

## Remedy for Leaving a Candidate Off of the Ballot

*Krieger v. Peoria (David G. Campbell, D. Ariz. 2:14-cv-1762)*

During early voting for a position on a city council, a candidate's name was left off of the ballot twice. He filed a federal complaint seeking a special election instead of a third mailing. The district judge granted him the requested relief. The judge and the parties resolved issues of whether the special election would allow for a runoff election and how campaign-finance rules would apply.

*Subject:* Voting irregularities. *Topics:* Election errors; enjoining elections; getting on the ballot; absentee ballots; early voting; primary election; campaign finance.

On Thursday, August 7, 2014, a candidate for city council in Peoria, Arizona, filed a federal complaint in the District of Arizona challenging election officials' remedy for the omission of the plaintiff's name on early ballots sent out beginning on July 31 for an August 26 election.<sup>1</sup> The candidate wanted a special election instead of officials' sending out corrected ballots.<sup>2</sup> On August 8, the plaintiff filed a motion to file an overlong motion for a temporary restraining order and a preliminary injunction,<sup>3</sup> and Judge David G. Campbell accepted the overlong motion on August 11.<sup>4</sup>

On August 12, Judge Campbell set a telephone conference for the following afternoon.<sup>5</sup> He held a hearing on August 22.<sup>6</sup>

On the day of the hearing, Judge Campbell issued a temporary restraining order, agreeing with the candidate that ballots cast omitting the candidate could not be adequately remedied by providing voters with corrected ballots for their optional use; a special election with correct ballots was required.<sup>7</sup>

On August 28, the parties notified Judge Campbell that disputes remained about how to handle a runoff election if one of the candidates did not get a majority of votes on general-election day, when the race for the

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1. Complaint, *Krieger v. Peoria*, No. 2:14-cv-1762 (D. Ariz. Aug. 7, 2014), D.E. 1; see Second Amended Complaint, *id.* (Aug. 15, 2014), D.E. 15; Amended Complaint, *id.* (Aug. 8, 2014), D.E. 5; see also Jackee Coe, *Ballot Blunder in Peoria*, Ariz. Republic, Aug. 7, 2014, at A1; Gary Grado, *Doctor Mistakenly Left Off Peoria Ballot, Plans to Sue*, Ariz. Capitol Times, Aug. 5, 2014; *Mesquite Candidate's Name Left Off Early Ballots*, Peoria Times, Aug. 5, 2014; *Peoria Candidate Sues in Ballot Fiasco*, Ariz. Republic, Aug. 8, 2014, at A3; *Peoria Council Candidate Left Off Primary Ballot, Twice*, Peoria Indep., Aug. 13, 2014, at 2.

2. Second Amended Complaint, *supra* note 1, at 10, 21; Amended Complaint, *supra* note 1, at 9, 21; Complaint, *supra* note 1, at 8, 17–18; see Jackee Coe, *3 Polling Locations Open to Help Fix Ballot Mistake*, Ariz. Republic, Aug. 15, 2014, at A5.

3. Page Motion, *Krieger*, No. 2:14-cv-1762 (D. Ariz. Aug. 8, 2014), D.E. 7.

4. Order, *id.* (Aug. 11, 2014), D.E. 11; see Injunction Motion, *id.* (Aug. 11, 2014), D.E. 12.

5. Docket Sheet, *id.* (Aug. 7, 2014) (D.E. 14); see *id.* (D.E. 22).

6. *Id.* (D.E. 37).

7. Temporary Restraining Order, *id.* (Aug. 22, 2014), D.E. 39, 2014 WL 4187500; see *Ballot Foul-Ups Derail Peoria Primary*, Ariz. Republic, Aug. 23, 2014, at A7; *Mesquite Election Decision Due This Week*, Peoria Times, Sept. 2, 2014.

plaintiff's seat would be held.<sup>8</sup> On September 3, Judge Campbell set the matter for hearing on the following day.<sup>9</sup> On September 5, he ordered that a runoff election would be held, if necessary, on March 10, 2015.<sup>10</sup>

On September 15, 2014, the parties stipulated that campaign-finance limits would apply to the special election on general-election day for the plaintiff's seat as if the August 26 election had not happened.<sup>11</sup>

Although a runoff election was in fact required, the plaintiff's third-place showing did not qualify him for it.<sup>12</sup>

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8. Status Report, *Krieger*, No. 2:14-cv-1762 (D. Ariz. Aug. 28, 2014), D.E. 40.

9. Docket Sheet, *supra* note 5 (D.E. 41); *see id.* (D.E. 44).

10. Order, *Krieger*, No. 2:14-cv-1762 (D. Ariz. Sept. 5, 2014), D.E. 45; *see* Jackee Coe, *Special Election for Peoria Council Set to Be Held Nov. 4*, Ariz. Republic, Sept. 5, 2014, at A11; *Mesquite Election Dates Set*, Peoria Times, Sept. 5, 2014.

11. Stipulation, *Krieger*, No. 2:14-cv-1762 (D. Ariz. Sept. 15, 2014), D.E. 46.

12. *See It's a Runoff in Mesquite*, Peoria Times, Nov. 5, 2014.