

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-002704

02/05/2008

HONORABLE PETER SWANN

CLERK OF THE COURT
D. Monroe
Deputy

MARICOPA COUNTY LIBERTARIAN PARTY MICHAEL KIELSKY

v.

HELEN PURCELL, et al.

COLLEEN CONNOR

ATTORNEY GENERAL
DOCKET-CIVIL-CCC

MINUTE ENTRY

3:00 p.m. This is the time set for Order to Show Cause Hearing Re: Petition for Writ of Mandamus and Writ of Injunction – Civil Election. Plaintiff, Maricopa County Libertarian Party, is represented by counsel, Michael Kielsky. Defendants, Helen Purcell, Karen Osborne, Maricopa County Board of Supervisors, Fran McCarroll, Fulton Brock, Don Stapley, Andrew Kunasek, Max W. Wilson, and Mary Rose Wilcox, are represented by Deputy County Attorneys, Colleen Connor and Laurence G. Tinsley.

Court Reporter, Judie Bryant, is present.

The Court has read the documents provided.

Argument is heard.

The task of the Court is to apply statutes as they are written, not to re-write them. The statute at issue in this case is A.R.S. § 16-621, which provides in pertinent part, “that all proceedings at the counting center shall be . . . under the observation of representatives of *each* political party and the public.”

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The statute does not limit observation to “participating” political parties. Because the legislature used the language “each political party” without qualification and without any special provisions that apply to Presidential Preference Elections, the Court concludes that the position of the Libertarian Party that it is entitled to have observers present pursuant to the statute is well taken.

The statute further provides that the proceedings shall be conducted according to the procedures prescribed in the manual provided for in A.R.S. § 16-452. That manual, which is dated October 30, 2007 and published by the Secretary of State, prescribes, among other procedures, certain security procedures applicable to party observers.

IT IS THEREFORE ORDERED granting the request for relief subject to the following provisos:

The two individuals identified, Mr. March and Mr. Shelby, will be permitted to observe in the counting center and shall be accorded the same latitude as the observers representing the other two political parties.

The observers shall not offer input and shall not raise objections to any of the proceedings. They are entitled to observe: to see and to listen. They are entitled to take notes. They are not entitled to bring in video cameras. There are video cameras trained on the facility. The statute requires that a video record be maintained, and the only photographic record will be that provided for by statute. There will be no other forms of electronic recording. If there are any concerns about the manner in which the counting is conducted, they may be raised by appropriate action in an orderly fashion during business hours of the Court.

The Court reminds the participants in today’s proceeding that the security rules set forth in the manual are to be observed and enforced. If there are any violations of those rules by any of the observers at the facility, it is the Court’s understanding and directive that the election officials would have the authority to cause any individuals posing a risk to the integrity of the election, the orderly conduct of the count, or the security of the facility to be removed summarily from the facility for the remainder of the evening until the Court can hear the matter further.

No observers are permitted in the secure area, the smaller room within the tabulating room. The vendor and key personnel are the only persons permitted in that area.

In the event that there any security concerns, the Court will defer to the judgment of County election officials until such time as there is an opportunity for further Court ruling. Just as the Court is ordering the representatives of the party to act in good faith to avoid even the

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appearance of, or potential for, interference with the process, the County will also respect provision in the manual that the observers have the right to be there, so long as they are behaving appropriately.

3:42 p.m. Matter concludes.