

MICHAEL B. WHITING
APACHE COUNTY ATTORNEY
Celeste Robertson
Chief Deputy County Attorney
Bar ID #: 035588
Apache County Attorney's Office
P.O. Box 637
St. Johns, AZ 85936
Telephone: (928) 337-7560
groupmail@apachelaw.net
Attorney for Non-Party Apache County

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

Kathleen Hoffard,

Plaintiff,

vs.

Cochise County, Arizona; Lisa Marra, in
her official capacity as Director of Cochise
County Elections Department

Defendants.

Case No.: 4:20-cv-00243-SHR

**NON-PARTY APACHE
COUNTY'S MOTION TO
QUASH SUBPOENA**

(Assigned to the Hon. Scott H. Rash)

INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 45(d)(3), Apache County, by and through undersigned counsel, hereby respectfully requests the Court enter an order quashing the subpoena for deposition served on Apache County Elections Director Angela Romero on June 15, 2022.

1 This Motion is made first and foremost because Apache County is not a party to this
 2 litigation, and as such, has nothing discoverable or pertinent to the case. Furthermore, given
 3 the timing of this request during an election year and the limited resources available to
 4 Apache County, submitting to a deposition would result in an undue burden to Apache
 5 County and the citizens it serves.
 6

7 **STATEMENT OF FACTS**

8 On June 15, 2022, Apache County Elections Director Angela Romero was served
 9 with a Subpoena to Testify at a Deposition in a Civil Action in this matter. In addition to
 10 the Subpoena, a list of 64 deposition questions was provided to Apache County in the
 11 Notice of Deposition, asking for in-depth explanations of Apache County's election
 12 procedures and processes. Apache County hereby requests the Subpoena be quashed for
 13 the following reasons.
 14

15 **LAW AND ARGUMENT**

16 The Court should quash the subpoena served on Apache County in this case
 17 because it subjects the Apache County Elections Department to undue burden. "[T]he
 18 court for the district where compliance is required must quash or modify a subpoena that
 19 [. . .] subjects a person to undue burden." Fed. R. Civ. P. 45(d)(3)(A)(iv). In determining
 20 whether a subpoena would result in undue burden to a person, courts are required to
 21 "balance the interests served by demanding compliance with the subpoena against the
 22 interests furthered by quashing it." 9A Wright & Miller, Federal Practice and Procedure §
 23 2463.1 (3d ed. 2019).
 24
 25

1 In doing so, courts consider several factors, including the “relevance of the
 2 information requested” to the underlying litigation, and the “burden [that would be]
 3 imposed” by producing it. *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th
 4 Cir. 2004). “The status of the subpoena recipient as a non-party is also a factor that can
 5 weigh against disclosure in the undue burden inquiry.” *Jordan v. Comm. Miss. Dept. of*
 6 *Corrections*, 947 F.3d 1322, 1337 (11th Cir. 2020); *see also Wiwa*, 392 F.3d at 818 (“[I]f
 7 the person to whom the document request is made is a non-party, the court may also
 8 consider the expense and inconvenience to the non-party.”).

10 **A. The Court should quash the subpoena because the information requested**
 11 **from Apache County is not relevant to the underlying litigation.**

12 In the Notice of Deposition served on Apache County, 64 questions are listed asking
 13 for detailed explanations of Apache County’s elections procedures and processes.
 14 However, Apache County is not a party to this litigation and its election procedures are
 15 not at issue. The issue of whether curbside voting should be offered in Cochise County
 16 can and should be resolved without involving Apache County in this litigation.
 17

18 There are slight variations in how each county operates its elections. Such variations
 19 are permitted under the Elections Procedures Manual issued by the Arizona Secretary of
 20 State. *See* 2019 Elections Procedures Manual, Arizona Department of State, Office of the
 21 Secretary of State, Election Services Division (Dec. 19, 2019). Specifically, as it relates
 22 to curbside voting, it’s discretionary whether each county offers curbside voting. *See id.*
 23 at 105 (“Curbside voting *may* be made available as a reasonable accommodation as
 24 necessary to provide voters with disabilities equal access to the voting process.”).
 25

1 If a county does choose to offer curbside voting, the Elections Procedures Manual
2 specifically outlines how it must be offered. *Id.* Therefore, while it is discretionary
3 whether to offer curbside voting, it is not discretionary how it is offered. Accordingly, it
4 is not relevant to this litigation whether Apache County offers curbside voting because
5 doing so is within each county's discretion. Further, it is not relevant to this litigation
6 how Apache County offers curbside voting because the step-by-step process is
7 specifically outlined in the Elections Procedure Manual. As such, the information
8 requested from Apache County is wholly irrelevant and the subpoena should be quashed.
9

10 **B. The Court should quash the subpoena because demanding Apache County's**
11 **compliance would result in undue burden.**

12 Even if the Court finds that the information requested from Apache County is
13 relevant, the subpoena should be quashed because what marginal relevance it would have
14 to the litigation is greatly outweighed by the burden it would place on Apache County.
15 The subpoena was served on Apache County Elections Director Angela Romero on June
16 15, 2022. The deposition is proposed to occur on June 29, 2022. This is just one week
17 before the voter registration deadline and the date on which early ballots are to be mailed.
18

19 Apache County only has two employees working in its Elections Department. Those
20 two employees are already working extra hours to ensure all election dates and deadlines
21 are met. Furthermore, the number of COVID-19 cases has recently risen in Apache
22 County. As a result, the Navajo Nation has reinstituted several COVID-19 protocols and
23 restrictions. *See* COVID-19 Safe Practice Guidelines, Navajo Department of Health,
24 ndoh.navajo-nsn.gov/COVID-19/COVID-19-Resources (May 11, 2022).
25

1 With approximately 70% of Apache County's population residing on the Navajo
2 Nation, the Elections Department has the added responsibility this election cycle of
3 incorporating those protocols and restrictions at its voting locations on the Navajo
4 Nation. Because the Elections Department is already facing additional responsibilities,
5 anything more at this point during the election year is an undue burden.
6

7 With only two employees, the Apache County Elections Department is greatly limited
8 in both time and resources. Compiling information and writing answers to the 64
9 questions listed in the Notice of Deposition would take a substantial amount of time –
10 time that the Elections Department simply does not have. To do so would require those
11 two employees to divert their efforts from this year's election, and it would risk Apache
12 County missing crucial deadlines. Director Romero and her staff member must prioritize
13 their legal responsibilities in conducting this year's election. To do otherwise would be a
14 disservice to Apache County and the citizens it serves, especially given that Apache
15 County is not a party to this lawsuit.
16

17 Ultimately, the burden imposed by complying with the subpoena greatly outweighs
18 any marginal relevance the requested information may have in this litigation. As such,
19 complying with the subpoena would be an undue burden to Apache County and the
20 subpoena should be quashed.
21

22 CONCLUSION

23 Based on the foregoing, Apache County respectfully requests the Court quash the
24 subpoena served upon Elections Director Angela Romero. In the alternative, Apache
25 County requests the deposition be rescheduled to a date and time after the 2022 General

1 Election to allow Director Romero and her staff member to fulfill their duties and
2 responsibilities.
3

4 RESPECTFULLY SUBMITTED this 23rd day of June, 2022.

5 APACHE COUNTY ATTORNEY
6 MICHAEL B. WHITING
7

8 /s/Celeste Robertson

9 Celeste Robertson
10 Chief Deputy County Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2022, I electronically transmitted the above document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing, and sent a copy by email to the following:

Rose Daly-Rooney, AZ Bar #015690
Maya Abela, AZ Bar #027232
Tamaraingsey In, AZ Bar #035208
Meaghan Kramer, AZ Bar #029043
ARIZONA CENTER FOR DISABILITY LAW
5025 E. Washington Street, Suite 202
Phoenix, AZ 85034
(602) 274-6287
E-mail: rdalyrooney@azdisabilitylaw.org
mabela@azdisabilitylaw.org
sin@azdisabilitylaw.org
mkramer@azdisabilitylaw.org
Attorneys for Plaintiff Kathleen Hoffard

Cochise County Attorney
Christine J. Roberts
Chief Civil Deputy County Attorney
Arizona Bar No. 033718
Paul Correa
Civil Deputy County Attorney
Arizona Bar No. 017187
P.O. Drawer CA
Bisbee, AZ 85603
CVAttyme@cochise.az.gov
*Attorneys for Cochise County and Lisa
Marra, in her official capacity as Cochise
County Elections Director*

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF ARIZONA**

3 Kathleen Hoffard,

Case No.: 4:20-cv-00243-SHR

4
5 Plaintiff,

[PROPOSED] ORDER
QUASHING SUBPOENA FOR
DEPOSITION OF NON-PARTY
APACHE COUNTY

6
7
8 vs.

9
10 Cochise County, Arizona; Lisa Marra, in
11 her official capacity as Director of Cochise
County Elections Department

12 Defendants.
13

14 The Court, having considered Apache County's Motion to Quash Subpoena,
15 hereby **GRANTS** the Motion.

16 **IT IS HEREBY ORDERED** pursuant to Fed. R. Civ. P. 45(d)(3)(A)(iv) quashing
17 the Subpoena to Testify at a Deposition in a Civil Action previously served upon non-
18 party Apache County Elections Director Angela Romero.

19 **IT IS SO ORDERED.**
20

21
22 Dated:

Scott H. Rash
United States District Court Judge
District of Arizona