

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FREDRIC N. ESHELMAN,

Plaintiff,

v.

TRUE THE VOTE, INC.,

Defendant.

Case No. 4:20-cv-04034

JURY DEMANDED

VERIFIED COMPLAINT

For his Verified Complaint, Plaintiff Fredric N. Eshelman alleges as follows:

PARTIES

1. Plaintiff Fredric N. Eshelman is a citizen of the United States who is a resident of, and domiciled in, North Carolina.
2. Upon information and belief, Defendant True the Vote, Inc., is a 501(c)(3) not-for-profit corporation organized under the laws of Texas with its headquarters and principal place of business in Houston, Texas. Defendant may be served through its registered agent, Catherine E. Engelbrecht, at 7232 Wynnwood Lane, Houston, Texas 77008-6041, or wherever Defendant's registered agent may be found.

JURISDICTION AND VENUE

3. The Court has subject-matter jurisdiction over this matter under 28 U.S.C. § 1332 because the parties are diverse and the amount in controversy exceeds \$75,000. Plaintiff is a citizen of North Carolina and Defendant is a citizen of Texas. Plaintiff seeks return of more than \$2.5

million in conditional gifts to Defendant in addition to contractual and economic damages, attorney's fees, and other declarative and equitable relief.

4. Venue is proper in this district under 28 U.S.C. § 1391(b) because Defendant is organized under Texas law and maintains its headquarters and principal place of business in Houston, Texas.

FACTS

5. Immediately after the November 3rd general election, Plaintiff decided to support efforts to investigate allegations of illegal and fraudulent conduct in connection with the 2020 general election.

6. Defendant holds itself out on its website as “the country’s largest voters’ rights organization” and notes that it is “well known for [its] ability to lead national unified plans to protect election integrity.” In describing its mission, Defendant describes its operations as “a network hub, working together with other organizations to implement targeted election integrity initiatives to expose and deter election fraud.”

7. On or around November 4th and November 5th, Plaintiff spoke with Defendant’s President, Ms. Engelbrecht, about Defendant’s Validate the Vote 2020 project.

8. During those conversations, Ms. Engelbrecht represented to Plaintiff that Defendant had organized its Validate the Vote 2020 effort to ensure the 2020 election returns reflect one vote cast by one eligible voter and thereby protect the right to vote and the integrity of the election.

9. Ms. Engelbrecht further represented to Plaintiff during those conversations that Defendant believed those efforts were necessary in light of significant evidence that there were numerous instances of illegal ballots being cast and counted in the 2020 general election.

10. Ms. Engelbrecht explained to Plaintiff that Defendant had developed a multi-pronged plan (referred to as its Validate the Vote 2020 initiative) to investigate, litigate, and expose

suspected illegal balloting and fraud in the 2020 general election. As part of its Validate the Vote 2020 plan, Defendant intended to: (1) solicit whistleblower testimonies from those impacted or involved in election fraud; (2) build public momentum through broad publicity; (3) galvanize Republican legislative support in key states; (4) aggregate and analyze data to identify patterns of election subversion; and (5) file lawsuits in federal court with capacity to be heard by the Supreme Court of the United States.¹

11. With respect to its plan to file lawsuits in key states, Ms. Engelbrecht represented that Jim Bopp—an attorney affiliated with Defendant—would file lawsuits in the seven closest battleground states with an eye toward serving subpoenas on state election officials to produce relevant election data.

12. Based upon data subpoenaed in those seven proposed lawsuits, Ms. Engelbrecht represented to Plaintiff that Defendant then intended to undertake sophisticated data modeling and statistical analysis to identify potential illegal or fraudulent balloting.

13. Ms. Engelbrecht advised Plaintiff that the expected cost of the Validate the Vote effort would be \$7,325,000. Based upon information and belief, that amount was well in excess of Defendant's 2019 budget, which Plaintiff understands was approximately \$750,000.

14. Based upon Ms. Engelbrecht's representations regarding Defendant's comprehensive plans to investigate, litigate, and publicize illegal balloting and other election fraud as part of its Validate the Vote 2020 efforts, Plaintiff agreed to give an initial gift of \$2 million to Defendant *on the condition* that the funds would be used to fund the initial stages of the Validate the Vote project. Specifically, \$1 million of that initial pledge was intended to fund efforts to communicate

¹ A one-page summary of the Validate the Vote 2020 plan that Ms. Engelbrecht provided to Plaintiff is attached hereto as **Exhibit 1**.

Defendant's findings via the contemplated litigation. Plaintiff advised he would contribute more as the project progressed.

15. Subject to those conditions, Plaintiff wired \$2 million to Defendant on November 5, 2020, using wiring instructions provided by Ms. Engelbrecht.

16. Ms. Engelbrecht inferred to Plaintiff that the legal expenses might exceed the initial budget. In order to maintain what he thought the momentum, on November 13th, Plaintiff agreed to give Defendant an additional \$500,000, subject to the same condition that those funds would be used to fund Defendant's Validate the Vote 2020 efforts.

17. Subject to those conditions, Plaintiff wired \$500,000 to Defendant on November 13, 2020, using wire instructions provided by Ms. Engelbrecht.

18. Time was of the essence to the efforts outlined in Defendant's Validate the Vote 2020 plan because of various state and federal deadlines for certification of state election results and electoral college votes.

19. After agreeing to conditionally give Defendant funds to support its Validate the Vote 2020 efforts, Plaintiff regularly and repeatedly sought substantive updates from Ms. Engelbrecht and other individuals associated with Defendant. Specifically, Plaintiff sought specific and actionable updates regarding progress on Defendant's purported investigation, litigation, and communication efforts in key states.

20. Plaintiff's requests were consistently met with vague responses, platitudes, and empty promises of follow-up that never occurred.

21. Specifically, in response to requests for specific and data relating to potential whistleblowers and how their allegations fit into an overall narrative, Ms. Engelbrecht would simply respond with vague comments like: "We are vetting" or "They are solid."

22. Ms. Engelbrecht also routinely ignored repeated requests for memoranda and written reports to summarize Defendant's efforts to identify and obtain information from whistleblower witnesses.

23. In response to questions about Defendant's litigation strategy in the seven key battleground states targeted by the Validate the Vote 2020 initiative, Plaintiff was only ever provided with four complaints filed in Wisconsin, Michigan, Georgia, and Pennsylvania. He was not provided any specific update on the status or strategy behind those cases. Nor was he provided any explanation as to the status of litigation in the remaining three states.

24. Defendant failed to consult with or inform Plaintiff of that decision even though that decision amounted to a material deviation from the Validate the Vote 2020 plan that Plaintiff conditioned his gifts upon.

25. Defendant's consistent delay and inability to make progress on the goals that Ms. Engelbrecht described to Plaintiff just after the election suggested that many of those goals might not be met since many important deadlines relating to state election results were rapidly approaching.

26. Given Defendant's lack of progress on the goals articulated in its Validate the Vote 2020 plan and the rapidly approaching certification deadlines, plaintiff decided to call a meeting with Ms. Engelbrecht and other individuals associated with Defendant's Validate the Vote effort.

27. Specifically, Plaintiff sought detailed information and reports on voter data that Defendant had collected, identities of any alleged whistleblowers (along with the information they would testify to and their vetting status), the entities and resources dedicated to performing statistical analysis on available voter data, the expected timeline to obtain such statistical analysis, the status and strategy update for the litigation in each of the seven battleground states, Defendant's

promises to provide media content for circulation, and Defendant's efforts to raise the remaining money to fund the project.

28. That meeting took place by teleconference on November 16 and was attended by Plaintiff, Ms. Engelbrecht, and Mr. Bopp, among others.

29. The November 16 meeting unfolded in a manner similar to the many others that had taken place regarding the Validate the Vote 2020 efforts since November 5—which is to say that Ms. Engelbrecht and Mr. Bopp failed to engage with or respond to Plaintiff's requests for specific, actionable updates on the issues set forth above and proposed plans to accomplish all of the efforts he had originally agreed to fund.

30. According to PACER records in the various district courts, Defendant voluntarily dismissed all of the four pending pieces of litigation it was pursuing on November 16.

31. Upon information and belief, Plaintiff further understands, upon information and belief, that the decision to abandon those cases was made in concert with counsel for the Trump campaign.

32. Defendant undertook to voluntarily dismiss its four active litigation matters without consulting or informing Plaintiff of that decision even though that decision amounted to a material deviation from the scope of the Validate the Vote 2020 program upon which Plaintiff's gifts were conditioned.

33. By November 16, it had become clear to Plaintiff that Defendant's delays and inability to make progress on its stated goals meant that it would be unable to execute on the Validate the Vote 2020 efforts that Plaintiff had agreed to fund.

34. Since Defendant had failed to comply with the conditions on Plaintiff's gift, Plaintiff sent an e-mail to Ms. Engelbrecht on Defendant's behalf early on November 17, 2020, to request a refund of the balance of his \$2.5 million contribution. In relevant part, that e-mail read:

Please wire the balance of my contributions to my account as shown below. Also send a full accounting of all monies spent out of the \$2.5M, which should be de minimis since nothing was accomplished over the 10 or so days. Thank you for a prompt response.²

35. Consistent with its conduct over the preceding 12 days, Defendant failed to respond to Plaintiff's request.

36. In light of the upcoming vote certification deadlines and his desire to use the funds he had conditionally gifted to Defendant to support other election-related efforts, Plaintiff sent Ms. Engelbrecht another e-mail requesting repayment early on November 19. In relevant part, that e-mail read:

Please acknowledge receipt of my previous email with wiring instructions to return the bulk of the money I put in. This is needed immediately for other activities toward the common goal.³

37. Again, Defendant failed to respond to Plaintiff's request.

38. Given Defendant's repeated refusal to respond to Plaintiff's request for repayment, counsel for Plaintiff sent a letter to Defendant on November 21 regarding the "directed donations that [Plaintiff] made to True the Vote, Inc. in the two weeks following the election, totaling \$2.5 million." Specifically, that letter requested that Defendant confirm before 7:00 p.m. EST on November 22 that it intended to return Plaintiff's \$2.5 million in conditional gifts and that it would undertake to initiate a wire transfer to do so by 10:00 a.m. on November 23.⁴

² A true and accurate copy of Plaintiff's November 17, 2020 e-mail (with redactions to protect Plaintiff's financial information) is attached hereto as **Exhibit 2**.

³ A true and accurate copy of Plaintiff's November 19, 2020 e-mail is attached hereto as **Exhibit 3**.

⁴ A true and accurate copy of the November 21 letter from Plaintiff's counsel is attached hereto as **Exhibit 4**.

39. Ms. Engelbrecht responded by e-mail after 5:30 p.m. the next day, but did not confirm that Plaintiff intended to return Plaintiff's money.

40. Instead, Defendant continued to engage in dilatory tactics, claiming without any specificity that it did not "expect to have complete information on what [it had] spent on the project this month until next month," that it had "made commitments to many people, including whistleblowers, that [it] must fulfill," and that it had "committed to activities that we must complete."⁵

41. Nonetheless, Defendant's response did acknowledge that Plaintiff's gifts had been conditioned on their use in support of Defendant's Validate the Vote 2020 efforts. Specifically, Ms. Engelbrecht assured Plaintiff's counsel that Defendant had "spent the money on the project we discussed with Mr. Eshelman."

42. Shortly thereafter on November 22, Plaintiff's counsel responded by e-mail, noting in relevant part:

Mr. Eshelman expects a wire of at least \$2 million first thing in the morning [of November 23]. Based on the limited reports that he has received, we cannot believe that True the Vote has committed more than \$500,000.⁶

43. As it had already done three times before, Defendant again refused to respond and failed to initiate a wire transfer of Plaintiff's funds by 10:00 a.m. EST.

44. In light of Defendant's failure to wire the requested funds, Plaintiff (through counsel) sent one final demand letter to Defendant on November 23.⁷ In that letter, Plaintiff notified

⁵ A true and accurate copy of Ms. Engelbrecht's November 22 e-mail message is attached hereto as **Exhibit 5**.

⁶ A true and accurate copy of Plaintiff's counsel's November 22 e-mail message is attached hereto as **Exhibit 6**.

⁷ A true and accurate copy of Plaintiff's counsel's November 23 demand letter (omitting the originally attached exhibits which are merely duplicative of materials already attached to Plaintiff's complaint) is attached hereto as **Exhibit 7**.

Defendant that if it failed to initiate wire transfer of the requested \$2 million before 5 p.m., Plaintiff would be forced to seek judicial intervention to obtain the requested funds.

45. Thirty minutes after that deadline, Mr. Bopp responded to Plaintiff's counsel's letter on his law firm's letterhead (as opposed to Defendant's). In that letter, Defendant offered to return \$1 million of Plaintiff's \$2.5 million in conditional gifts in exchange for a waiver of claims and an agreement not to file suit against Defendant.⁸

46. As of the time of the filing of this Verified Complaint, Defendant has still not initiated any wire transfer to Plaintiff.

47. In light of Defendant's refusal to engage with Plaintiff's reasonable requests, Plaintiff fears that Defendant may be currently disposing (or may already have disposed) of the Plaintiff's funds in support of unrelated projects or bad-faith expenditures supposedly in support of the Validate the Vote 2020 project.

48. While Plaintiff is forced to litigate to obtain what is rightfully his, relevant deadlines are rapidly approaching. Each day that passes makes it less likely that Plaintiff will be able to use the funds Defendant is wrongfully withholding for the purpose he initially intended them to be used—that is, to support efforts to investigate allegations of illegal and fraudulent conduct in connection with the 2020 general election.

COUNT I
Breach of Contract

49. Plaintiff incorporates by reference the foregoing allegations as though fully set forth herein.

50. The parties, for valuable consideration, entered into an enforceable oral contract on November 5, 2020, whereby Plaintiff would make a gift of \$2 million to Defendant in exchange

⁸ A true and accurate copy of Mr. Bopp's November 23 letter is attached hereto as **Exhibit 8**.

for Defendant's commitment to undertake the specific efforts referred to by Ms. Engelbrecht and in the Defendant's marketing materials as the Validate the Vote 2020.

51. The parties subsequently amended or restated the terms of the original oral agreement on November 13, 2020 when Plaintiff agreed to make an additional \$500,000 gift to Defendant on the condition that those funds would also be used solely to fund Defendant's Validate the Vote 2020 project.

52. The parties mutually understood that if Defendant deviated from the Validate the Vote 2020 plan as described to Plaintiff by Ms. Engelbrecht and in Defendant's marketing materials, that Plaintiff would have the right to revoke his conditional gift.

53. As set forth above, Defendant has abandoned its efforts to implement and execute the programs and efforts associated with its Validate the Vote 2020 initiative.

54. Consistent with Texas law, Plaintiff has repeatedly notified Defendant of his intent to revoke his conditional gift due to Defendant's failure to comply with its obligations under the parties' gift agreement. *See Oadra v. Stegall*, 871 S.W.2d 882, 891-92 (Tex. App. 1994); *Yates v. Blake*, 491 S.W.2d 751, 754 (Tex. App. 1973).

55. Faced with Plaintiff's requests and its own failure to abide by the terms of the parties' agreement, Defendant's refusal to surrender possession of \$2.5 million of Plaintiff's funds amounts to a material breach of the parties' agreement.

56. Defendant's breach has caused Plaintiff to suffer damages in excess of \$2.5 million.

57. Plaintiff has retained counsel to represent him in this matter and has agreed to pay reasonable and necessary attorney's fees, costs, and expenses. Plaintiff is entitled to recover his reasonable and necessary attorney's fees, costs, and expenses pursuant to section 38.001 of the Texas Civil Practice and Remedies Code.

COUNT II
Conversion

58. Plaintiff incorporates by reference all allegations in all paragraphs of the Verified Complaint as though fully set forth herein.

59. Where a donor manifests his intent to revoke a conditional gift for failure to satisfy a condition of the gift, title to the originally gifted property remains vested in the donor. *See Oadra v. Stegall*, 871 S.W.2d 882, 891-92 (Tex. App. 1994); *Yates v. Blake*, 491 S.W.2d 751, 754 (Tex. App. 1973).

60. Plaintiff has repeatedly notified Defendant of his intent to revoke his conditional gift of \$2.5 million due to Defendant's failure to comply with its obligations under the parties' gift agreement – that is, its failure to implement and execute the Validate the Vote 2020 program.

61. Despite Plaintiffs' repeated notice of his revocation of his conditional gifts, Defendant has persisted in wrongfully withholding \$2.5 million in Plaintiff's money.

62. Defendant's unauthorized and wrongful exercise of control over Plaintiff's \$2.5 million to the exclusion of Plaintiff's superior claim to those funds amounts to conversion.

63. Defendant's commission of the tort of conversion has caused Plaintiff to suffer damages in excess of \$2.5 million

COUNT III
Declaratory Judgment

64. Plaintiff incorporates by reference all allegations in all paragraphs of the Verified Complaint as though fully set forth herein.

65. As set forth above, Plaintiff has effectively revoked his conditional gifts totaling \$2.5 million to Defendant on the basis of Defendant's failure to abide by the condition on those gifts – namely, that Defendant would implement and execute the plans incorporated into its Validate the Vote 2020 initiative.

66. Having issued a valid revocation of a conditional gift, Plaintiff remains the rightful owner of the \$2.5 million that was initially given as a conditional gift to Defendant.

67. Accordingly, Plaintiff is entitled to a declaratory judgment that he is the rightful owner of the \$2.5 million at issue in this litigation and an order requiring Defendant to immediately transfer possession to Plaintiff. *See* Tex. Civ. Prac. & Remedies Code §§ 37.004, 37.011.

68. Plaintiff has retained counsel to represent him in this matter and has agreed to pay reasonable and necessary attorney's fees, costs, and expenses. Plaintiff is entitled to recover his reasonable and necessary attorney's fees, costs, and expenses pursuant to section 37.009 of the Texas Civil Practice and Remedies Code.

PRAYER FOR RELIEF


WHEREFORE, Plaintiff Fredric N. Eshelman prays that this Honorable Court would grant the following relief:

1. An order declaring Mr. Eshelman to be the rightful owner of the \$2.5 million conditionally given to Defendant and requiring Defendant to immediately surrender possession of those funds to Mr. Eshelman;
2. A temporary restraining order or other injunctive relief to preserve the status quo and to prohibit Defendant from disbursing any portion of Mr. Eshelman's \$2.5 million in conditional gifts while this litigation is pending;
3. An award of contractual and economic damages of \$2.5 million, at a minimum;
4. An award of Mr. Eshelman's attorney's fees and costs;
5. An award of pre- and post-judgment interest;
6. All other relief that the Court deems just and proper.

Verification

I, Fredric N. Eshelman, verify under penalty of perjury that I have read the above complaint and its contents. I also verify under penalty of perjury that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed on November 25, 2020.



Fredric N. Eshelman

Respectfully submitted,

/s/ J. Meghan McCaig

State Bar No. 24070083

Federal I.D. No. 1804619

Meghan.McCaig@tklaw.com

Thompson & Knight LLP

One Arts Plaza

1722 Routh Street, Suite 1500

Dallas, Texas 75201

(214) 969-1700

(214) 969-1751 (facsimile)

ATTORNEY-IN-CHARGE FOR PLAINTIFF

OF COUNSEL FOR PLAINTIFF:

Ronald M. Jacobs (*pro hac vice* to be submitted)

Christopher J. Climo (*pro hac vice* to be submitted)

Venable LLP

rjacobs@venable.com

600 Massachusetts Avenue, NW

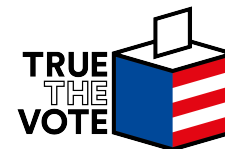
Washington, D.C. 20001

(202) 344-8215

(202) 344-8300 (facsimile)

Exhibit 1

Validate the Vote 2020



Goal

To ensure the 2020 election returns reflect one vote cast by one eligible voter and thereby protect the right to vote and the integrity of the election.

Problem

There is significant evidence that there are numerous instances of illegal ballots being cast and counted in the 2020 general election. Most of these illegal votes are being counted in Democrat counties and are suppressing legitimate results.

This is a result of Democrat officials refusal to obey state election laws and counting illegal votes. It is also the result of deliberate election fraud. This situation has been aided by the Democrat's deliberate effort to radically expand mail-in balloting, creating myriad opportunities for voter fraud that does not exist with in-person voting.

Furthermore, this flood of illegal votes violates the U.S. Constitution's right to vote by diluting the votes of legitimate voters.

Plan

- Solicit whistleblower testimonies from those impacted by or involved in election fraud - True the Vote
- Build public momentum through broad publicity - True the Vote
- Galvanize Republican legislative support in key states - True the Vote
- Aggregate and analyze data to identify patterns of election subversion - OPSEC Group
- File lawsuits in Federal Court with capacity to be heard by SCOTUS - True the Vote

Tactical Organizing: National, State, with micro-targeting in key counties

Key States: Arizona, Nevada, Georgia, North Carolina, Pennsylvania, Michigan, Wisconsin

Legal Strategy

Jim Bopp, True the Vote General Counsel, lead attorney in Bush v. Gore and Citizens United, will file federal suits in the seven closest battleground states to investigate voter fraud, expose it, and to nullify the results of the state's election, so that the Presidential Electors can be selected in a special election or by the state legislature.

Step 1: A federal civil rights lawsuit will be filed in each targeted state. This will provide the vehicle to serve subpoenas on state election officials to produce critical election data.

Step 2: Along with publicly available data, the produced election data will be analyzed to identify both illegal voters and illegal votes.

Step 3: If sufficient election fraud is proven, making the results of the election doubtful, the lawsuit will seek to have the state's election results overturned, leading to a special election, to selection of Presidential Elector by the state legislature, or to the selection the President by the U.S. House of Representatives.

TEAM

True the Vote
Catherine Engelbrecht
President

Legal
Jim Bopp
True the Vote General Counsel

Public Affairs
David Polyansky
Principal
Catherine Frazier
Principal

Data and Research
OPSEC Group
Gregg Phillips
President

Funding Estimate
 Whistleblower Campaign
 \$2,000,000

Data and Research
 \$1,750,00

Litigation
 District Courts \$2,500,00
 Appeals \$375,000
 US Supreme Court
 \$700,000

Total Effort
\$7,325,000

Funding Vehicles
 True the Vote
 Non-Profit 501c3

OPSEC Group
 Limited Liability Corp.

Exhibit 2

Fred Eshelman

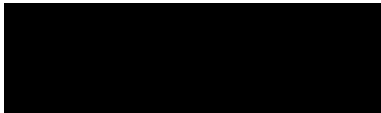
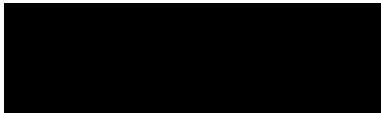
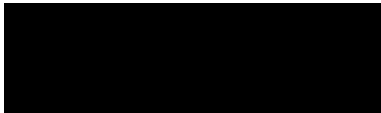
From: Fred Eshelman
Sent: Tuesday, November 17, 2020 8:16 AM
To: Catherine Engelbrecht
Subject: FW: Eshelman account

Please wire the balance of my contributions to my account as shown below. Also send a full accounting of all monies spent out of the \$2.5M, which should be de minimis since nothing was accomplished over the 10 or so days. Thank you for a prompt response.
Fred Eshelman

From: Nan Howard <nan@eshelmanventures.com>
Sent: Tuesday, November 17, 2020 8:10 AM
To: Fred Eshelman <fred@eshelmanventures.com>
Cc: Karen L. Paar (karen.paar@bofa.com) <karen.paar@bofa.com>
Subject: RE: Eshelman account

Fred:

Per your request, please find wiring information for your account at Bank of America listed below.

Bank:	Bank of America
Name on account:	Fredric N Eshelman
Routing Number:	
Account Number:	
Routing number to receive wires:	
Contact at BOA:	Karen Paar 980.683.9034

Nan

Nan Howard

Work: 910.558.6885 || Mobile: 910-620-5552 nan@eshelmanventures.com
Eshelman Ventures, LLC || 319 North 3rd Street, Suite 301, Wilmington, NC 28401

Exhibit 3

Fred Eshelman

From: Fred Eshelman
Sent: Thursday, November 19, 2020 5:37 AM
To: Catherine Engelbrecht
Subject: Funding

Please acknowledge receipt of my previous email with wiring instructions to return the bulk of the money I put in. This is needed immediately for other activities toward the common goal.
Fred

Exhibit 4



600 MASSACHUSETTS AVE., NW WASHINGTON, DC 20001
T 202.344.4000 F 202.344.8300 www.Venable.com

November 21, 2020

Ronald M. Jacobs

T 202.344.8215
F 202.344.8300
RMJacobs@Venable.com

Via email to: catherine@truethevote.org

Ms. Catherine H. Engelbrecht
True the Vote, Inc.
13909 Track Road East
Cat Spring, TX 78933

Re: Return of Funds

Dear Ms. Engelbrecht:

We represent Fred Eshelman with respect to the directed donations that he made to True the Vote, Inc. in the two weeks following the election, totaling \$2.5 million. In short, and as Mr. Eshelman has previously requested, we ask that these funds be returned immediately. To that end, I will need an email this weekend (no later than 7:00 p.m. EST on Sunday, November 22, 2020) agreeing to the prompt return, *and* a wire transfer initiated Monday morning (10:00 a.m. EST) to return those funds, or we will have to take additional steps to collect those funds.

We understand that True the Vote may have engaged in some limited activities in furtherance of the specific projects for which Mr. Eshelman agreed to make a donation. With appropriate documentation and accounting, Mr. Eshelman is willing to allow True the Vote to retain some of the funds he donated. Given the lack of information provided to date about these activities, we anticipate this will be a relatively low number, but are willing to discuss. Please contact me immediately if True the Vote believes it is entitled to retain any of these funds so that we can maintain our timeline.

As should be clear from the prior correspondence you have had with Mr. Eshelman, no further funds should be expended from the money he donated. In addition, True the Vote must retain all necessary records to justify any funds that were expended previously.

If I do not receive confirmation that you intend to return the funds to Mr. Eshelman, and if we do not receive proof of a wire transfer on Monday morning, we will be forced to take legal action to obtain redress. Given the reasonable foreseeability of litigation, True the Vote must

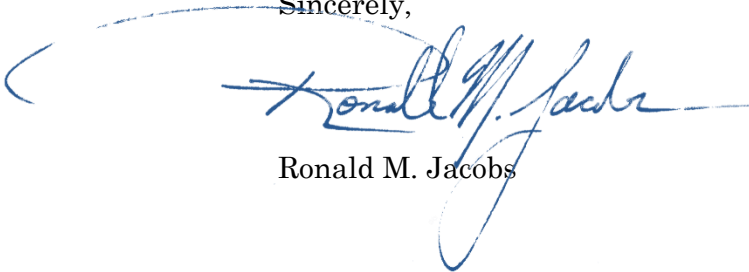
VENABLE_{LLP}

Ms. Catherine H. Engelbrecht
November 21, 2020
Page 2

immediately take steps to preserve all hard-copy and electronically stored information that may contain evidence relevant to Mr. Eshelman's claims. True the Vote must also immediately cease all data destruction (scheduled or otherwise) and undertake efforts to prevent the destruction or disposition of hard-copy materials or electronically stored information that may contain relevant evidence.

We are hopeful that this matter can be resolved quickly and amicably. Please know, however, that Mr. Eshelman expects his money back immediately as he has other efforts he wishes to fund that have very short timelines. We look forward to your prompt response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald M. Jacobs", is written over a faint, light blue circular stamp or watermark.

Ronald M. Jacobs

cc: Mr. Fredric N. Eshelman

Exhibit 5

From: Catherine Engelbrecht <catherine@truethevote.org>
Sent: Sunday, November 22, 2020 5:38 PM
To: Jacobs, Ronald M.
Subject: Re: Fred Eshelman Return of Funds

Caution: External Email

Dear Mr. Jacobs,

Since Mr. Eshelman asked for his money back, we have started to put together the costs and expenses of the project that he helped fund.

Unfortunately, we only have a few invoices and other receipts at this point, with many more forthcoming. Most vendors bill monthly, so we don't expect to have complete information on what we have spent on the project this month until next month.

In addition, we have made commitments to many people, including whistleblowers, that we must fulfill. And we have committed to activities that we must complete.

Finally, we have a invoice for one million dollars from Old Town Digital Agency, LLC, which Mr. Eshelman asked us to pay from his gift, which is not resolved. We have contacted them to get information about this but have not heard back. This invoice must be resolved before we are able to provide you a report of what we have spent so far on the project.

We have provided regular reports to Mr. Eshelman directly and through extensive communication with the people he said he is working with. I assure you that we have spent the money on the project we discussed with Mr. Eshelman.

I am happy to discuss this further with you, once we get all the information together, and I hope we can resolve this.

Sincerely,
Catherine Engelbrecht

On Sat, Nov 21, 2020 at 1:47 PM Jacobs, Ronald M. <RMJacobs@venable.com> wrote:

Dear Ms. Engelbrecht:

We represent Mr. Eshelman with respect to his directed donation to True the Vote, Inc. Please see that attached letter. I look forward to your prompt reply.

Sincerely,
Ron Jacobs

Ronald M. Jacobs | Chair, Political Law Practice | Venable LLP

t 202.344.8215 | f 202.344.8300 | m 202.329.4296

[600 Massachusetts Avenue, NW, Washington, DC 20001](#)

RMJacobs@Venable.com | www.Venable.com | www.PoliticalLawBriefing.com

This electronic mail transmission may contain confidential or privileged information. If you believe you have received this message in error, please notify the sender by reply transmission and delete the message without copying or disclosing it.

--



Catherine Engelbrecht
Founder, True the Vote

Exhibit 6

From: Jacobs, Ronald M.
Sent: Sunday, November 22, 2020 7:44 PM
To: Catherine Engelbrecht
Subject: RE: Fred Eshelman Return of Funds

Dear Ms. Engelbrecht:

Thank you for your email. Mr. Eshelman expects a wire of at least \$2 million first thing in the morning. Based on the limited reports that he has received, we cannot believe that True the Vote has committed more than \$500,000. If we see the \$2 million set to wire, we can hold off on filing the lawsuit in federal district court that we are preparing, which will seek a full refund, plus attorney's fees and damages. Thanks.

Sincerely,
Ron Jacobs

Ronald M. Jacobs | Chair, Political Law Practice | Venable LLP
t 202.344.8215 | f 202.344.8300 | m 202.329.4296
600 Massachusetts Avenue, NW, Washington, DC 20001

RMJacobs@Venable.com | www.Venable.com | www.PoliticalLawBriefing.com

From: Catherine Engelbrecht <catherine@truethevote.org>
Sent: Sunday, November 22, 2020 5:38 PM
To: Jacobs, Ronald M. <RMJacobs@Venable.com>
Subject: Re: Fred Eshelman Return of Funds

Caution: External Email

Dear Mr. Jacobs,

Since Mr. Eshelman asked for his money back, we have started to put together the costs and expenses of the project that he helped fund.

Unfortunately, we only have a few invoices and other receipts at this point, with many more forthcoming. Most vendors bill monthly, so we don't expect to have complete information on what we have spent on the project this month until next month.

In addition, we have made commitments to many people, including whistleblowers, that we must fulfill. And we have committed to activities that we must complete.

Finally, we have a invoice for one million dollars from Old Town Digital Agency, LLC, which Mr. Eshelman asked us to pay from his gift, which is not resolved. We have contacted them to get information about this but have not heard back. This invoice must be resolved before we are able to provide you a report of what we have spent so far on the project.

We have provided regular reports to Mr. Eshelman directly and through extensive communication with the people he said he is working with. I assure you that we have spent the money on the project we discussed with Mr. Eshelman.

I am happy to discuss this further with you, once we get all the information together, and I hope we can resolve this.

Sincerely,
Catherine Engelbrecht

On Sat, Nov 21, 2020 at 1:47 PM Jacobs, Ronald M. <RMJacobs@venable.com> wrote:

Dear Ms. Engelbrecht:

We represent Mr. Eshelman with respect to his directed donation to True the Vote, Inc. Please see that attached letter. I look forward to your prompt reply.

Sincerely,

Ron Jacobs

Ronald M. Jacobs | Chair, Political Law Practice | Venable LLP
t 202.344.8215 | f 202.344.8300 | m 202.329.4296
[600 Massachusetts Avenue, NW, Washington, DC 20001](https://www.venable.com)

RMJacobs@Venable.com | www.Venable.com | www.PoliticalLawBriefing.com

This electronic mail transmission may contain confidential or privileged information. If you believe you have received this message in error, please notify the sender by reply transmission and delete the message without copying or disclosing it.


--
 Catherine Engelbrecht
Founder, True the Vote

Exhibit 7



600 MASSACHUSETTS AVE., NW WASHINGTON, DC 20001
T 202.344.4000 F 202.344.8300 www.Venable.com

November 23, 2020

Ronald M. Jacobs

T 202.344.8215
F 202.344.8300
RMJacobs@Venable.com

Via email to: catherine@truethevote.org

Ms. Catherine H. Engelbrecht
True the Vote, Inc.
13909 Track Road East
Cat Spring, TX 78933

Re: Notice of Claim and Pre-Suit Demand

Dear Ms. Engelbrecht:

I write subsequent to my e-mail correspondence dated November 22, 2020. Despite our reasonable request that True the Vote return at least \$2 million of Mr. Eshelman's conditional gifts totaling \$2.5 million by wire transfer this morning, no such wire transfer has materialized. In light of True the Vote's repeated failure to comply with Mr. Eshelman's requests for repayment, this will serve as notice of our intent to file suit against True the Vote in federal court tomorrow, Tuesday, November 24, if True the Vote fails to remit \$2 million to Mr. Eshelman by wire transfer before 5 p.m. EST today.

First, a summary of the underlying facts. Immediately after the November 3rd general election, Mr. Eshelman decided to support efforts to investigate allegations of illegal and fraudulent conduct in connection with the 2020 general election. Following conversations with you about True the Vote's plan to pursue such investigations and to bring related litigation, Mr. Eshelman agreed on November 5th to donate \$2 million to True the Vote on the condition that the funds would be used exclusively to fund its "Validate the Vote 2020" initiative.¹ Mr. Eshelman caused those funds to be wired to True the Vote that same day. Eight days later, on November 13th, Mr. Eshelman agreed to give True the Vote an additional \$500,000 – again on the condition that those funds would be used to fund the Validate the Vote 2020 efforts.

¹ A one-page summary of that initiative circulated by True the Vote to Mr. Eshelman is attached hereto as Exhibit A.



Ms. Catherine H. Engelbrecht
November 23, 2020
Page 2

Between November 5th and November 16th, Mr. Eshelman and his team repeatedly sought substantive updates on the status of the Validate the Vote 2020 efforts, including investigation, litigation, and communication strategy in key states. Those requests, however, were met with platitudes and empty promises of follow-up. After eleven days with little progress and a rapidly approaching deadline for certification of election results, Mr. Eshelman called a meeting on November 16th with you and other individuals affiliated with True the Vote in order to develop a comprehensive strategy to accomplish the goals of the Validate the Vote 2020 effort. Unfortunately, that call proceeded just as so many before and ended without any meaningful action items or next steps. All the while, time marched on.

Following the November 16th meeting, it became clear that True the Vote had wasted too much time and would be unable to execute the ambitious plans that Mr. Eshelman had agreed to fund. Accordingly, Mr. Eshelman sent you an e-mail early on November 17th to request that True the Vote refund the balance of his \$2.5 million donation and provide an accounting of all funds spent out of that \$2.5 million. Mr. Eshelman's e-mail made clear his expectation that any such expenditures "should be de minimis since nothing was accomplished over the 10 or so days" as well as his expectation that True the Vote would provide a "prompt response."²

Consistent with True the Vote's dilatory conduct that initially led Mr. Eshelman to seek the return of his directed donation, 48 hours passed without any action or response to Mr. Eshelman's request. Given other organizations' immediate need for funds to pursue similar activities, Mr. Eshelman followed up with you early on November 19. Specifically, he requested that you "[p]lease acknowledge receipt of my previous email with wiring instructions" and that you "return the bulk of the money" he had conditionally donated to True the Vote.³

Again, 48 hours passed without a response from you or anyone affiliated with True the Vote. Given True the Vote's refusal to respond to Mr. Eshelman's correspondence, I wrote you to specifically request that True the Vote confirm by 7 p.m. EST on November 22 that it would agree to promptly return Mr. Eshelman's \$2.5 million by wire transfer initiated by 10 a.m. EST on Monday, November 23. My November 21 letter further underscored that time was of

² A copy of Mr. Eshelman's November 17 e-mail is attached hereto as [Exhibit B](#).

³ A copy of Mr. Eshelman's November 19 e-mail is attached hereto as [Exhibit C](#).



Ms. Catherine H. Engelbrecht
November 23, 2020
Page 3

the essence, noting that “Mr. Eshelman expects his money back immediately as he has other efforts he wishes to fund that have very short timelines.”⁴

Less than an hour and a half before 7 p.m. on November 22, you responded to my letter via e-mail without indicating whether True the Vote would agree to return the balance of Mr. Eshelman’s \$2.5 million in donations.⁵ Instead, your e-mail again sought to kick the can down the road. While it notes that True the Vote has “started to put together the costs and expenses of the project” and has “spent the money on the project [you] discussed with Mr. Eshelman,” you also note without any specificity that True the Vote does not “expect to have complete information on what [it has] spent on the project this month until next month,” that True the Vote has “made commitments to many people, including whistleblowers, that [it] must fulfill,” and that True the Vote has “committed to activities that we must complete.”⁶

Shortly after receiving your November 22 e-mail, I responded by e-mail noting Mr. Eshelman’s expectation that True the Vote would wire at least \$2 million to him first thing today, November 23.⁷ I also noted that we were highly skeptical that more than \$500,000 of Mr. Eshelman’s \$2.5 million in directed contributions had been committed based on the limited reports Mr. Eshelman has received to-date. Again, True the Vote failed to comply with that request.

Given True the Vote’s repeated refusal to comply with Mr. Eshelman’s time-sensitive requests for return of the balance of his \$2.5 million in gifted funds and the urgent need for those funds to support other election-related projects, True the Vote has left us no choice but to pursue legal redress to obtain those funds. As noted above, we intend to file complaint in federal court against True the Vote on Tuesday, November 24. We expect that complaint will allege claims for breach of contract, conversion, and violation of the Texas Deceptive Trade Practices Act. We intend to seek a full refund of the \$2.5 million in conditional gifts that Mr. Eshelman gave to True the Vote as well as damages and attorney’s fees. We also intend to

⁴ A copy of my November 21 correspondence is attached hereto as Exhibit D.

⁵ A copy of your November 22 e-mail is attached hereto as Exhibit E.

⁶ To the extent your November 22 e-mail references an invoice for \$1 million from Old Town Digital Agency, LLC, we understand that invoice has been cancelled since the time for communications is over and True the Vote never requested Old Town Digital to perform any of the contemplated services.

⁷ A copy of my November 22 e-mail is attached hereto as Exhibit F.



Ms. Catherine H. Engelbrecht
November 23, 2020
Page 4

seek equitable relief to preserve the status quo and to prevent any further disbursement of Mr. Eshelman's funds.

As you are no doubt aware, Texas law provides that donors have the right to revoke a gift whenever the gift remains "conditional on a future act." *Oadra v. Stegall*, 871 S.W.2d 882, 891-92 (Tex. App. 1994). That right has been recognized even where possession of the allegedly gifted property has been transferred to the purported donee. *Yates v. Blake*, 491 S.W.2d 751, 754 (Tex. App. 1973). Here, there appears to be no dispute that Mr. Eshelman's gifts were made contingent on their use to fund the Validate the Vote 2020 effort or that those efforts remain largely unfulfilled.⁸ Since the conditions on Mr. Eshelman's gifts have not been satisfied, he retains the right to revoke his conditional gift. Again, there can be no reasonable dispute that Mr. Eshelman has requested his funds be returned four times now.⁹ Accordingly, there can be no doubt that the gift is not valid. To the extent True the Vote disagrees, it will be burdened to prove a valid gift by *clear and convincing evidence*. *Oadra*, 871 S.W.2d at 891.

In similar circumstances, other courts have held that a non-profit entity's failure to abide by a condition on a directed donation amounts to a breach of the underlying gift agreement remediable by a return of the gifted funds. *Adler v. SAVE*, 74 A.3d 41, 43 (N.J. App. Div. 2013); *Tennessee Div. of United Daughters of the Confederacy v. Vanderbilt Univ.*, 174 S.W.3d 98, 119 (Tenn. Ct. App. 2005). Those courts have so held even where "the conditions that existed at the time of the gift may have materially changed, making the fulfillment of the donor's condition either impossible or highly impractical." *Adler*, 74 A.3d at 43. Since True the Vote has failed to comply with the conditions on Mr. Eshelman's \$2.5 million gift – that is, that the funds would be used in support of the Validate the Vote 2020 activities as originally outlined in Exhibit A – there can be no doubt that True the Vote is obliged to return those funds.

Because True the Vote has no legal or equitable right to retain Mr. Eshelman's \$2.5 million in conditional gifts, they must be returned immediately. Failure to do so will give rise to claims for conversion, breach of the gift agreement between Mr. Eshelman and True the Vote, and violation of the Texas Deceptive Trade Practices Act. If Mr. Eshelman were to prevail on those claims – which we expect he would – he would be entitled not only to repayment of the \$2.5 million in conditional gifts, but also to damages under as well as attorneys' fees under Texas Business & Commerce Code § 17.50(d) (breach of Deceptive Trade Practices Act), Texas

⁸ See Ex. E ("I assure you that we have spent the money on the project we discussed with Mr. Eshelman.")

⁹ See Exs. B, C, D, F.

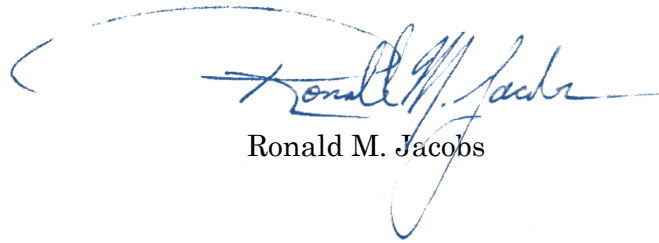
VENABLE_{LLP}

Ms. Catherine H. Engelbrecht
November 23, 2020
Page 5

Civil Practice & Remedies Code § 38.001 (breach of contract), and Texas Civil Practice & Remedies Code § 37.009 (declaratory judgments).

We remain hopeful that this matter can be resolved quickly and amicably. That cannot occur, however, if True the Vote refuses to return Mr. Eshelman's funds. Given Mr. Eshelman's desire to use those funds in connection with other election-related efforts with very short timelines, time is of the essence. Accordingly, we will have no choice but to seek judicial intervention if we cannot reach a resolution before 5 p.m. EST today. I look forward to your prompt response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald M. Jacobs", is written over a faint, light blue circular stamp or watermark.

Ronald M. Jacobs

cc: Mr. Fredric N. Eshelman

Exhibit 8

JAMES BOPP, JR.
jboppjr@aol.com

THE BOPP LAW FIRM, PC
ATTORNEYS AT LAW

MELENA S. SIEBERT
msiebert@bopplaw.com

THE NATIONAL BUILDING
1 South Sixth Street
TERRE HAUTE, INDIANA 47807-3510
Telephone 812/232-2434 Facsimile 812/235-3685
www.bopplaw.com

November 23, 2020

Via email to: RMJacobs@venable.com

Mr. Ronald M. Jacobs
Venable LLP
500 Massachusetts Ave., NW
Washington, DC 20001

Re: True the Vote, Inc.

Dear Mr. Jacobs:

We represent Ms. Engelbrecht with respect to the \$2.5 million donation True the Vote, Inc. received from Mr. Eshelman. Please direct all communications regarding this matter to us.

Our client has advised us that she has been trying to resolve this issue with your client, but has been unable to do so to this point. After receiving your client's initial request for a refund of his entire \$2.5 million donation, our client responded via email to you that True the Vote was still gathering details of the costs and expenses of the project, including commitments made to whistleblowers and others involved in True the Vote's project. In an email on November 22, 2020, you responded via email that your client expected at least \$2 million of the \$2.5 million donation to be returned by the morning of November 23, 2020.

True the Vote, Inc. also received an invoice from Old Town Digital Agency, LLC. Ms. Engelbrecht inquired as to what agreement or services this invoice was based upon, as she was unaware of any specific services that had been provided to date from Old Town Digital Agency, LLC. On November 23, 2020, Ms. Engelbrecht received an email from Dikran Yacoubian that this invoice was canceled.

After reviewing the expenses and obligations incurred regarding this project, including commitments made to whistleblowers, our client is prepared to offer your client a return of \$1 million of his donation to True the Vote, Inc. This return will be contingent upon your client, and others he is associated with, to enter into a written agreement to waive any claims regarding the donation by Mr. Eshelman to True the Vote, and regarding the Old Town Digital Agency, LLC's \$1 million invoice and any agreement with True the Vote. Furthermore, this return is contingent on Mr. Eshelman's and Old Town Digital Agency LLC's agreement not to file suit against True

Mr. Ronald M. Jacobs
November 23, 2020
Page 2

the Vote, Inc. while the written agreement is being finalized. True the Vote, Inc. will wire the \$1 million refund to Mr. Eshelman within 24 hours of the execution the written agreement.


Given the reasonable foreseeability of litigation if no settlement can be reached, Mr. Eshelman and Old Town Digital Agency, LLC must immediately take steps to preserve all hard-copy and electronically stored information that may contain evidence relevant to the donation by Mr. Eshelman to True the Vote, and regarding the Old Town Digital Agency, LLC's \$1 million invoice and any agreement with True the Vote. Likewise, Mr. Eshelman and Old Town Digital Agency, LLC must also immediately cease all data destruction (scheduled or otherwise) and undertake efforts to prevent the destruction or disposition of hard-copy materials or electronically stored information that may contain relevant evidence.

We hope that this matter can be resolved quickly and amicably. Please respond to True the Vote, Inc.'s offer of the refund of \$1 million of Mr. Eshelman's donation in lieu of litigation by noon on Tuesday, November 24, 2020. We look forward to your prompt response.

CC: Ms. Catherine Engelbrecht

Sincerely,

THE BOPP LAW FIRM, PC



James Bopp, Jr.
Melena S. Siebert