

1 ANDREW P. THOMAS  
MARICOPA COUNTY ATTORNEY

2  
3 By: BRUCE P. WHITE (004802)  
4 Deputy County Attorney  
MCAO Firm No. 00032000  
whiteb@mcao.maricopa.gov

5 CIVIL DIVISION  
6 Security Center Building  
7 222 North Central Avenue, Suite 1100  
Phoenix, Arizona 85004  
Telephone (602) 506-8541

8 Attorneys for Subpoena Respondent  
9 Charles Hoskins, Maricopa County Treasurer

10 IN THE UNITED STATES DISTRICT COURT

11 FOR THE DISTRICT OF ARIZONA

12 Maria M. Gonzalez, et al.,

13 Plaintiffs,

14 v.

15 State of Arizona, et al.,

16 Defendants.

NO. CV06-1268-PHX-ROS (LEAD)  
NO. CV06-1362-PCT-JAT  
NO. CV06-1575-PHX-ROS  
(Consolidated)

**MARICOPA COUNTY  
TREASURER'S OBJECTION TO  
PLAINTIFFS' SUBPOENA**

17 Charles Hoskins, Maricopa County Treasurer, pursuant to F.R.C.P. 45,  
18 objects to the subpoena issued by the Plaintiffs commanding the production for  
19 inspection and copying of all uncounted provisional and conditional provisional  
20 ballot envelopes from each election held in the county since January 2005. The  
21 objection is made on the following grounds:  
22

1           **1. Opening the Requested Ballots and Removing them from the**  
2 **Secure Facility Would Violate State and Federal Law.**

3           Producing the documents as commanded by the subpoena would require  
4 the Treasurer to violate the provisions of both state and federal law. State law  
5 requires:

6                       After the canvass has been completed, the officer in  
7 charge of elections shall deposit the package or  
8 envelope containing the ballots in a secure facility  
9 managed by the county treasurer, 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.

10 A.R.S. § 16-624(A).

11  
12           The only purpose recognized by Arizona law for the examination of  
13 ballots that have been cast is for the purpose of an election contest A.R.S. § 16-  
14 624(D). Even then significant safeguards are put in place to maintain the  
15 integrity of the ballots. A.R.S. § 16-677(B).

16           In addition to the prohibition of A.R.S. § 16-624, federal law prohibits the  
17 production of the ballots as requested in the subpoena. Pursuant to 42 U.S.C. §  
18 1974, each elections officer shall preserve for 22 months from any election  
19 (including a primary election) all records and papers relating to voting for federal  
20 offices, including ballots. If state law provides for a custodian to retain and  
21 preserve these documents, the custodian assumes the responsibility to comply  
22

1 with federal law regarding ballot retention. Thus, because Arizona law provides  
2 for the delivery of ballots to the Treasurer, the Treasurer assumes the  
3 responsibility to retain the ballots in compliance with 42 U.S.C. § 1974.

4 This case is not an election contest for which the statutes provide an  
5 opportunity to examine ballots. Further, Plaintiffs have made no showing that  
6 they cannot prepare for trial without the examination sought. The subpoena  
7 provides no safeguards for the integrity of the ballots but merely commands their  
8 production at a private law office.

## 9 **2. The Subpoena Would Cause an Undue Burden for the Treasurer**

10 Any order to compel production must protect any person who is not a  
11 party or an officer of a party from significant expense resulting from the  
12 inspection or copying commanded. F.R.C.P. 45(c)(2)(B). The protections  
13 against undue burden or harassment provided in Rule 45 are even greater when  
14 applied to third parties. *Dart Industries Co. v. Westwood Chemical Co.*, 649 F.2d  
15 646, 649 (9th Cir. 1980). The Maricopa County Treasurer who is the subject of  
16 the subpoena is not a party to this action.

17 Notwithstanding the protected nature of the ballots, in order to comply with  
18 the subpoena, a representative of the Treasurer's office would have to dig  
19 through thousands of boxes to determine which ones contained material that  
20 may be responsive. Pallets of boxes would have to be undone and each box  
21 examined to locate the requested ballots. Then those boxes containing  
22 provisional ballots would have to be transported to the offices of the requesting



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

CERTIFICATE OF SERVICE

ORIGINAL of the foregoing E-FILED  
and copies MAILED this 8th day of  
February, 2008, to:

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

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

/s/ Tyna M. Garcia