

ARIZONA SUPREME COURT

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 et al.,

Respondents.

Arizona Supreme Court
No. CV-26-0189

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

Maricopa County Superior Court
No. CV2025-202621

BRIEF OF AMICI CURIAE PRESIDENT PETERSEN AND SPEAKER MONTENEGRO IN SUPPORT OF THE PETITION FOR SPECIAL ACTION

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INTRODUCTION

Senate President Warren Petersen and House Speaker Steve Montenegro (“Amici”) submit this amicus brief¹ in support of Petitioner’s Petition for Special Action filed on June 19, 2026 (“Petition”). This brief focuses on the Petition’s satisfaction of the first factor for vacating the Court of Appeals’ stay, “likelihood of success on the merits.” *Ariz. 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 Respondents did not demonstrate a likelihood of success on the merits in the Court of Appeals 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

¹ Much of the substance of this brief was also presented to the Superior Court and the Court of Appeals.

the first instance for that duty to be carried out by the first officer/entity listed in the statute. In this 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*, 260 Ariz. 136, __ §13 (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]lack 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. § 16-544.²

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

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

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 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. § 16-647.³

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)).

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

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 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.

CONCLUSION

For the foregoing reasons, the Court should accept jurisdiction, vacate the Court of Appeals’ stay, and restore the superior court’s injunction.

RESPECTFULLY SUBMITTED this 22nd day of June, 2026.

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