

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Diane Wickberg,)	
)	
Plaintiff,)	
)	
v.)	
)	3:10 CV 8177-JAT
Candace D. Owens in her)	
individual capacity and in her official)	
capacity as Coconino County Recorder;)	
and Coconino County,)	
)	
Defendants.)	

SETTLEMENT AGREEMENT AND RELEASE

Plaintiff Diane Wickberg and Coconino County and Coconino County Recorder Candace Owens, stipulate and agree to the following:

1. The above-captioned complaint was brought by Plaintiff Diane Wickberg against Coconino County and Coconino County Recorder Candace Owens, and makes certain allegations as contained in Plaintiff's complaint.

2. Under this Settlement Agreement, it is the Parties' intent to settle and resolve all matters in controversy as between them, including but not limited to those claims and causes of action that were or could have been asserted in Plaintiff's complaint against Coconino County, the Coconino County Recorder Candace Owens, and their future, current or former agents and employees.

Release and Discharge

3. In consideration of payment in the amount of Forty-Two Thousand Seven Hundred and Twenty Dollars (\$42,720.00) by Coconino County to the

Goldwater Institute, for fees and costs, through a check made payable to, "The Barry Goldwater Institute for Public Policy Research," and Three Thousand Dollars (\$3,000.00) to Diane Wickberg, through a check made payable to "Diane Wickberg," under the terms described below, Diane Wickberg agrees to dismiss all claims that were or could have been brought arising out of the incidents that were bases of this litigation against Defendants Coconino County and the Coconino County Recorder, in her individual and official capacities, and their future, current or former agents and employees.

4. The Parties agree that the Recorder will include the language attached to this Settlement Agreement as "Attachment A" in its poll worker training manual, unless otherwise required by controlling law.

5. The County and the County Recorder agree to abide by Judge Teilborg's order in *Reed v. Purcell*, No. CV 10-2324-PHX-JAT, dated November 1, 2010, unless otherwise required by controlling law.

6. Coconino County agrees to provide payment in full as described in Paragraph 3 above within fifteen (15) days of the Effective Date of this Agreement.

7. The Parties further agree that upon receipt of the payments described in Paragraph 3 above, Diane Wickberg will file a motion to dismiss her complaint, 3:10-CV-08177-JAT, with prejudice, in the Arizona Federal District Court.

8. This Settlement Agreement shall also apply to the respective Parties' attorneys, elected officials, employees, directors, representatives, and all persons acting for and on behalf of the Parties.

9. Upon execution of the Settlement Agreement by the Parties, this Settlement Agreement shall be fully binding.

10. The Parties acknowledge and agree that the release and discharge set forth above is a general release for any and all claims for damages that might exist (whether they be known or unknown) in relation to the incidents that were bases of the litigation in 3:10-CV-08177-JAT. It is understood and agreed to by the Parties that this settlement is a compromise of disputed claims, and the agreement is not to be construed as an admission of liability on the part of any Party, by whom liability is expressly denied.

Attorneys' Fees and Costs

11. Other than the payment to the Goldwater Institute described in Paragraph 3 above, each Party hereto shall bear its own attorneys' fees and costs arising from the actions of its own counsel in connection with this Settlement Agreement.

Representation of Comprehension of Document

12. In entering into this Settlement Agreement, the Parties represent that they have relied upon the advice of their respective attorneys of their choosing and that concerning the consequences of this Settlement Agreement, that the terms of this Settlement Agreement have been completely read by the Parties and explained

to them by their attorneys, and those terms are fully understood and voluntarily accepted by the Parties.

Warranty of Capacity to Execute Agreement.

13. The Parties represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement.

14. The Parties have the sole right and exclusive authority to execute this Settlement Agreement and receive the consideration specified in it. The Parties have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement.

Governing Law

15. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona.

Counterparts

16. This Settlement Agreement may be executed in one or more counterparts for the convenience of the Parties. Each executed counterpart shall for all purposes be deemed an original, but all of which together shall constitute in the aggregate one and the same instrument. This signature page is for one or more counterparts and may be removed therefrom and attached to one or more duplicate agreements containing all original signatures.

Entire Agreement and Successor in Interest

17. This Settlement Agreement contains the entire agreement between the Parties with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each. Further, this Agreement supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter hereof.

Captions

18. The headings or captions in this Settlement Agreement are for convenience and reference only and do not control or affect the meaning or construction of any of the provisions hereof.

Modification

19. This Settlement Agreement shall not be modified or amended except in writing executed by all Parties.

Effective Date

20. This Settlement Agreement shall become effective only when fully executed by all Parties.

Future Cooperation

21. All parties agree to cooperate fully and to execute a Stipulation to Dismiss and any and all supplementary documents, and to take all additional action that are consistent with and that may be necessary or appropriate to give full

force and effect to the basic terms and intent of this Release and Settlement Agreement.

22. This Settlement Agreement was jointly prepared by counsel for the Parties and shall not be construed against any party as a consequence of its role, or the role of its counsel, in the preparation of this Settlement Agreement.

Severability

23. Should any provision of this Settlement Agreement be declared or be determined to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Settlement Agreement.

No Third Party Beneficiaries

24. Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Settlement Agreement.

IN WITNESS WHEREOF the Parties hereto have entered into this Settlement Agreement as of the Effective Date.

Diane Wickberg
Plaintiff

Date: _____

Coconino County Recorder

Individually and in her official capacities

Candace D Owens

Date: 3-7-11

Coconino County Board of Supervisors

By: Mandy Metzger
Mandy Metzger, Chairperson

Date: 3.9.11

APPROVED AS TO FORM:

DAVID W. ROZEMA

COCONINO COUNTY ATTORNEY

Michelle D'Andrea

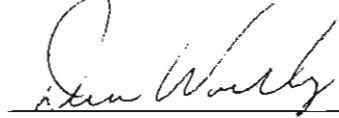
Michelle D'Andrea

Attorneys for Coconino County and
County Recorder

Date: 3/4/11


IN WITNESS WHEREOF the Parties hereto have entered into this Settlement Agreement as of the Effective Date.

Diane Wickberg
Plaintiff



Date: 3-4-11

Diane Cohen
Attorney for Plaintiff



Date: 3-8-11

Attachment A

SPECIAL SITUATIONS THAT MAY ARISE ON ELECTION DAY

- **ELECTIONEERING :**

Arizona law prohibits electioneering within 75 feet of the polling place during polling hours. Electioneering is defined as expressing support for or opposition to a candidate who appears on the ballot in that election, a ballot question that appears on the ballot in that election or a political party with one or more candidates who appear on the ballot in that election, within the 75 foot perimeter.

The anti-electioneering rule must be enforced objectively and uniformly. This means that enforcement of the anti-electioneering rule must not depend on the viewpoint or partisan nature of what the voter is expressly supporting or opposing, but only whether the conduct rises to the level of electioneering as defined above

- **CHALLENGE OF A VOTER:** If someone attempts to challenge a voter, call the Elections Office.

MARSHAL DUTIES

- Informs any voters waiting in line about voter ID requirements and checks that the voter is at the correct polling location for their physical address, unless the polling place has Greeters.
- Performs as relief person for other Election Board Members and assists in the polling place as instructed by the Inspector.
- Checks the ballot marking pens for dryness.
- Periodically checks voting booths to make sure no campaign literature was left behind.
- Demonstrates the voting method for voters who need assistance.
- Assists at the black Ballot Box or the blue Provisional Ballot Box.
- Assists voters with disabilities. Offers visual aids and assists with curbside voting when necessary.
- Maintains order inside and outside the polling place.
- Enforces the **75-Foot Limit as described in the underlined section of page 13.**

ELECTIONEERING

No person shall be allowed to remain inside the 75-foot limit area while the polls are open, except for poll workers [ARS 16-515 & 16-590].

- Enforcement of the 75 foot limit must be consistent with the instructions on page 13. The 75-foot limit shall be posted outside the main entrance of the polling place at three (3) different points. Signs and a measuring device are included in your supplies.
- Enforcement is the duty of the Marshal and the Inspector. **Should any problems or questions arise on Election Day, call the Elections Office immediately for guidance.**

- Announces the closing of the polls 1 hour before closing (6:00 p.m.), 30 minutes before closing (6:30 p.m.), 15 minutes before closing (6:45 p.m.), 1 minute before closing (6:59 p.m.) and at the official closing time (7:00 p.m.).
- Ensures that all voters in line at 7:00 p.m. (local time) are allowed to vote. **Permitting anyone to join the line after 7:00 p.m. is against the law.**
- **Should any serious problems arise; the Marshal should confer with the Inspector, who will call the Elections Office immediately.**