

**IN THE SUPREME COURT
OF THE STATE OF ARIZONA**

RACHEL MITCHELL, in her official
capacity as the Maricopa County Attorney,
Petitioner,

v.

JUSTIN HEAP, in his official capacity as
the Maricopa County Recorder,
Respondent.

Arizona Supreme Court No.

Maricopa County Superior Court
Nos. CV2025-020621; CV2025-
022266

PETITION FOR SPECIAL ACTION

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Introduction

This Petition for Special Action asks this Court to resolve a question of first impression at the heart of Arizona’s system of county government: Can county officers unilaterally bypass county attorneys and retain any attorney they wish to pursue offensive civil litigation in the absence of any statute authorizing that action? The plain language of the Arizona Constitution, the statutes in Title 11, and caselaw dating back to the territorial era all dictate that the answer is “no”; county officers may only exercise powers “as prescribed by law.” Ariz. Const. art. XII, § 4

In all of Title 11, it has been recognized that only two county officers have statutory authority to retain counsel: county attorneys, who are the “public prosecutor[s] of the county,” A.R.S. § 11-532(A), and boards of supervisors who have the power to “[d]irect and control the prosecution and defense of all actions to which the county is a party, and compromise them,” A.R.S. § 11-251(14). There is no statute giving other county officers (including county recorders) the same or similar authority. Thus, absent authorization from the county attorney, county officers other than the board may not retain outside litigation counsel to initiate (or defend) civil litigation.

In approving Maricopa County Recorder Justin Heap’s (the “Recorder”) unilateral retention of litigation counsel to initiate a lawsuit against the Maricopa County Board of Supervisors (the “Board”)—and reaching the untenable result that

Maricopa County Attorney Rachel Mitchell (the “County Attorney”) has no standing to challenge that retention—the superior court disregarded these bedrock principles and gave county officials across Arizona a “green light” to unilaterally retain outside litigation counsel of their own choosing to initiate lawsuits that are untethered to statutory duties. That ruling opens up a transformational Pandora’s Box without a constitutional change or legislative authority.

That clear legal error demands immediate correction by this Court. The superior court misread the governing statute, ignored over a century of precedent recognizing the virtually exclusive authority of county attorneys to represent the county in civil litigation, and created an untenable distinction between offensive and defensive claims that finds no support in the statutory text or caselaw.

The blast radius from the superior court’s decision will not be limited to Maricopa County or the facts of this case. By permitting any elected county officer to bypass county attorneys and retain outside litigation counsel, the court’s reasoning will destabilize county governance, undermine democratic accountability, expose county monies to cronyism and use for political witch hunts, leave counties liable for the tortious acts of un-vetted counsel, and allow county officers to retain counsel to further a particular ideological agenda via litigation.

These untenable consequences cannot be allowed to take place. The genie cannot be put back in the bottle. County officials and taxpayers, too, deserve finality on these legal issues now.

Accordingly, the County Attorney respectfully requests that this Court accept jurisdiction, vacate the superior court's order, and direct the court to enter judgment in her favor (1) declaring that county officers must use counsel appointed by the county attorney in all cases in which there is no direct legal conflict and (2) enjoining the Recorder from utilizing outside counsel that has not been appointed by the County Attorney.

Statement of the Issues

1. Whether a county attorney has standing to vindicate her statutory authority under A.R.S. § 11-532(A) to challenge a county officer's retention of litigation counsel.
2. Whether a county officer may unilaterally bypass the county attorney and retain litigation counsel of their own choosing, without statutory authorization.
3. Whether county attorneys possess statutory authority under A.R.S. § 11-532(A) to represent county officers in civil litigation and to appoint outside counsel in all cases where there is no direct legal conflict between the county attorney and the county officer.

Jurisdictional Statement

This Court has discretion to exercise jurisdiction to hear the County Attorney’s special action now. Ariz. Const. Art. VI, § 5(1), (3); *see also* Ariz. R.P. Spec. Act. 11(b)(3), 12(a). The inquiry is whether is “whether remedy by appeal is equally plain, speedy, and adequate.” Ariz. R.P. Spec. Act. 12(a), Here, all of the salient Ariz. R.P. Spec. Act. 12(b) factors, in addition to those recognized by this Court’s cases, strongly weigh in favor of accepting immediate jurisdiction to decide the dispositive legal issues in this case. As discussed below, this petition presents pure legal issues of first impression that are of statewide importance, seeks review of a decision that cannot be justified by any rule of law, is required to prevent the Recorder from proceeding without, or in excess of, jurisdiction or legal authority, and the remedy by appeal is wholly inadequate.

First, the issues presented are clearly of statewide importance. *See* Ariz. R.P. Spec. Act. 12(b)(4); *City of Surprise v. Ariz. Corp. Comm’n*, 246 Ariz. 206, 209 ¶ 6 (2019). The superior court’s decision is state-altering: it purports to authorize county officials, acting in their official capacity, to select their own counsel to pursue offensive litigation—not just against other county officers, but against anyone. The superior court’s reasoning is not even limited to cases in which the County Attorney has a conflict. Arizona has fifteen counties, each with multiple elected officers. The question of who has authority to retain counsel for county

officers in litigation, and who bears ultimate accountability (and expense) for those decisions, affects every county in this State.

It has always been understood that county attorneys have the virtually exclusive authority to represent county officers and to appoint outside counsel to act in their stead. *See, e.g., Santa Cruz County v. Barnes*, 9 Ariz. 42, 49 (1904) (“It is and should be the law that the supervisors of the county, on motion of or with the consent of the district attorney, have the power . . . to employ counsel . . .”). And this framework has proven critical to county governance.

To start, this framework protects the public fisc. The authority of county attorneys to represent county officers, or to appoint council for them in the event of a conflict, guards against the expenditure of county monies on patronage or the appearance of patronage. *Merriam v. Barnum*, 48 P. 727, 728 (Cal. 1897) (describing this framework as “one of the strongest safeguards cast about the expenditure of county funds”), *cited favorably in Bd. of Supervisors. v. Woodall*, 120 Ariz. 379, 382 (1978); *see also State ex rel. Banks v. Drummond*, 385 P.3d 769, 778 ¶ 36 (Wash. 2016) (explaining that avoiding the appearance of patronage is a core reason why western states made county attorneys an elected position). And it also allows for vetting of outside litigation counsel, who may expose the county treasury to claims based upon their tortious acts. *See Sanchez v. Maricopa County*, 572 P.3d 101, 111 ¶ 36 (2025).

This framework also promotes democratic accountability. Arizona’s system of county government creates a horizontal row of officers with powers and duties that are separate and distinct. *Id.* at 107 ¶¶ 15–16. Those distinct functions are what makes county officers “separately accountable to voters.” *Id.* ¶ 16. The public elects county attorneys to represent counties in civil and criminal proceedings. *Drummond*, 385 P.3d at 781 ¶ 50 (“It would be fruitless to delegate the selection of county officers to the voters if the duties of those officers could be freely delegated” to others); *Salt Lake County Comm’n v. Short*, 985 P.2d 899, 907 ¶ 21 (Utah 1999) (“Where the public elects an officer who is to perform all duties of an attorney for a governmental entity, they expect that that person will perform all duties within the scope of that office unless disabled from doing so by some ethical or legal rule.”). Dispersing county attorneys’ authority among other county officers blurs the lines and undermines the democratic accountability our system seeks to promote.

Additionally, this framework ensures both uniformity in a county’s litigation positions and that county officials in their official capacity do not retain issue advocacy groups—regardless of their political persuasion—to advance a particular political issue under the shroud of bona fide litigation. *See Cahn v. Town of Huntington*, 278 N.E.2d 908, 910 (N.Y. 1972).

That concern is particularly acute in the context of election administration, where the Legislature has drawn explicit lines to keep public election infrastructure insulated from private or political influence. Arizona law prohibits public agencies from allowing official governmental functions to be performed by individuals compensated—even indirectly—by private monies, including nonprofit or advocacy organizations. A.R.S. § 35-149.01(A). It likewise forbids counties and other public bodies from receiving or expending private monies “for preparing for, administering or conducting an election.” *Id.* § 16-407.01. These provisions reflect a clear legislative judgment that election-related governmental functions must remain publicly funded, publicly accountable, and institutionally neutral.

Allowing a county recorder to unilaterally retain an outside issue-advocacy organization, whatever its ideological agenda, to prosecute official-capacity litigation would erode those safeguards. It would create a pathway for private political groups to influence or redirect nonpartisan election administration through litigation strategy and resource allocation, all under the mantle of official county action. The county attorney framework exists to prevent precisely that outcome by centralizing the selection and oversight of counsel in a publicly accountable constitutional officer. Preserving that framework is therefore not only a matter of statutory fidelity, but a necessary protection against the politicization of local

election administration—an issue of undeniable statewide importance warranting this Court’s immediate review.

The superior court’s decision upends this longstanding framework with consequences that will reverberate across every county in Arizona warranting immediate relief. *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 278 ¶ 26 (2019) (granting review based on constitutional and statutory issues of statewide importance).

Second, this case raises pure legal issues of first impression concerning the authority of county officials. *See City of Surprise*, 246 Ariz. at 209 ¶ 6; *see also Forty-Seventh Legislature v. Napolitano*, 213 Ariz. 482, 485–86 ¶ 11 (2006) (exercising immediate special action jurisdiction over dispute between the Legislature and Governor); *Richer v. Fontes*, CV-24-0221-SA, 2024 WL 4299099, at *2 (Sept. 24, 2024) (decision order) (exercising special action jurisdiction to resolve question of county recorder’s authority).

Although this Court has previously considered whether a board of supervisors may utilize counsel other than the county attorney or the county attorney’s appointed counsel, *Woodall*, 120 Ariz. at 382 (holding that the board’s implied authority under a predecessor statute to A.R.S. § 11-251(14) authorized it do so), it has never before addressed whether other county officers may unilaterally retain counsel to proactively initiate civil litigation at their whim. In light of the

superior court's order, counties across the state need immediate guidance on this issue. *See Kadish v. State Land Dep't*, 155 Ariz. 484, 486 (1987) (granting transfer on “matters of first impression and substantial statewide importance”).

And here, the outcome turns exclusively on questions of statutory and constitutional interpretation. County officers have no inherent power. They have only those powers “prescribed by law,” Ariz. Const. art. XII, § 4, and are only authorized to act if empowered to do so “by the state constitution or statutes.” *Ariz. Pub. Integrity Alliance v. Fontes*, 250 Ariz. 58, 62 ¶ 14 (2020). Thus, the dispositive issues in this case are whether the Recorder is statutorily authorized to unilaterally retain litigation counsel (he is not) and whether the County Attorney may appoint counsel for him under A.R.S. § 11-532(A) (she may).

There are no disputed facts. The parties agreed to resolve this dispute through cross-motions for judgment on the pleadings, and the superior court decided the case on that basis. [APP0506, APP0509]; *Dobson v. State ex rel. Comm'n on Appellate Ct. Appointments*, 233 Ariz. 119, 121–22 ¶¶ 6–8 (2013) (granting immediate review where the petition “presents purely legal questions of statewide importance that turn on interpreting Arizona's Constitution”).

Third, the superior court's order “cannot be justified under any rule of law.” Ariz. R.P. Spec. Act. 12(b)(8). Its statutory interpretation is at war with both basic canons of construction and over a century of Arizona precedent recognizing the

county attorney's authority over county litigation. The superior court's contrary conclusion finds no support in the statutory text, legislative history, or case law.

Equally troubling, the superior court's standing analysis is fundamentally at odds with this Court's most recent guidance on standing doctrine. In *Montenegro v. Fontes*, 576 P.3d 692 (Ariz. 2025), this Court clarified that when assessing standing, a court assumes the plaintiff is correct on the merits and then considers whether those allegations state a claim involving a "particularized injury" or an "actual controversy." *Id.* at 696–97 ¶¶ 17–19. The superior court did the opposite: it concluded that A.R.S. § 11-532 does not authorize County Attorney to represent other county officials (or appoint counsel for them) in initiating civil litigation and, from that premise, concluded the County Attorney somehow lacks standing. [APP0508–09.] That analysis conflates the merits with standing, allows the Recorder's (or any other county officer's) unauthorized retention of counsel to evade review, and is irreconcilable with *Montenegro*.

Fourth, for related reasons, immediate relief is "particularly appropriate" to prevent the Recorder from proceeding "without or in excess of jurisdiction or legal authority." *City of Surprise*, 246 Ariz. at 209 ¶ 6 (citation modified). He lacks statutory authority to retain outside litigation counsel unilaterally, and the County Attorney's action seeks to enjoin him "from acts that are beyond his power." *Ariz. Pub. Integrity Alliance*, 250 Ariz. at 62 ¶ 14. Holding officials to the scope of their

statutory duties resides at the heartland of special action jurisdiction. Ariz. R.P. Spec. Act. 4(b).

Fifth, remedy by appeal is not adequate. Although the County Attorney has a direct appeal right under A.R.S. § 12-2101(A)(5)(b) because the superior court’s order denied injunctive relief, the ordinary appellate process is not adequate to address the issues of statewide importance presented. The superior court’s order gives county officials across Arizona a green light to retain any counsel they wish to pursue offensive claims—without oversight, without accountability, and without regard to the public fisc.

Resolution cannot wait for entry of judgment and the ordinary appellate process to run its course. County officials across the state are now free to seize on the superior court’s order to unilaterally retain litigation counsel without approval of the county attorney to start initiating litigation and exposing public funds to liability. Immediate relief is required to prevent that untenable result. *Ariz. Corp. Comm’n v. State ex rel. Woods*, 171 Ariz. 286, 288 (1992) (“[T]his court can best serve the public interest and principles of judicial economy by resolving fundamental legal questions regarding . . . constitutional power at this time”), *abrogated on other grounds by Johnson Utils., L.L.C. v. Ariz. Corp. Comm’n*, 249 Ariz. 215, 227 ¶ 52 (2020).

Even more dire, this is an election year, and the Recorder’s underlying case

is fundamentally a dispute over statutory duties for county officers in administering elections. [APP0007 ¶ 18.] The superior court's order opens the floodgates for all fifteen county recorders to retain counsel without authorization and initiate similar litigation seeking to alter election rules and procedures, sowing confusion in the midst of election season. The principles underlying the *Purcell* doctrine recognize that courts must safeguard against precisely this kind of eleventh-hour chaos. *Richer*, 2024 WL 4299099, at *3 (citing *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006)).

The issue requires immediate resolution by this Court to prevent ongoing harm to the constitutional office of the County Attorney and to the framework of county governance that the Legislature has carefully constructed.

Statement of Facts

This action stems from a separate dispute between the Recorder and the Board concerning the meaning of certain Arizona election law statutes, the responsibilities of the Recorder and the Board in the administration of elections, and an agreement between the two as to their shared responsibilities. [APP0007 ¶ 18.] As in any other case where two of her clients are adverse to one another, the County Attorney appointed outside counsel for each of them during the negotiations and remained neutral, advising neither. [APP0007–08 ¶ 22.]

When the Recorder complained that the attorney appointed for him lacked sufficient subject matter expertise, the County Attorney appointed former Arizona Supreme Court Justice Andrew Gould to advise the Recorder during negotiations with the Board. [APP0374–75 ¶ 7; APP0400.] His engagement letter specifically limited the scope of his work to advice and representation to the Maricopa County Recorder related to the Shared Services Agreement between Board and the Recorder. [See APP0375 ¶ 11.] The engagement did not include litigation services. [Id.]

Apparently tired of negotiating with the Board, the Recorder—without consulting the County Attorney or obtaining her approval—retained America First Legal Foundation (“America First Legal”), a public interest non-profit organization, to initiate litigation against the Board. (*Heap v. Galvin*, No. CV2025-

020621). [APP0375–76 ¶ 12.]. While America First Legal’s representation of the Recorder is *pro bono*, the Recorder seeks a fee award in his case against the Board. [APP0467.]

On June 25, 2025, the County Attorney filed a Verified Special Action Complaint for Declaratory and Injunctive Relief against the Recorder (*Mitchell v. Heap*, No. CV2025- CV2025-022266), seeking: (1) a declaratory judgment that unless the County Attorney has a direct legal conflict with the Recorder, the Recorder is not lawfully permitted to select, retain, or otherwise utilize any outside counsel that has not been appointed by the County Attorney; (2) injunctive relief enjoining the Recorder from retaining America First Legal or any other outside counsel that has not been appointed by the County Attorney; (3) a declaratory judgment that the Recorder acted outside his lawful authority by expending public monies to retain America First Legal without the approval of the County Attorney; and (4) injunctive relief enjoining the Recorder from expending any additional funds to retain America First Legal or any other outside counsel that has not been appointed by the County Attorney. [APP0012–15 ¶¶ 42–58; APP0015 ¶¶ A–D.]¹

Both parties moved for judgment on the pleadings. The County Attorney argued that no statute authorizes the Recorder to unilaterally retain outside

¹ The superior court consolidated *Mitchell v. Heap* with *Heap v. Galvin* upon stipulation of all parties. [APP0505; APP0071–73.]

litigation counsel, and that his retention of America First Legal was therefore *ultra vires*. [See APP0353–59.] She also asserted that A.R.S. § 11-532(A) designates her as “the public prosecutor of the county,” which broadly includes the power to initiate and continue both civil and criminal legal proceedings on behalf of the county and its officers, an authority that she may delegate to outside counsel in appropriate circumstances. [See *id.*]

The Recorder, for his part, argued that the County Attorney lacks statutory authority to appoint counsel for other county officers, that he has an independent right to counsel under common law, and that County Attorney Mitchell has a disqualifying conflict of interest. [See APP0404–13.]

On January 30, 2026, the superior court issued its order granting the Recorder’s Motion and denying the County Attorney’s Motion. [APP0509.] The superior court held that County Attorney Mitchell “failed to identify any controlling authority establishing that she has the exclusive statutory authority and duty to represent county officers in civil litigation when the county official is initiating litigation as a plaintiff.” [APP0507.]

The superior court further found that “the plain language of the statute governing the County Attorney’s powers and duties does not empower her with the authority she claims in this lawsuit” because A.R.S. § 11-532 does not confer a “veto power over the County Recorder’s ability to choose an attorney to represent

the Recorder in litigation initiated by the Recorder.” [*Id.*] It distinguished past cases discussing the retention of litigation counsel by county officers on their facts, and noted that “public funds are not at issue in the present case because the Recorder’s legal counsel—America First Legal—is representing the Recorder *pro bono.*” [APP0508.]

Finally, the superior court concluded that because the County Attorney had not established her exclusive right to represent the Recorder or to decide who Recorder Heap could retain as his attorney in litigation, she lacked standing, and dismissed the case on that basis. [APP0508–09.]

Standard of Review

This Court reviews an order denying an injunction for an abuse of discretion. *Ariz. Pub. Integrity Alliance*, 250 Ariz. at 62 ¶ 8. “An error of law constitutes an abuse of discretion.” *Shinn v. Ariz. Bd. of Executive Clemency*, 254 Ariz. 255, 259 ¶ 13 (2022) (quotation omitted).

An order granting motion for judgment on the pleadings is reviewed de novo. *Ray & Lindsay - 11, LLC v. Town of Gilbert*, 252 Ariz. 147, 149 ¶ 9 (App. 2021). As is the superior court’s standing determination. *Montenegro*, 576 P.3d at 696 ¶ 15.

Questions of constitutional and statutory interpretation are also reviewed de novo. *BSI Holdings, LLC v. Ariz. Dep’t of Transp.*, 244 Ariz. 17, 19 ¶ 9 (2018). This Court interprets statutes according to “the plain meaning of the words the legislature chose to use, viewed in their broader statutory context.” *In re Drummond*, 257 Ariz. 15, 18 ¶ 5 (2024) (quotation omitted); *Planned Parenthood Ariz., Inc. v. Mayes*, 257 Ariz. 137, 142 ¶ 16 (2024). It avoids constructions that would produce absurd results, destabilize the legal structure of government, or render provisions meaningless. *See Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019); *State v. Estrada*, 201 Ariz. 247, 251 ¶ 17 (2001). But it does not “inflate, expand, stretch or extend a statute” beyond its terms. *Roberts v. State*, 253 Ariz.

259, 266 ¶ 20 (2022) (quotation omitted). “When a statute’s plain language is unambiguous in context, it is dispositive.” *In re Drummond*, 257 Ariz. at 18 ¶ 5.

In the public-law context, the allocation of authority between county elected offices turns on what the Constitution and statutes confer. County officers possess only those powers expressly granted, together with powers implied from such express grants. *See Ariz. Pub. Integrity Alliance*, 250 Ariz. at 62 ¶ 14; *State ex rel. Pickrell v. Downey*, 102 Ariz. 360, 363 (1967).

Argument

I. The County Attorney Has Standing to Vindicate Her Statutory Authority.

The superior court’s standing analysis was circular and contrary to this Court’s precedents. The superior court found that the County Attorney lacked standing because she failed to establish her statutory authority. [APP0508–09.] In doing so, it conflated standing with the merits. *Montenegro*, 576 P.3d at 696–97 ¶¶ 17–19.

Standing in Arizona is prudential. *See Bennett v. Brownlow*, 211 Ariz. 193, 196 ¶¶ 14–16 (2005). The Arizona Constitution has no case or controversy requirement. *Mills v. Ariz. Bd. of Tech. Registration*, 253 Ariz. 415, 423 ¶ 23 (2022). Justiciability is only a prudential “matter of judicial restraint to ensure courts ‘refrain from issuing advisory opinions, that cases be ripe for decision and not moot, and that issues be fully developed between true adversaries.’” *Id.* (citation omitted).

Cases are justiciable “if the plaintiff has incurred an injury” or “if there is an actual controversy between the parties.” *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 280 ¶ 36 (2019). Under Arizona’s Declaratory Judgments Act, a party need not “demonstrate past injury or prejudice so long as the relief sought is not advisory.” *Ariz. Sch. Bds. Ass’n, Inc. v. State*, 252 Ariz. 219, 224 ¶ 16

(2022) (citation omitted). A plaintiff need only show its “rights, status or other legal relations are affected” *Id.* (quotations omitted).

Where, as here, a plaintiff alleges that another public officer is acting without or in excess of legal authority in a manner that injures the plaintiff’s official powers or duties, the plaintiff has standing. *See, e.g., Montenegro*, 576 P.3d at 696–97 ¶¶ 17–19; *Ariz. Pub. Integrity Alliance*, 250 Ariz. at 62 ¶ 11; *Forty-Seventh Legislature*, 213 Ariz. at 486–87 ¶¶ 14–18. More specifically, this Court’s recent guidance confirms that standing analysis assumes the plaintiff’s legal theory for purposes of the threshold inquiry. The relevant question is whether the plaintiff alleges a particularized injury or an actual controversy. *Montenegro*, 576 P.3d at 696–97 ¶¶ 17–19.

Here, the County Attorney alleges that the Recorder is proceeding outside his authority without the County Attorney’s authorization (and without any statutory authorization of his own), thereby impairing the County Attorney’s statutory function as the county’s public prosecutor and legal representative. [APP0003–05 ¶¶ 1–11.] That allegation, which must be credited as true, asserts a direct institutional injury. *Brewer v. Burns*, 222 Ariz. 234, 237–38 ¶¶ 11–12, 14 (2009). And it presents a concrete controversy fit for judicial resolution. *See Woodall*, 120 Ariz. at 380–81 (declaratory action appropriate to resolve allocation

of county legal authority); *Romley v. Daughton*, 225 Ariz. 521, 525–26 ¶¶ 19, 23–26 (App. 2010) (recognizing county attorneys’ authority and role).

By denying standing based on a *merits view* of A.R.S. § 11-532, the superior court incorrectly inverted the analysis. Whether the statute confers the authority that the County Attorney asserts is a merits question, and not even the dispositive one. Because the Recorder’s “authority is limited to those powers expressly or impliedly delegated to him by the state constitution or statutes,” and no statute authorizes him to unilaterally retain outside counsel, that action is “beyond his power” and must be enjoined. *Ariz. Pub. Integrity Alliance*, 250 Ariz. at 62 ¶ 14.

Whether viewed as an injury to the County Attorney’s statutory authority or an actual controversy regarding the scope of county officers’ statutory authority, standing exists.

II. The Recorder Lacks Authority to Retain Litigation Counsel.

Arizona county officers have no inherent powers. The Arizona Constitution creates county offices and directs that their “duties, powers and qualifications . . . shall be as prescribed by law.” Ariz. Const. art. XII, § 4. When our constitution uses the words “prescribed by law,” it “means statute” not the common law. *Cf. Shute v. Frohmiller*, 53 Ariz. 483, 488 (1939); *Brnovich*, 250 Ariz. at 130 ¶ 8 (recognizing that “[i]n Arizona, unlike some other states, the Attorney General has no inherent or common law authority”). The consequence is simple: county

officers may act only when the Constitution or a statute authorizes the act (expressly or by necessary implication). *See Pickrell*, 102 Ariz. at 363 (public officers possess “only such powers as are conferred by law”). And that principle applies equally to the Recorder. *Ariz. Pub. Integrity Alliance*, 250 Ariz. at 62 ¶ 14 (county recorder may only act within “expressly or impliedly delegated” authority).

That rule controls here. The Recorder initiated litigation against the Board in his official capacity; that is, as a constitutional county officer whose powers are confined to those “prescribed by law.” Ariz. Const. art. XII, § 4. Yet no statute authorizes county recorders to retain outside counsel to pursue litigation on their behalf. The absence of such statutory authority is dispositive.

Rather, in all of Title 11, only two county officers have statutory authority to retain counsel: county attorneys, who are the “public prosecutor[s] of the county,” A.R.S. § 11-532(A); and Boards of Supervisors, who have the power to “[d]irect and control the prosecution and defense of all actions to which the county is a party,” A.R.S. § 11-251(14); *Woodall*, 120 Ariz. at 382 (holding A.R.S. § 11-251(14) conferred implied authorization for a board of supervisors to retain outside counsel). There is no statute giving county recorders the same or even similar authority.

The only statute that the Recorder identified as conferring a supposed right to choose his own counsel is A.R.S. § 1-201, which adopts the “common law only so far as it is consistent with and adapted to the natural and physical conditions of this state and the necessities of the people thereof, and not repugnant to or inconsistent with the Constitution of the United States or the constitution or laws of this state, or established customs of the people of this state.” But that statute does not confer on the Recorder the authority that he claims.

County elected officers have no common-law powers; they are creatures of statute and have only those powers “prescribed by law,” Ariz. Const. art. 12, § 4, meaning codified in statute. *Cf. Shute*, 53 Ariz. at 488; *see also Brnovich*, 250 Ariz. at 130 ¶ 8; *Horne v. Hobbs*, 576 P.3d 108, 111 ¶ 9 (App. 2025) (same for state Superintendent).

Confirming this, a century of precedent post-dating the enactment of A.R.S. § 1-201,² has looked to sources other than the common law (i.e., statutes) to determine whether a board of supervisors may retain outside counsel. *Woodall*, 120 Ariz. at 383; *Pima County v. Grossetta*, 54 Ariz. 530, 539–40 (1939); *Barnes*, 9 Ariz. at 48. If county officers had some inherent common-law right to counsel of

² The current iteration of A.R.S. § 1-201 has remained essentially unchanged since 1887. *See John W. Masury & Son v. Bisbee Lumber Co.*, 49 Ariz. 443, 461 (1937).

their own choosing, then the courts in those cases would never have had needed to rely on A.R.S. § 11-251(14).

Moreover, allowing county elected officers to unilaterally retain outside litigation counsel to initiate official-capacity claims on their behalf is “repugnant to . . . the constitution or laws of this state, or established customs of the people of this state” such that A.R.S. § 1-201 is inapplicable. When “the public elects an officer who is to perform all duties of an attorney for a governmental entity, they expect that that person will perform all duties within the scope of that office unless disabled from doing so by some ethical or legal rule.” *Salt Lake County Comm’n*, 985 P.2d at 907 ¶ 21. Arizona’s system of county government creates a horizontal row of officers with powers and duties that are separate and distinct, which ensures those officers are “separately accountable to voters.” *Sanchez*, 572 P.3d at 107 ¶¶ 15–16. Blurring those functions undermines that political accountability. *Drummond*, 385 P.3d at 781 ¶ 50.

The absence of an authorizing statute evinces a legislative decision that the power does not exist; it is not a gap that may be filled by general notions of “common law” discretion. *See Pickrell*, 102 Ariz. at 363. Indeed, that the Legislature has authorized boards of supervisors to retain counsel but has not done so for other county officers (including recorders), confirms the Legislature has not granted the Recorder the power that he claims. *Estate of Dominguez v. Dominguez*,

567 P.3d 81, 86 ¶ 19 (Ariz. 2025); *Stambaugh v. Killian*, 242 Ariz. 508, 511 ¶ 15 (2017).

Consequently, the Recorder lacks authority to retain outside counsel. His retention of America First Legal is therefore *ultra vires* and must be enjoined. *Ariz. Pub. Integrity Alliance*, 250 Ariz. at 62 ¶ 14.

III. A.R.S. § 11-532 Defines the County Attorney as the County’s Public Prosecutor and Legal Representative.

The superior court committed further error in concluding that A.R.S. § 11-532(A) does not give county attorneys the authority to pursue offensive claims on behalf of other county officers in their official capacity or to appoint counsel on behalf of those county officers. [APP0507–08.] But the plain meaning of the statute at the time of its enactment, the structure of the statute itself, and all the case law discussing the authority of county officers to retain legal counsel refute that interpretation.

A. “Public Prosecutor” Encompasses Civil Litigation Authority, Including the Implied Authority to Appoint Council.

When interpreting statutory terms, courts look to ordinary meaning at the time of enactment. *In re. B.W.*, 572 P.3d 88, 96 ¶ 23 (Ariz. 2025). Tracing back to the territorial era, the statutes establishing county attorneys’ powers have not meaningfully changed. Ariz. Rev. Stat., Title XIII, Ch. 5, § 489 (1887); Ariz. Rev. Code § 881 (1928); *Grossetta*, 54 Ariz. at 539 (quoting 1928 code provision). The

phrase “public prosecutor” has meaning anchored in contemporaneous legal usage. In *Brnovich*, this Court explained that to “prosecute” historically meant to “institute and carry on a legal action,” including civil proceedings. 250 Ariz. at 131–32 ¶ 15. That understanding fits the statutory architecture of county government.

As discussed, county litigation requires centralized representation to maintain coherent legal positions, protect public funds, and ensure democratic accountability. The Legislature implemented that structure by defining the county attorney as the county’s prosecutor—i.e., the county’s legal representative in court—and then assigning duties consistent with that role. A county attorney’s role necessarily includes the authority to provide representation when county elected offices are adverse, and a county attorney cannot represent both entities. 1977 Ariz. Att’y Gen. Op. 154 (1977) (county attorneys may resort to outside counsel in “conflict of interest situations and problems requiring special expertise”).

B. Section 11-532 Is a Definitional Statute, Identifying the County Attorney’s Authority and Imposing Core Duties Without Exhaustively Enumerating Every Permissible Act

A.R.S. § 11-532 is entitled “Powers and duties; definition.” That title matters. Titles and headings are “permissible indicators of meaning,” especially when they illuminate structure. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 221 (2012). Here, the title signals that the statute

does two things: it (1) defines a county attorney’s authority; and (2) lists mandatory duties that attend the office.

Following the title’s cue, the statute opens with a clear definition. “The county attorney is the public prosecutor of the county” A.R.S. § 11-532(A). The definite article “the” denotes a single constitutional officer vested with a singular countywide authority. The enumerated “shall” subsections that follow impose duties—they do not silently strip the office of the incidental authority necessary to perform those duties effectively. *Brnovich*, 250 Ariz. at 132 ¶ 19. This Court generally presumes the Legislature does not enact superfluous language and does not write statutes that disable an office from functioning. *Nicaise*, 245 Ariz. at 568 ¶ 11.

Reading § 11-532 as an exhaustive inventory of every permissible act collapses the statute’s definitional clause into a nullity, inverts the statute’s structure, and would render the County Attorney’s office incapable of executing ordinary litigation functions that no one can reasonably doubt exist, *e.g.*, designating deputies, selecting specialists, retaining vendors, and appointing conflict counsel. The better reading is the ordinary one for statutes defining an office: the statute defines authority and sets core duties, while preserving implied and incidental authority needed to carry out the office’s defined role. *See Pickrell*, 102 Ariz. at 363 (express powers include necessary implied powers).

C. The Duties Enumerated in A.R.S. § 11-532(A) Are Not Exclusive, Nor Do They Limit the County Attorney’s Core Authority

The Recorder argued, and the superior court agreed, that because § 11-532 lists certain duties, anything not listed is forbidden. That is a textbook misuse of the Negative-Implication Canon (*expressio unius est exclusio alterius*). The canon “applies only when the *unius* . . . can reasonably be thought to be an expression of all that shares in the grant or prohibition involved.” Scalia & Garner, *supra*, at 107. A statute that defines an office and then lists core duties is not naturally read as an exhaustive list of every permissible act within the defined role. Moreover, here, the title’s inclusion of “definition” and the opening clause’s grant of authority defeat the premise that the Legislature intended exhaustive enumeration of all duties, let alone the authority attendant to those duties.

The negative-implication inference is even weaker where, as here, the statute defines authority and directs governmental action. In *United States v. Montalvo-Murillo*, 495 U.S. 711 (1990), for example, the Court rejected the idea that statutory “shall” directives governing government action silently divest authority or imply exclusivity. *Id.* at 718–20. The Court emphasized that many statutory requirements are “intended for the guide of officers” and “do not limit their power.” *Id.* at 718 (quoting *French v. Edwards*, 80 U.S. (13 Wall.) 506, 511 (1872)). And in *De Martinez v. Lamagno*, 515 U.S. 417 (1995), the Court recognized that “shall” in provisions authorizing governmental or judicial action

frequently operates permissively, conferring power without mandating its exercise or restricting its scope. *Id.* at 434 n.9.

Those principles apply with equal force to § 11-532(A). The statute’s “shall” subsections impose duties; they do not silently withdraw the County Attorney’s express authority as “*the* public prosecutor of the county,” A.R.S. § 11-532(A) (emphasis added), or the incidental authority to carry out that defined role, including appointment of counsel as appropriate.

Section 11-532(E) removes any remaining doubt. That provision confirms the County Attorney’s exclusive gatekeeping role for obtaining civil legal services for county officers. It provides that “[t]he county attorney may also obtain civil legal services for the county or for an officer, employee or agency of the county” from another public entity’s general counsel by request or intergovernmental agreement. *Id.* § 11-532(E). This presupposes that the authority to secure civil legal services for county officers resides in the County Attorney.

If county officers could somehow independently procure counsel whenever they wished, subsection (E) would be unnecessary and superfluous—contrary to established rules of construction. The Legislature instead centralized appointment authority in the County Attorney, confirming that the County Attorney is the decision-maker for *how* county officers obtain civil representation, including *when* outside counsel is needed. Construing § 11-532(A) to permit officers to bypass the

County Attorney collapses subsection (E) into surplusage. This Court rejects such readings. *Nicaise*, 245 Ariz. at 568 ¶ 11.

D. Caselaw Confirms The County Attorney’s Virtually Exclusive Authority to Appoint Outside Counsel.

Over a century of precedent going back to the territorial era confirms both (1) the default position that county officials must utilize their county attorney (or the county attorney’s designee) for both offensive and defensive litigation, and (2) a county officer desiring to utilize its own counsel must ground that decision in a statute that authorizes it.

Arizona courts recognized early that a board of supervisors may, in limited circumstances grounded in statute, employ counsel for county litigation. In *Barnes*, the territorial Supreme Court upheld the board’s ability to hire outside counsel, but only with a county attorney’s consent. 9 Ariz. at 49. In *Grossetta*—which involved offensive litigation to collect on judgments—this Court reaffirmed that the board’s express statutory authority carries with it the implied authority to employ counsel in litigation matters. 54 Ariz. at 539–40. Again, if county officials had some inherent right to employ outside litigation counsel, the Court would never have needed to rely on the board’s express statutory authorization.

This Court set the modern framework in *Woodall*, holding that the board lacked authority to employ private counsel to advise the board and county officers, because the Constitution created the county attorney’s office and statutes prescribe

its duties. 120 Ariz. at 382. The Court reasoned that when a statute charges a public lawyer with the duty to conduct the legal business of an agency, contracts with other lawyers to perform those duties are *ultra vires* and void. *Id.* at 381–82.

At the same time, *Woodall* recognized narrow circumstances in which a board could retain outside counsel for litigation—when the county attorney refuses to act, consents, is unable to provide services (including by appointing a special deputy), or is unable due to conflict. *Id.* at 380–83. Those exceptions confirm the rule. A county attorney is the default legal representative of his or her county. Retention of outside counsel, even with statutory authorization, is permissible only under certain circumstances. It follows that *without* statutory authorization, retention of outside counsel is not permissible at all.

The Court of Appeals in *Daughton*, reinforced these principles, reaffirming that “the county attorney of each county also has a duty (and the authority) to represent the county in civil litigation.” 225 Ariz. 521 at 525 ¶ 19. Even the board—despite its express authority under § 11-251(14)—may retain outside counsel only “on a case-by-case basis” and may not “disregard or supersede” the county attorney and employ other counsel to transact county business “in his stead.” *Id.* at 526–27 ¶¶ 23, 28–29. If boards of supervisors, who possess statutory authorization to retain counsel, are subject to such limitations, it makes no sense

that county recorders, who have no similar statutory authorization, would be subject to no limitations.

The Court of Appeal’s decision in *Romley v. Arpaio*, 202 Ariz. 47 (App. 2002), illustrates this principle. There, the sheriff faced proceedings before a county commission; the county attorney was conflicted and appointed counsel. *Id.* at 49 ¶¶ 1–3. The sheriff sought to use a different attorney already employed by the sheriff’s office, whose services would cost the county nothing additional. *Id.* at 49 ¶ 1. The court rejected the attempt and held that, absent authorization, “county officials must use counsel obtained by the county attorney to represent their interests.” *Id.* at 54 ¶ 27. The sheriff conceded, and the court accepted, the dispositive premise that his office “lacks statutory authority to choose or employ counsel.” *Id.* at 52 ¶ 17. The Recorder is in the same position as the sheriff in *Arpaio*. He is an elected county official; he identifies no statute authorizing him to retain counsel; and he seeks to bypass the County Attorney. That is not permitted.

In the absence of any statute supporting his position, the Recorder heavily relied on a misreading of *Maricopa County v. Biaett*, 21 Ariz. App. 286 (1974), and its progeny. In that case, the county attorney first attempted to obtain outside counsel for the recorder before delegating that task to the attorney general who later “told the recorder he should secure private counsel.” *Id.* at 287. In other words, the recorder in that case had the precise authorization that is absent in this

case. *Id. Biaett* held only that the recorder did not need to secure board approval of such counsel for his legal expenses to be a valid county charge. *Id.* at 288. *Biaett* does not give any county officer the limitless power to retain outside counsel to initiate civil litigation at a whim that the Recorder asserts here.

Together, the statutory framework and caselaw work in perfect harmony. An officer needs statutory authority to retain counsel; none exists for individual officers other than the county attorney and (in limited circumstances) the board. Section 11-532(e) confirms that obtaining counsel for county officers is within the county attorney’s exclusive and broad authority as “the public prosecutor of the county” A.R.S. § 11-532(A). Even when outside counsel is permissible, it must flow through recognized channels—appointment by the county attorney or board action under § 11-251(14) subject to the limitations contemplated by *Woodall* and *Daughton*. This framework reflects deliberate policy choices aimed at protecting the public fisc through centralized oversight, ensuring democratic accountability by vesting representation authority in an elected officer, and maintaining coherent legal positions for the county.

It does not matter if the unauthorized representation costs the county nothing. *See Arpaio*, 202 Ariz. at 49, 54 ¶¶ 1, 27. The question is one of legal authority, not cost. If *pro bono* could substitute for statutory authorization, any private political interest group could insert itself into county governance by

offering free representation to county elected officials, defeating the Legislature’s centralization of legal representation authority.

The Recorder’s unilateral retention of America First Legal is void and he should be enjoined from continuing to use that counsel.

IV. The Recorder’s Interpretation—Adopted by the Superior Court—Is Unsupported by the Text and Would Destabilize County Governance.

The superior court adopted two of the Recorder’s arguments in dismissing this action. First, that the County Attorney’s authority under § 11-532 extends only to defensive litigation, not to cases where a county officer initiates suit. Second, that because America First Legal is representing the Recorder *pro bono*, no public funds are at stake and thus the County Attorney’s concerns are inapplicable. [APP0506–08.] Neither argument withstands scrutiny.

A. The Offensive/Defensive Distinction Finds No Support in Text, Precedent, or Policy

The Recorder asserts, and the superior court agreed, that § 11-532’s enumerated duties relate only to defending the county and its officers, not prosecuting claims on their behalf. [APP0405–06; APP0506.] This plaintiff/defendant distinction cannot be sustained.

As discussed in Section III.A, *supra*, the term “public prosecutor” at the time of enactment “ordinarily encompassed both the initiation and continuation of litigation in both the criminal and civil contexts.” *Brnovich*, 250 Ariz. at 131–32

¶ 15. A prosecutor, by definition, initiates proceedings. If the Legislature had intended county attorneys' civil-litigation authority to extend to purely defensive matters, it would not have chosen language whose core meaning is the commencement of legal action. In myopically focusing on the enumerated items in A.R.S. § 11-532(A)(1)–(12), the Court improperly conflated a county attorney's *authority* with her *duties*. *Brnovich*, 250 Ariz. at 132 ¶ 19. As discussed in Section III.C, *supra*, the statutory enumeration of duties does not divest a county attorney of the broad authority conferred under § 11-532(A).³

Nor does caselaw support the offensive/defensive distinction. *Grossetta* addressed offensive litigation, not defense, but nonetheless grounded the board of supervisor's authority to retain counsel in its express statutory power. *See Grossetta*, 54 Ariz. at 539–40. All the subsequent authorities frame the question as one of *authority*—i.e., who decides how the county is represented—with no attention paid to whether the county official is initiating civil proceedings or defending them. *See Woodall*, 120 Ariz. at 381–83; *Daughton*, 225 Ariz. at 527 ¶¶ 28–29; *Arpaio*, 202 Ariz. at 54–55 ¶¶ 27–29. That principle does not evaporate simply because the official filed the lawsuit rather than responding to one.

³ Besides, as the County Attorney argued in her motion for preliminary injunction, these duties are necessarily implicated when outside counsel represents county officials in their official capacity. [APP0028–30.]

The practical consequences of the Recorder’s distinction counsel strongly against it. Under his reasoning, a county attorney would retain authority over representation when an officer is sued but lose that authority entirely when the officer decides to sue someone else. That inversion is entirely illogical. Offensive litigation is precisely the context in which counsel selection and litigation strategy can most directly drive county policy and spending. *See Cahn*, 278 N.E.2d at 910 (noting purposes underlying statutory controls on government attorney retention). An officer who initiates a lawsuit can choose targets, frame legal theories, seek discovery, and pursue remedies *that bind the county* to positions it never endorsed—all without oversight from the constitutional officer the Legislature charged with conducting the county’s legal business. This Court should not adopt a statutory construction that would destabilize governance in this way. *See Estrada*, 201 Ariz. at 251 ¶ 17 (rejecting interpretations that produce absurd or unjust results).

B. *Pro Bono* Representation Does Not Confer Authority Where None Exists.

The Recorder also argued, and the superior court accepted, that since “public funds are not at issue in the present case because Recorder Heap’s legal counsel—America First Legal—is representing the Recorder *pro bono*,” there is no issue. [APP0508–09.] This line of argument fundamentally misunderstands the nature of

the dispute and precedent and forgets that the Recorder is requesting a fee award in *Heap v. Galvin* for which the County will be responsible. [APP0467.]

It matters not whether public funds are being spent, but who has legal authority to decide who represents a county officer in official-capacity litigation, whether offensive or defensive. As discussed, that authority derives from the Constitution and statutes, not from a private organization's willingness to litigate for free. *See Arpaio*, 202 Ariz. at 49, 54 ¶¶ 1, 27 (sheriff sought "free" representation from an already-employed lawyer and still lost because he lacked authority to choose counsel). If *pro bono* could substitute for statutory authorization, any private group could insert itself into county governance disputes by offering free representation to an officer, defeating the Legislature's decision to centralize representation authority in the county attorney.

The *pro bono* argument also proves too much. Again, the Recorder seeks attorneys' fees if he prevails in *Heap v. Galvin*, which would result in county expenditures. [APP0467.] The *pro bono* characterization is thus illusory, and even if it were not, it cannot supply the statutory authority that the Recorder does not have.

C. The Recorder's Actions Undermine the Constitutional Office of the County Attorney and Arizona's System of County Government

The consequences of the superior court's ruling extend far beyond this case, and undermine two important principles undergirding the structure of Arizona's county government.

First, by allowing county officials to retain their own counsel to initiate litigation and excising county attorneys from that process, the superior court's order undermines the democratic accountability of county row officers. *Sanchez*, 572 P.3d at 107 ¶¶ 15–16. The Constitution and statute designate county attorneys as the legal advisor for each county's elected officers and to handle litigation affecting the county, ensuring that the person elected to provide legal services for the county—or whoever she appoints as outside counsel to act in her stead—is answerable to the voters. This legislative framework would be upset if the county attorney were excised from the equation.

Second, eliminating the county attorney from the equation would “destroy one of the strongest safeguards cast about the expenditure of county funds.” *Merriam*, 48 P. at 728. Counties are liable for the tortious acts of even outside litigation counsel, and any award of damages would be payable from county monies. *See Sanchez*, 572 P.3d at 111 ¶ 36. Moreover, the very reason why so many western states made the county attorney an elected position is to avoid the

appearance of patronage in governmental litigation. *Drummond*, 385 P.3d at 778 ¶ 36 (explaining that avoiding the appearance of patronage is a core reason why western states made county attorneys an elected position). The statutory structure of county government reflects a deliberate policy choice to prevent any county officer from opening the county's coffers to pay their friends or political allies rather than qualified, vetted legal counsel.

V. The Recorder's Affirmative Defenses Lack Merit.

A. No Conflict Bars the County Attorney's Appointment Power.

Recorder Heap claimed that County Attorney Mitchell has a disqualifying conflict of interest because she filed this action against him. This argument is circular and would create an impossible "catch-22." If filing a lawsuit to vindicate statutory authority creates a conflict that defeats that very authority, no County Attorney could ever enforce her statutory prerogatives.

When county attorneys exercise their statutory authority to appoint outside counsel for other officials, however, they are declining the representation and delegating their authority. *See* 1977 Ariz. Op. Att'y Gen. 154 (noting that County Attorneys commonly appoint outside counsel in "conflict of interest situations"). The exercise of that statutory authority cannot be "representation" within the meaning of ER 1.7. Were it otherwise, courts would somehow find themselves

“representing” the litigants before them when they appoint counsel for those litigants.

As *Arpaio* confirms, only direct adversity between the county attorney and other county officers precludes the appointment power. *Arpaio*, 202 Ariz. at 47 ¶ 4. There, the County Attorney could not represent the sheriff because she was going to testify against him in a hearing. *Id.* Despite this conflict, *Arpaio* still held that the sheriff “must use counsel obtained by the County Attorney to represent [his] interests.” *Id.* at 54–55 ¶ 27.

Here, County Attorney Mitchell has not “represented” either side in *Heap v. Galvin* or otherwise departed from a neutral position. Instead, she has only exercised her statutory prerogative to appoint counsel for them.

B. Estoppel, Waiver, Laches, and Unclean Hands Do Not Apply

The Recorder’s affirmative defenses of estoppel, waiver, laches, and unclean hands all fail as a matter of law.

On estoppel, the Recorder argues that the County Attorney created the situation she now challenges by limiting Justice Gould’s engagement to negotiations rather than litigation. But it is undisputed that negotiation counsel is all that the Recorder asked for, and the County informed the Recorder that he could not unilaterally retain outside counsel. [APP0374–75 ¶¶ 6, 11; APP0349–51.] This undisputed fact means Recorder Heap cannot establish estoppel. *See Valencia*

Energy Co. v. Ariz. Dep't of Rev., 191 Ariz. 565, 577–78 ¶¶ 36–40 (1998) (estoppel requires “affirmative acts inconsistent with the position later relied on,” reasonable reliance on that affirmative act, and “substantial detriment to the party resulting from a repudiation of prior representations”).

On waiver and laches, it is undisputed that the County Attorney filed suit within days of learning that Recorder unauthorized counsel had initiated *Heap v. Galvin*. Because waiver requires “full information of the material facts,” *Sw. Cotton Co. v. Valley Bank*, 26 Ariz. 559, 563 (1924), and laches requires unreasonable, prejudicial delay in filing suit, *Sotomayor v. Burns*, 199 Ariz. 81, 82–83 ¶ 6 (2000), these defenses do not apply.

On unclean hands, a party cannot benefit from the “unclean hands” defense at the expense of frustrating statutes or thwarting public policy. *Pan-Am. Petroleum & Transp. Co. v. United States*, 273 U.S. 456, 505–06 (1927). The Recorder cannot use “unclean hands” to render his unlawful conduct lawful.

VI. Injunctive Relief Is Warranted to Prevent Ongoing *Ultra Vires* Action.

Because the Recorder lacks statutory authorization to retain counsel, no further showing is necessary. See *Ariz. Pub. Integrity Alliance*, 250 Ariz. at 62–63 ¶¶ 14–18. But even if this Court were inclined to consider the typical injunction factors, each of them favor the County Attorney here. *Shinn*, 254 Ariz. at 255 ¶ 13

(preliminary injunction factors); *Brown v. City of Phoenix*, 258 Ariz. 302, 398 ¶ 17 (App. 2024) (permanent injunction factors).

Irreparable Harm: The Recorder’s attempt to claim duties and powers for his office that are not “prescribed by law” is textbook irreparable harm. Ariz. Const. art. XII, § 4. Ongoing constitutional violations constitutes an irreparable harm. *Washington v. Trump*, 847 F.3d 151, 1169 (9th Cir. 2017). Further, in bypassing the County Attorney, the Recorder has impeded the discharge of her duties and divested her of the powers under A.R.S. § 11-532. *Woodall*, 120 Ariz. at 381; *Daughton*, 225 Ariz. at 526 ¶ 23. No damages can remedy that ongoing injury.

Balance of Equities and Public Interest: In government litigation, the balance of equities and the public interest are considered together. *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018). Here, the Recorder has usurped the County Attorney’s authority and disrupted Arizona’s system of county government by exercising powers beyond those prescribed by law. “[I]t is always in the public interest” to enforce the Constitution. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). In doing so, he has undermined deliberate statutory safeguards designed to protect against the wasteful expenditure of county monies, uniformity in county litigation, and democratic accountability. *Drummond*, 385 P.3d at 778 ¶ 36; *Merriam*, 48 P. at 728.

On the other hand, the Recorder cannot be harmed through an order limiting him to his statutory authority. *Haynes v. Off. of the Att’y Gen. Phill Kline*, 298 F. Supp. 2d 1154, 1160 (D. Kan. 2003). The Recorder is simply being asked to follow the law and use duly appointed counsel. *See Brown*, 258 Ariz. at 312 ¶ 36 (defendant “failed to show how obeying the law would pose significant difficulties”) (citation modified).

This Court should therefore declare that, absent express statutory authorization, a county recorder may not select, retain, or utilize outside litigation counsel in his official capacity unless such counsel is obtained through the county attorney in all cases where there is no direct adversity between them. The Court should further enjoin the Recorder from continuing to retain or use counsel not lawfully obtained through those processes.

Conclusion

The superior court's ruling rests on a foundational interpretive error. It treated A.R.S. § 11-532 as an exhaustive list of powers rather than a definitional statute establishing the county attorney as the public prosecutor and legal representative for county officers, with enumerated duties illustrating that role. That reading misapplies the Negative-Implication Canon, misconstrues "shall" in a governmental-authorization statute, renders subsection (E) largely superfluous, conflicts with controlling precedent, and destabilizes Arizona's system of county governance.

County Attorney Mitchell therefore respectfully requests that this Court:

1. Accept jurisdiction of this Petition for Special Action;
2. Vacate the superior court's January 30, 2026, order granting the Recorder's Motion for Judgment on the Pleadings and denying the County Attorney's Motion for Judgment on the Pleadings;
3. Enter an order directing that judgment be entered in favor of the County Attorney, declaring that: (i) unless the County Attorney has a direct legal conflict with a county officer, or the County Attorney expressly delegates her authority, the county officer is not lawfully permitted to select, retain, or otherwise utilize any outside counsel that has not been appointed by the County Attorney; (ii) the Recorder acted outside his lawful authority by retaining America First Legal

without the County Attorney's approval;

4. Enjoin the Recorder from retaining America First Legal or any other outside counsel that has not been appointed by the County Attorney in *Heap v. Galvin* or any other litigation; and

5. Award the County Attorney her attorneys' fees and costs pursuant to A.R.S. §§ 12-341, 12-348, 12-348.01, and 12-1840.

RESPECTFULLY SUBMITTED this 2nd day of February 2026.

SNELL & WILMER L.L.P.

By: */s/ Brett W. Johnson*

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