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9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 THE STATE OF ARIZONA,
13
14 Plaintiff,
15
16 vs.
17 JOHN CHESTER STUART,
18
19 Defendant.

No. CR2008-006332-001

**SUPPLEMENT TO DEFENDANT'S
MOTION TO DISMISS**

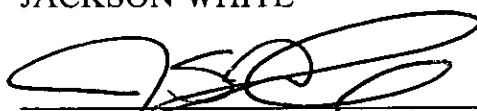
**REPLY IN SUPPORT OF MOTION
TO DISMISS**

Assigned to the Honorable:
Paul McMurdie

20 Defendant, through counsel undersigned, supplements his motion to dismiss and replies in
21 support of his motion to dismiss the above-captioned matter and requests dismissal because even
22 taking all of the state's allegations as true, defendant did not violate A.R.S. § 39-161. Tax
23 documents, even false tax documents, filed in Maricopa County Superior Court can *not* be false
24 filings. This motion is more fully set forth in the accompanying Memorandum of Points and
25 Authorities.

26 DATED this 20th day of June, 2008.

JACKSON WHITE


Attorneys for Defendant
Jeremy S. Geigle, No. 021786

1 A.R.S. § 39-161 was copied verbatim from California Penal Code § 115(a).²

2 The purpose of A.R.S. § 39-161 is to protect the integrity and reliability of public records.³

3 The whole object of all laws which require or permit instruments to be filed,
4 registered, or recorded in any public office is that the general public, if interested in
5 the subject-matter of the instrument, may proceed to the proper office, and if therein
6 they find an instrument duly filed, registered, or recorded, they may and must act with
7 the presumption that such an instrument is indeed in existence and is genuine, and
8 govern their affairs accordingly.⁴

9 In its broadest sense, a paper with writing on it is an instrument.⁵

10 "Falsely alters a written instrument" means to change a complete or incomplete
11 written instrument, without the permission of anyone entitled to grant it, by means of
12 counterfeiting, washing, erasure, obliteration, deletion, insertion of new matter,
13 connecting together different parts of the whole of more than one genuine instrument
14 or transposition of matter or in any other manner, so that the altered instrument falsely
15 appears or purports to be in all respects an authentic creation of its ostensible maker
16 or authorized by him. *Id.*

17 "Falsely completes a written instrument" means to transform an incomplete written
18 instrument into a complete one by adding, inserting or changing matter without the
19 permission of anyone entitled to grant it, so that the complete written instrument
20 falsely appears or purports to be in all respects an authentic creation of its
21 ostensible maker or authorized by him. *Id.*

22 "Falsely makes a written instrument" means to make or draw a complete or
23 incomplete written instrument that purports to be an authentic creation of its
24 ostensible maker but that is not either because the ostensible maker is fictitious, or
25 because, if real, the ostensible maker did not authorize the making or drawing of
26 the written instrument. *Id.*

"Forged instrument" means a written instrument that has been falsely made,
completed or altered. *Id.*

²*Lewis v. State*, 32 Ariz. 182, 186, 256 P. 1048, 1049 (Ariz. Jun 13, 1927) (NO. 639).

³*People v. Gangemi*, 13 Cal.App.4th 1790, 17 Cal.Rptr.2d 462 (Cal.App. 1 Dist. Mar 10, 1993) (NO. A054746).

⁴*Lewis v. State*, 32 Ariz. 182, 188, 256 P. 1048, 1050 (Ariz. Jun 13, 1927) (NO. 639).

⁵A.R.S. § 13-2001.

1 scheme. Accepting the state’s contention that no financial relationship exists between Mr. Stuart
 2 and Timothy Ryan and Andrew Thomas and accepting that the information in the IRS Forms is not
 3 accurate nor true, the IRS Forms still are not *false instruments* per A.R.S. § 39-161. The documents
 4 were made or authorized by Mr. Stuart, and were not made by another and then falsely changed or
 5 transformed by Mr. Stuart as contemplated by A.R.S. § 13-2001. Certainly, as the maker of the
 6 documents, and believing them to be valid and effective, Mr. Stuart did not “know” the documents
 7 to be “false or forged,” as is required for any finding of criminal liability under A.R.S. § 39-161.

8 The IRS Forms Filed In Superior Court Have No Actual Nor Apparent Legal Efficacy.

9 The IRS Forms filed in the Maricopa County Superior Court have no actual nor apparent
 10 legal efficacy. There is no integrity nor reliability interest to protect in tax forms filed in the
 11 Maricopa County Superior Court. Consider a false deed filed in Superior Court. Does the filing
 12 of the deed with the court have any legal effect whatsoever? Clearly it does not; rather the false
 13 deed would have to be filed in the county recorder’s office to take legal effect. The same is true
 14 with federal tax forms filed in the Superior Court. In short, Mr. Stuart’s filing of the tax documents,
 15 even if they were false instruments, which they are not, does not offend the interests which A.R.S.
 16 § 39-161 is designed to protect.

17 As prosecuted A.R.S. § 39-161 is unconstitutionally vague and overly broad.

18 Even if Mr. Stuart’s conduct is deemed to fall under A.R.S. § 39-161, his conduct is not a
 19 crime because A.R.S. § 39-161 is unconstitutionally vague and overly broad. A.R.S. § 39-161 is
 20 unconstitutionally vague and overly broad in violation of the First Amendment of the United States
 21 Constitution and Article 2 § 6 of the Arizona State Constitution. Vague statutes offend the Due
 22 Process Clause of the Fourteenth Amendment and Article IV section 2 of the Arizona Constitution.⁷
 23 The fundamental requirement of establishing clear guidance under statutes is “especially important
 24 in the context of criminal law” because of the potentially severe consequences of imprecision. Also,
 25
 26

⁷*Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *Cohen v. State*, 121 Ariz. 6, 9, 588 P.3d 291 (1978).

1 “where the legislature fails to provide such minimal guidelines, a criminal statute may permit a
2 stardardless sweep that allows policemen, prosecutors, and juries to pursue their personal
3 predilections.”⁸ Unfortunately, this occurred in the present case.

4 A statute is unconstitutionally vague if “it does not give persons of ordinary intelligence a
5 reasonable opportunity to learn what it prohibits and does not provide explicit standards for those
6 who will apply it.”⁹ Whether a statute is unconstitutionally vague is generally determined by
7 examining its application to the facts of the particular case.¹⁰

8 A.R.S. § 39-161 provides no guidance as to whether or not the alleged false instrument must
9 be a document *regularly filed* in that particular public office. Nor does A.R.S. § 39-161 give
10 guidance as to whether or not the document need have any *actual or apparent legal efficacy*. Such
11 vagueness allowed the state to charge a felony for a copy of a tax document filed in a superior court.

12 “The First Amendment doctrine of substantial overbreadth is an exception to the general rule
13 that a person to whom a statute may be constitutionally applied cannot challenge the statute on the
14 ground that it may be unconstitutionally applied to others.” *Massachusetts v. Oakes*, 491 U.S. 576,
15 581, 109 S.Ct. 2633, 2637 (1989), citing *Board of Airport Commissioners of Los Angeles v. Jews*
16 *for Jesus*, 482 U.S. 569, 574, 107 S.Ct. 2568, 2572 (1987). “The doctrine is predicated on the
17 danger that an overly broad statute, if left in place, may cause persons whose expression is
18 constitutionally protected to refrain from exercising their rights for fear of criminal sanctions.” *Ibid*.

19 A.R.S. § 39-161 if given its broadest interpretation makes a felony out of any piece of paper
20 with writing on it offered to be filed in any public office knowing that the piece of paper is false.
21 This statute potentially captures ninety percent of all pro-per pleadings in superior court. Taken

22
23 ⁸*State v. Takacs*, 169 Ariz. 392, 396, 819 P.2d 978 (App. 1991) (citing *Kolender v.*
24 *Lawson*, 461 U.S. 352, 358 (1983) and *Village of Hoffman Estates v. Flipside, Hoffman*
Estates, Inc., 455 U.S. 489, 498-99 (1982)).

25 ⁹*Takacs*, 169 Ariz. at 394, 819 P.2d at 980; *United States v. Harriss*, 347 U.S. 612,
26 617 (1954).

¹⁰*Norton v. Super. Ct.*, 171 Ariz. 155, 157, 829 P.2d 345 (App. 1992).

1 further, this statute captures all forgery and fraud cases where false documents are filed with the
2 court for the express purpose of demonstrating that the said documents are in fact false. Further
3 still, this interpretation make it a felony to submit a false document in a divorce proceeding with the
4 express purpose of showing that the spouse has been dishonest. Such an overly broad statute, if
5 accepted in the present prosecution, chills free expression and captures activity which was never
6 contemplated nor intended by the legislature.

7 **4. CONCLUSION**

8 This case should be dismissed because even taking all of the state's allegations as true,
9 defendant did not violate A.R.S. § 39-161. Simply put, tax forms filed in court can *not* be false
10 filings. The statute as applied in this case is unconstitutionally vague and overly broad. For the
11 foregoing reasons, it is respectfully requested that this case be dismissed.

12
13
14 ORIGINAL filed with the court on
15 this ____ day of June, 2008.

16 COPY of the foregoing
17 faxed/mailed this same date to:

18 The Honorable Paul McMurdie
19 Maricopa County Superior Court
101/201 W. Jefferson
Phoenix, Arizona 85003

20 Deputy County Attorney
21 301 W. Jefferson, 6th Floor
Phoenix, AZ 85007

22 _____
23 *F:\STU\Stuart, John\adv. State AZ\Pleadings\reply in support of motion to dismiss.wpd*