

**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

PETITION FOR SPECIAL ACTION

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INTRODUCTION

After a full evidentiary hearing, the superior court entered a permanent injunction enforcing its interpretation of Arizona statutes that allocate authority between an elected county recorder and a county board. The Court of Appeals stayed that judgment for one stated reason: it concluded that the Board was “very likely” to prevail because of the *Purcell* principle and then relied on the same purported administrative concerns to satisfy every remaining stay factor. That approach cannot be reconciled with Arizona law.

Purcell is not a merits doctrine. It is an equitable principle that counsels caution before last-minute changes to the rules governing how voters cast their ballots. It does not answer—and was never intended to answer—the statutory questions presented in this appeal concerning the allocation of authority between county officials. Yet the Court of Appeals never analyzed those statutory questions. Instead, it treated *Purcell* itself as evidence that the Board was likely to succeed on the merits. In doing so, it transformed a doctrine about equitable timing into a substitute for deciding the legal issues actually before the court.

Nor does this case implicate the concerns that gave rise to *Purcell*. The injunction alters no voter qualification, registration deadline, ballot format, voting location, identification requirement, or rule governing whether a ballot is lawful. It concerns which county office has final authority over internal election-administration functions and the resources needed to perform them. Those questions may carry operational consequences, but operational consequences do not transform an internal allocation of governmental authority into the kind of eleventh-hour alteration of the legal framework for voter participation that *Purcell* was designed to prevent.

The majority also misread the superior court's ruling. Paragraph 28 of that ruling identified operational harms caused by the Recorder's lack of control over systems and functions the superior court concluded belong to him. The injunction was the court's remedy for those harms. The stay order treated that finding as an admission that the injunction itself creates the harms. It then accepted five characterizations from the Board's reply that improperly assume the disputed allocation of authority. And, in any event, this characterizations can be harmonized with the governing statutes.

This petition, therefore, presents a narrow but consequential question: may an appellate court treat *Purcell* as a freestanding basis for finding a likelihood of success on the merits, decline to analyze the merits of the underlying statutory appeal, and then rely on the same disputed operational assertions to satisfy every other stay factor? The answer in Arizona is no. This Court should accept jurisdiction and vacate the stay or, at minimum, remand for an independent application of the *Smith* factors and consideration of targeted rather than blanket interim relief.

There is no equally plain, speedy, or adequate remedy by appeal. *See* RPSA 2(b)(2); 12(a). An appeal in the ordinary course would proceed on a standard briefing schedule and result in a decision months from now—long after the 2026 Primary Election has been administered, ballots have been cast, and results have been canvassed. A ruling in Recorder Heap’s favor after the election would be, for all practical purposes, moot as to the election itself: once the Board’s Elections Director has administered a primary under the Board’s claimed authority, no appellate decision can un-administer it. The unlawful election will have occurred. The voters who chose Recorder Heap to oversee early voting will have been denied their chosen officer’s lawful participation—permanently, as

to that election. Appellate review is inadequate when the harm in question will be complete and irreversible before an ordinary appeal can be resolved. *Cf. Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 61 ¶ 7 (2020) (in time-sensitive election case, accepting special action jurisdiction because case “involves election and statutory issues of statewide importance”).

This case presents an even stronger version of that scenario: the “time-sensitive” harm here is not merely pressing—it is, as a legal matter, irreversible once it occurs. No stay pending appeal, no damages award, and no remand can reconstitute an election administered by the wrong official. Special action is not merely the preferred vehicle; it is the only one.

STATEMENT OF ISSUES

1. Whether the Court of Appeals abused its discretion by treating the *Purcell* principle as an independent basis for finding “likely success on the merits” without analyzing the statutory merits of the Board’s appeal under Title 16 and A.R.S. § 11-601(2).

2. Whether *Purcell* supports a blanket stay where the injunction changes no voter-facing legal rule, the claimed operational conflicts rest

on disputed statutory premises, and the movant's failure to plan for or begin compliance materially aggravated the asserted hardship.

3. Whether, assuming a discrete implementation concern exists, the proper remedy is a complete stay or targeted, statute-specific interim relief that preserves existing voter-facing procedures while respecting the superior court's judgment.

RELATED CASES

Petitioner is aware of the following matters related through the same parties, events, issues, or transactions: *Heap v. Galvin*, Court of Appeals No. 1 CA-CV 26-0446; *Heap v. Galvin*, Maricopa County Superior Court No. CV2025-020621; *Mitchell v. Heap*, Maricopa County Superior Court No. CV2025-022266; *Mitchell v. Heap*, Court of Appeals No. 1 CA-CV 26-0165. Petitioner will supplement this disclosure if any additional related proceeding is filed or identified.

JURISDICTION

This Court may review a decision of the Court of Appeals through an appellate special action. ARIZ. CONST. art. VI, § 5; RPSA 11(b)(3). An ordinary appeal is not an equally plain, speedy, and adequate remedy. RPSA 12(a). The stay determines which officials will exercise the

disputed statutory authority during the July 21, 2026 Primary Election. Early voting begins imminently, and the 2026 Primary Election is scheduled for July 21, 2026. If the stay remains in effect through that election, a later merits decision cannot restore the Recorder's authority for an election already conducted. The issue, therefore, tends to evade review and may become functionally moot before the direct appeal can provide effective relief. *See* RPSA 12(b)(5).

The petition also presents pure legal questions of first impression and statewide importance: (1) whether *Purcell* may substitute for the likelihood-of-success inquiry and other stay factors required by *Smith*; (2) whether *Purcell* applies to an internal allocation-of-authority injunction that changes no voter-facing legal rule; and (3) whether equitable election-timing concerns can be based on administrative burdens caused or aggravated by the stay applicant's failure to prepare for compliance. *See* RPSA 12(b)(3), (4). Immediate resolution will materially advance the efficient management of the pending appeal and the administration of the 2026 election. *See* RPSA 12(b)(7). And the petition alleges that the stay rests on an incorrect legal standard, a recognized basis for special-action review. *See* RPSA 12(b)(8). The stay cannot be justified under the

governing stay framework if the Board’s likelihood of success on the statutory merits was never analyzed. RPSA 12(b)(8). This Court accepted jurisdiction under materially similar circumstances in *Arizona Public Integrity Alliance*, 250 Ariz. at 61 ¶ 7 (accepting transfer because case “involves election and statutory issues of statewide importance”).

STATEMENT OF FACTS

A. Background

Recorder Justin Heap took office in January 2025. Upon assuming office, he discovered that his immediate predecessor—whom he had just defeated in the primary election—had entered into a last-minute “shared services agreement” with the Maricopa County Board of Supervisors, in October 2024. That agreement transferred operational control of the Recorder’s IT systems, databases, servers, and software to the Board’s Enterprise Technology Innovation division just weeks before Heap was sworn in. Every other elected county officer in Maricopa County has his or her own IT department. The Recorder alone was stripped of this resource. APP034-35 ¶¶ 1-11.

After months of failed negotiations, during which Recorder Heap offered mediation and cooperation at every turn, he filed suit in June

2025. APP034 ¶¶ 7. Cross-motions for summary judgment were fully briefed, and an evidentiary hearing was held on January 26, 2026. APP033. On April 16, 2026, the superior court entered a comprehensive Under Advisement Ruling making twenty-five findings of fact and twenty-nine conclusions of law, concluding that the Board had unlawfully stripped the Recorder of IT systems and staff he was legally entitled to control, and that the Board had unlawfully arrogated Recorder-specific statutory functions to its own Elections Director. APP033-44. The superior court entered a permanent injunction requiring the Board either to return the Recorder's IT staff, systems, and equipment or to immediately fund replacement systems, and enjoining the Board from exercising the Recorder's statutory election-administration functions without the Recorder's consent. APP043-44.

The Legislature agreed. In an amicus brief filed with the superior court, the President of the Arizona Senate and the Speaker of the Arizona House of Representatives urged the court to rule for the Recorder, expressly confirming that the superior court's statutory interpretation correctly reflected legislative intent. APP003–APP026.

B. The Board's Conduct Before and After the April 16 Order

The superior court's findings did not merely describe a legal dispute. They described an unmatched pattern of bad faith.

Before the injunction: Almost immediately after the evidentiary hearing, individual Board members accused the Recorder's trial witnesses of lying, and the Board issued subpoenas—not through the Rules of Civil Procedure, but under its own statutory authority—to Recorder Heap and to witnesses who had just testified on his behalf. APP027-29. The superior court entered a TRO, finding it was “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.” APP028. When the TRO expired, the Board promptly reissued the subpoenas. The court later confirmed 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.” APP032. Using the threat of removal from office under A.R.S. § 11-253, the Board compelled Recorder Heap himself to appear before it and testify without the protections of the Rules of Evidence, the ability to object to unlawful questions,

or the presence of a neutral arbiter. The superior court refused to allow this “gamesmanship” to “interfere with or jeopardize the integrity of these proceedings” and declined to reward such “shenanigans.” APP032. Minutes before the case was submitted for decision, the Board filed a Rule 56(d) motion to reopen discovery, incorporating testimony it had coerced through its extra-judicial examination. The court denied that motion. APP030-32.

After the injunction: The Board’s conduct deteriorated further. It has not restored the IT positions that it took from the Recorder’s Office. All it has done is create eight new, unfilled positions rather than returning the experienced personnel who built and maintain the VRAS and ERO systems. APP066-68 ¶¶ 5-8. The Recorder proposed a cooperative, phased transition plan in a May 5, 2026 letter to County Manager Jennifer Pokorski, offering to complete the transition in stages and committing in writing to protect the Board’s access to all shared systems throughout any transition period. Both proposed deadlines passed without compliance. APP068-70 ¶¶ 9–16.

The Board deployed its Elections Director to actively countermand the Recorder’s directives at ballot replacement sites during May 2026 all-

mail elections, characterizing Recorder personnel as “merely observers” while instructing poll workers to disregard the Recorder’s lawful directions—in direct violation of the April 16 injunction. The Recorder’s counsel transmitted a written demand letter. The Board ignored it. APP070-71 ¶¶ 17-21.

On May 20, 2026, the Board passed a resolution purporting to authorize itself to establish early ballot drop boxes—a function that, under the April 16 injunction and under controlling statutes, belonged to the Recorder, and one whose unauthorized exercise by the Board potentially exposes Board members and staff to criminal liability under A.R.S. § 16-1005. The Board passed the resolution despite a written warning from the Recorder’s counsel that morning about its illegality. APP071-72 ¶¶ 21–23.

On April 30, four members of the Board jointly filed a motion for a stay pending appeal. The superior court denied that motion, finding it “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” and that the Board would use a stay “as an opportunity to moot the Court’s Ruling through extended delay.” APP045-46.

On June 16, 2026, Recorder Heap filed an Application for Order to Show Cause asking the superior court to hold the Board in contempt. APP047–APP096. Recorder Heap later filed a Proposed Contempt Order in relation to that application. APP110-125. The contempt application remains pending, and the proposed order has not been entered. It is relevant here to show that the Recorder has identified a comprehensive, workable framework for administering the 2026 Primary Election in full compliance with the April 16 injunction while protecting the Board’s legitimate operational interests at every step.

C. The Court of Appeals’ Divided Decision

On June 18, 2026, a divided 2-1 panel of the Court of Appeals stayed the injunction. APP126–APP131. The majority focused its entire analysis on the *Purcell* principle, concluding that the injunction was “very likely to be vacated on *Purcell* grounds,” APP128, and derived the other three stay factors entirely from *Purcell* without independent analysis. APP127-130. The majority, notably, did not address the likelihood of success for the Board on the merits, the correctness of the superior court’s findings

of fact and conclusions of law, or the Board’s sustained pattern of non-compliance.

STANDARD OF REVIEW

A decision granting a stay is reviewed for abuse of discretion, but legal errors and questions of statutory interpretation are reviewed de novo. *Ariz. Pres. Found. v. Pima Cmty. Coll. Dist. Bd.*, 259 Ariz. 539, 543 ¶ 11 (App. 2025). A court abuses its discretion when it applies the wrong legal standard, fails to consider a required factor, or rests its decision on a legally erroneous premise. The stay movant bears the burden of establishing the four *Smith* factors. *Id.* ¶ 12; *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, 410–11 ¶¶ 9–11 (2006).

ARGUMENT

I. The Court of Appeals Abused Its Discretion by Treating *Purcell* as a Substitute for the Required *Smith* Stay Analysis.

Arizona law makes clear that a party seeking a stay must establish (1) a strong likelihood of success on the merits, (2) irreparable harm absent a stay, (3) a balance of hardships tipping in its favor, and (4) public policy supporting a stay. *Smith*, 212 Ariz. at 410–11 ¶¶ 9–11. The Court of Appeals collapsed all four factors into a single *Purcell* analysis. That approach reflects multiple independent legal errors.

A. *Purcell* Has Not Been Adopted By Arizona Courts and Does Not Displace the *Smith* Factors.

The majority grounded its stay in *Purcell v. Gonzalez*, 549 U.S. 1 (2006), an unsigned, per curiam decision of the United States Supreme Court. *Purcell* arose under the federal Voting Rights Act after the Ninth Circuit enjoined Arizona’s voter identification law barely a month before a federal election. The Supreme Court vacated that injunction, holding that the appellate court had failed to defer to the district court’s discretion and had provided no factual findings or reasoning to justify its intervention on the eve of an election. At its core, *Purcell* is a federal comity doctrine: it counsels federal courts to exercise restraint before overriding state election procedures close to an election, out of respect for state sovereignty and to protect the reliance interests of voters and election administrators.

No precedential Arizona decision has adopted *Purcell* as a free-standing merits rule that displaces the four-factor Arizona stay analysis, making the Court of Appeals’ holding that the Board is likely to succeed in establishing a *Purcell* defense to injunctive relief dubious. The only Arizona authority the majority cited was *Fontes v. Lewis*, CV-24-0251-T/AP, 2024 WL 4625950 (Ariz. Oct. 25, 2024)—an unpublished, non-

precedential order that did not adopt *Purcell* but applied an independent Arizona-law analysis, affirming a superior court decision denying the Secretary of State’s motion for an injunction based on the balance of hardships.

The question is not whether election timing can be relevant in Arizona court proceedings. It can. The question is what analytical role timing plays within Arizona’s established framework.

In Arizona, timing in election law disputes is not considered via the *Purcell* doctrine, which our courts have never adopted but, rather, if at all, via the equitable doctrine of laches. *See Sotomayor v. Burns*, 199 Ariz. 81, 82-83 ¶ 6 (2000). “This doctrine is an equitable counterpart to the statute of limitations, designed to discourage dilatory conduct” and will generally bar a claim only “when the delay is unreasonable and results in prejudice to the opposing party.” *Id.* Here, there is no allegation that the Recorder unduly delayed in bringing or maintaining the underlying action, and so the Court of Appeals may not use the issue of timing to vitiate the preliminary relief he obtained below.

Lewis applied Arizona’s four-factor injunction standard and referenced *Purcell* only by analogy when assessing the third factor—the

balance of hardships—after early voting had already begun and the requested operational change was found impracticable. No. CV-24-0251-T/AP, 2024 WL 4625950 at *1–*2 (Ariz. Oct. 25, 2024) (decision order). Critically, *Lewis* did not hold that *Purcell* independently establishes likely success on the merits, and it did not bypass the merits of the legal claim by treating timing concerns as dispositive of every factor. It also never held that *Purcell* permits a court to avoid the underlying legal questions.

The stay order did precisely that. The merits of the Board’s appeal are statutory: the meaning of “county recorder or other officer in charge of elections” and the scope of the Board’s obligation under A.R.S. § 11-601(2). The stay order did not decide either question. Instead, it concluded that the injunction was “very likely to be vacated on *Purcell* grounds.” But *Purcell* does not determine the meaning of Title 16 or § 11-601(2). Treating an equitable timing consideration as the merits collapses *Smith*’s first factor into the remaining factors and permits the same asserted administrative burden to perform all analytical work.

Purcell is relevant, if at all, only to the equitable assessment of timing, feasibility, administrative burden, and voter reliance.¹ Those considerations must be applied through *Smith*; they cannot replace *Smith*. The stay order’s contrary approach converted a caution about equitable remedies into a rule for deciding the merits of an appeal that concerns statutory authority.

Furthermore, importing *Purcell* wholesale into Arizona state court proceedings would represent a significant doctrinal step—squarely presenting a question of first impression under RPSA 12(b)(3). This Court should resolve that question, and should decline to adopt a principle whose entire rationale—federal deference to state courts—evaporates when the court is itself a state court enforcing state law against local officials.

Purcell’s central concern is preventing last-minute judicial changes to the “rules of the road” that voters and election workers rely upon when casting ballots. *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). The injunction at issue does no such thing. It changes no voter qualification, registration deadline, ballot format,

¹ See *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring) (explaining that *Purcell*’s significance relates to *federal* court—not state court—intervention with state election rules).

voting location, identification requirement, or any other voter-facing rule. It addresses only the internal allocation of authority and resources between two county officials—the elected Recorder and the Board of Supervisors—over functions the Legislature has already assigned. That is not the type of eleventh-hour alteration *Purcell* was designed to prevent.

B. Even if *Purcell* Applies, the Court of Appeals Erred in Its Application Here.

1. The Court of Appeals’s Five Examples of “Operational Disruptions” are Answered by the Statutes.

The Court of Appeals majority’s stay order identified several specific changes it characterized as disruptive departures from established procedure. But each of those examples—presented as evidence that the injunction “hurtl[es] toward real-world consequences”—is answered directly by the text of the governing statutes. The Court of Appeals treated the injunction as though it invented a novel dual-authority structure. It did not. The injunction enforces the allocation of authority that the Legislature already enacted. Examined statute by statute, the disruption the majority feared dissolves.

Drop boxes and poll-worker supervision. The majority suggested that reassigning drop-box authorization and poll-worker

supervision from the Board's Elections Director to the Recorder would create competing chains of command visible to and confusing for voters. It would not. The injunction does not require parallel voting systems or conflicting instructions to voters. It allocates *final authority* over Recorder-administered early-voting functions while permitting Board personnel to continue providing logistical support under a single coordinated written protocol. Existing locations, equipment, workers, and public-facing procedures can remain in place. The official with final legal authority need not be visible to the voter at all, and internal lines of supervision can be clarified without changing any voter's ballot, deadline, polling location, or method of voting. What the majority described as voter-facing disruption is, in operation, an internal management clarification.

On-site early-ballot tabulation. The majority suggested the injunction's assignment of on-site tabulation authority to the Recorder would produce two competing Election Day counting systems. The statute forecloses that reading. A.R.S. § 16-579.01 assigns to the "county recorder or other officer in charge of elections" the decision whether to offer on-site early-ballot tabulation, and specifies that officer's duties: providing a separate processing area, necessary workers and equipment, a

separate tally, and reconciliation. A.R.S. § 16-579.01(A), (B)(1)–(4). Section 16-579.01 does not *create* two systems; it assigns a discrete early-ballot process to a single designated officer. Board personnel may continue performing logistical functions under a coordinated protocol. The statutory allocation of final authority does not require conflicting instructions to workers or voters. There is one process; the statute simply specifies who is in charge of it.

Chain of custody. The majority described the injunction’s chain-of-custody provisions as wresting an established function from the Board and creating duplicative tracking. Again, the statute itself makes the distinction. Section 16-621(A) places counting-center proceedings under the “board of supervisors or other officer in charge of elections.” Subsection (E) *separately* requires the “county recorder or other officer in charge of elections” to maintain the records documenting the chain of custody from early voting through provisional-ballot tabulation. The Legislature drew this line deliberately. The Board may generate transfer logs, delivery receipts, and inventories for materials it handles. The Recorder maintains the complete official record using those source documents. That is

statutory coordination, not duplication—and it is exactly what § 16-621 contemplates.

Separate tally and canvass. The majority expressed concern that § 16-579.01(B)(3)'s requirement of a separate Recorder-generated tally would produce a second canvass conflicting with the Board's statutory canvass authority. It would not. Section 16-579.01(B)(3) requires the Recorder or other officer in charge to categorize and tally on-site early ballots "in the official canvass and other reports"—a component that feeds *into* the canvass, not a competing one. The Board then performs its statutory canvass duties under A.R.S. §§ 16-642 and 16-645 using that tally. One office supplies a statutorily required component; the other completes and transmits the canvass. The provisions are complementary by design, and the majority's concern about a bifurcated canvass was not grounded in the text of either statute.

In sum, the operational disruption the majority catalogued dissolves on contact with the statutes that assign the functions in question. Each example the majority borrowed from the Board's Reply reflects the Board's preferred method of election administration. However, that is a policy question that rests squarely with the Legislature, which has

decided to allocate responsibilities differently than the Board, or the Court of Appeals majority, would prefer. The purported disruption is not an inevitable consequence of the injunction, but of the Legislature's policy judgments that cannot be disrupted by the Court of Appeals.

Furthermore, the order's reference to "the Board's responsibility for the conduct of elections," APP130, also inappropriately assumes the disputed merits. Arizona law divides election functions between the Board and the Recorder; neither office has undifferentiated responsibility for the entire election. The superior court's judgment preserves Board-assigned functions while restraining the Board from exercising Recorder-assigned functions without consent. The Board cannot establish irreparable harm by presupposing that it owns the very authority disputed on appeal.

2. The Board's Own Deliberate Noncompliance Created the Purported Emergency.

Independent of whether *Purcell* is ever appropriate in Arizona state courts, there is an even stronger basis to accept jurisdiction and vacate the stay from the Court of Appeals. The motivating concern underlying *Purcell* is with judicial disruption of established election procedures close to an election. It says nothing about a party that creates the disruption

by its own willful noncompliance with a court order and then invokes the resulting disarray as a shield. When the Board received the April 16 injunction, the 2026 Primary Election was ninety-seven days away. Early ballot mailing was sixty-nine days away. Those are not short timelines; they were fully adequate for compliant transition. The Recorder offered a phased, cooperative, implementation plan. The Board rejected it. The Board instead chose—deliberately and with legal counsel—to continue operating as if the injunction had not been entered: countermanding the Recorder’s directives in the field, passing resolutions that openly defied the injunction, failing to return the IT staff it was required to return, and refusing to return the seized servers, software, and equipment. APP067-73 ¶¶ 6–30.

The “proximity to election” that the Court of Appeals relied upon is entirely the Board’s own creation. Every day of the now-narrow timeline was a day the Board spent in stubborn defiance of the superior court’s order. Allowing a party to manufacture a *Purcell* emergency through its own non-compliance—and then inviting an appellate court to reward that manufactured emergency with a stay—would fundamentally undermine judicial authority. It would mean that any party that loses an election-

administration dispute can simply wait out the clock, run out the calendar, and then invoke proximity to the election as an automatic victory. Courts have consistently refused to permit parties to benefit from their own wrong. The principle applies with particular force in equity, where the Board is both the wrongdoer and the movant. *MacRae v. MacRae*, 57 Ariz. 157, 161 (1941) (“It is a cardinal rule of equity that he who comes into a court of equity seeking equitable relief must come with clean hands.”).

The superior court found—and the record confirms—that the Board had nine months of litigation to plan for compliance and made no contingency plans whatsoever. APP045-46. That is not misfortune. It is a strategy—and this Court should not allow *Purcell* to become a vehicle to make that strategy succeed.

II. The Court of Appeals Materially Misread the Superior Court’s Findings.

The stay order also rests on a material misreading of the superior court’s findings. The majority cited Paragraph 28 of the injunction—which identified “concrete operational harms”—as evidence that the injunction’s changes to election administration implicate the public’s voting experience and therefore trigger *Purcell*. But the majority reversed the

causal direction of that paragraph. Paragraph 28 did not find that transferring authority back to the Recorder would create operational harms. It found that the Board's unlawful division of authority—its ongoing refusal to return the Recorder's IT systems while simultaneously claiming control over his statutory functions—was *already* causing concrete operational harms. The injunction was the *remedy* for that dysfunction, not its source.

The logical error is significant. A judicial finding that an unlawful status quo produces operational risk is not a concession that restoring lawful authority will produce voter confusion. Those are opposite propositions. By treating the superior court's stated *reason for granting relief* as a reason to *suspend* that relief, the Court of Appeals' majority transformed the Recorder's most compelling evidence of injury into a weapon against him. *Purcell* was never designed to work that way. It protects voters from the disruption of judicial intervention; it does not protect a party's unlawful hold on authority from judicial correction by re-labeling that correction as the disruption.

III. This Court’s Decision in *Arizona Public Integrity Alliance* Forecloses any Categorical “Proximity” Bar to Relief.

This Court’s decision in *Arizona Public Integrity Alliance* forecloses any categorical rule that election proximity requires preservation of an unlawful practice. In that case, this Court accepted special action jurisdiction and enjoined the then-Maricopa County Recorder from including unlawful ballot instructions with mail-in ballots—just days before mailing was scheduled to begin. This Court granted relief against unauthorized election administration despite an approaching election because compliance remained feasible. 250 Ariz. at 64–65 ¶¶ 26–30. *Arizona Public Integrity Alliance* further held that “Plaintiffs’ delay does not excuse the County from its duty to comply with the law.” *Id.* at 65 ¶ 30. Here, there has been no allegation of delay on the part of the Recorder, making *Arizona Public Integrity Alliance* all the more applicable. This Court also expressly concluded that “the balance of hardships favors Plaintiffs” when the defendant is violating the law and compliance remains achievable before the relevant election deadline. *Id.* at 64–65 ¶¶ 26–29. It enjoined the unlawful conduct.

The same principles require an actual inquiry here into legality and feasibility—not automatic suspension based on the election calendar.

Arizona Public Integrity Alliance establishes that timing is not a license to continue conduct judicially determined to be unlawful and that the proper inquiry includes whether compliance can be achieved without impairing election administration.

IV. Proper Application of the *Smith* Factors Strongly Favors Vacating the Stay.

A. Likelihood of Success on the Merits.

Likelihood of success concerns the merits of the appeal. The Board's appeal challenges the superior court's construction of Title 16 and A.R.S. § 11-601(2). The stay order did not analyze either issue. It instead concluded that the injunction was "very likely to be vacated on *Purcell* grounds." APP128. But *Purcell* does not itself resolve the statutory merits. At most, it informs the equitable assessment of timing, feasibility, and public consequences. Treating an equitable timing principle as the merits collapses *Smith's* first factor into the remaining factors and eliminates the required inquiry into whether the appellant is likely to prevail on the issues actually presented by the appeal.

The same analytical problem affects the remaining factors. The order identified administrative consequences as the reason *Purcell* applied, then used those same consequences as irreparable harm, the balance of

hardships, and public policy. APP129-130. A sliding scale permits a weaker showing on one factor when another is exceptionally strong; it does not permit one disputed premise to substitute for four distinct inquiries. *Smith*, 212 Ariz. at 410–11 ¶¶ 9–11.

The Court of Appeals deliberately declined to address the merits, resolving the stay entirely on *Purcell* grounds. That decision speaks for itself: the majority could not find that the Board was likely to succeed on the merits, and so it did not try. The Legislature—the body whose intent controls statutory construction—filed an amicus brief in the superior court and the Court of Appeals urging the Recorder’s interpretation APP003–APP026, APP097–APP109, expressly confirming that the superior court’s reading of the statute was correct. The superior court’s twelve-page ruling applied multiple canons of construction—text, structure, the surplusage canon, the *expressio unius* canon, and constitutional avoidance—and each compelled the same conclusion. APP033–APP044. To hold that the Board is likely to succeed on the merits is to accept that a board of supervisors may unilaterally strip an independently elected constitutional officer of more than a hundred statutory election functions.

The Recorder has a strong—indeed overwhelming—likelihood of success on the merits.

The Board’s central argument is that the phrase “county recorder or other officer in charge of elections”—which appears 111 times in Arizona’s election statutes in Title 16—should be interpreted to mean that any board-appointed official may perform those functions without the Recorder’s consent. That argument is refuted by the text of the statutes, by every relevant canon of statutory construction, and by binding precedent.

First, the text: the phrase vests authority in the County Recorder, with the alternative officer serving as a permissible designee when the Recorder consents to such delegation. The trial court correctly observed that Arizona election statutes use four distinct formulations to allocate election authority: (1) directly to the Recorder; (2) directly to the Board; (3) to the “county recorder or other officer in charge of elections”; and (4) to the “board of supervisors or other officer or authority in charge of elections.” “[W]hen the legislature uses different wording within a statutory scheme, it intends to give a different meaning and consequence to that language.” *Egan v. Fridlund-Horne*, 221 Ariz. 229, 239 ¶ 37 (App. 2009) (citation omitted). If the Legislature had intended the Board’s Elections

Director to be freely interchangeable with the Recorder under the 111 statutes that specifically delegate authority to the “county recorder or other officer in charge,” it would have used the formulation it employed in the 16 statutes it allocated to the “board of supervisors or other officer.” It did not. That 111-to-16 disproportion itself demonstrates that the Legislature viewed the Recorder as the county’s principal election officer for the functions at issue.

Second, the surplusage canon confirms this reading. Under the Board’s interpretation, the distinction between the two phrases collapses entirely—both would permit the Board to assign the relevant function to its own officer without the Recorder’s input. That renders the distinction between the two formulations meaningless and violates the cardinal principle that courts should “give meaning to each word, phrase, clause, and sentence so that no part of the statute will be void, inert, redundant, or trivial.” *Jurju v. Ile*, 255 Ariz. 558, 562 ¶ 22 (App. 2023) (cleaned up).

Third, the *expressio unius* canon applies. As this Court has recognized, where the Legislature “has specifically included a term in some places within a statute 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 Ariz. v. Ariz. Dep't of Child Safety, 251 Ariz. 458, 463 ¶ 20 (2021) (cleaned up). The Legislature expressly granted the Board authority to appoint an “officer in charge of elections” in the formulation it used for Board-specific functions; it made no such grant when using the Recorder-specific formulation.

Fourth, constitutional avoidance supports the Recorder’s reading. Under *Molera v. Hobbs*, 250 Ariz. 13, 24-25 ¶ 37 (2020), courts must construe statutes to avoid serious constitutional doubts. The Board’s interpretation would permit one branch of county government to involuntarily strip an independently elected constitutional officer—the Recorder—of more than a hundred statutory functions and vest them in an official of the Board’s choosing. That raises profound structural constitutional concerns that the Legislature cannot have intended to authorize *sub silentio*.

Indeed, as mentioned above, the Legislature itself filed amicus briefs with the superior court and Court of Appeals urging them to adopt the Recorder’s proffered interpretation of the statute. APP003–APP026, APP097–APP109.

The Board also has not shown a strong likelihood of success on A.R.S. § 11-601(2). The trial court found that A.R.S. § 11-601(2)’s

mandate that the Board fund the “necessary expenses” of county officers encompasses not merely nominal funding, but the provision of systems, staff, and resources that allow the Recorder to exercise meaningful control over his statutory duties. The superior court did not hold that every county officer is entitled to any technology the officer demands. It found, after an evidentiary hearing, that the identified personnel and systems were necessary for the Recorder to perform statutory duties and that the Board’s control over the personnel and systems at issue had produced concrete outages and operational impairments. The injunction accordingly gives the Board two means of compliance: return the necessary resources to the Recorder’s control or fund adequate replacements.

This holding is directly supported by this Court’s decision in *Lockwood v. Board of Supervisors of Maricopa County*, 80 Ariz. 311, 316 (1956), which held 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. It is also directly supported by the Court of Appeals’ decision in *Maricopa County v. Biaett*, 21 Ariz. App. 286 (1974), which held that the Board could not usurp the Recorder’s statutory powers over voter registration, that such expenses

as the Recorder incurred to contest that usurpation were “necessary expenses.”

The trial court also noted a telling fact the Board cannot explain away: every other elected county officer in Maricopa County has its own IT department reporting to that officer. APP035 ¶ 11. Only the Recorder was stripped of this resource, at a moment deliberately chosen to preempt an incoming Recorder who had just won a competitive election. The Board’s claim that providing shared IT services satisfies A.R.S. § 11-601(2) is refuted by its own conduct toward every other county officer. As the superior court found, “[t]he 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.” APP035 ¶ 11.

The Board’s argument that the injunction “proves too much” because transferring the Recorder’s VRAS/ERO systems to the Recorder

would deprive the Board of custody of systems it uses is a red herring. The trial court's order does not require a permanent siloing of systems: it requires the Board to return the systems to the Recorder or fund systems adequate for him to perform his duties, and explicitly leaves the mechanics of transition to negotiation. The Recorder has voluntarily committed to maintaining the Board's access throughout any transition. APP069 ¶ 14, APP078. There is no oxymoron in the injunction—there is only the Board's unwillingness to cooperate. Indeed, the unreasonableness of the Board's position is demonstrated by the fact that the VRAS/ERO systems were developed *within the Recorder's Office* and were housed there for decades before the Board took control of them in late 2024. APP034 ¶ 5, Their return to the Recorder merely restores the status quo that existed for decades.

B. Irreparable Harm.

Because the Recorder is likely to succeed on the merits, the harm from the stay is concrete and severe: the 2026 Primary Election will be administered unlawfully, by officials without legal authority to administer it. The voters of Maricopa County exercised their franchise to elect Recorder Heap to administer the statutory election duties assigned to the

Recorder. The stay deprives them of their chosen officer's lawful authority. If the primary proceeds under the stayed arrangement, a later decision cannot restore the Recorder's statutory authority for an election already conducted. Beyond constitutional injury, whatever operational structures are cemented into place for the 2026 Primary will be difficult and disruptive to undo for the 2026 General Election, deepening the harm and potentially creating additional purported reliance interests the Board will use to resist future compliance. This is the kind of harm that ordinary appellate review cannot remedy after the fact and that supports both special-action jurisdiction and denial of a stay.

The Board's claimed irreparable harm—operational confusion—is both speculative and self-created. Every operational difficulty the Board has identified stems directly from its own decision not to comply with the injunction. APP037 ¶ 25, APP045-46. As the Recorder confirmed in writing on May 5, 2026, he is committed to protecting the Board's access to all IT systems throughout any transition period. APP069 ¶ 14, APP078. The Proposed Contempt Order further demonstrates how the election can proceed smoothly under the injunction, with specific protocols for chain of custody, ballot courier teams, drop box operations, site setup and

breakdown, command center operations, and IT access—all structured to protect both sides’ legitimate functions. APP110–APP125.

The superior court made a specific factual finding—which this Court must defer to—that “The Recorder has consistently expressed willingness to cooperate with the Board. *The Court does not see the same willingness from the Board.*” APP037 ¶ 25 (emphasis added). The Recorder has offered cooperation at every turn. He offered mediation in June 2025. APP034 ¶ 7. He offered a detailed phased transition plan in May 2026 with specific dates and a commitment to protect the Board’s operations. APP078. The Board has rejected or ignored every overture. The operational disruption the Board warns of is the predictable consequence of its own intransigence, not any inherent flaw in the court’s order.

C. Balance of Hardships.

Arizona Public Integrity Alliance resolves the balance-of-hardships inquiry in the Recorder’s favor: when the defendant is violating the law and compliance is achievable, the balance tips to the party seeking enforcement. 250 Ariz. at 64–65 ¶¶ 26–29. Any hardship on the Board from complying with the injunction is a hardship of its own making: it refused to plan for compliance during nine months of litigation and has spent the

sixty days since the injunction actively resisting it. APP045-46, APP067-73 ¶¶ 6-30. A party may not manufacture its own hardship through non-compliance and then cite that hardship as a ground for equitable relief.

Additionally, the trial court made factual findings that show the *Recorder* is the party suffering harm from the Board's conduct. Specifically, it found that the IT outages caused by the Board's mismanagement—including a VPN outage during UOCAVA voting and a recordation system outage in January 2026—are the direct product of the Board's control over the Recorder's systems. APP035-36 ¶¶ 12-16. The Court of Appeals completely ignored these harms. Every day the stay remains in effect is another day the Recorder cannot implement the change-management controls and maintenance-window scheduling that would prevent such outages from recurring during a critical election period.

There is a further, concrete dimension to the balance of harms that the Court of Appeals conspicuously ignored: the harm to the Recorder and to Maricopa County voters from *delaying* implementation of the April 16 Order at this precise moment in the election calendar. For more than two months, Recorder Heap has been planning and preparing for the 2026 primary election under the terms of the Court's April 16 Order.

His Office has structured its operational planning, staffing decisions, site designations, and attempts at cooperative arrangements with the Board's Elections Department on the premise that the Order is in effect and that the Recorder's statutory authority over early voting, voter registration, and ballot replacement sites will be fully operative this cycle. The Court of Appeals' stay forces the Recorder's Office to abandon over two months of compliance work and restart from scratch under the very framework the superior court has already found to be unlawful, at exactly the moment when that disruption would be most damaging to voters. That is not stability. It is whiplash. APP073-74 ¶¶ 31-34.

The balance of harms is also shaped by a feature of this litigation the Board would prefer this Court to overlook: the parties *themselves* identified the need for judicial clarity on their respective responsibilities as a central purpose of this suit. The Board filed its own counterclaim and affirmatively sought a judicial interpretation of the "other officer in charge of elections" statutory language so that the parties could better understand and implement their respective roles. APP033, APP074 ¶ 33. The April 16 Order provided exactly that clarity, for the first time in the history of this dispute. A stay strips that clarity away. It

returns both offices to the same state of legal ambiguity and operational conflict that generated this lawsuit in the first place—with no authoritative allocation of responsibilities, no agreed operational framework, and a primary election bearing down on both offices. That is not a harm the Board can fairly attribute to the Court’s Order. It is the harm the Board will have caused by seeking to suspend the only resolution this dispute has ever received. The voters of Maricopa County deserve to have their elections administered by officials who know what the law requires of them. A stay denies them that. APP074 ¶ 33.

D. Public Policy.

The superior court made a finding directly on point: “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.” APP043 ¶ 29. A stay that prolongs the Board’s unlawful administration of Recorder functions—and denies the Recorder the independent control over his systems that the law requires—does not serve voter confidence. To the

contrary, it allows elections to be administered in a manner a court has already declared unlawful, casting a shadow over the validity of those results.

Beyond the superior court's findings, public policy is powerfully served by a rule requiring that parties must comply with court orders. As this Court held in *Arizona Public Integrity Alliance*, 250 Ariz. at 64 ¶ 27, “public policy and the public interest are served by” ensuring that election officials comply with the law. A stay that keeps the Board in control of the Recorder's functions serves exactly the opposite of that interest. A rule permitting strategic non-compliance as a path to appellate relief would corrode the authority of Arizona courts and signal that a sufficiently determined party can evade any injunction simply by running out the clock. That result is incompatible with the rule of law.

The Court of Appeals ignored the fact that the Board came seeking equitable relief while its own hands are demonstrably unclean. “It is a cardinal rule of equity that he who comes into a court of equity seeking equitable relief must come with clean hands.” *MacRae*, 57 Ariz. at 161.

A stay pending appeal is an equitable remedy. Indeed, the standards governing the grant of a stay pending appeal are the same as those

for the equitable remedy of a preliminary injunction. The Board, therefore, needed to come to the Court of Appeals with clean hands. It did not.

The superior court—the tribunal that observed the Board’s conduct over the full arc of this litigation—expressly found that the Board engaged in “gamesmanship” and “shenanigans” designed to “interfere with or jeopardize the integrity of these proceedings.” APP032. That finding is not a characterization offered by opposing counsel; it is a judicial determination by the judge who presided over this case. It encompasses a course of conduct that included: retaliatory extra-judicial subpoenas issued against witnesses who had just testified for the Recorder, in circumstances that caused the trial court to enter a TRO to protect those witnesses; the compelled, extra-judicial examination of an adverse party under threat of removal from elected office; the use of coerced testimony to fuel a procedural motion that the trial court soundly rejected, APP027-32; and the passage of a resolution designed to moot the litigation, adopted without the public notice the Open Meeting Law requires and never implemented in good faith. APP066-67 ¶¶ 3-6.

That pattern only deepened after the entry of the April 16 Order. As explained above, since that ruling, the Board has refused to return the

seized IT positions or equipment. It has deployed its Elections Director to countermand the Recorder's directives at ballot replacement sites the Court declared to be under the Recorder's exclusive authority. And it unilaterally passed a drop box resolution that openly defies the April 16 Order, in the face of a written warning that doing so could expose Board members and staff to criminal liability. APP069-73 ¶¶ 15–30. A party that continues to violate a court order while simultaneously asking an appellate court to keep that order suspended is not entitled to the equitable solicitude a stay requires.

The Board's inequitable conduct is not a collateral grievance—it goes to the very heart of the relief it sought. The Board asked for a stay of an injunction requiring it to return resources it has continued to withhold in defiance of that injunction. It asked for a stay of enforcement of an order protecting the Recorder's authority over early voting—while its own employees have been actively usurping that authority in the field. And it asked for equitable relief while actively taking steps that increased, not reduced, the harm to the Recorder and to the public it was elected to serve. Equity has long refused to extend relief under such circumstances.

V. The Recorder Proposed a Comprehensive, Workable Plan for Compliance that Eliminates any Legitimate Operational Concern.

The Proposed Contempt Order, filed with the superior court on June 16, 2026, provides: a binary choice for the Board to either return all IT systems and staff to the Recorder’s operational control or fund adequate independent MCRO IT infrastructure—both by a date certain with concrete compliance deadlines; a full set of early voting operational directives that preserve the Board’s logistical and administrative infrastructure while placing direction and final decision-making authority in the Recorder’s hands, precisely as the statute requires, *see* A.R.S. § 16-542(A) (“The county recorder may establish on-site early voting locations at the recorder’s office, which shall be open and available for use beginning the same day that a county begins to send out the early ballots. The county recorder may also establish any other early voting locations in the county the recorder deems necessary.”); specific protocols for chain of custody, ballot courier teams, drop box operations, site setup and breakdown, command center operations, communications, and GIS and IT data support; explicit protection of the Board’s access to shared systems throughout the transition; and a compliance reporting mechanism with a designated

liaison, court-supervised dispute resolution, and reservation of jurisdiction for any necessary modifications. APP113–APP125. This is not a recipe for confusion. It is a carefully engineered operational plan designed to protect every legitimate interest of both offices. The practical disruption the Board conjures is an artifact of its own resistance, not of the injunction itself.

The Recorder does not ask this Court to adopt or enforce the proposed contempt order. He cites the proposal only to demonstrate that a concrete transition framework has been offered—one that preserves existing personnel and voter-facing procedures, maintains reciprocal system access, assigns liaisons, and provides expedited dispute resolution. Whether any part of that proposal should be ordered remains for the court with enforcement jurisdiction. Its present relevance is narrower: the Board’s assertion that compliance is inherently unmanageable is not supported by the absence of an available operational framework.

REQUEST FOR EXPEDITED RELIEF

Pursuant to RPSA 11(g), which provides that “[f]or good cause, a court may suspend or accelerate any procedure for an appellate special action,” Recorder Heap requests that this Court order expedited briefing

given the June 24 early ballot mailing deadline and the July 21 Election Day. Specifically, Recorder Heap requests that: (1) Respondents file any response no later than June 22, 2026, with no reply permitted; and (2) this Court issue a decision no later than June 23, 2026; or (3) in the alternative, if more time is required, that this Court stay the Court of Appeals' stay, pending resolution of this petition, pursuant to RPSA 16(c). The June 24 early ballot mailing deadline is a statutory obligation. *See* A.R.S. § 16-542(C). Every day that the Court of Appeals' stay remains in place is a day the Recorder cannot lawfully exercise the statutory authority the superior court correctly recognized as his own.

CONCLUSION

The Court of Appeals treated an inapplicable equitable timing principle as the merits of a statutory appeal, relied on the same disputed premise for all four stay factors, and imposed a blanket stay without considering statute-specific or tailored relief. The stay rewards noncompliance, penalizes the rule of law, and guarantees that the 2026 Primary Election will be administered in violation of Arizona statute. This Court should accept jurisdiction, vacate the Court of Appeals' stay, and restore the superior court's injunction.

If the Court concludes that immediate implementation of any discrete aspect of the injunction presents a concrete operational risk, the remedy should be tailored to that risk. The Court could preserve existing voter-facing locations, deadlines, ballot formats, personnel assignments, and equipment while requiring reciprocal system access, a single written operational protocol, preservation of each office's undisputed statutory functions, and expedited judicial resolution of any statute-specific disagreement. The existence of narrower relief defeats the necessity of a blanket stay restoring all disputed authority to the Board.

Alternatively, the Court should vacate the stay and remand with instructions to apply the four *Smith* factors independently, decide likelihood of success on the statutory merits, correct the misreading of paragraph 28, and consider whether any demonstrated operational concern warrants only limited interim relief.

Dated: June 19, 2026

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