

**Scharf-Norton Center for Constitutional Litigation at the  
GOLDWATER INSTITUTE**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Mark Reed,

Plaintiff,

vs.

Helen Purcell in her individual capacity  
and in her official capacity as Maricopa  
County Recorder; Karen Osborne in her  
individual capacity and in her official  
capacity as Maricopa County Director of  
Elections; and Maricopa County,  
Defendants.

Civil Action No. \_\_\_\_\_

**COMPLAINT**

Jury Demand

Plaintiff Mark Reed, by and through undersigned counsel, brings this  
Complaint against the above-named Defendants. In support of this Complaint,  
Plaintiff alleges the following upon information and belief:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343(a) and 42  
U.S.C. § 1983.

1           2.     This Court is authorized to grant declaratory and injunctive relief  
2 under 28 U.S.C. §§ 2201 and 2202, Federal Rules of Civil Procedure 57 and 65,  
3 and by the general legal and equitable powers of the Court.  
4

5           3.     Venue is proper under 28 U.S.C. § 1391(b) (1)-(2).  
6

### 7                                   **PARTIES**

8           4.     Plaintiff Mark Reed is a United States citizen and a citizen of  
9 Arizona, residing in Scottsdale, Arizona, in the County of Maricopa, within the  
10 jurisdiction of this Court.

11           5.     Defendant Helen Purcell is Maricopa County Recorder, an office  
12 created by the Arizona Constitution, art. XII, § 3 (2010). *See also* ARIZ. REV.  
13 STAT. ANN. (“A.R.S.”) § 11-401 (2010) (listing county officers); A.R.S. § 11-409  
14 (granting officers the authority to hire staff). Defendant Purcell is sued in her  
15 individual capacity and in her official capacity as Maricopa County Recorder.  
16

17           6.     Defendant Purcell “is responsible for administering the Elections  
18 Department which conducts all national, state and county wide elections, and  
19 provides support for cities, towns, school districts, special districts, and other  
20 jurisdictions.” (<http://recorder.maricopa.gov/web/recorder.aspx>) (last visited  
21 October 27, 2010). Specifically, Defendant Purcell “provide[s] election support  
22 to” those jurisdictions. (<http://recorder.maricopa.gov/web/elections.aspx>) (last  
23 visited October 27, 2010).  
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1           7. Defendant Purcell is responsible for “striking a balance in protecting  
2 the free speech rights of voters while preventing intimidation and illegal  
3 electioneering at the polls.”  
4

5           8. Defendant Karen Osborne is Maricopa County Director of Elections.  
6 Defendant Osborne is sued in her individual and official capacity.

7           9. Defendants Purcell and Osborne acted under color of law at all times  
8 material to this complaint.  
9

10          10. Defendant Maricopa County is a subdivision of the State of Arizona,  
11 organized pursuant to A.R.S. §§ 11-101, 11-105 and 11-201. Defendant County is  
12 a jural entity that can sue and be sued. A.R.S. §11-201(A)(1). It exists for  
13 purposes of self-governance and to aid in the administration of Arizona law. The  
14 powers of Maricopa County are exercised by the Maricopa County Board of  
15 Supervisors, as well as agents and officers acting under the Board’s authority.  
16 A.R.S. § 11-201(A)(1).  
17

18          11. Maricopa County Board of Supervisors consists of officers created  
19 by the Arizona Constitution, art. XII, § 3 (2010). The Board’s “duties, powers,  
20 and qualifications” are prescribed by law. *Id.* at § 4. Among other things, the  
21 Board is responsible for appointing “for each election precinct one inspector, one  
22 marshal, two judges and not less than two clerks of election.” A.R.S. § 16-531(A).  
23 The Board of Supervisors or other authority in charge of elections is required to  
24 conduct a class for the instruction of inspectors and judges. A.R.S. §16-532(A).  
25  
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1           12. In Maricopa County, the Recorder and Elections Director are  
2 responsible for hiring and training poll workers.  
3 ([http://recorder.maricopa.gov/pdf/ebworker\\_trainingManual.pdf](http://recorder.maricopa.gov/pdf/ebworker_trainingManual.pdf)) (last visited  
4 October 27, 2010).  
5

6           13. Maricopa County is responsible for the policy, practices and customs  
7 of the Board of Supervisors, County Recorder, and Director of Elections.  
8

### 9                           GENERAL ALLEGATIONS

#### 10                   Plaintiff Mark Reed

11           14. On November 2, 2010, Plaintiff Mark Reed intends to vote at his  
12 designated polling station in Scottsdale, Arizona, County of Maricopa.  
13

14           15. Mr. Reed believes it is important to vote in person on Election Day  
15 because it is a meaningful and symbolic exercise of his rights as a citizen under  
16 the Constitution of the United States.  
17

18           16. When Mr. Reed votes on November 2, he plans to wear a t-shirt that  
19 states: "Tea Party: Principles Not Politicians," with the insignia "Don't Tread On  
20 Me." He does not plan to campaign for anyone or anything on the ballot or  
21 attempt to influence anyone's vote.  
22

23           17. Mr. Reed learned that Maricopa County issued a per se ban on "tea  
24 party shirts" and that the County plans to take names and other identifying  
25 information of voters who wear shirts like his to the polling sites in the County but  
26 who refuse to remove or cover them. He further learned that if he does not  
27  
28

1 remove or cover his shirt in the polling place, the County will also launch an  
2 investigation into him for wearing his shirt to the polls.

3  
4 18. Plaintiff is shocked and intimidated by the County's policy, and  
5 fears the County's threat of launching an investigation into him that could lead to  
6 criminal charges as a result of the exercise of his rights.

7  
8 **County Election Policy and Poll Worker Training**

9 19. On or about October 21, 2010, Defendants announced a blanket ban  
10 on all t-shirts with the words "tea party" from the polling sites throughout  
11 Maricopa County for the November 2, 2010 election.

12 20. Defendants have stated that the "tea party" has all the earmarks of a  
13 party without filing as one and that "tea parties" support candidates.

14  
15 21. On Tuesday, November 2, 2010, the State of Arizona will hold a  
16 general election for which Defendants Purcell and Osborne have trained polling  
17 place workers. During this training, poll workers have been instructed  
18 "[c]ampaign material including, but not limited to, t-shirts, buttons, hats, signs,  
19 stickers, etc. is expressly prohibited" within 75 feet of a polling place. "If a voter  
20 comes in wearing a hat, buttons, t-shirt, etc. promoting a political view, candidate,  
21 issue or political party," the voter is asked to remove or conceal it. (*Id.*)

22  
23 22. The instructions do not define, describe, or otherwise explain what is  
24 "campaign material" or what it means for campaign material to "promote a  
25 political view" or "political party."  
26  
27  
28

1           23.    There is no similar ban on apparel reflecting membership in any  
2 other like organization, nor organizations such as labor unions, chambers of  
3 commerce, newspaper or any other group that endorses candidates.  
4

5           24.    On October 25, 2010, a poll worker assigned to the Estrella Vesta  
6 School polling place in Maricopa County, Brenda Schlomach, received  
7 mandatory poll worker training from Les Holland, an employee of Maricopa  
8 County.  
9

10          25.    Poll workers, including Mrs. Schlomach, are temporary employees  
11 of Maricopa County.  
12

13          26.    Mr. Holland specifically instructed poll workers that if a voter enters  
14 the polling place with a “donkey” or “elephant” on their person they must be asked  
15 to cover these emblems. Mr. Holland also said, “A marijuana leaf would be  
16 considered to be political speech for this election,” because of the medical  
17 marijuana measure that is on the ballot.  
18

19          27.    Mr. Holland instructed poll workers that the Wickberg tea party t-  
20 shirt injunction was only relevant to Coconino County and that he “expects that  
21 case to be overturned before Election Day.” Mr. Holland further stated that “while  
22 the Tea Party is not officially recognized as a party, it has been associated with  
23 such anger that it might intimidate a voter and we cannot have anything that  
24 intimidates or influences a voter.”  
25

26          28.    Mr. Holland instructed poll workers that the American flag would be  
27 permitted as long as it did not have anything partisan attendant to it. However, a  
28

1 “Don’t Tread on Me” symbol was not permitted because although it was the  
2 original flag of the United States, it was “co-opted” by “the Tea Party” and  
3 therefore not permitted.  
4

5 29. Mr. Holland also instructed poll workers that while a shirt that  
6 depicted a religious symbol such as a cross would be permitted, a shirt that said  
7 “How Would Jesus Vote?” would be considered political speech and thus  
8 prohibited in the polling site.  
9

10 30. At no time did the instructor mention anything about union apparel,  
11 uniforms, or any other group or organization that should be excluded from the  
12 polling place.  
13

14 31. At no time during the training session did the instructor say anything  
15 about electioneering being defined in whole or in part as express advocacy for or  
16 against a candidate, party or measure on the ballot or conduct that intentionally  
17 tries to coerce a voter as to how to vote on the ballot, except as described above.  
18

19 **Plaintiff’s Correspondence with Maricopa County Recorder and**  
20 **Director of Elections**

21 32. On October 25, 2010, counsel for Plaintiff sent correspondence to  
22 Defendants Purcell and Osborne referencing the Wickberg order in Coconino  
23 County and citing the reasons why tea party shirts do not constitute electioneering.  
24 Counsel for Plaintiff urged Defendants to revise their position, as well as the  
25 training they provide to poll workers, to reflect a constitutionally sound and  
26 nondiscriminatory definition of electioneering.  
27  
28

1           33. On October 20, 2010, Judge James Teilborg issued a preliminary  
2 injunction preventing Coconino County Recorder Candace Owens from applying  
3 the law against electioneering to prevent voters from wearing Flagstaff tea party  
4 shirts inside the polling place in the November 2, 2010 election. (*Wickberg v.*  
5 *Owens*, 3:10-cv-08177-JAT, U.S. District Court for the District of Arizona, Order  
6 by J. James A. Teilborg, 10/20/2010, Exhibit 1).  
7

8           34. On October 26, 2010, Colleen Connor, Assistant General Counsel  
9 for Maricopa County Office of General Litigation Services, responded to  
10 Plaintiff's October 25 letter, confirming and defending the County's policy  
11 regarding the ban on tea party shirts and their categorization as "campaign  
12 material."  
13  
14

15           35. During this period of time, Maricopa County poll workers going  
16 through training for the November 2 election were being instructed that "tea party"  
17 t-shirts would be prohibited in the polling site, as would a pin or other emblem  
18 depicting the "Don't Tread On Me" flag.  
19

20           36. Later in the day on October 26, the County issued yet another policy  
21 declaring that those who wear tea party t-shirts to polling sites will not be  
22 prevented from voting; but if they refuse to either remove or cover the shirts,  
23 County employees will be instructed to take their names and voter identification  
24 numbers and complete something called an "event report." Elections Director-  
25 Defendant Osborn will then use that information to launch an investigation into  
26 that voter at a later date, and, obviously, outside the polls.  
27  
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**Count I**

42. Defendants Purcell and Osborne, either by evil motive or intent, or through reckless or callous indifference to Plaintiff's federally protected rights, will imminently cause poll workers under their supervision to harass, threaten, silence, and chill Plaintiff's speech and association by directing the workers to enforce improper electioneering laws against Plaintiff and/or failing to train them in the proper enforcement of electioneering laws.

43. Defendants Purcell and Osborne directly and proximately caused Plaintiff to suffer ongoing injuries and damages, including, but not limited to, emotional distress, anguish and loss of freedom.

**WHEREFORE**, pursuant to 42 U.S.C. §1983, Plaintiff requests compensatory and punitive damages against Defendants Purcell and Osborne because their ongoing conduct is malicious, oppressive and in reckless disregard of Plaintiff's rights. Plaintiff further seeks costs, equitable relief, attorneys' fees and such other relief as this Court deems equitable and just.

## Count II

### Due Process Claim against Defendants Purcell and Osborne

44. Plaintiff realleges, adopts and incorporates by reference paragraphs 1 through 43, as though fully set forth herein.

45. Plaintiff has a Fourteenth Amendment right to Due Process of Law before government deprives him of life, liberty or property.

1       46. Plaintiff has protectable liberty interests—fundamental rights in fact—  
2 in free speech and association under the First Amendment, due process of law  
3 under the Fourteenth Amendment, and the right to vote.  
4

5       47. Defendants Purcell and Osborne, either by evil motive or intent, or  
6 through reckless or callous indifference to Plaintiff’s federally protected rights,  
7 announced a policy of exercising standardless discretion over what expressive  
8 conduct is characterized as electioneering, leaving them free to censor ideas and  
9 enforce their own personal preferences.  
10

11       48. Defendants Purcell and Osborne have failed to develop objective  
12 standards to ensure that citizens such as Plaintiff are not disenfranchised, harassed,  
13 or otherwise deprived of constitutional rights without due process of law. “The  
14 mandate to decide ‘in each case’ does not prevent [an official] from supplanting  
15 the original discretionary chaos with some degree of order, and the principal  
16 instruments for regularizing the system of deciding ‘in each case’ are  
17 classifications, rules, principles, and precedents. *Sensible men could not refuse to*  
18 *use such instruments and a sensible [government] would not expect them to.” Am.*  
19 *Hosp. Ass’n v. NLRB*, 499 U.S. 606, 612 (1991) (quoting K. DAVIS,  
20 ADMINISTRATIVE LAW TEXT, § 6.04, p. 145 (3d ed. 1972)) (emphasis added).  
21  
22

23       49. The threat is imminent that the conduct of Defendants Purcell and  
24 Osborne will deprive Plaintiff of due process under the laws of the United States at  
25 the polls on November 2, and the deprivation will directly and proximately cause  
26  
27  
28

1 Plaintiff to suffer injuries and damages, including, but not limited to, emotional  
2 distress, anguish and loss of freedom.

3       **WHEREFORE**, pursuant to 42 U.S.C. §1983, Plaintiff requests  
4 compensatory and punitive damages against Defendants Purcell and Osborne  
5 because their ongoing conduct is malicious, oppressive and in reckless disregard  
6 of Plaintiff's rights. Plaintiff further seeks costs, equitable relief, attorneys' fees  
7 and such other relief as this Court deems equitable and just.  
8  
9

10                               **Count III**

11               **Equal Protection Claim against Defendants Purcell and Osborne**

12       50. Plaintiff realleges, adopts and incorporates by reference paragraphs 1  
13 through 49, as though fully set forth herein.

14       51. Plaintiff's Fourteenth Amendment right to equal protection under the  
15 law protects him from intentional and arbitrary discrimination.  
16

17       52. Defendants Purcell and Osborne admit that they have a blanket  
18 policy prohibiting tea party apparel at the polls do not apply a similar policy to  
19 other groups that are similarly situated.  
20

21       53. Defendants Purcell and Osborne, by evil motive or intent, announced  
22 a policy to intentionally discriminate against Plaintiff by using electioneering laws  
23 to impose barriers that thwart the exercise of Plaintiff's constitutional rights based  
24 on his association with any "tea party" organization.  
25

26       54. The threat is imminent that Defendants Purcell and Osborne will  
27 deprive Plaintiff of equal protection under the laws of the United States at the polls  
28

1 on November 2, and the deprivation will directly and proximately cause Plaintiff  
2 to suffer injuries and damages, including, but not limited to, emotional distress,  
3 anguish and loss of freedom.  
4

5 **WHEREFORE**, pursuant to 42 U.S.C. §1983, Plaintiff requests  
6 compensatory and punitive damages against Defendants Purcell and Osborne  
7 because their ongoing conduct is malicious, oppressive and in reckless disregard  
8 of Plaintiff's rights. Plaintiff further seeks costs, equitable relief, attorneys' fees  
9 and such other relief as this Court deems equitable and just.  
10

11 **Count IV**

12 **§ 1983 *Monell* Claim against Maricopa County**

13  
14 55. Plaintiff realleges, adopts and incorporates by reference paragraphs 1  
15 through 54, as though fully set forth herein.

16 56. The policies and practices of Defendant Purcell, as County Recorder,  
17 represent official policy of Maricopa County.  
18

19 57. Defendant Purcell is the final policymaker who possesses final  
20 authority to establish County policy with respect to enforcing electioneering laws  
21 at the Scottsdale polling station and other stations in Maricopa County, Arizona.  
22

23 58. Defendant Purcell is deliberately violating and will continue to  
24 deliberately violate Plaintiff's constitutional rights through an unlawful express  
25 policy, own conduct and by directing her employees to engage in the same or  
26 similar conduct.  
27  
28

1           59. County liability may be imposed for the single decision by a  
2 policymaker. Further, if the decision to adopt a particular course of action is  
3 directed by those who establish governmental policy, the municipality is equally  
4 responsible.  
5

6           60. The acts of Defendant Purcell represent the county's official policy  
7 with respect to enforcing the electioneering laws at polling sites.  
8

9           61. These constitutional violations constitute serious harm.

10          62. The need to implement constitutional policies and procedures, as  
11 well as properly train, supervise, monitor and otherwise oversee poll station  
12 employees on the First Amendment and electioneering in the polling sites is so  
13 obvious, and the failure to properly do so is so likely to result in the violation of  
14 rights, that each Defendant reasonably can be said to be deliberately indifferent to  
15 the ongoing violation of Plaintiff's rights.  
16

17           **WHEREFORE**, Plaintiff demands judgment against Maricopa County for  
18 compensatory damages, equitable relief, plus costs and attorneys' fees, and such  
19 further relief as this Court deems equitable, just and proper.  
20

21                           **JURY DEMAND**  
22

23          Plaintiff demands a trial by jury.

24                           **REQUEST FOR RELIEF**  
25

26          63. Plaintiff has no adequate legal, administrative, or other remedy by  
27 which to prevent or minimize the ongoing irreparable harm from Defendants'  
28 ongoing conduct violating Plaintiff's constitutional rights.

1           64.    An actual live controversy exists between Plaintiff and Defendants,  
2 in which the parties have genuine and opposing interests, interests that are direct  
3 and substantial, and of which a judicial determination will be final and conclusive.  
4

5           65.    Plaintiff has a likelihood of success on the merits of the claims.

6           66.    The public interest and equities favor entry of a court order granting  
7 Plaintiff the following described declaratory relief, as well as temporary,  
8 preliminary and permanent injunctive relief.  
9

10           **WHEREFORE**, Plaintiff respectfully requests that the Court:

11           A.    Declare that by announcing a policy of banning tea party t-shirts at  
12 the November 2, 2010 polls, Defendants violate the First and Fourteenth  
13 Amendments by improperly and discriminatorily enforcing, and threatening to  
14 continue to improperly enforce, the electioneering laws against voters including  
15 Plaintiff.  
16

17           B.    Enjoin Defendants and any other employee acting on behalf of  
18 Defendants, from enforcing the policy against voters including Plaintiff.  
19

20           C.    Order Defendants Purcell and Osborne to create and publish  
21 objective classifications, rules and/or principles to ensure that electioneering law is  
22 enforced impartially and uniformly within Maricopa County and consistently with  
23 the Constitution.  
24

25           D.    Order Defendants Purcell and Osborne to provide additional training  
26 to election workers to ensure that the enforcement of electioneering law within  
27 Maricopa County is uniform and impartial and does not violate the Constitution.  
28

1 E. Award Plaintiff reasonable attorneys' fees, litigation expenses and costs,  
2 pursuant to 42 U.S.C. § 1988 and other applicable law, and grant such other relief  
3 as the Court may deem just and proper.  
4

5  
6 **October 28, 2010**

7 **RESPECTFULLY SUBMITTED,**

8 s/Diane Cohen

9 Clint Bolick (Arizona Bar No. 021684)

10 Diane S. Cohen (Arizona Bar No. 027791)

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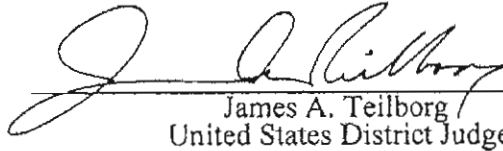
# EXHIBIT 1



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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