

Wearing Tea Party Shirts at Polling Places

Reed v. Purcell (James A. Teilborg, D. Ariz. 2:10-cv-2324)

On the Thursday before the 2010 general-election day, a voter filed a federal complaint in the District of Arizona seeking the right to wear a shirt at his polling place supporting the Tea Party, a party that did not appear on the ballot. On Monday, the judge granted the plaintiff temporary relief. In 2011, Arizona's election statutes were revised, mooting the case.

Subject: Polling-place activities. *Topics:* Campaign materials; intervention; attorney fees.

A voter filed a federal complaint in the District of Arizona on Thursday, October 28, 2010, against Maricopa County election officials, seeking the right to wear at his polling place on election day, November 2, “a t-shirt that states: ‘Tea Party: Principles Not Politicians,’ with the insignia ‘Don’t Tread On Me.’”¹ The complaint cited an October 20 injunction issued by Judge James A. Teilborg against Coconino County concerning Tea Party shirts worn at polling places in the 2010 general election.² With his complaint, the plaintiff filed a motion for a temporary restraining order.³

The Coconino case was filed on September 20,⁴ and a motion for a temporary restraining order was filed on October 13,⁵ the same day that the county recorder filed her answer with a counterclaim.⁶ The counterclaim sought a declaratory judgment that the recorder acted in compliance with an Arizona statute that proscribed electioneering within 75 feet of a polling place.⁷

On October 14, Judge Teilborg denied *ex parte* relief and set the case for hearing on October 21.⁸ On October 18, he ordered briefing on whether the state should be invited to participate as a party because the case concerned the constitutionality of a state statute.⁹ On October 20, Judge Teilborg issued a stipulated injunction permitting voters to wear at Coconino County polling places on November 2 the “Flagstaff tea party design.”¹⁰

1. Complaint at 4, *Reed v. Purcell*, No. 2:10-cv-2324 (D. Ariz. Oct. 28, 2010), D.E. 1.

2. *Id.* at 8; *see* Order, *Wickberg v. Owens*, No. 3:10-cv-8177 (D. Ariz. Oct. 20, 2010), D.E. 30.

3. Temporary-Restraining-Order Motion, *Reed*, No. 2:10-cv-2324 (D. Ariz. Oct. 28, 2010), D.E. 4.

4. Complaint, *Wickberg*, No. 3:10-cv-8177 (D. Ariz. Sept. 20, 2010), D.E. 1.

5. Temporary-Restraining-Order Motion, *id.* (Oct. 13, 2010), D.E. 11.

6. Recorder Answer, *id.* (Oct. 13, 2010), D.E. 12 [hereinafter *Wickberg* Recorder Answer]; *see also* County Answer, *id.* (Nov. 10, 2010), D.E. 34.

7. *Wickberg* Recorder Answer, *supra* note 6, at 11.

8. Order, *Wickberg*, No. 3:10-cv-8177 (D. Ariz. Oct. 14, 2010), D.E. 14.

9. Order, *id.* (Oct. 18, 2010), D.E. 18; *see* 28 U.S.C. § 2403(b); *see also* Certification Order, *Wickberg*, No. 3:10-cv-8177 (D. Ariz. Nov. 19, 2010), D.E. 40.

10. Order, *Wickberg*, No. 3:10-cv-8177 (D. Ariz. Oct. 20, 2010), D.E. 30.

As in the Coconino case, Judge Teilborg declined to issue an ex parte temporary restraining order in the Maricopa case and set a hearing for Monday, November 1.¹¹ Following testimony, arguments, and a 1:49 p.m. recess, he announced his ruling at 2:51 p.m.¹²

Judge Teilborg issued a temporary restraining order allowing voters in Maricopa County to wear Tea Party shirts and other message apparel that did not advocate for or against ballot measures, candidates, or political parties.¹³ (“The ‘tea party’ is not recognized as a political party by the State of Arizona.”¹⁴)

The Coconino case was dismissed as settled on April 12, 2011.¹⁵ Arizona’s election statutes were amended on April 29, narrowing the proscription on polling-place electioneering from the display of “political or electioneering materials” to the display of “electioneering materials.”¹⁶ On May 16, Judge Teilborg ordered briefing on effects of the change in the Maricopa case.¹⁷ On August 1, he dismissed the case as mooted by the statutory change.¹⁸ He awarded the Maricopa plaintiff \$71,224 in fees and costs on October 31.¹⁹

11. Order, *Reed v. Purcell*, No. 2:10-cv-2324 (D. Ariz. Oct. 29, 2010), D.E. 10.

12. Temporary Restraining Order at 8, *id.* (Nov. 1, 2010), D.E. 15 [hereinafter *Reed* Temporary Restraining Order], 2010 WL 4394289; Transcript at 85–86, *id.* (Nov. 1, 2010, filed Nov. 22, 2010), D.E. 28 [hereinafter *Reed* Transcript].

13. *Reed* Transcript, *supra* note 12, at 89.

14. *Reed* Temporary Restraining Order, *supra* note 12, at 3.

15. Order, *Wickberg*, No. 3:10-cv-8177 (D. Ariz. Apr. 12, 2011), D.E. 49.

16. 2011 Ariz. Legis. Serv. ch. 332 (West).

17. Order, *Reed*, No. 2:10-cv-2324 (D. Ariz. May 16, 2011), D.E. 37.

18. Order, *id.* (Aug. 1, 2011), D.E. 45.

19. Order, *id.* (Oct. 31, 2011), D.E. 55, 2011 WL 5128142.