

Office of the Yavapai County Attorney  
255 E. Gurley Street, Suite 300  
Prescott, AZ 86301  
Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 SHEILA SULLIVAN POLK  
2 YAVAPAI COUNTY ATTORNEY  
3 By Thomas M. Stoxen (014904)  
4 Deputy County Attorney  
5 255 E. Gurley Street  
6 Prescott, AZ 86301  
7 (928) 771-3338

8 Attorneys for Subpoena Respondent  
9 Yavapai County Treasurer, Ross Jacobs

10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF ARIZONA

12 Maria M. Gonzalez, et al.  
13 Plaintiffs,  
14 vs.  
15 State of Arizona, et al.  
16 Defendants.

FILED  \_\_\_\_\_ LODGED \_\_\_\_\_  
RECEIVED \_\_\_\_\_ COPY \_\_\_\_\_  
FEB 12 2008  
CLERK U S DISTRICT COURT  
DISTRICT OF ARIZONA  
BY \_\_\_\_\_ P DEPUTY

No. CV06-01268-PHX-ROS (Lead)  
No. CV06-01362-PHX-ROS  
No. CV06-01575-PHX-ROS

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

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

21 **1. Compliance with the Subpoena would violate Arizona law.**

22 Arizona Revised Statute § 16-624(A) states as follows:

23 **16-624. Disposition of official returns and ballots**

24 A. After the canvass has been completed, the officer in charge of elections shall  
25 deposit the package or envelope containing the ballots in a secure facility managed  
26 by the county treasurer, who shall keep it unopened and unaltered for twenty-four

1 months for elections for a federal office or for six months for all other elections, at  
2 which time he shall destroy it without opening or examining the contents.

3 B. Irregular ballots shall be preserved for six months after the election and the  
4 packages containing them may be opened and the contents examined only upon an  
5 order of court. At the expiration of such time, the ballots may be disposed of in the  
6 discretion of the officer or board having charge of them.

7 C. The officer in charge of elections shall produce the other packages or envelopes  
8 before the board of supervisors when it is in session for the purpose of canvassing  
9 the returns.

10 D. If a recount is ordered or a contest begun within six months, the county  
11 treasurer may be ordered by the court to deliver to it the packages or envelopes  
12 containing the ballots, and thereupon they shall be in the custody and control of the  
13 court.

14 There is no provision under A.R.S. §16-624 that allows the Yavapai County Treasurer to  
15 open the package containing the ballots or alter the contents of the package (by sorting through  
16 and removing the rejected conditional provisional and provisional ballots) in the manner  
17 requested by the Plaintiffs. The Treasurer may remove the ballots and deliver them to the custody  
18 and control of the court in an election contest.<sup>1</sup> However, Plaintiffs' action is not an election  
19 contest.

20 Additionally, compliance with the subpoena may subject the County Treasurer to criminal  
21 liability under A.R.S. §§ 16-1009, 16-1010, 16-1016(A)(9) and 16-1018(A)(2).

22 **2. Compliance with the Subpoena would place an undue burden for the Yavapai  
23 County Treasurer.**

24 Yavapai County has held at least two polling place elections from January 2005 to the  
25 date of the subpoena and it is estimated that over 3,000 rejected conditional provisional ballots  
26 and provisional ballots from these elections.

---

<sup>1</sup> Delivery to the custody of the court is appropriately prudent since the envelopes, besides  
containing the voter's ballot contain the voter's personal information such as the name, signature,  
address, telephone number.

1 Production of these documents will present a significant burden on the non-party Yavapai  
2 County Treasurer. As stated in the attached affidavit of Yavapai County Treasurer Ross Jacobs,  
3 not only will the Treasurer will have to allocate staff to sort through boxes of ballots to search for  
4 the requested documents, but the Treasurer will have to train his staff as to what types of  
5 documents are responsive to Plaintiff's subpoena. The Treasurer is merely the custodian of the  
6 ballots and he and his staff have little or no familiarity with the election process or the requested  
7 documents. The search for the requested documents will most likely disrupt the integrity of the  
8 remaining ballots which are in the Treasurer's custody.

10 Finally, it is the Treasurer's understanding that Plaintiffs seek the requested ballots to  
11 support their challenge of voter identification requirements, yet Plaintiffs have not restricted their  
12 request to only conditional provisional and provisional ballots rejected for identification issues.<sup>2</sup>

14 Because of the Arizona Statutory prohibitions against releasing the rejected conditional  
15 provisional and provisional ballot envelopes, which contain not only the voter's personal  
16 information, but also the voter's completed ballot, it would be imprudent for the Yavapai County  
17 Treasurer to comply with the subpoena prior to the court's ruling on his objection and any other  
18 objections to such a disclosure. The Yavapai County Treasurer objects to the subpoena pursuant  
19 to Rule 45(c)(2)(B) and asks that the subpoena be quashed pursuant to Rule 45(c)(3) as it requests  
20 information protected by Arizona Statute and subjects an undue burden upon the Treasurer as  
21 well as the voters whose ballots will be disturbed if the Treasurer is forced to comply with the  
22 subpoena.  
23

24 \_\_\_\_\_  
25 <sup>2</sup> Provisional ballots may be rejected for many reasons other than voter identification such as, 1)  
26 the voter is not registered; 2) there is no ballot in the envelope; 3) the voter registered after the 29-  
day cut off period; 4) there is no voter signature; 5) insufficient/illegible information; 6) signature  
does not match; 7) wrong party; 8) outside jurisdiction ballot; 9) voter challenge upheld; 10)  
voted in wrong precinct; and 11) voted and returned an early ballot

**Office of the Yavapai County Attorney**

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

RESPECTFULLY SUBMITTED this 12th day of February, 2008.

Sheila Sullivan Polk  
YAVAPAI COUNTY ATTORNEY

**By: /s/ Thomas M. Stoxen**  
Thomas M. Stoxen  
Deputy County Attorney

Attorneys for Subpoena Respondent  
Ross Jacobs, Yavapai County Treasurer

**Office of the Yavapai County Attorney**

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

CERTIFICATE OF SERVICE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

ORIGINAL of the foregoing E-Filed  
and copies MAILED this 12th 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, AZ 85003

I hereby certify that on the 12<sup>th</sup> 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/ Thomas M. Stoxen

Office of the Yavapai County Attorney  
255 E. Gurley Street, Suite 300  
Prescott, AZ 86301  
Phone: (928) 771-3344 Facsimile: (928) 771-3110

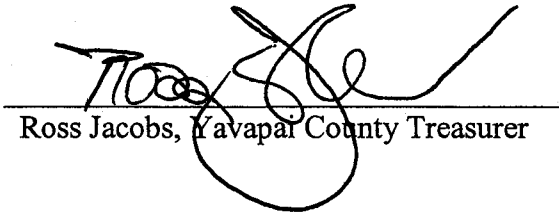
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**Affidavit of Yavapai County Treasurer Ross Jacobs**

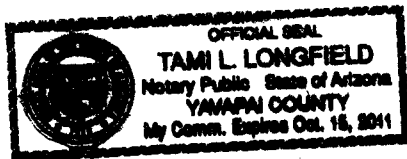
Ross Jacobs, being first duly sworn, upon his oath deposes and says:

1. I am the elected Treasurer of Yavapai County, Arizona.
2. One of my statutory responsibilities is to receive and dispose of official election returns and ballots pursuant to A.R.S. § 16-624.
3. I have no further statutory election responsibilities and therefore have limited knowledge as to the election process and the types of ballots in my custody pursuant to A.R.S. § 16-624. My staff also has limited knowledge as to the election process and the types of ballots in my custody.
4. It would be unduly burdensome on me and my staff to sort through boxes of unfamiliar documents to locate the documents requested by the Plaintiffs.

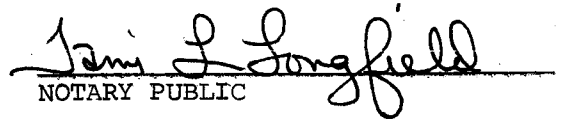
Further Affiant Saith Naught

  
\_\_\_\_\_  
Ross Jacobs, Yavapai County Treasurer

SUBSCRIBED AND SWORN to before me, the undersigned Notary Public, on this 11<sup>th</sup> day of February, 2008 by Ross Jacobs.



10-15-2011  
\_\_\_\_\_  
My Commission Expires

  
\_\_\_\_\_  
NOTARY PUBLIC