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Attorney for Petitioner

IN THE SUPERIOR COURT OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

MARICOPA COUNTY LIBERTARIAN
PARTY,

Petitioners,

VS.

HELEN PURCELL, Maricopa County
Recorder; and KAREN OSBORNE, Maricopa
County Director of Elections; MARICOPA
COUNTY BOARD OF SUPERVISORS, a
body politic; FRAN MCCARROLL, Clerk,
Maricopa County Board of Supervisors,
FULTON BROCK, DON STAPLEY,
ANDREW KUNASEK, MAX W. WILSON,
MARY ROSE WILCOX, Supervisors,
Maricopa County,

Respondents.

Case No. CV2008-002704
assigned to Hon. Larry Grant

MOTION FOR WRIT OF MANDAMUS AND WRIT OF INJUNCTION

CIVIL - ELECTION

Petitioners allege:

1. Petitioner Maricopa County Libertarian Party (MCLP) is a county affiliate of a state political party organized and recognized pursuant to state law, represents all registered Libertarians in the affected election districts, and was one of the three recognized political parties whose candidates are eligible to appear on election ballots.

2. Respondent Helen Purcell is sued solely in her official capacity as Maricopa County Recorder. Respondent Karen Osborne is sued solely in her official capacity as Maricopa

1 County Director of Elections. Respondent Fran McCarroll is sued solely in her official
2 capacity as Clerk of the Maricopa County Board of Supervisors ("Clerk"). Respondent
3 Maricopa County Board of Supervisors is a body politic. Respondents Fulton Brock, Don
4 Stapley, Andrew Kunasek, Max W. Wilson, and Mary Rose Wilcox are sued solely in their
5 respective capacities as Maricopa County Supervisors.

6 3. On or about February 4, 2008, Petitioners brought this matter initially to require the
7 Respondents to recognize the Libertarian Party affiliate as having the same status as the
8 Republican and Democrat Party affiliates, pertaining to post elections procedures and
9 election observers, as required under applicable statute and regulation. Respondents had
10 repeatedly refused to recognize the observers appointed by MCLP, and rejected their
11 credentials, and denied them participation in the post-election procedures. Following
12 hearing, the Hon. Peter Swann ordered February 5, 2008 that the statute by its language
13 included the Libertarian Party, that Respondents were failing to follow the statutes, and
14 ordered Respondents to abide by the statute.

15 4. Upon information and belief, on or about November 4, 2008, Respondents again
16 refused to include MCLP and its designees on the same basis as the Republican and
17 Democrat Party. Specifically, A.R.S. § 16-602 (C)(7), using much the same language as
18 was held to include the Libertarian Party in the order of February 5, 2008, the election board
19 members designated by the MCLP were denied participation on the same basis as the other
20 two parties, and were denied the same access and opportunity to participate and observe
21 as were designees of the other two parties. Among other particulars, the Libertarian
22 designees were prohibited from taking the "tear sheets" which were provided to the
23 designees of the other parties.

24 5. Upon information and belief, on or about November 4, 2008, Respondents
25 excluded the MCLP from the random selection process to select for precincts and elections
26 contests to be hand counted. "The county political party chairman for each political party

1 that is entitled to continued representation on the state ballot or the chairman's designee
2 shall conduct the selection of the precincts to be hand counted." A.R.S. § 16-602 (C)(1).
3 "Each county chairman of a political party that is entitled to continued representation on the
4 state ballot or the chairman's designee shall select by lot the individual races to be hand
5 counted pursuant to this section." A.R.S. § 16-602 (C)(6). Director of Elections Karen
6 Osborne stated that only the Republican and Democrat Party will participate in the random
7 selection process, and the Libertarians were to be excluded, despite the statutory language
8 which would require the participation of the Libertarian Party.

9 6. Additionally, upon information and belief, Respondents ignored the procedure
10 required by statute for the random selection of the precincts and elections contests to be
11 hand counted. A.R.S. § 16-602 (C)(1) requires that "[t]he selection of the precincts shall not
12 begin until all ballots voted in the precinct polling places have been delivered to the central
13 counting center" and that "[t]he unofficial vote totals from all precincts shall be made public
14 before selecting the precincts to be hand counted." Respondents acknowledged that ballots
15 from at least 10 precincts remained uncounted, and thus had not been made public, at the
16 time the precincts to be hand counted were selected.

17 7. Upon information and belief, Respondents also deviated from the process required
18 by statute and regulations for how the hand counted precincts were to be selected. The
19 regulations provided for in A.R.S. § 16-452, published as a manual by the Secretary of State
20 and dated October 30, 2007, at pp. 219-220, as well as the procedure outlined in A.R.S. §§
21 16-602 (C)(1) and (2), require that the precincts be picked first, after which the races to be
22 hand counted are then selected. See A.R.S. § 16-602 (C)(2): "The races to be counted on
23 the ballots from the precincts that were selected pursuant to paragraph 1 ... the races to be
24 counted shall be determined by selecting by lot ..." Respondents instead selected the races
25 first, and then the precincts.

26 8. Upon information and belief, Respondents ignore the statutory requirement to

1 conduct the hand count at the central counting center, and instead held the hand count at a
2 facility controlled by the Maricopa County Sheriff. "For each countywide primary, general
3 and presidential preference election, the county officer in charge of the election shall
4 conduct a hand count at the central counting center" A.R.S. § 16-602 (C).

5 9. As a direct and proximate result of the actions and omissions of agents of Maricopa
6 County, Petitioners and all voters will be irrevocably harmed, should Maricopa County be
7 permitted to deny the participation of the Maricopa County Libertarian Party in the hand
8 count and observation process, as required by statute, and to ignore the requirements of
9 statutes and regulation as to the hand count process. Respondents' refusal to permit
10 participation as contemplated by statute, deviation from the process required by statute and
11 regulation, and outright violation of the requirements of the applicable statutes, impacts the
12 credibility and credence of the processes and procedures conducted, violates Arizona law,
13 undermines the voting public's confidence in the electoral process, and no later remedy can
14 adequately recompense for this unique and extraordinary harm.

15 10. This motion is timely filed. Given the urgency of the matter, it is respectfully
16 requested that it be decided by the court as soon as possible.

17 WHEREFORE, Petitioners request this Court to issue its Order to Show Cause
18 requiring the Respondents to appear and show cause, if any they have, why it should not
19 enter preliminary or final orders:

20 1. Issuing an injunction invalidating the prior hand count process for failing to comply
21 with statutory and regulatory requirements.

22 2. Issuing an injunction ordering Maricopa County to accept those individuals so
23 designated by the Maricopa County Libertarian Party as its election board members.

24 3. Issuing an injunction ordering Maricopa County to require participation by
25 individuals so designated by the Maricopa County Libertarian Party in the hand count
26 precinct and race selection process.

1 4. Issuing an injunction ordering Maricopa County to comply with A.R.S. § 16-602 (C)
2 in all its particulars, including that the selection of precincts shall not begin until all ballots
3 have been delivered to the central counting center and the unofficial vote total have been
4 made public, that the precincts to be hand counted be randomly selected before the races
5 to be counted are selected, and that the hand count shall be conducted at the central
6 counting center.

7 5. Issuing an injunction ordering Maricopa County to conduct the hand count again,
8 as soon as practicable, and in compliance with the statutes, regulations, and the Court's
9 orders.

10 6. Awarding Petitioners' reasonable costs and expenses pursuant to A.R.S. §12-
11 2030.

12 7. Ordering such other relief, including permanent or temporary injunction, restraining
13 order, or other order against Respondents, and awarding any other relief, as this Court
14 deems appropriate.

15 Respectfully submitted this 7th day of November, 2008.

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17 BY: _____
18 Michael Kielsky
19 Attorney for Petitioner
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