

GOLDWATER

I N S T I T U T E

in defense of liberty

CENTER FOR CONSTITUTIONAL LITIGATION

October 25, 2010

Hon. Rick Romley
County Attorney
301 W. Jefferson Street
Phoenix, AZ 85003

VIA COURIER AND FIRST-CLASS DELIVERY

RE: Ban on Tea Party Shirts in Polling Places

Dear Mr. Romley:

As you may know, Maricopa County Director of Election Karen Osborne has issued a directive forbidding voters from wearing tea party shirts at the polls next Tuesday, even if those shirts do not promote or oppose a candidate or ballot measure. This directive is particularly shocking in light of the injunction issued last week by U.S. District Court Judge James Teilborg against a similar policy in Coconino County (attached).

The attached letter to County Recorder Helen Purcell and Election Director Osborne, written by my colleague Diane Cohen, outlines the legal reasons why such a subjective and discriminatory policy is unlawful.

Apparently, the policy is based on the assessment that because the tea party ostensibly endorses candidates, it is a de facto political party, and thus wearing a tea party shirt constitutes electioneering. That same analysis applies to organizations and entities from the Chamber of Commerce to the police unions to the *Arizona Republic*. Additionally, it is not even correct with regard to the tea party. As no less a source than the *Washington Post* reported yesterday (attached), a canvass of hundreds of tea party groups revealed that it “is not so much a movement as a disparate band of vaguely connected gatherings that do surprisingly little to engage in the political process”; indeed, 70 percent “have not participated in any political campaigning this year” and as a whole “they have no official candidate slates.”

Especially in light of the recent injunction, Ms. Osborne’s apparently unilateral policy exposes the County to significant risk of liability and deprives voters of their constitutional rights. We hope you will review this matter and counsel Maricopa County officials to quickly reverse the policy and to publicize that fact. The County easily may prevent electioneering at the

Clint Bolick | DIRECTOR

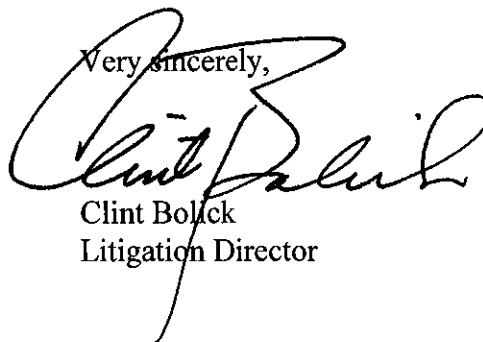
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polls without issuing a ban on tea party shirts, because such apparel does not attempt to influence anyone's vote.

On a personal note, thank you for your excellent service to the county. I hope you will continue to provide leadership in other capacities of public service.

Thank you for your prompt attention to this urgent matter.

Very sincerely,

A handwritten signature in black ink, appearing to read "Clint Bolick". The signature is fluid and cursive, with a large initial "C" and "B".

Clint Bolick
Litigation Director

Enclosures