

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3748
DMCGAHN@JONESDAY.COM

February 22, 2016

Chairman Michael McDonald
Nevada Republican Party
500 S. Rancho Drive, Suite 7
Las Vegas, NV 89106

Re: Videotaping the Caucuses

Dear Chairman McDonald:

We represent Donald J. Trump for President, Inc. We write to draw your attention to a recent article in the *Wall Street Journal*, which indicated that “Texas Sen. Ted Cruz’s campaign has instructed supporters to place their cellphones in the video mode as they enter caucus sites and record anything that looks suspicious, according to a person familiar with the matter.” Reid Epstein & Alexandra Berson, *GOP Braces for Nevada Caucus Mayhem on Tuesday*, Wall Street Journal (Feb. 21, 2016). We find this information especially troubling given Senator Cruz and his campaign’s track record of election shenanigans, including but not limited to:

- A mail piece camouflaged as an official state document declaring a “VOTING VIOLATION,” which was denounced by Iowa’s Secretary of State. *See* Statement of Secretary of State Paul Pate Regarding Misleading Mailer from Cruz for President Campaign (Jan. 30, 2016); Editorial, *Cruz’ Campaign of Deceit Should Worry Voters*, Des Moines Register (Feb. 4, 2016).
- Falsely claiming Dr. Ben Carson was dropping out of the race the night of the Iowa Caucuses. *See O’Reilly: Carson Campaign Was Damaged by Erroneous Information, Period*, Real Clear Politics (Feb. 4, 2016).
- Placing phone calls falsely claiming that Dr. Carson was suspending his campaign the night of the Iowa Caucuses. *See* Alex Swoyer, *Exclusive – Voicemails: ‘Ben Carson Suspending Campaign’*; *Cruz: ‘Accurate Report,’* Breitbart (Feb. 4, 2016).
- Posting a website with a “Photoshopped” picture of an opponent shaking hands with the President. Mike Zapler & Marc Cavuto, *Rubio adviser bashes ‘dishonesty’ of Cruz camp for Photoshopped Rubio-Obama picture*, Politico (Feb. 18, 2016).
- Distributing an incorrectly subtitled video suggesting an opponent made a mocking comment about the Bible on the day of the South Carolina primary. Nolan D. McCaskill, *Cruz campaign apologizes for spreading ‘inaccurate’ video*, Politico (Feb. 22, 2016).

Chairman Michael McDonald
February 22, 2016
Page 2

The recording of citizens engaged in voting is especially concerning because of its potential intimidating effects on voters. The Cruz campaign's public statements putting voters on notice that Cruz supporters will be videotaping may have such an effect on those who wish to exercise their right to caucus. Such activities could violate state law and the Voting Rights Act.

The United States Department of Justice, in scrutinizing voting procedures, has repeatedly issued guidance warning those who use such tactics. In 2012, it issued a press release immediately prior to Election Day, including: "For instance, actions designed to interrupt or intimidate voters at polling places by questioning or challenging them—or by photographing or videotaping them—under the pretext that these actions are meant to uncover illegal voting may violate federal law." DOJ Press Release, *United States Attorney Reaffirms Role of Justice Department on Election Day* (Nov. 5, 2012). Prior to the 1998 elections, the DOJ had similar concerns:

In the past week, the Justice Department also has received complaints that private citizens may go to polling places in predominantly minority areas in order to question, photograph or videotape voters. In response, the Justice Department sent out letters indicating that videotaping minority voters at or near the polls could constitute a violation of the Voting Rights Act.

"Videotaping of minority voters could constitute a violation of Section 11(b) of the Voting Rights Act," said Deputy Assistant Attorney General Anita S. Hodgkiss in a series of letters last week. Section 11(b) outlaws the use of intimidation, threats, or coercion to prevent people from voting.

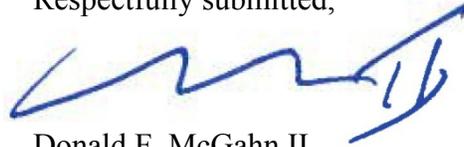
DOJ Press Release, *Federal Observers to Monitor Local Elections in Five States* (Nov. 2, 1998). Further, Nevada prohibits the photographing, recording, or videotaping the conduct of voting at a polling place, except for newsgathering and reporting purposes. *See Nevada Revised Statute 293.274*. The Cruz campaign's plans may be even more intimidating in the caucus process, where voters have less privacy than in the ballot box.

Accordingly, we ask that the Nevada Republican Party clarify whether or not such taping is permissible at the Caucuses, given that it appears potentially to be in contravention of federal and state law. Although the Nevada Caucus is a process run by the state party, publicly available information indicates that participants (1) must be registered voters, and (2) must present government-issued identification in order to participate; thus there is apparently some state action involved in the process. We further urge the Nevada Republican Party to ensure the rights of all registered Republicans who seek to exercise their right to cast a vote in the upcoming Caucus are maintained—including those of first-time Caucus-goers and those who may be unfamiliar with the process—and make clear that voter intimidation tactics will not be tolerated.

Chairman Michael McDonald
February 22, 2016
Page 3

We appreciate your prompt attention to this important issue.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'DMG II', with a stylized flourish at the end.

Donald F. McGahn II
Counsel, Donald J. Trump for President, Inc.

cc: Greg Bailor, Nevada Caucus Director