

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

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

*Petitioner,*

*v.*

THOMAS GALVIN, in his official  
capacity as a member of the Maricopa  
County Board of Supervisors; MARK  
STEWART, in his official capacity as a  
member of the Maricopa County Board of  
Supervisors; KATE BROPHY MCGEE,  
in her official capacity as a member of the  
Maricopa County Board of Supervisors;  
DEBBIE LESKO, in her official capacity  
as a member of the Maricopa County  
Board of Supervisors; STEVE  
GALLARDO, in his official capacity as a  
member of the Maricopa County Board of  
Supervisors,

*Respondents.*

Arizona Supreme Court No. \_\_\_\_\_

Court of Appeals  
Division One  
No. 1 CA-CV 26-0446

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

**APPENDIX IN SUPPORT OF PETITION FOR SPECIAL ACTION**

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12 **ARIZONA SUPERIOR COURT**

13 **MARICOPA COUNTY**

14 JUSTIN HEAP, in his official capacity  
15 as Maricopa County Recorder,

16 Plaintiff,

17 vs.

18 THOMAS GALVIN, in his official  
19 capacity as a member of the Maricopa  
20 County Board of Supervisors; MARK  
21 STEWART, in his official capacity as a  
22 member of the Maricopa County Board  
23 of Supervisors; KATE BROPHY  
24 MCGEE, in her official capacity as a  
25 member of the Maricopa County Board  
26 of Supervisors; DEBBIE LESKO, in her  
27 official capacity as a member of the  
28 Maricopa County Board of Supervisors;  
STEVE GALLARDO, in his official  
capacity as a member of the Maricopa  
County Board of Supervisors,

Defendants.

Case No: CV2025-020621

**MOTION BY PRESIDENT PETERSEN  
AND SPEAKER MONTENEGRO TO  
FILE AMICUS BRIEF**

(Assigned to the Hon. Scott Blaney)

1 Senate President Warren Petersen and House Speaker Steve Montenegro (“Amici”) move  
2 for leave to appear as amici curiae and file a brief in support of Recorder Heap’s Motion for  
3 Summary Judgment filed on August 11, 2025. The focus of the amicus brief is that this Court  
4 should hold narrowly that when an elections statute imposes a duty on either the recorders or the  
5 boards with the caveat that another “officer in charge of elections” may accomplish the task, the  
6 Legislature intended in the first instance for that duty to be carried out by the office listed in the  
7 statute. Amici’s proposed brief and a proposed order granting this Motion are filed concurrently  
8 with this Motion. Plaintiff Recorder Heap does not object to the President and Speaker filing an  
9 amicus brief. Amici have not received a response from Defendants regarding their position.<sup>1</sup>

#### 10 MEMORANDUM

11 Amici are Speaker of the Arizona House of Representatives Steve Montenegro and  
12 President of the Arizona Senate Warren Petersen. They file this brief in their official capacities as  
13 the presiding officers of their respective chambers. *See* Ariz. Const. art. IV, pt. 2, § 8; Ariz. State  
14 Senate Rule 2(N); Ariz. House of Reps. Rule 4(K).

15 While the Arizona Rules of Civil Procedure do not explicitly allow third-parties to file  
16 amicus curiae briefs, “trial judges have inherent power and discretion to adopt special,  
17 individualized procedures designed to promote the ends of justice in each case that comes before  
18 them.” *Hedlund v. Sheldon*, 173 Ariz. 143, 146 (1992) (quotation omitted). Accordingly, trial  
19 courts accept amicus curiae briefs that will provide important perspective, argument, or other  
20 information beyond that already provided by the parties. *See, e.g., Home Builders Ass’n of Cent.*  
21 *Ariz. v. City of Apache Junction*, 198 Ariz. 493, 496 ¶6 n.4 (App. 2000) (explaining that “several  
22 amici have appeared, both [in the Court of Appeals] and in the trial court[.]”).

23 Analogous authorities support granting this Motion by the President and Speaker as a  
24 matter of comity for a separate branch of state government. Under Rule 16(b)(1)(B) of the Arizona  
25 Rules of Civil Appellate Procedure (“ARCAP”), an officer of the State of Arizona is authorized

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26  
27 <sup>1</sup> Amici did not contact Attorneys for Plaintiff in *Mitchell v. Heap* as the issues addressed by  
28 Amici are unrelated to that action.

1 to file an amicus brief. *See also* A.R.S. § 41-1102 (identifying President and Speaker as officers  
2 of the Senate and House of Representatives, respectively). Similarly, under A.R.S. § 12-1841(D),  
3 both the Speaker and President are authorized to file briefs in a matter alleging unconstitutionality  
4 of a state law. While neither situation is precisely present here, these authorities lend support to  
5 this Court exercising its discretion to grant leave to file an amicus brief. First, this case involves  
6 questions of pure law (much like the issues decided by appellate courts). Second, allowing the  
7 board of supervisors to usurp the recorder’s statutory duties effectively nullifies the provisions of  
8 state law which grant those duties to the recorder just as if they were unconstitutional. Also, the  
9 Speaker and President do not wish to wait for this case to reach the appellate courts but rather  
10 wish to provide their important perspective now to aid this Court, whose opinion will be the first  
11 judicial word on the matter.

12 In addition, Amici meet the standards used by appellate courts to exercise their discretion  
13 to accept an opposed amicus brief: amici “can provide information, perspective, or argument that  
14 can help the appellate court beyond the help that the parties’ lawyers provide.” ARCAP  
15 16(b)(1)(C)(iii). Here, Amici have the unique perspective as the presiding officers of the two  
16 houses of the Arizona Legislature, and they are empowered by the rules of their chambers to file  
17 briefs on their chambers’ behalf. *See* Ariz. State Senate Rule 2(N); Ariz. House of Reps. Rule  
18 4(K). The Legislature brings other important perspectives. For example, it regularly engages in  
19 lawmaking, so it has a perspective on what was intended by the statutes’ language. Here, when a  
20 statute authorizes “the county recorder or other officer in charge of elections” to act, it is the  
21 recorder’s duty to ensure the statute is complied with unless the recorder expressly agrees to  
22 delegate that duty to another “officer in charge of elections.” The attached amicus brief also  
23 provides information and argument that can help the court beyond the help the parties’ lawyers  
24 provide.

25 To avoid duplication with the parties’ briefs, Amici’s brief expands on two discrete points  
26 that are not already fully addressed: 1) if there is ambiguity in Title 16 regarding which office has  
27 a statutorily imposed duty to complete the proscribed task, the ambiguity should be resolved in  
28

1 favor of the office listed in the statute; and 2) the board cannot usurp functions or equipment that  
2 are needed by the county recorder to fulfil his statutory duties.

3  
4  
5 **CONCLUSION**

6 For the foregoing reasons, Amici respectfully request the Court grant this Motion to File  
7 an Amicus Brief.

8 RESPECTFULLY SUBMITTED this 25th day of August, 2025.

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17 ORIGINAL of the foregoing E-FILED  
18 this 25th day of August, 2025.

19 COPY of the foregoing E-DELIVERED  
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13 **ARIZONA SUPERIOR COURT**  
14 **MARICOPA COUNTY**

15 JUSTIN HEAP, in his official capacity as  
16 Maricopa County Recorder,

17 Plaintiff,

18 vs.

19 THOMAS GALVIN, in his official capacity  
20 as a member of the Maricopa County Board  
21 of Supervisors; MARK STEWART, in his  
22 official capacity as a member of the Maricopa  
23 County Board of Supervisors; KATE  
24 BROPHY MCGEE, in her official capacity as  
25 a member of the Maricopa County Board of  
26 Supervisors; DEBBIE LESKO, in her official  
27 capacity as a member of the Maricopa  
28 County Board of Supervisors; STEVE  
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Defendants.

Case No: CV2025-020621

**BRIEF OF AMICI CURIAE**  
**PRESIDENT PETERSEN AND**  
**SPEAKER MONTENEGRO**

(Assigned to the Hon. Scott Blaney)

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1 **INTRODUCTION**

2 Senate President Warren Petersen and House Speaker Steve Montenegro (“Amici”)  
3 submit this amicus brief in support of Plaintiff’s Motion for Summary Judgment to provide  
4 a legislative perspective on the statutory interpretation issues before the Court.

5 **First**, both the county recorders and the county boards of supervisors hold county  
6 offices created by the Arizona Constitution. Their duties and authority are limited to those  
7 established by the Constitution or by statute. In the elections context, the Legislature has  
8 clearly prescribed certain duties for the county recorders and certain duties for the boards  
9 of supervisors. Other elections statutes do not vest a duty exclusively with the recorders or  
10 the boards, but instead instruct the “board or other officer in charge of elections” or the  
11 “recorder or other officer in charge of elections” to accomplish the prescribed duty. The  
12 Legislature’s distribution of statutory duties throughout Title 16 reflects a careful and  
13 deliberate diffusion of power and authority over elections at the county level.

14 **Second**, to the extent that a decision from this Court is necessary to resolve the  
15 current dispute between the elected officers in Maricopa County, it is critical that the  
16 decision is narrow in scope to avoid any unnecessary disruptions to administration of  
17 elections throughout this State. When an elections statute imposes a duty on either the  
18 recorders or the boards with the caveat that another “officer in charge of elections” may  
19 accomplish the task, the Legislature intended in the first instance for that duty to be carried  
20 out by the office listed in the statute. In this circumstance, the only way for the duty to be  
21 undertaken by another “officer in charge of elections” is for the initially authorized officer  
22 or agency to agree to divest its duty to the other officer, and subject to at-will termination.  
23 The Court must reach this conclusion based on two interpretive principles: (1) the canon  
24 against surplusage, *see Sanchez v. Maricopa County*, \_\_ Ariz. \_\_, 572 P.3d 101, 107 ¶13  
25 (Ariz. 2025) (rejecting argument that county board of supervisors had “plenary supervisory  
26 authority over a county sheriff” because it would render statutes “superfluous”); and  
27 (2) constitutional avoidance because otherwise the relevant statutes could be interpreted as  
28 irreconcilably ambiguous and therefore an invalid delegation of power by the Legislature,

1 *see Mistretta v. United States*, 488 U.S. 361, 372-73 (1989) (a valid delegation must “clearly  
2 delineate[] ... the public agency which is to apply it”), and also would create multiple levels  
3 of for cause removal rather than direct election by the people as provided in the constitution.

4 ***Third***, when an election statute imposes a duty on the county recorders, and the  
5 recorders need certain personnel or equipment to fulfill that statutory duty, the boards  
6 cannot take that equipment or personnel from the recorders without unlawfully divesting  
7 them of their ability to carry out their statutorily imposed duties.

#### 8 **INTEREST OF AMICI CURIAE**

9 Amici are Speaker of the Arizona House of Representatives Steve Montenegro and  
10 President of the Arizona Senate Warren Petersen. They file this brief in their official  
11 capacities as the presiding officers of their respective chambers. *See* Ariz. Const. art. IV, pt.  
12 2, § 8; Ariz. State Senate Rule 2(N); Ariz. House of Reps. Rule 4(K). In enacting Title 16,  
13 the Legislature acted to delegate certain duties to the county boards of supervisors and  
14 certain duties to the county recorders. Neither the boards of supervisors nor the recorders  
15 have inherent authority, so when a statute authorizes the “county recorder or other officer  
16 in charge of elections” to act, the statute should be understood to impose that duty on the  
17 recorder unless the recorder chooses to delegate that duty. The Speaker and President file  
18 this brief to ensure that the Legislature’s intent, as expressed in Title 16, is given full force  
19 and effect.

#### 20 **ARGUMENT**

#### 21 **I. If There Is Ambiguity in Title 16 Regarding Which Office Has a Statutorily 22 Imposed Duty to Complete the Prescribed Task, the Ambiguity Should Be 23 Resolved in Favor of the Office Expressly Listed in the Statute.**

24 When interpreting statutes, courts must “determine the meaning of the words the  
25 legislature chose to use.” *S. Ariz. Home Builders Ass’n v. Town of Marana*, 254 Ariz. 281,  
26 286 ¶31 (2023). Courts interpret statutes “neither narrowly nor liberally, but rather  
27 according to the plain meaning of the words in their broader statutory context, unless the  
28 legislature directs ... otherwise.” *Id.* “If the provision has only one reasonable

1 interpretation, [courts] apply it.” *State ex rel. Brnovich v. City of Phoenix*, 249 Ariz. 239,  
2 244 ¶21 (2020).

3 Both the county boards of supervisors and the county recorders are constitutionally  
4 created, elected officers of the county whose duties are imposed by statute. Ariz. Const. art.  
5 XII, §§ 3, 4; A.R.S. § 11-401. As such, each is required to fulfill their statutorily prescribed  
6 duties, and neither may usurp a duty imposed on a different office.

7 In the elections context, the Legislature has generally given Arizona’s fifteen  
8 counties broad flexibility to structure their elections duties as they see fit. And because  
9 administering elections involves different state and county officials working together to  
10 accomplish various goals often in a short time frame, there are numerous instances where  
11 the Legislature has prescribed a duty to the county recorders or to the boards of supervisors  
12 but has included language in the statute intending to permit either of those offices to  
13 delegate that authority as convenient or needed. These two statutory delegations use  
14 different language—either referring to the board or the recorder. So when a statute vests a  
15 duty with “the county recorder or other officer in charge of elections,” the board does not  
16 have overwrite authority to take the duty from the recorder without the recorder’s consent,  
17 and the recorder must retain authority to terminate any delegation at will.

18 **A. Both the County Recorders and the County Boards of Supervisors are**  
19 **Constitutionally Created, Elected Officers Whose Authority and Duties**  
20 **are Prescribed by Law.**

21 As noted above, both the supervisors who comprise the county boards of supervisors  
22 and the county recorders are constitutionally created officers of the county who must be  
23 elected to that position. Ariz. Const. art. XII, § 3; A.R.S. § 11-401. Their “duties, powers,  
24 and qualifications ... shall be as prescribed by law.” Ariz. Const. art. XII, § 4. Accordingly,  
25 both the board’s and the recorder’s “authority is limited to those powers expressly or  
26 impliedly delegated to [them] by the state constitution or statutes.” *Ariz. Pub. Integrity All.*  
27 *v. Fontes*, 250 Ariz. 58, 62 ¶14 (2020) (addressing the county recorders powers and duties);  
28 *see also Associated Dairy Prods. Co. v. Page*, 68 Ariz. 393, 395 (1949) (“The boards of

1 supervisors of the various counties of the state have only such powers as have been  
2 expressly or by necessary implication, delegated to them by the state legislature.”).  
3 ““Implied powers do not exist independently of the grant of express powers and the only  
4 function of an implied power is to aid in carrying into effect a power expressly granted.”  
5 *Vangilder v. Ariz. Dep’t of Revenue*, 252 Ariz. 481, 488 ¶24 (2022) (quoting *Associated*  
6 *Dairy Prods.*, 68 Ariz. at 395).

7 Because it is either the Constitution or statutes that impose authority and duties on  
8 the board or the recorder, it is only by constitutional amendment or statutory change that  
9 either’s authority or duties may be modified. Accordingly, the board of supervisors does  
10 not have authority to divest the recorder of any statutorily prescribed duty.

11 **B. In the Elections Context, the Legislature Has Vested Both the Boards of**  
12 **Supervisors and the County Recorders with Various Duties, and in Some**  
13 **Circumstances has Also Permitted Either Office to Delegate Its**  
14 **Statutorily Imposed Duty Should that Office Choose to Do So.**

15 When it comes to administering elections, it is the Legislature that “possesses the  
16 authority to enact substantive election laws.” *Fann v. Kemp in & for Cnty. of Maricopa*,  
17 253 Ariz. 537, 545 ¶21 (2022). Because the “constitution grants the legislature the authority  
18 to enact laws regarding the conduct of elections, *see* Ariz. Const. art. 7, § 12,” it is also for  
19 the Legislature “to decide whether and to what extent” the boards and the recorders “can  
20 conduct elections, *see id.* art. 12, § 4.” *Fann*, 253 Ariz. at 545 ¶21. The Legislature has  
21 exercised this authority and has vested both the boards and the recorders with various  
22 responsibilities, but has also enacted statutes that generally provide the counties with broad  
23 flexibility to structure its elections duties.

23 **1. The Legislature Has Assigned Some Duties Exclusively to the**  
24 **Recorders or Boards, and In Other Contexts Has Provided for an**  
25 **Initial Assignment, While Permitting the *Initially Assigned Officer***  
26 **to Reassign the Duty.**

26 The recorder for each county plays a pivotal role in facilitating elections, and has a  
27 duty—as well as the authority—to execute that role. For example, “[c]ounty recorders  
28 remain the primary point of contact for individuals registering to vote.” Ariz. Op. Att’y

1 Gen. No. I17-006, 2017 WL 5616935, at \*3 (Nov. 13, 2017). As such, it is the exclusive  
2 duty of the county recorders to supply “[b]lank state voter registration forms for registration  
3 of electors,” A.R.S. § 16-151, maintain “registration forms and records of cancellation of  
4 registration,” A.R.S. § 16-162, count “the registered voters by political party by precinct,  
5 legislative district and congressional district” and “report the totals to the secretary of state,”  
6 A.R.S. § 16-168, and “maintain the active early voting list as part of the voter registration  
7 roll,” A.R.S. § 16-544(A).<sup>1</sup>

8 Yet, the recorders do not maintain sole authority regarding facilitating elections at  
9 the county level. The boards of supervisors have also been statutorily endowed with certain  
10 duties and obligations. For example, it is the exclusive duty of the boards to establish  
11 election precincts, A.R.S. § 16-411, “prepare and provide ballots containing the names of  
12 all persons whose certificates of nomination have been filed with them,” A.R.S. § 16-503,  
13 appoint elections marshals, A.R.S. § 16-535, and “declare elected the person receiving the  
14 highest number of votes cast for each office to be filled by the electors of the county or a  
15 subdivision thereof,” A.R.S. § 16-647.<sup>2</sup>

16 In these circumstances, where a statute authorizes only the board or the recorder to  
17 act, it is clear that only that office may undertake the prescribed duty. *See City of Tucson v.*  
18 *Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 178 ¶6 (App. 2008) (“When the language of a  
19 statute is clear and unambiguous, a court should not look beyond the language, but rather  
20 simply apply it without using other means of construction, assuming that the legislature has  
21 said what it means.” (internal quotation marks omitted)).

22 **2. The Court Must Apply the Canon Against Surplusage and**  
23 **Constitutional Avoidance Canon When Interpreting Elections**  
24 **Statutes that Vest Authority in Multiple Officials.**

25 As a result of the Legislature’s intent that officials maintain flexibility in structuring  
26 elections duties, there is another way in which Title 16 vests authority. For numerous

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27 <sup>1</sup> This is not intended to be an exhaustive list of each of the county recorders’ exclusive  
duties.

28 <sup>2</sup> This is not intended to be an exhaustive list of each of the county boards of supervisors’  
exclusive duties.

1 provisions, the statute requires either the board or the recorder to undertake an action but  
2 alternatively allows another “officer in charge of elections” to fulfil the statutorily  
3 prescribed duty. *See, e.g.*, A.R.S. § 16-351 (“The *county recorder or other officer in charge*  
4 *of elections* shall perform petition signature verifications for nomination petition challenges  
5 for signatures of qualified electors who are residents of that county.” (emphasis added));  
6 A.R.S. § 16-621(A) (“All proceedings at the counting center shall be under the direction of  
7 the *board of supervisors or other officer in charge of elections* and shall be conducted in  
8 accordance with the approved instructions and procedures manual issued pursuant to § 16-  
9 452 under the observation of representatives of each political party and the public.”  
10 (emphasis added)). Here, there is a dispute over which office has the statutory authority to  
11 act when the statute contains the above language and both the board and the recorder desire  
12 to undertake the duty.

13 When the statute says “county recorder or other officer in charge of elections,” the  
14 Legislature’s intent was to vest the county recorder with the authority and duty to fulfill the  
15 statute’s mandates in the first instance. However, the Legislature has also recognized that  
16 administering elections is a weighty undertaking that generally requires flexibility and  
17 cooperation among the various state and county officers. As a consequence, the Legislature  
18 included the language “or other officer in charge of elections” in some statutes to provide  
19 the recorder with the opportunity to enlist assistance to fulfil these duties by involving  
20 another officer who is not directly controlled by the recorder, as long as the recorder retains  
21 full authority to revoke at will that delegation to a third official

22 **a. The Canon Against Surplusage Requires Reading the First Listed**  
23 **Official/Board as Being Primarily Assigned with Authority,**  
24 **Subject to that Official/Board Choosing to Delegate the Exercise**  
**of that Authority.**

25 To hold that the statutory language “county recorder or other officer in charge of  
26 elections” allows the county board of supervisors to unilaterally divest the recorder of his  
27 statutory duty and undertake it itself would effectively nullify the Legislature’s inclusion of  
28 the term “county recorder.” Indeed, it is undisputed that when a statute permits the board

1 “or other officer in charge of elections” to act, it is for the board to decide if it wishes to act  
2 or if it wishes to delegate that duty to another elections officer. It must follow then that  
3 when the statute permits “the county recorder or other officer in charge of elections” to act,  
4 it is for the recorder to decide if he wishes to act or if he wishes to delegate his duty to  
5 another elections officer who does not report to him.

6 To conclude instead that the statute allows the board to choose which elections  
7 officer may act renders the inclusion of “county recorder” superfluous, and is therefore not  
8 the correct interpretation of the statute. *See Sanchez*, 572 P.3d at 107 ¶13 (rejecting  
9 argument that county board of supervisors had “plenary supervisory authority over a county  
10 sheriff” because it would render statutes “superfluous”); *see also Clear Channel Outdoor*,  
11 218 Ariz. at 183 ¶33 (Courts “avoid an interpretation that makes ‘any language superfluous  
12 or redundant.’”).

13 Undeniably, when the Legislature intended the board be able to decide which  
14 election officer may undertake the statutory duty, it used the language “board of supervisors  
15 or other officer in charge of elections.” *See, e.g.*, A.R.S. §§ 16-621, -622, -513.01; *see also*  
16 *Padilla v. Indus. Comm’n*, 113 Ariz. 104, 106 (1976) (There is a “fundamental ...  
17 presumption that what the Legislature means, it will say.”). In other instances, the  
18 Legislature used different words and instructed the “county recorder or other officer in  
19 charge of elections to act.” Courts assume different language means different things. *See*  
20 *Egan v. Fridlund-Horne*, 221 Ariz. 229, 239 ¶37 (App. 2009) (Courts “presume that when  
21 the legislature uses different wording within a statutory scheme, it intends to give a different  
22 meaning and consequence to that language.”).

23 So, because the Legislature chose to use different words in different statutes—  
24 sometimes prescribing a duty first to the county recorder and sometimes to the board of  
25 supervisors—it is clear from the statutes’ plain language that the Legislature intended each  
26 office to be able to choose whether to undertake or delegate the statutory duty in the first  
27 instance. Clearly, this divergent language does not mean the same thing.

28

1 The Maricopa County Board of Supervisors (“Board”) argues against this  
2 interpretation (at 4-9) pointing out that the language “other officer in charge of elections”  
3 would be rendered superfluous if the Court concludes this means that the recorder may  
4 delegate this authority to his agent as he is already statutorily permitted to delegate any of  
5 his duties to his agent. A.R.S. §§ 11-409, 38-461, 38-462. But the Board’s interpretation  
6 misunderstands the statutory language. When a statute permits the county recorder to  
7 delegate his duty to another “officer in charge of elections,” it is not referring to the  
8 recorder’s agent but to another independent elections officer such as the board or the  
9 elections director. In this circumstance, the recorder would not maintain supervisory control  
10 over the delegated duty, but must maintain the ability to revoke the delegation should the  
11 recorder so choose. *See* Part I(B)(2)(b), *infra*.

12 In fact, the Board’s construction here is completely contradicted by A.R.S. § 16-  
13 205(E), which states: “[t]he board of supervisors shall require the county recorder or other  
14 officer in charge of elections to calculate voter turnout for candidate races[.]” *See also*  
15 A.R.S. § 16-411(B)(5) (“On a specific resolution of the board of supervisors ..., the board  
16 may authorize the county recorder or other officer in charge of elections to use emergency  
17 voting centers[.]”). Under the Board’s construction where the mere use of “other officer in  
18 charge of elections” gives it the ultimate authority to remove statutorily assigned duties  
19 from the recorder, the first part of this statute would be superfluous.

20 **b. The Constitutional Avoidance Canon Also Supports Reading the**  
21 **First Listed Official/Board as Being Primarily Assigned with**  
22 **Authority.**

23 As noted above, the Legislature “possesses the authority to enact substantive election  
24 laws.” *Fann*, 253 Ariz. at 545 ¶21, and when it enacts a statute it is delegating that authority  
25 to another officer. It is fundamental that for a delegation of governmental authority to be  
26 lawful, it must “*clearly delineate*[ ] ... the public agency which is to apply it.” *Mistretta*,  
27 488 U.S. at 372-73 (emphasis added). By reading the statutes in Title 16 as delegating  
28 authority to the first listed official/board and giving that official/board the authority to

1 exercise the power, or choose to delegate it, the Court avoids the constitutional problem of  
2 an invalid delegation that creates an irreconcilable ambiguity about to whom the Legislature  
3 delegated authority, rendering it an unconstitutional delegation. *See Molera v. Hobbs*, 250  
4 Ariz. 13, 24 ¶37 (2020) (applying constitutional avoidance canon).

5 Related to this, the Court must also hold that whatever official/board is listed first,  
6 and therefore actually given the delegation by the Legislature, cannot subdelegate to an  
7 “other officer in charge of elections,” other than in a manner that retains the authority to  
8 revoke that sub-delegation at-will. The U.S. Supreme Court has struck down statutes that  
9 create layers of for-cause removal. *See Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*,  
10 561 U.S. 477, 492 (2010) (“dual for-cause limitations on the removal of Board members  
11 contravene the Constitution’s separation of powers”). For similar reasons, the official/board  
12 that is listed first, and therefore given the delegation by the Legislature, must retain full  
13 control to revoke any sub-delegation to avoid the constitutional issues associated with what  
14 could otherwise be an invalid delegation. Otherwise—as here, where the people elect a new  
15 recorder—it is of no import because the ousted recorder has already delegated away his  
16 authority. This is a textbook example of creating an unauthorized, additional level of for-  
17 cause removal, and it is contrary to the statute and constitutional scheme, which provides  
18 for the direct election of recorders and supervisors.

### 19 **3. The History of Title 16 Supports This Interpretation.**

20 Since at least 1966, the Legislature has chosen to use the phrase “or other officer in  
21 charge of elections.” *See* 1966 Ariz. Sess. Laws ch. 92 (2nd Reg. Sess.) (H.B. 204) (“Subject  
22 to such instructions and procedures and the provisions of this article, the *board of*  
23 *supervisors or other officer in charge of elections* shall have the power to make all necessary  
24 and desirable provisions for the conduct of elections with approved electronic voting  
25 systems.” (emphasis added)). At times, the Legislature also used this language, in  
26 conjunction with other modifiers, when it intended for an election duty that was delegated  
27 to a county official (such as the board or recorder) to also be fulfilled by an analogous  
28 officer at a different level of government (such as a town or city council). *See, e.g.*, 1974

1 Ariz. Sess. Laws ch. 134 (2nd Reg. Sess.) (adding A.R.S. § 16-1102 which read “within  
2 thirty days next preceding the Saturday before any election called pursuant to the laws of  
3 this state, an elector may make a signed request to the *county recorder, or other officer in*  
4 *charge of elections for the applicable political subdivision of this state in whose jurisdiction*  
5 *the elector is registered to vote, for an official absentee ballot.” (emphasis added)).*

6 At no point though, did the Legislature include this language in any way which  
7 actually vested or suggested to vest the boards of supervisors with the authority to decide  
8 in the first instance which official could undertake the prescribed duty in every case.  
9 Instead, when the Legislature intended the board have this ability, it included language (*e.g.*  
10 “the board of supervisors or other officer in charge of elections”) so indicating. And the  
11 Legislature declined to make any amendment vesting the board with this ultimate overwrite  
12 authority even where there were controversies among the various offices. *See, e.g.,*  
13 *Maricopa County v. Biaett*, 21 Ariz. App. 286, 287 (1974). And the various boards and  
14 recorders have been entering into agreements for decades wherein they have been  
15 delegating their various statutory duties to one another consistent with the interpretation of  
16 the statutory language as explained here. Again, at no point has the Legislature stepped in  
17 to amend the relevant statutory language to grant the boards of supervisors ultimate  
18 authority over which office gets to undertake the statutory duties.

19 \* \* \*

20 Consequently, this Court should narrowly conclude that, based on the statutes’ plain  
21 language, when the statute authorizes “the county recorder or other officer in charge of  
22 elections” to act, it is the recorder’s duty to ensure the statute is complied with unless the  
23 recorder expressly agrees to delegate that duty to another “officer in charge of elections.”  
24 *See Clear Channel Outdoor*, 218 Ariz. at 178 ¶6 (“When the language of a statute is clear  
25 and unambiguous, a court should not look beyond the language, but rather simply apply it  
26 without using other means of construction, assuming that the legislature has said what it  
27 means.” (internal quotation marks omitted)). Similarly, when the statute authorizes “the  
28 board of supervisors or other authority in charge of elections” to act, it is the board’s duty

1 to ensure the statute is complied with unless the board expressly agrees to delegate that duty  
2 to another “officer in charge of elections.” Any delegations under these statutes must be  
3 revokable at will, and the board has no authority to determine which election officer gets to  
4 act when the statute imposes the duty on the “county recorder or other officer in charge of  
5 elections.”

6 **II. The Board Cannot Appropriate Functions, Personnel, or Equipment that Are**  
7 **Needed by the County Recorder to Fulfill His Statutory Duties.**

8 Where the Constitution or a statute has clearly vested a county recorder with certain  
9 duties, it is beyond a board’s authority to divest a recorder of these duties. *See Romley v.*  
10 *Daughton*, 225 Ariz. 521, 526 ¶25 (App. 2010); *see also Bd. of Supervisors of Maricopa*  
11 *Cnty. v. Woodall*, 120 Ariz. 379, 381 (1978) (“The law is well settled that when the  
12 constitution or the laws of the State create an office, prescribe the duties of its incumbent  
13 and fix his compensation, no other person or board, except by action of the legislature, has  
14 the authority to contract with private individuals to expend public funds for the purpose of  
15 performing the duties which were imposed upon such officer.” (internal quotation marks  
16 omitted)). And such a divestment occurs when the board takes personnel, equipment,  
17 functions, or funding needed by the recorder to fulfill his duties.

18 In *Romley*, the court of appeals concluded just that. There, the Maricopa County  
19 Board of Supervisors created and funded a General Litigation Department “outside the  
20 purview of the County Attorney” to represent the county in all civil matters after the board  
21 concluded there were conflicts with the county attorney. 225 Ariz. at 522-23 ¶¶3-5. Because  
22 the county attorney had a clear statutory duty “to represent the county in civil litigation,”  
23 the board “exceed[ed] its authority in effectively divesting the county attorney of his power  
24 to represent the county and its agencies” by creating and funding a different litigation  
25 department. *Id.* at 525-26 ¶¶19, 25.

26 Relying on *Romley*, the Arizona Attorney General has also reached the same  
27 conclusion. Specifically, the Attorney General concluded that a county board of supervisors  
28 exceeded “its authority and usurp[ed] the County Assessor’s authority when [it] removed

1 certain personnel [and equipment] from the County Assessor’s control.” Ariz. Op. Att’y  
2 Gen. No. I15-013, 2015 WL 9464429, at \*1 (Dec. 21, 2015). The Attorney General noted  
3 that a county assessor is statutorily “required to identify, by diligent inquiry, all real  
4 property in the county that is subject to taxation, to maintain uniform maps and records with  
5 assistance from ADOR, to report detailed property information on the tax roll, to account  
6 for all property in a county, and to supply geographical information to various county taxing  
7 districts.” *Id.* at \*2. Consequently, “[c]artography and title functions are necessary to an  
8 assessor’s performance of these and many other statutory duties,” so a board of supervisors  
9 “does not have the authority to withdraw cartography and title personnel from the control  
10 of the [assessor].” *Id.* To “remove cartography and property title personnel from the  
11 assessor’s office” would “unlawfully divest[] the assessor of mapping and title functions  
12 that she is required to perform under state law.” *Id.* at 5.

13 Similarly here, when a statute imposes a duty on the county recorder, and the  
14 recorder needs certain personnel, funding, or equipment to fulfil that statutory duty, the  
15 board cannot take that equipment or personnel from the recorder, or refuse to provide  
16 sufficient funding, without unlawfully divesting the recorder of his ability to carry out his  
17 duties.

### 18 CONCLUSION

19 For the foregoing reasons, this Court should hold narrowly that when an elections  
20 statute imposes a duty on either the recorders or the boards with the caveat that another  
21 “officer in charge of elections” may accomplish the task, the Legislature intended in the  
22 first instance for that duty to be carried out by the office listed in the statute.

23 RESPECTFULLY SUBMITTED this 25th day of August, 2025.

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1 ORIGINAL of the foregoing E-FILED this 25th day of August, 2025.

2 COPY of the foregoing E-DELIVERED  
3 this same date to

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28 /s/ Katlyn J. Divis

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P. McKinley, Deputy

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**ARIZONA SUPERIOR COURT**

**MARICOPA COUNTY**

JUSTIN HEAP, in his official capacity  
as Maricopa County Recorder,

Plaintiff,

vs.

THOMAS GALVIN, in his official  
capacity as a member of the Maricopa  
County Board of Supervisors; MARK  
STEWART, in his official capacity as a  
member of the Maricopa County Board  
of Supervisors; KATE BROPHY  
MCGEE, in her official capacity as a  
member of the Maricopa County Board  
of Supervisors; DEBBIE LESKO, in her  
official capacity as a member of the  
Maricopa County Board of Supervisors;  
STEVE GALLARDO, in his official  
capacity as a member of the Maricopa  
County Board of Supervisors,

Defendants.

Case No: CV2025-020621

**ORDER GRANTING MOTION BY  
PRESIDENT PETERSEN AND  
SPEAKER MONTENEGRO TO FILE  
AMICUS BRIEF**

(Assigned to the Hon. Scott Blaney)

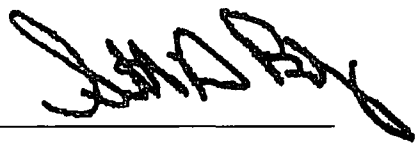
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The Court has reviewed the Motion by President Petersen and Speaker Montenegro for Leave to File an Amicus Brief. For the reasons stated therein,

IT IS ORDERED granting the Motion.

IT IS FURTHER ORDERED the Amicus Brief shall be separately filed within ten (10) days of this order.

Dated: 8/26/25



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Hon. Scott A. Blaney  
Judge, Superior Court of Arizona

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2025-020621

02/05/2026

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT

P. McKinley

Deputy

JUSTIN HEAP

JAMES K ROGERS

v.

THOMAS GALVIN, et al.

THOMAS J. BASILE

RYAN P HOGAN  
BRETT W JOHNSON  
CHARLENE A WARNER  
KORY A LANGHOFER  
JUDGE BLANEY

**HEARING SET**

The Court has reviewed and considered Plaintiff Maricopa County Recorder Justin Heap's *Emergency Motion to Quash Subpoenas or For Temporary Restraining Order Without Notice or Preliminary Injunction*, the supporting documentation, and the record in this case.

This case involves a dispute between the Recorder and Defendant Maricopa County Board of Supervisors. On January 26, 2026, the Court held the final evidentiary hearing in this case. The Court has taken that matter under advisement. The Recorder alleges that just one week later, on February 3, 2026, Defendant Board of Supervisors served subpoenas on three of the Recorder's employees – all three of which provided testimony in support of the Recorder at this Court's hearing. The subpoenas demand that the employees/witnesses produce documents supporting their testimony from the hearing, and that they do so with less than 72 hours notice. At least one subpoena requires an employee/witness to appear before the Board two days later for in-person testimony.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2025-020621

02/05/2026

The Court stresses that it has not yet heard from Defendant Board of Supervisors or from the Board's legal counsel. The Court will not issue findings or draw definitive conclusions until it has had an opportunity to hear from both sides. But the Court is concerned that such an action, taken by an opposing party so close in time to this Court's hearing, and focused directly upon the testimony of witnesses who appeared before this Court, amounts to retaliation, and interference in these proceedings. This Court has a duty to protect the integrity of these proceedings and the witnesses that appear before it.

To obtain temporary injunctive relief, the Court considers whether the Recorder has established the following factors: (1) "a strong likelihood" of success on the merits; (2) "the possibility of irreparable injury. . . if the requested relief is not granted;" (3) the balance of hardships favors injunctive relief; and (4) "[p]ublic policy favors the injunction." *Shoen v. Shoen*, 167 Ariz. 58, 653 (App. 1990). Courts apply a sliding scale in assessing these factors. *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410 (2006).

**THE COURT FINDS** that the Recorder has established, on the limited record before the Court, that the issuance of a temporary restraining order without notice is appropriate to maintain the *status quo* until the Court can hear from both parties. At a minimum: (1) the Recorder has established a likelihood of success on the merits based upon the apparent interference with these proceedings and the extremely short response times allotted by the subpoenas; (2) the Recorder has established the possibility of irreparable injury based upon the same facts; (3) the balance of hardships weighs heavily in favor of a grant of injunctive relief – it is unclear what hardship Defendant Board could face with a delay in enforcing its subpoenas; and (4) public policy requires this Court, once again, to protect the integrity of these proceedings and the witnesses that appear before it.

**THE COURT FURTHER FINDS** that a temporary restraining order should issue without notice because the Recorder has established that immediate and irreparable injury will likely result before Defendant Board of Supervisors may be heard in opposition.

On good cause, and in the Court's discretion,

**IT IS ORDERED** granting in part Plaintiff Maricopa County Recorder Justin Heap's *Emergency Motion to Quash Subpoenas or For Temporary Restraining Order Without Notice or Preliminary Injunction*. The Court issues the following Temporary Restraining Order: witnesses to which the subpoenas were directed are not required to comply with the subpoenas until further order of the Court.

**IT IS FURTHER ORDERED** setting an **in-person** Order to Show Cause Return Hearing on **Wednesday, February 11, 2026 at 9:00 a.m.** before this Division.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2025-020621

02/05/2026

**Honorable Scott A. Blaney**  
**East Court Building**  
**101 West Jefferson, Courtroom 411**  
**Phoenix, Arizona 85003-2202**  
**Telephone: (602) 372-1095**

**NOTE:** All Court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2025-020621

03/11/2026

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT

P. McKinley

Deputy

JUSTIN HEAP

JAMES K ROGERS

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RYAN P HOGAN  
BRETT W JOHNSON  
CHARLENE A WARNER  
KORY A LANGHOFER  
LINLEY SARAH WILSON  
STEPHEN W TULLY  
JUDGE BLANEY

**RULING**

The Court has reviewed and considered Defendants' *Request for Rule 56(d) Relief and for Expedited Hearing*, Plaintiff's *Response in Opposition to Rule 56(d) Motion of Defendants Galvin, McGee, Lesko, and Gallardo*, and the record in this case.

This special action involves an ongoing dispute between the Maricopa County Recorder and the Maricopa County Board of Supervisors. The Court held an initial status conference near the time of filing to determine how the case should proceed. The parties subsequently proposed a briefing schedule for cross-motions for summary judgment, with an additional evidentiary hearing to resolve any factual disputes and to serve as a trial on the merits. Pursuant to that schedule, the parties filed their respective motions for summary judgment on August 11 & 12, 2025, and their responses to the opposing party's motion on September 2, 2025. The Court then held the evidentiary hearing on January 26, 2026. Both parties appeared at the evidentiary hearing,

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

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presented evidence in the form of documents and witness testimony, and cross-examined the other party's witnesses.

Almost immediately after the hearing, Defendant Board of Supervisors issued subpoenas to the Recorder and to witnesses that had appeared on behalf of the Recorder at the evidentiary hearing. The Board issued its subpoenas pursuant to its own statutory fact-finding authority. The subpoenas were not for testimony before this Court; they instead required witnesses to appear in front of the Board, under oath, in front of a hostile party and not a neutral arbiter, and without the protection of the rules of evidence. Upon learning of the Board's compelled, extra-judicial discovery, the Court became concerned that the Board had issued the subpoenas in retaliation for the witnesses' testimony at this Court's evidentiary hearing and further, that the Board issued the extra-judicial subpoenas to improperly influence these proceedings. On Recorder Heap's motion, the Court issued a *Temporary Restraining Order* barring enforcement of the Board's subpoenas until after the Court received the parties' proposed findings of fact and conclusions of law. The Court specifically stated the following in the *Temporary Restraining Order*:

[T]he Court is concerned that such an action, taken by an opposing party so close in time to this Court's hearing, and focused directly upon the testimony of witnesses who appeared before this Court, amounts to retaliation and interference in these proceedings. This Court has a duty to protect the integrity of these proceedings and the witnesses that appear before it.

February 5, 2026 Minute Entry at p.2. After receiving the parties' proposed findings of fact and conclusions of law, the Court dissolved the *Temporary Restraining Order*.

The Board now seeks to use the Recorder's compelled, extra-judicial testimony to discredit the in-court testimony of the Recorder and his witnesses. But again, the testimony on which the Board now relies was taken in front of the Board – not this Court – based upon questioning by a hostile adverse party, without the protection of the rules of evidence, without a neutral arbiter, and without legal representation by Recorder Heap's attorney. The Board moves pursuant to Rule 56(d) for further discovery based upon that testimony, with the intent of subsequently submitting that testimony and any additional evidence to this Court.

Rule 56(d) permits a party to seek a delay in responding to an opposing party's motion for summary judgment when the party establishes that it cannot present evidence essential to justify its opposition to the motion for summary judgment. Whether to grant Rule 56(d) relief is within the discretion of this Court. *See* Rule 56(d)(5) (“When a request is filed in compliance with Rule 56(d)(1), the court *may*...”) (emphasis added); *see also Cornet Stores v. Superior Court In and For the County of Yavapai*, 108 Ariz. 84, 86 (1972) (“[I]n matters of discovery, trial courts are vested with wide discretion, and their decisions will not ordinarily be disturbed.”).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2025-020621

03/11/2026

**THE COURT FINDS** that Defendants have not established good cause for their requested relief. This is not a proper use of Rule 56(d), asserted for the first time after: (1) both parties agreed to a briefing schedule and date for an evidentiary hearing; (2) both parties filed their respective motions for summary judgment and responses to the opposing party's motion; (3) both parties appeared at the evidentiary hearing, presented evidence, and cross-examined the other parties' witnesses; and (4) the Court has already taken the matter under advisement for final determination on the merits. The time for discovery has long passed. This is particularly true where, as here, the case comes before the Court as a special action. Discovery is not routinely permitted in special action proceedings. Rule 7(g), Arizona Rules of Procedure for Special Actions.

**THE COURT FURTHER FINDS** that the Court's initial fear – that the Board of Supervisors was using its extra-judicial subpoenas in part to influence these proceedings – was well founded. The Court will not allow this gamesmanship to interfere with or jeopardize the integrity of these proceedings. Even if Defendants' request actually constituted a proper use of the rule (it does not), the Court would still not reward such shenanigans by allowing this extra-judicial "evidence" to taint the record in this case. The matter has already been taken under advisement for final determination.

On a failure to show good cause, and in the Court's discretion,

**IT IS ORDERED** denying Defendants' *Request for Rule 56(d) Relief and for Expedited Hearing*. The Court will issue a decision on the merits of this case in due course.

APR 17 2026 8:00 a.m.

T. Williams

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2025-020621

04/16/2026

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT  
T. Williams  
Deputy

JUSTIN HEAP

JAMES K ROGERS

v.

THOMAS GALVIN, et al.

THOMAS J. BASILE

RYAN P HOGAN  
BRETT W JOHNSON  
STEPHEN W TULLY  
CHARLENE A WARNER  
KORY A LANGHOFER  
LINLEY SARAH WILSON  
JUDGE BLANEY

UNDER ADVISMENT RULING

Before the Court is Plaintiff's *Verified Complaint for Special Action*, the parties' respective motions for summary judgment and related briefing, and *amicus curiae* briefing.

In a joint stipulation filed by the parties with the Court on August 25, 2025, the parties stipulated to a briefing schedule for cross-motions for summary judgment, affirming that if any material disagreements should arise, a short trial may be necessary. The Court held the requested trial on January 26, 2026, at which the parties presented evidence and arguments.

The Court has since reviewed and considered the evidence received at the January 26, 2026 evidentiary hearing in this matter, including the demeanor and credibility of testifying witnesses, as well as the parties' briefing and the arguments of counsel. The Court issues the following findings of fact, conclusions of law, and corresponding orders.

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**Findings of Fact**

1. Plaintiff Justin Heap is the current Maricopa County Recorder and was elected to his office in the November 5, 2024 general election.
2. Defendants Thomas Galvin, Mark Stewart, Kate Brophy McGee, Debbie Lesko, and Steve Gallardo, in their respective official capacities, collectively constitute the Maricopa County Board of Supervisors.
3. The fifteen Arizona counties are responsible for managing and implementing most facets of Arizona's complex elections infrastructure.
4. The Legislature has assigned some election-related responsibilities (such as voter registration, mail-in early voting, and voting processes for military and overseas voters) to the county recorders. Other aspects of election administration (such as overseeing the operation of polling locations on election day and the tabulation and certification of election results) are entrusted to the county boards of supervisors.
5. IT operations were historically housed in the Maricopa County Recorder's Office. But after Recorder Heap secured his party's nomination for Recorder, and prior to Recorder Heap actually assuming the responsibilities of his new office, the outgoing Recorder who Heap had just defeated in the primary election – Stephen Richer – entered into a shared services agreement with the Board that transferred operational control over the Recorder's IT systems and certain personnel to the Board.
6. Recorder Heap took office in January 2025. Upon taking office, he terminated the October 2024 shared services agreement, asserting its unenforceability and its violation and usurpation of his statutory duties.
7. Recorder Heap made efforts to negotiate a new SSA, including offering mediation on June 5, 2025. However, the parties were unable to reach a resolution.

**I. Seizure of IT Staff and Systems.**

8. As stated above, prior to Recorder Heap taking office, the Board transferred the Recorder's entire election-related IT staff to its own Enterprise Election Technology and Innovation ("ETI") department. The FY 2025–26 adopted budget shows a "shared services agreement adjustment" of \$4.53 million, representing the salaries of the IT personnel removed from the Recorder's payroll.

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9. Sam Stone, the Recorder's Chief of Staff, testified that returning these employees to the Recorder's office would not require the County to spend any additional money; it would simply be "a shift in where the line item would be placed in the budget."

10. Bryan Colby, the Recorder's Chief Information Officer, testified that the Board seized control of the servers, databases, and websites the Recorder used to carry out the Recorder's statutory duties, including the voter registration system (ERO/VRAS), the recording system (RDIS), GIS, and the BeBallotReady website.

11. This arrangement is unique among the county's elected officers. Assistant County Manager Zach Schira and Colby both testified that the other elected officials in the County have their own IT departments that report to the elected officer, not to the Board. The Board's decision to fund separate IT departments for every other elected county officer while stripping the Recorder of his own IT department strongly suggests that an independent IT department is a necessary expense of county office—and that the Board's refusal to afford the Recorder the same resource appears to not be motivated by a legitimate governmental purpose but instead serves to deprive him of the tools necessary to perform his statutory duties. The Recorder argues that the Board therefore has a mandatory duty under A.R.S. § 11-601(2) and relevant portions of Title 16, Arizona Revised Statutes, to either return the Recorder's IT systems and staff or to provide sufficient funding to replace what was taken.

## **II. IT Service Outages and Ticket Backlog.**

12. Since the transfer, the Recorder's Office has been entirely dependent on County IT for support. Colby testified that 76 of approximately 147 IT support tickets remained unresolved—a backlog exceeding 50%. Colby credibly testified that Recorder requests were deprioritized relative to Elections Department requests, and that with control over development resources—including one-time funds to hire contractors—the backlog could have been timely addressed.

13. ETI was responsible for at least three significant outages: (a) a VPN outage in October 2025; (b) a website outage on November 12, 2025, lasting approximately 6.5 hours; and (c) a recordation system outage on January 11–12, 2026.

14. In October 2025, a misapplied Cisco security patch caused a VPN outage that prevented Recorder staff from remotely accessing county systems to perform signature clipping—a mission-critical election task during UOCAVA voting and just before early ballots were sent. ETI implemented the patch without consulting or notifying the Recorder. Colby credibly testified that, had the Recorder controlled the relevant systems, the patch could have been scheduled after 10 p.m.—when remote work ended—eliminating any disruption. The Board's refusal to return election-related IT to the Recorder materially impedes his ability to implement industry-standard

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safeguards such as change-management controls and maintenance-window scheduling.

15. On November 12, 2025, the Recorder's public website went offline for approximately six and a half hours due to a failure of the platform provider and content-management system managed by ETI. The outage was discovered not by ETI but by Recorder staff and digital customers. Colby credibly testified that ETI had not deployed standard URL-monitoring tools that would have immediately alerted staff to the failure—an industry-standard best practice for critical public-facing systems.

16. On January 11–12, 2026, an automated annual backup filled the disk housing the Recorder's recordation system, taking it offline and rendering hundreds of weekend-uploaded documents unavailable until title companies resubmitted them on Monday. Colby testified that disk-usage monitoring, active backup supervision, and the ability to halt the backup as the disk approached capacity are recognized best practices that would likely have prevented or mitigated this failure. The Recorder lacks access and authority to implement such safeguards under the current Board-controlled IT structure.

**III. Refusal to Fund IT Positions Reporting to the Recorder.**

17. When the Recorder attempted to hire a new IT Infrastructure Manager—a position whose salary would be paid from funds already in the Recorder's budget—County Manager Jennifer Pokorski directly intervened to block the job posting. Pokorski sent an email on August 5, 2025, citing “active litigation” as the reason for refusing to allow the Recorder to post the position. Assistant County Manager Zach Schira confirmed at the hearing that the Board's position was to provide no election staff to the Recorder “until litigation is ... finalized.”

**IV. Denial of the Agilis Ballot-Sorting Machine.**

18. Janine Petty, the Recorder's Senior Director of Voter Registration, testified that approximately 25,000 provisional ballots must be processed each general election. The current process requires each ballot to be individually hand-scanned using a slow process. In 2024, A.R.S. § 16-134 was amended to allow voters to correct their registration and become full-ballot voters by providing proof of citizenship or residency by 7:00 p.m. on Election Day. Petty testified that, due to the condensed timeframe and manual scanning process, some voters who timely cured their provisional ballots were nonetheless not upgraded to full-ballot status because there was “no time to go back” and find those ballots among 25,000 envelopes.

19. Petty estimated that between 1 and 100 voters per general election are disenfranchised as a result—their ballots tabulated as federal-only when they were entitled to a full ballot.

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20. The Agilis machine processes about 18,000 envelopes per hour, meaning the entire provisional ballot inventory could be re-scanned in approximately 90 minutes, enabling timely identification and upgrade of cured ballots. Stone testified that the Recorder submitted a formal request for the Agilis machine in early 2025, with a detailed justification prepared by Petty and Ray Valenzuela, who is the Director of Early Voting in the Maricopa County Recorder's Office. The Board denied the request, citing recurring licensing costs and lack of space.

**V. The IT Personnel and Systems Are Necessary for the Conduct of the Recorder's Duties.**

21. The Court finds specifically that the IT staff, servers, databases, and websites seized by the Board and that were previously under the control of the Recorder are necessary for the conduct of the Recorder's duties.

**VI. Disputes Over Available Funding.**

22. The Arizona Legislature, through SB 1735, appropriated \$4.1 million to the Recorder's Office for election-related operations for FY 2025–26 and mandated that the Board "shall not in any way reduce the funding to the Maricopa County recorder's office below the amount of the adopted fiscal year budget." None of the \$4.1 million in legislative funding has been spent. The Board has denied the Recorder the use of these funds by refusing to authorize expenditures, including the IT position described above.

23. Separately, the Recorder's Office has approximately \$1 million in Help America Vote Act ("HAVA") federal grant funds that it sought to use for IT personnel. Nate Young, the Board's IT Director, submitted a request seeking to spend the Recorder's HAVA funds to hire staff under the Board's control rather than the Recorder's. The Recorder objected because these funds belong to the Recorder's Office and should support staff who report to the Recorder.

24. The Board based its denial of the Recorder's request to use SB 1735 and HAVA funds for personnel on a pre-existing Board policy of declining to approve budget requests that rely on a one-time appropriation to fund an ongoing, recurring expense.

**VII. Willingness to Cooperate.**

25. The Recorder has consistently expressed willingness to cooperate with the Board. The Court does not see the same willingness from the Board. The Recorder confirmed at the hearing his willingness to share equipment, coordinate on voting sites, share poll workers, and coordinate training—all without requiring any additional capital expenditures.

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**Conclusions of Law**

**I. Jurisdiction.**

1. This Court has jurisdiction pursuant to A.R.S. § 12-1831 *et seq.* (declaratory judgment), A.R.S. § 12-2021 (mandamus), and A.R.S. § 12-1801 *et seq.* (injunctive relief). This special action presents justiciable controversies regarding the respective statutory authorities and obligations of the Maricopa County Recorder and Board in the administration of elections.

2. The Recorder is responsible for overseeing, *inter alia*, voter registration, voter list maintenance, the distribution and signature verification of early ballots, and in-person early voting. A.R.S. §§ 16-120, -134, -165, -166, -542, -544.

3. The Board is responsible for, *inter alia*, drawing precinct boundaries, selecting Election Day voting locations, preparing ballots, supplying polling locations, hiring poll workers, tabulating ballots, and canvassing. *Id.* §§ 16-411, -510, -511, -531, -621, 642.

4. The Board is also responsible for approving appropriations, making contracts on the County's behalf, and managing the County's real property. *Id.* §§ 11-201, -251(1), 42-17101, *et seq.* "The power and responsibility for producing a balanced county budget rests with the board of supervisors." *Maricopa Cnty. v. Dann*, 157 Ariz. 396, 399 (1988).

5. The Court recognizes that in matters of funding and expenditures, this Court "is not a super-board of supervisors" and cannot "substitute [its] judgment for that of the board of supervisors." *Gregory v. Thompson*, 159 Ariz. 512, 515 (App. 1989). The Board's budgetary decisions will not be disturbed as long as they are not "arbitrary or capricious" or an "abuse of discretion." *Bd. of Sup'rs. v. Rio Rico Volunteer Fire Dist.*, 119 Ariz. 361, 364 (App. 1978).

**II. The Board's Duty to Fund the Recorder's Necessary Expenses.**

6. Under A.R.S. § 11-601(2), "necessary expenses incurred in the conduct of their offices" by county officers are "county charges" that the Board is obligated to pay. The County Recorder is an enumerated county officer under A.R.S. § 11-401. Accordingly, the Board has a non-discretionary, mandatory duty to fund the reasonable, necessary expenses incurred by the Recorder in the conduct of his office, including those expenses necessary for the Recorder to fulfill his election administration responsibilities.

7. This obligation is not contingent upon the existence of an intergovernmental agreement between the parties. The statutory duty under A.R.S. § 11-601(2) exists independently and cannot be abrogated by the absence of a voluntary agreement between the parties.

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8. The Board may not use its budgetary authority to usurp the functions of the Recorder or to coerce the Recorder into ceding statutory authority as a precondition of receiving necessary funding. *Maricopa Cnty. v. Biaett*, 21 Ariz. App. 286, 287, 290 (1974) (holding that expenses incurred by the Recorder to contest the Board’s usurpation of the Recorder’s statutory powers were “such ‘necessary expenses’ as to make them a county charge”); *Lockwood v. Bd. of Suprs. of Maricopa Cnty.*, 80 Ariz. 311, 316 (1956) (holding that the Board “could not under the budget law or any other law so conduct county affairs as to prevent” the “existence and operation” of an independent organ of county government).

9. Although recognizing the Board’s clear statutory duty to fund the Recorder’s reasonable and necessary expenses, the Court finds specifically that the Board’s denial of requests to authorize SB 1735 and HAVA funds for personnel expenditures was not arbitrary, capricious, or an abuse of discretion. The Board’s witnesses credibly testified that the underlying policy on which the Board relied predated Recorder Heap’s tenure and had been consistently applied.

**III. “Necessary Expenses” Includes Meaningful Control Over Systems and Employees.**

10. The concept of “necessary expenses” under A.R.S. § 11-601(2) encompasses not merely the nominal allocation of funds, but the provision of—or funding for—the systems, servers, databases, software, websites, employees, equipment, and facilities that the Recorder reasonably requires to exercise meaningful control over the performance of his statutory duties. In the modern era, an elected officer’s statutory duties cannot be performed without adequate information technology infrastructure and personnel.

11. Under A.R.S. § 11-409, county officers enumerated in § 11-401 “by and with the consent of, and at salaries fixed by the board, may appoint deputies, stenographers, clerks and assistants necessary to conduct the affairs of their respective offices.”

12. The Board’s transfer of the Recorder’s IT staff, servers, databases, software, and websites to entities under the Board’s control and its continued possession of them—without the Recorder’s consent—effectively divests the Recorder of the ability to carry out his statutory duties independently and constitutes an unlawful usurpation of the Recorder’s statutory authority. A governmental body “may not do indirectly what a statute does not give it the power to do directly.” *Hancock v. McCarroll*, 188 Ariz. 492, 498 (App. 1996); *see also Romley v. Daughton*, 225 Ariz. 521, 526 (App. 2010) (holding that the Board exceeded its authority by creating a department to perform the County Attorney’s statutory duties).

13. In 2015, the Attorney General issued an opinion (I15-013) concluding that the Yavapai

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County Board of Supervisors lacked authority to transfer cartography and title personnel from the County Assessor's office to a Board-controlled department because those functions were necessary for the Assessor to perform his statutory duties. Although not binding on this Court, the Court finds the opinion persuasive.

14. If the Board elects not to return to the Recorder the IT staff, servers, databases, software, websites, and equipment that it has taken from him, then the Board is obligated under A.R.S. § 11-601(2) to fund all necessary expenses for the Recorder to independently hire IT staff, secure office and warehouse space, develop replacement databases and software, and procure all equipment necessary for the conduct of his office.

**IV. "Recorder or Other Officer in Charge of Elections" Delegates Authority to the Recorder Unless He Consents to Delegation to Another Officer.**

15. The county boards of supervisors and the county recorders are constitutionally created, elected officers of the county, and their respective duties are imposed by statute. Ariz.Const.art. XII, §§ 3, 4; A.R.S. § 11-401. Each is required to fill their statutorily prescribed duties, and neither may usurp a duty imposed on the other office.

16. Arizona's election statutes use four distinct formulations to allocate election administration authority at the county level: (1) directly to the Recorder; (2) directly to the Board; (3) to "the county recorder or other officer in charge of elections," which appears in 111 instances throughout Title 16; and (4) to "the board of supervisors or other officer [or authority] in charge of elections," which appears in 16 instances. The use of two different phrases in relation to the "other officer in charge" to describe two different allocations of authority must be given distinct meanings. *Egan v. Fridlund-Horne*, 221 Ariz. 229, 239 ¶ 37 (App. 2009) (where the Legislature uses different words, courts presume different meanings were intended).

17. Under the canon that specific statutory provisions control over general ones, *Mercy Healthcare Arizona, Inc. v. Arizona Health Care Cost Containment Sys.*, 181 Ariz. 95, 100 (App. 1994), each provision naming "the county recorder or other officer in charge of elections" specifically delegates that authority to the county recorder. The phrase "or other officer in charge of elections" is the general provision permitting designation by the county recorder of another officer to exercise that function when necessary.

18. The legislative history confirms this interpretation. The phrase "or other officer in charge of elections" was added to Title 16 during the 1960s and 1970s legislative reforms that extended absentee voting and other election procedures to local elections not administered at the county level. *See, e.g.*, Senate Bill 1071 (Laws 1974, ch. 134). The contemporaneous statutory text—"the county recorder, or other officer in charge of elections for the applicable political subdivision of

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this state,” A.R.S. § 16-1102 (1974); *see also* A.R.S. § 16-1103(A) (1974)— confirms that “other officer” designated the analogous official in non-county political subdivisions, not a mechanism for the Board to strip recorders of county-level duties.

19. The Legislature has since expanded its use of “other officer in charge of elections” to encompass county-level officers, but has never adopted the Board’s reading. During its 1974 reforms, the Legislature knew the question of whether a board could strip a recorder of duties without consent had recently been litigated and resolved in the Recorder’s favor. *See Biaett* at 287. Had the Legislature intended to empower boards to involuntarily divest recorders of their duties, it could have done so expressly—*e.g.*, by delegating tasks to “the board of supervisors or its designee.” *Cf. Hancock*, 188 Ariz. at 498.

20. Any interpretation permitting the Board to unilaterally claim the 111 duties delegated to the Recorder violates multiple canons. *First*, it violates the surplusage canon by rendering the distinction between “recorder or other officer” and “board of supervisors or other officer” meaningless. *Jurju v. Ile*, 255 Ariz. 558, 562, ¶ 22 (App. 2023). *Second*, it violates *expressio unius*: where the Legislature used “board” in some statutes and “recorder” in others, “recorder” cannot be read to include the board. *ACLU of Arizona v. Arizona DCS*, 251 Ariz. 458, 463, ¶ 20 (2021). *Third*, it defeats the manifest legislative intent shown by the 111-to-16 disproportion establishing the Recorder as the principal county election officer.

21. Constitutional avoidance further supports this reading. Under *Molera v. Hobbs*, 250 Ariz. 13, 24 ¶ 37 (2020), courts must construe statutes to avoid serious constitutional doubts. Reading “or other officer in charge of elections” to let the Board unilaterally divest the Recorder—an independently elected constitutional officer—of his statutory duties and assign them to another individual of the Board’s choosing would raise serious structural constitutional concerns by permitting one branch of county government to nullify another’s authority, a result the Legislature could not have intended and would not have adopted without clearly saying so.

22. The Court therefore finds, specifically, that when an elections statute imposes a duty or responsibility on either the recorders or the boards with the caveat that another “officer in charge of elections” may accomplish the task, the Legislature intended in the first instance for that duty to be carried out by the officer specifically listed in the statute.

**V. Neither Party May Unilaterally Divest Statutory Responsibilities.**

23. The Board’s assertion of plenary authority over election administration through its general supervisory powers is inconsistent with Arizona law. The Board’s general authority does not override specific statutory delegations to other county officers. *Sanchez v. Maricopa County*, 572 P.3d 101, 107 (Ariz. 2025); *AZPLA v. Fontes*, 250 Ariz. 58, 65, ¶ 31 (2020). The Legislature has

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authority over the conduct of elections and determines the extent to which the Board may conduct them. *Fann v. Kemp*, 253 Ariz. 537, 545 (2022) (citing Ariz. Const. art. 7, § 12). The Board may not override these specific allocations by invoking general supervisory authority.

24. Where a valid delegation of authority exists, the delegation must clearly delineate the designated agency or officer. *Cf. Mistretta v. United States*, 488 U.S. 361, 372–73 (1989). Arizona’s election statutes clearly delineate the Recorder as the designated officer for the 111 functions assigned to the “recorder or other officer in charge.” The Board cannot substitute itself for the Recorder without either the Recorder’s consent or express legislative authorization.

**VI. SB 1735 Signals the Recorder’s Independent Election Authority.**

25. The Arizona Legislature’s enactment of SB 1735, which appropriated \$4,100,000 from the state general fund to the Maricopa County Recorder’s Office for election-related operations and mandated that “the Maricopa county board of supervisors shall not in any way reduce the funding to the Maricopa county recorder’s office below the amount of the adopted fiscal year budget for the Maricopa county recorder’s office,” constitutes a persuasive legislative determination that the Recorder possesses independent election administration authority requiring independent funding. Again, if the Board fails to return to the Recorder the IT staff, servers, databases, software, websites, and equipment that it has taken from him, then the Board is obligated under A.R.S. § 11-601(2) to fund all necessary expenses for the Recorder to independently hire IT staff, secure office and warehouse space, develop replacement databases and software, and procure all equipment necessary for the conduct of his office.

**VII. Irreparable Harm and Appropriate Relief.**

26. Because the Recorder has shown that the Board has acted unlawfully and exceeded its statutory authority by seizing the Recorder’s personnel, systems and equipment and refusing to return them to the Recorder’s control, the Recorder need not satisfy the standard for injunctive relief. *See Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 64 ¶ 26 (2020) (“A plaintiff need not show irreparable injury or balance of hardship ‘when the acts sought to be enjoined have been declared unlawful.’” (citation omitted)).

27. But even if the Recorder were required to show irreparable harm, constitutional violations constitute irreparable harm that cannot be adequately remedied through damages. *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1059 (9th Cir. 2009). The County Recorder is a constitutionally established office, and the Board’s seizure of the Recorder’s systems, staff, and equipment constitutes continuing nullification of the Recorder’s authority. This ongoing harm warrants injunctive and mandamus relief.

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28. The evidence at trial established that the Recorder's inability to exercise meaningful control over election systems and staff will likely cause concrete operational harms, including inability to timely process provisional ballots under A.R.S. § 16-134, resulting in voters being denied tabulation of the full ballots they had voted and to which they were entitled. These harms will not resolve and may likely increase absent court intervention, particularly as general election cycles approach.

29. Public policy strongly favors the relief sought. There is a "strong public policy favoring stability and finality of election results." *Arizona City Sanitary Dist. v. Olson*, 224 Ariz. 330, 334, ¶ 12 (App. 2010). The continuing disruption of the statutory allocation of election duties threatens the integrity and lawful, orderly conduct of future elections in Maricopa County.

On good cause, and in the Court's discretion,

**IT IS ORDERED:**

1. Declaring, consistent with the Legislature's intent, that whenever a statute in Title 16 of the Arizona Revised Statutes delegates authority to or imposes a responsibility on a county recorder or an "other officer in charge of elections," the statute is delegating that authority or responsibility to a county's recorder, unless the county's recorder agrees that an "other officer in charge of elections" may be designated to carry it out. The recorder may subsequently withdraw his or her consent and reclaim his or her statutory authority or responsibility.

2. Declaring, consistent with the Legislature's intent, that whenever a statute in Title 16 of the Arizona Revised Statutes delegates authority to or imposes a responsibility on a board of supervisors or an "other officer in charge of elections," the statute is delegating that authority or responsibility to a board of supervisors, unless the board of supervisors agrees that an "other officer in charge of elections" may be designated to carry it out. The board of supervisors may subsequently withdraw its consent and reclaim its statutory authority or responsibility.

3. Declaring that the Maricopa County Board of Supervisors has a nondiscretionary duty to fund all necessary expenses of the Recorder as set forth in Title 16 of the Arizona Revised Statutes.

4. Requiring the Maricopa County Board of Supervisors to return to the Recorder's direct custody and/or control the IT staff, servers, databases, software, websites, and equipment that were in the Recorder's custody and/or control prior to October of 2024 (or the current version of such items), or immediately fund the

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replacement of these personnel and items so that the Recorder may properly carry out his statutory responsibilities.

5. Enjoining the Maricopa County Board of Supervisors from further exercising any election functions delegated by the Legislature to the Recorder or “other officer in charge of elections,” absent the Recorder’s consent.

**IT IS FURTHER ORDERED**, while declaring above that the Board has a nondiscretionary duty to fund all reasonable and necessary expenses of the Recorder as set forth in Title 16 of Arizona Revised Statutes, declining to address whether specific funding requests must be approved or whether funding levels are inadequate. The Court takes no position on specific expenditures or funding levels, such as the Recorder’s request for a “Agilis” machine, as detailed above. Absent a clear showing that the Board’s funding decisions are arbitrary, capricious, or an abuse of discretion, the determination of the Agilis machine’s necessity and the propriety of the expenditure – as with all funding matters – is an issue more appropriately addressed through good faith negotiations between the Recorder and the Board of Supervisors.

**IT IS FURTHER ORDERED** declining to address the parties’ remaining arguments and issues as either moot or unpersuasive.

**IT IS FURTHER ORDERED** directing the Recorder to prepare and lodge a form of Judgment on or before **May 1, 2026**. The Recorder shall file any statement of taxable costs or application for attorney’s fees by this deadline as well. The Board shall file any objections or responses to the form of judgment or to the request for costs or fees within **twenty (20) days** thereafter.

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MINUTE ENTRY

The Court has reviewed and considered Defendant Maricopa County Board of Supervisors' *Motion for a Stay* and Defendant Mark Stewart's *Response to Co-Defendants' Motion for Stay*, as well as the record in this case. As the titles suggest, all Defendants in this action seek a stay of the Court's *April 16, 2026 Ruling* (filed 04/17/2026) in favor of Plaintiff Maricopa County Recorder Justin Heap.

**THE COURT FINDS** that oral argument would not assist the Court in ruling on the present motions. The Court therefore declines to schedule oral argument. Rule 7.1(d), Ariz. R. Civ. P.

Defendant Board of Supervisors seeks a stay pending appeal, arguing that the Board will likely be successful on appeal and that compliance with the Court's *April 16, 2026 Ruling* will cause irreparable harm. The Board argues, *inter alia*, that "last-minute changes to election systems" may "pose the (interrelated) dangers of burdening elections workers and complicating the voting experience." *See* Board of Supervisors' *Motion* at pp. 8-9. But the Court finds it

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inexplicable that the Board of Supervisors – in the nine months since Recorder Heap filed the present lawsuit – would not have considered and planned for the possibility that the Court would rule in favor of Recorder Heap. The Court has repeatedly urged the parties during the course of this litigation to work together to find a mutually acceptable resolution of this dispute. But as the Court found in its *April 16, 2026 Ruling*, instances of cooperation and negotiation have been rare to nonexistent.

Defendant Stewart filed his own separate *Motion* and seeks a stay to allow the parties to mediate the dispute. While it appears that Supervisor Stewart filed his request in good faith, the Court has little confidence that parties will use this stay for good faith negotiations and will instead see it as an opportunity to moot the Court's *Ruling* through extended delay.

On a failure to show good cause, and in the Court's discretion,

**IT IS ORDERED** denying Defendant Maricopa County Board of Supervisors' and Defendant Supervisor Mark Stewart's respective requests for a stay.

**IT IS FURTHER ORDERED** encouraging the parties to immediately negotiate a reasonable, mutually acceptable resolution of this dispute. If the parties are unable to resolve the entirety of this dispute, the Court encourages the parties to at least negotiate a temporary resolution that avoids any interference with the upcoming elections. The Court remains willing to defer to the parties' judgment as elected officials if they mutually reach a resolution through good faith negotiation.

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

11 JUSTIN HEAP, in his official capacity as  
12 Maricopa County Recorder;

13 Plaintiff / Counterdefendant,

14 v.

15 THOMAS GALVIN, in his official capac-  
16 ity as a member of the Maricopa County  
17 Board of Supervisors; MARK STEWART,  
18 in his official capacity as a member of the  
19 Maricopa County Board of Supervisors;  
20 KATE BROPHY MCGEE, in her official  
21 capacity as a member of the Maricopa  
22 County Board of Supervisors; DEBBIE  
23 LESKO, in her official capacity as a mem-  
24 ber of the Maricopa County Board of Su-  
25 pervisors; STEVE GALLARDO, in his of-  
26 ficial capacity as a member of the Maricopa  
27 County Board of Supervisors;

28 Defendants / Counterclaimants.

**AND**

29 RACHEL MITCHELL, in her official  
30 capacity as the Maricopa County Attorney;

31 Plaintiff,

32 v.

33 JUSTIN HEAP, in his official capacity as  
34 Maricopa County Recorder;

35 Defendant.

Case No.  
CV2025-020621  
(*consolidated*)

**APPLICATION FOR ORDER TO  
SHOW CAUSE WHY DEFEND-  
ANTS SHOULD NOT BE HELD IN  
CIVIL CONTEMPT FOR WILL-  
FULLY DISOBEYING THE  
COURT'S APRIL 16, 2026 UNDER  
ADVISEMENT RULING**

(Assigned to the Hon. Scott Blaney)

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## INTRODUCTION

Pursuant to A.R.S. § 12-864, Arizona Rule of Civil Procedure 7.3, and Arizona Rule of Procedure for Special Actions 7(c), Plaintiff and Counter-Defendant Justin Heap, in his official capacity as Maricopa County Recorder, respectfully applies for an Order to Show Cause directing the Defendants (collectively, the “Board”) to appear before the Court and show cause why they should not be adjudged in civil contempt for willful, continuing, and escalating noncompliance with this Court’s April 16, 2026 Under Advisement Ruling (the “April 16 Order” or “the Order”).

The April 16 Order is unambiguous. It requires the Board to return to the Recorder’s direct custody and control the IT staff, servers, databases, software, and websites that were in the Recorder’s custody and control before October 2024—or immediately fund their replacement. It enjoins the Board from exercising any election functions that the Legislature has delegated to “the Recorder or other officer in charge of elections,” absent the Recorder’s consent. It declares that the Board has a nondiscretionary duty to fund all necessary expenses of the Recorder as set forth in Title 16 of the Arizona Revised Statutes.

None of these obligations has been meaningfully met. More than six weeks after the April 16 Order was issued, the Board has not returned a single IT position to the Recorder’s Office—though, on May 20, apparently in an attempt to prepare for stay briefing at the Court of Appeals and to forestall this contempt motion, it voted to allow the Recorder’s Office to *hire* 8 new IT positions. But the Board created entirely new, unfilled positions rather than transferring the experienced former Recorder’s Office IT staff—the employees who built and maintain the VRAS and ERO systems—who remain employed by the Board. The Recorder’s Office CIO has been given administrative privileges nominally equivalent to those of the Board’s Deputy CIO, but this is a false equivalence: the Board’s Deputy CIO distributes access among his subordinates. Hence, the Board’s IT department collectively retains full access to the Recorder’s former systems. At the same time, the Recorder’s CIO has only limited or read-only access to many of them, including the ERO/VRAS voter registration databases. The Board has not returned a single server, database, or website. It has not approved the use of funds specifically appropriated by the Arizona Legislature and the federal government for the

1 Recorder’s election operations. It openly usurped the Recorder’s authority over ballot replace-  
2 ment sites during the May 2026 jurisdictional elections. And it passed a formal resolution arro-  
3 gating to itself the Recorder’s exclusive statutory authority to establish early-ballot drop boxes  
4 during the early voting period.

5 The Recorder has not met the Board’s noncompliance with reciprocal obstruction. In-  
6 stead, as documented below and in the accompanying Declaration of Recorder Justin Heap,  
7 attached hereto as Exhibit 1, he has extended repeated offers to cooperate, proposed phased  
8 transition timelines, confirmed in writing that the Board’s and Elections Department’s access  
9 to shared systems will be maintained throughout any transition, and bent over backward to  
10 accommodate the Board’s stated concerns. Those good-faith efforts have been met with delay,  
11 procedural gamesmanship, and contempt in both the colloquial and the legal sense of the word.

12 A court order is not a starting point for negotiation. The Recorder respectfully requests  
13 that the Court issue an Order to Show Cause, set an expedited hearing date, and—upon demon-  
14 strating that the Board’s conduct satisfies every element of civil contempt—adjudge the Board  
15 in contempt, impose appropriate coercive sanctions, and award the Recorder his attorneys’ fees  
16 and costs.

## 17 **I. FACTUAL AND PROCEDURAL BACKGROUND**

### 18 **A. The April 16 Order: What the Court Commanded.**

19 This action arose from the Board’s October 2024 seizure—engineered by the outgoing  
20 lame-duck Recorder in the waning weeks of his tenure—of the Recorder’s entire election-re-  
21 lated IT infrastructure and the staff who operated it. April 16 Order, Findings of Fact (“FF”)  
22 ¶¶ 5-8. Upon taking office on January 1, 2025, Recorder Heap terminated the shared services  
23 agreement under which the transfer was purportedly effected, offered mediation, and pursued  
24 relief in court when the Board refused to negotiate in good faith. FF ¶¶ 6-7.

25 After a full evidentiary hearing on January 26, 2026, and after reviewing extensive brief-  
26 ing, this Court issued its April 16, 2026 Under Advisement Ruling. The Order contains the  
following mandatory directives, each of which the Board has violated:

*First*, the Court ordered the Board to return to the Recorder’s direct custody and/or  
control the IT staff, servers, databases, software, websites, and equipment that were in the

1 Recorder’s custody and/or control before October 2024—or to “immediately fund” the Re-  
2 corder to independently hire IT staff, secure office and warehouse space, develop replacement  
3 databases and software, and procure all necessary equipment. April 16 Order, Order ¶ 4.

4 *Second*, the Court enjoined the Board from “further exercising any election functions  
5 delegated by the Legislature to the Recorder or ‘other officer in charge of elections,’ absent the  
6 Recorder’s consent.” April 16 Order, Order ¶ 5.

7 *Third*, the Court declared that the Board has a “nondiscretionary duty to fund all neces-  
8 sary expenses of the Recorder as set forth in Title 16 of the Arizona Revised Statutes.” April  
9 16 Order, Order ¶ 3.

10 These are not aspirational guidelines or hortatory recommendations. They are court or-  
11 ders. As this Court emphasized in its April 16 Ruling, the Board’s “budgetary authority” cannot  
12 be used “to usurp the functions of the Recorder or to coerce the Recorder into ceding statutory  
13 authority as a precondition of receiving necessary funding.” April 16 Order, Conclusions of  
14 Law (“COL”) ¶ 8. The Board had actual, specific knowledge of these obligations from the  
15 moment the Order was issued.

16 **B. The Board’s February 18, 2026 Resolution: A Broken Promise.**

17 The Board’s pattern of bad faith long predates the April 16 Order. In the period between  
18 the close of the January 26 evidentiary hearing and the matter being submitted to the Court for  
19 decision on February 19 (the due date for proposed findings of fact and conclusions of law),  
20 the Board voted unanimously on February 18, 2026, to adopt a resolution setting forth what it  
21 described as its “policy” on the matters in dispute. Declaration of Recorder Justin Heap in  
22 Support of Application for Order to Show Cause (“Heap Decl.”) ¶ 3.

23 Recorder Heap understood this resolution to be a tactical maneuver intended to moot  
24 the litigation and forestall a ruling by this Court. Heap Decl. ¶ 4. This Court saw through that  
25 tactic and declined to find the case moot. What followed confirmed the assessment: the Board  
26 has honored none of the commitments it made in the resolution.

In the February 18 resolution, the Board specifically committed to: (a) approving and  
funding half of the IT positions that had been housed in the Recorder’s Office before 2025—  
“a total of 16 positions”—pending completion of a full IT system separation; and (b) providing

1 the Recorder’s Chief Information Officer (“CIO”) with “administrative privileges that are equal  
2 to those of the Deputy CIO for Maricopa County.” Heap Decl. ¶ 5.

3 As of the date of this Application, neither commitment has been honored in any mean-  
4 ingful sense. The Board has not transferred any of its IT staff to the Recorder's Office; instead,  
5 on May 20—more than three months after the resolution was adopted—it voted to allow the  
6 Recorder to *hire* 8 brand-new, unfilled IT positions. That is not what the resolution promised.  
7 The resolution promised the transfer of half of the positions that had been housed in the Re-  
8 corder’s Office before 2025—i.e., the experienced personnel who know the systems. The  
9 Board’s May 20 action creates positions that did not previously exist and must be filled by new  
10 hires who are unfamiliar with the Recorder’s voter registration and election systems, while the  
11 experienced former Recorder’s IT employees remain employed by the Board. As for the CIO’s  
12 administrative access, the Board has granted the Recorder’s CIO privileges nominally equiva-  
13 lent to those of the Board’s Deputy CIO, but this is a false equivalence. The Board’s Deputy  
14 CIO distributes most administrative access among his subordinates, so he retains significantly  
15 more collective access through his team than the Recorder’s CIO holds individually or collec-  
16 tively. Cumulatively, the Board’s IT department has full access to all of the Recorder’s former  
17 systems and databases, while the Recorder’s IT department has only limited admin or read-only  
18 access to many of them—including, critically, the ERO/VRAS voter registration systems. Heap  
19 Decl. ¶ 6.

20 The Board made solemn, public, written commitments in a resolution designed to in-  
21 fluence this Court’s deliberations—and then, having failed to achieve that goal, honored them  
22 only at the last possible moment, and then only in a hollow, technical manner that perpetuates  
23 the very problems the resolution purported to address. Recorder Heap asks this Court to take  
24 careful note of this conduct when evaluating whether the Board’s post-Order noncompliance  
25 is the product of good-faith confusion or deliberate defiance.

26 **II. THE BOARD HAS NOT RETURNED THE RECORDER’S IT SYSTEMS OR STAFF.**

The April 16 Order’s mandate to return the Recorder’s IT resources—or immediately  
fund replacements—could not be clearer. The systems at issue are not peripheral or incidental

1 to the Recorder’s duties. As the Court found, they include the VRAS/ERO voter registration  
2 system, the GIS system, the BeBallotReady public website, and the RDIS recordation system—  
3 the core infrastructure through which the Recorder performs his statutory functions. FF ¶ 10.  
4 The Court specifically found that these IT staff, servers, databases, and websites are “necessary  
5 for the conduct of the Recorder's duties.” FF ¶ 21. The order is mandatory and self-executing.

6 On May 6, 2026, Recorder Heap sent a detailed letter to County Manager Jennifer  
7 Pokorski. Heap Decl. ¶ 9; see also *id.* Ex. A (Letter from Recorder Heap to County Manager  
8 Pokorski, May 6, 2026). That letter set forth a concrete, reasonable, and cooperative phased  
9 proposal for implementing the IT provisions of the Court’s Order. Heap Decl. ¶ 12. In Phase  
10 One—to be completed by May 8, 2026—the Board was to transfer to the Recorder’s Office  
11 half of the IT staff positions removed from the Recorder in 2024 and to provide the Recorder’s  
12 IT staff with access to the relevant systems and databases equivalent to the access held by the  
13 Board’s IT staff. This first phase merely imposed the same conditions the Board had already  
14 committed to in its own February 18 resolution—conditions that had never been implemented.  
15 In Phase Two—to be completed by May 22, 2026—the Board was to complete the full return  
16 of control over the IT systems and transfer the remaining IT positions. Heap Decl. ¶ 13.

17 Recorder Heap also committed in writing that, until the systems had been fully sepa-  
18 rated, he would maintain the Board’s and the Elections Department’s access to all IT systems  
19 needed to carry out their election-related duties. Heap Decl. ¶ 14. This commitment—made  
20 unilaterally and in writing—directly refutes any claim that the Board would suffer harm from  
21 compliance with the Court’s Order.

22 Both deadlines have now passed. The Board has not transferred any IT positions to the  
23 Recorder's Office—though, as noted above, it voted on May 20 to allow the Recorder to hire  
24 8 new, unfilled positions, this action does not constitute compliance with either the Court’s  
25 Order or the Board’s own resolution. The Recorder’s CIO has been granted administrative  
26 access nominally equivalent to that of the Board’s Deputy CIO. However, collectively, the Re-  
corder’s Office still has only limited or read-only access to many of its former systems—including  
the ERO/VRAS voter registration databases—and must still submit requests through the  
Board’s ticketing system to make needed changes to those systems. The IT staff, servers,

1 databases, software, and websites that the Court ordered returned remain entirely under the  
2 Board’s control. Heap Decl. ¶¶ 15-16. The backlog of unresolved IT support tickets—more  
3 than 50% of all tickets at the time of trial—has not been resolved. Because the Recorder’s  
4 Office CIO and IT staff still lack full access to critical systems and databases, the Recorder’s  
5 Office must still rely on the Board’s ticketing system to request even routine changes to the  
6 VRAS/ERO system and many other functions. The Recorder’s Office continues to lack the  
7 change-management controls and maintenance-window scheduling authority necessary to pre-  
8 vent the type of disruptive outages that have repeatedly impaired its operations since the 2024  
9 transfer. Heap Decl. ¶ 16; FF ¶¶ 13-16.

10 The Board’s stated justification for non-compliance—that a “Service Level Agreement”  
11 must first be negotiated—is not a defense; it is evidence of willfulness. As Recorder Heap’s  
12 counsel explained to the Board’s counsel in the May 18, 2026 letter: “No service level agreement  
13 was signed when the Board usurped those IT resources from the Recorder in late 2024, nor  
14 does the court’s decision permit the Board to impose such a requirement as a precondition to  
15 returning what the court has ordered returned.” Heap Decl., Ex. C. The Board’s claimed need  
16 for a Service Level Agreement is obvious pretext—if past behavior is any indication, the Board  
17 would intentionally delay any such “negotiation” of the agreement, setting up constant obsta-  
18 cles in an attempt to run out the clock on Recorder Heap’s term.

19 The Court’s ruling is mandatory. It is not an invitation to negotiate the terms of com-  
20 pliance. The Board does not get to impose bureaucratic obstacles or extract concessions as the  
21 price of obeying a court order.

### 22 **III. THE BOARD CONTINUES TO USURP THE RECORDER’S AUTHORITY 23 OVER EARLY VOTING AND BALLOT REPLACEMENT SITES.**

24 The April 16 Order enjoined the Board from “further exercising any election functions  
25 delegated by the Legislature to the Recorder or ‘other officer in charge of elections,’ absent the  
26 Recorder’s consent.” April 16 Order, Order ¶ 5. The Board has repeatedly, openly, and shame-  
lessly violated this injunction.

This section addresses two distinct categories of violation: (A) the Board’s interference  
with the Recorder’s administration of ballot replacement sites during the recent May 2026

1 jurisdictional elections; and (B) the Board’s passage of a formal resolution arrogating to itself  
2 the Recorder’s exclusive statutory authority to establish early-ballot drop boxes during the early  
3 voting period.

4 **A. Interference with Ballot Replacement Site Administration.**

5 Under A.R.S. §§ 16-409(A) and 16-558.02(A), only the County Recorder has the author-  
6 ity to provide for ballot replacement sites during jurisdictional mail ballot elections. On April  
7 28, 2026, consistent with the Court’s Order and in an effort to cooperate under compressed  
8 timeframes, Recorder Heap’s designated, through counsel, specific ballot replacement site lo-  
9 cations for the May 2026 jurisdictional elections held in Tempe, Guadalupe, and the Goldfield  
10 Ranch Fire District and confirmed a cooperative staffing arrangement under which Board-  
11 employed poll workers would operate those sites under the supervision of Recorder’s Office  
12 personnel. Heap Decl. ¶ 18; Ex. B (Letter from James K. Rogers to Board’s Counsel, April 28,  
13 2026). Rather than introduce last-minute complications into the plans the Board had already  
14 made before the April 16 Order had been issued, the Recorder generously chose to designate  
15 as ballot replacement site locations the same sites already selected by the Board—a gesture of  
16 cooperation that the Board exploited rather than honored.

17 During the May 2026 jurisdictional elections, Elections Director Scott Jarrett and Elec-  
18 tions Department personnel actively undermined Recorder management staff at ballot replace-  
19 ment sites. Heap Decl. ¶ 19. On May 15, 2026, Recorder staff discovered that poll workers had  
20 not been instructed about voters’ statutory right under A.R.S. § 16-579(A)(4) to present identi-  
21 fication instead of signature verification when delivering a completed early ballot—a right ex-  
22 pressly created by the Arizona Legislature and effective starting in 2026. At Recorder Heap’s  
23 direction, Recorder management staff directed that appropriate signage be posted and that poll  
24 workers inform voters of this statutory option. Elections Department personnel responded by  
25 instructing poll workers to disregard these directions and characterizing the staff members  
26 whom the Recorder had sent to manage those sites as “merely observers” with no authority.  
Heap Decl. ¶ 19.

The characterization of Recorder’s staff as observers is not only factually false; it defies  
the Court’s Order. Recorder Heap is not an “observer” at ballot replacement sites. He is the

1 official the Legislature has designated by statute as the officer responsible for providing and  
2 administering those sites. Section § 16-558.02(A) does not say the Recorder may “observe” a  
3 ballot replacement center operated by someone else. It says the Recorder “shall provide for”  
4 the ballot replacement center. Any ballot replacement site that is not under the direct manage-  
5 ment and control of the Recorder or his designees is operating unlawfully. Ex. C (Letter from  
6 James K. Rogers to Kory Langhofer, May 18, 2026).

7 The May 18, 2026 letter from Recorder Heap’s counsel detailed these violations, de-  
8 manding that the Board immediately cease its interference with the Recorder’s lawful exercise  
9 of his statutory authority, and specifically addressing the Elections Director’s pattern of “staff  
10 shopping”—approaching individual Recorder staff members one-on-one to secure agreements  
11 that would lock the Recorder’s Office into arrangements surrendering statutory authority, with-  
12 out the Recorder’s knowledge or authorization. Heap Decl. ¶ 20; Ex. C. The Board did not  
13 respond substantively or cure its violations.

14 **B. The Board’s Unlawful Drop Box Resolution.**

15 Rather than cure its violations, the Board escalated. On May 19, 2026, the Board placed  
16 on its formal meeting agenda for May 20 a resolution purporting to authorize the Board to  
17 establish and maintain drop boxes for the deposit of early ballots during the early voting period  
18 for the 2026 primary election. This authority belongs exclusively to the Recorder. Heap Decl.  
19 ¶ 21. Section 16-542(A) provides that the “*county recorder* may establish on-site early voting loca-  
20 tions” and “may also establish any other early voting locations in the county the recorder deems  
21 necessary.” (emphasis added.) Section 16-548(A) requires that early ballots must be “*delivered or*  
22 *mailed to the county recorder* or other officer in charge of elections of the political subdivision in  
23 which the elector is registered” and that “the ballot *must be received by the county recorder* or other  
24 officer in charge of elections.” (emphasis added.)

25 A ballot drop box is, under any reasonable reading of the statute’s plain text, an “early  
26 voting location”—a physical site where voters deliver their voted early ballots during the early  
voting period. And even if a drop box were not an early voting location, Arizona law requires  
that early ballots must be “delivered” to the Recorder and “received” by him. Ballots deposited  
into a Board-owned and managed drop box are “delivered” to, and “received” by the Board,

1 in direct violation of Arizona law. Because the statute vests this authority exclusively in the  
2 Recorder, the Board has no independent power to establish such locations. Ex. D (Letter from  
3 James K. Rogers to Kory Langhofer, May 20, 2026). Indeed, A.R.S. § 16-1005(H) makes it a  
4 class 6 felony for “[a] person who knowingly collects voted or unvoted early ballots from an-  
5 other person,” with an exception for “an election official” when “engaged in official duties.”  
6 Board employees who collect ballots at drop boxes established without the Recorder’s legal  
7 authority are not acting within the scope of lawful “official duties,” because the drop boxes  
8 themselves have not been lawfully established. Rather, through its drop boxes, the Board is  
9 extra-statutorily inserting itself into the early voting process, collecting without authorization  
10 “voted ... early ballots from another person” and then delivering them to the Recorder. In other  
11 words, the Board will be running a ballot-harvesting operation that is specifically prohibited by  
12 A.R.S. § 16-1005(H). Furthermore, A.R.S. § 16-1005(E) makes it a class 5 felony for any “per-  
13 son or entity that knowingly solicits the collection of voted or unvoted ballots by misrepresent-  
14 ing itself as an election official or as an official ballot repository or is found to be serving as a  
15 ballot drop off site, other than those established and staffed by election officials.” Drop boxes  
16 established by the Board without the Recorder’s statutory authority are not “established ... by  
17 election officials” with the power to establish them.

18 The only statutory provisions that authorize the Board to maintain drop boxes are ex-  
19 pressly limited to election day operations. A.R.S. § 16-579.02(A)(1) (election day, at voting cen-  
20 ters); A.R.S. § 16-411(D) (jurisdictional elections, election day, at designated sites). No statute  
21 grants the Board authority to establish drop boxes during the early voting period. This alloca-  
22 tion is not accidental; it is the Legislature’s deliberate choice, and it is confirmed by the *expressio*  
23 *unius* canon that this Court applied in the April 16 Order itself. See COL ¶ 20 (citing *ACLU of*  
24 *Arizona v. Arizona DCS*, 251 Ariz. 458, 463 ¶ 20 (2021)).

25 On the morning of May 20, before the Board voted, Recorder Heap’s counsel sent an  
26 urgent letter to the Board’s counsel explaining all of this, detailing why the drop box provision  
was unlawful, citing the applicable statutes and the Court’s April 16 Order, and warning of the  
potential criminal liability exposure. Heap Decl. ¶ 22; Ex. D. The Board proceeded to pass the  
resolution anyway, without the Recorder’s consent, in deliberate disregard of a binding court

1 order. Heap Decl. ¶ 23. This is not inadvertent noncompliance. It is willful contempt.

2 **IV. THE BOARD HAS REFUSED TO FUND THE RECORDER'S NECESSARY**  
3 **EXPENSES.**

4 The April 16 Order declared that the Board has a “nondiscretionary duty to fund all  
5 necessary expenses of the Recorder as set forth in Title 16 of the Arizona Revised Statutes.”  
6 April 16 Order, Order ¶ 3. The Board has not honored this obligation.

7 The Arizona Legislature, through SB 1735, appropriated \$4.1 million to the Recorder’s  
8 Office for election-related operations for FY 2025-26 and expressly mandated that the Board  
9 “shall not in any way reduce the funding to the Maricopa County recorder's office below the  
10 amount of the adopted fiscal year budget.” April 16 Order, FF ¶ 22. Not a dollar of this legis-  
11 lative appropriation has been spent. The Board has continued to deny the Recorder the use of  
12 these funds by refusing to authorize expenditures, including for the IT positions that the  
13 Court’s Order requires be returned or replaced. Heap Decl. ¶ 25.

14 Separately, the Recorder’s Office holds approximately \$1 million in Help America Vote  
15 Act (“HAVA”) federal grant funds that the Recorder sought to use for IT personnel who would  
16 report to and serve the Recorder. The Board has refused to authorize the use of these funds  
17 for this purpose. Heap Decl. ¶ 26. This refusal is particularly notable given that the Board’s  
18 own IT Director, Nate Young, submitted a competing request seeking to use the Recorder's  
19 HAVA funds to hire staff who would report to the Board rather than the Recorder. FF ¶ 23.

20 The Court’s April 16 Order squarely addressed the statutory underpinning of this obli-  
21 gation. The Court found that every other elected county officer in Maricopa County maintains  
22 an independent IT department reporting to that officer. FF ¶ 11. The Court concluded that the  
23 Board’s singling out of the Recorder for disparate treatment “appears to not be motivated by a  
24 legitimate governmental purpose but instead serves to deprive him of the tools necessary to  
25 perform his statutory duties.” *Id.* The Court held specifically that “the concept of ‘necessary  
26 expenses’ under A.R.S. § 11-601(2) encompasses not merely the nominal allocation of funds,  
but the provision of—or funding for—the systems, servers, databases, software, websites, em-  
ployees, equipment, and facilities that the Recorder reasonably requires to exercise meaningful  
control over the performance of his statutory duties.” COL ¶ 10.

1           The Board’s continued refusal to fund these positions is not a good-faith exercise of  
2 budgetary discretion. The Court has already found it unlawful. Continuing to withhold these  
3 funds in the face of the Court's Order is textbook contempt.

4 **V. LEGAL STANDARD FOR CIVIL CONTEMPT.**

5           Civil contempt in Arizona is governed by A.R.S. § 12-864, which states that “contempts  
6 committed by failure to obey a lawful writ, process, order, judgment of the court, and all other  
7 contempts not specifically embraced within this article may be punished in conformity to the  
8 practice and usage of the common law.” “A finding of civil contempt requires that the contem-  
9 nor (1) has knowledge of a lawful court order, (2) has the ability to comply and (3) fails to do  
10 so.” *Lund v. Donahoe*, 227 Ariz. 572, 583 ¶ 41 (App. 2011). All three elements are clearly satisfied  
11 here.

12           The procedural vehicle is supplied by Arizona Rule of Civil Procedure 7.3 and Arizona  
13 Rule of Procedure for Special Actions 7(c). Under ARCP 7.3(a), the Court, “on application  
14 supported by affidavit showing sufficient cause, may issue an order requiring a person to show  
15 cause why the party applying for the order should not have the relief it requests in its applica-  
16 tion.” Under RPSA 7(c), the plaintiff in a special action “may file an application for an order to  
17 show cause why the requested relief should not be granted,” and if the Court issues the order  
18 to show cause, “the court must set an expedited response date and may set a hearing.” Both  
19 rules apply here, and together they permit the Court to compel the Board’s appearance and to  
20 adjudge its compliance on an expedited schedule appropriate to the urgency of the matter.

21 **A. A Lawful Court Order Exists, and the Board Has Knowledge of It.**

22           The April 16, 2026 Under Advisement Ruling is a final, binding order of this Court,  
23 issued after a full evidentiary hearing with the participation of both parties. The Board was  
24 represented by counsel at every stage. Its attorneys received the Order the day it was issued.  
25 The Board then filed a notice of appeal and sought a stay—demonstrating not only knowledge  
26 of the Order but a fully considered, counseled decision about how to respond to it. The Board  
chose to reject compliance. It was a knowing choice. Its decision to seek an appeal while this  
Court’s decision is binding and in force, and in the absence of a stay, is not a defense to con-  
tempt.

1           **B. The Board Has the Ability to Comply.**

2           The Board controls the Recorder’s IT systems, servers, databases, software, and web-  
3 sites. It could return them at any time. The Recorder’s IT staff—former Recorder employees  
4 transferred to the Board’s ETI division—continue to receive their salaries from the County. As  
5 Recorder’s Office Chief of Staff Sam Stone testified at trial, returning these employees to the  
6 Recorder’s Office “would not require the County to spend any additional money; it would  
7 simply be ‘a shift in where the line item would be placed in the budget.’” FF ¶ 9. The Board  
8 also controls the County’s budget and all appropriations from that budget. It can approve the  
9 use of the \$4.1 million in SB 1735 funds and the \$1 million in HAVA funds for the Recorder’s  
10 IT personnel—nothing stands in the way except the Board’s own will.

11           Ability to comply is not a close question here. The only obstacle to compliance is the  
12 Board’s decision not to comply. That decision does not constitute a legal defense; it constitutes  
13 contempt.

14           **C. The Board has failed to comply.**

15           Not only has the Board failed to comply, but it has also acted in bad faith. For civil  
16 contempt, evidence of bad faith is not required, but here, the evidence of bad faith is over-  
17 whelming and warrants the Court’s attention in fashioning appropriate sanctions.

18           The Board knew exactly what the April 16 Order required. It was represented by expe-  
19 rienced counsel who drafted detailed arguments about the scope and effect of the Order in  
20 connection with its stay proceedings. The Board’s response to the Order was not to seek clari-  
21 fication or begin good-faith implementation. It was to ignore the order, even though it failed  
22 to secure a stay, and then to file an appeal, apparently hoping to get an appellate stay and run  
23 out the clock in the meantime, all the while passing a resolution usurping the Recorder’s drop  
24 box authority and instructing its Elections Director to countermand lawful Recorder directives  
in the field.

25           As Recorder Heap’s declaration documents, the Board was warned—in writing, in ad-  
26 vance—of its noncompliance on each of these matters and given repeated opportunities to  
cure. Heap Decl. ¶¶ 10-22. Those warnings were met with hostility, procedural excuses, and  
continued defiance. As this Court itself observed in the April 16 Order: “The Recorder has

1 consistently expressed willingness to cooperate with the Board. The Court does not see the  
2 same willingness from the Board.” FF ¶ 25.

3 Nothing that has occurred since the April 16 Order has changed this assessment. Heap  
4 Decl. ¶ 29.

## 5 **VI. THE RECORDER’S CONTINUING GOOD-FAITH EFFORTS.**

6 It bears emphasis that the Recorder has not responded to the Board’s defiance in kind.  
7 Throughout the post-Order period, Recorder Heap has made repeated, documented, concrete  
8 proposals for cooperative implementation of the Court’s order in a manner designed to mini-  
9 mize disruption to county operations. Heap Decl. ¶¶ 9-15, 28-32.

10 On May 6, 2026, the Recorder sent the County Manager a detailed, phased transition  
11 plan that offered the Board a reasonable schedule and committed the Recorder in writing to  
12 maintain the Board's access to all shared systems throughout the transition. Heap Decl. ¶¶ 9-  
13 14; Ex. A. On April 28, 2026, the Recorder coordinated with the Board on ballot replacement  
14 site arrangements and even adopted the Board’s preferred locations rather than insisting on his  
15 own. Heap Decl. ¶ 18; Ex. B. On May 18, 2026, the Recorder sent a detailed letter documenting  
16 the Board’s specific violations and giving the Board a final opportunity to cure before seeking  
17 judicial intervention. Heap Decl. ¶ 20; Ex. C. On May 20, 2026, the Recorder’s counsel sent an  
18 urgent pre-vote warning letter attempting to prevent the drop box resolution before it was  
19 passed. Heap Decl. ¶ 22; Ex. D.

20 Moreover, delaying implementation of the April 16 Order would not reduce disruption  
21 to county election operations—it would dramatically increase it. For more than six weeks, the  
22 Recorder’s Office has been planning and preparing for the 2026 primary election under the  
23 terms of the Court's Order. The Recorder has structured his operational planning, staffing de-  
24 cisions, site designations, and attempts at reaching cooperative arrangements with the Board’s  
25 Elections Department on the premise that the April 16 Order is in effect and that his statutory  
26 authority over early voting, voter registration, and ballot replacement sites will be fully operative  
this cycle. If that order is not implemented—with early primary ballots scheduled to be mailed  
in less than a month—it would force the Recorder’s Office to abandon the work it has already  
built toward compliance and restart from scratch under the framework this Court has already

1 found unlawful, at exactly the moment when that disruption would be most damaging to voters.  
2 Heap Decl. ¶ 32.

3 The need for judicial clarity on the allocation of election administration responsibilities  
4 between the Recorder and the Board was, moreover, a central animating purpose of this litigation  
5 from the outset. The Board recognized this itself: it filed its own counterclaim and affirm-  
6 atively sought a judicial interpretation of the “other officer in charge of elections” statutory  
7 language so that the parties could better understand their respective roles. The Court provided  
8 exactly that clarity in the April 16 Order. Allowing implementation of that Order to be further  
9 delayed would strip away the only authoritative resolution this dispute has ever received and  
10 return the parties to the same state of ambiguity and conflict that spawned this lawsuit—with  
11 no clear lines of authority, no agreed operational framework, and a primary election bearing  
12 down on both offices. The voters of Maricopa County deserve better. Heap Decl. ¶ 33.

13 The Recorder has given the Board every opportunity to comply with this Court’s Order.  
14 The Board has declined them all. The Court’s intervention is now necessary.

## 15 **VII. REQUESTED RELIEF.**

16 The Court has robust authority to enforce its orders through civil contempt. Civil con-  
17 tempt sanctions are coercive rather than punitive—their purpose is to compel compliance and  
18 to compensate the aggrieved party for losses caused by the contemnor’s noncompliance. *Trombi*  
19 *v. Donahoe*, 223 Ariz. 261, 264 ¶ 9 (App. 2009). “Any sanction that is imposed for civil contempt  
20 must be designed to coerce the person to do or to refrain from doing some act. Equally im-  
21 portant is that the sanction must fit the particular circumstances of the contempt.” *Stoddard v.*  
22 *Donahoe*, 224 Ariz. 152, 157 ¶ 24 (App. 2010) (cleaned up). Here, it would be appropriate for  
23 the Court to impose daily monetary sanctions, attorney’s fees, and specific performance re-  
24 quirements

25 The Court should also consider that the 2026 primary election cycle is approaching rap-  
26 idly, and that the Board’s ongoing usurpation of the Recorder’s authority creates serious risks  
to the administration of that election. Every day of noncompliance is a day in which the Board  
administers elections in a manner this Court has declared unlawful—with the attendant risks to  
voter confidence and to the legal validity of the election results themselves. Expedited treatment

1 is therefore not only appropriate but necessary.

## 2 **CONCLUSION**

3 The Board of Supervisors has willfully disobeyed every material obligation imposed by  
4 this Court's April 16, 2026 Order. It has not returned the Recorder's IT systems or staff. It has  
5 not funded the Recorder's necessary expenses. It has usurped the Recorder's authority over  
6 ballot replacement sites. It has passed a resolution arrogating to itself the Recorder's exclusive  
7 statutory authority over early-vote drop boxes in open defiance of the Court's injunction. And  
8 it has done all of this despite the Recorder's repeated, documented, good-faith efforts to achieve  
9 voluntary compliance without burdening the Court.

10 Recorder Heap respectfully requests that the Court:

- 11 1. Issue an Order to Show Cause, directing the Board and its individual members to  
12 appear before this Court on an expedited date—no later than seven days from the  
13 filing of this Application—and show cause why they should not be adjudged in civil  
14 contempt for willfully violating the April 16 Order;
  - 15 2. Upon the return date, adjudge the Board in civil contempt;
  - 16 3. Order the Board to immediately and fully comply with each provision of the April  
17 16 Order within five (5) days of the contempt finding, with daily fines of no less  
18 than \$100,000 per day accruing for each day of continued noncompliance thereafter,  
19 money which is to be awarded to the Recorder to spend in the discharge of the  
20 duties of his office as he judges fit;
  - 21 4. Award the Recorder his reasonable attorneys' fees and costs incurred in bringing  
22 this Application; and
  - 23 5. Grant such other and further relief as the Court deems just and proper.
- 24  
25  
26

1 RESPECTFULLY SUBMITTED this 28th day of May, 2026.

2 **America First Legal Foundation**

3  
4 By: /s/James Rogers

5 James K. Rogers (No. 027287)

6 *Senior Counsel*

7 America First Legal Foundation

8 611 Pennsylvania Ave., SE #231

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10 Phone: (202) 964-3721

11 James.Rogers@aflegal.org

12 *Attorney for Maricopa County Recorder Justin Heap,*

13 *Plaintiff in Heap v. Galvin*

14 *Defendant in Mitchell v. Heap*

15 ORIGINAL filed and served via electronic  
16 means this 28th day of May, 2026, upon:

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*Attorneys for Maricopa County Attorney Rachel Mitchell*

# Exhibit 1

1 **AMERICA FIRST LEGAL FOUNDATION**

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8 *Attorney for Maricopa County Recorder Justin Heap*

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

11 JUSTIN HEAP, in his official capacity as  
12 Maricopa County Recorder;

13 Plaintiff / Counter defendant,

14 v.

15 THOMAS GALVIN, in his official capac-  
16 ity as a member of the Maricopa County  
17 Board of Supervisors; MARK STEWART,  
18 in his official capacity as a member of the  
19 Maricopa County Board of Supervisors;  
20 KATE BROPHY MCGEE, in her official  
21 capacity as a member of the Maricopa  
22 County Board of Supervisors; DEBBIE  
23 LESKO, in her official capacity as a mem-  
24 ber of the Maricopa County Board of Su-  
25 perisors; STEVE GALLARDO, in his of-  
26 ficial capacity as a member of the Maricopa  
27 County Board of Supervisors;

28 Defendants / Counterclaimants.

**AND**

29 RACHEL MITCHELL, in her official  
30 capacity as the Maricopa County Attorney;

31 Plaintiff,

32 v.

33 JUSTIN HEAP, in his official capacity as  
34 Maricopa County Recorder;

35 Defendant.

Case No.

CV2025-020621

*(consolidated)*

**DECLARATION OF RECORDER  
HEAP IN SUPPORT OF MOTION  
FOR CONTEMPT**

1 I, Justin Heap, declare as follows:

2 1. I am the duly elected Maricopa County Recorder. I took office on January 1,  
3 2025, having won the November 2024 general election. I make this declaration based on my  
4 personal knowledge and on my review of records in the custody of the Recorder’s Office. I  
5 submit this declaration in support of a motion for an order to show cause why the Maricopa  
6 County Board of Supervisors should not be held in contempt of this Court’s April 16, 2026  
7 Under Advisement Ruling (the “April 16 Order”).

8 2. Since the issuance of the April 16 Order, the Board has not complied with it.  
9 Instead, the Board has continued—and in some respects escalated—the same pattern of con-  
10 duct that this Court found unlawful after a full evidentiary hearing: seizing and withholding  
11 the Recorder’s IT systems and personnel, usurping election administration functions that the  
12 Legislature has vested in the Recorder, and treating a binding court order as an invitation to  
13 negotiate rather than a mandate to obey. I have endeavored to work cooperatively with the  
14 Board and the Elections Department to implement the Court’s order in a manner that mini-  
15 mizes disruption. Those efforts have been met with delay, obstruction, and bad faith.

16 **II. THE BOARD'S FEBRUARY 18, 2026 RESOLUTION: A BROKEN PROMISE**

17 3. On February 18, 2026—after the evidentiary hearing had concluded but before  
18 this Court issued the April 16 Order—the Board of Supervisors unanimously adopted a reso-  
19 lution setting forth what it described as its “policy” on the issues in dispute.

20 4. I understand the Board adopted this resolution in an attempt to moot out this  
21 litigation and to forestall a ruling from this Court. The Court saw through this tactic and de-  
22 clined to find that the resolution mooted the case. Events since then have confirmed that the  
23 resolution was adopted in bad faith.

24 5. In the resolution, the Board specifically committed to, among other things: (a)  
25 approving and funding half of the IT positions that were housed in the Recorder’s Office  
26 before 2025—described in the resolution as “a total of 16 positions”—pending completion of  
a full IT system separation; and (b) providing the Recorder’s Chief Information Officer (CIO)  
with “administrative privileges that are equal to those of the Deputy CIO for Maricopa

1 County.”

2 6. The Board has honored these commitments only halfheartedly. As of the date  
3 of this declaration, the Board has not transferred any of its IT staff to the Recorder’s Office.  
4 On May 20, apparently in an attempt to prepare for stay briefing at the Court of Appeals and  
5 an inevitable contempt motion from me, the Board voted to allow the Recorder’s Office to  
6 hire 8 new IT positions. However, the Board created entirely new positions rather than trans-  
7 ferred those positions from its own IT staff. Therefore, the former Recorder’s Office IT em-  
8 ployees who were transferred to work for the Board—the IT staff members who created the  
9 VRAS and ERO systems and who have the experience and institutional knowledge to maintain  
10 those systems—will remain working for the Board, and my office will be forced to hire brand  
11 new staff members who are unfamiliar with the systems and will have to be brought up to  
12 speed. The Recorder’s Office CIO has been provided with administrative privileges equivalent  
13 to those of the Board’s Deputy CIO. However, this is a false equivalence as the Board’s Dep-  
14 uty CIO distributes most administrative access among his underlings, so he retains significantly  
15 more access and control through his employees than that of the Recorder’s Office CIO. Cu-  
16 mulatively, the Board’s IT department has full access to all of the Recorder’s Office’s former  
17 systems and Databases, while the Recorder’s Office CIO has only limited admin access or  
18 read-only access to many of those systems. Notably the Recorder’s Office CIO only has lim-  
19 ited access to the ERO/VRAS databases, which are the Recorder’s Office’s voter registration  
20 systems. The Board publicly proclaimed its commitments in a resolution intended to moot  
21 litigation; it waited more than three months to implement them, and then only did so in a way  
22 the causes the underlying problems to persist: the Recorder’s Office will not have IT staff  
23 members familiar with the relevant systems, and will have significantly lower access, collec-  
24 tively speaking, than the Board’s IT department.

24 **III. THE BOARD HAS NOT RETURNED THE RECORDER’S IT SYSTEMS OR**  
25 **STAFF**

26 7. As I described in greater detail at the January 26, 2026 evidentiary hearing, the  
Board transferred operational control over the Recorder’s Office’s entire election-related IT

1 infrastructure—including the VRAS/ERO voter registration system, the GIS system, the Be-  
2 BallotReady website, the RDIS recordation system, and the staff who operated these sys-  
3 tems—to its own Enterprise Technology Innovation (ETI) division in October 2024 shortly  
4 before I took office.

5 8. The April 16 Order required the Board to return these resources to my office’s  
6 direct custody and control, or to immediately fund replacement systems. The Court set no  
7 deadline for extended negotiation. The order is mandatory and self-executing.

8 9. On May 6, 2026, I sent a detailed letter to County Manager Jennifer Pokorski.  
9 A true and correct copy of my May 6, 2026 letter to Ms. Pokorski is attached hereto as Exhibit  
10 A.

11 10. In that letter, I first addressed a threshold communications matter. Because the  
12 Board’s Elections Director, Scott Jarrett, had been approaching individual members of the  
13 Recorder’s staff in an attempt to secure working-level agreements on matters directly impli-  
14 cating the Court’s order—without my knowledge or authorization—I clarified that the sole  
15 authorized representative of the Recorder’s Office on any matter related to the *Heap v. Galvin*  
16 litigation and the implementation of the Court’s order is my counsel, James K. Rogers. Work-  
17 ing-level discussions between staff of the two offices, while appropriate for routine operational  
18 matters, would not constitute binding commitments of the Recorder’s Office on litigation-  
19 related issues unless personally approved by me or confirmed in writing by Mr. Rogers. This  
20 clarification was necessary to prevent the Board from manufacturing unauthorized “agree-  
21 ments” through its staff-shopping approach and then holding my office to them.

22 11. With respect to the ballot replacement site arrangements for the May 2026 ju-  
23 risdictional elections, my letter confirmed the staffing arrangement that had been orally agreed  
24 upon between staff of the two offices: that a Recorder’s Office supervisor would manage and  
25 administer each ballot replacement site as a whole, with all personnel at that site—regardless  
26 of which department employed them—reporting to that Recorder’s supervisor. I noted ex-  
pressly that this arrangement was limited to the May 2026 jurisdictional elections and should  
not be construed as a precedent for or agreement to any similar arrangement in future

1 elections.

2 12. In that letter, I also addressed the return of the IT systems and personnel and  
3 set forth a concrete, reasonable, and cooperative proposal for implementing the IT provisions  
4 of the Court's April 16 Order.

5 13. The letter set forth a two-step phased transition to accomplish that return in a  
6 manner that would minimize disruption to ongoing county operations. In the first step, to be  
7 completed by May 8, 2026, the Board would transfer to the Recorder's Office half of the IT  
8 staff positions removed from the Recorder's Office's supervision in 2024, and would provide  
9 the Recorder's Office's IT staff with access to the relevant systems and databases equivalent  
10 to the access held by the Board's IT staff. This first phase merely imposed the same conditions  
11 that the Board had already committed itself to in its February 18 resolution, but had never  
12 implemented. In the second step, to be completed by May 22, 2026, the Board would complete  
13 the full return of control over the IT systems and transfer the remaining IT positions.

14 14. I also specifically committed in writing that until the systems had been sepa-  
15 rated, I would maintain the Board's and Elections Department's access to all IT systems they  
16 need to carry out their election-related duties.

17 15. My proposal was reasonable, cooperative, and consistent with the Court's order.  
18 The deadlines I proposed—May 8 and May 22—have now passed. In violation of this Court's  
19 order, as well as of its own resolution, the Board has not transferred any IT positions to the  
20 Recorder's Office, nor has it provided the Recorder's CIO with the systems access I requested.  
21 The Board's response to the Court's order has been to file an appeal and seek a stay—not to  
22 comply.

23 16. As of the date of this declaration, the IT staff, servers, databases, software, and  
24 websites that this Court ordered returned remain under the Board's control. The Recorder's  
25 Office continues to be entirely dependent on the Board's ETI division for IT support. The  
26 backlog of unresolved IT support tickets documented at trial has not been resolved. Because  
the Recorder's Office CIO and IT staff still lack full access to critical systems and databases,  
the Recorder's Office still must rely on the "ticketing system" of sending requests to the

1 Board's IT staff to make needed changes to VRAS/ERO system and many other functions.  
2 Furthermore, my office continues to lack the change-management controls and maintenance-  
3 window scheduling authority that would allow us to prevent the type of IT outages that have  
4 disrupted our operations since the 2024 transfer.

5 **IV. THE BOARD CONTINUES TO USURP THE RECORDER'S AUTHORITY**  
6 **OVER EARLY VOTING AND BALLOT REPLACEMENT SITES**

7 17. The April 16 Order enjoined the Board from "further exercising any election  
8 functions delegated by the Legislature to the Recorder or 'other officer in charge of elections,'  
9 absent the Recorder's consent." The Board has violated this injunction repeatedly and openly  
10 in connection with the May 2026 jurisdictional elections for the City of Tempe, the Town of  
11 Guadalupe, and the Goldfield Ranch Fire District, as well as with respect to its plans for early  
12 voting and drop box placement for the upcoming 2026 primary election.

13 18. Under A.R.S. §§ 16-409(A) and 16-558.02(A), only the county recorder has the  
14 authority to provide for ballot replacement sites for jurisdictional mail ballot elections. Con-  
15 sistent with the Court's order, and in an effort to cooperate in implementing it under com-  
16 pressed timeframes, on April 28, 2026, my counsel wrote to the Board's counsel designating  
17 specific ballot replacement site locations for the May 2026 jurisdictional elections and con-  
18 firming the cooperative staffing arrangements under which Board-employed poll workers  
19 would operate those sites under the supervision of Recorder's Office personnel. To avoid  
20 disruption or confusion, I chose to designate as the locations for the ballot replacement sites  
21 the same locals already selected by the Board. A true and correct copy of my counsel's April  
22 28, 2026 letter is attached hereto as Exhibit B.

23 19. The Board did not honor this arrangement. During the May jurisdictional elec-  
24 tions, Elections Director Scott Jarrett and Elections Department personnel actively under-  
25 mined Recorder management staff at the ballot replacement sites. On May 15, 2026, Recorder  
26 staff discovered that poll workers had not been instructed about voters' statutory right under  
A.R.S. § 16-579(A)(4) to present identification in lieu of signature verification when delivering  
a completed early ballot. At my direction, Recorder management staff directed that appropriate

1 signage be posted and that poll workers inform voters of this statutory option. Elections De-  
2 partment personnel responded by instructing poll workers to disregard these directions and  
3 characterizing Recorder employees as “merely observers.” This conduct was a direct violation  
4 of the Court's April 16 Order, which unambiguously vests election administration authority  
5 over ballot replacement sites in the Recorder.

6 20. On May 18, 2026, my counsel sent a detailed letter to the Board’s counsel ad-  
7 dressing these violations and demanding that the Board immediately cease its interference with  
8 my lawful exercise of my statutory authority. That letter further documented Mr. Jarrett’s pat-  
9 tern of “staff shopping”—approaching individual Recorder staff members one-on-one in an  
10 apparent attempt to secure agreements that would lock the Recorder’s Office into arrange-  
11 ments that cede statutory authority to the Board, without my knowledge or authorization. A  
12 true and correct copy of that letter is attached hereto as Exhibit C.

13 21. The Board did not respond substantively to the May 18 letter or cure its viola-  
14 tions. Instead, the Board escalated. On May 20, 2026, the Board placed on its formal meeting  
15 agenda a resolution purporting to authorize the Board to establish and maintain drop boxes  
16 for the deposit of early ballots during the early voting period. This authority belongs exclu-  
17 sively to the Recorder under the following statutes: *first*, A.R.S. § 16-542(A), which provides  
18 that the “county recorder may establish on-site early voting locations” and “may also establish  
19 any other early voting locations in the county the recorder deems necessary”; *second*, A.R.S. 16-  
20 548(A), which requires that early ballots must be “*delivered or mailed to the county recorder* or other  
21 officer in charge of elections of the political subdivision in which the elector is registered” and  
22 that “the ballot *must be received by the county recorder* or other officer in charge of elections.” (em-  
23 phasis added.) No statute grants the Board authority to establish drop boxes during the early  
24 voting period, and no statute allows voters to “deliver” their early ballots to the Board or for  
25 the Board to “receive” them.

26 22. Before the Board voted on this resolution, my counsel sent an urgent letter to  
the Board's counsel on the morning of May 20, 2026, explaining in detail why the drop box  
provision was unlawful, citing the applicable statutes and the Court's April 16 Order, and

1 warning that the Board’s action would appear to expose its members and staff to potential  
2 criminal liability under A.R.S. § 16-1005(E) and (H). A true and correct copy of that letter is  
3 attached hereto as Exhibit D.

4 23. The Board proceeded to pass the drop box resolution anyway, without my con-  
5 sent. In doing so, the Board deliberately assumed control over an early voting function that  
6 this Court has declared belongs exclusively to the Recorder. This is not inadvertent non-com-  
7 pliance; it is willful disregard of a binding court order.

8 **V. THE BOARD HAS REFUSED TO FUND THE RECORDER’S OFFICE’S NEC-**  
9 **CESSARY EXPENSES**

10 24. The April 16 Order further declared that the Board has a “nondiscretionary duty  
11 to fund all necessary expenses of the Recorder as set forth in Title 16 of the Arizona Revised  
12 Statutes.” The Board has not funded those expenses.

13 25. The Board has blocked all but one of my office’s requests to use the \$4.1 million  
14 appropriated by the Arizona Legislature through SB 1735 for election-related operations, and  
15 has continued to refuse to authorize expenditures from these funds for IT personnel. This is  
16 despite the Court’s finding that the Board’s refusal to allow my office to hire an IT Infrastruc-  
17 ture Manager—a position whose salary would have been paid from funds already allocated for  
18 my office’s use—was one of several acts by which the Board unlawfully deprived me of the  
19 tools necessary to perform my statutory duties. The Board has improperly placed the remain-  
20 der of these funds into a contingency account under its control and declined our request to  
21 place them into an interest-bearing grant fund under my office’s control.

22 26. The Board has similarly not changed its position on my previous request to use  
23 approximately \$1 million in HAVA federal grant funds for IT personnel who would report to  
24 and serve the Recorder.

25 27. The Board’s refusal to fund these positions is not a good-faith exercise of budg-  
26 etary discretion. This Court found that every other elected county officer in Maricopa  
County—the Sheriff, the County Attorney, the Assessor, the Treasurer—maintains an inde-  
pendent IT department reporting to that officer. The Board’s singling out of the Recorder’s

1 Office for this treatment, at a moment deliberately chosen to disable an incoming Recorder it  
2 opposed, is not an exercise of neutral fiscal management. It is a continuation of the conduct  
3 this Court has already declared unlawful.

#### 4 **VI. THE BOARD'S BAD FAITH APPROACH TO IMPLEMENTATION**

5 28. Throughout this litigation, I have sought to work constructively with the Board  
6 and to implement the Court's order in a manner that protects the interests of all Maricopa  
7 County voters. I confirmed my willingness to share equipment, coordinate on voting sites,  
8 maintain the Board's access to shared IT systems throughout any transition period, and ac-  
9 commodate operational concerns. The Court noted in its April 16 Order that "the Recorder  
10 has consistently expressed willingness to cooperate with the Board," while "the Court does  
11 not see the same willingness from the Board."

12 29. Nothing that has occurred since the April 16 Order has changed this assess-  
13 ment. The Board's response to the Court's ruling has been to file an appeal, seek a stay, pass  
14 resolutions usurping the Recorder's authority, instruct Elections Department staff to counter-  
15 mand Recorder directives in the field, and refuse to return or fund any of the resources the  
16 Court ordered returned.

17 30. The Board has not complied with the Court's order. It has not returned my  
18 office's IT systems or staff. It has not funded the necessary expenses of my office. It has  
19 continued to usurp my authority over early voting and ballot replacement sites in open defi-  
20 ance of the Court's injunction. The Board passed a resolution purporting to commit to certain  
21 steps and then did not follow through on a single one of them. And it has done all of this  
22 while pursuing an appeal that, as this Court correctly found in denying the stay, reflects no  
23 likelihood of success.

#### 24 **VII. ATTEMPTS TO WORK COOPERATIVELY**

25 31. I continue to remain open to cooperatively work with the Board and to ensure  
26 that we are able to smoothly transition my statutory election administration responsibilities  
back to their proper place in the Recorder's Office in a way that avoids disruption to voters  
and ensures that elections are held lawfully, fairly, and efficiently. It is my hope and expectation

1 that the Board and my office will share resources, equipment, and personnel to ensure that  
2 county resources are used prudently and wisely.

3 32. A delay in implementation of this Court’s April 16 Order would not reduce  
4 disruption—it would dramatically increase it. For six weeks, my Office has been planning and  
5 preparing for the upcoming 2026 primary election under the terms of the Court’s order. We  
6 have structured our operational planning, staffing decisions, site designations, and cooperative  
7 arrangements with the Board’s Elections Department on the premise that the April 16 Order  
8 is in effect and that my statutory authority over early voting, voter registration, and ballot  
9 replacement sites will be fully operative for this election cycle. If implementation of that order  
10 is delayed—with early primary ballots scheduled to be mailed in less than a month—it would  
11 not preserve the status quo. It would force my Office to abandon everything we have built  
12 toward compliance and restart from scratch under the very framework the Court has already  
13 found to be unlawful, at exactly the moment when that disruption would be most damaging  
14 to voters. That is not stability; it is whiplash.

15 33. Furthermore, the need for judicial clarity on the allocation of election admin-  
16 istration responsibilities between the Recorder and the Board was one of the central animating  
17 purposes of this litigation from the very beginning. The Board recognized this itself: it filed its  
18 own counterclaim and affirmatively sought a judicial interpretation of the “other officer in  
19 charge of elections” statutory language so that the parties could better understand and imple-  
20 ment their respective roles. The Court provided exactly that clarity in the April 16 Order.  
21 Allowing implementation of that order to be delayed would strip away the only authoritative  
22 resolution this dispute has ever received and return the parties to the same state of ambiguity  
23 and conflict that caused this lawsuit to be filed in the first place—with no clear lines of au-  
24 thority, no agreed operational framework, and a primary election bearing down on both of-  
25 fices. The voters of Maricopa County deserve better than that.

26 34. I declare under penalty of perjury under the laws of the State of Arizona that  
the foregoing is true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

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Executed on May 28, 2026 in Maricopa County, Arizona.

A handwritten signature in blue ink that reads "Justin Heap". The signature is written in a cursive style with a horizontal line underneath it.

Justin Heap

# Exhibit A



# Maricopa County

Office of the Recorder

---

May 6, 2026

**VIA EMAIL**

Jennifer Pokorski  
County Manager  
Maricopa County

**Re: May 2026 Jurisdictional Elections and Ballot Replacement Sites;  
Implementation of Court Order**

Dear Ms. Pokorski:

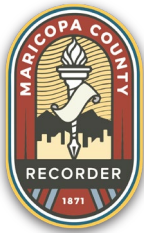
I write to address several matters arising from recent communications between my office and the Elections Department regarding the upcoming May 2026 jurisdictional elections and the implementation of the Superior Court's April 16, 2026, ruling in *Heap v. Galvin*.

**Ballot Replacement Sites — Clarification of Applicable Communications**

You may be aware of a series of emails and letters exchanged over the past two weeks concerning the administration of ballot replacement sites for the May jurisdictional elections. I want to address those communications directly and ensure there is no ambiguity about the Recorder's Office's position. Specifically, the email sent by Sam Stone on April 27, 2026, to Mr. Jarrett regarding ballot replacement sites and drop boxes was sent in error and does not reflect the position of this office on matters related to the *Heap v. Galvin* litigation or the implementation of the court's order.

I want to be clear on this point going forward: the only person authorized to speak on my behalf, or on behalf of the Recorder's Office, on any matter related to the *Heap v. Galvin* litigation—including the implementation of the court's order, the allocation of duties between the parties, and the exercise of any functions or duties covered by the court's order—is my attorney, James K. Rogers, Senior Counsel at America First Legal Foundation. Any working-level communications between Recorder's Office personnel and Board or Elections Department staff on these subjects do not constitute a binding commitment or agreement on my part unless I have personally approved them or they have been confirmed in writing by Mr. Rogers.

The governing document for the administration of ballot replacement sites in the May 2026 jurisdictional elections is Mr. Rogers's letter of April 28, 2026, addressed to counsel for the Board of Supervisors. That letter was transmitted before Mr. Jarrett's May 1 email and establishes the procedure I have set for the designation and administration of ballot replacement sites for these elections.



# Maricopa County

## Office of the Recorder

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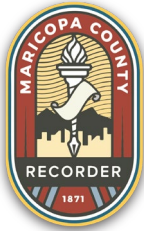
With respect to Mr. Jarrett's proposal in his May 1 email that the Recorder's Office "place a Recorder's Office permanent staff member as a VR clerk at each location" and that "the Recorder's Office will supervise the Recorder's Office staff member serving as a VR Clerk," it is my understanding that staff members from both offices have already reached an oral agreement that the Recorder's Office supervisor at each site will manage and administer the site as a whole, with all personnel working at that site –regardless of their employing department—reporting to that Recorder's Office supervisor. This letter serves as written confirmation of that arrangement. This arrangement applies solely to the May 2026 jurisdictional elections and shall not be construed as a precedent for, or agreement to, any similar arrangement in future elections.

### **Implementation of the Court's Order**

I look forward to working with you and your staff to implement the provisions of the court's April 16 ruling in a manner that is smooth, expeditious, and constructive. The court's order is clear, and I am committed to transitioning to the arrangement it requires in a way that minimizes disruption to county operations and ensures the continuity of election services for all Maricopa County voters.

The most pressing matter is the return of the IT systems, servers, databases, software, and staff positions that were transferred from the Recorder's Office to Board control in late 2024. These resources are necessary for the conduct of my office, and their return is required to restore the parties to the status quo that existed for decades before this dispute began. Because these systems and personnel were under the Recorder's supervision for many years prior to their transfer, the return process should be straightforward and unproblematic.

I propose that we accomplish this transition in two steps. First, by May 11, 2026, the Board should transfer to the Recorder's Office half of the IT staff positions removed from the Recorder's supervision in 2024. It should also provide the Recorder's IT staff at the Recorder's Office with equivalent access to the relevant systems and databases as held by the Board's IT staff. Second, full return of control over the IT systems, along with the transfer of the remaining IT positions, should be completed by May 22, 2026. Upon the systems' return, my office will work expeditiously to identify and separate out any functionalities used exclusively by the Board's Elections Department and transfer those functionalities. Until that process is complete, I commit to maintaining the Board's and Elections Department's access to all IT systems they need to carry out their election-related duties.



# Maricopa County

Office of the Recorder

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I am available to discuss any of these matters at your convenience and welcome a meeting at the earliest practicable date to work through the logistics of implementation. Please do not hesitate to contact me or to have the appropriate person reach out to Mr. Rogers at [james.rogers@aflegal.org](mailto:james.rogers@aflegal.org) if your staff wishes to address any matter related to the litigation or the court's order.

Sincerely,

A handwritten signature in black ink that reads "Justin Heap". The signature is written in a cursive style with a horizontal line crossing through the middle of the letters.

Justin Heap  
Maricopa County Recorder

**cc:** Zach Schira, Assistant County Manager  
Scott Jarrett, Elections Director  
Juanita Garzia, Clerk of the Board

# Exhibit B



April 28, 2026

**VIA EMAIL**

Kory Langhofer

Counsel for Maricopa County Board Chair Kate Brophy McGee, Vice Chair Debbie Lesko, Supervisor Thomas Galvin, and Supervisor Steve Gallardo  
kory@statecraftlaw.com

Stephen W. Tully

Counsel for Maricopa County Board Supervisor Mark Stewart  
STully@TullyBailey.com

**Re: Recorder Heap's Designation of Ballot Replacement Sites for  
May 2026 Jurisdictional Elections**

Dear Messrs. Langhofer and Tully:

I write on behalf of our client, Maricopa County Recorder Justin Heap, regarding the administration of ballot replacement sites for the upcoming May 2026 jurisdictional elections for the City of Tempe, the Town of Guadalupe, and the Goldfield Ranch Fire District.

As you are aware, on April 17, 2026, the Maricopa County Superior Court issued its Under Advisement Ruling in *Heap v. Galvin*, CV2025-020621, holding that whenever a statute in Title 16 delegates authority to the "county recorder or other officer in charge of elections," that authority vests in the Recorder unless the Recorder affirmatively consents to its exercise by another officer. The court further enjoined the Board from exercising any election functions delegated by the Legislature to the Recorder without the Recorder's consent.

The Recorder's authority over ballot replacement sites for jurisdictional mail elections follows directly from that ruling. Under A.R.S. § 16-558.02(A), "[t]he county recorder or other officer in charge of elections shall determine a central location in the district and shall provide for a ballot replacement center that is as near to that location as is practicable." Section 16-558.02 is part of Article 8.1 of Chapter 4 of Title 16. Under A.R.S. § 16-409(A), cities, towns, and school districts that conduct mail ballot elections must do so "as otherwise prescribed by article 8.1 of this chapter [4]," expressly incorporating § 16-558.02 and its assignment of ballot replacement author-

ity to the Recorder. Because Recorder Heap has not delegated his authority over ballot replacement sites to any other officer, he is the sole officer statutorily empowered to designate ballot replacement sites for the May 2026 jurisdictional elections.

Accordingly, Recorder Heap hereby designates the following locations as ballot replacement sites for the May 2026 jurisdictional elections, consistent with A.R.S. §§ 16-409(A) and -558.02(A):

**Town of Guadalupe election:**

EL TIANGUIS MERCADO  
9201 S. Avenida del Yaqui  
Guadalupe, AZ 85283

**City of Tempe election:**

TEMPE HISTORY MUSEUM  
809 E. Southern Ave.  
Tempe, AZ 85282

**Goldfield Ranch Fire District election:**

FORT MCDOWELL INDIAN COMMUNITY RECREATION CENTER  
16402 N. Fort McDowell Rd.  
Scottsdale, AZ 85264

It is the Recorder's understanding that, prior to the court's order, the Board had engaged sufficient personnel to staff these sites and has the necessary equipment available to operate them. Pursuant to page 11 of the court's order, the Recorder agrees that for these elections, these individuals will be permitted to staff this election under the supervision of Recorder's Office staff designated by the Recorder. Recorder Heap will assign a senior member of his staff to each site to oversee and supervise operations, consistent with his statutory responsibilities under A.R.S. §§ 16-409(A) and -558.02(A). The Recorder is entering into this arrangement because of the special circumstances created by the court's order having been issued so close to this election. This should not be construed as an agreement that the Recorder will consent to any such arrangement in future elections.

Please confirm promptly that the Board will cooperate in the implementation of these designations and that the staffing and equipment commitments referenced above will be honored. The Recorder has a statutory obligation to ensure that voters in these jurisdictions have meaningful access to ballot replacement services, and the proximity of the election leaves no margin for delay. Should the Board or any of its employees take any action to interfere with or disregard the Recorder's exercise of his lawfully designated authority over these sites, the Recorder will have no choice but

to seek appropriate relief from the court. We trust that will not be necessary, and we look forward to your prompt response.

Sincerely,

/s/ James Rogers

James K. Rogers

Senior Counsel

America First Legal Foundation

*cc: Recorder Justin Heap*

# Exhibit C



May 18, 2026  
VIA EMAIL

Kory Langhofer  
Statecraft PLLC  
649 North Fourth Avenue  
Phoenix, Arizona 85003  
kory@statecraftlaw.com

**Re: Response to Letters of May 7 and May 18, 2026**

Dear Mr. Langhofer:

I write on behalf of Maricopa County Recorder Justin Heap in response to your letters of May 7 and May 18, 2026. Your letters reflect a troubling and persistent unwillingness to accept the Superior Court's clear ruling in *Heap v. Galvin* or to acknowledge the unlawfulness of the Board's continuing attempts to usurp the Recorder's statutory authority.

**The Board's Bad Faith Approach to Implementation**

Your May 7 letter complains about what you characterize as “constantly changing positions” and a lack of “agreement or authorized statement from the Recorder's Office on a host of important questions.” This complaint rings entirely hollow given the conduct of the Board's Elections Director, Scott Jarrett.

Far from making “good faith efforts” to “resolve day-to-day operational issues in implementing the court's order,” Mr. Jarrett has been acting in a manner that is the exact opposite of what a reasonable person would characterize as “good faith.” Mr. Jarrett has been approaching individual senior members of the Recorder's staff, seeking agreement on various issues, apparently shopping for answers until he manages to secure one he likes. It appears he is trying to create facts on the ground to alter the status quo in an attempt at locking the Recorder's Office into arrangements that cede the Recorder's statutory authority to the Board. For precisely this reason, it was necessary to establish a clear line of communication and to clarify that Mr. Jarrett's one-on-one attempts at securing agreements with individual Recorder's staff

members—particularly when those staff members lack authority to bind the Recorder on matters directly implicating the court’s order—are not binding on the Recorder.

The Board cannot complain about a lack of certainty when its Elections Director has deliberately adopted a piecemeal, staff-shopping approach that seems targeted at ensuring no clear agreement can be reached while simultaneously attempting to manufacture purported commitments that the Recorder never authorized. Your lament about the absence of operational clarity is a problem entirely of your client’s making.

### **Service Level Agreement for IT Transition**

Your assertion that “a Service Level Agreement will be necessary to effectuate any transfer of IT resources between the parties” is puzzling. No service level agreement was signed when the Board usurped those IT resources from the Recorder in late 2024, nor does the court’s decision permit the Board to impose such a requirement as a precondition to returning what the court has ordered returned. The court’s ruling is mandatory, not an invitation to negotiate terms and conditions for compliance. The IT systems, servers, databases, and personnel in question belonged to the Recorder’s Office for decades. The Board unilaterally seized them. The court has now ordered their return. The Board does not get to impose bureaucratic obstacles or extract concessions as the price of obeying a court order.

### **Authority Over Ballot Replacement Sites**

Your May 7 and May 18 letters both attempt to deny the Recorder’s authority to manage ballot replacement sites for the May jurisdictional elections. You have offered no legal authority to support your contention that Recorder’s Office personnel are “not authorized to manage” staff at ballot replacement sites. You offer none, because Arizona law requires exactly the opposite.

Under Arizona law and a binding decision of the Maricopa County Superior Court, only “[t]he county recorder” has the authority to “provide for a ballot replacement center” during jurisdictional elections. A.R.S. § 16-558.02(A); *see also* A.R.S. § 16-409(A). The statute does not say that the Recorder may “observe” a ballot replacement center operated by someone else. It does not say that the Recorder’s role is limited to selecting a location while the Board runs the operation. It says the Recorder “shall provide for” the ballot replacement center, which means the Recorder is responsible for its operation and administration. Any ballot replacement site that is not under the direct management and control of the Recorder is operating unlawfully.

Your suggestion that the Board’s statutory duties regarding election boards, poll worker appointment, and training somehow override or cabin the Recorder’s plenary authority under § 16-558.02 is without merit. The Legislature knows how to allocate authority between the Recorder and the Board, and it has done so repeatedly and with precision throughout Title 16. When the Legislature assigns a function to

“the county recorder or other officer in charge of elections,” the Superior Court has held—and you are well aware—that the authority vests exclusively in the Recorder unless the Recorder delegates it. The Recorder has not delegated his authority over ballot replacement sites to the Board. A ballot replacement site staffed with personnel being ordered by the Board to ignore the Recorder’s directives is operating under the control of the Board. It is not being “provide[d]” by the Recorder. And any ballot replacement site that operates under the control and supervision of the Board rather than the Recorder is operating unlawfully.

### **The ID Verification Process Under A.R.S. § 16-579**

Your May 18 letter complains that Recorder's Office staff directed poll workers to advise voters of the statutory option to present identification when delivering an early ballot and receive an “ID Verified” designation, thereby bypassing signature verification. You characterize this as a “disruption” and claim it is “inconsistent with poll worker training.”

Poll worker training does not supersede statute. The Arizona Legislature enacted A.R.S. § 16-579(A)(4), effective in 2026, which expressly provides that “at any voting location the voter may choose to provide identification when presenting the voter’s mailed early ballot,” and if the voter does so, the election official must verify the identification, stamp the affidavit envelope “ID verified,” and place it in a secured ballot box without requiring signature verification. The statute further provides that such ballots are “deemed ready for tabulating and additional signature verification of the completed affidavit envelope as prescribed by § 16-550 is not required.”

This is not an “optional” procedure that election workers may choose whether or not to inform voters about. It is a legislatively created right that voters are entitled to exercise. The fact that the Elections Department’s poll worker training failed to adequately instruct workers to inform voters of this statutory option does not render the Recorder’s directive improper—it demonstrates that the Board’s training was deficient and inconsistent with state law. Recorder Heap’s staff took necessary corrective action to ensure that voters were informed of their rights under Arizona law. That is not a “disruption.” It is the lawful exercise of the Recorder’s authority over ballot replacement sites.

The Board’s attempt to subvert this new procedure is puzzling, particularly for an entity that has consistently complained about the costs and delays associated with signature verification. The ID verification option enacted by the Legislature leads to significantly quicker election results by allowing ballots to bypass the signature verification process entirely, eliminating days of processing time that have historically delayed the publication of final results in Maricopa County. It also saves substantial taxpayer money by reducing the manpower needed to conduct signature verification—a labor-intensive process that requires trained staff to review each affidavit

envelope and often necessitates additional cure procedures when signatures are rejected. Moreover, this procedure enhances voter confidence in elections by providing voters with immediate certainty that their ballot has been accepted and will be counted, rather than leaving them uncertain about whether their signature will pass muster days or weeks later. The Legislature recognized that voters who present valid identification in person have demonstrated their eligibility in the most reliable manner possible—far more reliable, in fact, than comparing signatures on file that may be years or decades old. By instructing poll workers to conceal this option from voters, the Board is not only violating state law, but actively working to deprive voters of a more secure, more efficient, and more confidence-inspiring method of casting their ballots.

One can only conclude that the Board's resistance to this procedure has nothing to do with election administration and everything to do with its determination to prevent the Recorder from successfully implementing any reform that might demonstrate the value of restoring his office to its full statutory authority.

### **Communications Between Elected Officials and Staff**

Your complaint that it is “inappropriate for Mr. Heap to email a reprimand and directives to Scott Jarrett” because “[e]lected officers customarily communicate with their own staff and other elected officials—not the staff of other elected officials” is remarkable in its lack of self-awareness. Mr. Jarrett is not merely “staff.” He is the Elections Director—a senior appointed official responsible for administering elections in Maricopa County. Recorder Heap, as the elected official with statutory authority over ballot replacement sites and early voting, has every right to communicate directly with Mr. Jarrett regarding the administration of those functions, particularly when Mr. Jarrett and his staff are countermanning lawful instructions issued by Recorder personnel in the field.

What is inappropriate is Mr. Jarrett’s unlawful attempt to usurp the Recorder’s statutory authority over ballot replacement sites in direct violation of a binding court order. What is inappropriate is Mr. Jarrett instructing poll workers to disregard directions from Recorder management staff who are lawfully supervising those sites. What is inappropriate is the Board’s persistent refusal to acknowledge the court’s ruling and to comply with its terms.

### **The Board's Continuing Defiance**

Your May 18 letter states that the Board “remain[s] open to Mr. Heap’s input and ideas” and suggests that “if Mr. Heap wishes to change the policies and practices within polling places, he should raise the issue in the first instance with the Board of Supervisors.” This framing inverts the legal reality established by the court’s April 16 ruling.

It is astounding that you claim Mr. Heap must seek the Board's permission to "change the policies and practices within polling places" when, as you very well know, the Superior Court's recent order makes crystal clear that Recorder Heap has authority over early voting and ballot replacement sites. The court did not rule that the Recorder may make suggestions to the Board for its consideration. The court ruled that the Recorder holds the statutory authority, and that the Board may not exercise that authority without the Recorder's consent. The legal posture is the reverse of what your letter suggests: it is the Board that must contact Recorder Heap if it has concerns about the Recorder's decisions regarding the administration of early voting and ballot replacement sites.

### **The Events of May 15, 2026**

Your characterization of events at the Tempe ballot replacement site requires correction. As was made clear in the email thread from Recorder Heap on May 15 email to Mr. Jarrett (which you reference in your May 18 letter), Recorder staff discovered that poll workers had not been instructed regarding the statutory option under A.R.S. § 16-579(A)(4) allowing voters delivering an early ballot to present identification and receive an "ID Verified" designation on their ballot affidavit envelope, nor had signage been posted informing voters of this option. At Recorder Heap's direction, Recorder management staff therefore directed that signage be posted and instructed poll workers to advise voters of the option. Voters remain free to decline and instead proceed through the standard signature verification process.

Recorder Heap is deeply concerned by Elections Department personnel instructing poll workers to disregard direction from Recorder management staff and characterizing Recorder employees as merely "observers." As stated above, under Arizona law and a binding court decision, only "[t]he county recorder" has the authority to "provide for a ballot replacement center" during jurisdictional elections. A.R.S. § 16-558.02(A); *see also* A.R.S. § 16-409(A). Any ballot replacement site that is not under the direct management and control of the Recorder is operating unlawfully.

Your client must immediately cease its attempts to circumvent Arizona election law. Decisions regarding implementation of Arizona election statutes within ballot replacement sites are vested in the Recorder, not the Elections Department. The Elections Department does not have statutory authority to issue instructions to staff at ballot replacement sites that override or countermand the Recorder's directives. Interference with Recorder operations by countermanding instructions given by Recorder management staff is unacceptable and unlawful.

Election Department personnel and poll workers assigned to ballot replacement sites must follow operational direction provided by Recorder management staff. Additionally, all communications between Elections Department personnel and workers assigned to ballot replacement sites must include the Recorder's Chief of

Staff, Sam Stone, and Deputy Recorder, Jeff Mason, to ensure transparency and proper coordination.

If this interference continues, the Recorder's Office will be forced to consider additional responsive action, including advising the court and seeking appropriate relief, including sanctions and contempt.

### **Conclusion**

The court's ruling is clear, it is binding, and it is not subject to the Board's approval. Your letters reflect a sustained effort to resist, delay, and undermine implementation of the court's order through procedural gamesmanship, mischaracterization of the legal framework, and baseless accusations against Recorder personnel who are simply doing their jobs in accordance with Arizona law.

I trust that going forward, your client will comply with the court's order and cease its unlawful interference with the Recorder's statutory duties.

Respectfully,  
/s/ James K. Rogers  
James K. Rogers  
Senior Counsel  
America First Legal Foundation

# Exhibit D



May 20, 2026

**VIA EMAIL**

Kory Langhofer

Counsel for Chair Kate Brophy McGee, Vice Chair Debbie Lesko, Supervisor Thomas Galvin, and Supervisor Steve Gallardo  
Maricopa County Board of Supervisors  
kory@statecraftlaw.com

Stephen W. Tully

Counsel for Supervisor Mark Stewart  
Maricopa County Board of Supervisors  
STully@TullyBailey.com

**Re: Unlawful Provision in Board of Supervisors Resolution Regarding Drop Boxes for 2026 Primary Election**

Dear Kory and Steve:

I write to alert you to a serious legal deficiency in a resolution that the Maricopa County Board of Supervisors has placed on its agenda for this morning's formal meeting as item number 97. The second portion of the proposed resolution, which purports to authorize the Board to establish and maintain drop boxes for the deposit of early ballots during the early voting period, is unlawful under Arizona statutes. Only the Recorder possesses the statutory authority to designate the locations for drop boxes and to establish them. The Board's attempt to arrogate this authority to itself not only violates the separation of powers between the Board and the Recorder, but also exposes the Board and its employees to serious criminal liability.

**I. Only the Recorder Has Statutory Authority to Establish Drop Boxes During Early Voting**

Arizona's election statutes vest the county recorder—and only the county recorder—with the power to establish early voting locations. Specifically, A.R.S. § 16-

542(A) provides that “[t]he county recorder may establish on-site early voting locations” at the recorder’s office, and that “[t]he county recorder may also establish any other early voting locations in the county the recorder deems necessary.” This grant of authority is exclusive to the Recorder. A ballot drop box is, under any reasonable interpretation of the plain meaning of the statutory text, an “early voting location,” as it is a physical site where voters may deliver their voted early ballots during the early voting period. Because the statute assigns this authority exclusively to the Recorder, the Board has no independent power to establish such locations.

The statutory scheme confirms this allocation of authority. The only provisions in Arizona law that authorize the Board to maintain drop boxes are expressly limited to election day operations. Section 16-579.02(A)(1) provides that on “election day,” “at a voting center,” if an elector does not present ID, “the elector shall ... deposit the elector’s voted early ballot in its affidavit envelope in an official drop box.” This provision contemplates drop boxes maintained only on election day itself, and only at voting centers, which are under the Board’s control.

The same holds true for jurisdictional elections: A.R.S. § 16-411(D) authorizes the Board in jurisdictional elections, on election day, to “designate one or more sites for voters to deposit marked ballots until 7:00 p.m. *on the day of the election.*” (emphasis added). These statutory provisions carefully circumscribe the Board’s authority to maintain drop boxes: only on election day and only at voting centers and polling places. No statute grants the Board authority to establish drop boxes during the early voting period.

This allocation of authority is not accidental. The Legislature has expressly chosen to vest early voting administration in the Recorder, and election day operations in the Board. The absence of any grant of authority to the Board to establish drop boxes during early voting is dispositive under the well-established canon of statutory interpretation known as *expressio unius est exclusio alterius*. As our Supreme Court has held, where the Legislature “has specifically included a term in some places ... and excluded it in other places, courts will not read that term into the sections from which it was excluded.” *Am. C.L. Union of Arizona v. Arizona Dep’t of Child Safety*, 251 Ariz. 458, 463 ¶ 20 (2021). Because the Legislature specifically granted the Board authority to maintain drop boxes on election day but made no such grant for the early voting period, no such authority exists. The Board cannot simply assume powers that the Legislature has withheld.

## **II. Early Ballots May Only be Delivered to the Recorder.**

The unlawfulness of the Board’s proposed action is further confirmed by the statutory requirements for early ballot delivery. Section 16-548(A) provides that early ballots must be “delivered or mailed *to the county recorder* or other officer in charge of elections of the political subdivision in which the elector is registered or deposited by the voter or the voter’s agent at any polling place in the county.” (emphasis added.)

Under this provision, early ballots deposited in drop boxes established and maintained by the Board—independent of the Recorder’s authority—have not been “delivered ... to the county recorder” and have not been “received by the county recorder.” The only exception in the statute is for ballots “deposited ... at any polling place,” *id.*, but that exception applies only to election day operations, when polling places are open, and voters may deposit ballots at those locations. During the early voting period, there are no “polling places” in operation, and thus, this exception does not apply.

The statutory text makes clear that the Recorder is the designated recipient of early ballots during the early voting period. Only the Recorder has the authority to establish the locations where such ballots may be deposited, and only ballots delivered to the Recorder or deposited at locations designated by the Recorder satisfy the statutory requirements.

### **III. The EPM Cannot Authorize Conduct That Violates Statute**

The Board may seek to justify its proposed resolution by pointing to language in the 2025 Elections Procedures Manual stating that “[a]ll ballot drop-off locations and drop-boxes shall be approved by the Board of Supervisors.” 2025 EPM at 78. This reliance is misplaced. The Arizona Supreme Court has repeatedly held that the EPM cannot legalize conduct that Arizona statutes prohibit. As the Court explained in *Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022), “an EPM regulation that contradicts statutory requirements does not have the force of law.” *See also Leach v. Hobbs*, 250 Ariz. 572, 576 ¶ 21 (2021) (same).

Because Arizona statutes vest the authority to establish early voting locations—including drop boxes—exclusively in the Recorder, the EPM’s language about Board “approval” cannot override this statutory allocation of authority. The EPM cannot grant the Board powers that the Legislature has withheld. At most, the EPM’s language could be construed to mean that the Board must approve the specific drop box locations chosen by the Recorder—that is, the Board might have a consultative or approval role with respect to locations proposed by the Recorder. But the EPM cannot be read to authorize the Board to unilaterally establish drop boxes without the Recorder’s designation and consent, in direct contradiction of A.R.S. § 16-542(A).

Moreover, even if the EPM’s provisions were controlling (which they are not), the EPM makes abundantly clear that drop boxes cannot be lawfully established or operated without the Recorder’s active participation and consent. The EPM further mandates that “[t]he *County Recorder* or officer in charge of elections shall develop and implement secure ballot retrieval and chain of custody procedures.” 2025 EPM at 79 (emphasis added). Furthermore, the EPM requires that ballot drop boxes contain fire suppression devices, and specifies that “[t]he *County Recorder* or officer in charge of elections shall install and utilize” those devices. 2025 EPM at 78-79 (emphasis added). These are not ministerial tasks that can be delegated or ignored. The

development and implementation of secure ballot retrieval and chain of custody procedures necessarily requires that the drop box be designated, established, set up, and maintained in accordance with the Recorder's standards and under the Recorder's supervision from the outset.

Accordingly, any designation of drop box locations made by the Board through this resolution would be invalid and ineffectual. None of those drop box locations could be lawfully set up or operated in accordance with the EPM's own requirements, because the Recorder would not have participated in their designation, would not have approved their installation, and would not have developed the required security and chain of custody procedures. The Board cannot unilaterally establish drop boxes and then expect the Recorder to retrofit them with fire suppression devices and chain of custody procedures after the fact. The statutory and regulatory scheme requires that the Recorder be involved from the beginning—because only the Recorder has the statutory authority to establish early voting locations in the first place.

Any procedures for secure ballot retrieval and chain of custody procedures for drop boxes established by the Recorder will require that the drop box was designated, established, set up, and maintained ahead of time in accordance with the Recorder's standards and approval. Therefore, any designations made by the Board through its resolution would be invalid and irrelevant, as none of those drop box locations could be set up in accordance with the requirements of the EPM.

#### **IV. Criminal Liability Under A.R.S. § 16-1005**

Most troubling is the criminal exposure that the Board's proposed resolution creates for the Board itself and for any employees who participate in establishing or staffing unauthorized drop boxes. Section § 16-1005(E) provides that “[a] person or entity that knowingly solicits the collection of voted or unvoted ballots by misrepresenting itself as an election official or as an official ballot repository or is found to be serving as a ballot drop off site, other than those established and staffed by election officials, is guilty of a class 5 felony.”

If the Board establishes drop boxes during early voting without statutory authority to do so—that is, without the Recorder's designation and approval under A.R.S. § 16-542(A)—then those drop boxes are being misrepresented “as an official ballot repository” and are “serving as a ballot drop off site, other than those established and staffed by election officials” within the meaning of subsection (E). The Recorder is the election official with statutory authority to establish early voting locations. Drop boxes established by the Board, in contravention of the Recorder's exclusive authority, are not “established ... by election officials”—they are established by a body that lacks legal authority to do so. Any person or entity involved in establishing or operating such unauthorized drop boxes is committing a class 5 felony.

Additionally, A.R.S. § 16-1005(H) makes it a class 6 felony for “[a] person who knowingly collects voted or unvoted early ballots from another person,” with an exception for “an election official” when “engaged in official duties.” Board employees who collect ballots at drop boxes established without the Recorder’s legal authority are not acting within the scope of lawful “official duties,” because the drop boxes themselves have not been lawfully established. Such employees, therefore, do not fall within the statutory exception, and they are committing criminal ballot harvesting under subsection (H).

These are serious felonies. The Board should not proceed with a resolution that exposes its members and employees to criminal prosecution simply because it wishes to assert control over a function that the Legislature has assigned to the Recorder.

### **Conclusion**

The proposed resolution’s authorization of drop boxes during the early voting period is unsupported by any grant of statutory authority to the Board. Arizona law vests the power to establish early voting locations—including drop boxes—exclusively in the County Recorder. The Board’s only authority with respect to drop boxes is limited to election-day operations at voting centers and polling places. The Board cannot rely on the EPM to override this statutory allocation of powers, and the EPM itself makes clear that drop boxes cannot be lawfully operated without the Recorder’s active approval and involvement in their designation, installation, and security procedures.

Most importantly, the Board’s proposed usurpation of the Recorder’s authority exposes the Board and its staff to serious criminal liability under A.R.S. § 16-1005(E) and (H). I strongly urge you to advise the Board to remove the drop box provision from this morning’s resolution. Only the Recorder has the power to designate these locations, and only drop boxes established under the Recorder’s authority can satisfy the statutory and regulatory requirements for lawful operation.

Sincerely,

/s/ James Rogers

James K. Rogers

Senior Counsel

America First Legal Foundation

cc: Recorder Justin Heap

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**ARIZONA COURT OF APPEALS  
DIVISION ONE**

JUSTIN HEAP,

Plaintiff/Appellee,

v.

THOMAS GALVIN, et al.,

Defendants/Appellants,

and

MARK STEWART,

Defendant/Appellee,

No. 1 CA-CV 26-0446

Maricopa County Superior Court  
No. CV2025-202621

**BRIEF OF AMICI CURIAE  
PRESIDENT PETERSEN AND  
SPEAKER MONTENEGRO IN  
OPPOSITION TO  
APPELLANTS' EMERGENCY  
MOTION FOR STAY  
PENDING APPEAL**

## INTRODUCTION

Senate President Warren Petersen and House Speaker Steve Montenegro (“Amici”) submit this amicus brief<sup>1</sup> in opposition to Appellants’ Emergency Motion for a Stay Pending Appeal filed on May 20, 2026 (“Stay Motion”). This brief focuses on the Stay Motion’s failure to satisfy the first factor for a stay, “likelihood of success on the merits.” *Arizona Pres. Found. v. Pima Cmty. Coll. Dist. Bd.*, 259 Ariz. 539, 543 ¶ 12 (App. 2025).

In the elections context, the Legislature has prescribed certain duties for the county recorders and certain duties for the boards of supervisors. Other elections statutes do not vest a duty exclusively with the recorders or the boards, but instead instruct the “board or other officer in charge of elections” or the “recorder or other officer in charge of elections” to accomplish the prescribed duty. The Legislature’s distribution of statutory duties throughout Title 16 reflects a careful and deliberate diffusion of power and authority over elections at the county level.

This Court should conclude that Appellants have not demonstrated a likelihood of success on the merits because when an elections statute imposes a duty on either the recorders or the boards with the caveat that another “officer in charge of elections” may accomplish the task, the Legislature intended in the first instance for that duty to be carried out by the first officer/entity listed in the statute. In this

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<sup>1</sup> Much of the substance of this brief was also presented to the Superior Court.

circumstance, the only way for the duty to be undertaken by another “officer in charge of elections” is for the initially authorized officer or agency to agree to divest its duty to the other officer, and subject to at-will termination.

The Court should reach this conclusion based on two interpretive principles: (1) the canon against surplusage, *see Sanchez v. Maricopa County*, \_\_ Ariz. \_\_, 572 P.3d 101, 107 ¶13 (Ariz. 2025) (rejecting argument that county board of supervisors had “plenary supervisory authority over a county sheriff” because it would render statutes “superfluous”); and (2) constitutional avoidance, because otherwise the relevant statutes could be interpreted as irreconcilably ambiguous and therefore an invalid delegation of power by the Legislature, *see Mistretta v. United States*, 488 U.S. 361, 372-73 (1989) (a valid delegation must “clearly delineate[] ... the public agency which is to apply it”), and also would create multiple levels of for cause removal rather than direct election by the people as provided in the constitution.

### **INTEREST OF AMICI CURIAE**

Amici are Speaker of the Arizona House of Representatives Steve Montenegro and President of the Arizona Senate Warren Petersen. They file this brief in their official capacities as the presiding officers of their respective chambers. *See* Ariz. Const. art. IV, pt. 2, § 8; Ariz. State Senate Rule 2(N); Ariz. House of Reps. Rule 4(K). In enacting Title 16, the Legislature delegated certain duties to the county boards of supervisors and to the county recorders. Neither the boards of

supervisors nor the recorders have inherent authority, so their authority must be derived from statutes. The Speaker and President file this brief to ensure that the Legislature’s intent, as expressed in Title 16, is given full force and effect.

## ARGUMENT

### I. The Superior Court Correctly Interpreted Title 16 in its Minute Entry

Simply put, the Superior Court got it right in paragraph 1 (on page 11) of its thoroughly reasoned minute entry:

[C]onsistent with the Legislature’s intent, ... whenever a statute in Title 16 of the Arizona Revised Statutes delegates authority to or imposes a responsibility on a county recorder or an “other officer in charge of elections,” the statute is delegating that authority or responsibility to a county’s recorder, unless the county’s recorder agrees that an “other officer in charge of elections” may be designated to carry it out. The recorder may subsequently withdraw his or her consent and reclaim his or her statutory authority or responsibility.

When it comes to administering elections, it is the Legislature that “possesses the authority to enact substantive election laws.” *Fann v. Kemp in & for Cnty. of Maricopa*, 253 Ariz. 537, 545 ¶21 (2022). Because the “constitution grants the legislature the authority to enact laws regarding the conduct of elections, *see* Ariz. Const. art. 7, § 12,” it is also for the Legislature “to decide whether and to what extent” the boards and the recorders “can conduct elections, *see id.* art. 12, § 4.” *Fann*, 253 Ariz. at 545 ¶21. The Legislature has exercised this authority and has vested both the boards and the recorders with various responsibilities. The interpretation the Superior Court adopted is correct.

**A. The Legislature Has Vested Both the Boards of Supervisors and the County Recorders with Various Duties and Permitted Either Office to Delegate Its Statutorily Imposed Duty Should that Office Choose to Do So and Subject to Withdrawing Such Delegation At Will.**

The recorder for each county plays a pivotal role in facilitating elections and has a duty—as well as the authority—to execute that role. For example, “[c]ounty recorders remain the primary point of contact for individuals registering to vote.” Ariz. Op. Att’y Gen. No. I17-006, 2017 WL 5616935, at \*3 (Nov. 13, 2017). As such, it is the exclusive duty of the county recorders to supply “[b]lank state voter registration forms for registration of electors,” A.R.S. § 16-151, maintain “registration forms and records of cancellation of registration,” A.R.S. § 16-162, count “the registered voters by political party by precinct, legislative district and congressional district” and “report the totals to the secretary of state,” A.R.S. § 16-168, and “maintain the active early voting list as part of the voter registration roll,” A.R.S. § 16-544.<sup>2</sup>

Yet, the recorders do not maintain sole authority regarding facilitating elections at the county level. The boards of supervisors have also been statutorily endowed with many duties and obligations. For example, it is the exclusive duty of the boards to establish election precincts, A.R.S. § 16-411, “prepare and provide ballots containing the names of all persons whose certificates of nomination have

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<sup>2</sup> This is not intended to be an exhaustive list of each of the county recorders’ exclusive duties.

been filed with them,” A.R.S. § 16-503, appoint elections marshals, A.R.S. § 16-535, and “declare elected the person receiving the highest number of votes cast for each office to be filled by the electors of the county or a subdivision thereof,” A.R.S. § 16-647.<sup>3</sup>

As a result of the Legislature’s intent that officials maintain flexibility in structuring elections duties, Title 16 frequently requires either the board or the recorder to undertake an action but alternatively allows another “officer in charge of elections” to fulfil the statutorily prescribed duty. *See, e.g.*, A.R.S. § 16-351 (“The *county recorder or other officer in charge of elections* shall perform petition signature verifications for nomination petition challenges for signatures of qualified electors who are residents of that county.” (emphasis added)); A.R.S. § 16-621(A) (“All proceedings at the counting center shall be under the direction of the *board of supervisors or other officer in charge of elections* and shall be conducted in accordance with the approved instructions and procedures manual issued pursuant to § 16-452 under the observation of representatives of each political party and the public.” (emphasis added)).

When the statute says “county recorder or other officer in charge of elections,” it vests the county recorder with the authority and duty to fulfill the statute’s

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<sup>3</sup> This is not intended to be an exhaustive list of each of the county boards of supervisors’ exclusive duties.

mandates in the first instance. However, the Legislature has also recognized that administering elections is a complex undertaking that generally requires flexibility and cooperation among the various state and county officers. As a consequence, the Legislature included the language “or other officer in charge of elections” in some statutes to provide the recorder with the opportunity to enlist assistance to fulfil these duties by involving another officer who is not directly controlled by the recorder, as long as the recorder retains full authority to revoke at will that delegation to a third official.

**B. The Canon Against Surplusage Requires Reading the First Listed Official/Board as Being Primarily Assigned with Authority, Subject to that Official/Board Choosing to Delegate the Exercise of that Authority.**

To hold (as Appellants unsuccessfully argued below) that the statutory language “county recorder or other officer in charge of elections” allows the county board of supervisors to unilaterally divest the recorder of his statutory duty and undertake it itself would effectively nullify the Legislature’s inclusion of the term “county recorder.” Indeed, it is undisputed that when a statute permits the board “or other officer in charge of elections” to act, it is for the board to decide if it wishes to act or if it wishes to delegate that duty to another elections officer. It must follow then that when the statute permits “the county recorder or other officer in charge of elections” to act, it is for the recorder to decide if he wishes to act or if he wishes to delegate his duty to another elections officer who does not report to him.

To conclude instead that the statutes allow the board to choose which elections officer may act renders the inclusion of “county recorder” superfluous, and is therefore not the correct interpretation of the statute. *See Sanchez*, 572 P.3d at 107 ¶13 (rejecting argument that county board of supervisors had “plenary supervisory authority over a county sheriff” because it would render statutes “superfluous”); *see also City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 183 ¶ 33 (App. 2008).

Undeniably, when the Legislature intended the board be able to decide which election officer may undertake the statutory duty, it used the language “board of supervisors or other officer in charge of elections.” *See, e.g.*, A.R.S. §§ 16-621, -622, -513.01; *see also Padilla v. Indus. Comm’n*, 113 Ariz. 104, 106 (1976) (There is a “fundamental ... presumption that what the Legislature means, it will say.”). In other instances, the Legislature used different words and instructed the “county recorder or other officer in charge of elections to act.” Courts assume different language means different things. *See Egan v. Fridlund-Horne*, 221 Ariz. 229, 239 ¶37 (App. 2009) (Courts “presume that when the legislature uses different wording within a statutory scheme, it intends to give a different meaning and consequence to that language.”).

Because the Legislature chose to use different words in different statutes—sometimes prescribing a duty first to the county recorder and sometimes to the board

of supervisors—it is clear from the statutes’ plain language that the Legislature intended each office to be able to choose whether to undertake or delegate the statutory duty in the first instance. Clearly, this divergent language does not mean the same thing.

**C. The Constitutional Avoidance Canon Also Supports Reading the First Listed Official/Board as Being Primarily Assigned with Authority.**

As noted above, the Legislature “possesses the authority to enact substantive election laws.” *Fann*, 253 Ariz. at 545 ¶21, and when it enacts a statute it is delegating that authority to another officer. It is fundamental that for a delegation of governmental authority to be lawful, it must “*clearly delineate*[ ] ... the public agency which is to apply it.” *Mistretta*, 488 U.S. at 372-73 (emphasis added). By reading the statutes in Title 16 as delegating authority to the first listed official/board and giving that official/board the authority to exercise the power, or choose to delegate it, the Superior Court correctly avoided the constitutional problem of an invalid delegation that creates an irreconcilable ambiguity about to whom the Legislature delegated authority, rendering it an unconstitutional delegation. *See Molera v. Hobbs*, 250 Ariz. 13, 24 ¶37 (2020) (applying constitutional avoidance canon).

Related to this, the Court must also hold that whatever official/board is listed first, and therefore actually given the delegation by the Legislature, cannot

subdelegate to an “other officer in charge of elections,” other than in a manner that retains the authority to revoke that sub-delegation at-will. The U.S. Supreme Court has struck down statutes that create layers of for-cause removal. *See Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 492 (2010) (“dual for-cause limitations on the removal of Board members contravene the Constitution’s separation of powers”). For similar reasons, the official/board that is listed first, and therefore given the delegation by the Legislature, must retain full control to revoke any sub-delegation to avoid the constitutional issues associated with what could otherwise be an invalid delegation. Otherwise—as here, where the people elect a new recorder—it is of no import because the ousted recorder has already delegated away his authority. This is a textbook example of creating an unauthorized, additional level of for-cause removal, and it is contrary to the statute and constitutional scheme, which provides for the direct election of recorders and supervisors.

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## CONCLUSION

For the foregoing reasons, the Court should deny Appellants' Stay Motion.

RESPECTFULLY SUBMITTED this 1st day of June, 2026.

FUSION LAW PLLC

By: Katlyn J. Divis

Katlyn J. Divis

CULPER LAW PLLC

By: /s/ Brunn (Beau) W. Roysden III

Brunn (Beau) W. Roysden III

*Attorneys for Amici Curiae Montenegro and  
Petersen in their Official Capacities*

IN THE  
**COURT OF APPEALS**  
STATE OF ARIZONA  
DIVISION ONE

JUSTIN HEAP,	)	Court of Appeals
	)	Division One
Plaintiff/Appellee,	)	No. 1 CA-CV 26-0446
	)	
v.	)	Maricopa County
	)	Superior Court
THOMAS GALVIN, et al.,	)	No. CV 2025-020621
	)	
Defendants/Appellants.	)	
_____	)	

**ORDER ACCEPTING AMICUS CURIAE BRIEFS**

The court has considered Helen Purcell's motion for leave to file an amicus curiae brief and Senate President Warren Petersen and House Speaker Steve Montenegro's motion for leave to file an amicus curiae brief concerning the Emergency Motion for a Stay Pending Appeal.

IT IS ORDERED granting both motions and accepting the amicus curiae brief of Helen Purcell filed on June 1, 2026, and accepting the amicus curiae brief of Senate President Warren Petersen and House Speaker Steve Montenegro filed on June 1, 2026.

IT IS FURTHER ORDERED that any party may file responses to the briefs by June 9, 2026.

\_\_\_\_\_/s/\_\_\_\_\_  
Randall M. Howe, Chief Judge

A copy of the foregoing  
was sent to:

James K Rogers  
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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 JUSTIN HEAP, in his official capacity as  
12 Maricopa County Recorder;

13 Plaintiff / Counterdefendant,

14 v.

15 THOMAS GALVIN, in his official capac-  
16 ity as a member of the Maricopa County  
17 Board of Supervisors; MARK STEWART,  
18 in his official capacity as a member of the  
19 Maricopa County Board of Supervisors;  
20 KATE BROPHY MCGEE, in her official  
21 capacity as a member of the Maricopa  
22 County Board of Supervisors; DEBBIE  
23 LESKO, in her official capacity as a mem-  
24 ber of the Maricopa County Board of Su-  
25 pervisors; STEVE GALLARDO, in his of-  
26 ficial capacity as a member of the Maricopa  
27 County Board of Supervisors;

28 Defendants / Counterclaimants.

**AND**

29 RACHEL MITCHELL, in her official  
30 capacity as the Maricopa County Attorney;

31 Plaintiff,

32 v.

33 JUSTIN HEAP, in his official capacity as  
34 Maricopa County Recorder;

35 Defendant.

Case No.  
CV2025-020621  
(consolidated)

**NOTICE OF FILING PROPOSED  
CONTEMPT ORDER**

(Assigned to the Hon. Scott Blaney)



1 ORIGINAL filed and served via electronic  
2 means this 15th day of June, 2026, upon:

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

JUSTIN HEAP, in his official capacity as  
Maricopa County Recorder;  
  
Plaintiff / Counterdefendant,

Case No.  
CV2025-020621  
*(consolidated)*

v.

THOMAS GALVIN, in his official capacity  
as a member of the Maricopa County  
Board of Supervisors; MARK STEWART,  
in his official capacity as a member of the  
Maricopa County Board of Supervisors;  
KATE BROPHY MCGEE, in her official  
capacity as a member of the Maricopa  
County Board of Supervisors; DEBBIE  
LESKO, in her official capacity as a mem-  
ber of the Maricopa County Board of Su-  
pervisors; STEVE GALLARDO, in his of-  
ficial capacity as a member of the Maricopa  
County Board of Supervisors;

**[PROPOSED] ORDER**

Defendants / Counterclaimants.

**AND**

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

Plaintiff,

v.

JUSTIN HEAP, in his official capacity as  
Maricopa County Recorder;

Defendant.



1 Board's failure to prepare is not a ground for excusing non-compliance; it is further evidence  
2 that the Board has treated this Court's Order as optional.

3 5. The Court finds that the Board's vote on May 20, 2026, to authorize the hiring of  
4 eight new IT positions does not constitute compliance or a good-faith step toward compliance.  
5 The Order required the return of all existing IT staff and systems.  
6

7 6. The 2026 Primary Election is scheduled for July 21, 2026. Early ballots are scheduled  
8 to be mailed on June 24, 2026. The imminence of these deadlines makes immediate compli-  
9 ance essential. Continued non-compliance is not merely a harm to the Recorder—it is a harm  
10 to the voters of Maricopa County, who are entitled to have their elected Recorder exercise the  
11 authority the Legislature assigned to him.  
12

13 7. The Court has previously found, and reaffirms here, that the Recorder has consist-  
14 ently expressed willingness to cooperate with the Board and that the Court does not observe  
15 the same willingness from the Board.  
16

#### 17 CONCLUSIONS OF LAW

18 8. The Board is in civil contempt of the April 16, 2026 Order. Under A.R.S. § 12-864,  
19 “contempts committed by failure to obey a lawful writ, process, order, judgment of the court,  
20 and all other contempts not specifically embraced within this article may be punished in con-  
21 formity to the practice and usage of the common law.” “A finding of civil contempt requires  
22 that the contemnor (1) has knowledge of a lawful court order, (2) has the ability to comply  
23 and (3) fails to do so.” *Lund v. Donahoe*, 227 Ariz. 572, 583 ¶ 41 (App. 2011). All three elements  
24 are clearly satisfied here.  
25

26 9. This Court retains inherent authority to enforce its own orders and to impose such  
remedial measures as are necessary to achieve compliance. *Major v. Coleman*, 251 Ariz. 345, 348

1 ¶ 13 (App. 2021) (“a superior court can issue orders as an exercise of its inherent authority to  
2 take actions necessary to effectuate the administration of justice in cases pending before it.”  
3 (cleaned up)). Civil contempt sanctions are coercive rather than punitive—their purpose is to  
4 compel compliance and to compensate the aggrieved party for losses caused by the contem-  
5 nor’s noncompliance. *Trombi v. Donahoe*, 223 Ariz. 261, 264 ¶ 9 (App. 2009). “Any sanction  
6 that is imposed for civil contempt must be designed to coerce the person to do or to refrain  
7 from doing some act. Equally important is that the sanction must fit the particular circum-  
8 stances of the contempt.” *Stoddard v. Donahoe*, 224 Ariz. 152, 157 ¶ 24 (App. 2010) (cleaned  
9 up).  
10

11  
12 10. Because the Board’s non-compliance threatens the integrity of the 2026 Primary  
13 Election, the Court finds that coercive monetary sanctions alone are insufficient to achieve  
14 timely compliance and that specific operational directives are necessary.

15  
16 11. The Maricopa County Board of Supervisors and Maricopa County are hereby found  
17 in **civil contempt** of the April 16, 2026 Order.

18  
19 12. Effective immediately, Defendants shall pay to the Maricopa County Recorder a  
20 coercive sanction of **\$100,000 per day** for each calendar day of continued non-compliance  
21 with any provision of this Order. Sanctions shall begin accruing on June 18, 2026. The purpose  
22 of this sanction is coercive, not punitive, and shall cease upon full compliance as determined  
23 by the Court.

24  
25 13. In addition to daily sanctions, if the Board has not complied with the IT provisions  
26 of Paragraphs 14-15 of this Order by June 17, 2026, Defendants shall pay the Recorder’s rea-  
sonable attorneys’ fees and costs incurred in bringing and prosecuting the contempt applica-  
tion, to be established by affidavit submitted no later than June 24, 2026.

1 **I. IT SYSTEMS AND PERSONNEL: IMMEDIATE COMPLIANCE DEADLINE**

2 14. No later than **5:00 p.m. on Wednesday, June 17, 2026**, Defendants shall elect one  
3 of the following two compliance options and provide written notice of their election to coun-  
4 sel for Plaintiff and to the Court:

5 **Option A — Return of Systems and Staff.** Defendants shall transfer to the opera-  
6 tional control of the Maricopa County Recorder’s Office (“MCRO”):

7 (a) Full administrative access to, and operational and physical control over the Voter  
8 Registration and Election System (VRAS), the Elections Records Office system (ERO), the  
9 GIS system, the BeBallotReady website, the RDIS recordation system, and all other IT systems  
10 necessary for the Recorder to perform his statutory functions, including voter registration,  
11 early voting administration, early ballot processing, signature verification, provisional ballot  
12 functions, and recordation duties;

13 (b) All IT personnel who are currently assigned to support MCRO-related election  
14 functions, including those who support VRAS, ERO, BeBallotReady, the GIS system, and  
15 early voting operations, shall report to and take direction from the Recorder; and

16 (c) Ancillary electronic equipment purchased by MCRO and not transferred via formal  
17 County procedures shall be immediately returned to the Recorder.

18 14.1 If Option A is elected, the Board shall retain read-and-execute access to those  
19 portions of VRAS, ERO, and any shared systems that the Board requires to carry out its own  
20 election administration functions (emergency voting, election day operations, tabulation, and  
21 canvass) for so long as those functions remain on shared systems. Such access shall be pro-  
22 vided on terms negotiated by the parties’ IT representatives within five business days of the  
23 election of Option A. If the parties cannot agree, the Court will resolve any dispute on 48

1 hours' notice. The Board's access under this paragraph shall not include administrative privi-  
2 leges or change-management rights over the Recorder's portions of shared systems. The Board  
3 shall bear all costs associated with transitioning its functions to a separate system at such time  
4 as the parties agree, or the Court orders, that a system separation is technologically feasible  
5 and operationally appropriate.  
6

7 **Option B — Funding for Independent MCRO IT Infrastructure.** If Defendants  
8 elect not to return the IT systems under Option A, Defendants shall, no later than 5:00 p.m.  
9 on June 17, 2026:

10 (a) Appropriate and make immediately available to the Recorder, in a dedicated account  
11 under the Recorder's exclusive spending authority, an amount to be determined by the Re-  
12 corder's Office and submitted to this Court by June 16, 2026, and subject to this Court's ap-  
13 proval, that is sufficient to allow the MCRO to contract for, procure, and deploy its own  
14 independent IT systems and personnel capable of supporting voter registration, early voting  
15 administration, early ballot processing, and signature verification operations in time for the  
16 June 24, 2026 early ballot mailing deadline;  
17

18 (b) Provide the Recorder with read-only access to all data currently housed in VRAS,  
19 ERO, and related systems sufficient to allow the MCRO to migrate voter registration records,  
20 ballot tracking data, and other Recorder-function data to the new system and also provide  
21 read-only access to the software repositories for all existing systems; and  
22

23 (c) Continue to provide, under the oversight of the MCRO CIO, in the interim period  
24 before the new system is operational, the data access, technical assistance, and system availa-  
25 bility necessary for the Recorder to perform his statutory functions without interruption until  
26 all such systems are operational and staff are fully trained to support their functions; and

1 (d) Ancillary electronic equipment purchased by MCRO and not transferred via formal  
2 County procedures shall be immediately returned to the Recorder

3 15. If Defendants fail to elect either Option A or Option B by the June 17, 2026 dead-  
4 line, the Court will treat the failure as an election of Option A and will issue a writ of assistance  
5 directing the Maricopa County Sheriff to take such steps as are necessary to effectuate the  
6 transfer of IT systems and personnel described in Option A.  
7

## 8 **II. EARLY VOTING OPERATIONS: 2026 PRIMARY ELECTION**

9 16. For the 2026 Primary Election (early ballots to be mailed June 24, 2026; Election  
10 Day July 21, 2026), the parties shall administer early voting and related Recorder functions as  
11 set forth in this Part. These provisions are operative immediately and govern all preparation,  
12 setup, and operational activities beginning on the date of this Order. Where any of the follow-  
13 ing provisions require the Board to provide personnel or resources to the Recorder, these  
14 provisions apply only to the conduct of the 2026 Primary Election and do not constitute a  
15 permanent or ongoing allocation of responsibilities or authorities to the Board.  
16  
17

### 18 **A. General Authority**

19 17. The MCRO shall have final decision-making authority and operational direction  
20 over all Recorder-administered functions for the 2026 Primary Election, including: voter reg-  
21 istration, early voting (including all early voting locations and operations), early ballot custody  
22 procedures, signature verification, provisional ballot functions within the Recorder's statutory  
23 purview, and all related Recorder processes. The Board of Supervisors Elections Department  
24 ("BOS Elections") shall retain responsibility for emergency and election day voting operations,  
25 tabulation, and canvassing.  
26

18. The Board shall provide sufficient personnel, resources, and equipment to support

1 Recorder-administered functions, and all such personnel provided by BOS Elections or  
2 County departments shall perform those tasks under MCRO direction for the duration of the  
3 assigned function. Such use of existing County resources shall not be deemed a transfer or  
4 sharing of the Recorder’s legal authority.  
5

6 **B. Early Voting Site Selection**

7 19. BOS Elections shall provide procurement, contracting, facilities, and logistical sup-  
8 port for early voting (“EV”) site selection. The MCRO shall have **final approval** of all EV  
9 locations, including the authority to approve, reject, add, or modify any proposed location for  
10 Recorder-administered EV functions. No EV site shall be considered final for Recorder-ad-  
11 ministered functions without written approval from the MCRO.  
12

13 **C. Personnel and Hiring**

14 20. County HR and BOS Elections shall continue to process recruitment, onboarding,  
15 payroll, and administrative hiring functions for poll workers and temporary election workers.  
16 For all personnel assigned to Recorder-administered EV or voter-registration functions, the  
17 MCRO shall have operational direction authority, training authority, assignment authority, and  
18 the authority to remove or reassign any such personnel during the period of their assignment.  
19

20 21. The MCRO shall hire one member of each ballot courier team, such that every  
21 courier team consists of one MCRO employee and one BOS Elections employee. All courier  
22 teams shall follow MCRO-approved chain-of-custody procedures.  
23

24 22. The MCRO shall hire one Technology Technician (“T-Tech”) Auditor for each EV  
25 location. The T-Tech Auditor shall serve as the senior T-Tech at the site, shall supervise site  
26 setup and equipment, and shall supervise and direct other T-Techs at the site during the EV  
period.

1           23. The MCRO shall hire Voter Registration (“VR”) clerks for all EV locations.

2           24. The MCRO shall designate or approve all personnel assigned to perform Recorder-  
3 administered functions at each EV site, including Chief Inspectors, alternate Chief Inspectors,  
4 T-Tech Auditors, VR clerks, and any other site personnel performing Recorder functions.

5                   **D. EV Site Setup and Breakdown**

6           25. BOS Elections shall provide logistical crews, equipment support, facilities coordi-  
7 nation, and supplies for EV site setup and breakdown. Setup and breakdown for Recorder-  
8 administered EV functions shall be performed according to MCRO-approved checklists and  
9 under MCRO-designated operational supervision. The provision of logistical support by BOS  
10 does not confer decision-making authority over EV operations on the Board. All BOS Elec-  
11 tions personnel performing such functions shall act under the full supervision and manage-  
12 ment of the MCRO for the duration of their performance of such functions.

13                   **E. EV Site Operations**

14           26. All BOS Elections personnel working at EV sites shall act under the full supervision  
15 and management of the MCRO for the duration of their performance of such functions. The  
16 MCRO shall be responsible for ongoing EV site operations, and shall:

17                   (a) Designate a primary and an alternate MCRO full-time employee to serve as Chief  
18 Inspectors for the EV period at each EV site;

19                   (b) Direct that all Inspectors and Troubleshooters report to MCRO via the MCRO  
20 Chief Inspectors;

21                   (c) Have the authority to remove, reassign, or require BOS Elections to replace any EV  
22 poll worker, including Inspectors, immediately upon request and without stated cause;

23                   (d) Require Inspectors hired by BOS Elections to attend an MCRO-conducted, EV-

1 specific training session of no more than two hours' duration;

2 (e) Provide poll workers with an MCRO-issued addendum to the official training man-  
3 ual addressing EV-specific processes;

4 (f) Serve as the final authority on all EV site operations, including voter-registration  
5 issue resolution, early-ballot handling procedures, escalation of site issues, instructions and  
6 answers given to poll workers, and all signage posted at EV locations.  
7

8 27. All communications from EV sites, or from personnel assigned to Recorder-ad-  
9 ministered functions at EV sites—including questions, concerns, or troubleshooting re-  
10 quests—shall be routed to the MCRO. No instructions concerning Recorder-administered  
11 functions shall be given to site personnel except as approved by the MCRO or issued pursuant  
12 to MCRO-approved protocols.  
13

#### 14 **F. Command Center**

15 28. The MCRO and BOS Elections shall jointly operate the Command Center during  
16 the EV period. MCRO shall provide an IT Specialist and a VR Specialist to staff the Command  
17 Center for the duration of the EV period. Copies of all reports, alerts, and other operational  
18 activity currently provided to BOS staff assigned to the Command Center shall be provided  
19 contemporaneously to designated MCRO personnel. The MCRO shall have final operational  
20 authority over all Recorder-administered functions routed through the Command Center. Is-  
21 sues involving both offices shall be logged, time-stamped, and escalated to designated liaisons  
22 for the respective office.  
23  
24

#### 25 **G. Drop Boxes**

26 29. The MCRO shall designate all locations for EV drop boxes. Personnel employed  
by BOS Elections shall manage installation and physical retrieval of drop boxes under the

1 supervision of the Recorder. Drop box pickups shall be coordinated between MCRO and  
2 BOS ballot couriers, with any issues reported to the MCRO. The MCRO shall have final de-  
3 cision-making authority over all aspects of drop box placement, operation, and any deviation  
4 or incident arising from drop box operations. The MCRO shall establish chain-of-custody  
5 protocols for drop box setup, takedown, and ballot retrieval, and BOS Elections shall comply  
6 with those protocols.  
7

### 8 **H. GIS, IT, and Data Support**

9 30. BOS Elections and County IT and GIS personnel shall make existing systems, data,  
10 staff support, administrative access, reports, and technical assistance available to the MCRO  
11 as necessary for voter registration processing, EV administration, deadline-week support, re-  
12 porting, and election-integrity functions. This obligation applies immediately and includes,  
13 without limitation, the week of June 22, 2026 (voter registration deadline week). No access  
14 required by this paragraph shall be withheld, conditioned, or delayed.  
15  
16

### 17 **I. Chain of Custody**

18 31. The MCRO shall approve all chain-of-custody procedures for early ballots, drop  
19 boxes, and other Recorder-administered EV materials. BOS Elections shall comply with  
20 MCRO-approved procedures when providing logistical support for those materials. Chain-of-  
21 custody documentation shall include, at minimum: exact ballot count, location, date, time, seal  
22 number, container number, the identity and office affiliation of each custodian, transferor, and  
23 transferee, route, destination, and any exception or incident. Any deviation from required  
24 chain-of-custody procedures shall be reported immediately to the MCRO designee and shall  
25 be preserved in a shared incident log, and shall be resolved by the MCRO.  
26

### **J. Security**

1           32. Designated MCRO personnel shall be included in all security meetings related to  
2 operations at MCTEC and any EV location.

3           **K. Communications**

4           33. MCRO Communications Team members shall be present in the MCTEC Media  
5 Communications Room during the EV period and through the canvass. No official public  
6 statement concerning voter registration, early voting, provisional ballots, signature verification,  
7 or any other topic within the Recorder's statutory purview shall be issued by BOS Elections,  
8 the Board, or any County department without prior written approval from the MCRO. Media  
9 inquiries related to Recorder-administered functions received by the Board shall be forwarded  
10 to the MCRO. The Board shall not respond to any such inquiry without MCRO approval.  
11 Media inquiries received by the MCRO that concern BOS Elections functions shall be for-  
12 warded to BOS Elections.  
13  
14

15           **III. COMPLIANCE REPORT**

16           34. No later than **June 17, 2026**, Defendants shall file with this Court, with a copy to  
17 counsel for Plaintiff, a written compliance report signed under oath by the County Manager  
18 describing with specificity:  
19

20           (a) The option elected under Part I (Option A or Option B) and all steps taken as of  
21 the report date to implement that option;  
22

23           (b) All steps taken as of the report date to implement the operational provisions of Part  
24 II;

25           (c) Any provision of this Order with which Defendants contend compliance is not yet  
26 complete, the reasons therefor, and a specific proposed deadline for completion; and

          (d) The name and contact information of the Board's designated compliance liaison

1 for all matters arising under this Order.

2 35. The Recorder shall file a response to the compliance report no later than **June 19,**  
3 **2026**, identifying any provisions with which the Recorder contends the Board has not com-  
4 plied and the factual basis for that contention.

5 36. This Court will conduct a compliance hearing on **[DATE TO BE SET BY THE**  
6 **COURT]** to assess compliance and, if necessary, impose additional sanctions or directives.

7 **IV. RESERVATION OF JURISDICTION**

8 37. This Court retains jurisdiction to enforce this Order, to resolve any disputes con-  
9 cerning compliance, and to modify this Order as the facts and circumstances of the 2026 Pri-  
10 mary Election require. Either party may seek emergency modification on 24 hours' notice.

11 38. Nothing in this Order shall be construed to limit the Board's authority over any  
12 election function that is assigned to the Board or the "board or other officer in charge of  
13 elections" by Arizona statute, or to require the Board to perform any act beyond those neces-  
14 sary to implement and comply with the Court's April 16, 2026 Order and this Order.

15 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2026

16  
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19  
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22 \_\_\_\_\_  
23 Honorable Scott A. Blaney  
24 Judge of the Superior Court  
25  
26

IN THE  
**COURT OF APPEALS**  
STATE OF ARIZONA  
DIVISION ONE

JUSTIN HEAP,	)	Court of Appeals
	)	Division One
Plaintiff/Appellee,	)	No. 1 CA-CV 26-0446
	)	
v.	)	Maricopa County
	)	Superior Court
THOMAS GALVIN, et al.,	)	No. CV 2025-020621
	)	
Defendants/Appellants.	)	
	)	

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**ORDER GRANTING EMERGENCY MOTION FOR A STAY PENDING APPEAL**

The Court, Presiding Judge Andrew M. Jacobs, Judge Brian Y. Furuya, and Judge James B. Morse Jr., has reviewed and considered Appellants' Emergency Motion for a Stay Pending Appeal, Appellee's response, and the reply. The Court has also considered the Brief of Amicus Curiae Helen Purcell in Support of the Maricopa County Board of Supervisors, the Brief of Amici Curiae President Petersen and Speaker Montenegro in Opposition to Appellants' Emergency Motion for Stay Pending Appeal, and the Brief of Amicus Curiae State of Arizona in Support of Appellants' Motion to Stay and the responses to those briefs.

Appellants, members of the Maricopa County Board of Supervisors (collectively, "the Board"), appeal from a superior court injunction requiring the Board, among other things, to return to appellee Maricopa County Recorder Justin Heap, "direct custody

and/or control the IT staff, servers, databases, software, websites, and equipment that were in the Recorder's custody and/or control prior to October of 2024 . . . or immediately fund the replacement of these personnel and items so that the Recorder may properly carry out his statutory responsibilities." The injunction also makes a number of changes to processes surrounding the 2026 election, as this order discusses below. The Board asks the court to stay enforcement of that ruling pending resolution of the appeal.

A party seeking a stay must establish (1) a strong likelihood of success on the merits, (2) irreparable harm if the stay is not granted, (3) the harm to the appellants outweighs the harm to appellee, and (4) public policy favors granting a stay. *Smith v. Ariz. Citizens Clean Elections*, 212 Ariz. 407, 410, ¶¶ 9-10 (2006). It is a sliding scale, so "the moving party may establish either 1) probable success on the merits and the possibility of irreparable injury or 2) the presence of serious questions and [that] 'the balance of hardships tip[s] sharply'" in favor of the moving party." *Id.* at 411 ¶ 10 (citations omitted).

We focus our analysis on one argument advanced by the Board and amicus Helen Purcell, the former Maricopa County Recorder: that the injunction's changes to Maricopa County election administration and management violate the principle set forth in *Purcell v. Gonzalez*, 549 U.S. 1 (2006). That principle is that courts are reluctant to order last-minute changes in election rules

and procedures because they can burden election workers and complicate and create confusion in the voting experience. See *Fontes v. Lewis*, CV-24-0251-T/AP, 2024 WL 4625950, at \*2 (Ariz. Oct. 25, 2024) (affirming denial of injunctive relief, concluding it would be “impracticable, if not imprudent” to grant relief affecting voting process).

We see merit in the Board’s and Purcell’s argument and conclude that the injunction is very likely to be vacated on *Purcell* grounds. Any defense of the injunction as not implicating *Purcell* (because it represents some non-public-facing, intragovernmental dispute over powers) is refuted by the face of the injunction. Paragraph 28 of the injunction justifies its mandates by claiming to avoid “concrete operational harms.” Injunction at 11 ¶ 28. So both the injunction and its opponents agree that the conflict before us has concrete, operational impacts on the public’s voting experience.

The Board sets out in its Reply a number of impactful changes the injunction imposes: (1) where previously “the Board authorized locations for ballot drop-boxes” under the 2025 Elections Procedures Manual, the Recorder now contends “the Board and its staff” commit “felonies if they authorize drop-box locations”; (2) where previously “[t]he Elections Director oversaw Board-appointed poll workers,” now “[o]nly the Recorder or his ‘designee’” may “control all ballot replacement site operations”; (3) where previously the Board managed everything at “Election Day

voting locations [through its] Elections Director" as an "officer in charge," now "[o]nly the Recorder or his 'designee' can commandeer space within the Board's polling places" and "operate a parallel and independent on-site tabulation program at Election Day voting locations" under A.R.S. §§ 16-579.01 and 16-579.02; (4) where "[t]he Board maintained chain of custody for all Election Day ballots and all early ballots" for which signatures were verified, now "[o]nly the Recorder or his 'designee' can maintain chain of custody for ballots during . . . early voting . . . through . . . post-election tabulation of provisional ballots"; and (5) where formerly there was one tabulation and canvass of votes, now there will be two, because now "[o]nly the Recorder or his 'designee' can tabulate and canvass early ballots cast on-site on Election Day, see A.R.S. § 16-579.01(B)(3)." Board Reply at 11.

The practical impacts of these changes, and even the injunction's claim to mitigate practical harms for the voter, all demonstrate that this is no mere backroom dispute over accounting principles or organizational charts. It is, by everyone's assessment, a live conflict hurtling toward real-world consequences in elections about to begin. The *Purcell* principle applies here and persuades us that the Board is very likely to succeed on the merits.

The *Purcell* principle also speaks to the remaining three components of the injunction standard. *Smith v. Ariz. Citizens*



A copy of the foregoing  
was sent to:

James K Rogers  
Stephen W Tully  
Kory A Langhofer  
Thomas J Basile  
Sambo Dul  
Katlyn J Divis  
Brunn W Roysden III  
Hon Scott A Blaney