

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. KYLE BRYSON  
JUDGE

CASE NO. C20085016

DATE: May 04, 2012

PIMA COUNTY COMMITTEE OF THE  
ARIZONA LIBERTARIAN PARTY  
INCORPORATED  
Counter Claimants

**COPY**

VS.

BETH FORD

PIMA COUNTY TREASURER  
Counter Defendants

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**RULING**

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**UNDER ADVISEMENT RULING**

On January 28, 2009 the Hon. Charles Harrington found the Defendant Pima County Committee of the Arizona Libertarian Party, Inc.'s ("Libertarian Party") counterclaim<sup>1</sup> was an election challenge or was a request that the Court conduct a criminal investigation. Judge Harrington also found that the election challenge was time-barred and that the Court was without jurisdiction to conduct a criminal investigation. Accordingly, the Court Ordered the Libertarian Party's counterclaim be dismissed. On appeal, the Court of Appeals rejected the former ruling, stating:

(W)e conclude the trial court erred in dismissing the Libertarian Party's counterclaim on the grounds that it constituted an untimely filed election contest and amounted instead to a request for the court to conduct a criminal investigation. We do not decide whether the counterclaim otherwise stated a claim for injunctive relief and remand this matter to the trial court for further proceedings consistent with our decision.

See October 28, 2010 Memorandum Decision at page 12, paragraph 18.

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<sup>1</sup> The counterclaim was in fact characterized as a cross-claim by the Libertarian Party, but all have since acknowledged that was a mistake; thus, this Court will characterize the document accordingly.

Laura Stafford  
Judicial Administrative Assistant

## RULING

Pima County has now filed a motion to dismiss the counterclaim, alleging that the posture of the matter is such that there is no justiciable controversy alleged, which is necessary for a court to issue the order the Libertarian Party seeks.

### Analysis

The Libertarian Party filed its seconded amended counterclaim on October 15, 2008, and asserted that the 2006 special election ballots were subject to tampering, and, as a result, that the court “should use its power to issue a permanent injunction to prevent this unlawful conduct in future elections.” *See* Answer and Second Amended Cross Claim<sup>2</sup> dated October 15, 2008, page 4, paragraph 14. The Libertarian Party’s second amended counterclaim asserted this authority was vested in Article 6, § 14 of the Arizona Constitution.

For the Court to be able to issue an injunction there must be an underlying act to enjoin, as well as a clear, specifically-articulated order identifying prohibited future activity. At the root of its claim, the Libertarian Party alleges that the 2006 RTA election was “rigged.”<sup>3</sup> As the Court of Appeals held when it ruled this was not an election case, such a finding is incidental to the ultimate determination of whether the Court should grant the injunctive relief the Libertarian Party has requested. However, this is not the only step which must be taken in the ultimate analysis. It now appears the Libertarian Party will ask the Court to require Pima County to perform graphic scanning of all ballots cast and provide those images to the public in future elections, even though that claim has not been specifically pleaded.

Even if the underlying allegation of election fraud is taken as true, as required by Arizona law, the Court is without authority to issue the order the Libertarian Party urges it to issue. Election procedures lie in the province of the Executive Branch of the government. The development and drafting of substantive law lie within the province of the Legislative Branch of the government.

Thus, the most this Court could do, given the posture of the case, is issue orders that Pima County follow the law. However, a general “obey the law” injunction cannot issue. *NLRB v. Express Publishing Co.*, 312 U.S. 426, 435-36, 61 S.Ct. 693, 85 L.Ed. 930 (1941).

Since the Court can neither draft substantive law nor issue an “obey the law” injunction, the Libertarian Party’s counterclaim must fail. That is not to say, in a general sense, allegations of improprieties in elections

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<sup>2</sup> See above.

<sup>3</sup> The Libertarian Party makes other accusations that subsequent elections have been “questionable” but provides no evidence that, even if true, any such later questionable election results were connected to the 2006 RTA election process.

**RULING**

should not be taken seriously and addressed when and where appropriate. However, the posture in which this case now stands is such that there is no pending claim for which relief can be granted. The Court is without jurisdiction to issue the orders the Libertarian Party seeks.

Ruling

For the above and foregoing reasons, Pima County's motion to dismiss the Libertarian Party's counterclaim is hereby **GRANTED**.

cc: Kristen Barrett Klotz, Esq.  
Ronna L. Fickbohm, Esq.  
William J. Risner, Esq.  
Clerk of Court - Under Advisement Clerk

Laura Stafford  
Judicial Administrative Assistant