

1 ANDREW P. THOMAS  
MARICOPA COUNTY ATTORNEY  
2 By: Colleen Connor  
Deputy County Attorney  
3 State Bar No. 015679  
MCAO Firm No. 00032000  
4 [connorc@mcao.maricopa.gov](mailto:connorc@mcao.maricopa.gov)

CIVIL DIVISION  
5 222 North Central Avenue, Suite 1100  
Phoenix, Arizona 85004  
6 Telephone (602) 506-8541

7 Dennis I. Wilenchik, Esq.  
State Bar No. 05350  
8 Kathleen Rapp, Esq.  
State Bar No. 023982  
9 WILENCHIK AND BARTNESS, P.C.  
2810 North Third Street  
10 Phoenix, Arizona 85004  
Telephone (602) 606-2810  
11 [DIW@wb-law.com](mailto:DIW@wb-law.com); [kathleenr@wb.com](mailto:kathleenr@wb.com)  
*Attorneys for Twelve County Recorders*  
12 *and Twelve County Elections Directors*

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

14 Maria M. Gonzalez, et al.,  
15 Plaintiffs,  
16  
17 v.  
18 State of Arizona, et al.,  
19 Defendants.

NO. CV06-1268-PHX-ROS (LEAD)  
NO. CV06-1362-PCT-JAT  
NO. CV06-1575-PHX-ROS  
(Consolidated)  
  
**COUNTY DEFENDANTS'  
OBJECTION TO SUBPOENAS  
AND MOTION TO QUASH**  
  
(Assigned to the Honorable  
Roslyn O. Silver)

21 Pursuant to Fed. R. Civ. P. 45, Maricopa, Apache, Cochise, Gila, Graham,  
22 Greenlee, LaPaz, Mohave, Pima, Santa Cruz, Yavapai and Yuma County

1 Defendants (“County Recorders” and “County Elections Directors”) submit this  
2 Motion to Quash trial subpoenas served within the last two businesses days for  
3 election officials throughout the State to appear and testify in this Court  
4 tomorrow, July 9, 2008 at 9:30 a.m. The County Recorders and Elections  
5 Directors from Maricopa, Pima, Cochise, Greenlee, Mohave, Yuma, Apache,  
6 Graham, and Yavapai Counties have been served with these subpoenas. In  
7 addition, Tammy Patrick, the Federal Compliance Officer for the Maricopa  
8 County Elections Department, is not a party to the action and was served with a  
9 subpoena on July 7, 2008. This Motion to Quash is supported by the following  
10 memorandum of points and authorities and the attachments hereto.

### 11 **MEMORANDUM**

12 With only days remaining before the bench trial, Gonzalez Plaintiffs began  
13 issuing subpoenas to County election officials. With very little notice, the  
14 Defendants will have no time to prepare for their testimony, little time to make  
15 the appropriate travel arrangements, and will be away from their office hindering  
16 them from effectively discharging their election duties in these final weeks before  
17 the Primary Election. Accordingly the aforementioned County Recorders,  
18 County Elections Directors, and Tammy Patrick object to these subpoenas and  
19 request the Court quash these subpoenas for their failure to provide adequate  
20 time to comply, the undue hardship on the witnesses, and for the Plaintiffs  
21 failure to file proof of service of the subpoenas.

#### 22 **I. Failure to Allow a Reasonable Time to Comply**

The Gonzalez Plaintiffs issued two subpoenas on Thursday, July 3, 2008  
and numerous subpoenas were served on Monday, July 7, 2008. Because the  
subpoenas do not allow a reasonable amount of time for compliance and were  
issued within two business days of the date the witnesses are expected to  
appear to testify, the subpoenas should be quashed. Such short notice for a  
witness to prepare and arrange to appear at trial is unreasonable. Moreover,  
these election officials have prior obligations that cannot be changed at this late

1 date. Maricopa County Recorder Helen Purcell will be in St. Louis, Missouri on  
2 Wednesday, July 9, 2008, attending a conference of the National Association of  
3 Counties of which she is a Board member. At that conference, Mrs. Purcell is  
4 scheduled to Chair the Membership Programs and Services Committee, and to  
5 participate in programs for the Technical Summit Committee and the Telephone  
6 and Technology Committee.

6 Likewise, Pima County Recorder F. Ann Rodriguez has numerous other  
7 obligations during the time she is expected to appear in Phoenix to testify. On  
8 Wednesday, July 9, 2008, Ms. Rodriguez has a joint meeting with Election  
9 Division and Central Information Technology regarding election related matters,  
10 a meeting with Facilities Management and Security Department to discuss  
11 election related matters regarding access for cleaning, maintenance issues and  
12 security issues, and a meeting with the Recorder's staff to discuss upcoming  
13 Primary Election assignments, issues, concerns or problems. These meetings  
14 are the last before the Recorder's Office starts mailing out early ballots for the  
15 Primary Election. On July 10 and July 11, 2008, Ms. Rodriguez will be recruiting  
16 additional staff and early voting site personnel as well as completing other  
17 projects that need to be dealt with prior to the Primary Election. In Mohave,  
18 Cochise, and Apache Counties, the County Recorders and Elections Directors  
19 will have to make the 4 – 5 hour drive to Phoenix today to ensure that they will  
20 be present in Phoenix tomorrow for the 9:30 a.m. start of the trial.

## 17 **II. Subpoenas Subject Persons to Undue Hardship**

18 With such little advance notice of the subpoenas and the proximity of the  
19 Primary Election, the subpoenas subject these individuals to an undue burden.  
20 The County Recorders and Elections Directors are preparing for the September  
21 2, 2008 Primary Election, which is just 56 days away. Early voting begins on  
22 July 31, 2008, only three weeks from the commencement of the trial. Gonzalez  
Plaintiffs are demanding that elections officials from the Counties throughout the  
State appear and testify at sometime during the next two weeks of the trial.

1 Within a day of issuing the subpoenas, the Recorders and Elections Directors  
2 will have to cancel appointments, make travel arrangements, and make the long  
3 drive to Phoenix for the start of the trial, July 9, 2008, and then return on  
4 whatever day they will likely have to testify.

4 Furthermore, Gonzalez Plaintiffs have not taken reasonable steps to avoid  
5 imposing undue burden or expense on the persons subject to the subpoenas in  
6 accordance with Fed. R. Civ. P. 45(c)(1). First, Gonzalez Plaintiffs have  
7 provided Defendants with the list of witnesses and the order they plan to call the  
8 witnesses at trial. Exhibit A. Gonzalez Plaintiffs plan to call 28 witnesses before  
9 calling any of the County witnesses yet the subpoenas require the County  
10 witnesses appear on the first day of trial. Second, County Defendants have  
11 already agreed to stipulate to authenticity and foundation of records that the  
12 Defendants disclosed during discovery thereby making the testimony of the  
13 County elections officials unnecessary. Exhibit B. Third, Gonzalez Plaintiffs  
14 have indicated that even if the Counties reach an agreement to stipulate to the  
15 admission of the County documents, the County Defendants will still be  
16 compelled to testify if the State does not stipulate to the admission of the State's  
17 documents disclosed during discover. Exhibit C. The Gonzalez Plaintiffs are  
18 holding the County election officials hostage in their negotiations with the State  
19 although such a contingency was not imposed on Coconino and Navajo  
20 Counties Recorders and Elections Directors.

### 17 **III. No Notice of Service**

18 Gonzalez Plaintiffs have failed to file proof of service of issuing these  
19 subpoenas in accordance with Fed. R. Civ. P. 45(b)(4). As a result, the  
20 Defendants only learned that 30 subpoenas were issued by Gonzalez Plaintiffs  
21 for witnesses to appear on July 8, 2008 when Plaintiffs filed its *Motion for*  
22 *Hearing or Conference re: to Administer Oath to Subpoenaed Witnesses by*  
*Jesus M Gonzalez*. Docket No. 920. Without proper proof of service, Gonzalez  
Plaintiffs 30 subpoenas should be quashed.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

**IV. Conclusion**

The Defendant County Recorders, Defendants County Elections Directors, and the Maricopa County Elections Department Federal Compliance Officer respectfully request this Court Quash these trial subpoenas, which provide little notice to election officials throughout Arizona and will impose an undue hardship on the subpoenaed witnesses.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of July 2008.

ANDREW P. THOMAS  
MARICOPA COUNTY ATTORNEY

BY:  /s/ Colleen Connor  
COLLEEN CONNOR  
Deputy County Attorney  
*Attorneys for the Twelve County  
Recorders and Twelve County Elections  
Directors*

-and-

DENNIS I. WILENCHIK, ESQ.  
KATHLEEN RAPP, ESQ.  
WILINCHIK & BARTNESS, P.C.  
*Attorneys for the Twelve County  
Recorders and Twelve County Elections  
Directors*

1 ORIGINAL of the foregoing E-FILED  
and copies MAILED this 8<sup>th</sup> day of  
2 July 2008, to:

3 Honorable Roslyn O. Silver  
UNITED STATES DISTRICT COURT  
4 Sandra Day O'Connor U.S. Courthouse  
401 West Washington Street, Suite 624, SPC 59  
5 Phoenix, Arizona 85003

6 CERTIFICATE OF SERVICE

7 I hereby certify that on the 8<sup>th</sup> day of July 2008, I caused the foregoing  
document to be electronically transmitted to the Clerk's Office using the CM/ECF  
8 System for filing and transmittal of a Notice of Electronic Filing to CM/ECF  
registrants.

9  
10 /s/ Colleen Connor  
GN 06-263

11 S:\COUNSEL\Civil\Matters\GN\2006\Gonzales v. State GN06-263\Pleadings\CAPTION.doc

12

13

14

15

16

17

18

19

20

21

22