

Arizona federal judge rules that fascists have free speech right to intimidate voters at ballot drop boxes

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On Friday Michael Liburdi, one of the roughly 90 right-wing district judges Donald Trump nominated from the ranks of the Federalist Society, ruled that fascist volunteers, some “camo clad” with body armor and other “tactical gear,” wearing masks and openly displaying firearms, have a First Amendment right to stake out Arizona ballot drop boxes, where they confront and record voters, and then publish information about people lawfully depositing ballots for the 2022 midterm elections.

The ruling will undoubtedly encourage similar thuggish voter suppression conspiracies throughout the United States, especially in predominately minority areas within other so-called “swing states,” such as Pennsylvania and Georgia.

An emergency appeal has already been filed in the Ninth Circuit, which includes Arizona and other Western states. A decision upholding or overturning the lower court ruling could be rendered at any time, as the election is only a week away. In the meantime Liburdi’s reactionary ruling remains in effect.

The motion for an immediate injunction against the ballot drop box intimidation was filed by the Arizona Alliance for Retired Americans and Voto Latino, two organizations that represent Arizona voters. The defendants are Clean Elections, USA, and its principal Melody Jennings, and multiple as yet to be identified “John Does” whom Jennings coordinates at the drop boxes.

Liburdi began by portraying the deranged Dinesh D’Souza documentary *2000 Mules* as if it were serious investigative journalism, rather than discredited propaganda manufactured by an established right-wing provocateur to bolster Trump’s big lie that the 2020 election was somehow stolen.

D’Souza’s ~~publications~~ *Final Judgment: The Cultural Left and Its Responsibility for 9/11*. He was a prominent “birther” and pleaded guilty in 2014 to campaign finance fraud, and was sentenced to a fine of \$30,000 and five years of probation, the first eight months in a “community confinement center.” Trump pardoned D’Souza in 2018, claiming he was “treated very unfairly by our government.”

“2000 mules” refer to the shadowy characters, none of them identified, much less prosecuted, who supposedly stuffed drop boxes in battleground states to steal the election from Trump. No fraudulent or illegal votes have been tied to any supposed “mule.”

Arizona requires voters to personally deposit their ballots but makes exceptions for family members and people with disabilities. Accordingly, the fact that a person deposits more than one ballot at a drop box does not mean a violation of law.

The pejorative phrase “ballot harvesting” refers to the practice, entirely legal in many other states, of collecting absentee ballots from bona fide voters for deposit in the mail or a drop box. There is simply no way to tell by watching a drop box whether a person is depositing ballots illegally. Truly fraudulent ballots that do not match up to actual voters are identified by election officials during the “canvassing” and counting process.

According to Liburdi, concerns raised by D’Souza’s film caused Jennings to organize “Arizona citizens to monitor two early voting ballot drop box locations in Maricopa County,” which is by far the state’s most populous, and the epicenter of the 2020 Democratic majority in the state. Liburdi acknowledged that the challenged activity “includes surveillance, photography, video recording and social media activity, has alarmed voters, elected officials and elections personnel,” and

“generated national media coverage.”

“Many voters have filed official complaints ... and have even sought out law enforcement assistance,” Liburdi added.

The formation of the conspiracy and incidents of harassment are detailed in court filings. Starting last August, Jennings solicited volunteers through Trump’s platform “Truth Social,” using the handle “TrumperMel,” “to completely dox” voters who choose to use drop boxes. “Doxing” means publishing identities along with personal information, including home addresses, on the internet.

Jennings called for “10 people in groups around every drop box! Not 2 people. That’s not a deterrent ... Video, take pics.

“All Arizona patriots get to the Mesa box or the Phoenix box ... right now,” Jennings posted, claiming “there are mules getting there and doing their thing even with my people there,” whom she describes as “our beautiful box watchers.”

During an October 19 interview with fascist Steve Bannon, Jennings claimed, “We’re geotracking them, we’ve got cameras on the back-sides of them. ... We have the sauce.”

The plaintiffs’ papers make clear the obvious, that “there are no ‘mules’—they are a paranoid conspiracy—so the people Defendant Jennings is targeting are simply voters.”

Over the last several weeks, voters have complained to election officials and law enforcement that they felt intimidated. They described being video recorded, followed and accused of acting as “a mule.” Jennings posted photos of alleged “mules,” with their license plates, on the internet.

Deputy sheriffs responding to voter complaints have confirmed that some drop box watchers were armed and wearing body armor with their faces covered.

Plaintiffs filed voluminous papers on Monday, October 24, documenting the harassment and intimidation, and requesting an order to enjoin Jennings from stationing people at drop boxes to intimidate voters. Jennings’ lawyer filed nothing in opposition but appeared at a hearing on Wednesday. Liburdi’s 14-page ruling was posted Friday.

To reach the desired result, encouraging the suppression of voting in Maricopa County, Liburdi had to brush off two federal statutes that explicitly protect the right to vote, one a product of the Civil War and Reconstruction, and the other a major accomplishment of the mid-20th

century civil rights movement.

In 1871, at the urging of President Ulysses S. Grant, Congress enacted the Ku Klux Klan Act, which, among other things, outlaws “conspiring to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote” from doing so.

Liburdi ruled the statute inapplicable because, supposedly, “Plaintiffs have not provided the Court with evidence that Defendants intend to prevent lawful voting. Rather, Defendants stridently maintain that they seek to prevent what they perceive to be widespread illegal voting and ballot harvesting.”

There is no element of intent under Section 11(b) of the Voting Rights Act, enacted in 1965, however. That statute provides, simply, that “No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote.”

Like a second-rate lawyer trapped in an untenable position, Liburdi claimed to struggle with the meaning of “intimidation” and “threaten” in the statute. After kicking up as much dust as possible, Liburdi moved on “to Plaintiffs’ primary aim,” namely putting “an end to Defendants’ drop-box surveillance activities,” which “requires a further free speech analysis.”

Giving Jennings and her crew of fascist thugs the benefit of every doubt, and then some, Liburdi found their objective to be deterring “illegal voting and illegal ballot harvesting” by “supposed ‘ballot mules’” through instilling fear of exposure and prosecution.

Because “Plaintiffs have not provided the Court with any evidence that Defendants’ conduct constitutes a true threat” and “does not fall into any traditionally recognized category of voter intimidation,” Liburdi concluded that he “cannot craft an injunction without violating the First Amendment.”

The Arizona drop box thuggery, and the failure of a Trump-nominated judge to protect voters, is part of a much larger attack on democratic and constitutional norms backed by Trump and his sycophants, who will no longer tolerate an electoral system in which they might lose.



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