

SUPREME COURT OF ARIZONA

JUSTIN HEAP,

Petitioner,

v.

THOMAS GALVIN, et al.,

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

**BRIEF OF AMICUS CURIAE STATE OF ARIZONA
IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICUS CURIAE

The State of Arizona files this brief as of right under ARCAP 16(b)(1)(B). The State has an interest in ensuring that elections are administered smoothly and according to law. The State also has an interest in ensuring that appellate courts may stay injunctions pending appeal when the balance of hardships and public policy require.

INTRODUCTION

The Court of Appeals wisely stayed a sweeping permanent injunction that the superior court issued on the eve of an election season. The injunction would have prohibited Maricopa County's Board of Supervisors from engaging in election-related activities it has long performed, creating a serious risk of chaos.

Maricopa County's Recorder seeks to overturn the stay because the Court of Appeals has not yet decided whether the superior court's interpretation of certain election statutes was correct. The State agrees that the Court of Appeals should, in due course, carefully interpret the election statutes at issue. The question is when. For now, the balance of hardships and public policy justify a stay while the Court of Appeals takes the time needed to review the superior court's statutory interpretation.

On the merits, the superior court's injunction violated basic principles of statutory interpretation. Before a court may enjoin a governmental entity from implementing one or more statutes, it must analyze each statute. But here, the superior court enjoined the Board from implementing dozens of statutes, without even purporting to analyze those statutes individually. In particular, the superior court assumed, without any individualized analysis, that the key statutory phrase "county recorder or other officer in charge of elections" means the same thing across the dozens of statutes in which the legislature has added it throughout the last several decades. But statutory interpretation requires context, and the superior court considered none, leading to bizarre results. Its bulk bin statutory interpretation was wrong as a matter of law and will likely require vacatur and remand, if not reversal, when the Court of Appeals reaches the merits. That too warrants a stay.

ARGUMENT

I. To issue a stay, the Court of Appeals did not need to decide that the superior court's statutory interpretation was wrong.

By rule, an appellate court may stay an injunction pending appeal. ARCAP 7(C) (authorizing appellate courts to "suspend . . . an injunction while an appeal is pending" and "enter any order appropriate to preserve

the status quo”). The rule does not specify which factors the appellate court must consider when deciding whether to issue a stay. This Court has adopted a four-factor framework. *Smith v. Arizona Citizens Clean Elections Commission*, 212 Ariz. 407, 410–11, ¶ 9 (2006).

Here, the Court of Appeals stayed a permanent injunction that the superior court had issued on the eve of an election season. The Recorder seeks to overturn the stay, primarily on the ground that the Court of Appeals has not yet decided whether the superior court’s interpretation of certain election statutes was correct on the merits. But the Court of Appeals was not required to decide whether the superior court’s statutory interpretation was correct at this stage. This is for two reasons.

First, the superior court’s permanent injunction relied not only on an interpretation of election statutes, but also on equitable conclusions—including that the injunction will not create severe hardship or serious public policy concerns. Those equitable conclusions were wrong, at least for the upcoming 2026 election season. Thus, a stay pending appeal was warranted.

Second, even if the Court of Appeals needed to analyze the superior court’s statutory interpretation to some extent, the presence of serious questions on the matter easily justify a stay here.

A. The superior court’s injunction would create severe hardship and serious public policy concerns for the 2026 election season, so a stay is warranted.

To obtain a permanent injunction, the Recorder was required to show (1) that he is correct on the merits of his statutory interpretation, (2) that he will be harmed in a manner irreparable by damages, (3) that the balance of hardships favors him, and (4) that public policy favors his requested injunction. *Brown v. City of Phoenix*, 258 Ariz. 302, 308, ¶ 17 (App. 2024).

All four showings are necessary. In particular, the U.S. Supreme Court has explained that, when the balance of hardships and public policy strongly weigh against an injunction, that “alone requires denial of the requested injunctive relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 23–24 (2008). This is because “a[n] injunction is a matter of equitable discretion; it does not follow from success on the merits as a matter of course.” *Id.* at 32.

Here, the balance of hardships and public policy strongly counsel in favor of maintaining the status quo and thus weigh strongly against the permanent injunction the superior court issued, at least for the 2026 election season. As the Court of Appeals explained, this case presents “a live conflict hurtling toward real-world consequences in elections about to begin,” and everyone agrees about “the importance of avoiding serious administrative

confusion in the 2026 election.” Stay Order at 4–5. And that was two weeks ago. The balance of hardships and public policy counsel weigh even more strongly in favor of the status quo now that the 2026 election season is further underway.

As a matter of equity, when the balance of hardships and public policy weigh strongly against an injunction, an appellate court may vacate the injunction without evaluating the merits. Indeed, that is what the U.S. Supreme Court did in *Winter*. See 555 U.S. at 24–32 (vacating injunction based on balance of hardships and public policy and specifying “we do not address the underlying merits of plaintiffs’ claims”).¹ And if an appellate court may *vacate* an injunction in such situations without evaluating the merits, it follows that an appellate court may also take the smaller interim step of *staying* an injunction in such situations without evaluating the merits.

The Recorder argues that this Court’s four-factor *Smith* framework *always* requires appellate courts to evaluate the merits when deciding whether to stay an injunction. This is because, as the Recorder points out,

¹ *Winter* involved a preliminary injunction, whereas this case involves a permanent injunction. But the U.S. Supreme Court’s reasoning applies in both contexts. *Id.* at 32.

the first *Smith* factor is whether the party seeking a stay has shown “a strong likelihood of success on the merits.” 212 Ariz. at 410, ¶ 10. But there are several problems with the Recorder’s view.

First, the Recorder’s view would imply that the U.S. Supreme Court was wrong in *Winter* to vacate an injunction without addressing the merits. But the U.S. Supreme Court’s explanation of equitable principles in *Winter* was sound. So, to the extent this Court’s four-factor framework in *Smith* could be read as always requiring appellate courts to evaluate the merits when deciding whether to stay an injunction (no matter how severe the hardships and no matter how serious the public policy concerns), this Court may wish to update its framework to account for the U.S. Supreme Court’s explanation in *Winter*—decided two years after *Smith*.

Second, this Court in *Smith* was not facing a situation where the balance of hardships and public policy strongly weighed against an injunction. In *Smith*, this Court adopted the four-factor framework for stays with little discussion, finding it “useful” and observing that lower courts and parties had previously applied it. 212 Ariz. at 410, ¶ 9. Having adopted the framework, this Court denied a stay after concluding that the plaintiff “would not succeed on his claims and that the judgment of the superior court

should be affirmed.” *Id.* at 411, ¶ 11. The question of how the *Smith* framework applies in a case like this has not been decided by this Court.

Third, although the first *Smith* factor is phrased in terms of whether the party seeking a stay is likely to succeed “on the merits,” the more relevant inquiry is whether the party seeking a stay is likely to succeed *on appeal*. After all, if a party seeking a stay is likely to succeed on appeal and ultimately persuade the appellate court to vacate the injunction, then the interim step of staying the injunction makes sense. And success *on appeal* can happen for non-merits reasons, as shown by the Supreme Court’s decision in *Winter*. In other words, when a defendant seeks to stay an injunction on appeal, the defendant’s likelihood of success on appeal “encompasses and mirrors the plaintiff[’s] likelihood of satisfying all four” injunction factors—including a favorable balance of hardships and public policy. *Am. Fed’n of Tchrs. v. Bessent*, No. 25-1282, 2025 WL 1023638, at *3 (4th Cir. Apr. 7, 2025) (Richardson, J., concurring). Here, because the Board showed that the balance of hardships and public policy weighed strongly

against the superior court's permanent injunction, the Board was likely to succeed on appeal – at least with respect to the 2026 election season.²

For these reasons, appellate courts deciding whether to stay an injunction pending appeal need not *always* evaluate the merits. When, as here, the balance of hardships and public policy weigh strongly against an injunction, appellate courts should stay the injunction.

B. Even if the superior court's statutory interpretation must be evaluated on the merits, the presence of serious questions would suffice.

Alternatively, even if the Court of Appeals should have evaluated the superior court's statutory interpretation on the merits to some extent, all that was necessary was the presence of serious questions on the merits. This is because the *Smith* framework uses a scale that is “not absolute, but sliding.”

212 Ariz. at 410, ¶ 10. “The greater and less reparable the harm, the less the

² Although the *Smith* four-factor framework for a stay resembles the traditional four-element test for an injunction, a party seeking a stay should not be held to quite as strict a standard as a party seeking an injunction. This is because an injunction is a coercive exercise of judicial power, whereas a stay is a temporary restraint of power. *See Nken v. Holder*, 556 U.S. 418, 428 (2009) (explaining that an injunction is an “extraordinary remedy” that “directs the conduct of a party, and does so with the backing of [the court's] full coercive powers,” whereas a stay “operates upon the judicial proceeding itself” including by “temporarily divesting an order of enforceability”) (simplified).

showing of a strong likelihood of success on the merits need be.” *Id.* at 411, ¶ 10. Indeed, if the movant shows that “the balance of hardships tips sharply” in the movant’s favor, then the movant need only establish “the presence of serious questions” on the merits. *Id.* (simplified).

Here, as explained above, the balance of hardships and public policy tip sharply against the superior court’s permanent injunction, at least for the upcoming 2026 election season. Thus, at most, the Board needed only to show serious questions on the merits to justify a stay pending appeal. And the Board easily made that showing. The superior court’s ruling violated basic principles of statutory interpretation as explained below.

II. The superior court’s ruling violated basic principles of statutory interpretation and cannot justify its sweeping injunction.

On the merits, the superior court’s bulk bin approach to statutory interpretation was wrong from the start. The superior court acknowledged that the phrase “county recorder or other officer in charge of elections” now appears in Title 16 of the Arizona Revised Statutes more than 100 times—much more than when the legislature first used the phrase more than fifty years ago. *See* APP040.³ But, rather than grant relief with respect to a specific

³ “APP” citations refer to the appendix to the Recorder’s petition.

statute, the superior court declared that “*whenever* a statute in Title 16 . . . 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.” APP043 (emphasis added). And then, relying on that broad declaration, the superior court permanently enjoined the Board 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.” APP044 (emphasis added).

To support such broad relief, the superior court did not engage in a statute-by-statute analysis of the phrase “county recorder or other officer in charge of elections.” Instead the court implicitly assumed that the phrase means the same thing across all statutes, regardless of context. *See* APP040–041. This assumption is unsupported.

A. Courts should not assume that a statutory phrase means the same thing across all statutes.

Usually, when the legislature uses the same phrase multiple times, it means the same thing. But, while this is true most of the time, it is not

automatically true in all instances. The meaning of statutory text depends on context. In addition, courts may consider factors beyond the plain text when interpreting statutes, which may require assigning different meanings to the same phrase across different statutes.

1. The meaning of text is context-dependent.

“Context is *always* relevant to statutory interpretation.” *Matter of Conservatorship of Chalmers*, 571 P.3d 885, 889, ¶ 18 (Ariz. 2025) (emphasis in original). “[C]ourts must interpret a statute’s plain language in context, because ‘[c]ontext is a primary determinant of meaning.’” *In re Drummond*, 257 Ariz. 15, 18, ¶ 5 (2024) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167 (2012)).

Accordingly, the U.S. Supreme Court has warned against the “tendency to assume that a word which appears in two or more legal rules, and so in connection with more than one purpose, has and should have precisely the same scope in all of them.” *United States v. Cleveland Indians Baseball Co.*, 532 U.S. 200, 213 (2001) (quoting Cook, “Substance” and “Procedure” in the Conflict of Laws, 42 Yale L.J. 333, 337 (1933)).

Understanding the meaning of a statutory phrase requires examining the particular context in which the legislature used it, even if the legislature

used the same phrase elsewhere. Of course, “[t]here is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning.” *State ex rel. Brnovich v. Maricopa Cnty. Cmty. Coll. Dist. Bd.*, 243 Ariz. 539, 542, ¶ 12 (2018) (quoting *State ex rel. Indus. Comm’n v. Pressley*, 74 Ariz. 412, 421 (1952)). “But the presumption is not rigid and readily yields” when the words “were employed in different parts of the act with different intent.” *State ex rel. Indus. Comm’n*, 74 Ariz. at 421 (quoting *Atlantic Cleaners & Dyers v. United States*, 286 U.S. 427, 433 (1932)). “[T]he meaning [of the same words] well may vary to meet the purposes of the law.” *Id.* (quoting *Atlantic Cleaners & Dyers*, 286 U.S. at 433)).

Context may show that a term used at one time or in one statute means something different from the same term used at a different time or statute. For example, the term “employee” is susceptible to multiple meanings across Title VII of the Civil Rights Act. In some sections of Title VII, context shows that “employee” covers only current employees, like the sections covering salary and promotions. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 343 (1997) (citing 42 U.S.C. §§ 2000e-2(h), 2000e-16(b)). In other sections, the term “employee” either has no temporal limitation or is used in a more inclusive sense, such as in the sections authorizing reinstatement or hiring

of employees. *Id.* at 342 (citing 42 U.S.C. §§ 2000e-5(g)(1), 2000e-16(b)). The U.S. Supreme Court has explained that the plain meaning of “employee” in one section does not show “that the term has the same meaning in all other sections and in all other contexts.” *Id.* at 343. Instead, “each section must be analyzed to determine whether the context gives the term a further meaning that would resolve the issue in dispute.” *Id.* at 343–44.

This Court has taken a context-specific approach when interpreting terms that appear repeatedly throughout a statutory scheme. For example, this Court has concluded that the term “lawfully present” in the Immigration and Nationality Act has “different meanings in different circumstances,” and a non-citizen can be lawfully present for admissibility purposes but not for benefits-eligibility purposes. *State ex. rel. Brnovich*, 243 Ariz. at 541-42, ¶¶ 11-15. In another case, this Court held that although Arizona’s criminal statutes generally define “minor” as a person under the age of eighteen, in the context of a sentencing statute for certain sex offenses the statute’s text and history demonstrated that the legislature intended a more expansive definition of “minor” to include police officers posing as minors. *See State ex rel. Polk v. Campbell*, 239 Ariz. 405, 406-07, ¶¶ 6-11 (2016).

2. Non-textual considerations also require a statute-by-statute inquiry.

In addition to statutory text, courts consider other factors that may require assigning different meanings to a single phrase depending on which statute it is in.

One consideration is whether relevant government actors have long understood a statutory phrase to have a certain meaning. As the U.S. Supreme Court has explained, “the contemporary and consistent views of a coordinate branch of government can provide evidence of the law’s meaning.” *Bondi v. VanDerStok*, 145 S. Ct. 857, 874 (2025). Consistent with this approach, when this Court interprets a statute, one consideration is whether the relevant government actors have already formed a consensus about its meaning. See, e.g., *Matter of Appeal In Pima Cnty. Juv. Action No. J-78632*, 147 Ariz. 584, 587 (1986) (finding persuasive “long acquiescence by this court and the Court of Appeals” in statutory construction by juvenile courts and agency); *Dupnik v. MacDougall*, 136 Ariz. 39, 44 (1983) (rejecting sheriffs’ claimed interpretation of statute when “for many years it has been the practice for the sheriffs” to do otherwise); *Jenney v. Arizona Exp., Inc.*, 89 Ariz. 343, 346 (1961) (reasoning that legislature’s re-enactment of statute

after “uniform construction by the officers required to act under it” indicates legislative intent).

So, when relevant government actors have long understood a phrase in a statute to have a certain meaning, that itself is a reason for courts to interpret the phrase in that statute accordingly—even if the same phrase might mean something else in another statute.

In addition, courts avoid interpretations that “lead[] to impossible or absurd results.” *Fleming v. State Dep’t of Pub. Safety*, 237 Ariz. 414, 417, ¶ 12 (2015) (citation modified). And when a single phrase appears in multiple statutes, interpreting the phrase to mean the same thing across all statutes may lead to absurd results for some statutes but not others. Avoiding absurdity requires a statute-by-statute evaluation. *Accord, e.g., Williams v. Williams*, 166 Ariz. 260, 265 (App. 1990) (reasoning that defining a statutory term a certain way “in this context” would “lead to an absurd conclusion”).

Moreover, when a statutory phrase is ambiguous, courts may consider additional factors to discern which meaning best effectuates legislative intent, including “the statute’s subject matter, legislative history, and purpose, as well as the effect of different interpretations.” *Fleming*, 237 Ariz. at 417, ¶ 12 (citation modified). These factors are also statute-specific. So,

when a single phrase appears in multiple statutes, the only way to analyze which interpretation is supported by “the statute’s” subject matter, legislative history, and purpose is to do a statute-by-statute evaluation. This may be especially true here, where the relevant phrase was added to different statutes numerous times over a period of decades.

B. The superior court’s broad injunction as to the phrase “county recorder or other officer in charge of elections” did not consider context and yields bizarre results.

Unfortunately, the superior court’s analysis of the phrase “county recorder or other officer in charge of elections” was not context-specific or statute-specific. The superior court cited “legislative history,” but only from the 1960s and 1970s and only for a small portion of the statutes that use the phrase today. *See* APP040–041. The superior court’s analysis rested almost entirely on general canons of statutory interpretation. *See id.*

These modest analytical premises do not justify the sweeping injunction the superior court issued, which prohibits the Board 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.” APP044 (emphasis added).

The superior court could not lawfully enjoin the Board from implementing dozens of statutes without analyzing each statute that was the subject of its injunction. Because the court analyzed the statutes in bulk, with barely any attention to individual statutory detail, the court had no way of knowing whether it was correctly interpreting most of the statutes it enjoined the Board from implementing. At a minimum, the superior court's statutory interpretation raises serious questions that justify a stay.⁴

Two examples illustrate how the superior court's interpretation cannot be correct across the board. First, Arizona's election laws require keeping records documenting chain of custody of all ballots and election equipment. *See* A.R.S. § 16-621(E). Under the superior court's interpretation, this recordkeeping task would apparently be assigned solely to the Recorder. *See id.* (requiring that the "county recorder or other officer in charge of elections" record the chain of custody for all election equipment and ballots).

⁴ To be clear, at this emergency stage, the State also has not analyzed every statute in which the phrase "county recorder or other officer in charge of elections" appears. It may be that, after thorough analysis, the State would agree with the superior court's interpretation in some contexts. But there are at least some contexts in which the superior court's interpretation is likely wrong, as explained below.

But the Board either maintains or receives custody of all ballots cast in an election. The Board prints and delivers Election Day ballots and ensures the ballots are transported to the central counting facility, where the Board oversees ballot tabulation. A.R.S. §§ 16-503, 16-509, 16-564, 16-608(A), 16-621(A). The central counting facility also receives early and mail ballots after the Recorder completes signature verification. A.R.S. § 16-550. The Board also furnishes and maintains voting devices and election supplies at polling places and precinct offices. A.R.S. §§ 16-447, 16-511. Yet the superior court’s injunction would apparently prevent the Board from keeping records documenting chain of custody for ballots and equipment during the time each are within the Board’s custody. This result would violate the rule against absurdity.

Second, under the superior court’s injunction, the Recorder apparently must oversee on-site tabulation of early ballots at Election Day voting centers. Section 16-579.01(A) provides that the “county recorder or other officer in charge of elections” may allow voters to have their early ballots tabulated at polling locations on Election Day. To oversee this process, the “county recorder or other officer in charge of elections” must designate an area in the polling location for on-site tabulation of early ballots that is

physically separate and provide the necessary “poll workers, election officials and equipment.” A.R.S. § 16-579.01(B)(1)-(2).

But the Board controls all other processes at polling locations on Election Day, so this setup would involve the Recorder operating a redundant and entirely separate process within polling locations, by employment of his or her own staff or by command of the Board’s poll workers and election officials. This point was explained in the Board’s emergency motion for a stay below (at 33–34).

Relatedly, under the superior court’s injunction, the Recorder would apparently be required to “[c]ategorize and tally separately in the official canvass and other reports electors whose voted early ballots are tabulated at the precinct or voting center.” A.R.S. § 16-579.01(B)(3).

But the Board is responsible for canvassing the primary and general elections, to be completed by dates outlined in statute. *See* A.R.S. § 16-622(A) (defining official election canvass as “[t]he result printed by the vote tabulating equipment, to which have been added write-in and early votes, *when certified by the board of supervisors or other officer in charge*”) (emphasis added); *see also* A.R.S. § 16-642(A) (requiring the “governing body holding an election” to canvass the election); A.R.S. § 16-645(B) (requiring the “board

of supervisors” to deliver official canvass to secretary of state within thirteen calendar days of primary election).

In effect, the superior court’s injunction apparently requires two offices to maintain separate ballot collection or tabulation centers at the same polling locations. That cannot be right. These dual systems would increase risk of confusion and administrative error, a result that defies common sense and ordinary principles of statutory interpretation.

The trial court’s bulk bin statutory interpretation was a flawed method from the start. It yields erroneous results in at least some contexts. And across the board, it raises—at a minimum—exactly the type of serious questions that warrant a stay and deeper consideration.

CONCLUSION

The Court should deny relief and leave the stay in place.

RESPECTFULLY SUBMITTED this 2nd day of July, 2026.

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