated a contact with

Preliminary examination transcript

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1 the attorney general; is that correct?

2 A. No.

3 Q. Did you ever tell the Detroit Police about this?

4 A. I was -- no, I didn't.

5 Q. Did you ever tell the prosecutors' office in Wayne
6 County about this?

7 A. I'm sorry?

8 Q. Did you ever tell the prosecutors' office in Wayne
9 County about this?

10 A. No, I didn't.

11 Q. So the only people you initially responded to or that
12 you reached out to was the radio station, is that
13 accurate, sir?

14 A. That's fairly accurate.

15 Q. Oh, it was actually the radio station and the attorney
16 general that started this whole issue, correct?

17 A. No, I wouldn't say that.

18 Q. What would you say?

19 A. I would say they gave me comfort that they would be
20 able to follow through on my desire. I had a strong
21 desire to report it, what I had heard and whatever, I
22 had a lot of things to do and after taking the time
23 out to have this interview with the radio station and
24 mind you, me feeling confident that they had better
25 avenues to contact the proper persons in charge, that

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1 I would be getting a proper follow-up.
2 Q. How long was your interview with the radio station,
3 Mr. Thomas, do you know?
4 A. Which one, in particular, are you talking about?
5 Q. Just both of them. Give me first one with Zack and
6 then the second one, how long do you think each one
7 was?
8 A. The first interview, probably, about 20 minutes, 25
9 minutes.
10 Q. And the second?
11 A. Second about the same, about the same. I had
12 already-- I had already left my house at that point.
13 Q. Prior to August 26th of 2020, did you ever place
14 yourself on a do not call list?
15 A. A do not call list?
16 Q. Yes, sir.
17 A. Yes, sir.
18 Q. You did?
19 A. Yes.
20 Q. When did you place yourself on a do not call list?
21 A. Several times over several years. It doesn't seem to
22 work.
23 Q. Okay. So you -- let's be clear about this, you were
24 on a do not call list when a call came into your home;
25 is that correct?

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1 A. Yes.

2 Q. Do you know when the last time you placed yourself on
3 the do not call list?

4 A. No. As I said before, it doesn't seem to work.

5 Q. Now what time do you recall the call coming to your
6 home?

7 A. This call?

8 Q. Yes, sir.

9 A. That robo call came in at 11:16 a.m..

10 Q. I'm sorry, were you looking at notes there, sir?

11 A. Yes, I just did refer to my note.

12 Q. Okay. I would appreciate you not looking at those
13 while I'm asking questions, if that's okay.

14 A. Okay.

15 THE COURT: Sir, if you need to refresh
16 your recollection, just let us know and you can use
17 whatever you need to refresh your recollection, just
18 let us know beforehand.

19 THE WITNESS: Thank you.

20 THE COURT: Okay.

21 By MR. AMADEO:

22 Q. Now was the call to a landline or a cell phone?

23 MR. NAOUM: Asked and answered.

24 MR. AMADEO: It wasn't asked and answered
25 by me.

Preliminary examination transcript

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1 THE COURT: Overruled.
2 By MR. AMADEO:
3 Q. I'm going to ask you again, was it a landline or cell
4 phone that this call came on?
5 A. That call came to a landline.
6 Q. How many calls did you receive from that number?
7 A. From that number, it was one.
8 Q. One call?
9 A. Yes.
10 Q. Did you pick it up?
11 A. No, I didn't.
12 Q. Did the answering machine pick it up?
13 A. The answering machine did, yes.
14 Q. Do you have the recording still?
15 A. I believe it's still recorded.
16 Q. Were you asked for the recording by the attorney
17 general?
18 A. I don't recall that.
19 Q. How many times did you listen to the call?
20 A. Including today?
21 Q. Before today? Ballpark.
22 A. Two, three times.
23 Q. So let me be clear, is it true that you had one call
24 come in?
25 THE COURT: Asked and answered.

1 THE WITNESS: Yes.

2 BY MR. AMADEO:

3 Q. Okay. How many -- did you ever share this call with
4 anybody?

5 A. Beg your pardon?

6 Q. Did you share the phone call with anybody?

7 A. Yes. As I stated before, I shared it with the radio
8 station.

9 Q. Anybody else besides that?

10 A. Not the actual call, no.

11 Q. Did you discuss it with people?

12 A. I actually posted a comment that I had received a
13 call, yes, I posted on Facebook.

14 Q. And on that Facebook post, was it shared by any of
15 your friends?

16 A. I'm not sure what you mean by shared. Did they -- are
17 you asking did they see it?

18 Q. No, I'm asking did they go to your page? Did you
19 actually share it with other people?

20 A. I don't have any idea if they shared it with other
21 people.

22 Q. Would it surprise you if somebody on your Facebook
23 page asked if they could share it and you asked them
24 for advice on that?

25 THE COURT: Counsel, I'm not exactly sure

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1 where you're going on this, but how is it relevant?

2 MR. AMADEO: I'm just building foundation
3 about the history of this call, Judge. I can move
4 forward.

5 THE COURT: Please.

6 BY MR. AMADEO:

7 Q. Mr. Thomas, as far as the robo call is concerned, do
8 you have any firsthand knowledge that the message in
9 robo call was a lie?

10 A. Do I have any firsthand knowledge? All I know is how
11 I felt when I heard the message from the phone.

12 Q. I understand how you felt, sir.

13 A. I'm not a technician and you know, I have no firsthand
14 knowledge.

15 Q. Okay. Did you vote in the August 4th primary?

16 A. Beg your pardon?

17 Q. Did you vote in the August 4th primary?

18 A. You're talking about this year?

19 Q. Yes, sir.

20 A. Yes, sir.

21 Q. Are you voting or have you voted this election coming
22 up?

23 A. Yes.

24 Q. Have you voted by mail?

25 A. Yes.

1 Q. So would it be fair to say that this call did not
2 affect you from voting at all?

3 A. No, it wouldn't.

4 MR. AMADEO: Thank you. Nothing further at
5 this time.

6 THE COURT: Mr. Grabel.

7 MR. GRABEL: Just a few follow-up
8 questions.

9 CROSS-EXAMINATION

10 BY MR. GRABEL:

11 Q. Good afternoon, Mr. Thomas. I appreciate your time
12 today. For any reason you don't hear me, just ask me
13 to speak up, would that be okay?

14 A. Fine.

15 Q. I appreciate that, Mr. Thomas. Obviously the call
16 that you heard, you believe that was the exact call
17 that came into you on the date that you mentioned
18 August 26th, 2020, correct?

19 A. Correct.

20 Q. So you believe that's an accurate rendition, nothing
21 has been altered or changed in any way, would you
22 agree with that?

23 A. It seems-- it appears that way, yes.

24 Q. Okay. So that's a fair context and tone of what you
25 received on August 26th, 2020, correct?

1 A. Yes.

2 Q. I appreciate you clarifying. Obviously, I understand
3 the message made you upset. I just want to ask you a
4 few questions and I wouldn't go into heavily why it
5 made you upset or the reason. Did you feel that after
6 listening to the message that you were going to suffer
7 some type of physical harm in any way based on that
8 message?

9 A. Not necessarily physical harm, no and not just myself.
10 I wasn't concerned about myself, when I got the
11 message.

12 Q. Sir, did you feel that your first -- and again, I
13 understand you may not -- one of the elements it may
14 be relevant to something called menacing, which has a
15 physical component to it, did you feel, after
16 listening to the message, in your opinion and I
17 understand you don't speak to the public at large, did
18 you feel that the message somehow threatened your
19 physical safety in any way, shape or form in your
20 opinion?

21 A. Not directly, no.

22 Q. Okay. Was there an indirect way that you thought
23 that you could suffer physical harm in any way after
24 listening to the message, in your opinion?

25 A. In some vague way, the climate that I've been seeing

1 this country going to and being very polarized, I've
2 been surprised by the amounts of degree folks would go
3 through to try and stand on one side or the other.
4 So not directly. I would say that I felt directly
5 that there was some direct physical harm that might
6 come to me, but certainly, possible, for some type of
7 association that it could.

8 Q. Did you read or were there words on that message that
9 you felt that you could indirectly or consequentially
10 suffer physical harm? Is that something that you felt
11 was unspoken or inferred? Explain if you could and
12 I'll wrap it up. I won't ask anything more on that.

13 A. Well, the message itself was stating that my
14 information would be given to the police department
15 and for them to see whether or not I, you know, had
16 any prior warrants. Also that the -- my information
17 would be given to credit card companies to see if I
18 had any bad debt. And then to-- top of the matter,
19 to me, was that it would be given to the CDC to try to
20 enforce me to have a vaccination.

21 Q. And I would be fair to say and I don't want to re--
22 I'll ask one question, you were offended by that
23 message, you found it offensive, am I correct?

24 A. Yes.

25 Q. I respect you. I understand that. Sir, I just want

1 to ask you a question, you seem like a very
2 intelligent man and I mean that sincerely, are you
3 aware, statutorily, in Michigan, if I or any person in
4 Michigan wanted to get your name and address and your
5 year of birth, I could actually, me or any other
6 person, citizen could obtain your information through
7 mail in voting, were you aware of that and MCL 168 --

8 THE COURT: How is this relevant, Mr.
9 Grabel?

10 MR. CUNNINGHAM: Well, I'll testing his
11 knowledge. I think it's relevant that he indicates
12 that he was offended. I'm just exploring if that
13 information is available. I would ask for some
14 latitude, your Honor. This is a case of first
15 impression and I'm going to wrap it up.

16 MR. NAOUM: Your Honor, he said earlier
17 that he wasn't an expert. He didn't want to go into
18 details of the law.

19 MR. GRABEL: Well, I'm asking if he is
20 aware. If he is not aware, I'm okay with that. I'm
21 going to wrap it up. I won't have any follow-up on
22 that particular line of questioning, your Honor. If
23 he is aware of that information --

24 THE COURT: I appreciate you wanting to get
25 this information, but whatever information you seem to

1 get still has to be relevant and I don't see that as
2 being relevant. Anything else you have?

3 THE WITNESS: I appreciate the Court's
4 ruling, your Honor.

5 MR. GRABEL: Thank you. Thank you, Judge.

6 BY MR. GRABEL:

7 Q. Mr. Thomas, would it be fair to say that you believe,
8 in your opinion, the message had any kind of
9 connotation towards any person voting in any way,
10 shape or form, in your opinion?

11 A. In my opinion, there was a deterrent from mail-in
12 voting and that you probably should vote in person.

13 Q. Okay. That's -- I mean, again I'm not putting words
14 in your mouth, that's your interpretation of the
15 message, is that a fair statement?

16 A. Yes. That's -- yeah. I would say -- I shouldn't say
17 what the intent of it towards in person voting, I
18 would say that the intent seemed to be to not vote by
19 mail.

20 Q. Okay.

21 A. There was no encouragement to go in in person voting.
22 There was no encouragement for in person voting.

23 Q. Did you feel in that message, in your opinion, there
24 was a -- it was disparaging you from voting in general
25 through in person voting, in any way, shape or form,

1 in your opinion?

2 A. In person voting?

3 Q. Yes.

4 A. I'm not sure. The message, as I said, it didn't-- it
5 was not surrounding or content was not about in-person
6 voting. It was about voting by mail. So the in-
7 person voting was not a part of the -- was not a part
8 of the message and I didn't feel that there was any
9 reference to in-person voting.

10 Q. Okay and as you said before, this didn't deter you
11 from even mail-in voting. You personally didn't have
12 a chilling effect on you to continuing to vote by mail
13 in voting, you personally; is that correct?

14 A. Me, personally, I vote as often as I can so no, it
15 wouldn't -- it didn't, no.

16 MR. GRABEL: Okay. I appreciate your
17 time, Mr. Thomas. Thank you for taking time out of
18 your day to come via Zoom and obviously offer your
19 time. I'm sure you have better things to do. Thank
20 you, again, sir.

21 THE WITNESS: You're welcome.

22 THE COURT: Any redirect?

23 MR. NAOUM: Yes, your Honor.

24 THE COURT: Go ahead.

25 REDIRECT EXAMINATION

1 BY MR. NAOUM:

2 Q. Mr. Thomas, you indicated you didn't feel threatened
3 physically. Did you feel threatened in any other sort
4 of way other than physical harm?

5 A. I was more appalled than threatened, felt threatened.

6 Q. To your knowledge, is there a reason why someone would
7 not want to vote right now?

8 A. Oh, there's several reasons why people wouldn't vote
9 in-person. We have a pandemic that is world-wide and
10 safety for your life is simply the utmost concern of
11 anyone. In-person voting is not as safe as it is
12 voting from home or early voting.

13 MR. GRABEL: I'm going to object. Again,
14 no disrespect to Mr. Thomas. I think that statement
15 calls for a medical conclusion. If you follow CDC
16 guidelines, wear a mask, social distancing, I think
17 both candidates, including democrat and republican,
18 would disagree with that statement, so I would ask for
19 a foundation to be laid by Mr. Thomas as expertise--

20 THE COURT: No. He asked his feeling, his
21 personal feeling. Overruled.

22 MR. GRABEL: I have no problem and that --
23 (inaudible)

24 THE COURT: Again, keep your voice up, Mr.
25 Grabel.

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1 MR. GRABEL: I will, your Honor. Thank
2 you.

3 BY MR. NAOUM:

4 Q. Mr. Thomas, can you explain why it didn't have a
5 chilling effect on you?

6 A. When you say chilling effect --

7 Q. Yeah. Why did this not stop you from voting in mail?

8 A. Oh, actually I vote by mail most of the time. I have
9 been voting absentee in several elections for the
10 longest. That's actually -- just so happens November
11 is my anniversary month and I travel a lot in November
12 and therefore, I had to request absentee ballots for a
13 long time. And there's a way for you to track the
14 absentee ballots. I felt very comfortable receiving
15 notifications that my ballot was received, mailed out
16 by such and such a date and received by such and such
17 a date and I felt very confident and still do that my
18 vote is in the hand of the election committee.

19 Q. So regardless of the robo call, it didn't dissuade
20 you?

21 A. No.

22 MR. NAOUM: Thank you. No further
23 questions.

24 THE COURT: Mr. Naoum, I have a couple
25 follow-up questions myself, but before I ask those

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1 questions, can you play the audio back for me once
2 more, please?

3 MR. NAOUM: Yeah. Sure. One moment.

4 MR. GRABEL: I may have a follow-up when
5 the Court is done, solely what was asked on redirect
6 only, your Honor.

7 THE COURT: Okay.

8 (Audio recording being played)

9 THE COURT: Okay. Thank you.

10 THE COURT: Mr. Thomas.

11 THE WITNESS: Yes, sir.

12 THE COURT: Hate to do this to you, but how
13 old are you, sir?

14 THE WITNESS: I am 62.

15 THE COURT: How long have you been voting?

16 THE WITNESS: Oh, long time, since I can
17 remember verbatim, since I was a kid.

18 THE COURT: All right. So you're not a
19 brand new voter, right?

20 THE WITNESS: No, sir.

21 THE COURT: And you said that you
22 regularly exercise voting by mail or absentee mailing;
23 is that right?

24 THE WITNESS: Yes, I do, sir.

25 THE COURT: Okay. Now when you heard this

1 robo call and it made certain assertions, like your
2 personal information could be stored in a database and
3 that type of thing and police could use it in pursuing
4 old warrants and that type of thing, in your years of
5 voting, did you find that information to be true or
6 not true?

7 THE WITNESS: In my years of voting, sir, I
8 have never had any inferences of that, no.

9 MR. GRABEL: And your Honor, I would ask
10 for a foundatoin be laid that this witness, just
11 because he has years of voting, I don't think it
12 speaks to the tendance of the call that he had a
13 foudation to answer that. I've been voting for
14 years. I don't think it gives me expertise.

15 THE COURT: I wasn't asking as an expert, I
16 was asking in his years of voting did he find that
17 information that was related to him in this robo call
18 to be true or not.

19 MR. GRABEL: I would object. I don't
20 think it's relevant to this.

21 THE COURT: Your objection is noted for the
22 record. Overruled. You may answer the question,
23 sir.

24 THE WITNESS: Your Honor, I have never had
25 any type of inference that my information would be

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1 given to any other organization other than the voting
2 registration information.

3 THE COURT: Have you personally heard that
4 your information could be forwarded to credit card
5 bureaus or credit card companies to collect a debt?

6 THE WITNESS: Not until this call. That's
7 when I first heard something of this.

8 THE COURT: And what about the references
9 to CDC, you could --

10 THE WITNESS: No.

11 THE COURT: Okay.

12 THE WITNESS: Sorry, sir. That was the
13 first time that I heard a reference to the CDC
14 enforcing vaccinations.

15 THE COURT: Okay.

16 THE WITNESS: I have never -- first time I
17 heard any of this from this call.

18 THE COURT: I also recall, correct me if
19 I'm wrong, you said prior to contacting the radio
20 station that you tried to get in touch with the
21 election bureau to inform them of this; is that right?

22 THE WITNESS: That is correct, sir.

23 THE COURT: All right. Okay. Any
24 questions based on my questions? I think Mr. Grabel
25 said that he had a couple questions, based on Mr.

1 Naoum's redirect.

2 MR. GRABEL: I do.

3 RE-EXAMINATION

4 BY MR. GRABEL:

5 Q. First of all, Mr. Thomas--

6 THE COURT: Keep your voice up nice and loud
7 for me, Mr. Grabel.

8 MR. GRABEL: I appreciate it.

9 BY MR. GRABEL:

10 Q. You look pretty good for 62. That's not a question,
11 just a statement. Must be doing something right.

12 A. Thank you.

13 Q. Question, you indicated, obviously and I won't get
14 into the particulars, obviously, you felt you
15 mentioned with the pandemic or concern about the
16 health implication of in-person voting. Is that
17 something that I think you said that during one of
18 your answers I think it was my cross-examination; is
19 that correct?

20 A. Can you restate it again?

21 Q. Yeah. I think you indicated that you had some health
22 concerns about in-person voting because of the
23 pandemic, correct? I'm summarizing, but I think that
24 was the construct of your statement; is that correct?

25 A. Yes, in general, there are health concerns, yes.

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- 1 Q. I respect that and I'm not going to go into your
2 personal travel itinerary, you indicate that, you
3 volunteered that you're planing on doing some
4 traveling this month, correct?
- 5 A. No, that's not correct.
- 6 Q. Did you say you were going to travel?
- 7 A. No. I said I usually travel in November.
- 8 Q. Okay. But not this year?
- 9 A. Oh, no. No, no.
- 10 Q. Okay. I was going to ask you a few questions only
11 directed on what the judge's line in questioning, it
12 seems like the judge asked you some questions that you
13 believe with your experience as a voter that the -- I
14 guess the message that if you will, the tendance of
15 the message was false, correct? You didn't believe
16 that it was accurate, based on the Judge's question to
17 you, is that a fair representation to you?
- 18 A. Correct, and I believe it was malicious.
- 19 Q. Okay. And obviously, I respect your opinion, I guess
20 I'll ask the question again, because I think that the
21 Court delved into that, are you aware under MCL 1685
22 me or you, any other person could get your name,
23 address and your year of birth for any mail-in voter,
24 were you aware of that, sir?
- 25 A. Not in particular.

1 Q. Okay. Now my question is, sir, are you aware that
2 and I can play it for you, if you're not, it's okay, a
3 few weeks ago on a town hall president, I guess Vice
4 President Biden indicated after being asked a question
5 at the town hall, by George Stefanopolos, he would
6 consider mandating vaccines, order it?

7 MR. NAOUM: Your Honor, relevance.

8 THE COURT: Sustained.

9 MR. GRABEL: Relevance because the Court
10 rightfully inquired about it.

11 THE COURT: No, I sustain the objection.
12 Please move on, sir.

13 MR. GRABEL: I'm sorry, your Honor.

14 THE COURT: I sustained the objection.
15 Please move on.

16 MR. GRABEL: Okay.

17 BY MR. GRABEL:

18 Q. Just so I'm clear, so I don't waste the Court's time
19 so if I challenge -- I mean, his conclusions of why it
20 falls is with information that there is plausibility
21 in this case?

22 THE COURT: It sounds like you are assuming
23 facts not in evidence. I sustain the objection and
24 I'm waiting on your next question. If you have any --

25 BY MR. GRABEL:

1 Q. Sir, do you have any background in law enforcement?

2 A. Law enforcement, no, I'm not a law enforcement
3 officer, no.

4 Q. So if you're -- do you have any expertise to determine
5 if one enforcement -- or law enforcement official
6 could obtain your information, of an elected voter to
7 run against the person if he had outstanding warrant,
8 you cannot comment on whether law enforcement
9 individual has the legal ability to do that? You
10 don't have the expertise; is that fair?

11 A. I do not have the expertise.

12 Q. Okay. And I appreciate that. My question is two, I
13 assume you have no affiliation with any collection
14 agency or credit card company if they wanted to
15 legally obtain information on somebody that had a
16 delinquent or collection purposes, would you agree
17 that do you don't have the expertise to say if the
18 credit card company could do something and still be
19 within legal bounds in this state, State of Michigan?

20 A. Can you repeat that?

21 Q. Yes. I didn't phrase that very well. I would. Do
22 you have any knowledge whether a credit card company
23 could obtain a mail-in voters information to see if
24 they have, I guess, cross reference that with any
25 outstanding credit card debt, do you know if a credit

1 card company can do that legally?

2 A. I have no idea, no.

3 MR. GRABEL: Appreciate your time, again,
4 Mr. Thomas. Thank you, again, sir.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you, Mr. Thomas. If
7 we're all done with Mr. Thomas, I would release him.

8 MR. GRABEL: Yes, please, your Honor.

9 MR. AMADEO: Yes.

10 THE COURT: Okay. Thank you, sir. Have
11 a good day. Stay safe.

12 THE WITNESS: Thank you. I will exit,
13 leave, I believe.

14 THE COURT: Be safe, Mr. Thomas. Thank
15 you. Next witness, please.

16 MR. CUNNINGHAM: Our next witness is
17 Jeffrey Campbell.

18 THE COURT: Please spell your full name.

19 THE WITNESS: J-e-f-f-r-e-y,
20 C-a-m-p-b-e-l-l.

21 Please raise your right hand.

22 J E F F R E Y C A M P B E L L,
23 after been first duly sworn to tell the truth, the
24 whole truth and nothing but the truth, was examined
25 and testified as follows:

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1 THE WITNESS: Yes, I do.

2 THE COURT: Thank you, sir. You may begin
3 when you're ready.

4 DIRECT EXAMINATION

5 BY MR. CUNNINGHAM:

6 Q. Sir, would you tell the Court your full name please?

7 A. Jeffrey Campbell.

8 Q. What is your occupation, sir?

9 A. I am a Special Agent for the Michigan Department of
10 Attorney General.

11 Q. How long have you held that position?

12 A. Since March 23rd of this year.

13 Q. And what did you do before that?

14 A. I worked for the Eaton County Sheriffs Office for 25
15 years before I retired in March.

16 Q. And worked for what?

17 A. I started off a road patrol deputy, worked my way up
18 through the ranks and I retired as a captain, assigned
19 to the detective bureau twice during my career.

20 MR. GRABEL: Your Honor, I would stipulate
21 that Mr. Campbell is qualified as a law enforcement--
22 (inaudible) if that helps.

23 MR. CUNNINGHAM: Glad to hear that. Can I
24 continue with my questioning?

25 THE COURT: All right. You may.

1 BY MR. CUNNINGHAM:

2 Q. Now sir, in regards to your background in law
3 enforcement, did you have occasion to learn about a
4 particular recorded message back in August?

5 A. Yes.

6 Q. Under what circumstances did you learn about that
7 message?

8 A. I was assigned, from my office, to investigate a robo
9 call regarding mail-in voting. My assignment came
10 August 27th.

11 Q. All right, sir. And did you have occasion to
12 actually listen to that?

13 A. I did. As part of my assignment, I was given a copy
14 of the robo call in question.

15 Q. Now sir, I'm going to play for you what was actually
16 already admitted into evidence as Exhibit Number 1.
17 May I ask the Court to allow me to share it?

18 THE COURT: Okay. Give me one second.

19 MR. CUNNINGHAM: May I proceed, your Honor?

20 THE COURT: Hold on a second. I have to
21 make you a host. Okay. You may proceed.

22 MR. CUNNINGHAM: Thank you.

23 (Playing audio recording)

24 BY MR. CUNNINGHAM:

25 Q. And is that, in fact, the recording that was provided

1 to you?

2 A. Yes, it is.

3 Q. Now in that recording, does it say under the law you
4 can use this under the law, you can or the police can
5 use this or does it say the police will use it to
6 track down warrants?

7 MR. GRABEL: Your Honor, I think that the
8 call speaks for itself verbally. The Court heard it
9 at least three or four times.

10 THE COURT: I'll sustain that, if that's a
11 objection.

12 By MR. CUNNINGHAM:

13 Q. Does it say they will, in fact, do that?

14 A. Yes, sir.

15 Q. When you got that assignment on that tape, did you
16 take any action in regard to determine where that tape
17 came from, the origination of that all?

18 A. Yes. The first thing I did was contact Mr. Thomas.

19 Q. Okay. And after doing that, what did you do?

20 A. I drafted a search warrant to U.S. Telecom to initiate
21 a trace back or to get the trace back record that were
22 initiated, finding the original point of this call.

23 Q. You use the name of a particular organization, U.S.
24 Telecom, I believe?

25 A. Yes, U.S. Telecom.

1 Q. What is that?

2 A. That's a trade association of the major
3 telecommunication providers, service providers that
4 organizations run the industry trace back group, which
5 is what we use to trace the source of robo calls.
6 They've been in existence for a few years now and our
7 office has worked with them in the past to trace back
8 any robo calls.

9 Q. And sir, you served a search warrant on them; is that
10 correct?

11 A. Correct.

12 Q. And after you served that search warrant did they
13 respond to it?

14 A. Yes, they did.

15 Q. What did you do next after they responded to that
16 search warrant?

17 A. I reviewed the information that they provided and
18 drafted another search warrant.

19 Q. And that second search warrant was who?

20 A. That was actually to a called Message Communications
21 president, Robert Mahanian in Los Angeles, California.

22 Q. Was a search warrant actually issued?

23 A. It was by Los Angeles County Judge, yes, it was.

24 Q. Did you participate in the execution of that search
25 warrant?

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1 A. Yes, I did.

2 Q. And who else participated in the execution of the
3 warrant?

4 A. Special Agent Brian Landy from my office went with me
5 to Los Angeles and I had assistance from the
6 California Department of Justice in drafting and
7 getting the search warrant approved and executing the
8 search warrant.

9 Q. The Special Agent Landy have any expertise or
10 specialization on the laws?

11 A. He is our office Computer Examiner.

12 Q. When you executed the search warrant, how did that
13 occur?

14 A. The agents from California actually gave the initial
15 contact with Mr. Mahanian's office, which is also his
16 residence in Los Angeles. And then once that initial
17 contact was made, and participated in the search
18 warrant.

19 Q. What did that warrant authorize you to-- search
20 warrant authorize you to search and seize?

21 A. All records related to the mobile call on August 26th
22 of this year and any records that are related to the
23 WJM Burkman and Associates, Jack Burkman, particularly
24 and any recordings or communications with those
25 people.

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1 Q. And did you locate any electronic records in that
2 search?

3 A. Yes, I did.

4 Q. And did the search warrant authorize seizure of the
5 electronic records?

6 A. Yes, it did.

7 Q. And how was that done?

8 A. 'Um, different ways. Agent Landy conducted a cell
9 phone upload for Mr. Mahanian's cell phone. While we
10 were uploading, Mr. Mahanian's actually was observing
11 us access his records, which he indicated were stored
12 on a remote server, not necessarily on-site. He
13 allowed us to upload those.

14 Q. A lot of reports?

15 A. A lot of reports.

16 Q. Can you give us an idea about the approximate size of
17 the electronic --

18 A. I think his cell phone upload was a hundred and -- was
19 in excess of a hundred and 50 gigabytes.

20 Q. And after you did that search warrant, did you draw
21 any interest in any particular email addresses?

22 A. Through some emails that I seized from Mr. Mahanian, I
23 noticed there were communications between him and two
24 email addresses, first one being Jack Burkman, 2016@
25 Gmail.com and the second one was Jacobwohl@gmail.com.

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1 Q. And armed with that knowledge, what did you do?

2 A. I drafted another search warrant, received approval
3 and served it to --

4 Q. And did you receive a -- well, excuse me, what did you
5 ask for in that search warrant?

6 A. Subscriber and records identifying the records of
7 those two email addresses through Google.

8 Q. Okay.

9 A. Electronic records associated with that, including
10 email and email content.

11 Q. Did Google respond to that search warrant?

12 A. Yes, they did.

13 Q. How did they respond?

14 A. They provided, in two separate parts, account
15 subscriber information as requested along with the
16 emails that had been requested for both email
17 addresses identifying John Burkman as one of the
18 account holders for Jack Burkman 2016 and Jacob Wohl
19 at the holder for Jacob Wohl@Gmail.Com.

20 Q. Now were those records provided you in paper form?

21 A. No. They were provided through numerous portal and
22 used to provide these records from through search
23 warrant and subpoena and I downloaded the electronic
24 through that.

25 Q. Is that portal open to that public or is there public

1 access to that?

2 A. No. That is something that you would have to be law
3 enforcement officer to access.

4 Q. So it was records electronically transmitted from
5 them; is that right?

6 A. They were electronically transmitted to me through
7 that.

8 Q. Now did you have occasion to review some of those
9 documents provided by Google?

10 A. Yes.

11 Q. And does Google provide any type of certification
12 along with those business records?

13 A. They did provide a Certificate of Authenticity that
14 was digitally signed by their records keeper.

15 Q. Did you have occasion to look through some of the
16 emails that were provided by Google?

17 A. Yes, I did.

18 MR. GRABEL: I would indicate there is
19 nobody hear from Google and --

20 THE COURT: Keep your voice up. I can't
21 hear you, Mr. Grabel.

22 MR. GRABEL: He is testifying to records
23 that are not in evidence, your Honor and no foundation
24 to lay on authenticity of these records. We need the
25 record from Google.

1 THE COURT: I think your objection may be a
2 little premature.

3 MR. CUNNINGHAM: Yeah.

4 BY MR. CUNNINGHAM:

5 Q. I asked him if he had occasion to review those emails?

6 A. Yes, I did.

7 Q. And how many emails did you have the opportunity to
8 examine?

9 A. I don't have an exact number of emails. There was a
10 lot of emails in both that were provided by Google.

11 Q. Okay. I'm going to show you what I will have marked
12 for purposes of identification as People's Proposed
13 Exhibit 8 and ask you if you recognize Proposed
14 Exhibit number 8?

15 A. I do.

16 Q. Okay. What is that?

17 A. That is the first page of the letter that I received
18 along with the documents provided by Google, included
19 in that letter includes their Certificate of
20 Authenticity.

21 Q. Okay. And that certified by an electronic signature;
22 is that correct?

23 A. That is correct.

24 Q. And it's certified as authentic business record as it
25 indicates, right, in the signature; is that correct?

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1 A. Correct.

2 Q. Now in regards to exhibit -- Proposed Exhibit 8, you
3 indicated there were a lot of emails, but you -- the
4 exhibit itself has attached only a few of them; is
5 that correct? You have seen this before?

6 A. I have seen this exhibit, yes and yes, it does have
7 some of these emails attached.

8 Q. Each and every one of those attached emails was part
9 of that delivery from Google?

10 A. Yes. These exhibits, these were from Google.

11 Q. Those properly authenticate business record that you
12 received from Google?

13 A. Correct.

14 MR. CUNNINGHAM: I move for admission of
15 Proposed Exhibit 8.

16 MR. GRABEL: I would object unless it has a
17 raised seal periodic. Michigan Rule of Evidence, I
18 believe and I could be wrong, 1001, it's not a
19 self-authenticating document. It doesn't authenticate,
20 therefore he needs somebody from Google to
21 authenticate it.

22 THE COURT: Mr. Cunningham? So not for
23 exam purposes, I don't.

24 MR. GRABEL: Well, the Rules of Evidence
25 still apply and preliminary exam, I'm not aware of

1 that one being waived. It may be in Rules of
2 Evidence.

3 THE COURT: Still not a self-authenticating
4 document, but I certainly respect it.

5 THE COURT: Mr. Cunningham, your response?

6 MR. CUNNINGHAM: Your Honor,
7 self -authenticating under the rule, I'm offering it
8 working under the Michigan Rules of Evidence, not the
9 Grabel rules, which I hope those --

10 MR. GRABEL: You can cite that, if you
11 want, but I don't have any rules, but once I do, I'll
12 make a copy of it.

13 THE COURT: Let save the sarcasm and keep
14 it professional.

15 MR. CUNNINGHAM: I would rely on the
16 90211, certified records of regularly conducted
17 activity. The original or duplicate of a record,
18 whether domestic or foreign, in regularly conducted
19 business activity, that would be admissible under
20 803.6, if accompanied by a written declaration by a
21 custodian or other qualified person and it falls
22 within that particular rule.

23 THE COURT: All right. Court's going to
24 allow it.

25 MR. CUNNINGHAM: Self-authenticating

1 documents.

2 THE COURT: Court admits it under the self-
3 authenticating document and I am going to admit it
4 over defense counsel's objection, which is noted for
5 the record.

6 MR. GRABEL: Thank you, your Honor.

7 BY MR. CUNNINGHAM:

8 Q. Mr. Campbell, you've indicated that attached to the
9 exhibit or last part of the exhibit, I'm sorry, are a
10 number of emails that you have seen that were put
11 together with this exhibit; is that correct?

12 A. Yes. These are emails that I found which Google
13 records provided to me.

14 Q. Okay. And now these -- were those records were
15 provided you, they didn't have those Bates numbers,
16 the numbers that was added in working the exhibit; is
17 that correct?

18 A. You're referring to the 002003 at the bottom of the
19 page? Yes, that's correct. Those were not on my
20 original records.

21 Q. Okay. I'm going to go down to through the subscriber
22 information and what are all these entries here with
23 the subscriber information?

24 A. Those are the account log, analog out records, along
25 with dates and time and address that is used to access

1 the accounts.

2 Q. All right, sir. I got in the exhibit, Exhibit 8, move
3 down to what Bates stamp and 11, page 11, I'm going to
4 ask you if you recognize that, sir?

5 A. I do recognize it, yes.

6 Q. Could you read -- I'm sorry. Let me get back to it.
7 Sorry, I'm having a little problem with the technical
8 part of it here.

9 All right, 11, tell us what this number 11
10 is, please, page 11, number A.

11 A. I'm sorry, you cut out there a little bit. What was
12 the question?

13 Q. Can you describe for us or tell us what this is, page
14 11 of Exhibit A?

15 A. This is an email that I found within Google records
16 provided to me by Google. I can scroll up a little
17 bit. I can see it --

18 Q. Okay. And if you'll read it into the record once I
19 scroll?

20 A. Okay. This email says in subject line regarding Dem
21 dated August 19th, of 2020 at 11:49. It's from Jack
22 Burkman 2016 Gmail, to Jacob Wohl Gmail.com first part
23 of email, yes America needs W.B. This is in response
24 to an email sent by Jacob Wohl email to Jack Burkman,
25 2061 at Gmail.com on Wednesday August 19th, that's

1 11:40 a.m.. That message says Bill Clinton speaks.

2 THE COURT: Hold on. You need to speak up
3 just a little louder and a little slower, please.

4 THE WITNESS: Yes, sir. Can you hear me
5 okay now?

6 THE COURT: Okay, all right. You may
7 proceed.

8 BY MR. CUNNINGHAM:

9 Q. Please proceed, Mr. Campbell.

10 A. Okay. I was middle of, I believe, the second part of
11 that email, from August 19th, 2020, 11:40 a.m.. Bill
12 Clinton dem convention speech viewership on-line
13 stream total viewership, ABC, 727, CBS 424, NBC 196,
14 no, I'm not missing any zeros. Our press conference
15 is literally get 50 to a hundred times more views,
16 which is why we must hi-jack this boring election.

17 MR. AMADEO: Your Honor, I'm going to make
18 an objection right now. This is about advertising and
19 on-line streaming. This has nothing to do with the
20 robo calls. Mr. Cunningham is purely going on a
21 fishing expedition here.

22 MR. CUNNINGHAM: Your Honor, the heart of
23 this is intimidating voters and when you talk about
24 hi-jacking a boring election, I think that he's very
25 clear intent here to intimidate voters that affect the

1 outcome of the election. The motive here and the
2 motive that would be shown throughout is the intent to
3 unfairly affect this election. So very clearly, this
4 is relevant.

5 MR. GRABEL: Saying that they're hi-jacking
6 a boring election --

7 MR. CUNNINGHAM: I didn't say that, Mr.
8 Wohl said that.

9 MR. GRABEL: Well, your accusation is about
10 a robo call, not a --

11 THE COURT: I'm going to need the parties
12 to speak to the Court, not each other.

13 MR. GRABEL: Sorry, your Honor. Your
14 Honor, I'm saying that this email between the two
15 defendants about their personal views on a boring
16 election or Bill Clinton's democratic speech
17 viewership has absolutely zero to do with if there's
18 probable cause that the robo call violated the
19 Michigan Statute.

20 THE COURT: Okay. So I take it this is the
21 404B type evidence that you were seeking, Mr.
22 Cunningham?

23 MR. CUNNINGHAM: Well, this is not the 404
24 B evidence I talked about before. This is going
25 strictly motive. Motive is always relevant.

1 THE COURT: Motive is part of 404B, as
2 well.

3 MR. CUNNINGHAM: Yeah and it would go to
4 404B, but if note the date is August 19th, this is
5 very short period of time before the robo calls go out
6 and I think it will be even clearer when you see some
7 of the other emails. This has already been admitted
8 into evidence here.

9 THE COURT: All right. I'll take it under
10 advisement for right now. You may proceed.

11 BY MR. CUNNINGHAM:

12 Q. Okay. Sir, the next email, tell us what that is.

13 A. This is an email, it says on the subject line, Robert
14 and it's dated August 22nd, 2020, at 2:48. It's from
15 Jack Burkman, 2016 at Gmail.com to Robert at Message
16 Communications.Com and Jacob Wohl@gmail.com. It says
17 want to make sure check arrived. We are ready to
18 begin the robo calls.

19 Q. And the next page, sir?

20 A. This one also says in the subject line regarding
21 Robert, it's dated August 23rd, 2020 at 332. It's
22 from Robert at Message Communications.com to Jack
23 Burkman 2016@gmail.com and Jacob Wohl@Gmail.com. It
24 says Hi Jack. The check hasn't arrived yet, but I'll
25 check again on Monday morning. Do you have a

1 tracking number for it? As soon as I receive it, I'll
2 send over the paid invoice showing both payments in
3 2020 for 2000 dollars. Thank you, again and signed by
4 Robert Mahanian.

5 Q. The next page, please.

6 A. This email says robo call tape in the subject line.
7 It's dated August 25th, of 2020 and 0010. It's from
8 Jacob Wohl@Gmail.com to Jack Burkman 2016@Gmail.com.
9 It says attached is the audio file for the robo call.
10 We should send it to black neighborhoods in Milwaukee,
11 Detroit, Philadelphia, Charlotte, Richmond, Atlanta
12 and Cleveland.

13 Q. Was there anything attached to that email?

14 A. Yes, it showed down the bottom of the page, you see
15 there was indications of attachments at the bottom
16 that said 1599 vote by mail, robo call.wav. In the
17 Google records provided to me, that is an actual
18 attachment of an audio recording that is the mail in
19 voting recording that went out on August 26th, 2020.

20 Q. And the next page, please?

21 A. This email message on the subject line working on robo
22 now. It's dated August 25th, of 2020 at 1751. It's
23 from Burkman 2016@Gmail.com to Jacob Wohl@gmail.com.
24 It says Clevenland, Philadelphia, Minnesota, Chicago,
25 New York City and Detroit.

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1 Q. Next page, please.

2 A. This one says subject line, robo, it's dated August
3 25th, 2020, 1848 hours from Jack Burkman
4 2016@gmail.com to Jacob Wohl@gmail.com. The message
5 says data all loaded, ready. Many zip codes. We
6 have two wavs, the 267,000 calls each. If you could
7 do me one favor, just go in and upload the recording.
8 Message Communications.Com account 12013, pass code
9 5202. Then I will enable, pick days and go in and hit
10 go.

11 Q. Next would be, please?

12 A. The email regarding got call uploaded. It dated August
13 26th, 2020 at 10:47. It's from
14 Robert@Messagecommunications.com to Jacob Wohl@
15 Gmail.com and Jack Burkman 2016@Gmail.com. The
16 message says yes, your campaign is currently running
17 and recording, uploaded about 20 minutes ago, is
18 running. I believe you are all set. It's signed
19 Robert Mahanian and it's in response to the email
20 message on this page just below it.

21 Q. And the next one, please?

22 A. This one says on of the subject line regarding the got
23 call uploaded, August 26th, 2020, 10:51 a.m. Jack
24 Burkman2016@Gmail.com to Jacob Wohl@Gmail.com. It
25 says great job in response to an email from Jacob Wohl

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1 at Gmail.com, that says I just uploaded the wav file.
2 You can successfully update the calls per minute
3 number to the maximum. We should be ready to go now.

4 Q. And the next one, please?

5 A. In the subject line robo. It's dated August 26th,
6 1527. It's from Jacob Wohl@Gmail.com to Jack
7 Burkman@2016 Gmail.com. It says robo getting quite a
8 bit of play on Twitter. I think they will have to
9 write.

10 Q. And the next one please.

11 A. This one says in the subject line regarding protests
12 dated August 26th, 2020 at 1236, it's from Jack
13 Burkman2016@Gmail.com to Jacob Wohl@Gmail.com, it says
14 let's leave Thursday 6:30 p.m. with Louis Thursday. I
15 love these robo calls getting angry black call backs,
16 win or lose, the black robo calls was a great idea.
17 This is in response to an email sent by Jacob Wohl@
18 Gmail.com regarding, it says the writers are starting
19 their mayhem tomorrow at 7 p.m.. Black Lives Matter
20 plaza formerly known as Lafayette Square. We should
21 definately get Louis and bull horns.

22 Q. Next one.

23 A. This one is an email that says in subject line Deny,
24 it's dated August 27th of 2020 at 1234. It's from
25 Jacob Wohl@Gmail.com to Jack Burkman2016@Gmail.com.

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1 It says deny to will, ex cetera, regarding robo. That
2 will make them write.

3 Q. And the next one, sir?

4 A. This is in the subject line email that says regarding
5 robo call to Michigan dated August 27th, 2020 at 1326.
6 It's from Jack Burkman2016@Gmail.com to Tierney Sneed
7 at Talking Points Memo.Com and it says in the message,
8 we have no connection to those robo calls. Thank you.
9 It's in response to an email sent to Jack Burkman2016
10 @gmail, from Tierney Sneed.

11 Q. Coming down to the end.

12 A. This one says on the subject line regarding robo call
13 in Michigan dated August 27th, of 2020 at 1338, it's
14 from Jack Burkman2016@gmail.com to Tierney Sneed at
15 Talking Points Memo.Com. It says couple points, one,
16 no one in their right mind would put their cell on
17 robo call. I bet a Soros Group is trying to embarrass
18 us. Thirdly, we have been asked by the Trump Campaign
19 to do robo calls and politely declined. We don't do
20 that stuff.

21 Q. And the next one, please.

22 A. This is an email that says in the subject line
23 regarding robo call, it's dated August 27th of 2020 at
24 1718 hours. It's from Jack Burkman2016@gmail.com to
25 G. Edgars at 18.org, it is-- it is a message, says no

1 sir, not at all, in response to a question from David
2 Edgards of the AP that says Hi Jack, I'm reaching out
3 about this. Are you or Jacob Wohl involved? Thanks
4 and then it also includes what appears to be a copy of
5 a press release by Secretary of State Benson and
6 Attorney General Nessel.

7 Q. Sir, I'm going to ask you, I'm going to leave from
8 this exhibit and I'm going to ask you if, in your
9 duties as the officer in charge of this case, you had
10 occasion to come in possession of a transcript from a
11 proceeding in the United States District Court for the
12 Southern District of New York, a hearing that was
13 held, a transcript of a hearing held this past Monday?

14 A. Yes.

15 Q. Okay. And did that transcript, was that certified as
16 a true and accurate copy by the court reporter?

17 A. Yes, sir, it was.

18 Q. I'm going to pull up Proposed Exhibit number 9. Do
19 you recognize Proposed Exhibit 9, sir?

20 A. Yes. This is a transcript that I received regarding
21 the proceeding in the U.S. District Court, Southern
22 District of New York.

23 Q. Is that transcript certified by the court reporter?

24 A. Yes. If you scroll down to page 25 of this transcript
25 you'll see the court reporter's signature, certifying

1 it's true and accurate copy.

2 MR. CUNNINGHAM: Your Honor, at this time
3 I'm going to move for the admission of -- limited
4 purposes, I want the entire document in, only to give
5 meaning to certain specific parts and the part that I
6 will have identified in regard to admissibility, only
7 as to Mr. Burkman, would be on page 12 and 13 and the
8 parts that I want to ask as to Mr. Wohl would be 14
9 and 15. The relevance of them is that there will be
10 admission to the party opponent. They did make
11 certain admissions on the record and it takes the
12 entire transcript to give meaning to those admissions,
13 so the rest of the transcript is not as substantive
14 evidence, simply offered to explain or give meaning to
15 those limited portions and each limited portion is
16 offered only as to each individual defendant, so for
17 those reasons, I would move accordingly.

18 THE COURT: Okay. Counsel?

19 MR. GRABEL: Well, your Honor, I guess I
20 would simply say he is trying to offer that there is
21 admissions that they -- at least, my client, I guess
22 approved or authored the call because it never
23 indicated what the specific fact was. I may not
24 object to it, but I don't have the transcript in front
25 of me, so if I may ask if Mr. Cunningham could tell

1 what assertions he is trying to make so I can maybe
2 stipulate to it?

3 MR. CUNNINGHAM: I'm not. I'll have Mr.
4 Campbell read into the record the parts that I'm
5 looking to have admitted.

6 MR. GRABEL: That would be appreciated
7 before I potentially stipulate to and I would like to
8 know what you, factually, are trying to advance.
9 That's all.

10 MR. CUNNINGHAM: It's on page 12, bring it
11 up here now.

12 BY MR. CUNNINGHAM:

13 Q. Beginning on line 17 on page 12, would you read that
14 Mr. Campbell?

15 A. Could you scroll up just a little further for me?
16 There we go. Starting with line 17, the Court says
17 Mr. Burkman, my question was not whether they're true
18 or false right now. My question was whether you,
19 acting alone or with anyone else, prepared that
20 message and caused it to be sent? Mr. Burkman
21 responded oh, yes, your Honor. Yes, that is our call.
22 Yes, yes.

23 The Court asked, you don't deny that you
24 caused this call to be made and that you -- Mr.
25 Burkman interrupts and says no. The Court says don't

1 deny the content of it? Mr. Burkman says no, your
2 Honor, we do not.

3 Q. And the Court says thank you; is that correct?

4 A. That's correct.

5 MR. CUNNINGHAM: That is the portion that I
6 wanted admitted as to Mr. Burkman alone, as
7 substantive evidence.

8 MR. GRABEL: Your Honor, I would only
9 inquire as if it makes reference, I just want to make
10 sure that that statement is connected to this robo
11 call because I don't have the rest of the transcript
12 in front of me. If it is for prelim purposes, I
13 don't necessarily have a problem to try to move this
14 along. I just want to make sure that it's referring
15 to the prior call that's been admitted as an exhibit,
16 the robo call involving, I think it was Tameka Taylor,
17 A.K.A. Tameka Taylor, if that's what the transcript is
18 referencing.

19 MR. CUNNINGHAM: Yes, that's what's
20 referenced. That's why I asked for the introduction
21 of the entire transcript to give meaning and make it
22 clear that it was that particular --

23 THE COURT: All right, so --

24 MR. CUNNINGHAM: -- robo call.

25 THE COURT: So you stipulate to it's

1 admission?

2 MR. GRABEL: I stipulate for purposes of
3 prelim if it's referencing that robo call. I don't
4 see that as an issue, at least on behalf of my client
5 for purposes of this prelim only, yes.

6 THE COURT: All right. Admitted.

7 BY MR. CUNNINGHAM:

8 Q. Now I will go down to page 14. Let's begin with page
9 13. I'm sorry. Okay. Let's begin with page -- again
10 the screen is blocking my page numbers so I -- page 14
11 and begin with line 20 of page 14.

12 A. Beginning line 20, it says let me then ask Mr. Wohl if
13 he wishes to make any statement. Mr. Wohl answers
14 yes, your Honor. I would second everything that Mr.
15 Burkman just pointed out. I would also say and I
16 would stress the point that there are no robo calls
17 underway. There have not been any robo calls underway
18 since the beginning of any sort of legal proceedings
19 in Michigan and what we believe that this is not an
20 effort to stop robo calls. No one, least of all the
21 Plaintiffs, and no one else has alleged that any robo
22 calls have taken place since the proceedings began in
23 Michigan. So what this represents is an effort not
24 to stop robo calls, but to stifle our constitutionally
25 protected political speech and as to Miss Narvarro's

1 mention of the bail conditions in Michigan and the
2 like, that was examined by the Court, there was
3 another hearing since the one that she referred --
4 that she referenced and everything is all in good
5 standing as it relates to the bail in Michigan.
6 That's what I would conclude with, your Honor. The
7 Court says all right. Thank you. Mr. Wohl you
8 indicated that you echo all of what Mr. Burkman said.
9 Does that include acknowledgement that you
10 participated in the preparation of the content of the
11 messages and it's communications to plaintiffs through
12 the entity in California? Mr. Wohl answered yes, your
13 Honor as to Mr. Burkman's specific representations,
14 yes, yes. The Court says all right. Thank you.

15 MR. CUNNINGHAM: Your Honor, at that point
16 I would move for admission of that passage as to Mr.
17 Wohl only.

18 THE COURT: Any objection?

19 MR. AMADEO: I'll stipulate for prelim
20 purposes, but he's not mentioned transcription error
21 that came out, but I'll handle that on
22 cross-examination, Judge.

23 MR. CUNNINGHAM: Well again, we're asking
24 for mine to be admitted for substantive evidence, but
25 only to give meaning to the provisions there that are

1 admitted separately against Mr. Wohl and Mr. Burkman.
2 I'm not asking that the other parts be used as
3 substantive evidence, only that they be used to give
4 meaning to their answers.

5 THE COURT: That's understood.

6 MR. AMADEO: And respectfully I said that
7 Judge King, we'll stipulate to that for prelim
8 purposes only.

9 MR. CUNNINGHAM: Okay. Court receives
10 that stipulation and it will be admitted.

11 BY MR. CUNNINGHAM:

12 Q. Now sir, let's go back a little bit to that execution
13 of the search warrant in California. You told us
14 that the search warrant authorized the seizure of
15 certain records; is that correct?

16 A. That's correct.

17 Q. Okay. And first of all, sir, do you recognize what
18 I'm showing on the screen as Proposed Exhibit Number
19 4?

20 A. Yes, I do.

21 Q. What is that, sir?

22 A. This is a copy of a purchase order worksheet from the
23 Message Communications account of J.M. Burkman and
24 Associates, LLC.

25 Q. And did you seize that during the course of the search

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1 warrant at the Message Communications Inc?

2 A. Yes, I did.

3 MR. CUNNINGHAM: I move for admission of
4 Exhibit Number 4.

5 THE COURT: Any objection?

6 MR. GRABEL: I would indicate number one
7 authenticity of the document, your Honor, is not self-
8 authenticating, so I would object on those grounds and
9 although it was seized, the record keeper is not here
10 to authenticate it's validity.

11 MR. AMADEO: And from Mr. Wohl's
12 perspective, your Honor, I would object. I think that
13 this is the best evidence rule issue, but if we're
14 only putting it in for prelim purposes, I don't want
15 to keep wasting the Court's time with repetitive
16 questions.

17 THE COURT: It is for preliminary
18 examination purposes only. Is this a certified
19 document, Mr. Cunningham?

20 MR. CUNNINGHAM: I'm sorry, I didn't hear.

21 THE COURT: Is this a certified document?

22 THE WITNESS: No, your Honor. This was
23 not. This was taken in the search warrant.
24 Different rules apply. We didn't -- this was not --
25 tell you what, I'm going to withdraw this proposed

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1 exhibit.

2 THE COURT: Okay.

3 MR. CUNNINGHAM: I'll go on to proposed
4 Exhibit 5.

5 BY MR. CUNNINGHAM:

6 Q. Proposed Exhibit 5, sir, do you recognize that
7 document?

8 A. Yes I do.

9 Q. What is that document, sir?

10 A. This is a photograph of a paper check that I took at
11 Mr. Mahanian's office, Message Communications during
12 the course of executing the search warrant.

13 Q. Okay. One of those things that was authorized by the
14 search warrant?

15 A. Correct.

16 Q. Actual physical evidence?

17 A. This is an actual paper check that I seized.

18 Q. And you still have it?

19 A. I do.

20 Q. It's on evidence?

21 A. It's on evidence, yes.

22 MR. CUNNINGHAM: Move for the admission.

23 THE COURT: Any objection.

24 MR. GRABEL: I guess I would have the same
25 objection. If it's a check, I can see that I think we

1 need someone from the bank to authenticate there is
2 actually a bank account. I'm not saying it's a forged
3 check, but I still think there is foundational
4 requirements that need to be made and I'll let the
5 Court rule on that and I'll stop there.

6 THE COURT: What he alleges that he
7 recovered during the search warrant, it goes to weight
8 not admissibly.

9 MR. GRABEL: Fair enough, your Honor. I
10 have no issue with that.

11 MR. AMADEO: And there is no issue for Mr.
12 Wohl on that issue, Judge for prelim purpose only.

13 THE COURT: Okay admitted.

14 BY MR. CUNNINGHAM:

15 Q. I'm going now to Proposed Exhibit 6. Sir, can you
16 tell us about -- well, you already told us that during
17 the execution of the search warrant you seized
18 electronic records there from Mr. Mahanian's
19 electronic device; is that correct?

20 A. Yes. That's correct.

21 Q. Now you've had a -- the opportunity to review what has
22 been marked or identified now as Proposed Exhibit
23 number 6; is that right?

24 A. I have, yes.

25 Q. And are all of these few documents documents that were

1 obtained in the execution of search warrant?

2 A. Yes. These particular ones were obtained from Mr.
3 Mahanian's part of the search warrant.

4 Q. And are each and every one of the ones in this
5 proposed exhibit from or to either Mr. Burkman or Mr.
6 Wohl?

7 A. They are either from or to Mr. Burkman, Mr. Wohl and
8 communications between them and Robert Mahanian,
9 Message Communication.Com.

10 MR. CUNNINGHAM: I move for admission of
11 Exhibit Number 6.

12 MR. GRABEL: Your Honor, I would object and
13 with the Court's permission to save some time, maybe
14 make, perhaps, a continuing objection, so I wouldn't
15 have to do this on these exhibits. I still think a
16 foundation needs to be made for it's admissibly. I'll
17 leave it at that and if the Court wants an ongoing,
18 then I won't have to interrupt on the rest of these
19 documents.

20 THE COURT: You're standing objection is
21 recognized by the Court and noted for the record. The
22 Court overrules the objection. I find that this
23 particular evidence goes more so to the weight as
24 opposed to it's admissibility. The Court will take
25 it for that purpose and admitted. You may proceed.

1 MR. AMADEO: Your Honor, under the guise of
2 judicial economy, I would like to make a standing
3 objection. I have a feeling we're going to look at
4 hundreds and hundreds of exhibits. I don't want to
5 waste the Court's time, just want to keep the record.

6 THE COURT: So noted.

7 By MR. CUNNINGHAM:

8 Q. All right, sir. The Exhibit Number 6, again, that
9 first page, Exhibit number 6, can you describe for me
10 what this is?

11 A. This is an email that we recovered from Mr. Mahanian's
12 office during the search warrant. It's from Jack
13 Burkman to Robert at Message Communications.com copied
14 to Jacob Wohl and subject line, it says regarding
15 Roberts. It's dated August 19th of 2020 at 9:17
16 p.m.. It says checks to you Robert, just went out in
17 the two day pouch. You will have in two or three
18 days, then we attack.

19 Q. Sounds a little familiar. Have you seen an email like
20 that before?

21 A. I'm sorry, you cut out, sir. What did you say?

22 Q. It sounds a little familiar. Was it an email like
23 that one before?

24 MR. AMADEO: Objection. Counsel is
25 testifying.

1 MR. CUNNINGHAM: I'm asking him a question.

2 THE COURT: Overruled. Go ahead. Again,

3 Mr. Cunningham, all comments directed to the Court.

4 Objection overruled. You may proceed.

5 BY MR. CUNNINGHAM:

6 Q. Where it says check to you Robert, just went out in
7 two day pouch. You will have it in two to three days.
8 Is that familiar with an exhibit, is that familiar to
9 you?

10 A. It is familiar to me, but I don't believe that it's
11 been brought up in today's testimony.

12 Q. Okay. What can you tell us about the next one?

13 A. This one is an email. If you could scroll up just a
14 little bit, I think I'm missing part of it here. I'm
15 sorry, the other direction.

16 Q. Oh, scroll down. I'm sorry. Okay. This is an
17 email?

18 A. This is an email from Jack Burkman to Robert at
19 Message Communications.com, copied to Jacob Wohl.
20 Subject is regarding Robert, it's dated Sunday, August
21 23rd, of 2020 at 11:39 a.m.. It says you'll get it
22 Monday. Thank you. A message from Robert Mahanian,
23 it says Hi, Jack, the check hasn't arrived, but I'll
24 check again on Monday morning. Do you have a tracking
25 number for it? As soon as I receive it, I'll send

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1 over the paid invoice showing both payments in 2020,
2 for \$2000 total. Thank you, again, Robert Mahanian.

3 Q. And the next one please?

4 A. This one is an email from Jack Burkman to Robert at
5 Message Communications.com subject line -- this is
6 dated Monday, August 24th, 2020. 9:45 p.m.. Message
7 says check come, if not, will overnight new one
8 Tuesday.

9 Q. This one, sir.

10 A. If you could scroll up just a little bit. There we
11 go. This is an email from Jack Burkman to Robert at
12 Message Communications.com, subject line says
13 regarding did. Dated Tuesday, August 25th, 2020 8:47
14 p.m. it says two minutes when you can, almost done
15 703-795-5364. Thank you, so much. It's in response
16 to a message from Robert Mahanian, Hi Jack, I did
17 receive the check, check number 19921 today and
18 credited to your account just a moment ago. You are
19 all set. Thank you, Robert Mahanian.

20 Q. The next one?

21 A. This is an email from Jacob Wohl at Gmail.com to Jack
22 Burkman and Robert Mahanian. Subject line says got
23 call uploaded. It's dated Wednesday, August 26th,
24 2020 at 10:41 a.m. It says I just uploaded the wav
25 file successfully and updated the calls per minute

1 number to the maximum. We should be ready to go now.

2 MR. GRABEL: Your Honor, can I just
3 stipulate that Mr. Mahanian was employed by our client
4 to make a robo call? I mean, that's what we're trying
5 to get at here, correct?

6 THE COURT: That's what it sounds like.

7 MR. GRABEL: Do we need to go through 300
8 questions about that, Judge?

9 MR. CUNNINGHAM: We're not going through
10 300 questions, one more and that's it for this
11 exhibit.

12 MR. GRABEL: But you have more questions
13 about this issue, correct?

14 MR. CUNNINGHAM: I have very, very few
15 more questions.

16 MR. GRABEL: Your Honor, I just want to
17 say for court economy, if we want to stipulate to that
18 issue for prelim, we're certainly willing.

19 THE COURT: Mr. Cunningham, I think that I
20 get the point that this gentleman was, allegedly,
21 employed by-- Mr. Mahanian was employed by the
22 defendants, Jack Burkman and Jacob Wohl. Is there
23 something else that you're trying to draw the Court's
24 attention to, aside from that point?

25 MR. CUNNINGHAM: Yes, your Honor, there

1 is.

2 THE COURT: Okay.

3 MR. CUNNINGHAM: The exhibit that's up on
4 the screen right now, it's where the -- Jacob Wohl
5 indicates he just uploaded the wav and then Mr.
6 Burkman responds great job. That's the exact same
7 email that has been admitted into evidence as part of
8 the Exhibit number 8. The point being, your Honor,
9 that Exhibit Number 8 was from Google from the email
10 for Mr. Burkman and Wohl in Virginia. This is an
11 email that was seized in response to the execution of
12 the search warrant in California. To have the email
13 in at both ends shows the use of the computer. There
14 was a charge here in the crime of use of computers to
15 commit the crime. And I think having the exact email
16 in their two places show that a computer was used to
17 transmit that and that's what it was offered for.

18 THE COURT: Okay. Go ahead.

19 MR. CUNNINGHAM: I have nothing further
20 for this witness.

21 THE COURT: Cross-exam.

22 MR. AMADEO: Officer, do you need a short
23 break at all or --

24 THE COURT: You may continue.

25 MR. AMADEO: Thank you, Judge.

1 CROSS-EXAMINATION

2 BY MR. AMADEO:

3 Q. Good afternoon, officer. I'm going to ask you some
4 questions and since we are on Zoom, if you need me to
5 repeat anything, please let me know. What is your
6 current position, sir?

7 A. I'm a special agent for the Michigan Department of
8 Attorney General.

9 Q. Okay. And were you the OIC, also known as officer in
10 charge of this investigation?

11 A. Yes.

12 Q. And as the OIC, what were your duties?

13 A. I was assigned to lead this investigation, essentially
14 investigate the complaints that I was given, from my
15 office.

16 Q. How long were you investigating my client?

17 A. I started this on August 27th, is the date that I was
18 actually assigned.

19 Q. August 27th and how did you get involved?

20 A. I was given this assignment by my supervisor.

21 Q. Do you know how your supervisor became aware of any of
22 these things?

23 A. I don't specifically recall, no.

24 Q. So we're not sure if it was the radio station that
25 contacted you or not as Mr. --

1 A. I believe that the call-- I do believe that
2 originally our office learned of this through the
3 radio station, yes.

4 Q. Okay. Okay and is it true and there was a lot of
5 evidence so please correct me if I'm wrong, is it true
6 that there has been one witness that claimed my client
7 violated the statute, this was Derrick Thomas?

8 A. I have only spoken --

9 Q. So that's correct?

10 THE COURT: You broke up, sir. Can you
11 repeat your answer?

12 THE WITNESS: Yes. I spoke with Mr.
13 Thomas. He is the only complainant I talked with.

14 BY MR. AMADEO:

15 Q. Okay. So based upon Mr. Thomas receiving one phone
16 call, the Attorney Generals sent out two officers out
17 to California to investigate; is that correct?

18 A. Yes.

19 Q. Okay. Who's Robert Mahanian?

20 A. Robert Mahanian is the president of the Message
21 Communications.

22 Q. Did you go visit him?

23 A. I did.

24 Q. Where was he located?

25 A. In Los Angeles, California.

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1 Q. And did you go alone?

2 A. No, Special Agent Landy travelled out to California
3 with me and I was assisted by agent from California
4 Department of Justice.

5 Q. Just curious, how much taxpayers money did you spend
6 on this investigation?

7 MR. CUNNINGHAM: Objection, relevance.

8 THE COURT: How is this relevant?

9 MR. AMADEO: Okay. Fine.

10 BY MR. AMADEO:

11 Q. What are the charges against my client, officer?

12 A. I believe he is charged with four counts. I guess
13 without reading them, I might misstate them a little
14 bit, but charged voter intimidation, one charge to
15 conspiracy voter intimidation, charge of using a
16 computer to commit a crime, charged with conspiracy to
17 use a computer to commit a crime, if I'm not mistaken.

18 Q. And how long have you been a law enforcement agent?

19 A. About 26 and-a-half years now.

20 Q. Have you ever investigated these types of charges
21 before?

22 THE COURT: Is that relevant? Hold on a
23 second. Why is that relevant?

24 MR. AMADEO: Well, your Honor, he is the
25 one that made the request for an arrest warrant. I

1 would like to see what his experience is, if he knows
2 the elements that need to be proven?

3 THE COURT: That's not relevant. That's
4 not his duty either.

5 By MR. AMADEO:

6 Q. Do we know if it's subjective or objective statute
7 that you authorized --

8 MR. CUNNINGHAM: Objection, your Honor.
9 I'm the lawyer, not the investigator.

10 THE COURT: I'll sustain the objection.

11 BY MR. AMADEO:

12 Q. Who is Derrick Thomas?

13 A. Derrick Thomas is the complainant in this
14 investigation.

15 Q. Okay. And did you hear Mr. Thomas testify earlier?

16 A. Yes, I did.

17 Q. Did Mr. Thomas tell you if he voted or not in this
18 election?

19 A. I never asked him that question. He did not tell me
20 that.

21 Q. You were present during my cross-examination of Mr.
22 Thomas; is that correct?

23 A. Yes.

24 Q. Did you hear my questions to Mr. Thomas?

25 A. I did, yes.

1 Q. Were you paying attention to his questions (sic).

2 A. Yes.

3 Q. Did Mr. Thomas respond that he voted in this election?

4 MR. CUNNINGHAM: Objection, relevance,
5 your Honor.

6 MR. AMADEO: Relevancy is that you're
7 saying that my client is a menace. If he actually
8 voted, how did it prevent him from voting?

9 THE COURT: Again, I don't know if you
10 guys, if there is a disconnect here, but you're not to
11 respond to each other.

12 MR. AMADEO: I apologize.

13 THE COURT: The objection was relevancy.
14 Your response is --

15 MR. AMADEO: It's very relevant to see if
16 these robo calls actually dissuade anybody from
17 voting, Judge.

18 THE COURT: Well, that's not what the --
19 that's not what the alleged crime calls for. The
20 alleged crime calls for did he attempt, meaning did
21 the defendant have the specific intent to bring about
22 these actions, not the effect that it had on the
23 listener or the person who received the message.

24 MR. AMADEO: I'll move on.

25 BY MR. AMADEO:

1 Q. What area code was Mr. Derrick Thomas' phone number
2 in?

3 A. It's 313.

4 Q. Is 313 a Detroit area code?

5 A. I know it's a Detroit area code. I can't say whether
6 it's specifically in the City of Detroit.

7 Q. Would it surprise you if 313 listed for numerous areas
8 in the Wayne County?

9 MR. CUNNINGHAM: Objection as to what
10 would surprise you. Relevance.

11 MR. AMADEO: The relevancy is that at 313
12 area code, your Honor, was allegedly styled by this
13 robo call and I'm trying to establish where those
14 calls went to.

15 THE COURT: I'll allow it. Go ahead.

16 By MR. AMADEO:

17 Q. So again, to your knowledge, would it surprise you if
18 the 313 area code also included suburbs in the Wayne
19 County area?

20 A. That would not surprise me.

21 Q. Did you ask anybody outside Detroit area if they
22 received the calls and what their thoughts were on the
23 calls?

24 A. I did not.

25 Q. Did you interview anybody else besides Derrick Thomas

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1 about the calls?

2 A. I interviewed Mr. Mahanian and off the top of my head,
3 besides Derrick Thomas, I also interviewed a couple
4 other people at the Michigan Department of State and
5 that's all I can think of at the moment.

6 Q. So let me help you out here, officer, as of October
7 1st, 2020 in your report, how many other people came
8 forward to you about this robo call?

9 A. I'm sorry, say that again.

10 Q. As of October 1st, 2020, how many other people have
11 come forward to you about receiving this robo call?

12 A. None.

13 Q. So the only person that has said anything about a robo
14 call is Derrick Thomas, is that accurate?

15 A. I don't know if that's accurate or not. That's the
16 only person I talked to about this particular case.

17 Q. As the officer in charge, is it your obligation to do
18 a thorough investigaiton?

19 A. Yes.

20 Q. Who else did you interview about this phone call, sir?

21 A. I already told you who I interviewed about this phone
22 call. I mentioned Mr. Mahanian, talked to Mr. Thomas.
23 I talked to a few people from the Michigan Department
24 of State. There may be couple others that I'm not
25 recollecting at the moment, but they would be in my

1 reports.

2 Q. Let me narrow this down, officer. Has there been any
3 other citizens that have come forward to you or that
4 you interviewed that received the phone call,
5 allegedly, coming from my client, yes or no?

6 A. No. I have not talked to anyone, other citizens
7 about this.

8 Q. Let's go back to Robert Mahanian. What's the name of
9 his company?

10 A. Message Communications Incorporated.

11 Q. Okay. What is Message Communications Incorporated
12 do, sir?

13 A. They offer robo call broadcasting services on-line.

14 Q. Did you run a criminal LEIN check on Mr. Mahanian?

15 A. I did not personally do that. The agent out in
16 California did that for me.

17 Q. How well do you know Mr. Mahanian?

18 A. I have never met him prior to the search warrant.

19 Q. Did it concern you that he was fined \$25,000 from the
20 FCC in 2014 for robo calls?

21 MR. CUNNINGHAM: Objection, your Honor.

22 What's the relevance that a person who is not
23 testifying had a civil action, civil administrative
24 action?

25 MR. AMADEO: Your Honor, it's not civil.

1 It's not simply a civil administrative action. The
2 allegation that Mr. Mahanian pled guilty to, carried a
3 one year penalty of incarceration and it speaks to the
4 credibility of this investigation.

5 THE COURT: Go ahead.

6 By MR. AMADEO:

7 Q. So again, Officer Campbell, were you concerned or were
8 you aware that Robert Mahanian was fined \$25,000 from
9 the FCC in 2014 for making illegal robo calls?

10 A. I was aware of that, yes.

11 Q. Did it concern you?

12 A. No.

13 Q. Is Mr. Mahanian being charged with anything today?

14 A. No.

15 THE COURT: How is that relevant?

16 BY MR. AMADEO:

17 Q. Did you hear Mr. Thomas testify that he was on a do
18 not call list?

19 A. I did.

20 Q. Whose responsibility would it be to find out if
21 somebody was going to -- using Media Communications,
22 Inc, if it was a do not call number, would that be my
23 client or would that be Robert Mahanian?

24 A. I don't know the answer to that.

25 Q. Okay. During the call -- during the course of your

1 investigation, did you talk to any Constitutional Law
2 experts to see if a call was protected by the First
3 Amendment?

4 A. I did not.

5 MR. CUNNINGHAM: Objection.

6 THE COURT: What's the objection?

7 MR. AMADEO: Your Honor, if this is free
8 speech and it has --

9 THE COURT: Hold on. I asked him what the
10 objection was. What's the objection?

11 MR. CUNNINGHAM: What's the relevance to
12 who he talked with? He's not making the call as to
13 the legal argument.

14 MR. AMADEO: Your Honor, the relevancy, he
15 is the OIC of this investigation.

16 THE COURT: Yeah, but he doesn't get to
17 decide what charges are ultimately lodged against
18 these defendants. He is investigator. He can submit
19 a warrant, but the ultimate call lies with the
20 prosecuting authority. I'll sustain the objection.

21 BY MR. AMADEO:

22 Q. Okay. Officer Campbell, to your knowledge, did you or
23 the Attorney General review to see if there were First
24 Amendment protections of this phone call?

25 THE COURT: Again--

1 MR. CUNNINGHAM: Objection.

2 THE COURT: I have already ruled on that.

3 Stop, Mr. Cunningham. I already ruled on that. This
4 officer does not get to make that call.

5 BY MR. AMADEO:

6 Q. Going back to Mr. Mahanian, in his job at Message
7 Communication Inc, what is his role in the robo call?

8 A. Mr. Mahanian's role in the robo call?

9 Q. Yes, sir.

10 A. Well, he owns the company that provides the services.

11 Q. Okay. And as providing those services, what does
12 that mean, sir? Can you explain the process to the
13 Court?

14 A. Yes. I mean, I can tell you what I'm aware of and
15 that is that he offers those services on-line. The
16 client can sign up for those services by way of on-
17 line applications. They essentially can provide
18 whatever recording that they wish to upload into the
19 account. They pay for the services, either by check
20 or by electronic transmission through that website.
21 They can schedule the robo calls that they wish to go
22 out. They can use databases as they upload or pick
23 from existing databases by zip code and schedule the
24 robo calls to go out that way, on their own. It,
25 essentially, allows clients to manage their own

1 campaign through the on-line service.

2 Q. Okay. So let's clear it up a little bit. To your
3 knowledge, to the best of your knowledge, who provides
4 the device for the calls? Is that Robert Mahanian?

5 A. I'm not really sure what devices you'd be referring
6 to.

7 Q. Robo calls don't just come out of thin air. How are
8 they done? There has to be a device in place; is that
9 correct?

10 A. I believe they are done through Mr. Mahanian's
11 servers, done through Mr. Mahanian's communication
12 servers.

13 Q. And the methods used, that would be a service provided
14 by Mr. Mahanian, would it not?

15 A. Correct. Through his agreement and contracts with the
16 telecommunication providers, yes.

17 Q. Would that, the technology be provided by Mr.
18 Mahanian?

19 A. Through the on-line website, yes.

20 Q. And would the phone list be provided by Mr. Mahanian?

21 A. It's options for clients to upload their own or pick
22 from existing databases that Mr. Mahanian can provide.

23 Q. So here's the question, million dollar question, if
24 you would, when Derrick Thomas received his call, was
25 it Jacob Wohl and Jack Burkman that reached out for

1 the 313 or was it a database from Robert Mahanian?

2 A. Well, that particular robo call was initiated by Mr.
3 Buckman and Mr. Wohl through Mr. Mahanian's company,
4 to the end receivers who received all the calls.

5 Q. So would it be fair to say that these calls could not
6 have been committed without the assistance and
7 guidance of Robert Mahanian?

8 A. Well, they could have used another company. But in
9 this case--

10 Q. But they could have done this on their own or would
11 they need a company like Messages Communications Inc
12 to proceed?

13 A. They would need a company such as Messages
14 Communications or similar to proceed.

15 Q. Did you ever interview my client?

16 A. I did not.

17 Q. Did you ever ask to interview my client?

18 A. I did.

19 Q. And what happened?

20 A. I was told no.

21 Q. Did you ever ask if they had legal counsel prior to
22 making the robo call?

23 A. No.

24 Q. Okay. So in your expert opinion, if they did do --
25 and this is hypothetical, if they did their due

1 diligence and got an opinion from the lawyer that said
2 the call was legal, would that change your opinion of
3 this case?

4 MR. CUNNINGHAM: Objection, relevance.

5 THE COURT: Assuming facts not in
6 evidence. Sustained.

7 MR. AMADEO: I have nothing further at this
8 time. Thank you, Judge.

9 THE COURT: Any redirect?

10 MR. GRABEL: Your Honor, I would like to
11 ask some questions with regard to the court's section.
12 I didn't mean to interrupt the Court.

13 THE COURT: No, you didn't. Thank you.

14 MR. GRABEL: Thank you. I appreciate it.

15 CROSS-EXAMINATION

16 BY MR. GRABEL:

17 Q. Special Agent Campbell, obviously in this case you --
18 would you agree you've done a thorough investigation,
19 as far as on any -- all the emails and communications
20 of Mr. Burkman and I would say Mr. Wohl, you've tried
21 to look for all the documents that they've spoke to
22 concerning this robo call, correct?

23 A. I can tell you that I have not finished reviewing all
24 the emails that I received, if that answers your
25 question. I have looked through a lot of them.

1 Q. Okay. And I saw again, just the very small fragment
2 of some of the messages today that were offered
3 through the Attorney General, correct?

4 A. Yes.

5 Q. Okay. Could you please tell this court if you were
6 aware of any messages and messages could encompass
7 emails, texts, social media posting, define it as
8 broadly as you like, do you have any type of messages
9 as I have defined that would suggest, either Mr.
10 Burkman or Mr. Wohl said we want to limit mail in
11 voting in any -- in any way, shape or form? Do you
12 have anything that would suggest that inference?

13 A. I guess that was an argueable -- if you're asking for
14 my opinion, yeah, I think that there are some things
15 that you can argueably say that was their intent.

16 Q. Okay.

17 A. That would be up for debate, I guess, for the lawyers
18 to argue in court over.

19 Q. Would you please share with the Court which messages
20 that you believe communicates that thought you just
21 said, so I understand what your rational is based on,
22 if you would be so kind?

23 A. Are you specifically asking about exhibits that have
24 been offered today or other emails that I have seen?

25 Q. I guess I would say if you have them available, what

1 specific messages did you indicate, specifically, that
2 they wanted or I should say my client wanted to deter
3 mail-in voting. Could you please bring it to the
4 court's attention? Any exhibit, any document.

5 A. Well, one that I can think of that's been offered
6 today is the email that referenced hi-jacking the
7 boring election. I have also seen emails between the
8 two of them discussing other plans to influence the
9 election by creating false schemes, hiring actors to
10 create false allegations and so forth.

11 Q. Okay. To be fair, I understand that you're certainly
12 entitled to your own opinion, so the message that was
13 offered in the prosecution's exhibit, I don't remember
14 the number, that we're going to hijack this boring
15 election, that, to you, was they don't want people to
16 vote, as far as mail in voting, that's how you
17 construe that this is a fair characterization or am I
18 mischaracterizing your analysis?

19 A. I believe it's documents, one of their intentions to
20 influence the election unfairly.

21 Q. Okay. So they use the word boring election and
22 because the word hijack was used, you indicated that
23 obviously their ability was to deter mail-in voting,
24 at least that's your constructive, how you interpret
25 that; is that correct?

1 A. Well in context with all the other emails I have seen,
2 yes, I would read it that way that that's what they
3 were trying to unfairly influence the election.

4 Q. Did you find any emails or messages -- I should say,
5 let me broaden that, let me rephrase that. Are there
6 any messages, in your opinion that imply that any
7 individual could not, in-person, vote in any way,
8 shape or form?

9 A. I do not recall seeing any messages like that.

10 Q. Okay. So you don't believe that there is any
11 communications that suggested that some negative
12 connotation on in-person voting in any way, shape or
13 form, at least of your opinion as it is today; is that
14 correct?

15 A. Yeah. Like I said, I don't recall seeing any
16 messages, specifically, saying they were talking about
17 in-person voting.

18 Q. Okay. So you -- and obviously, you probably heard
19 this robo call that we heard earlier, I didn't want to
20 ask how many times because I think it is probably ad
21 nasuem, you probably heard it, probably more than ten
22 times or more, is that a fair statement?

23 A. I'm sure I've heard it more than ten, yes.

24 Q. I was being kind, but you heard it enough to sort of,
25 I assume, you kind of at least analyzed it, as far as

1 knowing what the message says without having to
2 refresh your memory, correct?

3 A. Correct.

4 Q. And you heard it earlier today, I believe two times,
5 correct?

6 A. Yes. I believe at least two times, yes.

7 Q. Okay. Did you believe, in your opinion, as obviously
8 experienced, obviously, police officer, do you believe
9 any part of that robo call, in your opinion, had any
10 type of connotation on in-person voting, in any way,
11 in your opinion, in-person voting?

12 A. I don't believe it referenced in-person voting at all.

13 Q. Is there anything that you construe as trying to, I
14 guess, not have somebody do mail -- excuse me,
15 in-person voting on that call, in your opinion?

16 A. I'm sorry, can you repeat that one?

17 Q. I didn't phrase it well. In your opinion, listening
18 to that robo call, did you believe that there was any
19 messages, explicitly or impliedly, that deterred a
20 voter from in-person voting, on that robo call, in
21 your opinion?

22 A. No, not in my opinion.

23 Q. So you believe that the message or robo call, I'm
24 using the word robo call, was sort of giving an
25 opinion of mail-in voting, correct?

1 A. I believe it was specifically discouraging mail-in
2 voting.

3 Q. Okay. And obviously, adversely, you don't believe it
4 discouraged in-person voting?

5 A. No, it did not reference in-person voting at all, to
6 my knowledge.

7 Q. Okay. Now obviously, in this particular opinion and
8 there may be no answer, did you try to contact my
9 client, Jack Burkman or I think his legal name might
10 be John Burkman, I'll use them interchangeably, to ask
11 him what his reason or rational was of why he sent
12 this message? What the -- you know, what the reason
13 or rational was?

14 A. No. I have never attempted to contact your client.

15 Q. Okay. Is there a particular reason why you didn't
16 want to get his opinion, if you cared to see if he
17 could offer an explanation of what his rational was
18 for constructing this robo call?

19 A. Well, as I testified previously, I did request an
20 interview. Both Mr. Wohl and Mr. Burkman declined.

21 Q. I declined?

22 A. Correct.

23 Q. And was that after charges were pressed though,
24 already?

25 A. That's after the charges were issued and we were

1 arranging for them to turn themselves in.

2 Q. Okay. I would imagine that at that point in time and
3 I agree with you, not that I'm testifying, I don't
4 question you on that, but so let me make sure I'm
5 clear on this, the first time you asked to speak to
6 Mr. Burkman, was after your-- I guess, the charging
7 was made and charges were already issued against him;
8 is that correct?

9 A. That's correct.

10 Q. Is there a particular reason, if you know, why you
11 didn't want to get any statements or comments from Mr.
12 Burkman concerning the call before you submitted this
13 for prosecution, if you know?

14 A. I don't have an answer for that. I don't know.

15 Q. Obviously and usually and I understand every
16 investigation is different in criminality and I don't
17 want to speak in the general construct but don't
18 typically, you try to be thorough to give a suspect
19 the opportunity to, perhaps, give a statement as part
20 of the investigation, isn't that typically customary,
21 in your opinion?

22 A. In many cases, yes, it is.

23 Q. Okay. And I apologize, you cut out, I wanted to give
24 you the opportunity, could you answer that question
25 again, 'cuz you cut out for one second. I apologize.

1 A. Yeah, in many cases I will try to interview the
2 suspects prior to charges, although that's not always
3 the case.

4 Q. Right. I imagine the purpose of that is two-fold, a
5 suspect, depending on the subject matter, might have
6 relevant, valuable information that could be relevant
7 to the investigation, that's one reason, is that a
8 fair statement?

9 A. Yeah, that's a fair statement.

10 Q. And the other possibility is sometimes suspects make
11 statements that are against their own penal interest
12 and they make admissions which are also be helpful as
13 well to the prosecution. That's fair game too, isn't
14 it?

15 A. It would be correct.

16 Q. Okay. And I understand every case is different, but
17 would you agree, at least in your experience, the
18 crime here, if you will or the alleged crime is based
19 on, you know, obviously verbal statements, correct?
20 It's based on statments made in a call?

21 A. Correct. It's based on the robo call recording.

22 Q. Right. And I'm not going to get into analyzing the
23 elements, that's probably beyond your purview, but
24 this, in your experience, is unusual type of
25 prosecution that you have not been involved with

1 before, is that a fair statement?

2 THE COURT: That's not relevant.

3 MR. GRABEL: I'll withdraw the question.

4 BY MR. GRABEL:

5 Q. Did the Attorney General's Office instruct you not to
6 even procure a statement from Mr. Burkman that they
7 didn't want you to ask him his reason or rational
8 before they issued the charges? Goes to bias, before
9 I hear objection.

10 A. No, I did not receive any specific instructions.

11 Q. Okay. So regardless if Mr. Burkman offered a reason,
12 or background or whatever research you purportedly
13 did, you weren't interested to even get his side or
14 his opinion on why he potentially made this call? You
15 were not interested in that, would that be a fair
16 statement, before you had him -- before charges were
17 authorized against him?

18 A. No. Like I said, I was interested, that's why I asked
19 you for the interview.

20 Q. Well, that was nice, but why didn't you ask him for
21 that interview before he got charged. That's a little
22 late in the game, is it not, in your opinion?

23 A. Well, that's not my decision, as far as when the
24 charges are issued, but I ended up with the charges
25 being issued and that was my option to ask his

1 attorney, that I was aware of, for that interview.

2 Q. And it wasn't that you agree, did you have the ability
3 to contact him via phone or you know, go to his
4 residence if you so choose? Did you have the ability
5 to do that?

6 A. Well, yes, I would certainly have the ability to do
7 that. I certainly would not have before a certain
8 point. I wanted to make sure that I had a chance to
9 gather other information, not give them a heads-up the
10 investigation was going on. That's kind of a tactical
11 decision on my part.

12 Q. Were you concerned on what was the reason why you
13 didn't want them to know the investigation was going
14 on? Was it going to destroy evidence or what was your
15 rational that would actually even be a concern?

16 A. Well, I mean in any investigation there is a
17 possibility of evidence being destroyed and that was a
18 concern of mine. And not knowing whether they could
19 actually destroy some of this, if there was computer
20 devices for anything that I might need or be looking
21 for, at some point. I did not want that heads up.

22 Q. Okay. So I'm curious, when did you submit for
23 authorization for prosecutor -- for prosecution?

24 THE COURT: For purpose of this preliminary
25 examination, why is that relevant?

Preliminary examination transcript

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1 MR. CUNNINGHAM: Objection.

2 MR. GRABEL: Excuse me, your Honor?

3 THE COURT: For this hearing, this
4 preliminary examination, why is that relevant?

5 MR. GRABEL: Well, I think it goes to the
6 absolute disgraceful bias that they didn't even
7 procure a statement from the defendant to see if he
8 had some rational or reason, but yet they would fly
9 out to California to interview a secondary witness
10 with two people on taxpayer dollars and not even give
11 the defendant an opportunity to offer a reason or
12 rational why they made --

13 THE COURT: It's not relevant.

14 MR. GRABEL: Perhaps why they did the call
15 to defend himself and give him an opportunity? I find
16 it disgraceful.

17 THE COURT: It's not relevant. Next
18 question, please.

19 MR. GRABEL: Thank you.

20 THE COURT: You're welcome.

21 BY MR. GRABEL:

22 Q. Special Agent Campbell, is there a particular reason
23 why you decide to fly out to California on taxpayer
24 dollars with another officer?

25 MR. CUNNINGHAM: Objection.

Preliminary examination transcript

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1 MR. GRABEL: Let me finish the question,
2 before you object, is that fair, sir?

3 THE COURT: Again, I'm not going to ask you
4 again to stop addressing each other. That's the last
5 time I'm going to tell you that, counsel.

6 MR. GRABEL: That's the first time in this
7 hearing I did, but I apologize, your Honor.

8 May I finish the question before he
9 objects?

10 THE COURT: Ask your question.

11 MR. GRABEL: Thank you.

12 BY MR. GRABEL:

13 Q. Is there a special reason, Investigator Campbell, is
14 there a special reason why you fly out to California,
15 not simply to interview Mr. Mahanian by phone and save
16 the taxpayers that exorbitant costs, if you know?

17 A. Yes, there is a reason.

18 Q. Would you please share that with the Court?

19 A. We did not know -- I had seen publications, news media
20 postings where Mr. Burkman or Mr. Wohl denied being
21 involved. At that point we did not know if it was
22 them involved in this or if maybe somebody else was
23 using their names and information. I did not know
24 Mr. Mahanian's involvement, so level of involvement or
25 what his cooperation would be, we felt the best

1 tactical decision, serve the search warrant with us
2 on-site at his office, to get the records from the
3 source, without relying on his cooperation to provide
4 them.

5 Q. Well, I'm curious, did you threaten and I shouldn't
6 use the word threaten, did you indicate to Mr.
7 Mahanian, words or words to the effect that if he
8 didn't cooperate, that you may charge--

9 A. No, I never told him.

10 Q. Did you, without repeating what Mr. Mahanian said, did
11 you inquire to Mr. Mahanian if he had some type of,
12 let's just say legal vetting process that he would vet
13 these whatever robo calls, that he would make sure
14 that they pass legal scrutiny? Did you inquire that
15 if he had -- if that was part of his service?

16 MR. CUNNINGHAM: Objection, your Honor.
17 It's calling for hearsay.

18 MR. GRABEL: Well, I said if he asked him,
19 I didn't ask for his answer. I said if he asked him.
20 I didn't ask him to repeat the answer, so I don't
21 believe that it would be hearsay.

22 THE COURT: Overruled. Go ahead.

23 MR. GRABEL: Thank you.

24 THE WITNESS: Did I ask him? What was your
25 question again, sir?

Preliminary examination transcript

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1 BY MR. GRABEL:

2 Q. No problem. Did you ask Mr. Mahanian words to--
3 words to the effect, if when a customer wanted to
4 utilize his services for a robo call, he would vet the
5 call through his own legal process to make sure that
6 the call did not run afoul of, you know, legalities?

7 A. No, we didn't have a discussion like that.

8 Q. Okay. Do you think, in your opinion, and again would
9 that be important if Mr. Muhanian made representations
10 that he had his own legal counsel to vet the legal
11 robo calls, would that be relevant to you in this
12 prosecution, if you know?

13 MR. AMADEO: Objection, your Honor.

14 THE COURT: Assuming facts not in evidence.
15 Sustained.

16 MR. GRABEL: I don't have any further
17 questions at this time. Thank you, Special Agent
18 Campbell. I appreciate your time.

19 THE COURT: Any redirect?

20 MR. CUNNINGHAM: No redirect, your Honor.

21 THE COURT: I do have a couple questions.
22 Officer Campbell, based on your investigation, are you
23 able to tell what the content or who provided the
24 content of these robo calls?

25 THE WITNESS: In this particular case, I

1 have records that show that the content was uploaded
2 by the clients, in this case, Mr. Burkman and Mr.
3 Wohl.

4 THE COURT: I see. And in your
5 investigation, are you able to determine who makes the
6 call as to what target area that these robo calls are
7 supposed to go to?

8 THE WITNESS: In this case Mr. Mahanian's
9 records show that the zip codes of where these calls
10 were to be directed to, were uploaded by the client.

11 THE COURT: When you say the clients,
12 you're referring to --

13 THE WITNESS: Mr. Burkman and Mr. Wohl.

14 THE COURT: Okay. Okay. That's all I
15 have. Any questions based on my questions?

16 MR. GRABEL: I have one, your Honor, if I
17 may, based on your line of questioning.

18 THE COURT: Go ahead.

19 MR. GRABEL: Thank you.

20 RE-EXAMINATION

21 BY MR. GRABEL:

22 Q. Special Agent Campbell, can you tell this court with
23 reasonable certainty whether Mr. Mahanian may have
24 altered the content of this message? Do you have any
25 ability to offer any evidence to the Court whether, in

1 fact, it was altered by Mr. Mahanian?

2 A. I have no indications that it was altered by him at
3 all.

4 Q. Okay. Is that something that you asked Mr. Mahanian
5 whether he altered the message that was given to him?

6 A. In the course of my interviews of Mr. Mahanian, talked
7 about the records that he indicated that were provided
8 by Mr. Burkman and Mr. Wohl. There was no admission
9 or any statement by him that he has the ability to
10 alter. He did mention that he keeps all of those
11 recordings in detailed records on his involvement with
12 his clients, so he can show what the history is, but
13 no indications that there was any changes to the
14 information.

15 Q. Okay, and up to this date, Mr. Mahanian has not been
16 charged with absolutely anything, to the best of your
17 knowledge in the State of Michigan, based on his
18 purported involvement in this robo --

19 THE COURT: That's not relevant. I don't
20 care if Mr. Mahanian is charged or not. It doesn't
21 have any relevance to this Court.

22 MR. GRABEL: I don't have any further
23 questions. Thank you, again, Special Agent Campbell.

24 THE COURT: Mr. Cunningham, do you have any
25 other witnesses?

Preliminary examination transcript

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1 MR. CUNNINGHAM: Yes, your Honor. Are you
2 ready to proceed, Mr. Naoum?

3 MR. NAOUM: Let me call Miss Crane.

4 THE COURT: Give me one moment, if you
5 don't mind.

6 MR. AMADEO: Your Honor, can we have a
7 short break?

8 MR. CUNNINGHAM: Can we have a short break
9 while we line this up?

10 MR. AMADEO: Your Honor, we're objecting to
11 this witness testifying.

12 THE COURT: I'm sorry, I didn't hear you.
13 What did you say, counsel? I didn't hear you.

14 MR. AMADEO: We are objecting to this
15 witness testifying. She -- it's been very clear
16 experts cannot testify. She is not a fact witness.
17 The AG is using this as an expert on robo calls and
18 expertise of Secretary of State and it was very clear
19 in your emails, Judge, that I could not have an expert
20 nor would --

21 THE COURT: I did say I think that experts
22 in Constitutional Law would be fruitful in aiding the
23 Court as to what my findings are. I didn't say no
24 experts would be allowed. I said experts in
25 Constitutional Law as relates to the First Amendment.

1 MR. AMADEO: Well, your Honor, Mr.
2 Cunningham did say in his email to you that he did
3 not -- he thought you were the only expert that should
4 be allowed at trial -- I'm sorry, at the prelim, now
5 he is trying to put an expert in.

6 THE COURT: I don't care what Mr.
7 Cunningham said, but the question is would an expert
8 or whatever this next witness is and I'm not sure, I
9 haven't had any proffered testimony as to what this
10 expert is supposed to offer, but if it is going to aid
11 the Court in some manner, then quite possibly now you
12 proposed an expert in constitutional law, particularly
13 in the First Amendment and I indicated to you that I
14 didn't think that was necessary, given this Court's
15 experience on the bench and as well as my teaching,
16 that that would be necessary or would aid this Court
17 in anything as relates to the First Amendment. Now as
18 to robo calls and I'm only going by what you gentlemen
19 have said, robo calls and the like, I don't have any
20 expertise in that area. I don't know what this
21 witness is going to testify to, perhaps I can get an
22 offer of proof from Mr. Cunningham.

23 MR. CUNNINGHAM: This witness is the
24 Assistant Director of the Department of Elections,
25 aware of those laws that Mr. Rabaut has talked about

1 in regards to the ability of persons to get
2 information. She's well aware of the procedures in
3 place at the Bureau of Elections and Department of
4 State as to what information can be disclosed and what
5 information cannot be disclosed.

6 THE COURT: And that was brought up during
7 the cross-examination as to, I think it was Mr. Grabel
8 if I'm not mistaken, brought up questions regarding
9 whether or not certain information can be obtained
10 through different entities and for that reason, I will
11 allow this witness to testify. Court will do a ten
12 minute break. We'll reconvene at 3:41 p.m.

13 (Whereupon a brief recess was held).

14 THE COURT: We're back on the record, with
15 People versus Burkman and People versus Wohl. People
16 call your next witness.

17 MR. NAOUM: Deputy Director -- Deputy
18 Legal Director Khyla Craine to the stand.

19 THE COURT: Ma'am, tell me your name and
20 spell it for me, please.

21 THE WITNESS: K-h-y-l-a, last name
22 C-r-a-i-n-e.

23 K H Y L A C R A I N E,
24 after been first duly sworn to tell the truth, the
25 whole truth and nothing but the truth, was examined

1 and testified as follows:

2 THE WITNESS: Yes.

3 DIRECT EXAMINATION

4 BY MR. NAOUM:

5 Q. Please state your name.

6 A. Khyla Craine.

7 Q. Where do you work?

8 A. I work at the Department of State.

9 Q. What is your title?

10 A. Deputy to the Secretary at the Department of State.

11 Q. Is there a specific division that this role is tied
12 to?

13 A. Yes, it is part of the legal services administration,
14 which is in the executive office.

15 Q. Okay. And can you describe your role and
16 responsibility?

17 A. Sure. I serve as the second in command of the Legal
18 Services Administration and provide legal and policy
19 consult to the Secretary on a myriad of issues that
20 she deals with, as well as various business areas
21 within the Department of State, including the Bureau
22 of Election.

23 Q. Okay. And given your role, are you familiar with the
24 procedures of Bureau of Elections?

25 A. I am, yes.

1 Q. Okay. Does anything in your role touch on data?

2 A. Yes. Yes, I serve as the Chief Privacy Officer for
3 the Department of State as well. So any issues
4 dealing with data, sharing agreements, questions about
5 the legality of what can be shared with our various
6 datasets that comes to my office.

7 Q. Generally, whenever there is data related questions,
8 you're brought into the loop?

9 A. That would be correct, yes.

10 Q. You know what a robo call is?

11 A. Yes, I do.

12 Q. And can you describe it for me?

13 A. Sure. An automated dialed to a group of residents
14 that will encourage them to do something, usually tied
15 to election, but it could be for any purpose, really.
16 So it's just not someone actually calling the numbers,
17 but it's the automated dial in.

18 Q. But automated dialing, do you mean to include --
19 (inaudible)

20 THE COURT: Keep your voice up, Mr. Naoum.

21 MR. NAOUM: What was that, Mr. King?

22 THE COURT: Please keep your voice up.

23 MR. NAOUM: I apologize.

24 BY MR. NAOUM:

25 Q. To your knowledge, robo calls are used sometimes for

1 political purposes?

2 A. Yes.

3 Q. Okay. Were you ever made aware of robo calls made to
4 Detroit residents on August 26th, of 2020?

5 A. I was made aware.

6 Q. When were you made aware?

7 A. I was made aware either late August or early
8 September.

9 Q. Okay. And why were you made aware of it?

10 A. Through my role as Deputy Legal Director, I'm usually
11 in the loop about issues that come across the
12 secretary's desk, which is legal issues like this.

13 Q. Was there anything, in particular, about this robo
14 call that was brought to your attention?

15 A. Yes. That there's an accusation that it would be
16 voter suppression type of robo call targeted African
17 American citizens in the City of Detroit.

18 Q. So you're familiar with the robo call in question?

19 A. Yes, I am.

20 Q. Did you get a chance to listen to it?

21 A. I did. I listened to it at the beginning of October
22 for the first time.

23 MR. NAOUM: Your Honor, I will now play
24 Exhibit 1 for the benefit of witness.

25 THE COURT: Okay. You are now a co-host.

1 (Playing audio recording)

2 BY MR. NAOUM:

3 Q. Miss Craine, is that the same robo call that you
4 referenced before?

5 A. Yes, sir, it is.

6 Q. Okay. What can you tell me about the claim in the
7 robo call that voting by mail will result in the
8 electors personal information becoming apart of the
9 public database?

10 A. So a part of the information is -- so information
11 related to elections is a part of a public record,
12 however, there are search limitations, of course, to
13 that record the part of the robo call that talks about
14 this information whereby different law enforcements or
15 credit agencies or used by the CDC, that would be
16 false.

17 Q. Okay. What is shared, what is publically shared about
18 a voter's file?

19 A. So our state election files, voter file and so your
20 name, your address, information about if you
21 participated in election, whether it would be mail-in
22 or in-person, that part of the information can be
23 shared publically but state law prohibits information
24 such as a phone number or email address to be a part
25 of that publically shared information and so it

1 doesn't make sense that a law enforcement agency or
2 credit agency, much less the CDC would utilize the
3 qualified voter file to be able to contact a citizen.

4 MR. GRABEL: I would ask that the
5 foundation be laid that the witness has personal
6 knowledge for what the Center of Disease Control would
7 do with any data and law enforcement, I think that
8 exceeds --

9 THE COURT: I think she testified that
10 that information would not be given to the CDC, am I
11 correct or did I hear that wrong?

12 MR. GRABEL: They requested it, is that
13 what you indicated, your Honor? Just clarifying.

14 THE WITNESS: No, your Honor, I can
15 clarify.

16 THE COURT: Go ahead.

17 THE WITNESS: So what I was saying is that
18 it just doesn't track that the law enforcement or the
19 credit agencies would access this information because
20 there other data sites that the department has that
21 would give them the information that this actually
22 would require. There is a separate set of laws and
23 datasets that more specifically our driver file that
24 companies typically used and get information from,
25 moreover in Michigan, there is a set of information

1 called the LEIN system which is Law Enforcement
2 Information Network where our law enforcement agency
3 would get information for their use. So the
4 qualified voter file just would not -- it doesn't make
5 sense that they would accept the qualified voter file
6 because it's very limited on the amount of information
7 that they would have to contact a voter, because
8 again, there's no phone number information, nor an
9 email that we can provide to anyone that requests a
10 qualified voter file. It's prohibited by law.

11 THE COURT: Just so I'm clear, is any
12 information as relates to voting and that type of
13 thing given to CDC?

14 THE WITNESS: Not to my knowledge, no, your
15 Honor and If I may, I'm also not aware of any mandated
16 vaccinations that happens in the United States that
17 tracks what was stated on that robo call, as well,
18 sir.

19 BY MR. NAOUM:

20 Q. All right, Miss Craine, so realistically as a
21 qualified voter file, in terms where you would be able
22 to access, for law enforcement, would be the name,
23 whether or not they vote and their address?

24 A. That is correct.

25 Q. And how they vote, in terms of by mail or in-person?

1 A. Oh, yes.

2 Q. And there is no other information?

3 A. No, other -- I mean, there is a few more data points
4 but nothing that would be able to allow an entity to
5 contact the voter.

6 Q. Okay. Do you have --

7 A. It's specifically tailored to elections.

8 Q. Okay. Do you have access to the qualified voter
9 files?

10 A. No, sir, I do not.

11 Q. Can you describe who does have access and how that's
12 to be dealt?

13 A. Sure. So the Bureau of Elections, the state director
14 and Bureau of Election provides access to the 1,500
15 clerks around the state, based upon a need to know.
16 They're vetted by the state, the Bureau of Elections
17 and they grant access to the qualified voter file.
18 The Department of State has 1,500 employees identify
19 and only a slim number of them, within the Bureau of
20 Elections have access, along with the state -- excuse
21 me, the county and local courts.

22 Q. So is it true that this public database is used by the
23 police department to track down open warrants?

24 A. Can you repeat the question? I'm sorry.

25 Q. Is it true that this public database of qualified

1 voter files is used by the police department to track
2 down old warrants?

3 A. No.

4 MR. GRABEL: Calls for speculation, unless
5 this witness speaks to every law enforcement agency in
6 Michigan. I believe it's outside the scope of her
7 expertise.

8 THE COURT: Well, I'm not so sure that it
9 is. From the perspective of she would be the entity
10 that the law enforcement agency would have to come to.
11 Have you or do you have any knowledge at any time of
12 voter information given to law enforcement agencies
13 for the purpose of tracking down people with old
14 warrants?

15 THE WITNESS: No, your Honor, unless it's
16 related to an elections related offense.

17 BY MR. NAOUM:

18 Q. Okay. Is it true that this public database is used
19 for companies to collect outstanding debts?

20 A. No, sir, not to my knowledge.

21 Q. So no credit card companies make that request to the
22 Secretary of State?

23 A. No. And in fact, again, I would reiterate they would
24 more so ask for the driver file. We have several
25 thousands of entities that request information from

1 the driver files, not the qualified voter file.

2 Q. Is it true that the public database of the qualified
3 voter files is used for the CDC to track people for
4 mandatory vaccines?

5 A. No.

6 Q. Does the CDC reach out for any of this information at
7 all?

8 A. No.

9 Q. Does voting by mail modify any of the information in
10 the qualified voter file?

11 A. I mean to the respect that a person voted by mail, but
12 it wouldn't -- I'll just say that to the extent that
13 they voted by mail or their ballot was rejected or
14 spoiled in that kind of manner, so strictly elections
15 related information.

16 Q. Okay. If you vote by mail, is there any reason to
17 quote, unquote, be aware of or be fearful of anything?

18 A. No. The Secretary of State --

19 MR. GRABEL: Calls for a legal conclusion.

20 THE COURT: It does?

21 MR. NAOUM: Yeah, what was that, your
22 Honor?

23 THE COURT: He says it calls for a legal
24 conclusion. I'm not sure it does. There may be an
25 objection there. I'm not sure if that was the right

1 one though.

2 MR. NAOUM: I'm asking to her knowledge.

3 THE COURT: Okay. Rephrase the question.

4 MR. GRABEL: I don't think -- I think it
5 would call for speculation as well, your Honor or
6 maybe her opinion, if it would. She doesn't speak for
7 every mail-in voter, how they would construe the robo
8 call message.

9 THE COURT: Rephrase the question, please.

10 BY MR. NAOUM:

11 Q. Do any of the claims in the robo calls, in the robo
12 call have the proper validity to generate fear amongst
13 the voters?

14 MR. GRABEL: Calls for speculation, your
15 Honor. She doesn't speak for voters in general.

16 THE COURT: I'll sustain the objection.
17 Ma'am, do you have any concern with those people who
18 choose to do mail in voting?

19 THE WITNESS: I don't have any concern with
20 people mail in voting. I would have a concern if
21 they listened to this robo call and got misinformation
22 and whether or not that they would feel that mail in
23 voting was safe.

24 THE COURT: Okay. Anything else?

25 BY MS. NAOUM:

1 Q. Miss Crane, why would you be worried about that, in
2 particular?

3 A. Well because the information that is in this robo
4 call, from my experience, is targeted to a specific
5 group of people, especially African Americans, who may
6 be fearful of law enforcement or fearful of credit
7 card companies accessing this information and that is
8 incorrect. They would not be able to do so.

9 MR. GRABEL: Your Honor -- I would object,
10 your Honor. In all due respect --

11 THE COURT: I'll sustain the objection. I
12 got you. Sustain.

13 MR. GRABEL: Thank you, your Honor.

14 THE COURT: Next question.

15 BY MR. NAOUM:

16 Q. In your opinion, do these types of robo calls fit a
17 general pattern that we're seeing related to elections
18 in this country?

19 MR. GRABEL: Objection, relevance--

20 THE WITNESS: Yes.

21 THE COURT: Sustained.

22 MR. GRABEL: -- I don't care about any
23 robo call pattern.

24 THE COURT: Sustained.

25 MR. NAOUM: Okay. No further questions,

1 counsel.

2 THE COURT: Cross exam.

3 CROSS-EXAMINATION

4 BY MR. GRABEL:

5 Q. Miss Crane, I'm going to ask you a couple questions.

6 So I'm clear, any person in Michigan could obtain the
7 name, address and I believe also year of birth of any
8 mail in voter; is that a correct statement?

9 A. Of any voter?

10 Q. So if I mailed in vote and you wanted to get my name,
11 address and year of birth, there is no requirement,
12 other than I request it, is that a fair statement?

13 A. It wouldn't be specified. It wouldn't be specific
14 just to you. You would have to either ask for the
15 entire State of Michigan, you would have to ask for a
16 specific jurisdiction, zip code, house district, that
17 sort of thing. So they can't ask for specifically
18 you, they would have to ask for something that would
19 encompass that for a jurisdiction or other entity that
20 they think you encompass.

21 Q. Again, it's a fair hypothetical. If I wanted to get
22 the names, addresses and year of birth for every mail
23 in voter in Michigan, would you provide me that
24 information if I, let's say, paid whatever fee there
25 was? Would you provide me that information if I

1 requested it?

2 A. If you requested it, for every voter.

3 Q. What I do with that information, would it be fair to

4 say, as long as it's not illegal, it would be of no

5 concern to you, would that be a fair characterization?

6 A. I wouldn't say it would be no concern, but I would

7 agree to your point about as long as it's not illegal.

8 Q. Okay. So you agree?

9 A. You can seek through the Freedom of Information Act.

10 Q. Right. There could be no preclusion that couldn't get

11 that information, correct?

12 A. That's correct.

13 Q. Okay. If I wanted to get money from a certain

14 geographical area, I could use this database, correct?

15 If they owed me money, if I couldn't find their

16 address, I could do that legally, would that be a fair

17 hypothetical?

18 A. Hypothetically, yes, but it doesn't track that you

19 would use this dataset, versus the other datasets that

20 the Department of State has at your disposal.

21 Q. So you believe the other datasets in the hypothetical

22 I gave you would give me more pertinent information

23 that would help facilitate, in my example, gaining

24 information for collections, correct?

25 A. Correct.

1 Q. But now at this point you're saying in your experience
2 you've never seen a credit card company utilize this
3 database to perhaps collect an outstanding debt, is
4 that a fair statement?

5 A. I never seen a company utilize a qualified voter file
6 to access to -- correct.

7 Q. I didn't mean to interrupt you. I apologize, but
8 you're telling me if, in fact, they did, that would
9 not concern you or bother you that somehow the law has
10 been violated if they did that, let's say, tomorrow?
11 That could change any day, is that a fair statement of
12 your opinion?

13 A. Can you repeat the question? I apologize.

14 Q. Right. I'm assuming this is an ongoing situation, if
15 a credit card company tomorrow made the request for
16 this particular database we were talking about, your
17 answer could, potentially, change tomorrow, is that
18 correct? If they decide to ask for that information
19 they could get it, correct?

20 A. In theory, yes, but we would probably ask why they
21 would want to get access to the qualified voter file
22 versus the driver file.

23 Q. Well, under the statute, I don't believe that you have
24 the right to ask them the reason or rational, do you?
25 I don't see anything in the statute that gives you the

1 ability to ask them why they want the information, do
2 you?

3 A. We can ask. Getting the information, thats a
4 different question. But we can ask and we can also
5 let them know that the information from the voter file
6 would not get them the information that they want. We
7 can provide them information from the driver file
8 which is much more substantial than what they're
9 looking for.

10 Q. But if they refuse to give you the reason they wanted,
11 I'm just saying you would still give them the
12 information from the qualified voter file, if they
13 wanted it?

14 A. Potentially.

15 Q. Potentially and what would be the prohibition, if you
16 know, why you wouldn't give it to, let's say in this
17 example, a credit card entity for example, if you
18 know? How would you refuse it?

19 A. I don't know right now. Again, but it doesn't make
20 any sense why they would want to get access to the
21 qualified voter file.

22 Q. And I imagine as a manager, and I don't mean to offend
23 you, you were personally offended by this robo call;
24 is that a fair statement?

25 A. What my personal offense is, I don't know if that

1 matters here. As the Deputy Legal Director for the
2 Michigan Department of State, our responsibility is to
3 insure that all of our voters are able to vote without
4 any type of issue and that they're not intimidated or
5 given misinformation about the accuracy or security of
6 their ballot. So in that aspect, I was offended by
7 it, yes.

8 Q. 'Cuz you believe and I respect your opinion, you
9 believe the message is completely false, is that a
10 fair statement, in your opinion and I respect that.
11 I'm just saying I want to make it clear, you believe
12 that the message was false for the reasons you gave
13 during your direct testimony, correct?

14 A. As the Deputy Legal Director of Michigan Department of
15 State, yes, I believe that the information is false.

16 Q. I respect that. Now I'll ask you this, to be fair to
17 you, you're a lawyer, you have a law degree?

18 A. That is correct.

19 Q. Have you ever worked for a prosecutor attorney agency?

20 A. Yes, I have.

21 Q. And is that--

22 A. As an intern.

23 Q. Was that Michigan Attorney Generals Office?

24 A. Yes.

25 Q. What is that?

1 A. As an intern, I worked for the United States U.S.
2 Attorneys Office for the District of Columbia.

3 Q. Okay. And obviously in Michigan would you agree in
4 each County, the highest law enforcement official is
5 the prosecuting attorney, is that your understanding
6 in each county?

7 A. I believe that's my understanding. The highest law
8 enforcement agent?

9 Q. In each county, is considered the prosecuting attorney
10 for each county, is that a fair statement I just made,
11 as a term of art?

12 A. Like the Chief Law Enforcement Agent for each county
13 is the prosecuting attorney?

14 MR. CUNNINGHAM: Your Honor, if I may,
15 this is out of scope.

16 MR. GRABEL: I'm just testing the
17 veracity. She said the statement is false factually
18 in her opinion, which I respect. I'm just parsing
19 the fact, that you offered the witness to come up here
20 and say the message is completely false. I'm simply
21 exploring the possibility that the message may have
22 plausible -- you know, that may be plausibly true, I'm
23 not arguing with her, I'm ready to delve into that
24 because if a prosecutor wants to seek information on
25 outstanding warrants and wants to find out the address

1 of certain individuals, they can use this database if
2 they so chose.

3 THE COURT: Why don't you ask that
4 question. Go ahead

5 MR. GRABEL: I'm exploring that with her.
6 Okay. I will.

7 BY MR. GRABEL:

8 Q. If a prosecuting attorney, if they had outstanding
9 warrant and trying to locate an individual and they
10 think, let's say, for example, he or she, regardless
11 of color, creed, race, religion is in Wayne County,
12 could they utilize this database to cross reference
13 with outstanding warrants if they wanted to? Whether
14 it's efficient or not, could they do that or not, in
15 your opinion as a former intern in the U.S. Attorneys
16 Office? Could you do that?

17 A. Well, they --

18 MR. NAOUM: Your Honor, I don't think an
19 intern is qualified to say anything like that.

20 MR. GRABEL: I don't know, maybe she is or
21 not. I'd like to see if she -- maybe she doesn't know.

22 THE COURT: She can answer the question.
23 Go ahead.

24 BY MR. GRABEL:

25 Q. Miss Craine, do you have an opinion on my last

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1 question and I apologize, I didn't want to cut you
2 off.

3 A. No, I don't. I don't.

4 Q. You don't know is that a fair statement?

5 A. No. Could -- I mean, with the other tools that they
6 have at their disposal, I'm not sure why they would
7 reach to the qualified voter file.

8 Q. Okay, but my question is -- I understand that, but
9 you're telling me any person could get that
10 information if they wanted to, names, addresses, year
11 of birth, they could do that?

12 A. Yeah, name, address, year of birth.

13 Q. But you believe there are other more efficient
14 databases that they can use at their arsenal to get
15 more fruitful information, if they wanted to? Let's
16 say, in my example, effectuate an arrest for an
17 outstanding warrant, would that be a fair
18 clarification?

19 A. There's more information that they currently do use.
20 We have data sharing agreements and other types of
21 agreement with law enforcement agencies where they
22 would be able to get information that the Department
23 of State holds. And none of those are -- none of
24 them, to my knowledge, deal with the qualified voter
25 file. They typically accessing the various parts of

1 the driver file.

2 Q. So you believe that even though they can utilize them,
3 there may be more, in your opinion, efficient means to
4 use other databases to effectuate, let's say, in my
5 example, effectuate finding somebody who has an
6 outstanding arrest warrant, did I characterize your
7 answer correctly?

8 A. I don't know if it's more so efficiently, but go
9 ahead.

10 Q. I just simply indicating you're telling me if somebody
11 has an outstanding warrant, law enforcement may
12 have -- I said better databases that might give them
13 more fruitful information than the qualified voter
14 file if they wanted to effectuate an arrest of
15 somebody with an outstanding old warrant, is that a
16 correct statement, in your opinion?

17 A. That would be correct.

18 Q. Okay. Thank you. And not to trivialize it,
19 obviously the issue concerning the CDC and mandatory
20 vaccines, you would agree that you have no expertise
21 in the field of, I guess, vaccines or immunology,
22 correct? You haven't been an intern for Dr. Fauci,
23 have you, that I'm not aware?

24 A. I have not, but I do have a Bachelor of Science in the
25 nursing and practiced as a nurse before I became a

1 lawyer.

2 Q. Okay. Very good. Are you aware and again, I won't
3 belabor the point, Judge and I'll wrap it up, that
4 actually a few weeks ago and I can play it for you,
5 Vice President Biden, who is said the election --

6 MR. NAOUM: Objection, relevancy.

7 MR. GRABEL: I haven't finished the
8 question. Judge, may I finish the question before he
9 objects to it?

10 THE COURT: Go ahead.

11 MR. GRABEL: Thank you.

12 By MR. GRABEL:

13 Q. Miss Craine, are you aware, since you have some, I
14 guess, background in medicine in a town hall, a few
15 weeks ago and I could play it for you, Vice President
16 Biden, who is ahead in the polls, has asked -- was
17 asked by George Stephanopolous if he would mandate
18 making a vaccine by law and his answer was and it
19 wasn't no, it was depends and then he was asked on how
20 he would enforce making that mandate, if it became law
21 and did you hear that town hall when he asked that
22 question?

23 A. I did not.

24 Q. Okay. So if a vaccine, in my hypothetical, was
25 mandated, do you know if the CDC might utilize the

1 voter records, qualified voter records or another
2 database to compel people to take a vaccine? Do you
3 know if that's possible, in your opinion?

4 MR. NAOUM: Objection, speculation.

5 MR. GRABEL: Well, she said the statement
6 is false. Maybe that might change her opinion, maybe
7 it won't.

8 THE COURT: I'll sustain the objection.

9 MR. GRABEL: Did you say sustain?

10 THE COURT: I did.

11 MR. GRABEL: Okay. Very good.

12 By MR. GRABEL:

13 Q. So it would be fair to say, Miss Craine, obviously
14 your opinion, which I fully respect, of this statement
15 being false, I assume you did not do a deep dive into
16 law enforcement in general or credit card companies or
17 rather the CDC, if a vaccine was mandated, might they
18 use this thing, you did not do any deep research on
19 that, is that a fair statement?

20 A. On whether or not the CDC would mandate?

21 Q. Yeah. Well, I'll ask this, you didn't call the CDC
22 and ask them if they were going to use any databases
23 to mandate vaccine, correct? You didn't call them and
24 inquire about that, did you?

25 A. I didn't because in the United States there have not

1 been any mandated vaccinations to my knowledge, so I
2 wouldn't need to call them about that.

3 Q. Well, you would agree, the last time there was a
4 pandemic in this case in 1918, you and I were not
5 alive, correct? These are strange times, would you
6 agree?

7 A. They are strange times, yes.

8 Q. I don't believe before, at least, in Michigan, I'll
9 speak to it, I don't remember there was a mandate that
10 you should wear a mask before this year, would that be
11 a fair characterization, during my lifetime, correct?

12 A. That could be, yes.

13 MR. NAOUM: Objection, relevance.

14 THE COURT: Sustain.

15 MR. GRABEL: I'm just debunking the fact
16 that it's her opinion that it's false. I'm just
17 exploring how she formed that opinion. That's all,
18 Judge, nothing more.

19 THE COURT: Do you have any other
20 questions?

21 MR. GRABEL: No, I think my point is made.
22 I appreciate your time, Miss Craine. Thank you, so
23 much.

24 BY MR. GRABEL:

25 Q. Also I assume, let me just ask you this, you haven't

1 obviously talked to Mr. Burkman or Mr. Wohl to ask
2 them why, if they did put this message out, what their
3 reason or rational was, correct? Would that be a fair
4 statement?

5 A. I did not, but I do recognize that they only submitted
6 this into the City of Detroit and not across the State
7 of Michigan, so if they were actually concerned about
8 the citizens and there mail in ballots, being given to
9 other entities, then it's interesting that they would
10 only give this out to the citizens in Detroit and not
11 all across the State.

12 Q. I assume you're indicating that you believe this was
13 targeted to African Americans and minorities, would
14 that be your conclusion, correct?

15 A. That would be my conclusion, correct. Yes, that
16 would be my conclusion, even if it was not, there is
17 some -- there's questioning if there is an -- if you
18 are trying to alert the citizens of the state, why
19 would you only put it -- given this robo call to one
20 jurisdiction out of various jurisdictions in the State
21 of Michigan?

22 Q. Okay. But you did not obviously try to contact Mr.
23 Burkman or Mr. Wohl, to see if they had a reason why
24 they targeted these places, that's just what your
25 assumption is, correct?

1 A. Well, it's not necessarily just my assumption, but my
2 experience dealing with various types of voter
3 suppression across the country. Their robo calls fit
4 into this pattern of misinformation to select
5 individuals within a particular type of jurisdiction.

6 Q. So obviously I understand. So your opinion is
7 misinformation. If I were have said to you that
8 Pfizer warrants were improperly granted --

9 THE COURT: Now we're getting back into
10 areas of --

11 MR. GRABEL: That's fine, Your Honor.
12 I'll withdraw the question.

13 BY MS. GRABEL:

14 Q. I would assume you're personally angry at this robo
15 call. You are -- I don't mean to be disingenuous,
16 you're African American?

17 THE COURT: I think she's already answered
18 this question, as well. That was towards the very
19 beginning of your cross-exam.

20 MR. GRABEL: I'll withdraw.

21 THE COURT: Her answer was relatively the
22 same.

23 MR. GRABEL: I'll finish, your Honor.

24 MR. AMADEO: I just have a couple
25 questions of Deputy Craine.

1 CROSS-EXAMINATION

2 BY MR. AMADEO:

3 Q. Hi, Deputy Crane. How are you?

4 A. Good, thank you.

5 Q. Thank you for making some time. I know you have an
6 important job and you're busy. I'm going to ask a few
7 quick questions. I know it's been a long day for
8 everyone. Have you ever heard of the Criminal Justice
9 Policy Information Counsel?

10 A. Yes.

11 Q. Isn't it true that a member of Secretary of State --
12 isn't it true there that counsel is, in fact, a member
13 of the Secretary of State?

14 A. No, not to my knowledge.

15 Q. It would surprise you if they were?

16 A. That the Criminal Justice --

17 Q. Policy Information Counsel is actually connected to
18 the Michigan Secretary of State?

19 A. We do have a member of the counsel from the
20 Secretary's office.

21 Q. And isn't information about government data shared
22 throughout this network, at least that's what it says
23 on Google?

24 A. Yes. We do have information that is shared through
25 our driver file.

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1 Q. So that information is not necessarily protected,
2 would that be a fair statement?

3 A. No, it's not.

4 Q. Why not?

5 A. It's not a true statement because there is about five
6 different laws on the Federal, as well as the state
7 level that protects one's data.

8 Q. So are you saying that law enforcement cannot do a
9 LEIN check through this system?

10 A. No, I'm not.

11 Q. You're not saying that?

12 A. No.

13 Q. But would you agree that's a possibility?

14 A. That from the driver file information that we changed
15 into LEIN, could they do a LEIN check? Yes, they can.
16 But there still are laws that protect residents'
17 information.

18 Q. Just one final thing here and no disrespect by this
19 question, but you did say how you felt the calls were
20 directed at African Americans in the Detroit area,
21 would that paraphrase be correct?

22 A. Sure.

23 Q. Did you know when my client purchased or allegedly
24 purchased these calls, it was 313 area code?

25 A. Which is the City of Detroit and surrounding areas,

1 yes.

2 Q. Okay. So usually surrounding areas, are you aware
3 that many suburbs in Wayne County are highly Caucasian
4 are also in that 313 area code?

5 A. I am.

6 Q. So would it be fair to say that the call was not
7 necessarily directed towards people in the City of
8 Detroit, but Wayne County in general, based upon that
9 area code?

10 A. I would not and even if it were, Wayne County is
11 disproportionately African American, either way you
12 strike it, they did not target to the entire state
13 they were targeted to the one of the more densely
14 populated counties. If you're statement would
15 actually track where African Americans live and again,
16 this fits into a narrative that has been happening
17 across the country, where information is fed into
18 African American jurisdictions or where most or many
19 African Americans live.

20 Q. So let me do a little clarification here. It's your
21 position that the 313 area code is heavily populated
22 with African Americans, is what that you're saying?
23 Wayne County in general is mainly African Americans?
24 Are we sure about that?

25 A. No. I'm not saying that. What I'm saying it is

1 heavily African Americans in Wayne County, majority of
2 African Americans that live within the State of
3 Michigan are in that general vicinity too, but either
4 way it goes, what did not happen, according to the
5 information that I have, is that your client did not,
6 send this across the state. If they actually wanted
7 to inform all voters, within the State of Michigan
8 they did not do that. They sent it into the City of
9 Detroit, which is my understanding, which means that
10 it looks like it was targeted to a particular type of
11 people and not just voters generally.

12 Q. Would it be fair to say you have not reviewed all the
13 evidence in this case?

14 A. That would be fair.

15 MR. AMADEO: Okay. Thank you for your
16 time.

17 THE COURT: Any redirect?

18 MR. NAOUM: No, your Honor.

19 MR. GRABEL: Judge, may I ask one
20 follow-up question, if I may?

21 THE COURT: You promised me you were done,
22 but go ahead.

23 MR. GRABEL: Apologize, your Honor.

24 RE-EXAMINATION

25 BY MR. GRABEL:

1 Q. Miss Craine, I guess in your opinion after listening
2 to the robo call, do you believe that it spoke
3 expressly or impliedly to deter in-person voting in
4 any way, in your opinion?

5 A. Did it express?

6 Q. Expressly or impliedly deter an individual for not
7 voting in person in any way?

8 A. No. It stated that it was -- it seemed like it was
9 trying to deter people from voting mail-in -- excuse
10 me. It attempted to deter people from mailing in
11 their ballots and given COVID and how it has
12 disproportionately affected African Americans,
13 particularly in the City of Detroit, all these things
14 combined, it's not just a one up here or one up there,
15 all of these different things combine to attempt to
16 suppress, what it seems like to suppress the vote,
17 particularly of African Americans, particularly in the
18 City of Detroit.

19 Q. Okay. So you factored that in your opinion in the
20 message that it put pandemic in effect of that; is
21 that correct?

22 A. I mean, I'm not sure why you would talk about
23 mandatory vaccinations with the CDC.

24 Q. Did it indicate, number one -- but did the message in
25 any way tell a person that they should not vote

1 in-person? Yes or no?

2 A. No, it did not.

3 Q. Okay. And if a person, let's say, in that message
4 did not have outstanding warrants, a credit card
5 problem, would that concern them about mail-in voting
6 at all, if you didn't have those two problems?

7 A. It may not necessarily concern them, but it may be
8 concern other persons in their family, ex cetera. So
9 you just don't know how far this message would reach.

10 Q. Okay. And again, if a person wasn't against vaccine,
11 I assume, we don't know how each person would view
12 this message, correct? You don't speak for, I guess
13 the community in general, correct, of how they feel or
14 react to this message, is that a fair statement?

15 A. That would be a fair statement, however, there are
16 messages -- there are messages that are -- there are
17 statements within this robo call that could be
18 particularly influential on African Americans and
19 other people of color, when you take about mandated
20 vaccinations, when you say the things like, the man
21 quote, unquote, don't give your information to the
22 man, that is a -- those types -- that type of verbiage
23 is directing to a specific group of people.

24 Q. So are you saying, I'll wrap up with this, that the
25 word the man is something that's only used as somebody

1 directed to the African American community or if it
2 was a potential white caller, you're telling me that
3 the message would refer to the man, white person
4 wouldn't understand that?

5 A. I don't really know if the white community uses that
6 type of language, no.

7 MR. GRABEL: Okay. Appreciate it. Thank
8 you, Miss Crane.

9 THE WITNESS: You're welcome.

10 THE COURT: Ms. Crane, I hate to do this to
11 you, I just have a couple questions for you.

12 How long have you been in your current position?

13 THE WITNESS: For a little over 18 months,
14 your Honor.

15 THE COURT: Prior to being in your current
16 position, were you in that branch of government?

17 THE WITNESS: No, your Honor.

18 THE COURT: Okay. And in 18 months that
19 you've been in your position, ever seen law
20 enforcement, CDC or credit card companies utilize the
21 database that you're talking about here today?

22 THE WITNESS: No, your Honor. They
23 have -- the qualified voter file, no, your Honor at no
24 time have I seen this.

25 THE COURT: Okay. All right. Any

1 questions based on my questions?

2 MR. GRABEL: Based only on your question.

3 THE COURT: I figured you would.

4 RE-EXAMINATION

5 By MR. GRABEL:

6 Q. Obviously, Miss Crane, this pandemic has been going on
7 for, obviously a short period of time. The world has
8 kind of changed in many ways, unfortunately, probably
9 for the negative, you would agree with that, correct?

10 A. Certainly.

11 Q. And obviously with the shut downs in Michigan, you
12 would agree that's harmed a lot of people,
13 financially?

14 THE COURT: You said you had one question
15 that was related to my question.

16 BY MR. GRABEL:

17 Q. Well, I'm just saying that you said the last 18 months
18 but you can't speak to the future, since the world --

19 THE COURT: I didn't ask about the
20 future, I asked about in the 18 months that she's been
21 there and you said you had a question based on my
22 question.

23 MR. GRABEL: I have no further questions.

24 THE COURT: Thank you, Miss Crane, you're
25 all set.

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1 THE WITNESS: Thank you, your Honor.

2 THE COURT: People, any other witnesses?

3 THE WITNESS: Do I log out, your Honor? I
4 apologize.

5 THE WITNESS: Yes.

6 MR. NAOUM: Yes.

7 THE WITNESS: Okay. Thank you.

8 MR. CUNNINGHAM: Your Honor, the People
9 have no further witnesses. We will rest. I will move
10 to bind over the defendants on the charges stated in
11 the complaint and warrant.

12 THE COURT: Okay. Mr. Grabel?

13 MR. GRABEL: Your Honor, your Honor
14 obviously the Court heard the testimony. It's not who
15 done it with the robo call and to be honest with you,
16 your Honor, the interesting thing about this statute
17 is that the Court is probably aware, maybe not aware,
18 this statute, not that it can't be prosecuted, any
19 statute can be utilized to be prosecuted, obviously
20 the statute has elements like any other offense, your
21 Honor. This certainly and I think that it's
22 undisputed, a person has to be put on fair notice what
23 potential conduct they engage in has to be criminal.
24 You can't -- you have to know it. The two components
25 for this statute indicate the conduct has to be

1 menacing or corrupt in affecting, let's say, voters'
2 rights. And menacing is a term of art, your Honor
3 that usually involves some type of threat of physical
4 harm. You can look at the case law, it involves
5 physical harm. I'm not sure that the Attorney
6 General is indicating that the message, if you will,
7 the message in there is menacing or I'm assuming, I
8 think that they're indicating that that's corrupt.
9 Obviously, obviously corrupt is, frankly, not a term
10 of art. That case law has really defined for criminal
11 purposes. This is a criminal statute. Obviously,
12 your Honor, I don't think that you would look at this
13 message and say I believe it deters people from voting
14 in-person. Certainly I think that would be a stretch
15 beyond belief. I think that certainly you can argue,
16 at least for preliminary exam purposes, that while I
17 think it can defer, possibly, mail in voting --

18 THE COURT: Let me correct -- I hate to
19 interrupt you, but let me correct you, just one
20 moment. What is alleged here is not the actual
21 affect that it had on the person receiving the
22 messages. What counts here is what the defendants'
23 specific intent was in delivering that message. What
24 was their intent and how do we determine what their
25 intent is? We determine what their intent is by

1 looking at all of the circumstances surrounding the
2 incidences, their actions before, during and
3 afterwards and I submit, is probably why the Attorney
4 Generals Office provided those text messages to give
5 some form as to what the defendants' objectives were,
6 in providing these robo messages to people in the 313
7 area code.

8 MR. GRABEL: Well, I guess I would
9 indicate, your Honor, under the statute, first of all
10 if you construe that they had and I'll speak for Mr.
11 Burkman, assuming for purposes of this hearing, you
12 believe that there were nefarious reasons for doing
13 this call and I'm certainly not conceding that. To
14 me, I think that is a statutory construction of this
15 statute, they certainly-- Mr. Burkman did not do
16 anything that would deter in-person voting and the
17 statute doesn't delineate that and in my opinion, the
18 statute is not clear on that. I don't believe if you
19 say well, I think you deterred mail-in voting, that's
20 not enough for this criminal statute. As a matter of
21 law, there has been nothing here to suggest in these
22 emails that don't vote at all. You can argue if you
23 want to argue that he didn't want mail-in voting.
24 That's not enough to bind the case over, as a matter
25 of law and statutory construction and I'm not

1 conceding that, but if you argue that, that's not
2 enough.

3 The other issues are, I understand people
4 have opinions, but at this particular point people can
5 certainly have opinions on the plausibility. I don't
6 think that the statement is false as a matter of law.
7 I think it's protected speech. I think this
8 prosecution violates the state and federal First
9 Amendment Rights. I understand that a person can be
10 offended by the message, but at this point to suggest
11 it rises to the level of criminality in this case, I
12 think is absurd. This may be an issue that might have
13 to go up on appeal, but I don't believe that even for
14 probable cause purposes, looking at the statute, the
15 Rule of Lenity, I don't think that a reasonable person
16 should look here that they deterred anybody, they
17 deterred voting. Statute should have delineated
18 between mail-in voting and in-person voting. It does
19 not. Obviously to construe the fact that they
20 deterred the act of somebody to in-person vote, they
21 did not. Therefore that reason alone would be enough
22 that this case, they have not made out a prima facie
23 case. If the Court wants us to brief it, I will be
24 delighted to certainly brief it based on the proofs
25 that were here today before the Court makes a

1 decision.

2 THE COURT: Totally not necessary. Mr.
3 Amadeo?

4 MR. AMADEO: Your Honor, I'm be brief.
5 This has been long enough for you. I'll simply say I
6 do think that there's problems in the statute. There
7 is a reason it's being applied in the Federal Court of
8 Appeals right now. I do think that if anything, the
9 call actually has motivated voters to vote and I'll
10 respect your decision and I'll preserve all arguments
11 from there. Thank you, Judge.

12 THE COURT: People.

13 MR. CUNNINGHAM: Your Honor, you obviously
14 have a good grasp on the facts and the testimony. If
15 you have any questions, I'd be glad to answer them.
16 If not, I have nothing further.

17 THE COURT: Mr. Naoum, did you have
18 anything to add?

19 MR. NAOUM: Your Honor, I would just note
20 that, you know, the context of when these calls are
21 made in the midst of a pandemic and in-person voting
22 is certainly questionable in these times and so that
23 context must be or should be valuated when determining
24 the mail in, you know, the contention that it's solely
25 talking about mail.

1 THE COURT: All right. The Court, after
2 hearing the testimony of Derrick Thomas, Jeffrey
3 Campbell and Khyla Craine is satisfied that the People
4 have met their burden of probable cause as it relates
5 to the charges contained in the complaint and warrant.
6 The Court, after hearing the People's evidence, seeing
7 the People's evidence, the text messages, as well as
8 the robo call itself, find that this conduct was
9 reprehensible. I don't think that anyone is of the
10 opinion that we have the wrong defendants here. I
11 think it's not even being contested that John Burkman
12 and Jacob Wohl are persons who are responsible for
13 advancing this call to people in the 313 area code.
14 Their text messages that were proffered in People's
15 evidence gives context to what motivated this call.
16 Clearly, these are two individuals that are very
17 political or have very strong political views and
18 their intent is what is necessary here for this Court
19 to find in order to bind this matter over,
20 particularly as it relates to Count 1, election law
21 bribing, intimidating voters. Now that count, if you
22 just bring it as it is, can be a little misleading
23 because in actuality, the statute, itself calls for
24 specific intent. It doesn't matter whether it had any
25 actual effect on the intended targets, what matters

1 here is what their intent was. Was there intent to
2 present false and misleading statements about mail in
3 voting by way of these robo calls? And I submit to
4 you that that is exactly what it is, that we have
5 here.

6 We had the testimony of Khyla Craine, who
7 indicated that in her short time that she's been in
8 her position that she has never had law enforcement
9 and credit card companies or the CDC access their
10 database in order to contact people or try to get
11 warrants on these people or try to make them take some
12 mandated vaccine, try to track them down because of
13 their credit. The defendants, in one of the text
14 messages talks about how they got the black people
15 mad. You know, I think the City of Detroit is about
16 85 percent African American and albeit, 313
17 encompasses, not only the City of Detroit, but the
18 immediate surrounding areas, like River Rouge, Ecorse
19 and the like, what gives further information as to
20 what these defendants intent was is the very last line
21 of the robo call that was stated about don't let the
22 man and the man is a term that is often used by
23 African Americans in referring to the white man.

24 There's no question that the People have
25 met their burden of probable cause as it relates to

1 all the charges contained in this complaint and
2 warrant. Court finds those charges were committed in
3 the City of Detroit and Court finds probable cause to
4 believe that these defendants committed them and they
5 may have some defenses that a trier of fact may
6 entertain, but at the end of the day, this Court
7 determines whether or not the People have established
8 evidence on each and every element of the charged
9 defendants here and I find that they do.

10 The defendants will be bound over to Wayne
11 County Third Circuit Court, Criminal Division for
12 further proceedings. Their arraignment on the
13 information date and time, which may be subject to
14 change because the COVID 19, so check into that, but
15 for right now, the date that I have to give is
16 November 12th, 2020 at 9:00 a.m. and their bonds will
17 be continued.

18 MR. GRABEL: Your Honor --

19 MR. CUNNINGHAM: Thank you, your Honor.

20 MR. GRABEL: Thank you, your Honor.

21 MR. GRABEL: Judge King.

22 THE COURT: Yes.

23 MR. GRABEL: I just want to apologize, I'm
24 used to being live prelims. I didn't want to
25 disrespect you when me and Mr. Cunningham were going

Preliminary examination transcript

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back and forth. I didn't mean to disrespect you.
Zoom is kind of an adjustment. I do apologize for
that, Judge.

THE COURT: Understood. Thank you.
(Proceedings concluded at approximately
4:36 p.m.)

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CERTIFICATE OF COURT REPORTER

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, BETH A. TOMASI, CSR-3098, Official Court Reporter in and for the 36th District Court for the City of Detroit, County of Wayne, State of Michigan, do hereby certify that the foregoing pages, 1 through 153, comprises a complete, true and accurate transcript of the proceedings had in the above-entitled cause.

Beth A. Tomasi

BETH A. TOMASI, CSR-3098
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DATED: December 23, 2020

Motion hearing transcript

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STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT COURT OF MICHIGAN
CRIMINAL DIVISION

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4 THE PEOPLE OF THE STATE OF MICHIGAN File Nos. 20-004636-01-FH
20-004637-01-FH

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v

6

JOHN BURKMAN,

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and

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JACOB WOHL,

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Defendants.

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_____ /

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MOTION HEARING (BY ZOOM)
BEFORE THE HONORABLE MARGARET M. VAN HOUTEN
Detroit, Michigan - Tuesday, February 23, 2021

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APPEARANCES:

15

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COURT REPORTER:

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Third Circuit Court
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T A B L E O F C O N T E N T S

WITNESSES

PAGE

None called.

EXHIBITS

DESCRIPTION

IDENTIFIED

ADMITTED

None identified.

OTHER MATERIAL IN TRANSCRIPT

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Motion hearing transcript

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1 Detroit, Michigan
11:14 2 Zoom proceeding - February 23, 2021
11:14 3 THE COURT: Calling Case Nos. 20-004636, People
11:15 4 versus John Burkman; and 20-004637, People versus Jacob Wohl.
11:15 5 These matters are on the docket today for a motion hearing and
11:15 6 final conference.
11:15 7 Appearances, please?
11:15 8 MR. CUNNINGHAM: Good morning, your Honor. May it
11:15 9 please the Court, Richard Cunningham, P29735, Assistant
11:15 10 Attorney General, on behalf of the People.
11:15 11 THE COURT: Mr. Naoum?
11:15 12 MR. NAOUM: Wisam Naoum, P83335, on behalf of the
11:15 13 People.
11:15 14 MR. GRABEL: Good morning, your Honor, P53310,
11:15 15 attorney Scott Grabel, on behalf of Defendant Mr. Burkman.
11:15 16 MR. AMADEO: Good morning, your Honor, William
11:15 17 Amadeo, P76194, on behalf of Mr. Wohl.
11:15 18 And for the record, your Honor, both Mr. Wohl and
11:15 19 Mr. Burkman consent to this hearing via Zoom and waive their
11:17 20 right to be present in person.
11:17 21 THE COURT: And, Mr. Burkman, can you state your
11:17 22 name for the record, please?
11:17 23 DEFENDANT BURKMAN: John Burkman, your Honor.
11:17 24 THE COURT: And, Mr. Burkman, do we have your
11:17 25 permission to proceed by Zoom?

Motion hearing transcript

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11:17 1 DEFENDANT BURKMAN: Yes, ma'am, you do.

11:17 2 THE COURT: Okay. And, Mr. Wohl, can you state your
11:17 3 name for the record?

11:17 4 DEFENDANT WOHL: Jacob Wohl, your Honor.

11:17 5 THE COURT: And do we have your permission to
11:17 6 proceed by Zoom today?

11:17 7 DEFENDANT WOHL: Yes, your Honor.

11:17 8 THE COURT: Okay. And we have two motions that
11:17 9 were -- well, I never received a response from the defense on
11:17 10 the People's 404(b) notice that was filed.

11:17 11 MR. GRABEL: Well, your Honor, I --

11:17 12 THE COURT: It was filed?

11:18 13 MR. GRABEL: Your Honor, I believe the Court
11:18 14 indicated they would allow -- since this was a Motion to
11:18 15 Quash, I believe the Court at the prior hearing allowed us to
11:18 16 bifurcate, that in the interests of judicial economy that the
11:18 17 Court indicated they would allow us to argue this, and
11:18 18 depending on the outcome of this motion the Court would later
11:18 19 let me file a Response to the 404(b).

11:18 20 I'm pretty confident. That's what my notes did
11:18 21 indicate. And I did bring that specific inquiry up --

11:18 22 THE COURT: That's fine.

11:18 23 MR. GRABEL: -- to settle that issue, your Honor.

11:18 24 THE COURT: That's fine. We can address that at a
11:18 25 later hearing.

Motion hearing transcript

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11:18 1 The People did file -- or the defense did file a
11:18 2 Motion to Quash. And I did review the People's Response to
11:18 3 that, very detailed briefs from both parties. And I did
11:18 4 review the transcript of the preliminary exam in anticipation
11:18 5 of this hearing today.

11:18 6 So, Mr. Cunningham -- or I'm sorry, Mr. Grabel or
11:18 7 Mr. Amadeo, which one of you would like to present on the
11:19 8 Motion to Quash?

11:19 9 MR. GRABEL: I'll go first, your Honor. And I won't
11:19 10 regurgitate the brief.

11:19 11 THE COURT: Please.

11:19 12 MR. GRABEL: I know the Court read it. I can
11:19 13 appreciate that, your Honor. The only thing I'll say, your
11:19 14 Honor, obviously, for purpose of the record, I incorporate all
11:19 15 the legal arguments that have been made in my briefs so I
11:19 16 don't have to regurgitate each subsection.

11:19 17 Your Honor, obviously, this is a difficult case.
11:19 18 It's an unusual case. In my opinion, your Honor, based on the
11:19 19 legal precedents that I brought to the Court's attention, I
11:19 20 don't believe the attorney general's come remotely to making
11:19 21 out a prima facia case based on common sense, state and
11:20 22 federal law, and frankly fundamental fairness.

11:20 23 As I said, I've given the Court numerous legal
11:21 24 reasons that -- any of the reasons, frankly, provide the basis
11:21 25 for dismissal.

Motion hearing transcript

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11:21 1 I'm mindful of the fact, your Honor, that robo call,
11:21 2 depending on the content, certainly could rise to the level of
11:21 3 a criminal offense.

11:22 4 I'm not suggesting to the Court, Well, it's a robo
11:22 5 call, Judge, it can't be a crime; or everything you say,
11:22 6 whether it's in robo call, or on Facebook, or anything is
11:22 7 protected speech. It is not.

11:22 8 The Court is well aware and mindful that certain
11:23 9 types of speech are not protected speech. Obviously, a true
11:23 10 threat, for example, is one thing.

11:23 11 If I make robo call that I'm going to do a bomb
11:23 12 threat, or I'm going to go shoot up a school, certainly, your
11:23 13 Honor, whether it's in a robo call, or on Facebook, or
11:23 14 anything, that is not protected speech. We all know that.
11:23 15 We've seen that before.

11:23 16 But I think it's important, your Honor, to start out
11:23 17 this analysis with understanding a robo call, looking at the
11:23 18 definition of a robo call in general. And I'll give you
11:23 19 Oxford's definition, because I think it's important that you
11:24 20 have to understand that as a starting point.

11:24 21 "A robo call is an automated telephone call, which
11:24 22 delivers a recorded message, typically on behalf of a
11:24 23 political party or a telemarketing company."

11:24 24 I think you have to start this analysis, where is
11:24 25 this statement coming from? Is it coming from a door-to-door?

Motion hearing transcript

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11:24 1 Is it coming from a telephone call, from a live person? You
11:24 2 have to start with the premise of a robo call.

11:24 3 I got one last week, Judge. Guess what? Silver's
11:24 4 about to go up 10,000 percent. I better get in on it. And by
11:24 5 the way, the other one said, Joe Biden is going to raise my
11:25 6 taxes, fact, don't vote for Joe Biden. I got that a couple of
11:25 7 weeks ago.

11:25 8 We get numerous robo calls, your Honor. I'm not
11:25 9 saying -- as I said before, you have to be mindful of this.
11:25 10 So looking at this call -- and the Court I'm sure reviewed it
11:25 11 very carefully -- the call starts out with, this, you know,
11:25 12 "This is Tamika Taylor from Project 1599, a civil rights
11:26 13 organization..."

11:26 14 So let's start with that premise. This did not say
11:26 15 a law enforcement agency or a governmental agency, a civil
11:26 16 rights organization. That should alert any reasonable
11:26 17 individual this is going to be some of --

11:26 18 UNIDENTIFIED INDIVIDUAL: The Court --

11:26 19 THE COURT: Hold on.

11:26 20 Who is Shea Finnian or Fienne (phonetic)? If you're
11:26 21 not an attorney or a party to this action, you need to leave
11:26 22 this courtroom and watch live on YouTube.

11:26 23 Go ahead, Mr. Grabel.

11:26 24 MR. GRABEL: No problem, your Honor. Obviously,
11:26 25 looking at the message, you have to start out with the premise

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11:27 1 it's a civil rights organization.

11:27 2 You have to understand that, first of all, most
11:27 3 people are going to be somewhat mindful, well, it's a robo
11:27 4 call. We all know robo calls can be annoying.

11:27 5 You know what the easy thing to do, Judge, if you
11:27 6 don't like the call -- I'm sure you do the same thing -- you
11:27 7 either block it, or hang up if you don't like the message.

11:27 8 But I'm sure, Judge, a reasonable person -- and I
11:27 9 give the credit of the people in Wayne County; I think they're
11:27 10 intelligent, educated people -- I think certainly you're going
11:27 11 to take any robo call, especially when you're identifying as a
11:27 12 civil rights organization. I'm not assuming they're going to
11:27 13 read it as absolute fact and gospel. If they are, then I'm
11:29 14 dumbfounded.

11:29 15 Okay. But let's certainly move further: Mr. Wohl
11:30 16 and Mr. Burkman identify themselves in the call. It's no
11:30 17 secret. They say "founded by Jack Burkman and Jacob Wohl,"
11:30 18 their real name.

11:30 19 So understanding, if you think they believe they're
11:30 20 breaking the law or doing something wrong, I'm not sure why
11:30 21 they actually literally identified themselves in the call.

11:30 22 So we move on to the three tenets of the, message
11:30 23 your Honor, that these meant that the database here, which by
11:30 24 the way, your Honor, for the record, I can get your name and
11:30 25 address from this database. That's certainly going to be

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11:30 1 available to me, your Honor. So that is obtainable.

11:30 2 So if the prosecutor, or a law enforcement agency,
11:30 3 or a lawyer wanted to use this for collection purposes, they
11:30 4 could certainly do it, your Honor. That's a free thing. I
11:30 5 understand the message says law enforcement is using it and
11:30 6 lawyers are using it.

11:30 7 At the prelim, the person who spoke as a witness,
11:31 8 she indicated, Well, there's better databases to get this
11:31 9 information, not that it couldn't be used, Judge. She just
11:31 10 felt there were better databases to be used.

11:31 11 Then you move on to the CDC comment, which I think
11:31 12 everybody probably flipped out on. I mean, I heard that. It
11:31 13 said the CDC was pushing to use the information for mandated
11:31 14 vaccines.

11:31 15 Now, whether the Court is offended by the statement,
11:31 16 they think it's not true, partially true, half true, it really
11:31 17 doesn't matter.

11:31 18 For purposes of making this criminal, remember,
11:31 19 we're talking about felonious criminal conduct, let's be
11:31 20 mindful of that.

11:31 21 I saw the prosecutor use the word "black robo call"
11:31 22 about 30 times in his brief. He wants to get you angry,
11:31 23 Judge, get angry at the message. Disregard the First
11:31 24 Amendment implications, disregard common sense and the law.
11:31 25 You need to get angry here, Judge. You don't like the

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11:32 1 message. You're offended by him.

11:32 2 And you know what, their witness at the prelim said,
11:32 3 he wasn't deterred not to vote by this. He simply was
11:32 4 offended by the message, and he obviously called in because he
11:32 5 was offended.

11:32 6 And you know what, I respect the witness there that
11:32 7 he was offended. It had no impact on him not to vote. They
11:32 8 didn't produce one witness at the preliminary exam that the
11:32 9 issue of voting was impinged upon. The one witness they
11:32 10 produced was offended.

11:32 11 And you know what, Judge, I'm not saying I agree
11:32 12 with the message, or I do agree, or I don't agree. I think
11:32 13 the message certainly has plausibility to it.

11:32 14 I have something keyed up I'm not going to play,
11:32 15 your Honor unless the Court asks. I have something from a
11:32 16 town hall by Joe Biden in October. They asked him, Are you
11:32 17 going to mandate vaccines? He says, "It depends."

11:33 18 And the follow-up question by George Stephanopoulos
11:33 19 was, "Well, how are you going to enforce it?" And he goes,
11:33 20 "I'm not sure how I'm going to enforce it." I could play it,
11:33 21 but I doubt the Court's going to -- if they question me, I'll
11:33 22 play it.

11:33 23 He says, "That's the tough thing, I don't know if
11:33 24 we're going to get the governors involved." Then he talked
11:33 25 about mandating masks, "am I going to do that. I might make

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11:33 1 the governors do that."

11:33 2 So the fact that this call said that the CDC is
11:33 3 pushing for it, you know what, I think anybody's entitled to
11:33 4 that opinion. I don't think it's a threat. I don't think
11:34 5 they're saying, hey, if you mail-in vote we're going to come
11:34 6 shoot up your house, Judge, and take you out. That would be a
11:34 7 little bit different.

11:34 8 I certainly think everything in this message, no
11:34 9 matter what you think of it, is protected speech. To rise to
11:34 10 the level, your Honor, obviously, this information has to be
11:34 11 menacing or corrupt.

11:34 12 Obviously, there's very little case law on this.
11:34 13 This is a case of first impression. As the Court is probably
11:34 14 aware, there is no case law on this. My research of
11:34 15 "menacing" does require a physical component. It does.

11:34 16 I understand the attorney general disagrees with me,
11:34 17 your Honor, but I'm sure if the Court researches it, well,
11:34 18 clearly it's not menacing as a matter of law. Menacing, to
11:34 19 me, as incorporated in the law and the history of it, requires
11:35 20 some type of physical threat. That's not here in my opinion,
11:35 21 per se, as a matter of law. So that, to me, that concept is
11:35 22 nonexistent.

11:35 23 Number two, the Court has to then grapple with, is
11:35 24 this message, all the tenets of the message -- putting aside
11:35 25 the First Amendment implications for just a second -- the

Motion hearing transcript

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11:35 1 Court has to say, well, there's no definition of corrupt.

11:35 2 Mr. Burkman and Mr. Wohl need to be put on
11:35 3 reasonable notice that if this message -- they should know
11:35 4 what corrupt is. As the Court knows, there's no definition
11:35 5 for "corruption" in the law. There's no jury instruction. I
11:35 6 guess it's like pornography, Judge, you'll know it when you
11:35 7 see it.

11:35 8 The problem is, you're talking about a level of a
11:36 9 message that must rise to the level of felonious criminal
11:36 10 activity that could land you in prison.

11:36 11 Certainly, if you're going to be put under the guise
11:36 12 of being in prison, potentially in the Department of
11:36 13 Corrections, felonious conduct -- it's not a 93-day
11:36 14 misdemeanor or a one-year misdemeanor -- you'd better know
11:36 15 what corruption means.

11:36 16 Now, certainly there's things that corruption -- it
11:36 17 mentions bribery, it tells the other thing -- and I certainly
11:36 18 know -- I don't think you have to define, we know what bribery
11:36 19 means, common sense would tell you that -- but we're talking a
11:36 20 very high level here, as a matter of law, what corruption is.

11:37 21 So you're telling me advertising your real name,
11:37 22 saying you're from a political organization -- and by the way,
11:37 23 Judge, and I don't mean to be disingenuous when I say this --
11:37 24 "beware of the man."

11:37 25 And I'm not trying to be sarcastic or offend

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11:37 1 anybody. That connotation says to you, you could be offended.
11:37 2 I assume -- again, I obviously assert, you know, certain
11:37 3 people may be offended by that connotation. I respect that.
11:37 4 I'm not being flippant.

11:37 5 But are you really taking everything in this
11:37 6 message? You know, the attorney general's analyzing this
11:37 7 with, like, it's a CNN fact checker.

11:37 8 Like I heard last week, when Joe Biden gave the
11:37 9 speech, they were fact checking him, and four things were
11:38 10 false. Well, are we going to charge him with something?
11:38 11 There's got to be some flexibility with First Amendment
11:38 12 speech, your Honor.

11:38 13 But here's the thing: Does this feel right to you?
11:38 14 The message may offend you, but does it really make sense that
11:38 15 you think this rises to the level of felonious activity?

11:38 16 And I could tell you, this prosecution's been
11:38 17 peculiar from day one. Let me be mindful of this: When we
11:38 18 found out about these charges, I contacted the attorney
11:38 19 general's office. We arranged on a self-surrender
11:38 20 immediately.

11:38 21 Both gentlemen availed themselves, without question
11:38 22 the date they were supposed to at the Wayne County Jail --
11:39 23 both came from across the country -- and then a million
11:39 24 dollars' bond was asked for.

11:39 25 Doesn't that -- don't you find that perplexing, a

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11:39 1 million dollars' bond the attorney general asked for? This
11:39 2 thing stinks to high heaven, in all due respect. Now,
11:39 3 granted, the judge didn't grant the bond because of course it
11:39 4 was absurd. I think in the Flint water crisis, with people
11:39 5 dying, the attorney general asked for a less bond. This is a
11:39 6 political stunt.

11:39 7 Meanwhile, when they got charged, the attorney
11:39 8 general went on *Rachel Maddow* -- now, that's her prerogative;
11:39 9 I'm not saying there's anything improper or illegal -- but you
11:39 10 scratch your head and wonder, what's the fundamental
11:39 11 underpinnings of this case? I would question that.

11:40 12 But forget about that. Look at the law. Look at
11:40 13 the reasons that we brought and see if this feels right to the
11:40 14 Court that you believe this message is so corrupt or menacing
11:40 15 that you believe it rises to the level that, hey, I believe a
11:40 16 jury should get a shot at this and let them decide what's
11:40 17 corrupt, even though there's no jury instruction for it.

11:40 18 This sets beyond a dangerous precedent that if
11:40 19 you're going to punish a message like this in a robo call,
11:40 20 it's certainly disconcerting. If not, maybe we should all
11:40 21 move to Russia, I mean, or Syria. This is insanity, this
11:40 22 defense.

11:40 23 If the message offense you, Judge, so be it. I
11:40 24 respect you for that. But you know what, Judge,
11:41 25 unfortunately, there's many things, especially these days in

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11:41 1 the era we live in, a lot of things you read on Facebook,
11:41 2 politically or nonpolitically, it's cancel culture now. If
11:41 3 you don't like the message, turn it off.

11:41 4 And you know what, I think Justice Brandeis said in
11:41 5 a case a long time ago, if you disagree with the speech you're
11:41 6 hearing, don't silence the person, more speech, not less
11:41 7 speech.

11:41 8 And understand, your Honor, what did this do to
11:41 9 curtail in-person voting? Now, I understand we're in the
11:41 10 middle of a pandemic. I'm not naive to that fact. But let's
11:41 11 be fair: Did this message in any way, shape, or form,
11:41 12 communicate, explicitly or impliedly, that you shouldn't go
11:41 13 mail-in vote? There's nothing in there.

11:41 14 There's no way you can grapple and say, well, I
11:41 15 think it's implied in the message. Where is it implied? This
11:42 16 statute doesn't indicate -- number one, does it mean voting in
11:46 17 totality, voting any form of voting, mail-in voting, in-person
11:46 18 voting. This said, this message should not say, Don't vote.

11:46 19 By the way, if you look at the numbers, Judge, the
11:47 20 numbers of in-person voting in Michigan this year, last
11:47 21 November, I think, was a record.

11:47 22 So, yes, there is a pandemic, but you're assuming
11:47 23 many assumptions that you're not going to vote at all if you
11:47 24 don't mail-in vote. That's just not true. There was no
11:47 25 evidence in this record to suggest that.

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11:47 1 The Court has numerous reasons to hang their hat to
11:47 2 dismiss it. Even if they find the message improper, that
11:47 3 doesn't change the fact that perhaps there might be civil
11:47 4 litigation on this, but suggesting that this rises to the
11:47 5 level of criminal malfeasance is absolutely insulting and
11:47 6 offensive to this Court, in my opinion.

11:47 7 And I know the prosecutor found Judge Marrero's
11:48 8 comments in New York inspiring. No disrespect Judge Marrero,
11:48 9 I don't think you, myself, or anyone should be concerned what
11:48 10 a federal judge does in New York on a civil case. And I mean
11:48 11 no disrespect to Judge Marrero. I don't care his opinion on a
11:48 12 civil case in this case. I don't care.

11:48 13 I don't think you care if I cite a case from
11:48 14 somebody in Alaska or California. I'm concerned about your
11:48 15 impressions of what Michigan had -- the interpretation of this
11:48 16 statute under Michigan law.

11:48 17 And in this case, as a matter of common sense,
11:48 18 fundamental fairness, and common sense, you should not allow
11:48 19 this case to continue further based on the numerous reasons
11:48 20 that are cited in my brief. I would ask you to dismiss this
11:48 21 case in its entirety. It's fundamentally flawed. Thank you.

11:49 22 THE COURT: Mr. Amadeo, do you have anything to add
11:49 23 to that?

11:49 24 MR. AMADEO: Briefly, your Honor. You've read the
11:49 25 briefs. You heard Mr. Gabel. You've got a heavy docket.

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11:49 1 There's no reason for me to reiterate everything.

11:49 2 I will say this though, Judge, and I'll be very
11:49 3 brief -- I'm going back to my bar prep days and Con Law to
11:49 4 Professor Paradowski; he has one of the best Con Law minds in
11:51 5 the country -- this is a case of strict scrutiny.

11:52 6 Strict scrutiny, why and how are we going to
11:52 7 regulate the First Amendment? The "why," the AG makes a good
11:52 8 point: There's a compelling interest in protecting the right
11:52 9 to vote.

11:52 10 Where they fail is the "how". It has to be done in
11:52 11 a narrowly tailored fashion. Criminal sanctions for allegedly
11:53 12 false speech in a political arena is not narrowly tailored,
11:53 13 and it unduly burdens protected speech, Judge. Based on that,
11:53 14 I feel this case should be dismissed. Thank you.

11:53 15 THE COURT: And, Mr. Cunningham or Mr. Naoum, who's
11:53 16 going to reply on behalf of the People --

11:53 17 MR. CUNNINGHAM: I'll reply, your Honor.

11:53 18 THE COURT: -- or Naoum? I'm sorry. Okay.

11:53 19 MR. CUNNINGHAM: I'll address first Mr. Grabel's
11:53 20 arguments that this simply doesn't rise to the level of a
11:54 21 criminal prosecution or a justifiable criminal prosecution.

11:54 22 Now, he makes light of Judge Mario in the New York
11:54 23 Federal District Court. He makes light of that jurist. But I
11:54 24 think that Judge Mario caught the essence of what this case is
11:54 25 all about:

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11:54 1 "The right to vote embodies the very essence of
11:54 2 democracy. Absent free and elections uninfluenced by
11:55 3 fear, the underpinnings of democratic rule would crumble."

11:55 4 "The United States Constitution, as enforced through
11:55 5 Congress, the courts enshrine these principles."

11:55 6 This is not overreaching. This is something that,
11:55 7 irrespective of what Mr. Grabel will say, is something that's
11:55 8 not justifiable.

11:55 9 Defendants do not contest that they originated the
11:56 10 robo calls. Now, remember, the judge was talking -- Judge
11:56 11 Mario was talking about those very same robo calls:

11:56 12 "In fact, by their own admissions and other public
11:56 13 statements they reportedly made, they have worked overtly
11:56 14 to influence potential voters to disinformation campaigns.

11:56 15 "Instead, as legal grounds for their actions,
11:56 16 Defendants advance a sinister and pernicious theory: They
11:56 17 contend that the expression of the robo calls communicated
11:56 18 constitute speech protected by the First Amendment.

11:56 19 "Defendants' theory implicates a fundamental threat
11:57 20 to democracy. This case thus rejects that for the
11:57 21 justification of Defendants' baneful conduct.

11:57 22 "The First Amendment cannot confer on anyone a
11:57 23 license to inflict purposeful harm on democratic society
11:57 24 or offer refuse for wrongdoing seeking to undermine
11:57 25 bedrock constitutional principles, nor can it serve as a

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11:57 1 weapon they would yield to bring about our democracy's
11:57 2 self-destruction."

11:57 3 The actions of these defendants were criminal. They
11:57 4 clearly violated a statute designed to punish and prohibit,
11:58 5 detering people from voting. It is the intent of the
11:58 6 defendants here, not the result from the citizenry, but the
11:58 7 intent of the defendants is what really controls.

11:58 8 The evidence establishes that they intended to deter
11:58 9 people from vote. If you vote by mailing, your information
11:58 10 will be used, not might be used, or could be used, or would be
11:58 11 available.

11:58 12 If you vote by mail-in voting, you will get into a
11:58 13 database that will be used by law enforcement, by creditors,
11:58 14 and maybe even by the CDC. That is a menace. Irrespective of
11:58 15 the position taken by counsel, a menace is a threat.

11:58 16 And that threat doesn't have to be a threat of
11:58 17 physical harm. And I think Judge Mario, in his Opinion, made
11:59 18 that pretty clear when he assigned an old law that supports
11:59 19 that.

11:59 20 A menace is a threat, and a threat can be a threat
11:59 21 to financial, can be a threat to other than simply physical.
11:59 22 There was a menace here. If you vote by mail, your
11:59 23 information will be available to the police, will be available
11:59 24 to creditors, and might be available to the CDC.

11:59 25 And given the background of the minority community's

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11:59 1 experience with mandatory violations -- you're aware of the
11:59 2 Tuskegee experiments -- that's something that's very
11:59 3 well-known within the minority communities.

11:59 4 And that's the reason why these defendants use that.
12:00 5 This is a dog-whistle argument. We're a civil rights group.
12:00 6 We're watching out for you.

12:00 7 Look at the totality of the circumstances, as the
12:00 8 judge did at the preliminary exam: What was the real intent
12:00 9 of these defendants? It was to deter people from voting. It
12:00 10 was the belief that this minority community will go to another
12:00 11 candidate, and the best way to do it is to suppress their vote
12:00 12 to help our guy.

12:00 13 And that's what this call was all about, and that's
12:00 14 what the menace is. And it is ridiculous here to say that it
12:00 15 was just an attempt to help the minority community by
12:00 16 cautioning them against mail-in voting.

12:00 17 We know that this is really an intent here to
12:01 18 suppress the voting, and suppress the voting is what this case
12:01 19 is all about. This is a voter intimidation, voter
12:01 20 suppression.

12:01 21 Now, they argue not only that the judge erred in
12:01 22 binding over because it doesn't establish a crime, but they
12:01 23 also argue that it's protected by the First Amendment.

12:01 24 And I think I rely a lot on what Judge Mario said in
12:01 25 his Opinion, but there are basically two arguments here in

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12:01 1 regard to the constitutional issue. As Judge Mario relied
12:01 2 upon, there's the concept of the true threat.

12:01 3 Now, in First Amendment law, there are a number of
12:01 4 categories of speech that the Court has recognized don't
12:01 5 receive First Amendment protection: child pornography, a true
12:02 6 threat, those are not protected by.

12:02 7 And Judge Mario found that this particular robo call
12:02 8 was a true threat. And in doing so, he talks about the
12:02 9 intimidation part of it, how it's a threat beyond just
12:02 10 physical, but a threat to your financial, a threat to you, the
12:02 11 police coming after you, it is, in fact, a true threat. And I
12:02 12 adopt all the arguments that the judge laid out in his
12:02 13 decision in regards to that.

12:02 14 But even beyond the argument of the true threat is
12:02 15 the concept of when you look at the First Amendment, the real
12:02 16 issue here is, is there a compelling reason for the State to
12:02 17 want to regulate this speech? And if so, is this a
12:02 18 narrowly -- the statute, a narrow way of doing it?

12:03 19 As I concede, the U.S. Supreme Court has never
12:03 20 really addressed the terms of voter suppression statutes as
12:03 21 being within that category like true threats or child
12:03 22 pornography, but they come awful close in that *Burson* case,
12:03 23 that I cited, the one where the candidate for office was
12:04 24 prohibited from getting within 100 feet of the polls. And
12:04 25 they challenged it on First Amendment grounds, and the Court

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12:04 1 denied that challenge saying that, you know, implying that any
12:05 2 type to protect the integrity of the election would be a
12:05 3 narrowly drawn reason for that compelling state interest.

12:05 4 And nothing shows the compelling state interest more
12:06 5 than that language put forward by Judge Mario, you know, that
12:06 6 the right to vote embodies the very essence of democracy. And
12:06 7 when you start tinkering with that, you are hitting on the
12:06 8 compelling interest of the state.

12:06 9 And under the strict scrutiny standard, this is a
12:06 10 narrowly compelled -- it's not all request that you don't
12:06 11 vote, it's the actual suppression of the vote. And where's
12:06 12 the suppression in? You have to menace, and you have to -- or
12:06 13 use corrupt means.

12:06 14 And both are present here. Menace is beyond simple
12:06 15 physical threats. By using corrupt means, you've used a robo
12:06 16 call that contains lies, flat-out lies designed for a specific
12:06 17 purpose.

12:07 18 You don't need -- I mean this is a dog whistle here
12:07 19 they're sending out, the fact that they're trying to suppress
12:07 20 this vote.

12:07 21 They're suppressing the vote in a particular
12:07 22 community because they see that community as being opposed to
12:07 23 their interests. And it's geared towards their community.
12:07 24 It's only sent out into that community. The language of it,
12:07 25 the person who made it, all geared towards this community,

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12:07 1 this sub-minority community.

12:07 2 So for those reasons, I think it's very clear that
12:07 3 (A) it's not protected by the First Amendment, and (B) the
12:07 4 district court judge was right on when he figured out what was
12:08 5 going on here. And he laid that right out, and he did not
12:08 6 abuse his discretion. Thank you.

12:08 7 THE COURT: Okay. I've heard the arguments made
12:08 8 today, I read the extensive briefs that were filed by both
12:08 9 Defense and the People, and I reviewed the transcript of the
12:08 10 preliminary exam, where three witnesses were heard.

12:08 11 I'm first going to address the abuse of discretion
12:08 12 standard and the actual Motion to Quash based on the evidence
12:08 13 that was presented.

12:08 14 And although there's no specific jury instructions
12:08 15 for this, jury instructions can be drafted from the statute
12:08 16 itself. And the statute prohibits:

12:08 17 "A person shall not attempt by means of bribery,
12:08 18 menace, or other corrupt means, or device, either directly
12:08 19 or indirectly, to influence an elector in giving his vote
12:09 20 or her vote, or to deter the elector from giving his or
12:09 21 her vote in any election in this state."

12:09 22 And that is MCL 168.932(a). And that is the
12:09 23 statute, the substance of the statute that they're charged
12:09 24 under. The others are conspiracy to commit that crime, or
12:09 25 using a computer to commit that crime, or conspiracy to use a

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12:09 1 computer to commit that crime.

12:09 2 So the crux of it is this crime set forth in this
12:09 3 statute. Those elements, as the People point out in their
12:10 4 brief, is clearly the defendant, either directly or
12:10 5 indirectly, attempted to deter an elector from voting in an
12:10 6 election, and that the defendant used the means of menace, or
12:10 7 other corrupt means, or device in such attempt.

12:10 8 I think that's pretty close. We might have to
12:10 9 change that a bit in the future, but those are basically the
12:10 10 two elements of the crime.

12:10 11 And Defense argues that menace has to mean
12:10 12 threatening physical injury to the person. I'm not convinced
12:10 13 by that.

12:10 14 Menace, in the robo call that was put forth,
12:10 15 basically it was threatening them that if they vote by mail
12:10 16 the police are going to come after them and arrest them if
12:10 17 they have a warrant; their creditors are going to come find
12:11 18 them, you know, if they owe money; and the CDC is going to
12:11 19 come and force them to get a vaccine, a mandatory vaccine if
12:11 20 they vote by mail.

12:11 21 And clearly some people could feel menaced, you
12:11 22 know, that that is a menace, a threat to their freedom, to
12:11 23 their financial well-being, or to force them to take a vaccine
12:11 24 that they may or may not want to take.

12:11 25 There was testimony at the preliminary exam from,

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12:11 1 first, the investigator, the Officer in Charge who did the
12:11 2 investigation, that he found the e-mails between these
12:11 3 parties. And those e-mails clearly demonstrate an attempt to
12:11 4 influence the election.

12:11 5 I believe one of the terms used in those e-mails was
12:12 6 "hijack the election." And those e-mails were stating that
12:12 7 they were going to target these robo calls to cities with high
12:12 8 minority populations in urban areas.

12:12 9 It was explained that these robo calls can be sent
12:12 10 not just to an area code, but to zip codes within the area
12:12 11 code, and that these robo calls were going to target zip codes
12:12 12 in communities with a large minority population, particularly
12:12 13 African American populations.

12:12 14 And this call certainly could have the impact -- and
12:12 15 it doesn't mean that it has to have the impact that they will
12:12 16 succeed in influencing, or stopping, or deterring an elector
12:12 17 from voting, because the person that testified that he got the
12:12 18 call, the former firefighter that retired, he testified to
12:13 19 receiving the call, he clearly was not influenced and he voted
12:13 20 by mail in the election -- but others may have been.

12:13 21 And it's not whether they succeeded in deterring
12:13 22 someone from voting, it's whether they attempted to deter
12:13 23 someone from voting. That is the language in the statute.

12:13 24 And certainly the robo call itself, the language in
12:13 25 the call could influence someone and deter them from voting by

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12:13 1 mail.

12:13 2 Now, they make a big distinction in the arguments
12:13 3 that, well, it's not saying anything about in-person voting.
12:13 4 Anyone can go and vote in person. But in this day and age,
12:13 5 you have to take the totality of the circumstances.

12:14 6 In the fall of 2020 when these were going out, we
12:14 7 had a worldwide pandemic going on, where people were being
12:14 8 encouraged to stay in their home and not leave their home if
12:14 9 they don't have to.

12:14 10 If they're not an essential worker, they should work
12:14 11 from home if they're able to. They should get their groceries
12:14 12 delivered if they're able to.

12:14 13 The messages going out across this nation were, stay
12:14 14 home, don't go out, do what you can to avoid going out in
12:14 15 public, particularly places where people would be congregating
12:14 16 and there would be many people.

12:14 17 And in-person voting, particularly in the city of
12:14 18 Detroit -- I've been in the precincts in the city of Detroit
12:14 19 in the past before I was a judge -- those places can be very
12:15 20 crowded on election day. And I can see people wanting to
12:15 21 avoid those crowds and voting by mail rather than in person.

12:15 22 And this robo call received by someone who may fall
12:15 23 for that information could have deterred them from voting by
12:15 24 mail, and if they have any kind of health issues, or are
12:15 25 afraid of the virus, may not have voted in person as well.

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12:15 1 The potential is there that this robo call could
12:15 2 have affected someone and deterred them from voting by mail.
12:15 3 And it doesn't specify in the statute -- and I don't think it
12:15 4 has to -- it just says, "deter the elector from giving his or
12:15 5 her vote in any election held in this state." It doesn't have
12:15 6 to specify whether it's in person or by mail.

12:15 7 And I think that the district court judge did not
12:15 8 abuse their discretion in binding over based on the evidence
12:15 9 that was presented, and I am going to deny the Motion to
12:16 10 Quash.

12:16 11 Now, your other argument was with regard to the
12:16 12 First Amendment freedom of speech. And I think that's more of
12:16 13 a separate motion to dismiss based on constitutionality of the
12:16 14 statute itself. And the State does have a compelling state
12:16 15 interest to protect the vote of registered voters in the
12:16 16 state.

12:16 17 And, again, as the judge in the New York case
12:16 18 stated, that voting is a fundamental right in this country,
12:16 19 and it's the base of our democratic republic that people are
12:16 20 able to vote for their representatives, and vote in
12:16 21 presidential elections, in all elections.

12:16 22 And the State has a very compelling state interest
12:17 23 to protect that right to vote, and I believe this statute is
12:17 24 narrowly tailored to simply prevent any attempt to influence
12:17 25 that vote or deter them from voting.

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12:17 1 The statement itself, you're saying it's an opinion.
12:17 2 Well, it's not an opinion telling someone to vote one way or
12:17 3 another. It's telling them, don't vote. Don't vote by mail
12:17 4 because "the man" is going to get your information, and
12:17 5 they're going to arrest you, they're going to come after you,
12:17 6 your creditors are going to come after you, or you're going to
12:17 7 be forced to take a vaccine you may not want to receive.

12:17 8 And I think that this does not qualify as under the
12:17 9 First Amendment -- it's not a violation of the First Amendment
12:17 10 in this context. Everyone has to be -- or every statement has
12:18 11 to be reviewed in and of itself. It's not expressing an
12:18 12 opinion. It is stating information that is misleading, at the
12:18 13 very least, and possibly false.

12:18 14 And according to the witness from the Bureau of
12:18 15 Elections, there is other information that any of these
12:18 16 services, the police, the creditors, or the others would get
12:18 17 not from the voter file, but from their driving record because
12:18 18 there's more information available to those people.

12:18 19 And I believe that this squarely, fully falls within
12:18 20 the right of the State and the compelling state interests to
12:18 21 protect the right of its residents to vote. And so I'm going
12:18 22 to deny the Motion to Dismiss based on the First Amendment
12:18 23 claims as well.

12:18 24 So at this time we need to set a new date to deal
12:18 25 with the 404(b) issue. And has there been an offer from the

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12:19 1 People? Are you waiting until these things are heard?

12:19 2 MR. CUNNINGHAM: I do not anticipate any offer being
12:19 3 made, your Honor.

12:19 4 THE COURT: Okay. And so at this time, we need to
12:19 5 set a new date. How much time do you need to respond to the
12:19 6 People's 404(b) motion?

12:19 7 MR. GRABEL: Probably, three weeks, your Honor.
12:19 8 Before I go further, I was going to ask the Court for a motion
12:19 9 to stay to take this issue up on appeal. As the Court is
12:19 10 aware, this is somewhat a novel and unique issue with very
12:19 11 little case law. And the prosecutor relied on a federal judge
12:19 12 on a civil case out in New York.

12:20 13 So I would ask the Court to stay these proceedings
12:20 14 so I can take the case up and perfect an interlocutory appeal
12:20 15 to the Court of Appeals.

12:20 16 THE COURT: Response, Mr. Cunningham?

12:20 17 MR. CUNNINGHAM: Yes, your Honor, I would oppose a
12:20 18 stay. Let's be realistic. It's going to be quite some time
12:20 19 before we are able to set a trial date. And to stay the
12:20 20 matter on the -- it's very unlikely that the Court of Appeals
12:20 21 would take it at this point in time. Why should they?

12:20 22 This is not like a ruling against the prosecutor and
12:21 23 would be controlled by double jeopardy aspects. They can
12:21 24 always raise the issue after they're convicted.

12:21 25 So I don't anticipate -- you know, this is a leap,

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12:21 1 perhaps they will grant it -- but why should we delay it even
12:21 2 further when we know there's going to be a substantial delay
12:21 3 just from the nature of the world, that it's going to be a
12:21 4 long time right now before you can give us a trial date for
12:21 5 not-in-custody defendants. So why would we have to stay this?

12:21 6 I think that it's realistic for the Court of Appeals
12:22 7 to consider and reject the arguments in plenty of time that
12:22 8 you wouldn't have to delay the trial on this case.

12:22 9 THE COURT: That raises a very good point,
12:22 10 Mr. Cunningham, because we're just going to be starting trials
12:22 11 for in-custody defendants next month. And Lord knows when
12:22 12 we'll get to out-of-custody defendants, and we have a lot of
12:22 13 cases much older than this one that are pending and awaiting
12:22 14 their trial dates.

12:22 15 I'm going to deny the motion to stay. I don't
12:22 16 believe it's necessary. If you wish to file an interlocutory
12:22 17 appeal, I think you have plenty of time to get that done
12:22 18 before the trial date will ever get set in this case.

12:22 19 If the Court of Appeals were to grant leave, you
12:23 20 know, they could issue the stay as well, but I don't think
12:23 21 that's necessary at all. This case is not going to move at
12:23 22 lightening speed where you need a stay issued.

12:23 23 And I personally don't think that there's a lot of
12:23 24 merit to that appeal, but that would be up to the Court of
12:23 25 Appeals if you're seeking leave to appeal there. It's

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12:23 1 certainly not a final order of this Court.

12:23 2 And at this time, we'll put this out -- looking at
12:23 3 dates here -- April 12th or 13th, does that give you enough
12:23 4 time to respond to that before the Court of Appeals --

12:23 5 MR. GRABEL: It does, it does, it most certainly
12:23 6 does, your Honor. Thank you.

12:23 7 THE COURT: Okay. So which one do you want, the
12:24 8 13th or the 12th?

12:24 9 MR. GRABEL: How about the 13th, your Honor?

12:24 10 THE COURT: Okay. Tuesday, April 13th at 9:00 a.m.
12:24 11 we'll continue this final conference and will address the
12:24 12 People's 404(b) motion at that time and any other motions that
12:24 13 may get filed.

12:24 14 MR. GRABEL: I'll file them timely, assuming it will
12:24 15 be argued on the 13th, correct, your Honor?

12:24 16 THE COURT: Yes, it will be argued on the 13th.

12:24 17 MR. GRABEL: Very good. I'll follow the court rule
12:24 18 and make sure that parties are served within the appropriate
12:24 19 time frame.

12:24 20 THE COURT: Yeah, I would actually like to get it
12:24 21 two weeks ahead because I have the feeling it's going to be
12:24 22 lengthy, and I'm going to need some time to digest it, and the
12:24 23 People to respond.

12:24 24 MR. GRABEL: That's fine. I'll make a notation of
12:24 25 that, your Honor. I'll have it in your hands by, I would say,

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12:25 1 yeah, the end of March, two weeks before.

12:25 2 MR. AMADEO: And, your Honor, I have an
12:25 3 out-of-custody trial that day, which I doubt is going to go,
12:25 4 but they won't tell me until about a week before the trial.

12:25 5 THE COURT: Do you want to do that on the 12th,
12:25 6 then, instead?

12:25 7 MR. AMADEO: No. If Mr. Grabel could cover for me,
12:25 8 that would be fine. I will obviously submit my motions, but
12:25 9 since he's representing the co-defendant, if I couldn't be
12:25 10 present, I will have a stand-in.

12:25 11 I don't want to drag this out any further than we
12:25 12 need to because my trial may get canceled. But as of right
12:26 13 now, I am in trial. So I will either have a sub or
12:26 14 Mr. Grabel, if that's acceptable to the Court?

12:26 15 THE COURT: And will your client be amenable to
12:26 16 that?

12:26 17 MR. AMADEO: Yes, absolutely, Judge.

12:26 18 THE COURT: Mr. Wohl, would you agree to Mr. Grabel
12:26 19 standing in for your attorney if he's in trial?

12:26 20 DEFENDANT WOHL: That's certainly okay, your Honor.

12:26 21 THE COURT: Okay. Then we'll continue this on
12:26 22 Tuesday, the 13th of April, and we'll see you then.

12:26 23 And my clerk will prepare the order on the Motion to
12:26 24 Quash and Motion to Dismiss.

12:26 25 MR. AMADEO: Thank you, your Honor. Have a good

Motion hearing transcript

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12:27 1 day.

12:27 2 MR. CUNNINGHAM: Thank you, your Honor.

12:27 3 MR. GRABEL: You're denying the Motion to Stay,
12:28 4 you're denying that, your Honor?

12:28 5 THE COURT: And the I'm denying the Motion to Stay.

12:28 6 MR. GRABEL: You'll draft that as well, your Honor?

12:28 7 THE CLERK OF THE COURT: Was that for both
12:28 8 defendants or just one, Judge?

12:28 9 THE COURT: Both. The Motion to Stay -- well, were
12:29 10 you joining in the Motion to Stay, Mr. Amadeo, for your
12:29 11 client?

12:29 12 MR. AMADEO: I was, your Honor.

12:29 13 THE COURT: Okay. So it's as to both defendants.

12:29 14 MR. GRABEL: And the Court will draft that, or would
12:29 15 the Court like me to draft it?

12:29 16 THE COURT: No, the clerk will put it together.

12:29 17 MR. GRABEL: Certainly appreciate that, your Honor.
12:29 18 And I had to make the motion to preserve it. If I don't make
12:29 19 it, then the Court --

12:29 20 THE COURT: I understand.

12:29 21 MR. GRABEL: That's fine. But I appreciate the
12:29 22 attorney general that we probably do have some time. But it
12:29 23 is required for me to do that or the Court of Appeals will not
12:29 24 even review the file.

12:29 25 THE COURT: I understand.

Motion hearing transcript

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12:29 1 MR. GRABEL: Thank you.

12:29 2 THE COURT: And, Madame Clerk, once I sign them, if
12:29 3 you can forward them?

12:29 4 Can you put your e-mail addresses in the chat so
12:29 5 that the clerk can forward the orders to you?

12:29 6 MR. AMADEO: Absolutely.

12:29 7 THE COURT: Mr. Cunningham, if you could too so you
12:29 8 get a copy of it?

12:29 9 MR. CUNNINGHAM: Yeah.

12:29 10 THE COURT: Okay. That concludes this matter.

12:29 11 MR. GRABEL: Thank you, your Honor.

12:29 12 (Zoom proceeding concluded.)

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Motion hearing transcript

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1 STATE OF MICHIGAN)

2)

3 COUNTY OF WAYNE)

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6 I certify that this transcript, consisting of 35
7 pages, is a complete, true, and accurate transcript of the
8 proceedings and testimony taken via Zoom in this case on February
9 23, 2021.

10

11

12

13

14 March 17, 2021 /s/ Kim Blackburn

15 Date

Kim Blackburn, RPR, CSR 7263

16

Third Judicial Circuit Court

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1441 St. Antoine Street

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Detroit, Michigan 48226

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Orders on motion

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STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	ORDER DENYING/GRANTING MOTION	CASE NO. 20-004636-01-FH
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ORI MI- 821095J Court Address 1441 St. Antoine, Detroit MI 48226 Courtroom 504 Court Telephone No.

THE PEOPLE OF THE STATE OF MICHIGAN

vs.

JOHN BURKMAN

Defendant

At a Session of Said Court held in The Frank Murphy Hall of Justice
at Detroit in Wayne County on 2/23/2021

PRESENT: Honorable Margaret M. Van Houten

A Motion for: THE DEFENDANT'S MOTION TO QUASH AND TO DISMISS

_____ having been filed; and

the People having filed and answer in opposition; and the Court having reviewed the briefs and records in the Cause and being fully advised in the premises;

IT IS ORDERED THAT the Motion for SAME AS ABOVE

_____ be and

is hereby denied granted.



Honorable Margaret M. Van Houten

Orders on motion

RECEIVED by MSC 2/22/2023 5:24:44 PM

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	ORDER DENYING/GRANTING MOTION	CASE NO. 20-004637-01-FH
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ORI MI- 821095J Court Address 1441 St. Antoine, Detroit MI 48226 Courtroom 504 Court Telephone No.

THE PEOPLE OF THE STATE OF MICHIGAN

vs.

Jacob Alexander Wohl

Defendant

At a Session of Said Court held in The Frank Murphy Hall of Justice
at Detroit in Wayne County on 2/23/2021

PRESENT: Honorable Margaret M. Van Houten

A Motion for: THE DEFENDANT'S MOTION TO QUASH AND TO DISMISS

_____ having been filed; and

the People having filed and answer in opposition; and the Court having reviewed the briefs and records in the Cause and being fully advised in the premises;

IT IS ORDERED THAT the Motion for SAME AS ABOVE

_____ be and

is hereby denied granted.



Honorable Margaret M. Van Houten

Court of Appeals opinions

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN MACAULEY BURKMAN,

Defendant-Appellant.

FOR PUBLICATION

June 2, 2022

9:10 a.m.

No. 356600

Wayne Circuit Court

LC No. 20-004636-01-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACOB ALEXANDER WOHL,

Defendant-Appellant.

No. 356602

Wayne Circuit Court

LC No. 20-004637-01-FH

Before: LETICA, P.J., and REDFORD and RICK, JJ.

LETICA, P.J.

In these consolidated appeals,¹ defendants, John Macauley Burkman and Jacob Alexander Wohl, appeal as on leave granted² the trial court's orders denying their motions to quash and

¹ *People v Burkman*, unpublished order of the Court of Appeals, entered November 9, 2021 (Docket Nos. 356600 and 356602).

² This Court denied defendants' applications for leave to appeal, *People v Burkman*, unpublished order of the Court of Appeals, entered May 6, 2021 (Docket No. 356600), *People v Wohl*, unpublished order of the Court of Appeals, entered May 6, 2021 (Docket No. 356602), but the Supreme Court remanded to this Court for consideration as on leave granted, *People v Burkman*,

dismiss. Defendants were both charged with attempting to influence, deter, or interrupt electors, MCL 168.932(a), conspiracy to commit that offense, MCL 750.157a, and two counts of using a computer to commit a crime, MCL 752.796.

Defendants contend that the charges should have been dismissed because their dissemination of a robocall regarding possible repercussions of mail-in voting did not constitute a menace or use of other corrupt means or device under MCL 168.932(a). We conclude the robocall did involve menace and could also be construed as a corrupt means or device. Defendants further contend that MCL 168.932(a) is unconstitutional both on its face and as applied in this case. However, the phrase “other corrupt means or device” is not unconstitutionally vague. Concerning defendants’ First Amendment arguments, the robocall message was not a “true threat,” but is still not subject to First Amendment protections because it was speech integral to criminal conduct. Accordingly, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Derrick Thomas was a retired firefighter, resident of the city of Detroit, and registered voter. As a regular voter, Thomas received “robocalls;” a prerecorded phone message disseminated to a large group of people via a computer or robot. Thomas had telephone service through both a landline at his home and a cell phone. Thomas had placed himself on a do-not-call list several times, but it did not stop unsolicited calls to his home.³ His landline phone had a (313) area code, a caller identification feature, and the ability to simultaneously record a message and play it aloud as it was recorded. On August 26, 2020, at 11:16 a.m., Thomas did not answer a phone call to his landline from phone number (703) 795-5364, a number he did not recognize. Still, he heard the message that was left as it was recorded:

Hi, this is Tamika Taylor from Project 1599,^[4] a civil rights organization founded by Jack Burkman and Jacob Wohl. Mail-in voting sounds great, but did you know

___ Mich ___ (2021) (Docket No. 163164), *People v Wohl*, ___ Mich ___ (2021) (Docket No. 163165). We refer to “defendants” to reflect collective action, but refer to each defendant by his last name where appropriate to reflect individual activity.

³ According to the FCC, “Political campaign-related autodialed or prerecorded voice calls, including autodialed live calls, autodialed texts, and prerecorded voice messages, are prohibited to cell phones, pagers, or other mobile devices without the called party’s prior express consent.” However, “[p]olitical campaign-related autodialed or prerecorded voice calls are permitted when made to landline telephones, even without prior express consent.” FCC, Rules for Political Campaign Calls and Texts <<https://www.fcc.gov/rules-political-campaign-calls-and-texts>> (accessed May 31, 2022).

⁴ According to the Federal Communications Commission (FCC), Project-1599 is not a registered legal entity, but a branding name used to describe the activities conducted by defendants and J.M. Burkman & Associates, LLC, an entity providing registered lobbying services. <<https://www.fcc.gov/document/fcc-proposes-5-million-fine-unlawful-robocalls>> (accessed May 31, 2022). Although the FCC proposed a forfeiture of \$5,134,500 against defendants and the

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 [Center for Disease Control and Prevention (CDC)] is even pushing to use records from 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.

The message upset Thomas as he believed it was designed to act as “a deterrent from mail-in voting.” Although Thomas did not believe that his direct physical safety was threatened, indirectly, he felt concerned about his safety because politics were polarizing. Thomas found the message offensive because it indicated that voting information would be used to allow the police to determine if an individual had any bench warrants, allow credit card companies to learn if an individual had any outstanding debts, and allow the CDC to force an individual to get vaccinated. Thomas felt appalled more than threatened by the message because it deterred mail-in voting during a pandemic and voting in-person was not as safe.

Thomas tried to notify the Detroit Election Commission about the phone call and message, but was unable to speak to a person. Thomas then called a local news radio station, and he was interviewed for a story. He played the recorded message for the station employee and gave consent to have the radio station record the message.

As a result of the radio interview, Thomas was contacted by the Department of Attorney General. Thomas did not have firsthand knowledge about any truth to the contents of the message. He did not allow himself to be affected by the message and voted by mail.

The Department assigned Jeffrey Campbell the task of investigating the robocall. Campbell learned that the robocall was sent by a company called Message Communications operated by Robert Mahanian. Additionally, the investigation determined that defendants paid to have the robocall sent by Mahanian's company and were responsible for the robocall's content. Through search warrants, Campbell obtained e-mail exchanges between defendants, and because of the volume of the e-mails, Campbell had not yet reviewed all of them. In the e-mails Campbell had read, defendants discussed how to “hijack” this “boring” election. On August 19, 2020, Burkman wrote to Mahanian and copied Wohl that the checks were sent in a “two[-]day pouch” and “then we attack.” On August 22, 2020, defendants communicated to Mahanian that they were ready to begin the robocalls and that the payment had been mailed.

On August 25, 2020, Wohl e-mailed Burkman that the audio file of the robocall was attached. Wohl further suggested that the robocall be sent “to black neighborhoods in Milwaukee, Detroit, Philadelphia, Charlotte, Richmond, Atlanta, and Cleveland.” In response, Burkman suggested that the robocall be sent to “Cleveland, Philadelphia, Minnesota, Chicago, New York

lobbying entity, the basis of the fine was the unlawful robocalls to wireless numbers without subscribers' prior express consent. For this reason, the content of the robocall was irrelevant to the proposed forfeiture. *Id.* at 1-2 n 10.

City, and Detroit.” It was determined that the robocalls would be sent in “two waves” consisting of 267,000 calls in each wave.

On August 26, 2020, Mahanian notified defendants that their “campaign is currently running and recording.” Defendants exchanged e-mails that the robocalls were being discussed on the Twitter platform. On August 26, 2020, at 12:36 p.m., Burkman wrote to Wohl to comment on the success of the robocalls, stating, “I love these robo[]calls getting angry black call backs, win or lose, the black robo[]calls was [sic] a great idea.”

On August 27, 2020, Wohl seemingly wrote Burkman that they should deny sending the robocalls because it would generate more written discussion. Indeed, in response to a writer from a political news and opinion website, Burkman wrote, “[W]e have no connection to those robo[]calls.” A short time later, Burkman addressed the same writer, stating:

[C]ouple points, one, no one in their right mind would put their cell [phone number] on [the] robo[]call. I bet a [George] Soros Group is trying to embarrass us. Thirdly, we have been asked by the Trump Campaign to do robo[]calls and politely declined. We don’t do that stuff.

Additionally, a member of the Associated Press wrote Burkman and asked if defendants were involved in the robocall. Burkman wrote back, “[N]o sir, not at all.” However, on October 26, 2020, Burkman presented at a federal court hearing in New York and acknowledged that defendants prepared and caused the robocall message to be sent. At the same hearing, Wohl affirmed the statement made by Burkman.⁵

Campbell was asked by Burkman’s counsel whether there was other evidence his client desired to deter mail-in voting. Although Campbell had not completed his review of the e-mails, he responded there were “e[-]mails between [defendants] discussing other plans to influence the election by creating false schemes, hiring actors to create false allegations and so forth.” When asked to provide an opinion regarding the nature of the e-mail between defendants, Campbell responded, “one of their intentions [was] to influence the election unfairly” and to deter mail-in voting. He acknowledged that the e-mails did not reference in-person voting.

During Campbell’s investigation, he learned that defendants uploaded the content of the robocall. Furthermore, defendants, not Mahanian, chose the *zip codes* where the robocall was deployed. Campbell had no evidence that Mahanian altered the content of the robocall presented by defendants, and Mahanian kept detailed records addressing client involvement and content history.

Khylla Craine, an attorney, served as the second in command of the legal services administration, which included the bureau of elections, within the Secretary of State and provided legal and policy consultations. Craine also was the chief privacy officer and addressed data-related

⁵ During the preliminary examination, counsel for both defendants inquired whether Campbell interviewed their clients. Campbell testified that he asked to conduct interviews after the charges were issued, but his request was denied.

questions. Craine described a robocall as “[a]n automated [message] dialed to a group of residents that will encourage them to do something, usually tied to election, but it could be for any purpose[.]” Craine was made aware of this particular robocall in late August or early September 2020. There was an accusation “that it would be voter suppression type of robo[.]call targeted African American citizens in the City of Detroit.” Craine heard the robocall in October 2020.

Craine testified that information related to elections was part of a public record. However, there were search limitations on the record. She opined that the robocall’s content addressing law enforcement, credit card agencies, or use by the CDC was false. A state election file contained the voter’s name, address, participation in an election, and type of vote cast, mail-in or in-person. This information could be shared publicly. However, state law prohibits the voter’s phone number or e-mail address from being shared. Because the qualified voter file contained limited data that did not include contact information, it did not make sense that law enforcement or credit card agencies would use this compiled material. Moreover, there were other compiled databases that law enforcement and credit card agencies used that contained information they required for their work. For example, the driver information file provided companies more details than the qualified voter file. The Law Enforcement Information Network system was the database used by police agencies to achieve their objectives. Craine was unaware of any voting information requested by or given to the CDC, and she was unaware of any mandated vaccinations as stated on the robocall. Even Craine did not have access to the qualified voter files, the access was given on a need-to-know basis, and the recipients that received these files were vetted by the bureau of elections. Thus, Craine opined that law enforcement did not have access to the qualified voter file unless there was an investigation into an elections related offense. Further, it was not used by credit card companies to collect outstanding debts. Thousands of entities request information from the driver files, not the qualified voter files. Craine opined that voters had no reason to be concerned about mail-in voting. And she “would have a concern if [voters] listened to this robo[.]call and got misinformation and whether or not . . . they would feel that mail[-]in voting was safe.”

On cross-examination, Craine opined that an individual’s qualified voter file could not be accessed, but a request for a specific jurisdiction or for every voter could be obtained. Furthermore, if debt collection was the goal, other databases provided more suitable information. Craine affirmed that she was offended by the robocall to the extent the state had the “responsibility . . . to ensure that all of our voters are able to vote without any type of issue and that they’re not intimidated or given misinformation about the accuracy or security of their ballot.” Also, on cross-examination, Craine again opined that the information contained in the robocall was false. Although Craine did not call the CDC to determine if it would seek to access voter files, there were no mandated vaccinations at that time.

Craine also never sought out defendants to inquire about their reason for the robocall. But, if motivated by concern over mail-in ballots, Craine found it curious that defendants only directed the robocall to Detroit residents rather than cautioning citizens across the State of Michigan about mail-in voting. In Craine’s experience addressing voter suppression, the robocall fit into the pattern of misinformation directed to select individuals in a particular jurisdiction. When it was proffered that defendants’ purchase of information pertaining to the (313) area code of Wayne County included suburban communities that were “highly Caucasian,” Craine maintained that Wayne County remained “disproportionately African-American.” Again, Craine testified defendants appeared to target a particular group of people, not just general voters, in light of the

dissemination of the robocall to a limited area and not the entire state. Further, she opined that the use of phrases such as “mandatory vaccinations” and “the man” was verbiage directed to a particular group of people. Because the robocall attempted to deter mail-in voting and COVID-19 had disproportionately affected African-Americans in Detroit, Craine concluded that suppression of the vote was the logical determination in light of the combination of factors. In the 18 months that Craine worked in her position, police, credit card agencies, and the CDC had never used the qualified voter files.

At the conclusion of this testimony, defendants opposed the bindover, alleging that the statute did not govern the message at issue or did not clearly define the conduct it governed and that the message at issue contained speech that was protected by the First Amendment. The prosecution asserted that it presented sufficient information to support the elements and the speech at issue was not protected.

The district court concluded that the crimes alleged were committed in the city of Detroit and that there was probable cause to believe that defendants committed them. The district court noted Craine’s testimony that law enforcement, credit card companies, and the CDC did not access the qualified voter files to contact people or to execute their duties. It was also noted that defendants disseminated the call to a particular group of people in light of defendants’ “very strong political views,” and the appropriate inquiry was not the effect of the message on the recipient, but defendants’ intent. The district court also stated that the message was directed to a community that was 85% African-American and this community equated the term “the man” to “the white man.”

In the circuit court, defendants moved to quash the bindover. First, defendants argued that MCL 168.932(a) did not criminalize their conduct because they did not engage in acts of physical harm. Second, defendants submitted that MCL 168.932(a) was unconstitutional on its face and as applied and protected by the First Amendment. The prosecution opposed the motion, alleging that defendants’ actions were criminal and in violation of MCL 168.932(a) because they sent a threatening message designed to deter individuals from voting, and the threat need not be physical. It was further alleged that the message was not protected by the First Amendment because it was a true threat and there was a need to protect the right to vote.

After hearing oral argument, the trial court rejected defendants’ arguments. The trial court concluded that the district court did not abuse its discretion in binding defendants over in light of the content of the message, the e-mails exchanged between defendants regarding their desire to “hijack” the election, the community to which the message was directed, and the circumstances surrounding the pandemic as residents were encouraged to stay home. The trial court also rejected the contention that the prosecution violated defendants’ First Amendment rights, noting that the state had a compelling interest in protecting the right to vote and narrowly tailored MCL 168.932 to prevent any attempt to influence the vote or deter a vote. Moreover, the trial court characterized the message as not expressing an opinion, but presenting misleading and possibly false information. From this decision, defendants appeal.

II. STANDARDS OF REVIEW

A trial court’s ruling regarding a motion to quash the information is reviewed for an abuse of discretion. *People v Zitka*, 325 Mich App 38, 43; 922 NW2d 696 (2018). An abuse of discretion occurs when a trial court’s decision falls outside the range of reasonable and principled outcomes. *People v Burger*, 331 Mich App 504, 510; 953 NW2d 424 (2020) (citation and quotation omitted). A trial court necessarily abuses its discretion when it commits an error of law. *Id.* The bindover decision is reviewed de novo to determine whether the district court abused its discretion without any deference to the circuit court decision. *People v Hawkins*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 357068), slip op at 8. Similarly, the denial of a defendant’s motion to dismiss charges is reviewed for an abuse of discretion. *People v Korkigian*, 334 Mich App 481, 489; 965 NW2d 222 (2020). To determine whether dismissal is appropriate for the failure to demonstrate the defendant’s intent, the facts and circumstances or context of where and when defendant’s conduct took place may be considered. *People v Gerhard*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 354369), slip op at p 7; *People v Byczek*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 350341), slip op at p 8.

Issues involving statutory interpretation are reviewed de novo. *People v Lydic*, 335 Mich App 486, 490; 967 NW2d 847 (2021). The lower court’s determination that a defendant’s conduct falls within the scope of a penal statute is reviewed de novo. *Korkigian*, 334 Mich App at 489. Further, application of the facts to the law is reviewed de novo. *Lydic*, 335 Mich App at 490. A challenge to the constitutionality of a statute presents a question of law reviewed de novo on appeal. *People v GR*, 331 Mich App 58, 68; 951 NW2d 76 (2020).

III. APPLICATION OF MCL 168.932

Defendants first assert that their conduct does not constitute a violation of the voter suppression statute. We disagree.

When interpreting a statute, the primary goal is to ascertain and give effect to the intent of the Legislature. *People v Morrison*, 328 Mich App 647, 651; 939 NW2d 728 (2019). If the statutory language is plain and unambiguous, the legislative intent is clearly expressed, and judicial construction is neither permitted nor required. *People v Costner*, 309 Mich App 220, 224; 870 NW2d 582 (2015). When interpreting a statute, the appellate court must give effect to every word, phrase and clause and not render any part of the statute surplusage or nugatory. *People v Rea*, 500 Mich 422, 427-428; 902 NW2d 362 (2017). “When a word or phrase is not defined by the statute in question, it is appropriate to consult dictionary definitions to determine the plain and ordinary meaning of the word or phrase.” *Id.* at 428. “In construing a legislative enactment we are not at liberty to choose a construction that implements any rational purpose but, rather, must choose the construction which implements the legislative purpose perceived from the language and the context in which it is used.” *People v TJD*, 329 Mich App 671, 688; 944 NW2d 180 (2019) (citation omitted).

A. MENACE

MCL 168.932 provides, in pertinent part:

A person who violates 1 or more of the following subdivisions is guilty of a felony:

(a) A person shall not attempt, by means of bribery, menace, or other corrupt means or device, either directly or indirectly, to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in this state.

Defendants contend that the robocall was not menacing because it did not involve a threat of physical assault. Because the term “menace” is not defined in MCL 168.932, we may consult a dictionary definition to determine the plain and ordinary meaning of the word. *Rea*, 500 Mich at 428. “Menace” is defined as “a show of intention to inflict harm”; “one that represents a threat”; “to make a show of intention to harm”; or “to represent or pose a threat to.” *Merriam Webster’s Collegiate Dictionary* (11th ed). The term “menace” as defined in the dictionary does not require an accompanying physical component, but may be established through a threat. Indeed, the plain language of MCL 168.932(a) does not require that the menace be achieved through physical contact as reflected by the Legislature’s further qualification that a person shall not attempt by menace, either *directly or indirectly*, to deter the elector from giving his vote. Thus, the behavior equated with menace may occur either directly or indirectly. The term “directly” is defined as “in a direct manner”; “in immediate physical contact”; and “in the manner of direct variation.” *Id.* Further, the term “indirectly” is defined as “deviating from a direct line or course”; “not straightforward and open”; and “not directly aimed at or achieved.” *Id.* By the Legislature’s allowance for the menace to occur in a direct or indirect manner, the menace may be achieved with or without physical contact. This challenge is without merit.

Nonetheless, defendants posit that the term “menace” has acquired a peculiar meaning in the law requiring physical harm, and because the robocall did not threaten physical harm, the motion to quash should be granted. Defendants’ citation to criminal cases involving an assault are not persuasive.⁶ There is no indication that the Legislature intended to limit the term “menace” as applied in cases charging criminal assault to this election statute. Further, the interpretation urged by defendants is contrary to the rules governing statutory construction. We are to apply the term “menace” according to the legislative intent as expressed by the statutory language of the election law statute. *Costner*, 309 Mich App at 225. Thus, the term must be examined in the context in which it is used *in election law* to implement the legislative purpose as expressed by the plain language. *TJD*, 329 Mich App at 688. MCL 168.932(a) criminalized the interference with the exercise of the right to vote as well as a breach of the integrity of the process through interference, i.e., the interruption of the elector in giving his vote. The requirement of a physical component underlying the term “menace” in MCL 168.932(a) when the menace may occur directly or indirectly is contrary to the legislative purpose and intent as expressed in the statute’s plain language. Accordingly, we decline defendants’ invitation to read a physical component into the voter suppression statute, MCL 168.932(a).

⁶ Moreover, the cases cited by defendants did not examine the precise meaning of menace. See *People v Johnson*, 407 Mich 196, 241; 284 NW2d 718 (1979) (LEVIN, J., dissenting); *People v Doud*, 223 Mich 120, 123; 193 NW 884 (1923); *Hamlin v Mack*, 33 Mich 103, 106 (1875); *People v Plumsted*, 2 Mich 465, 466 (1853).

B. CORRUPT MEANS OR DEVICE

Alternatively, defendants assert that the robocall message did not constitute a “corrupt means or device” because it was not intrinsically unlawful like bribery or menace.⁷ We disagree.

Specifically, invoking the statutory canon of construction *noscitur a sociis*, a doctrine that “stands for the principle that a word or phrase is given meaning by its context or setting,” *People v Morris*, 314 Mich App 399, 410; 886 NW2d 910 (2016), defendants submit that “corrupt means or device” must be interpreted by reference to bribery and menace. Indeed, words in a statute should not be examined in a void, but should be read as a whole to harmonize the meaning and give effect to the whole act. *People v Hill*, 486 Mich 658, 668; 786 NW2d 601 (2010) (citation omitted). Applying *noscitur a sociis*, words and clauses are not detached from those which precede and those that follow. *Id.* Although the meaning of grouped words should be given a related meaning, that does not require that the terms be subsumed or contrived to fall within the same definition. Rather, “it is clear that what a court should do in construing a term in a criminal statute for which there are a variety of potential definitions is to determine from among those definitions which the Legislature most reasonably intended by the specific context in which the term is found.” *Id.*

We decline the request to apply *noscitur a sociis* in order to achieve defendants’ goal of equating “corrupt means or device” with menace or bribery. To do so, we would fail to give effect to every word, phrase and clause in MCL 168.932(a) and render “corrupt means or device” surplusage or nugatory. *Rea*, 500 Mich at 427-428. Further, there is no need to resort to such legal maxims, as this Court has previously explained in the context of misconduct in office that “corrupt behavior” refers to “intentional, purposeful, deliberate, and knowing wrongful behavior.” *People v Waterstone*, 296 Mich App 121, 138; 818 NW2d 432 (2012). Our Supreme Court has likewise described “corrupt intent” as a “sense of depravity, perversion or taint.” *People v Perkins*, 468 Mich 448, 456; 662 NW2d 727 (2003). Additionally, both lay and legal dictionaries provide similar definitions of corrupt. See *Merriam Webster’s Collegiate Dictionary* (11th ed) (“morally degenerate and perverted,” “characterized by improper conduct (as bribery or the selling of favors)”; *Black’s Law Dictionary* (11th ed) (“[h]aving unlawful or depraved motives; given to dishonest practices, such as bribery”) (emphasis added).

The evidence at the preliminary examination was sufficient to bind over defendants premised on “other corrupt means or device.” The prosecution introduced e-mails exchanged between defendants in which they discussed “hi-jack[ing] this boring election.” In order to achieve this goal, defendants composed a robocall message stating that mail-in voting “will” allow personal information to become part of a public database. It was then concluded that *this* database “will be used by police departments to track down old warrants and be used by credit card companies to collect outstanding debts?” Further, the robocall posited that the CDC was “pushing”

⁷ In the discussion of this issue addressing the statute’s terms, defendants raise a number of hypothetical circumstances. Because these hypotheticals were raised in the context of a statutory construction challenge and not First Amendment freedoms, we must focus on the specifics of the case at hand. *People v Lockett*, 295 Mich App 165, 176; 814 NW2d 295 (2012).

to use mail-in voting records to “track people for mandatory vaccines.” Defendants then arranged to send the robocall message to predominantly African-American metropolitan neighborhoods⁸ and expressed pleasure when they received “angry black call backs.” When defendants were contacted about their participation in the robocall, they initially denied any involvement. Months later, during a separate court proceeding in another state, defendants admitted they were responsible for disseminating the robocall message. Craine opined that the robocall statements were false because the qualified voter files had never been used in the manner suggested by the robocall, nor would it be practical for law enforcement, creditors, or the CDC to use qualified voter files when other publicly available databases provided more personal details. Further, she noted that the vaccinations were not mandatory at the time of the robocall. Thomas, a voter who received the robocall, construed it as trying to deter listeners from mail-in voting and opined that many people may not want to vote at all if they felt in-person voting during the COVID-19 pandemic was their only option. In light of the content of the robocall and the pandemic, a voter, contingent on his or her circumstances, may deem it ill-advised or unsafe to exercise the right to vote either through mail-in or in-person voting. A fact-finder could conclude from this evidence that defendants intentionally disseminated a dishonest message with the depraved motive of deterring voting. *Gerhard*, ___ Mich App at ___, slip op at p 7; *Byczek*, ___ Mich App at ___, slip op at p 8. Consequently, the trial court did not abuse its discretion by denying defendants’ motion to quash because there was probable cause to believe that defendants used a corrupt means or device to deter voting, MCL 168.932(a), in light of all the facts and circumstances. *Zitka*, 325 Mich App at 43.

Defendants also argue that the bindover should have been quashed because MCL 168.932(a) prohibits influencing, deterring, or interrupting an elector from “giving his or her vote,” and the robocall message only deterred one specific method of voting—mail-in voting—without discouraging traditional in-person voting. But as the prosecution points out in response, the timing of the robocall was significant. Our nation was in the midst of the COVID-19 pandemic, such that in-person voting carried with it a serious risk to a voter’s health. The message could also deter all voting by robocall recipients who were entirely unable to vote in-person for reasons other than the risk of contracting or spreading COVID-19. Thus, whether defendants influenced, deterred, or interrupted electors from giving their votes under these circumstances is a question of fact. *Gerhard*, ___ Mich App at ___, slip op at p 7; *Byczek*, ___ Mich App at ___, slip op at p 8.⁹

⁸ Campbell testified that he learned the robocall was disseminated by zip code, but did not specify the zip codes on the record. Thomas testified that he received the robocall to his landline in his Detroit residence which was a (313) area code. During the questioning of Craine, defense counsel referenced that defendants purchased information pertinent to the (313) area code in Wayne County. From the record, it is unclear if defendants purchased the qualified voter files of metro Detroiters or some other database and then directed the robocall to specific zip codes premised on race or other factors in light of the data purchased.

⁹ Defendants also contend that there was no evidence that a voter was dissuaded from voting as a result of the robocall. Indeed, Thomas testified that he was appalled by the robocall’s message, but it did not deter him from voting. The clear and plainly expressed language of MCL 168.932(a),

Defendants contend that the robocall message cannot lead to criminal liability under MCL 168.932(a) because the message asserted opinion, plausibly true facts, or untrue facts defendants did not know to be false. As noted, MCL 168.932 provides, in pertinent part:

A person who violates 1 or more of the following subdivisions is guilty of a felony:

(a) A person shall not attempt, by means of bribery, menace, or other corrupt means or device, either directly or indirectly, to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in this state.

Defendant's arguments address the intent required by MCL 168.932(a). As noted, for the robocall to be deemed a corrupt means or device, it must be established that defendants deliberately used a wrongful method with a depraved intent to interfere with voting. Regardless of whether the message was worded in the form of an opinion, possibly true,¹⁰ or unknowingly false, if defendants intended to influence, deter, or interrupt an elector in giving his or her vote, MCL 168.932(a) is satisfied. The prosecution presented sufficient evidence to establish probable cause that defendants had the requisite intent, and the trial court did not abuse its discretion by denying defendants' motion to quash the bindover.

Lastly, defendants submit that this Court should apply the rule of lenity because the definition of "other corrupt means or device" is ambiguous. "The rule of lenity provides that courts should mitigate punishment when the punishment in a criminal statute is unclear." *People v Johnson*, 302 Mich App 450, 462; 838 NW2d 889 (2013) (quotation marks and citation omitted). Stated otherwise, "[t]he rule of lenity stands for the proposition that penal laws are to be strictly construed with all doubts resolved in a defendant's favor[.]" and "[t]he rule applies only when the statutory text is ambiguous[.]" *People v Arnold*, ___ Mich ___, ___; ___ NW2d ___ (2021) (Docket No. 160046), slip op at p 19 n 51 (citations omitted). Because MCL 168.932(a) is not

Costner, 309 Mich App at 224, prohibits the "attempt, by means of . . . menace, or other corrupt means or device, either directly or indirectly, to influence . . . or deter . . . or interrupt the elector in giving his or her vote at any election held in this state." (Emphasis added). Thus, the plain language punishes, as a felony, the attempt and there is no further requirement that the attempt be successful to punish the conduct.

¹⁰ Defendants contend that the content of the robocall was plausibly true because law enforcement and credit card agencies use other databases in the course of their work. However, the robocall's message did not convey that other databases afforded those entities the information created by mail-in voting or that qualified voter files were subject to dissemination. Rather, defendants' robocall message correlated mail-in voting to the creation of information leading to the possible execution of a bench warrant, adverse consequences from a credit card debtor, and possible mandated vaccination. The implication being, that by mail-in voting, the voter would cause unintended or unwanted consequences. That is, by mail-in voting, the voter would essentially cause their undoing. The message, its truth or falsity, and its implications as applied to MCL 168.932(a) present a question for resolution by the trier of fact.

ambiguous and the Legislature’s intent is clear from the statutory language, the rule of lenity has no application here. *Id.*

IV. FIRST AMENDMENT

Defendants contend that MCL 168.932(a) is unconstitutional on its face and as applied to defendants. We disagree. Rather, we conclude that MCL 168.932(a) is not void for vagueness, nor is it unconstitutional as applied to defendants because it criminalizes speech integral to criminal conduct.

A challenge to the constitutionality of a statute presents a question of law reviewed de novo on appeal. *GR*, 331 Mich App at 68. The statute is presumed to be constitutional unless its unconstitutionality is plainly apparent, and when possible, the statute is to be construed as constitutional. *Id.* “The burden is on the party challenging the statute’s constitutionality to prove its invalidity.” *Id.*

“Congress shall make no law . . . abridging the freedom of speech.” US Const, Am I. The First Amendment, US Const, Am I, applies to the states through the Fourteenth Amendment, US Const, XIV. *J & J Constr Co v Bricklayers & Allied Craftsmen, Local 1*, 468 Mich 722, 729; 664 NW2d 728 (2003). The Michigan Constitution provides the same protection. Under Const 1963, art 1, § 5, “[e]very person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech.” “The rights of free speech under the Michigan and federal constitutions are coterminous.” *In re Contempt of Dudzinski*, 257 Mich App 96, 100; 667 NW2d 68 (2003).

“The void for vagueness doctrine is derived from the constitutional guarantee that the state may not deprive a person of life, liberty, or property, without due process of law.” *People v Lawhorn*, 320 Mich App 194, 198; 907 NW2d 832 (2017) (quotation marks and citation omitted). A statute may be deemed unconstitutionally vague for three reasons: “(1) it is overbroad and impinges on First Amendment freedoms; (2) it does not provide fair notice of the conduct proscribed; or (3) it is so indefinite that it confers unstructured and unlimited discretion on the trier of fact to determine whether an offense has been committed.” *Id.* at 199 (quotation marks and citation omitted). Defendants submit that MCL 168.932(a) is void for vagueness because it does not adequately define “other corrupt means or devices.”

“A statute provides fair notice when it give[s] a person of ordinary intelligence a reasonable opportunity to know what is prohibited.” *People v Miller*, 326 Mich App 719, 738; 929 NW2d 821 (2019) (quotation marks and citation omitted; alteration in original). “Fair notice exists when the statute’s meaning can be determined by referring to judicial interpretations, common law, dictionaries, treatises, or the common meaning of words.” *Id.* As explained earlier, the key term in the challenged phrase—corrupt—has been interpreted by judicial opinions. “Corrupt behavior” refers to “intentional, purposeful, deliberate, and knowing wrongful behavior,” *Waterstone*, 296 Mich App at 138, while “corrupt intent” means a “sense of depravity, perversion or taint,” *Perkins*, 468 Mich at 456. A person of reasonable intelligence should therefore understand that he or she violates MCL 168.932(a) by using any intentional, purposeful, deliberate, and knowingly wrongful method with the depraved intent to interfere with voting.

Defendants also contend that the phrase “corrupt means or device” makes the statute overbroad because it criminalizes protected speech in a manner that is not narrowly tailored to fit a compelling governmental interest. Defendants characterize this argument as a facial challenge, but only present arguments regarding the breadth of the statute as applied specifically to the robocall message. “A facial challenge attacks the statute itself, and requires the challenger to establish that no set of circumstances exist under which the act would be valid. The fact that the . . . [a]ct might operate unconstitutionally under some conceivable set of circumstances is insufficient.” *People v Johnson*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 351308); slip op at 2 (quotation marks and citation omitted; alteration in original). “An as-applied challenge alleges a present infringement or denial of a specific right or of a particular injury in process of actual execution of government action.” *Id.* (quotation marks and citation omitted). Because defendants focus on specific application of the statute to the facts at hand, we treat this issue as an as-applied challenge.

In *United States v Stevens*, 559 US 460, 470; 130 S Ct 1577; 176 L Ed 2d 435 (2010), the United States Supreme Court explained:

The First Amendment’s guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits. The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it.

Consequently, the government may not ordinarily restrict speech on the basis of its content, except in a number of well-recognized areas. *United States v Alvarez*, 567 US 709, 716; 132 S Ct 2537; 183 L Ed 2d 574 (2012). “Among these categories are advocacy intended, and likely, to cite imminent lawless action; obscenity; defamation; speech integral to criminal conduct; so-called ‘fighting words’; child pornography; fraud; true threats; and speech presenting some grave and imminent threat the government has the power to prevent . . .” *Id.* at 717 (citations omitted). The parties here disagree as to whether the prohibition against using corrupt means or devices to interfere with voting falls within the exceptions for true threats or speech integral to criminal conduct.

We agree with defendants that MCL 168.932(a) operates in this case to bar speech beyond the scope of the true threat exception because it extends to threats of nonviolent harm.

“True threats” encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats “protect[s] individuals from the fear of violence” and “from the disruption that fear engenders,” in addition to protecting people “from the possibility that the threatened violence will occur.” Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or

death. [*Virginia v Black*, 538 US 343, 359-360; 123 S Ct 1536; 155 L Ed 2d 535 (2003) (citations omitted; alteration in original).]

Relying on the Supreme Court’s articulation of a true threat in *Black*, this Court has likewise stated that true threats involve threats of unlawful violence. *TM v MZ*, 326 Mich App 227, 239; 926 NW2d 900 (2018). The message disseminated by defendants warned of harm to the listener’s freedom, financial security, and bodily autonomy, but did not involve a “serious expression of an intent to commit an act of unlawful violence” *Black*, 538 US at 359. MCL 168.932(a), therefore, cannot avoid constitutional scrutiny in this case under the true threat exception.¹¹

However, we conclude that First Amendment protection exception for “speech integral to criminal conduct” is applicable. *Giboney v Empire Storage & Ice Co*, 336 US 490; 69 S Ct 684; 93 L Ed 2d 834 (1949), the authority commonly cited for this exception, involved an injunction against peaceful picketing at an ice distribution facility by members of an ice peddlers union. *Id.* at 491-492. The union members’ goal was to compel the ice distributor to stop selling to nonunion peddlers, contrary to a state statute prohibiting participation in any “pool, trust, agreement, combination, confederation or understanding with any person or persons in restraint of trade or

¹¹ In reaching this conclusion we are mindful of the decisions rendered in *United States v Nguyen*, 673 F3d 1259 (CA 9, 2012), and *Nat’l Coalition on Black Civic Participation v Wohl*, 498 F Supp 3d 457 (SD NY, 2020). In *Nguyen*, the defendant, a Republican candidate for a seat in the United States House of Representatives, mailed a Spanish-language letter to registered voters with Hispanic surnames who were registered as Democrats or “decline[d] to state[.]” He challenged his conviction for obstruction of justice for failing to disclose the full extent of his knowledge regarding the mailing of the letter that was designed to act as an attempt at voter intimidation. *Nguyen*, 673 F3d at 1261-1262. In addition to challenging the probable cause to issue a search warrant, defendant alleged that his letter was political speech entitled to First Amendment protection. The *Nguyen* Court rejected the First Amendment challenge, citing *Black*, 538 US at 360, and concluding that “[i]ntimidation in the constitutionally proscribable sense of the word is a type of true threat.” However, the *Nguyen* Court never examined the additional aspect of *Black* that the statement communicate an intent to commit an act of unlawful violence to a particular individual or group. *Id.* at 1266. In *Nat’l Coalition*, the plaintiffs sued defendants, among others, for sending the same robocall at issue in the present case to minority populations in New York City in violation of the Voting Rights Act, 52 USC 10307(b), and requested injunctive relief. 498 F Supp 3d at 463-466. The *Nat’l Coalition* Court recognized the *Nguyen* decision as well as the *Black* Court’s requirement that a threat to commit a violent act accompany a true threat. The *Nat’l Coalition* Court nonetheless granted the request for injunctive relief despite a First Amendment challenge noting that a nonviolent or illegal per se act may still constitute interference, intimidation or coercion for purposes of the Voting Rights Act. *Id.* at 477-485. Because Michigan has applied the threat of violence to the true threat exception to First Amendment protections, *TM*, 326 Mich App at 239, we do not conclude that *Nguyen* and *Nat’l Coalition* are dispositive. See MCR 7.215(J)(1) (“A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this rule.”).

competition” *Id.* at 491 n 2, 492. Had the distributor agreed to stop selling ice to nonunion members, it too would have been in violation of the state antitrust restraint law. *Id.* at 493. The union peddlers argued, in part, that the injunction violated the First Amendment freedom of speech because they were merely publicizing truthful facts in a peaceful manner. *Id.* at 497-498. But the Supreme Court disagreed, reasoning that the “sole immediate object of the publicizing adjacent to the premises of [the distributor] . . . was to compel [the distributor] to agree to stop selling ice to nonunion peddlers,” contrary to state law. *Id.* at 498. The Court concluded that freedom of speech did not “extend[] its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute.” *Id.* “[I]t has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.” *Id.* at 502.

Here, the purpose of MCL 168.932(a) is to preserve and protect the right to vote, a compelling state interest. See *Burson v Freeman*, 504 US 191, 198-199; 112 S Ct 1846; 119 L Ed 2d 5 (1992) (recognizing protection of right to vote freely as compelling state interest); *Mich Alliance for Retired Americans v Secretary of State*, 334 Mich App 238, 257; 964 NW2d 816 (2020) (noting the state’s compelling interest in preserving the integrity of elections). The statute carries out this goal by prohibiting influencing, deterring, or interrupting an elector from giving his or her vote by way of bribery, menace, or other corrupt means or device. To the extent a fact-finder agrees with the prosecution’s theory that defendants spread a dishonest message with the depraved intent to discourage voting, defendants’ dissemination of the message deterred voting through corrupt means. Like the picketing in *Giboney*, the speech was an integral part of conduct criminalized by MCL 168.932(a) and should not be constitutionally protected merely because the conduct was “carried out by means of language.” *Id.*

Affirmed.

/s/ Anica Letica

/s/ Michelle M. Rick

Court of Appeals opinions

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN MACAULEY BURKMAN,

Defendant-Appellant.

FOR PUBLICATION

June 2, 2022

No. 356600

Wayne Circuit Court

LC No. 20-004636-01-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACOB ALEXANDER WOHL,

Defendant-Appellant.

No. 356602

Wayne Circuit Court

LC No. 20-004637-01-FH

Before: LETICA, P.J., and REDFORD and RICK, JJ.

REDFORD, J. (*concurring in part and dissenting in part*).

I concur with the majority's conclusion that the circuit court did not err in denying defendants' motion to quash their bindover for a violation of MCL 168.932(a) under a theory of culpability alleging other corrupt means or device. I likewise concur with the majority that the prosecution of defendants' conduct does not violate defendants' First Amendment rights to free speech because defendants' speech was integral to criminal conduct. I dissent from the majority's conclusion that the conduct alleged and proofs offered below support a theory of culpability alleging a menace in violation of MCL 168.932(a), and I would reverse the trial court's decision in that regard.

As noted in the majority opinion, in these consolidated appeals, defendants, John Macauley Burkman and Jacob Alexander Wohl, appeal as on leave granted the trial court's orders denying

their motions to quash and dismiss. Defendants were both charged with attempting to influence, deter, or interrupt electors, MCL 168.932(a), conspiracy to commit that offense, MCL 750.157a, and two counts of using a computer to commit a crime, MCL 752.796.

Defendants contend that the charges should have been dismissed because their dissemination of a robocall regarding possible repercussions of mail-in voting did not constitute a menace or use of other corrupt means or device under MCL 168.932(a). I conclude the robocall did not involve a menace to the call's recipient; however, it could be construed as a corrupt means or device. Defendants further contend that MCL 168.932(a) is unconstitutional both on its face and as applied in this case. I conclude the phrase "other corrupt means or device" is not unconstitutionally vague. Concerning defendants' First Amendment arguments, the robocall message was not a "true threat," but is still not subject to First Amendment protections because it was speech integral to criminal conduct. Accordingly, I would reverse in part, affirm in part, and remand to the trial court for further proceedings consistent with this opinion.

I generally concur with the majority's description of the basic facts and procedural history of the case, found in § I of its opinion. I agree with the majority's recitation of the standard of review in § II, the analysis of MCL 168.932 regarding a corrupt means or device in § III (B) and the First Amendment analysis in § IV.

I disagree with the majority's analysis in § III (B) regarding the menace theory of liability under MCL 168.932.

I. APPLICATION OF MCL 168.932 REGARDING MENACE

Defendants assert that their conduct does not constitute a violation of the voter suppression statute. I agree that the charged conduct and evidence presented below does not constitute a menace under the statute but disagree that it is not the use or attempted use of a corrupt means or device.

MCL 168.932 provides, in pertinent part:

A person who violates 1 or more of the following subdivisions is guilty of a felony:

(a) A person shall not attempt, by means of bribery, menace, or other corrupt means or device, either directly or indirectly, to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in this state.

Defendants contend that the robocall was not menacing because it did not involve a threat of physical assault. I agree.

Cases discussing menacing behavior indicate that to "menace" means to make a serious threat of assault by overt conduct that causes the victim to reasonably believe that the person making the threat will do what is threatened. See generally, *People v Doud*, 223 Mich 120, 129-131; 193 NW 884 (1923) (explaining that Michigan law forbids a defendant from menacing of human life by threatening an assault with a dangerous weapon); *People v Reeves*, 458 Mich 236, 245; 580 NW2d 433 (1998) (describing menacing conduct as the defendant's placement of his

hand in a bag and pointing it at the complainant while saying, “What’s more important, your job or your life?”). In *People v Braman*, 30 Mich 460, 467-468 (1874), our Supreme Court discussed the proper interpretation of a statute that criminalized threatening the accusation of a crime as a means of extortion, and specifically considered what the Legislature meant regarding a threat:

Do not the expressions which the legislature have here employed fairly denote that the accusation threatened must be signified or indicated as one to *proceed from the defendant*?

When the law speaks of *his* threat “to accuse,” when it exclusively alludes to the defendant and the party threatened, and makes no reference to any one else, in the relation we are now considering, can it be supposed that it was intended to include the case of a threat that some *third* party would accuse?

If such had been the design, we may suppose the legislature would have expressed themselves in terms certainly more appropriate to convey it. Considering the phraseology used, and considering also that it occurs in a provision introducing and defining a criminal offense, I am unable to apply the expression broadly and as though the words imported no *limitation*. The idea conveyed is, as it seems to me, that the *accusation* menaced is to be one threatened to come *from the party* threatening, and not exclusively from some other. Hence, however malicious and wicked the threat, unless it menace a criminal accusation by the author of the threat, the case is not within the offense the legislature have seen fit to mark out: 1 Bish. C. L., § 67; *Coe v Lawrence*, 16 E. L. & E., 252; *Reg v Williams*, 1 Den. C. C., 39. [Emphasis in original.]

In this case, defendants did not express to recipients of the robocalls that defendants would do the acts threatened but stated that others might do the described offensive acts. Accordingly, defendants’ expression in the robocalls does not fit the jurisprudential concept of a menace or menacing, and therefore, the robocall was not menacing.

II. CONCLUSION

For the reasons set forth in that portion of the majority’s opinion with which I concur, and the reasons set forth above, I conclude the trial court did not err in denying the motion to quash the bindover in this matter on all grounds but the menace theory of liability, nor did the district court abuse its discretion in the decision to bind over defendants to the circuit court for trial for

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violation of the statute by corrupt means or device. I would affirm in part, reverse in part, and remand to the trial court for further proceedings consistent with this opinion.¹

/s/ James Robert Redford

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¹ This opinion does not stand for the proposition nor should it be understood to express a conclusion that no set of facts or circumstances could be alleged to support a charge under the “menace” provision of MCL 168.932.

Registers of actions

REGISTER OF ACTIONS

[CASE No. 20-004636-01-FH](#)

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PARTY INFORMATION

Defendant	Burkman, John Macauley	Attorneys Scott Gabel <i>Court Appointed</i> (800) 342-7896(W)
		Attorney Unreported <i>Retained</i>
Plaintiff	State of Michigan	Richard L. Cunningham (313) 456-0204(W)

CHARGE INFORMATION

Charges: Burkman, John Macauley	Statute	Level	Date
1. Election Law - Bribing/intimidating Voters	168/932A	.	08/26/2020
2. Election Law - Bribing/intimidating Voters (Conspiracy)	168/932A	.	08/26/2020
3. Computers - Using to Commit a Crime - Maximumimprisonment of 4 Years or More But	752/7973D	.	08/26/2020
4. Computers - Using to Commit a Crime - Maximumimprisonment of 4 Years or More But	752/7973D	.	08/26/2020

EVENTS & ORDERS OF THE COURT

	DISPOSITIONS
10/08/2020	Plea (Judicial Officer: Judge, District Court) 1. Election Law - Bribing/intimidating Voters Defendant Stand Mute: Plea of Not Guilty Entered by Court
10/08/2020	Plea (Judicial Officer: Judge, District Court) 2. Election Law - Bribing/intimidating Voters (Conspiracy) Defendant Stand Mute: Plea of Not Guilty Entered by Court
10/08/2020	Plea (Judicial Officer: Judge, District Court) 3. Computers - Using to Commit a Crime - Maximumimprisonment of 4 Years or More But Defendant Stand Mute: Plea of Not Guilty Entered by Court
10/08/2020	Plea (Judicial Officer: Judge, District Court) 4. Computers - Using to Commit a Crime - Maximumimprisonment of 4 Years or More But Defendant Stand Mute: Plea of Not Guilty Entered by Court
	OTHER EVENTS AND HEARINGS
09/30/2020	Recommendation for Warrant
10/02/2020	Warrant Signed
10/08/2020	Arraignment on Warrant (9:00 AM) (Judicial Officer Judge, District Court) Result: Defendant Stands Mute; Plea Of Not Guilty Entered By Court
10/21/2020	Preliminary Examination (9:00 AM) (Judicial Officer King, Kenneth J) Result: Held
10/29/2020	Competency Hearing (9:00 AM) (Judicial Officer King, Kenneth J) Result: Held
10/29/2020	Preliminary Examination (9:00 AM) (Judicial Officer King, Kenneth J) Result: Held: Bound Over
10/29/2020	Bound Over
11/03/2020	Interim Condition for Burkman, John Macauley - Cash or Surety \$100,000.00
11/12/2020	Arraignment On Information (9:00 AM) (Judicial Officer Chylinski, James R.) Parties Present Result: Held
11/12/2020	Disposition Conference (9:00 AM) (Judicial Officer Chylinski, James R.) Parties Present Result: Held
11/12/2020	Bond Continued
11/16/2020	Calendar Conference (9:00 AM) (Judicial Officer Van Houten, Margaret M.) Parties Present Result: Held
11/16/2020	Order For Production Of Exam Transcript Signed and Filed
11/16/2020	Calendar Conference form, Signed and Filed (Judicial Officer: Van Houten, Margaret M.)

Registers of actions

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11/25/2020 [Motion](#)
11/25/2020 [Proof of Service, Filed](#)
11/30/2020 [Proof of Service, Filed](#)
11/30/2020 [People's Response \(Answer\) to Motion](#)
12/04/2020 [Miscellaneous, Filed](#)
12/04/2020 [Proof of Service, Filed](#)
12/21/2020 **Motion Hearing** (9:00 AM) (Judicial Officer Van Houten, Margaret M.)
[Parties Present](#)
12/07/2020 Reset by Court to 12/21/2020
Result: Held
12/21/2020 [Order Signed and Filed](#) (Judicial Officer: Van Houten, Margaret M.)
12/23/2020 [PE PDF Transcript, filed](#)
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02/09/2021 [Motion To Quash Information](#)
02/09/2021 [Proof of Service, Filed](#)
02/23/2021 **Final Conference** (9:00 AM) (Judicial Officer Van Houten, Margaret M.)
[Parties Present](#)
12/23/2020 Reset by Court to 02/23/2021
01/25/2021 Reset by Court to 12/23/2020
Result: Continued
02/23/2021 [Motion To Quash Information](#)
02/23/2021 [Heard And Denied - Order Signed and Filed](#) (Judicial Officer: Van Houten, Margaret M.)
02/23/2021 **Motion**
02/23/2021 [Heard And Denied - Order Signed and Filed](#) (Judicial Officer: Van Houten, Margaret M.)
03/05/2021 **Order For Production Of Transcript**
03/16/2021 **Stenographers Certificate Filed**
03/31/2021 [Notice of Transcript Filed](#)
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03/31/2021 [Proof of Service, Filed](#)
03/31/2021 [Motion](#)
04/13/2021 **Final Conference** (9:00 AM) (Judicial Officer Van Houten, Margaret M.)
[Parties Present](#)
Result: Held
04/13/2021 [Brief Or Memorandum of Law](#)
04/13/2021 [Proof of Service, Filed](#)
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05/10/2021 [Proof of Service, Filed](#)
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05/13/2021 [People's Response \(Answer\) to Motion](#)
05/13/2021 [Proof of Service, Filed](#)
05/17/2021 **Motion Hearing** (9:00 AM) (Judicial Officer Van Houten, Margaret M.)
[Parties Present](#)
Result: Held
05/17/2021 **Notice of Other Acts Evidence**
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05/25/2021 [Miscellaneous, Filed](#)
05/25/2021 [Miscellaneous, Filed](#)
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06/03/2021 [Proof of Service, Filed](#)
06/03/2021 **Order For Production Of Transcript**
06/04/2021 [Witness List, Filed](#)
06/04/2021 [Miscellaneous, Filed](#)
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06/07/2021 **Pre-Trial** (9:00 AM) (Judicial Officer Van Houten, Margaret M.)
[Parties Present](#)
Result: Continued
06/07/2021 [Proof of Service, Filed](#)
06/07/2021 [Information Filed](#)
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08/05/2021 [Miscellaneous, Filed](#)
09/21/2021 **Pre-Trial** (9:00 AM) (Judicial Officer Van Houten, Margaret M.)
[Parties Present](#)
Result: Held
11/09/2021 **Pre-Trial** (9:00 AM) (Judicial Officer Van Houten, Margaret M.)
[Parties Present](#)
Result: Held
11/09/2021 **Stay of Appeal - Interlocutory Appeal Granted**
11/30/2021 [Miscellaneous, Filed](#)
12/29/2021 [Documents Prior to eFiling](#)

Registers of actions

06/17/2022 **Review Date** (9:00 AM) (Judicial Officer Van Houten, Margaret M.)
[Parties Present](#)
03/30/2022 Reset by Court to 05/31/2022
05/31/2022 Reset by Court to 06/17/2022
Result: Continued

06/23/2022 **Miscellaneous, Filed**

04/14/2023 **Review Date** (9:00 AM) (Judicial Officer Van Houten, Margaret M.)
07/27/2022 Reset by Court to 08/18/2022
08/18/2022 Reset by Court to 10/07/2022
10/07/2022 Reset by Court to 12/02/2022
12/02/2022 Reset by Court to 04/14/2023

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REGISTER OF ACTIONS

CASE NO. 20-004637-01-FH

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PARTY INFORMATION

Defendant	Wohl, Jacob Alexander	Attorneys William C. Amadeo <i>Court Appointed</i> (800) 392-7311(W)
		Attorney Unreported <i>Retained</i>
Plaintiff	State of Michigan	Richard L. Cunningham (313) 456-0204(W)

CHARGE INFORMATION

Charges: Wohl, Jacob Alexander	Statute	Level	Date
1. Election Law - Bribing/intimidating Voters	168/932A	.	08/26/2020
2. Election Law - Bribing/intimidating Voters (Conspiracy)	168/932A	.	08/26/2020
3. Computers - Using to Commit a Crime - Maximumimprisonment of 4 Years or More But	752/7973D	.	08/26/2020
4. Computers - Using to Commit a Crime - Maximumimprisonment of 4 Years or More But	752/7973D	.	08/26/2020

EVENTS & ORDERS OF THE COURT

DISPOSITIONS

10/08/2020	Plea (Judicial Officer: Judge, District Court) 1. Election Law - Bribing/intimidating Voters Defendant Stand Mute: Plea of Not Guilty Entered by Court
10/08/2020	Plea (Judicial Officer: Judge, District Court) 2. Election Law - Bribing/intimidating Voters (Conspiracy) Defendant Stand Mute: Plea of Not Guilty Entered by Court
10/08/2020	Plea (Judicial Officer: Judge, District Court) 3. Computers - Using to Commit a Crime - Maximumimprisonment of 4 Years or More But Defendant Stand Mute: Plea of Not Guilty Entered by Court
10/08/2020	Plea (Judicial Officer: Judge, District Court) 4. Computers - Using to Commit a Crime - Maximumimprisonment of 4 Years or More But Defendant Stand Mute: Plea of Not Guilty Entered by Court

OTHER EVENTS AND HEARINGS

09/30/2020	Recommendation for Warrant
10/02/2020	Warrant Signed
10/08/2020	Arraignment on Warrant (9:00 AM) (Judicial Officer Judge, District Court) Result: Defendant Stands Mute; Plea Of Not Guilty Entered By Court
10/21/2020	Preliminary Examination (9:00 AM) (Judicial Officer King, Kenneth J) Result: Held
10/29/2020	Competency Hearing (9:00 AM) (Judicial Officer King, Kenneth J) Result: Held
10/29/2020	Preliminary Examination (9:00 AM) (Judicial Officer King, Kenneth J) Result: Held: Bound Over
10/29/2020	Bound Over
11/03/2020	Interim Condition for Wohl, Jacob Alexander - Cash or Surety \$100,000.00
11/12/2020	Arraignment On Information (9:00 AM) (Judicial Officer Chylinski, James R.) Parties Present Result: Held
11/12/2020	Disposition Conference (9:00 AM) (Judicial Officer Chylinski, James R.) Parties Present Result: Held
11/16/2020	Calendar Conference (9:00 AM) (Judicial Officer Van Houten, Margaret M.) Parties Present Result: Held
11/16/2020	Order For Production of Exam Transcript Signed and Filed
11/16/2020	Calendar Conference form, Signed and Filed (Judicial Officer: Van Houten, Margaret M.)
11/25/2020	Proof of Service, Filed

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11/25/2020 [Motion](#)
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06/11/2021 [Notice of Transcript Filed](#)
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06/21/2021 [Lower Court Transcript Filed](#)
06/21/2021 [Lower Court Transcript Filed](#)
06/21/2021 [Proof of Service, Filed](#)
07/15/2021 [Notice of Transcript Filed](#)
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[Parties Present](#)
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