



August 14, 2008

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Pedro A. Cortés,
Secretary of the Commonwealth
210 N. Office Building
Harrisburg, PA 17120

Re: Request to clarify meaning of 25 Pa. Cons. Stat. Ann. §
3060(c), which prohibits electioneering within polling place

Dear Secretary Cortés,

We are writing to ask you to provide an opinion clarifying that the definition of "electioneer," as used in the Pennsylvania Election Code, 25 Pa. Cons. Stat. Ann. § 3060(c), does not apply to and/or prohibit *voters* from casting ballots while wearing partisan T-shirts, stickers, and buttons. "Electioneer," a term that is not defined by the election code or Pennsylvania case law, has been interpreted inconsistently by poll workers and has led to confusion about what *voters* may wear into polling places when they cast their ballots. We respectfully request that you provide an opinion to the county boards of elections clarifying the meaning of "electioneer" as that term is used in § 3060(c). And because the statute implicates First Amendment free-speech rights, we urge you to adopt a narrow definition of the term "electioneer" that would explicitly allow *voters* to wear candidate t-shirts, buttons, stickers, and similar items into the polling place in order to cast their votes.

We received complaints from people in Mt. Lebanon, Pa., and in Ardmore, Pa., who were prohibited from voting in the April 22, 2008, primary because they wore t-shirts endorsing candidates for office into the polling place.¹ And we have learned that the website for the Centre County Board of Elections informs voters that they will be asked to remove "any campaign material that is

¹ The complainants were permitted to vote if they agreed to remove their t-shirts or turn them inside out. We have received similar complaints in recent elections from elsewhere in Allegheny County, as well as Lancaster and York Counties.

exposed (hat, shirt, button, etc.)” before voting.² But practice varies from one polling place to another. Identical t-shirts and other forms of “passive” electioneering, such as candidate stickers and buttons, were permitted during the primary election in other Allegheny County polling places, for example.

25 Pa. Cons. Stat. Ann. § 3060(c) states that “[n]o person, when within the polling place, shall electioneer or solicit votes for any political party, political body or candidate, nor shall any written or printed matter be posted up within the said room, except as required by this act.” Only poll watchers, voters in the course of voting and those providing assistance to them, election officers, clerks, machine inspectors, overseers, and peace and police officers are allowed within ten feet of the polling place. *Id.* at § 3060(d). Accordingly, the statute’s prohibition of electioneering within the polling place applies only to voters and those persons necessary to facilitate and oversee the voting process. Although the state can constitutionally prohibit the latter category of persons from wearing items endorsing candidates for office while performing their election-day duties, when that restriction is applied to voters themselves — who must go to the polling place to exercise their right to vote — it implicates important First Amendment rights.

Because of the First Amendment interests involved, county boards of elections and individual poll workers should not be permitted to decide for themselves whether voters who wear candidate t-shirts, buttons, and stickers to the polls are engaged in electioneering. According such broad discretion to poll workers has the potential to result in unconstitutional viewpoint discrimination,³ and voters’ First Amendment rights should not depend on which county they happen to live in. There is obvious confusion about what acts constitute electioneering under the statute and a concurrent need on the part of county boards of elections and poll workers for guidance on this issue.

That guidance should define the term “electioneer” narrowly. When First Amendment freedoms are at issue, “government may regulate only with narrow specificity.”⁴ Simply wearing a t-shirt, sticker, or button endorsing a candidate is not “electioneering” within the plain meaning of the word, which is defined by Merriam-Webster as “to take an active part in an election; specifically: to work for the election of a candidate or party.” Any decision to depart from the plain

² Elections and Voter Registration, Centre County Board of Elections, available at <http://www.co.centre.pa.us/elections/elect.asp>.

³ *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 130-131 (1992) (“A government regulation that allows arbitrary application is inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view. To curtail that risk, a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license must contain narrow, objective, and definite standards to guide the licensing authority.”) (internal quotations and citations omitted).

⁴ *N.A.A.C.P. v. Button*, 371 U.S. 415, 432-33 (1963).

meaning of the word and include passive acts like wearing a candidate t-shirt, sticker, or button in the statute's prohibitions must be made by the legislature.

For all of these reasons, we request that you provide a written opinion to the county boards of elections by September 2, 2008, clarifying that *voters* who are present in the polling place to cast their ballots are permitted to wear t-shirts, stickers, and buttons endorsing candidates for office. We also ask that you provide us with a copy of that opinion. Please contact us at (412) 681-7864 if you have any questions about this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara J. Rose", with a long horizontal flourish extending to the right.

Sara J. Rose, Staff Attorney
Witold J. Walczak, Legal Director
ACLU of Pennsylvania

Andrea Mulrine, President
League of Women Voters of Pennsylvania