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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Maria M. Gonzalez, et al.,

Plaintiffs,

v.

State of Arizona, et al.,

Defendants.

NO. CV06-1268-PHX-ROS (LEAD)

NO. CV06-1362-PCT-JAT

NO. CV06-1575-PHX-ROS

(Consolidated)

**LA PAZ COUNTY TREASURER'S
OBJECTION TO PLAINTIFFS'
SUBPOENA**

1 Ellen Solper, La Paz County Treasurer, pursuant to Fed. R. Civ. P. 45, objects to
2 the subpoena issued by the Plaintiffs commanding the production for inspection and
3 copying of all uncounted provisional and conditional provisional ballots from each
4 election held in the county since January 2005.

5 Producing the documents as commanded by the subpoena would require the
6 Treasurer to violate the provisions of state law. State law requires:

7 After the canvass has been completed, the officer in charge of
8 elections shall deposit the package or envelope containing the
9 ballots in a secure facility managed by the county treasurer,
10 who shall keep it unopened and unaltered for twenty-four
months for elections for a federal office or for six months for
all other elections, at which time he shall destroy it without
opening or examining the contents.

11 A.R.S. § 16-624(A).

12 Subsection D specifically provides that the County Treasurer may be ordered by
13 the court to deliver to it, not Plaintiffs, the envelopes containing the ballots **if a recount**
14 **is ordered or a contest begun** within six months. Plaintiffs seek neither a recount nor
15 present an election contest. Thus, there is no statutory basis for accessing the
16 provisional ballot envelopes. Because A.R.S. § 16-624(D) includes only two
17 circumstances under which access may be granted, the Legislature has necessarily
18 excluded accessing the ballot envelopes for any other reason.

19 In addition, compliance with the subpoena would cause an undue burden on the
20 Treasurer who would have to search through all the election records in the secure facility
21 to determine which ones may be responsive to the subpoena. The Treasurer is merely
22

1 the custodian of the ballots. The Treasurer and her staff have little or no familiarity with
2 the election process or the method for storing these records. The search for the
3 requested records will most likely disrupt the integrity of the remaining ballots that are
4 in the Treasurer's custody.

5 For these reasons, the La Paz County Treasurer objects to the subpoena issued by
6 the Plaintiffs.

7

8 RESPECTFULLY SUBMITTED this 14th day of February 2008.

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ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY

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BY: /s/ Colleen Connor
COLLEEN CONNOR
Deputy County Attorney

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-and-

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1 ORIGINAL of the foregoing E-FILED
and copies MAILED this 14th day of
2 February 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 15th day of February, 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.

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10 Stephanie M. Bame

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