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**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 first
9 served with a Subpoena to Testify at a Deposition in a Civil Action in this matter. In
10 addition to the Subpoena, a list of 64 deposition questions was provided to Apache County
11 in the Notice of Deposition, asking for in-depth explanations of Apache County's election
12 procedures and processes. After Apache County filed a Motion to Quash the Subpoena
13 based on the undue burden it would cause the County. Plaintiff then voluntarily dismissed
14 the subpoena. However, Plaintiff later served Apache County with a second subpoena for
15 deposition, this time reducing the number of questions to 47. The remaining questions still
16 ask for in-depth explanations of Apache County's elections procedures and processes. As
17 such, Apache County hereby renews its request that the Subpoena be quashed for the
18 following reasons.
19

20 **LAW AND ARGUMENT**

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

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

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

In the second Notice of Deposition served on Apache County, 47 questions are listed asking for detailed explanations of Apache County’s elections procedures and processes. However, Apache County is not a party to this litigation and its election procedures are not at issue. The issue of whether curbside voting should be offered in Cochise County can and should be resolved without involving Apache County in this litigation.

There are slight variations in how each county operates its elections. Such variations are permitted under the Elections Procedures Manual issued by the Arizona Secretary of State. *See* 2019 Elections Procedures Manual, Arizona Department of State, Office of the

1 Secretary of State, Election Services Division (Dec. 19, 2019). Specifically, as it relates
2 to curbside voting, it's discretionary whether each county offers curbside voting. *See id.*
3 at 105 ("Curbside voting *may* be made available as a reasonable accommodation as
4 necessary to provide voters with disabilities equal access to the voting process.").

5
6 If a county does choose to offer curbside voting, the Elections Procedures Manual
7 specifically outlines how it must be offered. *Id.* Therefore, while it is discretionary
8 whether to offer curbside voting, it is not discretionary how it is offered. Accordingly, it
9 is not relevant to this litigation whether Apache County offers curbside voting because
10 doing so is within each county's discretion. Further, it is not relevant to this litigation
11 how Apache County offers curbside voting because the step-by-step process is
12 specifically outlined in the Elections Procedure Manual. Additionally, other Arizona
13 counties have already provided Plaintiff with information regarding their curbside voting
14 procedures. Therefore, Plaintiff already has a sufficient sample of how other counties
15 offer curbside voting. As such, the information requested from Apache County is wholly
16 irrelevant and the subpoena should be quashed.

17
18 **B. The Court should quash the subpoena because demanding Apache County's**
19 **compliance would result in undue burden.**

20
21 Even if the Court finds that the information requested from Apache County is
22 relevant, the subpoena should be quashed because what marginal relevance it would have
23 to the litigation is greatly outweighed by the burden it would place on Apache County.
24 The deposition is proposed to occur on August 23, 2022. This is in the middle of election
25

1 season as the County's Elections Department finishes fulfilling its duties after the
2 Primary Election and prepares for the General Election.

3 Apache County only has two employees working in its Elections Department. Those
4 two employees are already working extra hours to ensure all election dates and deadlines
5 are met. Furthermore, the number of COVID-19 cases has recently risen in Apache
6 County. As a result, the Navajo Nation has reinstituted several COVID-19 protocols and
7 restrictions. *See* COVID-19 Safe Practice Guidelines, Navajo Department of Health,
8 ndoh.navajo-nsn.gov/COVID-19/COVID-19-Resources (May 11, 2022).
9

10 With approximately 70% of Apache County's population residing on the Navajo
11 Nation, the Elections Department has the added responsibility this election cycle of
12 incorporating those protocols and restrictions at its voting locations on the Navajo
13 Nation. Because the Elections Department is already facing additional responsibilities,
14 anything more at this point during the election year is an undue burden.
15

16 With only two employees, the Apache County Elections Department is greatly limited
17 in both time and resources. Compiling information and writing answers to the 47
18 questions listed in the Notice of Deposition would take a substantial amount of time –
19 time that the Elections Department simply does not have. To do so would require those
20 two employees to divert their efforts from this year's election, and it would risk Apache
21 County missing crucial deadlines. Director Romero and her staff member must prioritize
22 their legal responsibilities in conducting this year's election. To do otherwise would be a
23 disservice to Apache County and the citizens it serves, especially given that Apache
24 County is not a party to this lawsuit.
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1 Ultimately, the burden imposed by complying with the subpoena greatly outweighs
2 any marginal relevance the requested information may have in this litigation. As such,
3 complying with the subpoena would be an undue burden to Apache County and the
4 subpoena should be quashed.

5
6 **CONCLUSION**

7 Based on the foregoing, Apache County respectfully requests the Court quash the
8 subpoena served upon Elections Director Angela Romero. In the alternative, Apache
9 County requests the deposition be rescheduled to a date and time after the 2022 General
10 Election to allow Director Romero and her staff member to fulfill their duties and
11 responsibilities.

12 RESPECTFULLY SUBMITTED this 7th day of August, 2022.

13 **APACHE COUNTY ATTORNEY**
14 **MICHAEL B. WHITING**

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16 /s/Celeste Robertson
17 Celeste Robertson
18 Chief Deputy County Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 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:

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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.**
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