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By: Jeremy S. Geigle, No. 021786

# IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

Plaintiff,

No. CR2008-006332-001

REPLY IN SUPPORT OF MOTION TO DISMISS

Vs.

JOHN CHESTER STUART,

(Assigned to the Honorable Paul McMurdie)

Defendant, through counsel undersigned, replies in support of defendant's motion to dismiss this case because there are no laws (state or federal) nor established procedure to properly file federal tax documents with this Court. This motion is more fully set forth in the accompanying Memorandum of Points and Authorities.

DATED this 19th day of September, 2008.

**JACKSON WHITE** 

Jeremy S. Geigle

Attorneys for Defendant

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# **MEMORANDUM OF POINTS AND AUTHORITIES**

# 1. FACTS

The facts remain in dispute. However, for the purpose of this motion to dismiss, we assume all of the factual allegations of the State are true. The State has alleged that on or about March 26, 2008, John Stuart filed a pro-per petition and memorandum in Maricopa County Superior Court and included false or forged IRS form 1040 V and IRS form 1099-OID with the group of documents.

## **LAW**

A person who acknowledges, certifies, notarizes, procures or offers to be filed, registered or recorded in a public office in this state an instrument he knows to be false or forged, which, if genuine, could be filed, registered or recorded under any law of this state or the United States, or in compliance with established procedure is guilty of a class 6 felony. As used in this section "instrument" includes a written instrument as defined in § 13-2001.

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

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

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

<sup>1</sup>A.R.S. § 39-161.

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

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

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

### 2. **ARGUMENT**

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There are no laws nor established procedure to file federal tax documents with this Court.

The State argues in its response that the public would not only seek a federal tax document in the superior court but also rely on it in the rare case it was found in that public office, the court. 5 This argument is absurd. No reasonable person would seek or rely upon a federal tax document filed in the Superior Court by a pro-per defendant.

The State further argues that these federal tax documents could be filed with the federal court 8 and that defendant's expert has stated the same. This contention is also falsely absurd. Federal tax documents can not be properly filed with the federal court. Further, defendant's expert has testified 10||by affidavit that federal tax forms 1099OID and 1040V may only be properly filed with the IRS and 11 || not the federal court. See Affidavit of William H. Barchilon, C.P.A, attached to defendant's motion 12 to dismiss.

The constitutional protection against overbreadth built into the statute is the language that 14 requires the document be filed in the proper office. The Superior Court is not the proper office for 15 | filing federal tax documents and therefore this case should be dismissed.

### CONCLUSION 3.

This case should be dismissed because even taking all of the State's allegations as true, 18 defendant did not violate A.R.S. § 39-161. There are no laws (state or federal) nor established 19 procedure to properly file federal tax documents with this court. For the foregoing reasons, it is 20 respectfully requested that this case be dismissed.

RESPECTFULLY SUBMITTED this 19th day of September, 2008.

JACKSON WHITE

40 N. Center Street, Suite 200

Attorneys for Defendant

1	ORIGINAL filed with Clerk of Court and COPY hand delivered
2	this 19th day of September, 2008, to:
3	Hon. Paul McMurdie Maricopa County Superior Court
4	101 W. Jefferson Ave., Ste. 413 Phoenix, Arizona 85003
5	Assigned Judge
6	and COPY faxed and mailed same date to:
7	Susie Charbel, Deputy County Attorney Maricopa County Attorney's Office
8	301 W. Jefferson, Suite 400 Phoenix, Arizona 85003-2191
9	Attorney for Plaintiff [fax #602-506-7950]
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