

**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. CV-26-0189-SA

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

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

**MARICOPA COUNTY ATTORNEY RACHEL MITCHELL'S MOTION
FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE***

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Maricopa County Attorney Rachel Mitchell (the “County Attorney”), having read the Petition for Special Action (“Petition”) filed by Maricopa County Recorder Justin Heap (the “Recorder”), moves for leave to file the brief, lodged contemporaneously herewith, as *amicus curiae* in this proceeding. The Court should allow the County Attorney to file this brief because she has “an interest in another case that the decision in the present case may affect” and files this brief to provide the Court with “information, perspective or argument that can help the appellate court beyond the help that the parties’ lawyers provide.” ARCAP 16(b)(1)(C)(ii)–(iii).

Indeed, Maricopa County Recorder Justin Heap (the “Recorder”) himself identifies the separate consolidated litigation involving his dispute with the County Attorney as a “related case[.]” to his Petition. *See* Pet. at 8. In that “related case[.],” the County Attorney seeks to enjoin the Recorder from using counsel other than the one appointed to him by the County Attorney. *See Mitchell v. Heap*, No. 1 CA-CV 26-0165. The Recorder’s unauthorized counsel—America First Legal Foundation—has seized on the now stayed April 16, 2026, Order to assert that it is the sole entity authorized to provide the Recorder with legal services in any way connected to the Order. For that reason, the County Attorney recently filed a Motion for Temporary Restraining Order and Preliminary Injunction to enjoin unappointed counsel from providing general outside counsel services to the

Recorder. *See* Mot. for TRO and Prelim. Inj., *Mitchell v. Heap*, No. CV2025-020621, (Maricopa Cnty. Sup. Ct. June 4, 2026). Given the Recorder’s reliance on the April 16, 2026, Order, this Court’s determination of the legal effect of that Order “may affect” the separate litigation between the County Attorney and the Recorder. ARCAP 16(b)(1)(C)(ii).

Likewise, the County Attorney’s separate litigation with the Recorder allows her to provide context to the Court beyond what the parties have argued. As detailed in her amicus brief, the Recorder lacks statutory authority to retain his own counsel to provide litigation services before this Court. The absence of such statutory authority, means he must use counsel appointed for him by the County Attorney to litigate his dispute with the Maricopa County Board of Supervisors (the “Board”). Because the County Attorney has not authorized America First Legal to represent the Recorder in his dispute, the Petition is an unauthorized filing and should be dismissed without prejudice for that reason. This issue has not been developed in *Heap v. Galvin*, and the County Attorney as the elected “public prosecutor” of Maricopa County, *see* A.R.S. § 11-532(A), is the proper party to address that important interest for purposes of the Recorder’s Petition. ARCAP 16(b)(1)(C)(iii).

The County Attorney cannot sit by while an unauthorized attorney is performing her duties to the other county offices. The County Attorney is the head

of the Maricopa County Attorney’s Office—the government law firm for the country’s fourth largest county. As the head of a county agency, standing to file an amicus brief is likewise supported by ARCAP 16(b)(1)(B), which allows an amicus to be filed as of right for state agencies and counties.

The Board in its entirety has consented to the County Attorney’s filing of an amicus brief in this Special Action. The Recorder, however, has opposed. He has claimed that ARCAP 16(a) *forbids* the filing of an amicus brief for two reasons. First, he claims that the County Attorney’s statutory duty to act as counsel for both the Board and the Recorder means she is not “independent of any party to the appeal.” Second, he claims that “*Heap v. Galvin* and *Mitchell v. Heap* are consolidated,” so “it is at least an open question whether she is technically a party to the appeal.” Neither reason can withstand scrutiny.

While the County Attorney generally has a duty to represent county officers in civil litigation, *see Romely v. Daughton*, 225 Ariz. 521, 525 ¶ 19 (App. 2010) (“The county attorney of each county ... has a duty (and the authority) to represent the county in civil litigation.”), she cannot undertake the representation when two of her government-agency clients are adverse to one another. *See* ER 1.7. When that occurs, she must appoint outside counsel for each officer and represent neither in the litigation. *See* Arizona Prosecuting Attorneys’ Advisory Council, *Government Lawyers Ethics Manual* 18–19 (1st ed. 2025); *see also Romley v.*

Arpaio, 202 Ariz. 47, 54 ¶ 27 (App. 2002) (“[C]ounty officials must use counsel obtained by the County Attorney to represent their interests....”).

That is the process the County Attorney followed in *Heap v. Galvin*: she appointed counsel for the Board, attempted to appoint counsel for the Recorder, has remained neutral in the dispute, and has taken no position on the merits of the dispute. In fact, the County Attorney’s brief expressly makes clear that “if properly appointed counsel determines that the Petition should be re-filed in the exact same form, raising the exact same arguments, the County Attorney would have no objection.” The County Attorney is not counsel for either side in *Heap v. Galvin*.

Nor is she a party to *Heap v. Galvin* simply because the cases are consolidated, which the Recorder moved for and all parties stipulated. As the Recorder himself acknowledges, the appeals from the consolidated cases are proceeding on two separate tracks. *See* Pet. at 8 (related cases). The County Attorney has not participated in the *Heap v. Galvin* appeal and is not even on the service list for the filings in that appeal, including the Recorder’s Petition. She has not taken any position with respect to the merits of that separate dispute. *Heap v. Galvin* and *Mitchell v. Heap* are two distinct cases addressing distinct legal issues—consolidation only means that they are being heard by the same judge because they arise out of a common core of operative facts. *Yavapai County v. Superior Court*, 13 Ariz. App. 368, 370 (1970) (explaining that consolidation

“does not merge the suits into a single cause or change the rights of the parties”).

When an unauthorized counsel is representing a government entity and usurping the authority of the County Attorney, the County Attorney has an obligation to bring the reality to the Court’s attention. No person or entity other than the County Attorney has provided financial resources for the preparation of her amicus brief. Accordingly, the County Attorney respectfully requests that this Court accept the Brief of *Amicus Curiae* lodged with this Motion.

RESPECTFULLY SUBMITTED this 25th day of June 2026.

SNELL & WILMER L.L.P.

By: /s/ Brett W. Johnson

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