

AFFIDAVIT

I, Bennie D. Cogar, being first duly sworn, hereby depose and state as follows:

Introduction

1. I am an investigator with the West Virginia Attorney General's Office, working (in this case) on behalf of the West Virginia Secretary of State's Office. I make this affidavit in support of a Criminal Complaint against Thomas Cooper, charging him with Attempt to Defraud the Residents of West Virginia of a Fair Election, in violation of 52 U.S.C. § 20511(2)(B).

2. The information contained in this affidavit is based upon the information I have gained from my investigation, my experience and my training and/or information relayed to me by other law enforcement agents and/or their experience and training. Since this affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included each and every fact known to me concerning this investigation. I have set forth the facts that I believe are necessary to establish probable cause.

Probable Cause

3. In April 2020, the Clerk of Pendleton County, West Virginia, received, via U.S. mail, eight "2020 Primary Election COVID-19 Mail-In Absentee Request" forms from eight voters on which the voter's party-ballot request appeared to have been altered by use of a black-ink pen.

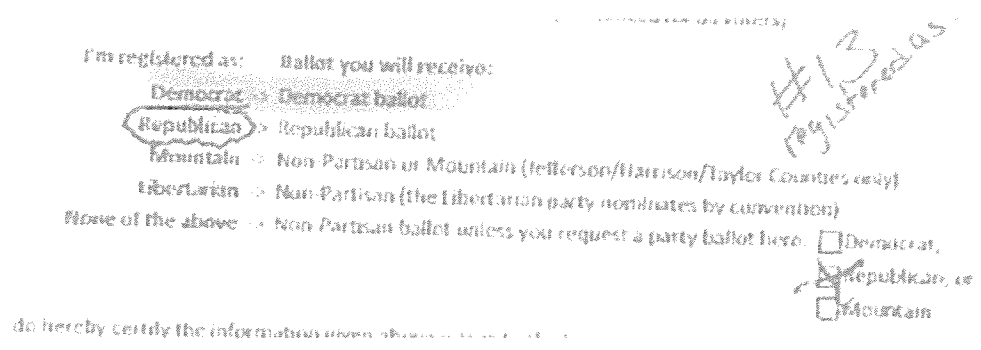
On five *requests*, it appeared that the voters' ballot choice was changed from Democrat to Republican.¹ The Clerk knew that some of the voters were not Republican, so she called them.

4. One of the voters was M. R., who said that all four members of his family requested a Democrat ballot by placing a blue-ink line under the word "Democrat," and they did not use black ink and they did not request a Republican ballot. His daughter, P. R., is the Onego Post-Master, and she personally placed all four of the Rs' *requests* in the mail at her post office on April 9, 2020. Knowing this, M. R. suggested that a mail carrier might have tampered with their *requests*.

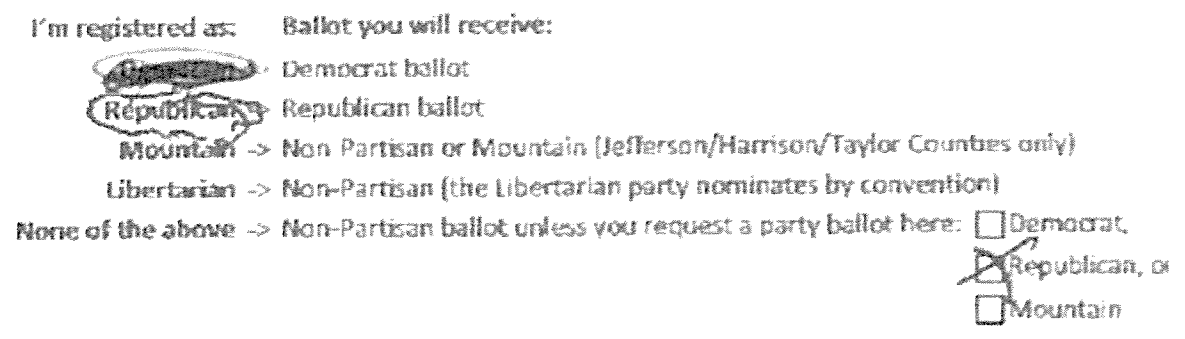
5. The Clerk contacted the West Virginia Secretary of State's Office to report that *requests* had been altered, and I was given the assignment of investigating the case. I interviewed the Clerk and collected the eight *requests*. On the Rs' four *requests*², the word "Republican" was circled in black ink in such a way as to also mark-out a blue-ink line under the word "Democrat," and the box beside the word "Republican" was also checked in black ink. Here, for example, is the relevant part of M. R.'s *request* (please note that the yellow highlight was placed on the *request* by the Clerk):

¹ On three *requests*, the voters' party requested was not changed, but, in addition to the "Republican" box checked in blue ink, the word "Republican" was circled in black ink.

² One family member actually has a different surname.



6. Two requests were from M. G. and K. G., of Franklin, WV. On K. G.'s request under the heading "I'm registered as," a blue-ink circle around the word "Democrat" was scratched-out with black ink, and black ink was used to circle the word "Republican" and check the "Republican" box. Here's the relevant part of K. G.'s request:



7. I contacted US Postal OIG Inspector Todd Phillips, who said that Tommy Cooper held a U.S. Postal Service contract to deliver mail in Pendleton County. In fact, Cooper's assignment includes picking-up the mail in the three towns in which the victims live: Onego, Riverton and Franklin.

8. On April 27, 2020, Inspector Phillips and I met with Thomas Cooper, who agreed to an audio recording interview. During the interview, Cooper said that "yes," he changed the *requests* that had been placed in the mail at the Onega post office (i.e., the R's *requests*). As for the other requests, Cooper said, "I'm not saying no...[but] if it was on my route, I would take the blame." The investigator asked, "You were just being silly?" and Cooper responded, "Yeah... [I did it] as a joke. . [I] don't even know them.

Law

9. The proposed complaint charges Cooper with attempting to defraud the residents of West Virginia of a fair election, in violation of 52 U.S.C. § 50211(2)(B) (formerly 42 USC § 1973gg-10). § 50211(2)(B) is unique in that it focuses on the result of the false information—whether the ballot as generated through the false information is defective and void under state law—rather than the type of information furnished. As such, this statute enjoys a wide application which allows prosecutors to employ it as an alternative to general fraud statutes. Election Law Violations, 50 Am. Crim. L. Rev. 765, 802-03 (2013).

10. By altering the *requests*, Cooper attempted to procure from the Clerk mail-in absentee primary election ballots for the R.s and K. G.³ that he knew to be materially false, fictitious, or fraudulent under the laws of West Virginia, to wit: WV Code § 3-3-1 et seq. (The West Virginia Election Code), and especially § 3-1-25 (a voter only votes for party candidates in the primary election) and § 3-3-5(a) (upon *request* completed and signed by the voter, the Clerk


³ I was unable to interview M.G., so I did not interview either K. G. or M. G.

shall provide a voter the appropriate absentee ballot). Had Cooper's conduct not been detected, it would have caused the Clerk to give Republican ballots to 5 Democrat voters—skewing the primary election by 5 votes and thereby defrauding all West Virginian's of a fair election.

CONCLUSION

11. Based on the above information, I respectfully submit that there is probable cause to believe that Thomas Cooper attempted to defraud the residents of West Virginia of a fair election, in violation of Title 52, United States Code, Section 20511(2)(B).

Respectfully submitted,



Bennie D. Cogar
Investigator
Office of the West Virginia Attorney General

By Video

Subscribed and sworn to before me on May 26, 2020 :



MICHAEL JOHN ALOP
UNITED STATES MAGISTRATE JUDGE