

**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

**Petitioner's Opposition to Arizona Attorney General's Amicus
Brief**

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INTRODUCTION

The Attorney General’s amicus brief is narrower than the relief it seeks. The Attorney General does not defend the Board’s core merits theory that a Board-appointed Elections Director may become the “other officer in charge of elections” for Recorder-first statutes whenever the Board chooses. Nor does the Attorney General identify any voter-facing rule that must change if the superior court’s judgment is enforced in tailored form. Instead, the Attorney General argues that hardship and public policy can justify a stay without meaningful merits review, and that the superior court erred by applying a consistent interpretation to recurring language throughout Title 16. AG Br. at 2–20.

Those arguments do not justify a blanket stay of a permanent injunction entered after an evidentiary hearing and final merits ruling. The Attorney General attacks the superior court’s equitable judgment without applying the governing standard of review. This Court reviews a trial court’s grant of an injunction for abuse of discretion. *Clayton v. West*, 251 Ariz. 226, 229 ¶ 10 (2021). The Attorney General does not cite that standard, much less show that the superior court abused its discretion. That omission matters because the superior court considered the same timing

concerns the Attorney General now invokes and found the threatened disruption largely self-created. In denying the Board’s stay motion, the court found 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.” APP045–46. The court also had “little confidence” that a stay would be used for good-faith negotiations rather than “as an opportunity to moot the Court’s Ruling through extended delay.” APP046.

Nor can hardship alone substitute for Arizona’s stay standard. *Smith* requires a merits inquiry. *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, 410–11 ¶¶ 9–11 (2006); *Ariz. Pres. Found. v. Pima Cmty. Coll. Dist. Bd.*, 259 Ariz. 539, 543 ¶ 12 (App. 2025). The sliding scale permits a lesser merits showing only when serious questions are paired with hardships that tip sharply toward the movant. *Smith*, 212 Ariz. at 411 ¶ 10. It does not permit a losing governmental party to suspend an adjudicated judgment merely by claiming that compliance requires administrative work near an election. That is especially true where the Recorder has proposed preserving voter-facing procedures,

equipment, locations, staffing, manuals, and existing workflows while tailoring relief only where a discrete, concrete operational risk is shown.

The Attorney General’s statutory argument is equally overstated. Context matters, but context is not a license to abandon recurring text. This Court rejected that kind of piecemeal approach in *Trisha A. v. Department of Child Safety*, explaining that identical or substantially similar language should be interpreted consistently absent a reason to depart from the presumption of consistent usage. 247 Ariz. 84, 88 ¶ 17 (2019). The superior court followed that approach. It gave effect to Title 16’s recurring distinction between statutes assigning duties to the “county recorder or other officer in charge of elections” and statutes assigning duties to the “board of supervisors or other officer in charge of elections.” The Attorney General’s contrary method would require recurring litigation over more than 100 uses of materially similar election-administration language, producing uncertainty where election law most needs clarity.

The Attorney General’s own brief confirms why a blanket stay is unwarranted. She admits that she “has not analyzed every statute” and may agree with the superior court “in some contexts.” State Br. at 17 n.4.

That is not a showing that the Board is likely to prevail on the merits. Further, the Attorney General's two examples do not show absurdity: § 16-621 permits the Board to direct counting-center proceedings while the Recorder maintains the complete chain-of-custody record, and § 16-579.01 requires a separate tally within a single canvass, not two tabulations or two canvasses. The Legislature made a judgment about how to allocate election administration tasks, and it is not the role of the Attorney General or this Court to second-guess that judgment, especially because Arizona's election system adopts a separation-of-powers type of approach, separating out responsibilities for related subjects and allocating different parts of each distinctly to the Board and the Recorder.

This Court's June 23 Order recognized the correct middle path: identify concrete operational risks and tailor interim relief accordingly. The Attorney General offers no reason to abandon that approach. The Court should reject the request to leave the Court of Appeals' blanket stay in place.

ARGUMENT

I. The Attorney General’s Hardship-Only Stay Standard is Not Arizona Law.

Arizona’s stay doctrine is not a litigation hourglass: a party that loses after trial cannot run out the clock, call its own delay “hardship,” and erase the merits inquiry that *Smith*, *Clayton*, and *Arizona Preservation Foundation* require.

ARCAP 7(c) gives appellate courts authority to suspend, modify, restore, or grant an injunction while an appeal is pending. It does not displace the governing stay standard. *Smith v. Arizona Citizens Clean Elections Comm’n* adopted the familiar four-factor framework: likelihood of success on the merits, irreparable harm absent a stay, balance of hardships, and public policy. 212 Ariz. 407, 410 ¶¶ 9-11 (2006). *Arizona Preservation Foundation v. Pima Cmty. Coll. Dist. Bd.* confirms that a party seeking a stay pending appeal bears the burden to establish those factors. 259 Ariz. 539, 543 ¶ 12 (App. 2025)

The Attorney General asks this Court to hold that the Court of Appeals “need not *always* evaluate the merits” and may stay a permanent injunction based on hardship and public policy alone. AG Br. at 8. That is a substantial revision of *Smith*. It should be rejected.

The Attorney General begins from the wrong appellate baseline. She argues that “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.” AG Br. at 4. But that argument attacks the superior court’s equitable judgment without identifying the standard governing review of that judgment. This Court has held that “[w]e review a trial court’s grant of a [permanent] injunction for an abuse of discretion.” *Clayton v. West*, 251 Ariz. 226, 229 ¶ 10 (2021).

The Attorney General does not cite that standard, much less show that the superior court abused its discretion in balancing hardship and public policy after an evidentiary hearing. The omission matters. The superior court considered the same election-timing concerns and found that any threatened disruption was largely of the Board’s own making.

When denying the Board’s stay motion, the court stated that “the Court finds 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.” APP045–46. The court further explained that it

found it likely that if it ordered even a short stay to allow mediation, the court had “little confidence” the Board “will use this stay for good faith negotiations and will instead see it as an opportunity to moot the Court’s Ruling through extended delay.” APP046. Those findings are fatal to the Attorney General’s hardship theory. A party cannot create or aggravate the timing problem by failing to plan for an adverse ruling, ignore the court’s ruling for two-and-a-half months, and then invoke that self-created timing problem as a basis to nullify the injunction.

Furthermore, the Attorney General mischaracterizes Recorder Heap’s argument about likelihood of success on the merits. Recorder Heap’s argument was that the Court of Appeals’ likelihood of success analysis, which focused only on *Purcell*, was central to its decision and that its analysis was improper because it never actually evaluated the merits. If the court of appeals had performed a proper analysis about success on the merits, it would have evaluated the superior court’s construal of the phrase “or other officer in charge of elections.” It also would have evaluated the superior court’s interpretation of the meaning of the requirement in A.R.S. § 11-601(2) that the Board must fund all necessary expenses of the Recorder. It would have also analyzed how the

requirements of Section 11-601(2) apply to the superior court's factual findings that the Board has not been funding the Recorder's necessary expenses because it has deprived him of the IT staff, servers, databases, and equipment necessary for him to carry out his functions and has been denying his reasonable requests to hire staff and purchase equipment to carry out his duties.

The problem with the court of appeals' stay decision is not that it failed to evaluate the likelihood of success on the merits. The problem is that its decision *relied* on a purported analysis of likelihood of success, yet only considered the *Purcell* principle in that analysis. But *Purcell* does not determine the meaning of Title 16 or § 11-601(2). At the very least, the stay decision must be reversed and remanded to require the court of appeals to conduct the proper analysis that it failed to do.

The Attorney General's arguments about the proper application of *Smith* are incorrect for three additional reasons.

First, Smith's sliding scale still requires a merits showing. The second formulation permits relief when there are "serious questions" and the balance of hardships tips sharply toward the movant. *Smith*, 212 Ariz. at 411 ¶ 10. It does not say that hardship can replace the merits. It

lowers the merits threshold, but does not remove it. And it only lowers that threshold when the moving party makes a correspondingly stronger showing on the equities. The Attorney General’s approach would convert *Smith*’s sliding scale into a one-factor test. Furthermore, the superior court made specific factfinding on this point and found that any hardship was a problem of the *Board*’s own making and thus did not justify a stay. See APP045-46 (rejecting the Board’s claim of irreparable harm and finding “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.”). No party has argued that this finding was an abuse of discretion, and the court of appeals failed to give it the required deference.

Second, the Attorney General’s reliance on *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008), is misplaced. *Winter* addressed a federal preliminary injunction before final judgment. *Id.* at 20, 32. This case concerns a stay of a permanent injunction entered after a full evidentiary hearing, credibility findings, and a final merits ruling. APP033–44. The distinction matters. A permanent injunction reflects an adjudicated entitlement to relief. A stay suspends that judgment and

deprives the prevailing party of its benefit during the appeal. That is why a stay is “not a matter of right, even if irreparable injury might otherwise result to the appellant” and why the applicant bears the burden of justifying an intrusion into the ordinary operation of the judgment. *Nken v. Holder*, 556 U.S. 418, 427, 433–34 (2009) (cleaned up). Furthermore, it was improper for the Attorney General’s to invite this Court to adopt *Winter*. Whether to adopt *Winter* is not an issue in this special action and has not been fully briefed. Amici are not permitted to “create, extend, or enlarge the issues” before the Court, *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, 4 ¶ 7 n.2 (2013), and this Court should therefore ignore the Attorney General’s request.

Third, the Attorney General’s theory reverses the post-judgment burden. The superior court already decided that the Recorder was entitled to relief, including equitable relief. APP033–44. The Board, therefore, had to show that the court of appeals should suspend that relief. It was not enough to argue that administering elections is difficult, that cooperation is desirable, or that some applications of the order may require clarification. The stay applicant had to show a likelihood of

success—or at least serious merits questions coupled with sharply tipped hardships—on the issues actually decided. The Board failed to do so.

The Attorney General says the superior court’s “equitable conclusions were wrong, at least for the upcoming 2026 election season.” AG Br. at 3–4. But the Attorney General’s assertion depends on the same premise the Court of Appeals assumed: that the injunction itself creates the operational conflict. The superior court made a factual finding that the opposite was true: “The evidence at trial established that the Recorder’s inability to exercise meaningful control over election systems and staff will likely cause concrete operational harms.” APP039–40 ¶ 28. The injunction was designed to remedy that unlawful and divided structure, not create it.

Nor does election timing alone make the hardships tip sharply toward the Board. The Recorder suffers an irreparable institutional injury every day statutory authority assigned to his office is exercised by a Board appointee over his objection. The public likewise has an interest in elections administered by the officials the Legislature named. Hardship is not a one-way ratchet that always favors the party resisting an injunction. If administrative friction from complying with a judgment were

enough to stay that judgment, governmental defendants could defeat election-law injunctions simply by delaying compliance until election preparation had begun.

II. Election Stability Supports Tailored Relief, Not a Blanket Stay.

The Attorney General repeatedly invokes “the status quo.” AG Br. at 2–5. But the legally relevant status quo is not whichever arrangement the losing party implemented before judgment. The pre-judgment arrangement was the very arrangement the superior court held unlawful. APP033–44. Treating that arrangement as the privileged baseline would give a party that lost after trial the benefit of its unlawful conduct for the duration of the election cycle.

The Recorder’s requested relief does not require voter-facing disruption. The Recorder has proposed preserving existing voting locations, deadlines, ballot formats, staffing assignments, equipment, public instructions, poll-worker materials, and the published election workflow while assigning final legal authority over each statutory component to the proper office. That proposal directly answers the concern underlying election-timing doctrines: voter confusion and administrative chaos. It does not change the rules by which voters register, request ballots, cast

ballots, present identification, or have their ballots counted. It clarifies internal governmental authority.

Arizona Pub. Integrity All. v. Fontes is the controlling Arizona example. There, this Court enjoined a Maricopa County Recorder from including an unauthorized instruction with mail-in ballots close to an election because the Recorder lacked statutory authority. 250 Ariz. 58, 62–65 ¶¶ 14–30 (2020). This Court held that public policy favored compliance with election law and that delay did not excuse unlawful conduct when compliance remained feasible. *Id.* at 64–65 ¶¶ 26–30. The principle applies here: election timing requires a concrete feasibility inquiry, not a categorical rule preserving conduct judicially determined to be unlawful.

The Attorney General’s contrary approach would transform election stability from a voter-protection principle into a governmental non-compliance defense. Any county officer could resist an order, wait until election tasks were underway, and then claim the calendar itself requires a stay. That is not stability. It is an incentive to delay.

This Court’s June 23 Order sets forth a path to avoid that problem. It asks the parties to identify concrete operational risks and the date beyond which effective relief could no longer be ordered, and it specifically

contemplates relief “limited to any function that presents a discrete, concrete operational risk for the 2026 Primary Election.” June 23 Order at 3–4. That inquiry is incompatible with the Attorney General’s request to leave a blanket stay in place based on generalized hardship. The proper question is function-specific: what, if anything, cannot be done without changing voter-facing procedures or creating concrete operational risk? The Attorney General has not answered that question.

III. This Court has rejected the Attorney General’s suggested piecemeal approach when materially identical language recurs throughout a text.

The proper approach to construing the meaning of a phrase that appears multiple times in different related statutory sections is to apply the presumption of consistent usage canon whereby the same phrase is presumed to mean the same thing throughout a statutory text. The Attorney General’s proposed interpretive method is to conduct a case-by-case analysis of the 127 different instances where “or other officer in charge of elections” appears in Title 16 of the Arizona Revised Statutes. This is not merely impractical; it is contrary to this Court’s treatment of recurring legal text.

This Court has already rejected the argument that identical or substantially similar language should receive different meanings merely because it appears in provisions involving different procedures or consequences. In *Trisha A. v. Department of Child Safety*, the court of appeals reasoned that the phrase “good cause” should vary among the Rules of Procedure for the Juvenile Court because the “procedures and rights at stake in these rules are distinctly different.” 247 Ariz. 84, 88 ¶ 17 (2019) (quoting *Trisha A. v. Dep’t of Child Safety*, 245 Ariz. 24, 30 ¶ 14 (App. 2018), vacated, 247 Ariz. 84 (2019)). This Court rejected that approach:

The court of appeals reasoned that the “good cause” standard varies between Rules 64(C), 65(C), and 66(D)(2) because the “procedures and rights at stake in these rules are distinctly different.” But the standard for good cause under these rules should be consistent *because the language of these rules is identical or substantially similar....* See Antonin Scalia & Bryan A. Garner, *Reading Law* 170 (2012) (explaining under the presumption of consistent usage canon that “[a] word or phrase is presumed to bear the same meaning throughout a text”).

Id. (quoting *Trisha A.*, 245 Ariz. at 30 ¶ 14) (emphasis added).

That reasoning applies with greater force here. The Attorney General’s argument is the same argument this Court rejected in *Trisha A.*, that because different provisions involve different procedures, rights, or practical contexts, the same recurring phrase should be reinterpreted

provision by provision. But *Trisha A.* teaches that contextual variation alone is not enough. When the language is “identical or substantially similar,” the default rule is consistency. *Id.* A party seeking departure from that rule must identify a specific textual conflict or contextual indicator that actually requires a different meaning. The Attorney General has not done so.

The superior court adopted the interpretive approach this Court has favored. It did not treat context as irrelevant. It identified the Legislature’s recurring textual pattern and applied a consistent default rule to that pattern: when Title 16 assigns a function to the “county recorder or other officer in charge of elections,” the Recorder is the official named first and has primary authority unless the Recorder delegates that authority to some other officer. Conversely, when Title 16 assigns a function to the “board of supervisors or other officer in charge of elections,” or to the “board of supervisors or other authority in charge of elections,” the Board is the official body named first and has primary authority unless the Board delegates that function to another officer. That approach gives effect to the Legislature’s words. The Attorney General’s approach dissolves them into case-by-case uncertainty.

The practical consequences confirm why the canon of consistent usage is indispensable here. Arizona’s election statutes use the phrase “county recorder or other officer in charge of elections” 111 times. They use the reciprocal Board-first formulation—“county board of supervisors or other officer in charge of elections” or “board of supervisors or other authority in charge of elections”—16 times. Those two categories alone produce 127 statutory uses. The Attorney General’s theory would require individualized litigation over each use before county officials could know who has final authority. That is not statutory interpretation; it is a recipe for never-ending institutional conflict.

The Legislature could not have intended a scheme in which each recurring election-administration phrase becomes a separate lawsuit. Indeed, the Legislature itself has weighed in three times through this dispute and has confirmed every time that it agrees with the superior court’s interpretation. APP003–APP024, APP097–APP107, Brief of Amici Curiae President Petersen and Speaker Montenegro In Support of the Petition for Special Action, June 22, 2026.

Election statutes exist to allocate responsibility before election officials act, not to invite emergency litigation every time the Recorder and

Board disagree. Under the Attorney General’s approach, the parties would be forced to litigate statute by statute, subsection by subsection, election by election, throughout the remainder of the Recorder’s term. Each side would argue over the operational context, historical practice, administrative convenience, implied delegations, and purported “officer in charge” for every individual provision. That would create the very uncertainty the election code is designed to prevent. And it would create the very disruptions the Attorney General claims that she wants to avoid.

Arizona law shuns such outcomes. Courts construe statutes “in a way that avoids absurdity and fulfills the legislature’s purpose.” *Mail Boxes, Etc., U.S.A. v. Indus. Comm’n*, 181 Ariz. 119, 122 (1995). Thus, this Court favors interpretations that avoid “absurd result[s].” *Perini Land & Dev. Co. v. Pima Cnty.*, 170 Ariz. 380, 383 (1992). “A result is ‘absurd’ if it is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion.” *State v. Estrada*, 201 Ariz. 247, 251 ¶ 17 (2001) (quoting *Perini*, 170 Ariz. at 383).

The Attorney General’s proposed methodology is absurd in exactly that sense. It would proliferate uncertainty about statutory authority at

the moment when election officials most need certainty. It would make the same recurring phrase presumptively unstable across Title 16. It would encourage each office to preserve its position by filing emergency applications whenever a new statutory duty arises. And it would allow a board of supervisors to continue exercising Recorder-first functions until the Recorder wins a separate statute-specific adjudication for each one. That cannot be what the Legislature intended when it repeatedly used the same two formulations to divide authority between two elected county offices.

The correct rule—the one adopted by the superior court and advocated by the Legislature itself—is narrower and more workable: apply the presumption of consistent usage across Title 16’s recurring formulations and give primary effect to the office the Legislature named first. The Attorney General’s two examples do not meet that standard, for the reasons explained below. At most, they call for implementation guidance. They do not justify the Attorney General’s invitation to replace a clear statutory default with 127 separate interpretive disputes.

IV. Context Supports the Superior Court’s Core Interpretation; It Does Not Authorize Board Displacement by Fiat.

The Attorney General is forced to acknowledge that Arizona courts recognize “a natural presumption that identical words used in different parts of the same act are intended to have the same meaning.” Ag Brief at 12 (quoting *State ex rel. Brnovich v. Maricopa Cnty. Cmty. Coll. Dist. Bd.*, 243 Ariz. 539, 542, ¶ 12 (2018)). That presumption yields only when the statutory connection, purpose, or context reasonably shows different intent. *State ex rel. Indus. Comm’n v. Pressley*, 74 Ariz. 412, 421 (1952). The Attorney General has failed to meet her burden of showing that the Legislature intended different meanings each of the 127 times it used the phrase “other officer in charge of elections.”

The Attorney General is able to offer only two examples where courts in this State have departed from the presumption of consistent usage, and both of those examples are readily distinguishable. In *Brnovich*, this Court held that the “phrase ‘lawfully present’” had different meanings in different statutes because “Congress and agencies use the phrase ‘lawfully present’ as a technical term that takes on different meanings in different circumstances.” 243 Ariz. at 542 ¶ 15. This Court reached that conclusion because the text of the relevant statutes clearly

indicated that Congress had intended the meaning to vary.¹ The Attorney General has failed to show that this is the case here. Similarly, in *State ex rel. Polk v. Campbell*, this Court held that the term “minor” in a criminal statute about child prostitution did not have the normal meaning of a person under age 18 because the Legislature specifically included language in the statute stating that a defendant could “be convicted under § 13–3212(B)(2) when the ‘minor’ is actually an undercover peace officer.” 239 Ariz. 405, 407 ¶¶ 6-11 (2016). There is no such legislative language in Title 16 providing any indication that the Legislature intended for “other officer in charge of elections” to have different meanings in different statutes.

Here, the recurring phrase appears in a statutory scheme that repeatedly distinguishes between functions assigned to the Recorder,

¹ “MCCCD’s position highlights the fact that Congress and agencies use the phrase ‘lawfully present’ as a technical term that takes on different meanings in different circumstances ... See, e.g., 8 U.S.C. § 1611(b)(2) (permitting aliens who are ‘lawfully present . . . as determined by the Attorney General’ to receive Social Security benefits); 8 C.F.R. § 1.3(a)(4)(vi) (stating that an alien ‘currently in deferred action status’ is ‘lawfully present’ for purposes of Social Security benefits ‘only’); 45 C.F.R. § 152.2 (stating that an alien ‘currently in deferred action status’ is ‘[l]awfully present’ for purposes of Affordable Care Act benefits but explicitly excluding DACA recipients).”

State ex rel. Brnovich v. Maricopa Cty. Cmty. Coll. Dist. Bd., 243 Ariz. 539, 542 (2018).

functions assigned to the Board, functions assigned to the “county recorder or other officer in charge of elections,” and functions assigned to the “board of supervisors or other officer in charge of elections.” That structure is itself context. The Legislature knew how to name the Board when it intended the Board to hold primary responsibility. It did so repeatedly. When it instead named the Recorder first, the text should be given effect.

Nor does the word “or” answer the antecedent question. “Or” creates alternatives, but it does not identify who may lawfully create the alternative or place a particular official “in charge” of a function the Legislature assigned to the Recorder. The phrase does not say “county recorder or the Board’s designee.” It says “county recorder or other officer in charge of elections.” The alternative must therefore be an officer who is otherwise lawfully in charge of that function. The Board’s general budgetary and governance authority does not make its appointed Elections Director the lawful holder of every Recorder-first statutory function. The Arizona Constitution “does not provide a board with any general authority to hire, fire, supervise, discipline, control, or prescribe duties for” independently elected county officers and there is no “hierarchical”

relationship between the Board and such officers. *Sanchez v. Maricopa Cnty*, 260 Ariz. 136, 142-43 ¶¶ 13–16 (Ariz. 2025). Rather, “[t]he Arizona Constitution creates county officers who are each separately and directly elected by voters with no provision subordinating one officer to another.” *Id.* at 142 ¶ 15.

The superior court’s reading of “other office in charge of elections” does not require courts to add words to Title 16. It applies the words already there. Arizona county officers have only the powers prescribed by law, and the Board has no statute authorizing it to reassign Recorder-first election duties to its own appointee over the Recorder’s objection. If the Board could always create the “other officer” for Recorder-first statutes simply by allocating funding or internal reporting lines, the words “county recorder” would do no operative work. The first-listed office would be reduced to an option the Board may accept or override at will. That is not a faithful reading of the Legislature’s text.

The Recorder’s position also does not depend on post-enactment testimony about subjective legislative intent or on any constitutional rule limiting the Legislature’s power to structure county government. The Legislature may assign county election functions however it chooses. The

question is how it did so in the statutes enacted. The enacted words and statutory structure show a deliberate allocation: Board-first statutes belong to the Board unless another officer is lawfully in charge; Recorder-first statutes belong to the Recorder unless another officer is lawfully in charge. What the Board may not do is use its funding or managerial authority to make its own appointee the “other officer” for duties the Legislature assigned to an independently elected Recorder.

The Attorney General’s own admission confirms why a blanket stay is unwarranted. The Attorney General acknowledges that she has not completed the statute-by-statute analysis she says is essential. She even acknowledges the possibility that she may agree with the superior court in some contexts. AG Br. at 17 n.4. That is far from a showing that the Board is likely to prevail on the merits.

A. The Attorney General’s Two Examples Do Not Create Absurdity or Operational Impossibility.

The Attorney General offers two examples of supposedly absurd results that, in her view, confirm her argument that “other officer in charge of elections” has different meanings in different statutes within Title 16: chain-of-custody records under § 16-621(E) and on-site early-ballot

tabulation under § 16-579.01. AG Br. at 17–20. Neither supports a blanket stay.

1. The Attorney General Mistakes Legislative Checks and Balances for Absurdity.

The Legislature made a deliberate judgment to divide election-administration authority among separately accountable county actors, assigning some related functions only to the Recorder, others to the Board, and still others presumptively to the official named first in the relevant statutory formulation, but with the ability to delegate those tasks to an “other officer in charge of elections.” The Attorney General’s argument rests on a fundamental misunderstanding of this bedrock principle of separation of powers embedded in Arizona’s election statutes.

That the Legislature exercised its judgment to divide responsibilities between boards and recorders is not unusual; it reflects a separation-of-powers-type design within county election administration. American government has long separated related powers among different officials because diffusion of authority promotes accountability, reduces the risk of corruption and abuse, and prevents one office from becoming judge, administrator, custodian, and reviewer of its own work. Election administration is no exception. It is entirely sensible for the Legislature to place

physical counting-center operations with the Board while assigning the complete chain-of-custody record to the Recorder, and to place Election Day voting-location logistics with the Board while assigning the on-site early-ballot process and reconciliation to the Recorder.

The Attorney General apparently thinks that a single administrator would be more convenient. But the choice is not hers to make. Administrative convenience is not the measure of statutory meaning, and it is not this Court's role to consolidate power that the Legislature chose to divide. Courts must interpret statutes to fulfill legislative purpose and avoid absurd results, *Mail Boxes, Etc., U.S.A.*, 181 Ariz. at 122, but the absurdity doctrine does not permit courts to treat deliberate checks and balances as absurd merely because they require coordination. A result is absurd only if it is "so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion." *Estrada*, 201 Ariz. at 251 ¶ 17 (quoting *Perini Land & Dev. Co.*, 170 Ariz. at 383). Dividing election duties between the Board and Recorder is not irrational; it is the statutory design.

2. The Recorder Can Act as Final Custodian for Chain of Custody Records and Establish Chain-of-Custody Procedures and Forms for the Board to Follow.

Section 16-621 distinguishes between counting-center operations and chain-of-custody record maintenance. Subsection (A) provides that “[a]ll proceedings at the counting center” are under the direction of the “board of supervisors or other officer in charge of elections.” A.R.S. § 16-621(A). Subsection (E), by contrast, provides that the “county recorder or other officer in charge of elections shall maintain records that record the chain of custody for all election equipment and ballots during early voting through the completion of provisional voting tabulation.” A.R.S. § 16-621(E).

Those adjacent subsections do not conflict. They allocate different duties. The Board may direct proceedings at the counting center. It may also create transfer logs, delivery receipts, equipment inventories, tabulator logs, seal records, and other source documents for ballots and equipment while they are physically in its possession. Nothing in the superior court’s injunction prevents that. The statutory question is who establishes the procedures and forms for chain of custody and who maintains the final, complete official chain-of-custody records required by § 16-

621(E). The Legislature answered that question by naming the Recorder in subsection (E).

The Attorney General’s contrary view assumes that the official responsible for maintaining a record must physically possess every item at every moment. That is not how recordkeeping works. A record custodian can maintain a complete record based on contemporaneous source documents created by multiple actors. Indeed, § 16-621(E) spans a period “during early voting through the completion of provisional voting tabulation”—which covers the entirety of an election. Early voting, signature verification, ballot curing, provisional-ballot verification, counting-center operations, and provisional tabulation do not all occur in the hands of one employee or one office. A single complete record necessarily depends on contributions from different personnel and different stages of the process.

Assigning control over the procedures for chain of custody and maintenance of the complete record to the Recorder is not absurd; it is coherent. The Recorder administers early voting and maintains voter-registration records. The Board directs the counting center. Section 16-621(E) bridges those processes. The Recorder can maintain the complete record and establish the procedures to be followed, while the Board

generates source records for Board-controlled stages. That is a single integrated record, not a duplicate chain of custody.

At most, this issue warrants an implementation clarification: each office must create contemporaneous source records when it physically handles ballots or equipment; both offices must have reciprocal access to the chain-of-custody repository; and the Recorder establishes the procedures to be followed and maintains the complete statutory record required by § 16-621(E). If clarification of this minor point is needed, that is best handled through tailored relief. It is not a reason to stay the entire injunction.

3. Section 16-579.01 creates one on-site early-ballot process, not a second election system.

The Attorney General’s on-site tabulation example rests on the same mistaken assumption. Section 16-579.01 permits the “county recorder or other officer in charge of elections” to provide a process for a voter who appears at a polling location or voting center on Election Day with a voted early ballot to have that early ballot tabulated on-site. A.R.S. § 16-579.01(A). If that option is provided, the statute assigns to the “county recorder or other officer in charge of elections” the duties to designate a physically separate processing area, provide necessary workers

and equipment, categorize and tally those electors separately in the official canvass and other reports, and reconcile the process. A.R.S. § 16-579.01(B)(1)–(4). Designating the Recorder as the primary official for this task makes sense, since the Recorder is in charge of early voting. *See* A.R.S. § 16-542(A)

Those provisions do not require two polling places, two check-in systems, two tabulation systems, or two canvasses. They require one early-ballot process embedded within an existing voting location. Existing Board-provided workers and equipment may be used. The same polling location may serve both Election Day voters and early-ballot voters. The same published workflow may remain in place. The legal question is who has final authority over the early-ballot component that § 16-579.01 assigns to the Recorder or other officer in charge of elections.

Nor does § 16-579.01(B)(3) conflict with the Board’s canvass duties. The statute requires a separate category and tally “in the official canvass and other reports.” A.R.S. § 16-579.01(B)(3). That is not a second canvass. It is a required component within the single official canvass. The Board remains responsible for the county canvass under §§ 16-642 and 16-645. The Recorder supplies the statutorily required separate tally and

reconciliation for on-site early ballots. The Board then incorporates that information into the single canvass. The provisions are complementary.

The Attorney General's suggested absurdity disappears once the distinction between physical performance and final legal authority is recognized. Poll workers can follow a single written protocol. Questions about early-ballot eligibility and the § 16-579.01 process can be escalated to the Recorder's designated liaison. Questions about Election Day ballots, facility issues, marshals, central-count tabulation, and canvass logistics can be escalated to the Board's liaison. Mixed issues can be logged and resolved through expedited review. No voter is detrimentally impacted by a lack of knowledge as to which office holds final statutory authority over a particular component.

Furthermore, because Section 579.01 contains the formulation "other officer in charge of elections," the Recorder has the authority to delegate these day-of-election tasks to the Board, and he is willing to do so. Therefore, the operational concerns that the Attorney General has expressed about this statute are irrelevant.

4. Other operational issues are equally susceptible to function-specific treatment.

The same principle applies to the other operational subjects the Court identified in its June 23 Order. Ballot drop-box locations can remain where approved, while the Recorder administers early-ballot custody and chain-of-custody procedures assigned to the “county recorder or other officer in charge of elections.” Ballot-replacement or early-voting sites can use existing locations, staff, equipment, and voter-facing instructions, while a single supervisor directs the function assigned to that office. Shared IT systems can remain physically in place through the Primary canvass, with reciprocal access and change-control protections replacing any immediate physical migration.

These are not theoretical compromises. The Recorder has already proposed preserving the election plan while allocating authority by statutory function, keeping existing staff in place, preserving existing equipment, deferring physical IT migration, requiring reciprocal system access, operating a joint command center, maintaining shared records, and resolving disputes on an expedited basis. APP113–25. That proposal directly answers the Attorney General’s hardship concerns. It eliminates

the need for duplicative equipment, duplicate tabulation, a second canvass, or immediate infrastructure migration.

The Attorney General's amicus does not engage with that proposed middle path. It treats the case as though the only options are a complete stay or immediate implementation of every aspect of the April 16 Order in the most disruptive possible way. That is not the posture after this Court's June 23 Order, and it is not required by the record.

V. Any Serious Statute-specific Question Should Be Addressed Through Narrow Relief.

The Attorney General's strongest possible point is not that the superior court's core interpretation is wrong. It is that some applications may require careful implementation. Recorder Heap agrees that implementation should be careful. But careful implementation does not justify a stay of the entire judgment.

If a specific statutory function creates a concrete operational risk for the Primary, the Court can address that function. If a specific phrase requires a context-specific reading that the parties are unable to resolve amongst themselves, they can ask the Court for clarification. If a specific workflow requires joint performance by both offices, the Court can order joint performance while preserving final authority over each component.

If a specific IT transfer would create unacceptable risk before the canvass, the Court can defer physical transfer while requiring functional access and reciprocal safeguards. None of those possibilities supports restoring all disputed authority to the Board.

The Attorney General's requested rule would produce perverse incentives. It would tell county boards and other governmental actors that when they lose an election case, they may obtain a stay by identifying a handful of operational hypotheticals and invoking election timing. It would tell trial courts that permanent injunctions enforcing election statutes are practically unenforceable whenever a governmental defendant can characterize compliance as complex. And it would tell elected officials whose statutory authority has been displaced that appellate review will arrive only after the election in which their authority mattered.

Arizona law points in the opposite direction. *Smith* requires a structured stay analysis. *Arizona Preservation Foundation* places the burden on the stay applicant. *Arizona Public Integrity Alliance* confirms that election officials must comply with election law when compliance remains feasible. And this Court's June 23 Order recognizes that tailored interim

relief can protect voters without suspending the superior court's judgment wholesale.

CONCLUSION

The Attorney General's amicus does not justify a blanket stay. It does not show that the superior court abused its discretion in entering permanent injunctive relief after an evidentiary hearing. It does not show that *Smith* permits hardship and public policy to replace the required merits inquiry. It does not show that *Purcell* answers the statutory questions presented by Title 16 and A.R.S. § 11-601(2). And it does not show that the superior court erred by applying the canon of consistent usage to recurring election-administration language throughout Title 16.

At most, the Attorney General identifies possible implementation questions concerning two statutes. But those examples do not establish absurdity, operational impossibility, or likelihood of success on the merits. Title 16 deliberately divides related election functions between the Recorder and the Board. That statutory allocation may require coordination, but coordination is not chaos, and divided authority is not absurdity. The proper remedy for any discrete operational concern is tailored interim relief—not restoration of every disputed function to the Board.

The Court should reject the Attorney General's request to leave the Court of Appeals' blanket stay in place. It should vacate the stay or, at minimum, replace it with function-specific interim relief that preserves voter-facing procedures while respecting the superior court's judgment and the Legislature's allocation of election authority.

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