Scharf-Norton Center for Constitutional Litigation at the GOLDWATER INSTITUTE
Clint Bolick (Ariz. Bar No. 021684)
Diane S. Cohen (Ariz. Bar No. 027791)
500 E. Coronado Road
Phoenix, AZ 85004
(602) 462-5000
CBolick@GoldwaterInstitute.org
DCohen@GoldwaterInstitute.org
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Diane Wickberg, Plaintiff, v. Candace D. Owens, et al., Defendants.	) No. 10-CV-8177-PCT-JAT) Hon. James A. Teilborg)) **PLAINTIFF'S EX PARTE MOTION FOR A TEMPORARY RESTRAINING ORDER OR, IN THE ALTERNATIVE, MOTION FOR PRELIMINARY INJUNCTION**)) Oral Arguments Requested

Now comes Plaintiff Diane Wickberg, by and through her attorneys, and moves ex parte, pursuant to Federal Rules of Civil Procedure 6(c)(1)(C) and 65, for a temporary restraining order or, in the alternative, a preliminary injunction. This Motion is supported by the Memorandum of Points and Authorities below.

INTRODUCTION

Plaintiff moves this Court for a temporary restraining order barring Defendants and Defendants' agents and employees from enforcing any and all Arizona and Coconino County electioneering laws and rules, including but not limited to A.R.S. §§ 16-515(A), 16-1013(A)(1), and 16-1018, against Plaintiff and other similarly situated individuals who wear the Flagstaff tea party shirt at issue to the polling sites in Coconino

County during the November 2, 2010 election. The shirt at issue is described in paragraph 5 of Diane Wickberg's Affidavit, attached hereto as Exhibit 1. Plaintiff further requests that upon the issuance of a Court order prohibiting such enforcement, Defendants shall disseminate the order to all Coconino County poll workers and any other employees who will be working at polling sites. Finally, Plaintiff requests that any temporary restraining order bond be waived or reduced to a nominal amount.

The undersigned counsel, Diane Cohen, certifies that on September 29 and October 11, she contacted Plaintiff's counsel via telephone and discussed Plaintiff's intent to file a motion for equitable relief before the November 2 election. The undersigned explained that this was being done in an attempt to gain Defendants' cooperation on a discovery and briefing schedule necessary for a preliminary injunction. On October 1 and 6, Plaintiff's counsel and defense counsel also communicated via e-mail regarding Plaintiff's need for expedited discovery and briefing. The scope and time period of intended discovery were specifically discussed; however, Defendants were not ultimately amenable to entering into any type of agreement.

Plaintiff is mindful that if the Court treats this Motion as a motion for a temporary restraining order without notice and opts not to exercise its discretion under Fed. R. Civ. P. 6(c)(1) to waive or shorten the 14 day notice requirement, the requested relief may expire prior to November 2, 2010. Should this occur, Plaintiff is prepared to diligently seek an extension of the Court's order so that it continues to shield her from harm during the upcoming November 2 election.

There are only 21 days between the filing of this Motion and the November 2 election. Given the need to obtain immediate relief, and so that any such order can be disseminated to poll employees throughout Coconino County in enough time prior to the election, Plaintiff believes in good faith that the application of a temporary restraining order is the best vehicle to secure relief. Should the Court deem this application improper, in the alternative Plaintiff requests that the Court treat this Motion as a motion for preliminary injunction, and enter a scheduling order that would afford Plaintiff the opportunity to secure relief from harm in a timely manner prior to the November 2 election.

Plaintiff was irreparably harmed on both May 18 and August 24, 2010. She continues to be harmed by the chilling effect on her speech caused by Defendant's credible threats. Additionally, Mrs. Wickberg faces future irreparable harm because she is forced to decide whether she will forgo her constitutional right to wear her shirt on November 2 or face certain harassment, if not arrest, imprisonment and fine, should she choose to stand up for her rights. Under our Constitution, this is a choice a citizen should not have to face or make. Given the law and facts, as set forth below, Plaintiff is likely to succeed on the merits. Further, the equities and public interest favor the requested relief. Accordingly, Plaintiff respectfully requests that the Court grant this Motion and enter the attached proposed order.

MEMORANDUM OF POINTS AND AUTHORITIES

On two occasions, May 18, 2010 and August 24, 2010, Plaintiff Diane Wickberg was stopped and harassed by Defendants' employees as she attempted to vote in

Coconino County for the mere fact that she was wearing a shirt that depicted the United States Constitution and contained the language, "We the People . . . Reclaiming our Constitution Now . . . Flagstaff Tea Party" (Affidavit of Plaintiff Diane Wickberg, ¶¶5-8, attached as Exhibit 1). She was targeted not because her shirt advocates for or against a party, person or measure on either ballot–it does not (Ex. 1, ¶13, Attach. C)–but because of the Defendant County Recorder's[1] admitted bias against tea parties in general and willful ignorance of the Flagstaff tea party (Ex. 1, ¶¶ 9-10, 13-15, Attach. A, C-E; *see generally* Affidavit of Joy Staveley, attached as Exhibit 2, ¶¶ 6-8).[2]

On September 20, 2010, Plaintiff filed a civil rights complaint pursuant to 42 U.S.C. §1983 against Coconino County and Defendant Owens, in her individual capacity and in her official capacity as Coconino County Recorder (Docket 1). In the Complaint, Plaintiff alleges that Defendant Owens violated her constitutional rights to free speech and association, equal protection, and due process.

I. STATEMENT OF FACTS

The facts are fully set forth in the attached affidavits and attachments thereto (Exs. 1 and 2) and are incorporated herein by reference.

---

[1] Defendant County Recorder is tasked with "preserving First Amendment Rights and enforcing statutory prohibitions on electioneering, displaying political materials and influencing others in a polling place" (Ex. 1 ¶ 12; Ex. 1 Attach. B).

[2] The Flagstaff tea party is a local, decentralized, non-partisan, civic organization that does not endorse candidates or ballot measures and focuses on education and promoting involvement from its members and the general public on issues of public concern. (Ex. 1 ¶ 3; *see also*, http://rocn-flagstaff.ning.com (last visited October 6, 2010.)

II. STANDARD OF REVIEW

"The standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction." *Cochran v. Rollins*, 2008 U.S. Dist. LEXIS 66534, 1-2, 2008 WL 3891578, 1 (D. Ariz. August 20, 2008). The standard for a preliminary injunction is satisfied when the movant shows: 1) a likelihood of success on the merits; 2) a likelihood of irreparable harm; 3) the existence of serious questions going to the merits and the balance tips in the movant's favor; and 4) the injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, __ U.S. __, 129 S.Ct 365, 376 (2008); *Alliance for the Wild Rockies et al. v. Cottrell et al.*, 2010 U.S. APP. LEXIS 13022, 2010 WL 264087 (9th Cir. June 24, 2010) (clarifying an aspect of the post-*Winter* standard for preliminary injunction, holding that the "serious questions going to the merits" test survives *Winter*).

III. ARGUMENT

A. Plaintiff's Constitutional Rights Were Violated

1) Plaintiff's First Amendment Rights

The First Amendment issue in this case is whether a government official can excise, as "electioneering," one particular civic group's shirt from the public discourse, either on the theory that the shirt at issue tacitly asserts undue influence over voters or upon a more general assertion that a government official may properly silence groups as a matter of personal predilection that the shirt may "intimidate" voters. Defendant Owens ostensibly relies on A.R.S. § 16-515(A), §16-1018, and the rules found in the Secretary

of State's (SOS)[3] Elections Procedures Manual in support of her position that wearing the Flagstaff tea party constitutes electioneering under Arizona law (Ex. 1, Attach. E); however, this reliance is inexplicable given that the SOS looked at the facts in this case, applied the same law, and found that the shirt did not rise to the level of electioneering (Ex. 1, Attach. C).

Arizona Election Law

Arizona Revised Statues (A.R.S.) § 16-515 provides in relevant part:

> a person shall not be allowed to remain inside the seventy-five foot limit while polls are open, except for the purpose of voting . . . and *no political or electioneering materials may be displayed within the seventy-five foot limit.*

(emphasis added).

A.R.S. § 16-1018 provides in relevant part: "A person who commits any of the following acts is guilty of a class 2 misdemeanor: 1. Knowingly electioneers on election day within a polling place . . . ." The SOS's Election Procedures Manual prohibits "campaign related materials including but not limited to campaign signs, buttons, literature, shirts, bumper stickers, advertisements, endorsements or written materials" within the 75 foot limit. ARIZ. SEC'Y OF STATE, ELECTIONS PROCEDURES MANUAL 150 (May 2010), *available at* http://www.azsos.gov/election/Electronic_Voting_System/2010/Manual.pdf (last visited Oct. 12, 2010).

[3] The SOS is the Chief Election Officer of the State of Arizona who "prescribe[s] rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting." A.R.S § 16-142(A)(1).

The Arizona Court of Appeals has noted that Arizona law does not define "electioneering." *Fish v. H.S. Redeker*, 2 Ariz. App. 602, 411 P.2d 40 (1966). However, in its decision, the *Fish* Court undertook a historical analysis of Arizona election law and found that its purpose is to "prevent interference with the efficient handling of the voters by the election board and to prevent delay or intimidation of voters entering the polling place by political workers seeking a 'last chance' effort to change their vote.'" *Id*. at 602, 411 P.2d at 42 (citing *State v. Robles*, 88 Ariz. 253, 355 P.2d 895 (1960)).[4] *Fish* thus supports the principle that "electioneering" cannot mean anything other than express advocacy.

Fish and the SOS' July 1, 2010 opinion (Ex. 1, Attach. C) are consistent[5] with the U.S. Supreme Court's decision in *Burson v. Freeman*, 504 U.S. 191 (1992), a case where

---

[4] The SOS's opinion as set forth in the July 1 correspondence is also consistent with public policy inherent in Arizona election law. For example, A.R.S. §16-901.01, provides definitions for terms used in the election code, and defines "expressly advocates" as used in the chapter as "conveying a communication containing a phrase such as 'vote for,' 'elect' . . . 'support' . . . 'vote against,' 'defeat' . . . or a campaign slogan or words that can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates . . ." Likewise, A.R.S. §16-1013 makes it illegal to coerce or intimidate a voter to "cast or refrain from casting his vote for any particular person or measure at an election." A.R.S. §16-1017 makes it unlawful to "induce a voter to vote for against a particular candidate or issue."

[5] Pursuant to A.R.S. §1-213:

> Words and phrases shall be construed according to the common and approved use of the language. Technical words and phrases and those which have acquired a peculiar and appropriate meaning in the law shall be construed according to such peculiar and appropriate meaning.

Accordingly, Merriam-Webster Dictionary defines "electioneering" as "tak[ing] an active part in an election; *specifically*: to work for the election of a candidate or party."

the Court held that Tennessee could forbid a professional campaign worker from actively engaging voters outside of a polling place. In *Burson*, the Court weighed "the accommodation of the right to engage in political discourse with the right to vote," 504 U.S. at 198, and held that States may prohibit electioneering around polling places because "States' [have] compelling interests in preventing voter intimidation and election fraud." *Id.* at 206. However, unlike the *Burson* petitioner, who was a professional campaign worker seeking to loiter outside of a polling place in order to actively engage voters, Mrs. Wickberg is not a professional operative and there is nothing about her conduct that is demonstrably incompatible with the act of voting: she did not loiter outside the polls on May 18 or August 24, 2010, nor did she make any affirmative attempt to actively engage and exert undue influence over other voters, nor does the shirt itself advocate for any candidate, party or measure on the ballot (*See* Ex. 1; *see generally* Complaint (Docket. 1) ¶¶ 12-31).

Based on the foregoing, we know "electioneering" and "political" cannot mean anything other than *speech that advocates for or against a candidate, party or measure on the ballot* because any other definition sets us on a slippery slope wherein government officials would be free to use their own subjective beliefs to decide what these terms mean. Under the standardless discretion currently applied by Defendant Owens there is no principled distinction in Coconino County between banning tea party shirts and banning such things as a Star of David or crucifix based on the fact that some Jewish and

---

http://www.merriam-webster.com/dictionary/electioneering (last visited Oct. 9, 2010).

Christian groups endorse candidates. Indeed, myriad types of attire would be banned from the polling sites based on Defendant Owens' logic. For example, there are numerous labor unions, like the Phoenix Firefighters Local 493, which endorse candidates and ballot measures. Would firefighters need to check their uniforms at the polling site door according to Defendant Owens? In Arizona alone there are numerous political action committees, representing a cross section of professions, vocations and interests, such as dentists, teachers and food workers (*See* Ex. 3). Would dental coats, Arizona Education Association pins, and chefs' hats and aprons need to be checked at the polling site door because dentists', teachers' and food workers' groups endorse candidates and support ballot measures? Neither Arizona election laws nor the United States Constitution can condone such regulation.

Defendant Owen Engages in Viewpoint Discrimination

Aside from the absence of any legitimate interest to justify Defendant Owens' actions against Mrs. Wickberg, Defendant Owens' de facto blanket ban on Flagstaff tea party shirts also runs afoul of the Constitution because it is clearly motivated by a desire to suppress Mrs. Wickberg's point of view.

> It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys. . . . Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.

Rosenberger v. Rector & Visitors of the Univ. of Va., 515 U.S. 819, 829 (1995) (citations omitted). Moreover, there is ample evidence that, in applying electioneering laws against Mrs. Wickberg's expressive conduct, Defendant Owens willfully and deliberately

ignored facts relevant to this case. Among the facts Defendant Owens knew but recklessly disregarded are:

- There were no "tea party" candidates on the August 24, 2010 ballot. *See* Ariz. Sec'y of State's list of 2010 Primary Election Candidates, http://www.azsos.gov/election/2010/Primary/FullListing.htm (last visited Oct. 9, 2010).

- There are no "tea party" candidates on the upcoming November 2, 2010 ballot. *See* Ariz. Sec'y of State's list of 2010 General Election Partisan Candidates, http://www.azsos.gov/election/2010/general/PartisanCandidates.htm (last visited Oct. 9, 2010).

- The Flagstaff tea party's policy is to remain non-partisan and avoid express advocacy of candidates, political parties or propositions (Ex. 1 ¶ 3; Ex. 2 ¶¶ 1, 7); *see also* Disclaimer on Flagstaff tea party website, http://rocn-flagstaff.ning.com/ (last visited Oct. 11, 2010).

Defendant Owens also ignored the Secretary of State's August 2, 2010 letter to Plaintiff's counsel in which the SOS stated that Mrs. Wickberg's shirt would only be electioneering under certain circumstances, such as "if a candidate posts political signs or issues direct mail pieces that read 'tea party candidate . . . " (Ex. 1, Attach. E). Notwithstanding the fact that Plaintiff believes this is an erroneous interpretation of the law,[6] even under that standard, the tea party shirt does not amount to electioneering because none of those

[6] The SOS's August 2nd correspondence assumes an incredibly broad definition of "political or electioneering materials" that unnecessarily raises vagueness and overbreadth questions about A.R.S. § 16-515's constitutionality. *Morrison v. Olson*, 487 U.S. 654, 682 (1988) ("[I]t is the duty of federal courts to construe a statute in order to save it from constitutional infirmities"). Plaintiff believes the standard articulated in the SOS' first letter (Ex. 1, Attach. C)—whether there has been an "attempt to persuade or influence voters to vote for or against a particular candidate, party of proposition in this election"—provides a much clearer and more objective definition of electioneering that amply protects the State's legitimate interests while circumscribing the discretion of government officials to engage in impermissible viewpoint discrimination.

conditions were present. Despite the facts, Defendant Owens insisted on enforcing electioneering law against Mrs. Wickberg in the past and promises to enforce electioneering laws against Mrs. Wickberg in the future if she wears her shirt to the polls.

"The [viewpoint discrimination] test is whether the government has excluded perspectives on a subject matter otherwise permitted by the forum." *Faith Ctr. Church Evangelistic Ministries v. Glover*, 480 F.3d 891, 912 (9th Cir. 2007)*; cf. Flint v. Dennison*, 488 F.3d 816, 833 (9th Cir. 2007) ("Viewpoint neutrality is the requirement that government not favor one speaker's message over another's regarding the same topic"). Here, Defendant Owens acknowledged that she treats similarly situated groups differently. Although Defendant Owens issued a de facto blanket ban on Flagstaff tea party shirts because "the perception of the tea party is that they have an agenda," are "threatening," and are "a part of the Republican party," (Ex. 2 ¶ 6), when presented with a hypothetical involving a citizen voting in a Sierra Club shirt, Defendant Owens admitted that whether the shirt was permissible depended on whether the Sierra Club was supporting a "particular ballot issue" at the time (Ex. 2 ¶ 8).

2) Plaintiff Is Entitled to Equal Protection under the Law

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution." *Lazy Y Ranch LTD v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008) (quoting *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)). As set forth above, the evidence establishes, based on Owens' own admissions, that she treated, and will

continue to treat, Flagstaff tea party members differently from members of similarly situated groups, based on her "perception" of (or in other words "bias against") the group. (Ex 2 ¶¶ 4-6).

In order to successfully defend against Plaintiff's equal protection claim, Defendant Owens must show that her decisions were a narrowly tailored means of achieving a substantial and legitimate objective. *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 101-02 (1972). Defendant Owens will be unable to meet this burden based on the law and her own admissions. First, as established above, the State has no legitimate interest in regulating voter attire that does not expressly advocate for or against a candidate, party or measure on the ballot. Second, even if the State had a legitimate interest here, it cannot further that interest by discriminating on the basis of the expressive conduct's content, as Defendant Owens does. *Id.* This is unquestionably an equal protection violation. *Id.* at 96 ("[U]nder the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views").

3) Due Process Must Guide the Enforcement of Arizona Election Laws

The Constitution abhors the misuse of discretion as a license for arbitrary procedure. *E.g.*, *Am. Hosp. Ass'n v. NLRB*, 499 U.S. 606, 612 (1991) ("The requirement that the [NLRB] exercise its discretion in every disputed case cannot fairly or logically be read to command the Board to exercise standardless discretion in each case"); *Shuttlesworth v. Burmingham*, 394 U.S. 147, 150 (1969) ("There can be no doubt that

the [law], as it is written, conferred upon the City Commission virtually unbridled and absolute power to prohibit [free speech] . . . For in deciding whether or not to withhold a permit, the members of the Commission were to be guided only by their own ideas of 'public welfare, peace, safety, health, decency, good order, morals or convenience'").

Because Defendant Owens insists on applying electioneering law against Mrs. Wickberg based on her novel "eye of the beholder" standard (*see* Ex. 2 ¶¶ 4, 6), the reality is that the Recorder has willfully and deliberately chosen to apply no discernable standards at all.

> It is settled by a long line of . . . [Supreme Court decisions] that a [law], which . . . makes the peaceful enjoyment of freedom which the Constitution guarantees contingent upon the uncontrolled will of an official . . . is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.

Shuttlesworth, 394 U.S. at 151.

The standardless discretion at issue in this case involves more than First Amendment censorship. Defendant Owens has a duty as the final policymaker in charge of elections to "supplant[] the original discretionary chaos with some degree of order" by "regularizing the system of deciding in each case [through] classifications, rules, principles, and precedents" *NLRB*, 499 U.S. at 612 (quoting K. DAVIS, ADMINISTRATIVE LAW TEXT, § 6.04, p. 145 (3d ed. 1972)) (emphasis added). As the Supreme Court notes, "Sensible men could not refuse to use such instruments and a sensible [government] would not expect them to." *Id.* Defendant Owens nevertheless refused to promulgate such instruments, even after the shortcomings of her procedures were pointed out to her by the SOS, as well as commanded by the Arizona appellate

courts, preferring instead to embrace the power of unbridled discretion. The result was a loss of Plaintiff's constitutional rights, taken from her without due process of law.

B. <u>A Preliminary Injunction Should be Granted</u>

1) Plaintiff Will Suffer Irreparable Injury Absent Injunctive Relief

The loss of First Amendment freedoms, for even minimal periods of time unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Under Ninth Circuit law, "a party seeking preliminary injunctive relief in a First Amendment context can establish irreparable injury sufficient to merit the grant of relief by demonstrating the existence of a colorable First Amendment claim." *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 973 (9th Cir. 2002). As set forth above and in the supporting affidavits, Defendant Owens will continue enforcing electioneering laws against Mrs. Wickberg in an arbitrary, capricious and standardless manner come November 2, 2010. With just 21 days until the next election, Plaintiff is suffering and will continue to suffer real and significant irreparable harm, harm that cannot be remedied except through injunctive relief. *See Designer Skin, LLC*, 2008 U.S. Dist. LEXIS 68467, 2008 WL 4174882, at *5.

2) Plaintiff Is Likely to Succeed on the Merits

As discussed above, the evidence strongly supports Plaintiff's Complaint. Given Defendant Owens' willful ignorance of the law and guidance from the SOS, and her own admissions regarding her discriminatory treatment of Plaintiff solely due to the group to which she belongs, Plaintiff is likely to succeed on the merits.

3) The Balance of Hardship Tips in Favor of Issuing the Injunction

The balance of the hardships alone tips in favor of issuing the injunction. There would be absolutely no harm to Defendants by allowing Mrs. Wickberg to wear her shirt to the polls on November 2nd. An injunction against Defendant Owens' conduct here will in no way compromise the Recorder's ability to protect against voter intimidation or efforts within 75' of the polls to influence voter conduct.

4) The Public Interest Clearly Favor Issuing a Preliminary Injunction

The public has an interest in laws being enforced constitutionally. *Cf. American Civil Liberties Union v. Ashcroft*, 322 F.3d 240, 2551 n.11 (3rd Cir. 2003) ("Neither the Government nor the public generally can claim an interest in the enforcement of an unconstitutional law"). Moreover, the public interest ordinarily favors preliminarily enjoining the unconstitutional enforcement of a law. *See Sammartano*, 303 F.3d at 974 (collecting cases).

The Ninth Circuit has recognized only limited exceptions to this general rule, such as where nuclear safety is involved, provided that the government adduces evidence showing specifically how other legitimate interests would be harmed by enjoining the unconstitutional application of a law. *See Sammartano*, 303 F.3d at 974 (citing *Hale v. Dep't of Energy*, 806 F.2d 910, 918 (9th Cir. 1986)). Accordingly, in this case, Defendants must show harm to legitimate public interests—apart from the *illegitimate* interests in protecting the public from undifferentiated threats or censoring groups based on their viewpoint—to overcome the strong public interest in favor of preliminarily enjoining laws that violate the First Amendment. *Id.*

C. Upon Issuing an Injunction, the Court Should Waive Bond Because Plaintiff Advances a Constitutional Claim and Defendants are Unlikely to Suffer Pecuniary Harm from an Injunction

"'Rule 65(c) invests the district court 'with discretion as to the amount of security required, if any.'" In particular, '[t]he district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.'" *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (internal citations omitted). As set forth above, there is no realistic likelihood of harm to Defendants from being wrongfully enjoined. Furthermore, persuasive authority recommends that courts exercise their discretion and waive bond for plaintiffs in cases involving constitutional rights. *See, e.g., Olshock v. Village of Skokie*, 401 F. Supp. 1219 (N.D. Ill. 1975). Accordingly, Plaintiff respectfully requests that this Court use its discretion and either waive bond or set it at a nominal amount.

IV. CONCLUSION

WHERFORE, in light of the foregoing, Plaintiff respectfully requests that this Court grant her motion for temporary restraining order, as forth in the proposed order.

OCTOBER 13, 2010

RESPECTFULLY SUBMITTED,

s/ Diane S. Cohen
Clint Bolick (Ariz. Bar No. 021684)
Diane S. Cohen (Ariz. Bar No. 027791)
GOLDWATER INSTITUTE
500 E. Coronado Rd., Phoenix, AZ 85004
P: (602) 462-5000
CBolick@GoldwaterInstitute.org
DCohen@GoldwaterInstitute.org
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Diane Cohen, an attorney, hereby certify that on October 13, 2010 I served the attached document by prepaid USPS First Class Mail on the following, who are not registered participants of the CM/ECF System:

Michelle D'Andrea, Deputy County Attorney
Coconino County Attorney's Office
110 E. Cherry Avenue
Flagstaff, AZ 86001

Coconino County
c/o Candace D. Owens, Recording Officer for Coconino County
110 E. Cherry Ave
Flagstaff, AZ 86001

Coconino County
c/o Steve Peru, County Manager and CEO of Coconino County
219 E. Cherry Ave.
Flagstaff, AZ 86001

Diane S. Cohen
Attorney for Plaintiff

s/ Diane Cohen