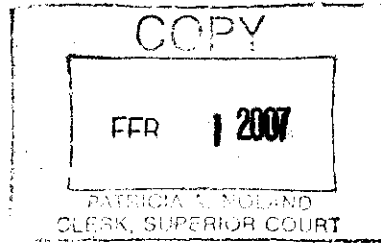


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State Bar Number: 002257
5 Pima County Bar Number: 48228

6 **KENNETH K. GRAHAM, ESQ.**
State Bar Number: 007069
7 Pima County Bar Number: 21588



8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF PIMA**

10 **DEMOCRATIC PARTY OF PIMA**
11 **COUNTY,**

12 Plaintiff,

13 -vs-

14 **PIMA COUNTY BOARD OF**
15 **SUPERVISORS, a body politic, and**
16 **BETH FORD, PIMA COUNTY**
17 **TREASURER, in her official capacity as**
18 **Pima County Treasurer,**

19 Defendants.

NO. **C 20070516**

VERIFIED COMPLAINT -
STATUTORY SPECIAL ACTION
A.R.S.§39-121.09

JUDGE:

19 Plaintiff alleges:

20 I.

21 The Democratic Party of Pima County (hereinafter "Democratic Party") is a political
22 organization created by statute. A.R.S.§16-821(A) provides that "the whole number of
23 precinct committeemen of a political party shall constitute the county committee of the
24 party." The Pima County Board of Supervisors is a body politic.

25 The Defendant Beth Ford, Pima County Treasurer has been sued in her official
26 capacity.

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II.

As a statutory political party, the Democratic Party has certain obligations and privileges. A.R.S. §16-621(A) concerns procedures at the vote counting center. That statute provides that “all proceedings at the counting center shall be under the direction of the board of supervisors” . . .and shall be conducted. . .”under the observation of representatives of each political party. . .”

III.

A.R.S. §16-621(A) further provides that “there shall be no preferential counting of ballots for the purpose of projecting the outcome of the election.”

IV.

A.R.S. §16-602(G) sets out the procedures for the counting of votes of “early ballots.” Sample batches of ballots are randomly selected by political party representatives for the purpose of post election auditing of the accuracy of the computer program that counts the votes.

V.

During the 2006 General Election, Democratic Party observers kept track of all printing of actual vote totals that were printed as part of the statutory audit of the counting process. Observers from other political parties were present during those same times. Neither the party observers nor the election personnel read the results that were printed in their presence before they were sealed in boxes or envelopes.

VI.

As part of its post-election auditing process, the Democratic Party learned that vote totals were printed when their observers were not present nor had they been notified that results would be printed. The Democratic Party believes that three detailed “Summary

1 Sheets” containing actual vote results were printed prior to the election without notice to
2 them.

3 VII.

4 The Democratic Party requested to view existing continuous camera recordings of the
5 counting room in order to determine who was present when those printings occurred and who
6 operated the county computer.

7 VIII.

8 The Diebold Corporation General Election Management Systems (GEMS) software
9 installed by Diebold personnel does not record which person commands the computer.
10 Therefore, the cameras would have provided the only recorded evidence of who operated the
11 computer on those occasions.

12 IX.

13 The Pima County Board of Supervisors’ election personnel delayed granting the
14 Democratic Party’s timely request to view the continuous camera recordings until the County
15 personnel reported that those days in question had been erased due to a twenty (20) day
16 retention cycle, although the Democratic Party had made its request during the retention
17 period.

18 X.

19 Based upon a review of electronic records going back to 2002, the Democratic Party
20 has learned that the Defendant Board of Supervisors’ County Election personnel have been
21 regularly printing the preferential counting of ballots. Those printings have occurred since
22 Brad Nelson has been the County Election Director without notice to any political party and
23 while specifically denying to the Democratic Party that they were doing so.

1 XI.

2 Pursuant to Arizona's public records laws, A.R.S. §39-121 *et seq.*, and the Party's
3 statutory monitoring and auditing function, the Democratic Party requested of Beth Ford, the
4 Pima County Treasurer and the Pima County Board of Supervisors, to produce all of the
5 printed summary vote totals during the 2006 Primary and General Election. Pima County
6 claims to be unable to provide those reports because they have placed them in the vault of the
7 Pima County Treasurer in boxes containing ballots.

8 XII.

9 A.R.S. 16-624(A) and (D) read as follows:

10 A. Upon receipt of the packages and envelopes containing the
11 returns and the voted ballots, the officer in charge of elections
12 shall deposit the package or envelope containing the ballots in
13 the safe of 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.

14 . . .

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

18 XIII.

19 Plaintiff alleges that A.R.S. §16-624(A) and (D) relate to the secrecy of the ballots and
20 do not make otherwise public records or non-ballot documents subject to destruction merely
21 because they have been intentionally or negligently sealed together with ballots.

22 XIV.

23 The Democratic Party seeks an order from this court requiring the defendants to
24 obtain the public records allegedly placed by Pima County Election personnel in the
25 Treasurer's vault. The Democratic Party wishes those boxes opened in the presence of its

1 observers and those of any other party that chooses to observe and does not want to examine
2 any ballots in those boxes that may be sealed with the summary reports.

3 XV.

4 Alternatively, the Democratic Party requests that the court take custody and control of
5 those boxes and have them opened under the supervision of the court and party observers for
6 the purpose of retrieving the public record summary reports.

7 XVI.

8 The Democratic Party seeks its costs and reasonable attorney's fees incurred herein
9 pursuant to A.R.S. §39-121.02(B).

10 XVII.

11 The Democratic Party will be irreparably harmed in the performance of its obligation
12 to monitor the vote counting processes and integrity of elections without access to the
13 documents sought. The Democratic Party has no adequate and equally speedy remedy as this
14 Statutory Special Action pursuant to A.R.S. §39-121.02(A)

15 XVIII.

16 The Democratic Party requests that the Court issue its Order for the Defendants to
17 show cause why the relief sought herein should not be granted.

18 **WHEREFORE**, the plaintiff, Democratic Party of Pima County, requests judgment
19 in its favor as follows:

- 20 1. For an order requiring the defendant Pima County Board of Supervisors and
21 Beth Ford, Pima County Treasurer to show cause why they should not
22 produce to plaintiff in its presence the "Summary Reports" placed in the
23 Treasurer's vault by Pima County Election personnel and to otherwise account
24 for the production and disposition of those reports.

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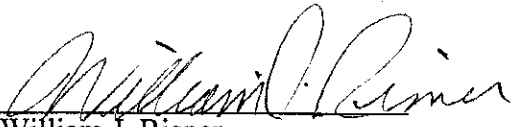
26 Democratic Party of Pima County v.
Pima County Board of Supervisors
and Beth Ford-COMPLAINT

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2. Alternatively, for the court to take control and custody of the boxes and other material placed by county personnel in the Treasurer's vault to be opened in the presence of party observers under the control of the court.
3. For their costs and reasonable attorney's fees.
4. For other and further relief as is just upon the presentation of evidence.

DATED this 17 day of February, 2007.

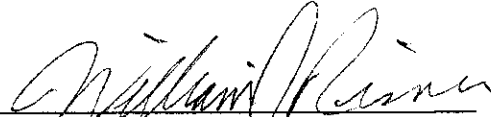
RISNER & GRAHAM

By 
William J. Risner
Attorneys for Plaintiff

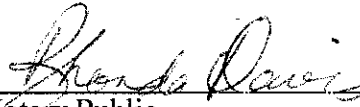
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4 **VERIFICATION**

5 STATE OF ARIZONA)
6) ss.
7 COUNTY OF PIMA)

8 **WILLIAM J. RISNER**, being duly sworn upon his/her oath states that he is familiar
9 with the allegations in the foregoing complaint and that upon information and belief those
10 allegation are true and correct.

11 
12 **WILLIAM J. RISNER**

13 SUBSCRIBED TO AND SWORN before me this 1st day of February, 2007, by
14 **WILLIAM J. RISNER.**

15 
16 Notary Public

