

GOLDWATER

I N S T I T U T E

VIA HAND DELIVERY AND CERTIFIED MAIL

CENTER FOR CONSTITUTIONAL LITIGATION

October 25, 2010

Helen Purcell
Maricopa County Recorder
111 S. 3rd Ave., #103
Phoenix, AZ 85003-2225

Karen Osborne
Maricopa County Director of Election
111 S. 3rd Ave. #102
Phoenix, AZ 85003-2225

Re: Election Day, November 2, 2010

Dear Recorder Purcell and Director Osborne:

We have learned of your recent issuance of a blanket ban on all t-shirts with the words “tea party” from the polling sites throughout Maricopa County in the upcoming November 2 election. Further, we have heard your statements that the basis of this ban is your belief that “the tea party” has “all the earmarks of a party without filing as one” and that “tea parties” support candidates. Additionally, while the Maricopa County Elections Department Board Worker Training Manual bans “campaign material,” the definition of which is unclear, it certainly cannot include apparel depicting the membership in an organization, when that apparel does not expressly advocate for or against someone or something on the ballot.

Given the plethora of apparel in general as well as tea party organizations themselves, such a blanket ban is overly broad at best. First, it is unclear to what you are referring when you say “tea parties,” since there are hundreds of groups calling themselves tea parties. Further, your blanket ban discriminatorily singles out “tea party” apparel while treating other apparel, such as apparel reflecting membership in a labor organization, or any other group that also endorses candidates, differently. Additionally, your apparent reasoning that attempts to distinguish “tea parties,” because of your belief that their sole purpose is political, is a distinction of no consequence when determining whether the conduct of any individual within a polling site constitutes electioneering. Nor is your position reasonable given the political influence and power of groups, such as AFSME for example, which has spent \$87.5 million in the 2010 elections, according to an October 22, 2010 report by the Wall Street Journal.

We are not suggesting that union apparel or uniforms be banned from the polling sites in Maricopa County; we are illustrating the unreasonableness and discriminatory nature of your position on “tea party” apparel. We urge you to revise your position, as well as the training you are providing to poll workers to reflect a constitutionally sound definition of electioneering, which if consistent with First Amendment precedent and Arizona law, must mean nothing other than express advocacy of a candidate, party or measure on the ballot intended to coerce a voter

Clint Bolick | DIRECTOR


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how to vote. See *Burson v. Freeman*, 504 U.S. 191 (1992); *Fish v. H.S. Redeker*, 2 Ariz. App. 602, 411 P.2d 40 (1966); see also *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150 (1969). Moreover, there is no basis for your singling out "tea parties" (see *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995)), while treating other groups who also engage in political activities and endorse candidates differently. *Faith Ctr. Church Evangelistic Ministries v. Glover*, 480 F.3d 891, 912 (9th Cir. 2007); *Lazy Y Ranch LTD v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008).

As you may know, we have obtained a federal court injunction (which is enclosed), against a similar ban in Coconino County. We believe that your current position, especially in light of that injunction, exposes Maricopa County taxpayers to costly litigation and voters to a loss of First Amendment rights.

We would be pleased to discuss this matter with you further and in the meantime urge your immediate reconsideration of Maricopa County's blanket ban on all "tea party" apparel.

Very sincerely,



Diane Cohen
Attorney

Enclosure

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Diane Wickberg,) CV 10-8177-PCT-JAT
10 Plaintiff,)
11 v.) **ORDER**
12 Candace D. Owens,; Coconino County,)
13 Defendants.)
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15 Upon this Court's thorough review of Plaintiff's Motion for Preliminary
16 Injunction (Doc. 11) brought pursuant to Fed. R. Civ. P. 65, and other applicable law,
17 and the stipulation of the parties agreed to on October 20, 2010,
18 IT IS HEREBY ORDERED that:

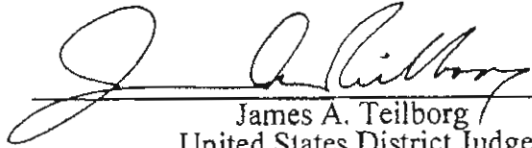
19 1) Defendant and her agents and employees are hereby enjoined from
20 applying Arizona electioneering law, including but not limited to, A.R.S. §§ 16-
21 515(A), 16-1013(A)(1), 16-1018 and the Coconino County Election Board Reference
22 Manual applicable to the November 2, 2010 election, to prohibit Plaintiff and other
23 similarly situated individuals who wear the Flagstaff tea party design that is the
24 subject of Plaintiff's Complaint, ¶13, to the polling sites in Coconino County during
25 the upcoming November 2, 2010 state-wide general election.

26 2) Defendant shall disseminate this order to all Coconino County poll
27 workers and any other employees, including inspectors, marshals, judges and
28 volunteers, who will be working at polling sites throughout the County on November

1 2, 2010, no later than 72 hours before the November 2 election.

2 3) The hearing scheduled for October 21, 2010 at 9:00 a.m. on Plaintiff's
3 Motion for Preliminary Injunction, is vacated.

4 DATED this 20th day of October, 2010.

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8 James A. Teilborg
9 United States District Judge
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