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January 11, 2008

Pima County Board of Supervisors  
130 West Congress Street, 5<sup>th</sup> Floor  
Tucson, Arizona 85701

**Via Hand-Delivery**

Dear Board Members:

I have enclosed the following documents for your information:

1. The Democratic Party's Motion to Amend the Findings of Fact. This is the motion for a "new trial" that Chris Straub has referred to. You can read it and understand the limited nature of our request.
2. My letter to Chris Straub of January 10, 2008, concerning the data transfer.
3. Our proposed Stipulation.

The Libertarian Party agrees with the contents of my January 10, 2008. David Euchner, Libertarian Party Chairman, has authorized me to inform you of their agreement with the Democratic Party. Your instruction to John Moffatt was to work with the political parties. His unilateral plan is specifically designed to introduce potential data corruption and is not acceptable. It is a bad faith plan that is contrary to acceptable data chain of custody norms.

Sincerely,

**RISNER & GRAHAM**



William J. Risner, Esq.

WJR/ml  
Enclosures

c: Chris Straub, Esq.

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5 Pima County Bar Number: 48228

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7 Pima County Bar Number: 21588

8 *Attorney for Plaintiff*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF PIMA**

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

13  
14 Plaintiff,

15 -vs-

16 **PIMA COUNTY BOARD OF  
SUPERVISORS, a body politic,**

17 Defendant.  
18

**NO. C2007-2073**

**MOTION TO AMEND FINDINGS OF  
FACT OR LAW OR FOR A NEW  
TRIAL**

Assigned to:  
Hon. Michael Miller

19 Pursuant to Rule 52(b), A.R.C.P. and Rule 59(a)(8), A.R.C.P., the plaintiff moves the  
20 court for certain amendments to its findings of fact or law or for a new trial. In particular, the  
21 plaintiff objects to the following findings which will referenced herein by the corresponding  
22 numbers in the court's, under advisement, ruling.

23 2. The court has erroneously concluded that Charles Huckelberry "has final authority  
24 to make individual decisions on specific record requests." It is instead, the Board itself that  
25 has such final authority. The plaintiff filed its Notice of Claim with the Pima County Board  
26 of Supervisors and they are the party defendants, not Mr. Huckelberry. The Board has final

1 authority and is by law the County's Chief Executive Officer. The Arizona Supreme Court in  
2 *Falcon ex. rel. Sandoval v. Maricopa County*, 213 Ariz. 525, 527, 144 P.3d 1254, 1256  
3 (2006), concluded that: "Based upon the statutory powers and duties for a board of  
4 supervisors, we conclude that a county's board of supervisors is its chief executive officer."  
5 The court continued by noting that the Board's powers include supervising county officers,  
6 A.R.S. § 11-251(1)," etc. "Most importantly for purposes of this case the Board has the  
7 power to [d]irect and control prosecution and defense of all actions to which the county is a  
8 party, and compromise them." *Id.* § 11-251(14) (at p. 527).

9 3. The Pima County Board of Supervisors is charged with conducting elections by  
10 multiple statutes. Only rarely in Title 16 of the Arizona Revised Statutes is a "county  
11 election officer" mentioned. The Board in Pima County has chosen to create a Division of  
12 Elections to carry out its statutory duties.

13 5. The court erroneously stated that "the parties agree that the GEMS program is not  
14 subject to disclosure." The plaintiff pointedly does not agree that the GEMS program is not  
15 subject to disclosure. The plaintiff has not sought the GEMS program. Whether or not it  
16 may be disclosed is not an issue before this court and is irrelevant to the court's decision.

17 19 and 20. The plaintiff is unsure of the meaning of the court's term "final mdb  
18 files." It is the plaintiff's position that all the mdb files are public records and not prohibited  
19 from disclosure. As the court found, A.R.S. § 16-444(A)(4) definition of a computer  
20 program does not include data files. A.R.S. § 16-445 does not require data files to be sent to  
21 the Secretary of State and does not prohibit the County from disclosing any and all data files.

22 The initial ballot layout is valuable as it can be compared with counted ballots to  
23 determine if the ballot count has been "flipped." In other words, for an election such as the  
24 RTA election the server could be programmed to count "no" votes as "yes" votes. A  
25 comparison of the initial ballot order with the counted ballot order is a simple check on a  
26

1 simple method of cheating. In this case the evidence revealed that the returned tape from the  
2 Secretary of State for only the RTA election was "lost" by Pima County. All other returned  
3 tapes are said to be in Pima County's possession.

4 By using the term "final mdb file" the court may be committing a grievous error if it  
5 is saying that political parties are prohibited from confirming that candidate codes and ballot  
6 orders have remained the same during the entire election process.

7 From the beginning to end of any given election, most of the databases are supposed  
8 to remain "frozen." Once the "logic and accuracy" tests have been completed only certain  
9 tables change. The audit log grows with use and the vote totals increment. The rest of the  
10 files contain what is supposed to be identical through the election. Releasing the complete  
11 series poses no danger whatsoever and is required for oversight.

12 The easiest way to "hack an election" is to tamper with portions of the database that  
13 are supposed to be frozen. The candidate ID numbers are the softest target but there are  
14 many more. For instance, both the "frozen elements" and the vote totals that are supposed to  
15 increment are vulnerable to hand editing.

16 29. The court erroneously claims that "the plaintiff concedes that the release of mdb  
17 files immediately after the polls close is neither practical or appropriate. Release of the mdb  
18 file days or even weeks after the election significantly reduces the concern that valid election  
19 results could be challenged with an altered mdb file." The plaintiff has made no such  
20 concession. Indeed, the whole thrust of its Declaratory Judgment claim is to obtain the  
21 needed data in a timely manner in the future.

22 It is important to remember that no election result could be successfully challenged  
23 with an altered mdb file under any possible circumstance. It is possible that ballots could be  
24 re-counted electronically or even manually under some unusual circumstances but never  
25 could an altered copy of an mdb file be admitted as evidence.

1           A.R.S. § 16-672 requires that election contests be filed within five days after the  
2 completion of the canvass. Furthermore, the complaint must set forth the “particular grounds  
3 of the contest” and be “verified.” It is, therefore, an election contest itself that would be  
4 “impractical” under the court’s view that “days or even weeks” could elapse before data files  
5 were available. The effect of the court’s suggestion is to always keep proof of election  
6 manipulations out of the hands of political parties and candidates until it is too late to  
7 challenge any election.

8           The plaintiff agreed that the files need not be provided at 8 p.m. on election day but it  
9 sees no reason why a copy could not be provided to all political parties that evening.

10           Due to the time it would take to analyze the data it should be made available at a  
11 reasonable time well before the canvass is officially approved by the governing body in order  
12 that the governing body can be made aware of potential errors. If available only at the time  
13 of the final canvass the five day limit on specific challenges would be difficult to meet. The  
14 suggestion that days and weeks later would suffice is an open invitation to fraud.

15           31. The court erroneously refers to an “unknown threat” as “plausible” in the context  
16 of the release of mdb files. However, every single witness agreed on two critical points.  
17 Firstly, there has never been a known attempt by outsiders to hack into an election computer  
18 in the history of the United States. That history includes all manufacturers and all  
19 jurisdictions that number nationally in the thousands. Secondly, because the Pirna County  
20 election server is in a protected room with layers of security protection all witnesses agreed  
21 that no possible mechanism existed to accomplish such an intrusion from the outside.

22           Therefore, to refer to the provision of mdb files in this case as presenting a  
23 “plausible” risk is to ignore all testimony from every expert that none knew how it could be  
24 done. Because some scenario might be “possible” in the abstract does not render such a  
25 scenario “plausible” when not one person could imagine how it could be done.

1           32, "33" and "second 33." The court notes in 32 that audit logs have previously been  
2 disclosed but ignores the definitive testimony that the audit logs are of limited value as they  
3 can be edited after the fact utilizing Microsoft Access™. That fact argues in favor of the  
4 necessity of a full examination of the data file because the audit log is inherently unreliable.

5           The court is correct that this lawsuit is not predicated on a showing of fraud. Such  
6 evidence suggesting fraud does exist, however, but the evidence is relevant to the defendant's  
7 request for a stay as opposed to the ruling on the merits.

8           The court's conclusion that the release of multiple copies of the mdb files would  
9 "pose a known risk that hackers could use the files to contaminate valid mdb files" is  
10 contrary to the evidence in this case. As previously noted the mere existence of such  
11 "hackers" is imaginary. Merle King testified that unknown persons and groups existed in his  
12 investigation but could not identify any such groups or persons nor could he cite a single  
13 attempt by outsiders to hack into an election computer anywhere in the country. The court's  
14 statement that hacking from the outside is a "known risk" ignores the evidence that  
15 protections are in place that adequately counters that risk.

16           Any "hacking" must be accomplished by those with access to the Pima County  
17 computers. Those "insiders" include election employees and vendors. The California study  
18 (Exhibit 17) examined all known risks and ranked them by order of least to greatest risk.  
19 They listed vendors as the greatest risk followed by election employees. Nowhere on their  
20 list, even at the bottom, can outside "hackers" be found. "Hackers" must have inside help  
21 and if such help is available the additional risk of multiple mdb files in possession of anyone  
22 is insignificant.

23           Importantly, the testimony established that multiple copies of databases does not  
24 contribute to risk. In response to the court's questions of Merle King about the risk of  
25 disclosure of the mdb "architecture" Professor King listed as examples of the contents of that  
26

1 architecture the "table names," the "index of tables," and the "SQL queries." Those tables  
2 and other elements exist in all GEMS mdb files. There is simply no additional "risk" from  
3 multiple files. The table names and index are the same in all GEMS databases. They are the  
4 same in the database the court examined as is in all other databases. Indeed, Professor King  
5 testified that the architecture would be identical in each database. He testified that the  
6 architecture would be the same not only in each Pima County database but that "the mdb files  
7 are fairly uniform from version of GEMS to version of GEMS" throughout all jurisdictions.  
8 In other words, GEMS 1.18.24 would create databases with the same table names, the same  
9 index and the same queries every time everywhere.

10 Professor King's testimony relating to the risk of database architecture was in the  
11 context of information that could be used to "sow chaos," "create mayhem" or "spoof  
12 elections." Professor King's answers to the question of multiple databases in that context  
13 was that "patterns of usernames" might be revealed as well as the "size of fields" and the  
14 "order of values in databases." The pattern of usernames is a trivial matter that is irrelevant  
15 in Pima County since it does not utilize different usernames. The "size of fields" and "orders  
16 of values" does not explain any additional risk in multiple databases.

17 On the issue of "spoofing and chaos" Professor King offered as a singular example  
18 that a man in Pennsylvania took a hammer to a voting machine on one occasion. No other  
19 evidence was offered by the defendant from any witness.

20 The court's conclusion in the second number 33 conclusion is wholly without support  
21 in any testimony. Not only is there no known history of outside hacker attempts nor any  
22 means available to outsiders to hack into a protected computer but there is no additional  
23 value in the repeated disclosure of the identical "architecture" of mdb files.

24 In preparing these objections Plaintiff listened to the entire testimony of Professor  
25  
26

1 Merle King and Dr. John Moffatt.<sup>1</sup> Moffatt's testimony is of importance since Charles  
2 Huckelberry testified that the Board of Supervisors had no role in his decision and that he  
3 relied on Dr. Moffatt for his decision to not allow the Democratic Party to see the election  
4 database.

5 Dr. Moffatt listed three concerns during his testimony. As an initial legal matter it is  
6 important to note that he testified that each of his concerns was merely a "possibility" while  
7 the applicable legal standard requires the defendant to prove that "specific" harm is  
8 "probable." The defendant's proof was wholly deficient in establishing any specific probable  
9 harm. See *Mitchell v. Superior Court*, 142 Ariz. 332, 335, 690 P.2d 51, 54 (1984); *Cox of*  
10 *Arizona Publications, Inc. V. Collins*, 175 Ariz. 11, 14 852 P.2d 1194, 1197 (1993).

11 Moffatt's number one concern was that the Democratic Party could generate different  
12 numbers in a "votes cast report" within hours after election. His "concern" is logically  
13 absurd because it would result in no advantage to the Party and the certain loss of credibility  
14 as the County would retain the original database, other political parties would have copies of  
15 the original and the ballots themselves would be in the County's possession. The absurdity  
16 of this "number one concern" is helpful, however, in exposing the absolute and total absence  
17 of any realistic risk through the provision of the databases to the Democratic Party.

18 For the purpose of these objections to the court's erroneous finding, the relevance of  
19 Moffatt's asserted objection is that multiple databases would not increase his imagined risks.

20 The number two "major" risk testified to by Dr. Moffatt was the potential printing of  
21 ballots by the Democratic Party. That risk was also described as merely "possible" and for  
22 good reason as some 1,600 different ballot forms were described for each election. All of  
23 those different ballots are provided to each political party months in advance of an election.

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25 <sup>1</sup> Their testimony is available on Google Video.

26

1 The actual ballots themselves are mailed to voters who request ballots at least a month before  
2 elections. There is no credible testimony as to how the disclosure of additional mdb files  
3 from past elections could increase any risk of the falsification of ballots by the Democratic  
4 Party or, in fact, anyone in the future as those same persons would receive their very own  
5 ballots in advance of the next election. They would then face the virtually impossible task of  
6 using and inserting fake ballots into the system. It is for good reason that Moffatt referred to  
7 this scenario as only "possible." While perhaps "possible" in a technical sense it is absurd  
8 and ridiculous in the real world, which might explain its absence in the historical record.

9 Although Moffatt described the "reporting and ballots as the two major things" he  
10 testified about a third "possibility," namely that the Democratic Party could write memory  
11 cards. He testified that could be accomplished with knowledge of how races are coded and  
12 the possession of software and a crop scanner. Since Pima County has itself previously  
13 publicly published how races are coded the disclosure of multiple past election databases  
14 discloses nothing not already disclosed. The only known crop scanner in Arizona is the one  
15 purchased by Pima County.

16 The plaintiff strongly asserts that there is no testimony to support this court's  
17 conclusion on multiple databases posing increased risks. Nonetheless, if the court sticks with  
18 its erroneous conclusion and limits the plaintiff to two databases as an initial disclosure then  
19 the plaintiff requests that the May 16, 2006 RTA election and the 2006 Primary election  
20 databases be disclosed. Following our analysis of those two databases the plaintiff would

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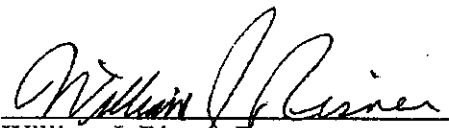
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1 then re-urge that all the databases should be disclosed.

2 RESPECTFULLY SUBMITTED this 2nd day of January, 2008.

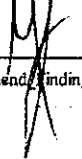
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**RISNER & GRAHAM**

BY:   
William J. Risner, Esq.  
*Attorney for Plaintiff*

**COPY** of the foregoing via facsimile  
this 2nd day of January, 2008, to:

Christopher Straub  
**OFFICE OF THE  
PIMA COUNTY ATTORNEY**  
32 North Stone Avenue #2100  
Tucson, Arizona 85701-1412  
*Attorney for Defendants*

  
\_\_\_\_\_  
Moi\_to\_Amend Findings\_of\_Fact\_or\_Law

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January 10, 2008

Christopher Straub, Esq.  
**OFFICE OF THE  
PIMA COUNTY ATTORNEY**  
32 North Stone Avenue #2100  
Tucson, Arizona 85701-1412

Via Facsimile and Standard Mail

**RE: *Democratic Party of Pima County v. Pima County Board of Supervisors***

Dear Chris:

The Democratic Party has proposed a simple mechanism for transferring the files. Our proposal does not involve either a Sheriff's Deputy or transportation of the hard drives. Our proposal offers the use of a new laptop in a sealed Dell shipping box at the courthouse.

Here is the problem with using a County owned "IT laptop." Presumably it is a laptop that has been "cleaned up" or whatever by the County staff. An auto-erase malicious payload already on the County laptop could trigger on connection to our hard drive. Our suggestion of a virgin computer in an unopened factory box is more secure.

Our video suggestion is for the camera to record the screen so that a record can be made of all instructions to the computer. Our desire is for a clear record of instructions given that is non-intrusive and does not involve any possibility of contamination.

Once the files have been transferred to the new Dell computer the Republican Party or Libertarian Party can receive data transfers from that computer to their hard drives or CDs or DVDs can be provided for them.

We agree to the list of files to be made available for the '06 RTA, Primary and General elections but additionally request a pair of text files (extension .TXT) that are of a type the county has already agreed are public records. There is an "mdb" file named "2006- Pima General Corrupted database for training mdb." We would like that file although it is not numbered 051606.

January 10, 2008

**RISNER & GRAHAM**

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The "mdb" files are large and can not fit on single CDs. It is far more reasonable for them to be transferred from one hard drive to another hard drive. The courthouse is the best location and a screen video the best option for a record.

The Board of Supervisors instructed John Moffatt to "work with folks from the parties to make sure that we get information to them as quickly and correctly as possible..." Our proposals easily accomplish the Board's direction.

The telephone number you provided for John Moffatt was busy each time I tried it. Hopefully you will forward our simple and secure proposal to him.

Sincerely,

**RISNER & GRAHAM**

A handwritten signature in cursive script that reads "Bill Risner".

William J. Risner, Esq.

WJR/ml

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State Bar Number: 007069

7 Pima County Bar Number: 21588

8 *Attorney for Plaintiff*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF PIMA**

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12 **DEMOCRATIC PARTY OF PIMA  
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13  
14 Plaintiff,

15 -vs-

16 **PIMA COUNTY BOARD OF  
SUPERVISORS, a body politic,**

17 Defendant.  
18

**NO. C2007-2073**

**STIPULATION**

Assigned to:  
Hon. Michael O. Miller

19 The parties request that the court enter the attached order containing the following  
20 stipulated agreement:

21 The Clerk of the Superior Court presently has in its possession two hard disk storage  
22 devices containing copies of the Pima County Elections Database. Although under the  
23 Court's control, one device is owned by the defendant and the other by the plaintiff.

24 The parties agree that the plaintiff may copy from its hard disk all of the files relating  
25 to the Pima County Consolidated Election of May 16, 2006 ("The RTA Election"), the 2006  
26 Primary Election and the 2006 general Election. The defendant will provide the relevant

1 password relating to the "gbf" files. The plaintiff may video the computer screen in order to  
2 record a precise record of which files are downloaded.

3 Should other political parties wish to receive a similar copy of the same data, they at  
4 the same time may do so.

5 The copying of the data will occur on the premises of the Superior Court Building and  
6 the two original hard disks shall remain in the custody of the Clerk of the Court at all times.

7 The downloading shall occur Friday morning, January 11, 2008.

8 RESPECTFULLY SUBMITTED this \_\_\_\_ day of January, 2008.

9 **RISNER & GRAHAM**

10  
11 BY: \_\_\_\_\_

12 William J. Risner  
13 *Attorney for Plaintiff*

14 **BARBARA LAWALL**  
15 **PIMA COUNTY ATTORNEY**

16  
17 BY: \_\_\_\_\_

18 Christopher Straub  
19 Thomas A. Denker  
20 Karen S. Friar  
21 *Attorneys for Defendant*