



Brian Edward Malnes
2157 West Alaska Avenue
Flagstaff, Arizona, 86001
928-774-4580

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Brian Edward Malnes,)	CV-16-08008-PCT-GMS
)	
)	
Plaintiff <i>Pro se</i> ,)	MEMORANDUM IN SUPPORT
)	OF PRELIMINARY INJUNCTION
vs.)	
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)	
State of Arizona, Michele Reagan)	
)	
Defendants.)	
)	
)	<u>ORAL ARGUMENT REQUESTED</u>

Brian Edward Malnes (Plaintiff) comes before the Court to file a “Memorandum in Support of Preliminary Injunction,” filed in support of Plaintiff’s “Motion for Preliminary Injunction” (Doc. #35), which states, “The Plaintiff moves that a Preliminary Injunction be issued to the State of Arizona, and Michele Reagan (Defendants) requiring them to abide by the U.S. Constitution, by removing the Un-Constitutional requirement for qualification for Federal Office found within the Arizona State Statute, A.R.S. § 16-311(A)&(B).” Because an injunction was not issued, the Plaintiff was denied his Constitutional Right to run for the U.S. House of Representatives. According to the Defendant’s Website,¹ the Plaintiff is not on the ballot for the office he was registered for with the FEC (#H6AZ01231). As such, the Plaintiff requests

¹ <http://apps.azsos.gov/election/2016/Candidates/PrimaryCandidates.htm>

1 injunctive relief that allows the Plaintiff to appear on the Arizona statewide ballot that is under
2 the supervision of the Defendants. November 8, 2016 ballot as an Independent Candidate (not a
3 write-in candidate) for the U.S. House of Representatives AZ-CD #1.

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5 After filing Document #35, the Plaintiff awaited a response from the Defendants (the
6 State of Arizona and Michele Reagan), which he received on June 6, 2016 in the form of a
7 “Purposed Partial Declaratory Judgment (PPDJ),” **EXHIBIT 1**. In the PPDJ, the Defendant’s
8 agree that the A.R.S. § 16-311(A) is indeed unconstitutional as stated: “The parties also stipulate
9 to a declaratory judgment that the requirement that an individual cannot run for office if the
10 individual has been convicted of a felony without being restored to civil rights incorporated into
11 A.R.S. § 16-311(A) is unconstitutional as applied to candidates for federal office.” Thus, the
12 Defendants agree with the U.S. Constitution’s ‘Qualification Clause’ and recognize that A.R.S. §
13 16-311(A) is “unconstitutional.”

14 On March 25, 2016, the Plaintiff filed a “Notice of Constitutional Challenge to a Statute”
15 (Doc. #33), in which he challenged A.R.S. § 16-311(A). At no time since that filing have the
16 Defendants addressed this issue, which they now acknowledge as unconstitutional. In fact, the
17 Defendant’s have pointed to A.R.S. § 16-311(A), “Indeed, the first day that Plaintiff can file
18 nomination papers with the Secretary’s office is May 2, 2016, and the last day is June 1, 2016.
19 A.R.S. § 16-311(A) (requiring filing of a nomination paper “not less than ninety nor more than
20 one hundred twenty days before the primary election.”). In other words, Defendants have not
21 taken any steps to harm Plaintiff’s federal campaign, much less taken any steps that would
22 irreparably harm his ability to run” (Doc. #24). However, by pointing to a law (A.R.S. § 16-
23 311(A)) that the Defendants now agree is unconstitutional, the Defendants have caused harm to
24 the Plaintiff’s campaign.

25 In addition, by obeying the law, the Plaintiff was unable to get signatures on his own
26 behalf, due to the fact he is not a “qualified elector.” In addition, the Defendants spokesman Matt
27 Roberts made a statement to the media that has led to the Plaintiff being questioned about his
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1 qualification, and arguably has led to his not being on the ballot for the State of Arizona General
2 Election. Thus, adding undue, and unconstitutional bias against the Plaintiff.

3 By agreeing that A.R.S. § 16-311(A) is unconstitutional, the Defendant's have admitted
4 they have violated the Plaintiff's civil rights by endorsing, and enforcing the requirements of
5 A.R.S. § 16-311(A) (Doc. #24).

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9 THEREFORE, the Plaintiff requests the Court to impose an injunction against the
10 statutes listed above and in the Plaintiff's "Motion for Preliminary Injunction" (Doc. #35), and
11 A.R.S. § 16-341(A) that precludes the Plaintiff from his Civil Right to run for office in the State
12 of Arizona. Plaintiff further requests injunctive relief that allows the Plaintiff to appear on the
13 Arizona statewide ballot that is under the supervision of the Defendants. November 8, 2016
14 ballot as an Independent Candidate for the U.S. House of Representatives AZ-CD #1.

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19 Dated this 11th day of June 2016.

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23 Brian Edward Malnes

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25 Flagstaff, AZ 86001

26 928-774-4580

27 malnes@me.com

28 Plaintiff, *Pro se*

EXHIBIT 1

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

BRIAN EDWARD MALNES,

Plaintiff,

vs.

STATE OF ARIZONA, and MICHELE
REAGAN, in her official capacity as Secretary
of State of Arizona,

Defendants.

Case No.: 3:16-CV-08008-GMS

**STIPULATION CONSENTING TO
ENTRY OF PARTIAL DECLARATORY
JUDGMENT AND PROPOSED PARTIAL
DECLARATORY JUDGMENT**

The parties stipulate and agree to the following:

- 1) On May 26, 2016, Plaintiff Brian Edward Malnes filed a Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 35) against Defendants the State of Arizona and Secretary of State Michele Reagan, alleging that the requirements in A.R.S. §§ 16-311 (A) and -341(A), applying a definition of “qualified elector” that bars felons from running as a candidate for federal office, is unconstitutional.
- 2) Plaintiff’s Amended Complaint (Doc. 7) does not include this claim. However, given the liberal standard of Rule 15 of the Federal Rules of Civil Procedure, and the parties’ agreement to resolve this issue by stipulation, it is not in the best

1 interest of the parties or the Court to require Plaintiff to amend his Amended
2 Complaint prior to resolving the issue.

- 3 3) To the extent that A.R.S. §§ 16-311(A) and -341(A) incorporate A.R.S. §§ 16-
4 101(A)(5) and -121(A) to bar an individual convicted of a felony that has not
5 been restored to civil rights from running for office, it does not apply to
6 candidates for federal office, based on the holding in *U.S. Term Limits, Inc. v.*
7 *Thornton*, 514 U.S. 779, 827 (1995).
- 8 4) All other current procedural requirements for federal candidates in Arizona law,
9 including, but not limited to the nomination paper filing requirements in A.R.S.
10 §§ 16-311 and -341, remain enforceable.
- 11 5) All current substantive and procedural requirements for candidates running for
12 State, county, and local elections remain enforceable, including all provisions of
13 A.R.S. §§ 16-101, -121, -311, and -341.
- 14 6) The parties stipulate to a declaratory judgment that, based on the Supreme Court
15 decision in *Term Limits*, an individual may run for federal office despite having
16 been convicted of a felony without being restored to civil rights, so long as the
17 individual meets all other requirements under the U.S. Constitution as well as all
18 other procedural requirements as described in paragraph 4 above.
- 19 7) The parties also stipulate to a declaratory judgment that the requirement that an
20 individual cannot run for office if the individual has been convicted of a felony
21 without being restored to civil rights incorporated into A.R.S. § 16-311(A) is
22 unconstitutional as applied to candidates for federal office.
- 23 8) The Defendants dispute Plaintiff's remaining claims, including those found in his
24 Amended Complaint (Doc. 7) and the first Temporary Restraining Order and
25 Preliminary Injunction (Doc. 18) filed on March 1, 2016. This Stipulation
26 Consenting to Entry of Partial Declaratory Judgment and Proposed Partial
Declaratory Judgment shall have no effect on Plaintiff's remaining claims and
Defendants' defenses to those claims.

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

11 BRIAN EDWARD MALNES,

12 Plaintiff,

13 vs.

14 STATE OF ARIZONA, and MICHELE
15 REAGAN, in her official capacity as Secretary
of State of Arizona,

16 Defendants.

Case No.: 3:16-cv-08008-GMS

PARTIAL DECLARATORY JUDGMENT

17 Having considered the Stipulation Consenting to Entry of Partial Declaratory Judgment,
18 and good cause appearing therefore, the Court hereby grants Partial Declaratory Judgment
19 pursuant to the terms Stipulation.

20 DONE IN OPEN COURT this ____ day of June, 2016.

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22 The Honorable G. Murray Snow
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