

**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. 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

RECORDER'S SUPPLEMENTAL BRIEF ON OPERATIONAL ISSUES FOR 2026 PRIMARY ELECTION

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INTRODUCTION

The Court’s June 23 Order identifies the correct interim question: the choice need not be binary. June 23 Order at 3–4. The Court need not either preserve the Court of Appeals’ blanket stay or require an immediate physical reorganization of every shared system before the July 21 Primary Election. It can preserve every voter-facing feature of the election that is already fixed—locations, hours, deadlines, ballot formats, staffing assignments, the published poll-worker manual, and existing equipment—while restoring the superior court’s allocation of final legal authority except where a discrete, record-supported operational risk requires narrower treatment.

Recorder Heap therefore proposes a limited and interim framework applicable only to the 2026 primary election that would allow the parties and, if necessary, the courts, to find a permanent solution. The Board would continue performing its undisputed functions: establishing precincts, polling places, and vote centers; procuring ballots and Election Day supplies; appointing election boards and marshals; operating the central count tabulation room; performing central-count tabulation; conducting the county canvass; and the statutory functions assigned to the

“board or other officer in charge of elections.” Existing County employees would continue performing the same mechanical and logistical work with the same equipment.

The Recorder would exercise final authority over voter registration, voter-list maintenance, early voting, early-ballot distribution and receipt, signature verification and cure, provisional-ballot functions assigned to him, and the statutory functions assigned to the “county recorder or other officer in charge of elections.” Shared personnel would take functional direction from the office whose statutory duty they are performing. Shared systems would remain available to both offices, with reciprocal access and change-control protections. In the unlikely event of a dispute over mixed functions, it would be resolved through designated liaisons, a shared incident log, and expedited review by the superior court.

That framework requires no second voter line, no new e-pollbooks, no new ballot printers, no replacement tabulation system, no second count, and no second canvass. Indeed, Maricopa County’s currently published 2026 Primary Election Manual already incorporates on-site early-

ballot tabulation into the existing Election Day process.¹ It provides for at least two Early Ballot Tabulators and two Election Day Ballot Tabulators at each voting location²; directs voters who seek early-ballot identification verification through the existing SiteBook check-in process³; and then directs those voters to an Early Ballot Tabulator.⁴

The question is therefore not whether the County must invent and equip a new process after May 1. The County already has the process,

¹MARICOPA CNTY. ELECTIONS, *2026 Primary Election Manual*, 2026 (hereinafter “2026 Primary Election Manual”) at 28, available at <https://perma.cc/M45T-YHTN> (“Each voting location will be equipped with at least four tabulators, two Early Ballot Tabulators and two Election Day Ballot Tabulators.”) and 103 (“voters with a mail-in ballot may choose to check in, have their ID verified, have their envelope stamped, and then cast their ballot in an Early Ballot Tabulator”); This Court has held that it may take judicial notice of government websites and records. *E.g.*, *Ariz. Pub. Integrity Alliance v. Fontes*, 250 Ariz. 58, 65 ¶ 28, n.2 (2020); *Arizonans for Second Chances, Rehabilitation, and Pub. Safety v. Hobbs*, 249 Ariz. 396, 403 ¶ 12, n.1 (2020). Accordingly, Recorder Heap requests that this Court take judicial notice of the 2026 Primary Election Manual.

² *Id.*

³ *Id.* at 69 (explaining that signs at voting locations will “[p]rovide[] instructions to voters about options to proceed directly to the drop box or to line up to participate in early ballot ID verification.”); 80-83 (providing instructions for “Checking in Voters – Early Ballot ID Verification”); and 192 (answering frequently asked questions about early ballot ID verification and explaining that “[e]arly Ballot ID Verification is an option for voters with a mail ballot to have their ID verified at a voting location” and that “[t]his process allows us to report election results faster”)

⁴ *Id.* at 125 (instructions for using on-site early voting tabulators).

equipment, and instructions. The only interim question is which elected office has final authority over the discrete statutory components within that existing process.

The recent May 19 jurisdictional elections supply a practical model. The Recorder accepted the Board's existing locations, personnel, equipment, and logistical support, while designating a Recorder supervisor to manage the ballot-replacement sites. APP076–APP083. The record identifies no voter-facing disruption caused by that allocation. The only concrete operational dispute arose when Elections Department personnel attempted to countermand Recorder management concerning a Recorder-administered process at the Tempe site. APP086–APP090. A clear functional allocation and escalation protocol would prevent—not create—that kind of conflict.

There is no equally plain, speedy, and adequate remedy by appeal. The voters of Maricopa County elected the Recorder to exercise authority over early voting in only two primary and two general elections. Only the extraordinary relief that this court can craft can restore this authority to the person the voters elected to hold it in time to prevent them from

having been deprived of the benefit of a meaningful and genuine choice for this election.

The Court should therefore accept jurisdiction, vacate the blanket stay, and enter the tailored interim relief set forth below. At minimum, the Court should leave the stay in place only as to the physical migration or duplication of shared IT infrastructure under paragraph 4 of the April 16 Order until completion of the Primary canvass, while restoring paragraphs 1–3 and 5 subject to the operational protocol described below, which preserves all existing voter-facing procedures.

Record citations to “APP” refer to the Appendix in Support of the Petition for Special Action. Citations to “Board App.” refer to the appendix filed with the Board’s Emergency Motion for a Stay Pending Appeal in the Court of Appeals.

I. Effective, Nondisruptive Relief Remains Available Throughout the Primary Election Calendar.

A. The significant fixed deadlines do not foreclose the tailored relief proposed here.

The principal dates are now concrete. The UOCAVA mailing deadline was June 6. The voter-registration deadline was June 22. Early voting and ballot mailing began June 24. The last day to request a

replacement ballot by mail is July 10; the County recommends mailing completed early ballots by July 14; and Election Day is July 21.⁵ The Board may begin the county canvass on July 27 and must complete it by August 3; the statewide canvass is scheduled for August 6.⁶

The Secretary of State's detailed calendar also identifies several operational milestones within that period. June 22 was the recommended deadline to designate receiving sites, the central counting place, the computer center, and the early processing center. Early-ballot tabulation became permissible on June 24. The Recorder prepares the official Voter Registration Database (precinct registers) by July 13 after operation of the weekend rule. The deadline to complete tabulation contingency plans is July 13. In-person early voting ends July 17. Provisional ballot processing must be completed by July 26.⁷

⁵ ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION, *July 21, 2026-Statewide Primary Elections*, (2026), available at <https://perma.cc/8ZCZ-4WRW>. Recorder Heap requests that the Court take judicial notice of the government material cited in this footnote, *see supra*, note 1.

⁶ Arizona Secretary of State's Office, *Calendar Dates—July 21, 2026 Primary Elections (2026)*, available at <https://perma.cc/S57C-JXEQ>. Recorder Heap requests that the Court take judicial notice of the government material cited in this footnote, *see supra*, note 1.

⁷ *Id.*

The Board’s May 1 internal deadline for finalizing its poll-worker manual and the asserted closure of equipment procurement are relevant only to relief that would require rewriting the manual, reprogramming e-pollbooks, adding a second check-in line, or purchasing new equipment. Board App. APP276 ¶¶ 28–29. The Recorder does not request any of those things. The published 2026 Primary Election Manual already contains the early-ballot identification-verification and on-site-tabulation process, including separate Early Ballot Tabulators and Election Day Ballot Tabulators.⁸ The tailored order proposed below would preserve that manual and the existing equipment plan. It would require only a short responsibility matrix or supervisor bulletin identifying the final decisionmaker for Recorder-administered and Board-administered functions.

The County’s own conduct confirms that May 1 was not an absolute bar to later operational guidance. On June 8—more than five weeks after the asserted manual deadline—the County published an eight-page Section Seven Addendum that states it “replaces all training materials” concerning voter-registration updates.⁹ If the County can replace

⁸ 2026 Primary Election Manual at 28, 80–83, 103.

⁹ MARICOPA CNTY. ELECTIONS, *2026 Primary Election Manual § 7 Addendum* 96–103 (updated June 8, 2026), available at <https://perma.cc/FT94->

substantive process instructions after May 1, it can distribute a one-page responsibility matrix that changes no voter-facing procedure and requires no equipment reprogramming. Indeed, the trial court's injunction was itself stayed, at the Board's request, subsequent to May 1st.

The May 1 date, therefore, is not a point beyond which effective relief became impossible. It is, at most, a reason not to require a new voter-facing workflow. The Court can leave the existing workflow untouched while assigning internal legal authority. Poll workers can continue following the existing manual, reporting through the existing Hotline and command-center structure, with questions routed to the designated Recorder or Board liaison according to subject matter.

Nor is there a single date beyond which all effective relief becomes impossible. The relevant point varies by function:

1. *Voter registration and early-ballot administration.* Relief remains meaningful immediately. Early voting began June 24 and continues through July 17, with early ballots received through 7:00 p.m. on

XKM6 (stating in bold red letters at the bottom of the first page, page 96: "IMPORTANT: Updated June 8, 2026. Replaces all training materials on the subject of updating voter registration in print, online, and video."). Recorder Heap requests that the Court take judicial notice of the government material cited in this footnote, *see supra*, note 1.

July 21. Authority over voter-registration records, early-ballot requests, early-voting operations, receipt, signature verification, cure, and provisional processing will be exercised throughout that period and after Election Day.

2. *Election Day operations.* Relief remains meaningful through July 21. The Court can preserve all existing sites, equipment, staffing, and training while clarifying the internal division of authority before final training, deployment, and Election Day command-center operations.

3. *Tabulation, chain-of-custody records, and canvass.* Relief remains meaningful through completion of the county canvass on August 3 and the statewide canvass on August 6. Section 16-621(E)'s chain-of-custody record obligation extends "through the completion of provisional voting tabulation." The Recorder's statutory reporting, reconciliation, and provisional-ballot functions likewise continue after Election Day.

4. *Physical IT migration.* The Court may conclude that a physical transfer of servers, personnel reporting lines, or system ownership should not occur during active election operations. That does not require staying the superior court's allocation of legal authority. The Court can defer physical migration through August 6 while requiring immediate

reciprocal access, functional control, data availability, and change-management protections.

The answer to the Court's deadline question is therefore function-specific. Meaningful pre-Election-Day relief remains available through July 21, and meaningful relief concerning provisional processing, chain-of-custody records, tabulation reporting, and canvass remains available through August 6. Physical migration of shared IT infrastructure may be deferred until after the Primary. The County's public training page states that poll workers receive training within forty-five days of each election and presently posts both the 2026 Primary Election Manual and the June 8 addendum.¹⁰ A short responsibility matrix should issue as soon as practicable, which will not adversely impact operations, but rather will enhance them by clarifying the relative authorities of the parties and reduce the likelihood of any conflicts, such as what occurred during the May jurisdictional elections.

¹⁰ Maricopa County Elections, *Poll Worker Training Materials* (accessed June 25, 2026), <https://elections.maricopa.gov/work-with-us/poll-worker-training.html#Manual>. Recorder Heap requests that the Court take judicial notice of the government material cited in this footnote, *see supra*, note 1.

B. The Court should distinguish between locked voter-facing choices and still-reversible internal authority.

The operational deadlines support a narrow rule: preserve choices on which voters, vendors, and temporary workers have already relied, but do not use those choices to decide the legal identity of the official with final authority. The existing locations can remain. The same workers can report for the same shifts. The same SiteBooks, ballot-on-demand printers, Early Ballot Tabulators, Election Day Ballot Tabulators, transport boxes, and command-center systems can be used. The same manual can govern each mechanical step. None of those facts requires that a Board-appointed administrator have final authority over statutory functions assigned to the Recorder.

This distinction also makes the relief reversible. If the Board ultimately prevails on appeal, no voter-facing process will have to be unwound: the same personnel and equipment will have administered the election. If the Recorder prevails, the Primary will not have been conducted entirely under an allocation the superior court held unlawful. Tailored relief thus minimizes operational risk while preserving the possibility of meaningful appellate review and maximizing the likelihood that the election is administered according to the Legislature's requirements

established by statute. This Court’s decision in *Arizona Public Integrity Alliance* confirms that election timing requires a concrete feasibility inquiry, not automatic preservation of conduct found unlawful: where compliance remained achievable, this Court ordered election officials to comply and held that delay did not excuse noncompliance. *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 64–65 ¶¶ 26–30 (2020).

II. The Court Can Leave Undisputed Functions With Their Statutory Offices and Temporarily Allocate the Remaining Functions Without Restructuring the Election.

A. Functions assigned specifically to the Recorder should remain with the Recorder.

Title 16 assigns a substantial body of voter-registration and early-voting duties to “the county recorder” alone. Those functions are the clearest candidates for immediate agreement, and the tailored interim order should expressly preserve them.

1. Voter registration and eligibility. The Recorder supplies and receives registration materials and information; receives and processes registrations transmitted by other agencies; determines eligibility; handles incomplete applications; cancels registrations when required; removes ineligible registrants; and supplies blank state voter-registration

forms. *See* A.R.S. §§ 16-103, -112, -120, -121.01(A), -128, -132, -134, -138, -151.

2. *Registration records and voter lists.* The Recorder maintains the official registration record and cancellation records; assigns voters to precincts and districts; processes changes and cancellations; verifies registration information; prepares the official precinct registers; counts registered voters by political party, precinct, legislative district, and congressional district; transmits required voter-registration data; and certifies and delivers precinct registers. *See* A.R.S. §§ 16-161 to -166, -168, -169.

3. *Early voting and the Active Early Voting List.* Section 16-542(A) authorizes the county recorder to establish on-site and other early-voting locations, and subsection (F) permits “the recorder” to use early-ballot-request information to update voter-registration records. Section 16-543(A) assigns specified UOCAVA forwarding duties to “the recorder.” Section 16-543.02(D) makes a federal write-in absentee ballot that includes sufficient registration information a voter-registration form that must be received by the county recorder within the statutory period. Section 16-544(A) requires each county recorder to maintain the Active Early Voting List as part of the voter-registration roll, and later

subsections impose additional duties on the county recorder alone. The Board retains its distinct authority over emergency voting under § 16-542(H) and § 16-411(B)(5).

Several provisions contain mixed formulations within the same statute. For example, § 16-121.01(A) assigns notice regarding an incomplete registration to the Recorder, while later subsections refer to the “county recorder or other officer in charge of elections.” Sections 16-542, -543, and -544 likewise contain both Recorder-specific and alternative language. The interim order should therefore allocate authority by subsection and function, not treat each statute as indivisible.

These Recorder-specific duties should include the operational resources necessary to perform them. Existing County personnel may continue handling data entry, call-center support, site logistics, and technical work. But when they perform a Recorder-specific function, final operational direction should come from the Recorder or his designated supervisor. The employing department, payroll system, and physical work location need not change.

B. Functions assigned specifically to the Board should remain with the Board.

The Recorder does not seek control over functions the Legislature assigned to the Board. For the Primary, the Board should continue to:

1. Establish election precincts, polling places, and vote centers under A.R.S. § 16-411(A)–(B);
2. Prepare and provide ballots under A.R.S. § 16-503;
3. Appoint election boards and supply the materials assigned to the Board under A.R.S. §§ 16-531 and 16-551(A), (E);
4. Appoint election marshals under A.R.S. § 16-535;
5. Authorize and define emergency voting under A.R.S. §§ 16-411(B)(5) and 16-542(H);
6. Direct proceedings at the central counting facility under A.R.S. § 16-621(A); and
7. Conduct, complete, and transmit the county canvass under A.R.S. §§ 16-642 and 16-645; and
8. Declare elected the persons receiving the highest number of votes for county and subdivision offices under A.R.S. § 16-647.

The Board may also continue procurement, contracting, facilities coordination, payroll administration, equipment maintenance, site setup

and breakdown, ballot and supply delivery, tabulation operations, and canvass logistics insofar as those activities support Board-assigned functions or provide resources for Recorder-assigned functions. Providing personnel or equipment does not transfer the underlying statutory authority. The superior court’s April 16 Order expressly preserved the Board’s primary authority under statutes using the formulation “board of supervisors or other officer in charge of elections.” APP043 ¶ 2.

C. The remaining “Recorder or other officer in charge of elections” functions are legally disputed, but should be assigned to the Recorder for the interim period.

The ultimate construction of the phrase “county recorder or other officer in charge of elections” is one of the principal merits disputes. Recorder Heap does not characterize that legal issue as undisputed. For interim operational purposes, however, those functions should be assigned to the Recorder unless this Court finds that a particular function presents a concrete risk that cannot be addressed through the protocol below. As more fully set forth below, the Recorder contends that none of the functions listed below present a concrete risk if assigned to the Recorder.

First, the superior court’s April 16 ruling remains the only merits adjudication entered after an evidentiary hearing and full briefing of the

legal issues. It held that the first-listed office possesses primary authority and may consent to performance by another officer. APP041–APP043 and ¶¶ 1–2. The President of the Senate and Speaker of the House likewise explain that this construction gives effect to every word, preserves the Legislature’s deliberate allocation of authority, and avoids treating the first-listed official as surplusage. APP013-022, APP100-106. Assigning these functions to the Recorder for one election does not finally resolve the appeal; it preserves the adjudicated allocation while the Court addresses the legal question.

Second, most of these alternative-formulation functions are operationally adjacent to duties assigned exclusively to the Recorder. The same voter-registration record supports petition-signature verification, early-ballot eligibility, Active Early Voting List administration, address correction, provisional-ballot verification, and precinct-register preparation. The same early-ballot lifecycle runs from request and mailing, through receipt and signature verification, to custody records, cure, reconciliation, and transfer for tabulation. Splitting final authority within that lifecycle creates more handoffs and greater ambiguity than leaving the function with the office that maintains the underlying voter record.

Third, the parties have known since April 16 that the superior court assigned these functions to the Recorder. The Recorder proposed a phased implementation that preserved the Board's system access and existing personnel. APP077–APP079. The Recorder's proposed contempt order lodged with the superior court supplied a detailed responsibility matrix using the existing workforce, equipment, command center, courier structure, and IT systems. APP113–APP125. Any remaining difficulty is therefore best handled function by function; it is not a reason to restore every disputed function to the Board.

Fourth, interim assignment to the Recorder does not mean Recorder employees must physically perform every task. Existing Elections Department employees can continue installing equipment, staffing sites, transporting sealed containers, operating tabulators, and preparing reports. They would simply follow the Recorder's approved protocol while performing a Recorder-administered task and the Board's protocol while performing a Board-administered task. That is ordinary interoffice coordination, not duplication.

The alternative-formulation functions that should be left with the Recorder for the interim period include:

1. Registration, citizenship-verification, and petition-signature-verification functions under A.R.S. §§ 16-121.01(C)–(F) and -351(E);
2. Early-voting and early-ballot functions under A.R.S. §§ 16-542, -543, -543.02, -544, -547, -548, -549, -550, -550.01, and -551(C)–(D);
3. On-site early-ballot tabulation functions under A.R.S. §§ 16-579.01 and -579.02;
4. Limited emergency-location and electioneering-posting functions assigned to the “county recorder or other officer in charge of elections” under A.R.S. § 16-411(B)(5)(c), (I)–(J), while preserving the Board’s authority to establish precincts, polling places, vote centers, and emergency-voting authorization;
5. Provisional-ballot and registration-verification functions under A.R.S. § 16-584;
6. The Recorder-first hand-count functions under A.R.S. § 16-602(B)(2), (B)(7)(f), and (F), while preserving the county officer in charge’s remaining hand-count responsibilities; and
7. The live-video and chain-of-custody-record functions assigned by A.R.S. § 16-621(D)–(E), while preserving the Board’s control over counting-center proceedings under § 16-621(A);

8. If any of the following become relevant during the period covered by the court's order: unified-ballot and turnout-calculation functions under A.R.S. §§ 16-204(G) and -205(E); special-congressional-vacancy early-ballot mailing under § 16-222(B)(5); and special-district mail-election functions under A.R.S. §§ 16-558.01 and -558.02.

These functions are not legally undisputed; they are central to the appeal. The narrower interim point is that the personnel, systems, equipment, and voter-facing procedures needed to perform them already exist. Assigning final authority to the Recorder for the interim period requires no duplicate workflow and preserves the parties' merits positions for the appeal.

III. The Court Can Enter a Narrow Interim Order That Preserves the Existing Election Plan.

Recorder Heap proposes that the Court modify the stay as follows.

A. Scope of the stay.

The Court should vacate the stay as to paragraphs 1–3 and 5 of the April 16 Order, subject to the interim protocol below. Those provisions identify the offices with primary statutory authority, require funding of necessary Recorder expenses, and prohibit the Board from exercising Recorder-assigned functions without consent. The Court may leave the stay

temporarily in place as to the physical-transfer of IT systems or replacement-system remedy in paragraph 4 through the August 6 statewide canvass. During that period, paragraph 4 should be replaced with a functional-access order that gives both offices the access and operational capabilities necessary to perform their respective duties without physically migrating or duplicating the shared infrastructure.

B. Interim operational protocol.

The following framework draws from the operational provisions the Recorder proposed in the superior court, including continued use of Board personnel and equipment, reciprocal system access, a joint command center, shared incident reporting, bipartisan courier teams, and expedited judicial resolution. APP113–APP125.

1. *Preservation of all voter-facing procedures.* No existing Primary voting location, drop-box location already approved for use, operating hour, deadline, ballot format, public instruction, SiteBook workflow, poll-worker assignment, or equipment deployment shall be changed solely because of this litigation without written agreement of the parties or further court order.

2. *Preservation of the existing manual and equipment.* The Board and Recorder shall use the published 2026 Primary Election Manual, the existing one-check-in-line SiteBook workflow, existing ballot-on-demand printers, and the already-planned Early Ballot Tabulators and Election Day Ballot Tabulators. No second check-in line, additional e-pollbooks, additional ballot printers, or duplicative tabulation system shall be required.

3. *Allocation of final authority by statutory function.* The Recorder shall have final authority over Recorder-specific and “Recorder or other officer in charge of elections” functions identified in Section II. The Board shall have final authority over Board-specific and “Board or other officer in charge of elections” functions. For a mixed process, the person performing each component shall follow the protocol of the office holding authority over that component.

4. *Maintain existing personnel and resources in place.* County HR and the Elections Department may continue recruitment, onboarding, payroll, scheduling, facilities, procurement, and administrative support. Existing staff shall continue their assigned mechanical tasks. While performing a Recorder-administered function, staff shall take functional

direction from the Recorder's designated supervisor; while performing a Board-administered function, they shall take functional direction from the Board's designated supervisor. No employee's civil-service status, compensation, or permanent departmental assignment is altered.

5. *Require reciprocal systems access without physical migration.* Until August 6, all shared systems shall remain physically in place. The Board, County IT, and GIS personnel shall provide the Recorder and his designated IT staff timely access, reports, technical support, and the ability to direct changes necessary for Recorder-administered functions. The Board shall retain the access necessary for emergency voting, Election Day operations, tabulation, and canvass. Neither office may make a change that materially affects the other office's function without notice and approval through a documented change-control process. Any access or change-control dispute shall be submitted to the superior court on 24 hours' notice.

The Recorder and his IT staff should be granted access to all necessary systems, databases, and programs required for Recorder-administered election functions. The Recorder's Office relies on a variety of technology systems to perform its statutory election responsibilities,

including voter registration, early voting, mail-in voting, signature verification and curing, Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voting, and Special Elections Board (SEB) operations. These services depend on systems including, but not limited to, the Voter Registration Application System (VRAS), ERO, the supporting databases, public and internal websites, and online services that allow voters to update registration information, request mail-in ballots, verify signatures, and access other Recorder-administered services. The Recorder's Office should be given administrative access to the underlying hardware and operating systems, source code repositories, shared file servers, network file repositories, and related infrastructure because these systems support the Recorder's statutory responsibilities.¹¹

6. *Issuance of a short responsibility matrix to supplement the 2026 Primary Election Manual.* Within 24 hours of the Court's order, the Board and the Recorder shall each identify one operational liaison and one legal liaison. Within 48 hours, the parties shall issue a joint one-page matrix, in conformity with the Court's allocation of responsibilities,

¹¹ See Exhibit 1 for a more complete list of elections-related systems, databases, and programs.

that identifies the final escalation point for: voter registration; early voting; emergency voting; Election Day polling-place operations; early-ballot identification verification; on-site early-ballot tabulation; provisional ballots; chain of custody; counting-center operations; tabulation; and canvass. The matrix may be distributed as a supervisor bulletin or manual addendum and shall not alter any written voter-facing instruction. The County's June 8 Section Seven Addendum demonstrates that post-May 1 updates can be distributed through the existing training system.

7. Operate a joint command center. The Recorder and Elections Department shall jointly staff the command center during early voting, Election Day, and post-election processing. Reports, alerts, incident tickets, wait-time information, equipment issues, and custody exceptions shall be shared contemporaneously. Issues involving both offices shall be logged, time-stamped, and escalated to the designated liaisons. Until 2024, the Command Center had always been jointly run with the Board and Recorder Staff. Thus, a jointly operated command center would not be a departure from, but a return to, the normal practice in the County.

8. Preserve approved drop-box locations and divide approval from operation. Any drop-box locations already approved by the Board

for the Primary shall remain in place. The Recorder shall post the locations and approve the security, retrieval, and chain-of-custody procedures prescribed by the 2025 Elections Procedures Manual. Existing Elections Department personnel, acting under the supervision of the Recorder, may install, monitor, and retrieve the boxes under those procedures using bipartisan teams. No location shall be added, removed, or materially changed without written agreement or court approval.

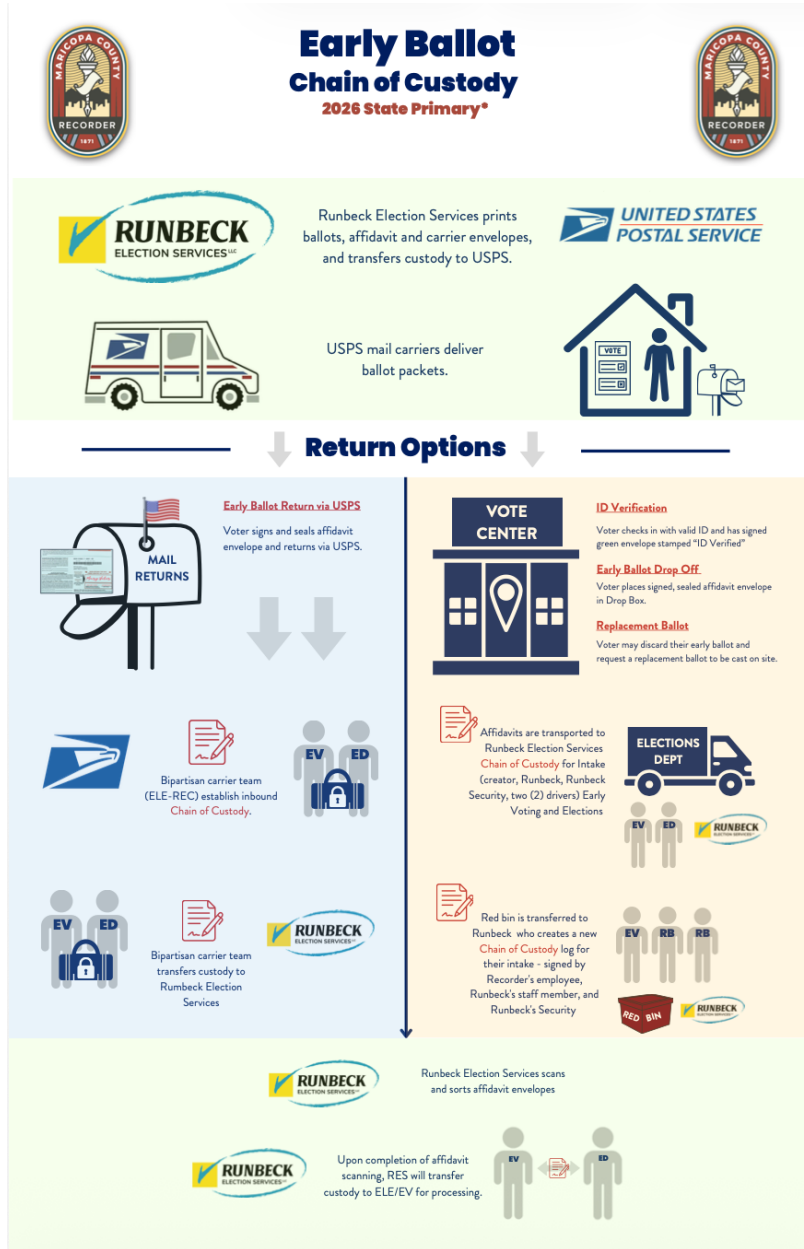
9. *Use one ballot-replacement-site chain of command.* At all ballot-replacement sites, the Recorder shall designate or approve the site and a Recorder supervisor. Existing Elections Department personnel and equipment may be used to staff the site. Personnel shall follow the Recorder supervisor's directions for replacement-ballot issuance, voter-registration confirmation, and early-ballot functions, and shall follow Board direction for any distinct Board-assigned Election Day function at the same facility.

10. *Use one on-site early ballot tabulation process.* The County shall use the process already published in the 2026 Primary Election Manual for early ballot tabulation. The Recorder shall have final authority over the § 16-579.01 decision, voter eligibility and identification-

verification components, separate categorization, and reconciliation. Existing Board-provided poll workers, SiteBooks, ballot-on-demand equipment, and tabulators may execute the process. The Board shall retain control of counting-center tabulation and the official canvass. The parties shall not create a second check-in line, second tabulation system, or second canvass.

11. *Maintain one continuous chain-of-custody record.* Each office shall create contemporaneous source records when it physically handles ballots or equipment. The Recorder shall maintain the complete set of records required by § 16-621(E), using the contemporaneous source records created by each office. Each transfer shall document the container, seal, count or batch identifier, location, date and time, transferor, transferee, route, destination, and any exception. The same container and physical route may be used; no extra transfer is required solely to change legal responsibility for the record. The following Chain of Custody flowchart illustrates how a single, continuous custody record could be

maintained throughout the early ballot process while complying with § 16-621(E):¹²



¹² Complete Early Ballot Chain of Custody chart, including for provision ballots, attached as Exhibit 2.

12. *Expedited dispute resolution and a sunset.* The superior court shall retain authority to resolve implementation disputes on 24 hours' notice. No party may unilaterally change a voter-facing procedure while a dispute is pending.

This interim protocol shall expire upon the August 6 statewide canvass unless extended or modified by this Court. It shall be without prejudice to the parties' merits positions in the pending appeal.

IV. None of the Six Identified Subjects Requires a Blanket Stay.

None of the six subjects identified by the Court presents an operational problem. Each concerns a discrete component of an existing election workflow, and each can be addressed by preserving the County's current voter-facing procedures, personnel, equipment, locations, and published instructions while assigning final authority over each statutory component to the office the Legislature named. None requires new voting locations, a second check-in system, additional equipment, duplicate tabulation, a second canvass, or the physical migration of shared IT infrastructure before the Primary. At most, the record supports targeted implementation measures—a responsibility matrix, reciprocal systems access, one chain of command for each function, contemporaneous shared

records, and expedited dispute resolution—not a blanket stay suspending every aspect of the superior court’s judgment. The subsections below address each identified subject in turn and demonstrate that the asserted risk is either already accommodated by the County’s existing election plan or can be eliminated through narrow, function-specific relief.

A. Authorization and operation of ballot drop boxes can be divided exactly as the 2025 Elections Procedures Manual directs.

The framework proposed above will not adversely affect the drop box locations approved by the Board. The 2025 Elections Procedures Manual already assigns complementary responsibilities to the Board and Recorder regarding drop boxes. It provides that ballot drop-off locations and drop boxes must be approved by the Board of Supervisors or its designee.¹³ 2025 EPM ch. 2, § I.H, at 78. It separately requires the “County

¹³ It is the Recorder’s contention that this provision of the EPM conflicts with Arizona statutes delegating to the Recorder sole authority over administration of early voting and requiring that all early ballots be delivered to and received by him. See A.R.S. §§ 16-542(A) and -548(A). As this Court explained in *Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022), “an EPM regulation that contradicts statutory requirements does not have the force of law.” See also *Leach v. Hobbs*, 250 Ariz. 572, 576 ¶ 21 (2021) (same). This brief does not concede the Recorder’s ultimate position that it is unlawful for the EPM to delegate to Boards of Supervisors any authority to designate or approve drop box locations. However, for purposes

Recorder or officer in charge of elections” to post the designated locations; monitor staffed boxes; install required fire suppression devices; develop and implement secure retrieval and chain-of-custody procedures; prescribe retrieval forms; confirm receipt; maintain traceable records; and adopt additional local security procedures. *Id.* at 78–80.

The Court can enforce both sets of requirements without moving a single box. Any locations already approved for the Primary remain approved. The Recorder posts the approved list and establishes the operational security and retrieval protocol. Existing Board personnel, acting under the direction of the Recorder, install and service the boxes, and bipartisan courier teams retrieve ballots under that protocol. The Board’s approval role is not erased; the Recorder’s statutory and EPM-assigned operational role is not displaced.

The current 2026 Primary Election Manual already trains poll workers to monitor a drop box, requires bipartisan action when a box is opened, and provides for daily retrieval by ballot couriers before Election Day. 2026 Primary Election Manual 29–30. Thus, the mechanics are

of ensuring a smooth election, the Recorder will not contest the Board’s designation and approval of locations for this primary election.

already fixed. The interim order would only identify the office that approves the custody protocol and resolves exceptions. That creates a single point of accountability and no voter-facing risk.

B. Early voting operations are manageable under the model used for the May jurisdictional elections.

The Recorder has already demonstrated that his office can successfully operate early voting sites staffed by Elections Department personnel.¹⁴ For the May 19 jurisdictional elections, the Recorder did not demand new sites, duplicate personnel, or different equipment. He designated the same three locations the Board had already selected and agreed that Board-recruited personnel and equipment could be used, with a Recorder’s Office supervisor managing each site. APP081–APP083. The Recorder’s May 6 letter confirmed a staff-level agreement that all personnel

¹⁴ The Court’s order asks the parties to discuss the operational effects of the Recorder managing ballot replacement sites. However, such sites are generally used in all-mail jurisdictional elections, whereas in the 2026 July Primary, the rough functional equivalent would be early voting locations. *Compare* A.R.S. § 16-558.02 (ballot replacement sites in all-mail jurisdictional elections) *with* A.R.S. § 16-542(A) (empower the County Recorder to “establish any other early voting locations in the county the recorder deems necessary”). This section proceeds under the assumption that the Court would like the parties to address operations at early voting locations. However, the same analysis would apply to the management of ballot replacement sites.

at a site would report to the Recorder supervisor for that election, while also preserving ordinary working-level communications. APP077–APP079.

That model did not require a second public-facing operation. The record identifies no failed opening, equipment shortage, voter delay, or ballot-processing disruption attributable to Recorder supervision. The concrete dispute at the Tempe site concerned Elections Department personnel countermanding Recorder management on whether poll workers should explain an optional early-ballot identification-verification procedure created by the Legislature in 2024. APP086–APP090; *see also* A.R.S. § 16-579. The lesson is that clear authority prevents conflict. It is not that the Board must control a function assigned to the Recorder or other officer.

C. The on-site early-ballot tabulation program is already built into the published manual and existing equipment plan.

Sections 16-579.01 and 16-579.02 do not require a separate election inside each vote center. Section 16-579.01 permits the “county recorder or other officer in charge of elections” to provide on-site tabulation of mailed early ballots on Election Day and, if that option is provided,

assigns that officer responsibility to designate a separate processing area, provide necessary workers and equipment, separately categorize and tally participating voters in the official canvass and reports, and reconcile the process. Section 16-579.02 then prescribes the voter-facing sequence: identification, roster or e-pollbook entry, removal of the ballot from the affidavit envelope, deposit into a tabulator, and secure retention of the empty envelope.

Maricopa County has already implemented that sequence in its current manual. The manual tells poll workers that voters with a mailed ballot may use their mailed ballot, proceed through early-ballot identification verification on a SiteBook, and, on Election Day, take the ballot to an Early Ballot Tabulator.¹⁵ It states that each voting location will have at least four tabulators—two Early Ballot Tabulators and two Election Day Ballot Tabulators—and instructs poll workers how to set up, open, monitor, and close both categories.¹⁶ It also explains that ordinary Election Day ballots go to an Election Day Ballot Tabulator, while a voter

¹⁵ 2026 Primary Election Manual 80–83.

¹⁶ *Id.* at 28, 60–63, 120–27, 140–43.

with a mail-in ballot who completes identification verification may use an Early Ballot Tabulator.¹⁷

Those published instructions materially narrow the operational dispute. The County does not need a new manual, a second voter-registration database, new e-pollbooks, or new ballot printers. The existing SiteBook flow already presents the relevant options. The separate processing area can be a downstream area within the same voting location; it does not require a second entrance or a competing check-in system. Existing poll workers, acting under the supervision of the Recorder, can execute the manual's steps.

The tailored interim order would change only the escalation path. The Recorder would be the final decision-maker for early-ballot eligibility, identification verification, the § 16-579.01 process, separate categorization, and reconciliation. The Board would remain responsible for the vote center's other Election Day operations, the physical tabulation equipment, central counting, and canvass. A question about an early-ballot voter would go to the Recorder liaison; a question about an Election Day ballot, facility, marshal, or tabulator malfunction would go to the

¹⁷ *Id.* at 103.

Board liaison; a mixed issue would be logged and jointly escalated. That is not two chains of command for one task. It is one final authority for each statutory task, just as the Legislature intended.

The May 1 manual deadline and closed equipment-procurement window do not create a discrete risk from this allocation. The program is already in the manual, and the equipment is already planned. The Court can prohibit changes to the voter-facing workflow and permit only a short supervisory addendum identifying final authority.

D. Chain of custody can remain physically continuous while the Recorder maintains the complete statutory record.

The Recorder can maintain the complete statutory record of chain of custody, and the Board may at the same time maintain the necessary records for its equipment. The Board’s operational argument conflates physical custody with responsibility for the official end-to-end record. Section 16-621 draws the distinction in adjacent subsections. Subsection (A) places proceedings at the counting center under the “board of supervisors or other officer in charge of elections.” Subsection (E) separately 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(A), (E).

Those provisions can operate together. When Elections Department personnel possess a sealed transport container, receive ballots at a receiving site, operate a counting center, or handle tabulation equipment, they create the contemporaneous source record for that event. When Recorder personnel receive early ballots, verify signatures, process cures, or determine provisional eligibility, they create the source record for those events. Each office transmits its source records into a shared custody system under the ultimate control of the Recorder. The Recorder maintains a complete statutory record spanning the full period described in § 16-621(E). The Board retains physical custody and operational control where its statutory functions require it.

This arrangement requires no extra ballot movement and no new handoff. The same bipartisan team may retrieve the same container on the same route to the same receiving site. The same Board personnel may operate the counting center. The only requirement is complete, contemporaneous documentation available to both offices. The proposed contempt order already described the necessary fields: container and seal

identifiers, count or batch identifier, location, date and time, custodians, transferor and transferee, route, destination, and any exception or incident. APP123 ¶ 31.

The 2025 EPM uses the same model for drop boxes. It requires the Recorder or other officer to prescribe retrieval forms and custody procedures, while designated ballot retrievers physically collect and deliver the ballots. 2025 EPM ch. 2, § I.H.9, at 79–80. The current Primary manual likewise requires bipartisan handling and custody documentation for envelope drop boxes and tabulators.¹⁸ Single-point oversight and distributed physical performance are already embedded in election administration.

A shared electronic log with role-based access and immutable audit history would further reduce risk. Until such a system is confirmed, the parties can exchange scanned or electronic copies contemporaneously and maintain a single shared incident log.

E. There is no need for two tabulations or two canvasses.

The framework described above does not require two separate tabulations or canvasses. The Board’s contention that the Order requires

¹⁸ 2026 Primary Election Manual at 29–30, 170–79.

two on-site tabulations and two canvasses rests on a category mistake. Section 16-579.01(B)(3) requires the Recorder or other officer to “[c]ategorize and tally separately in the official canvass and other reports” electors whose early ballots are tabulated at a vote center. A separate category and tally within the official canvass is not a second canvass. It is a data field or subtotal within the single county canvass.

Similarly, the physical tabulation remains singular. A voter who completes the on-site process deposits the ballot into the designated Early Ballot Tabulator. The results are incorporated into the County’s tabulation system. Proceedings at the central counting facility remain under the Board’s direction under § 16-621(A). The Board then conducts one county canvass under §§ 16-642 and 16-645. The Recorder supplies the separately categorized tally and reconciliation required by § 16-579.01(B)(3)–(4); the Board incorporates those figures into the single official canvass.

The County’s own current manual confirms this one-election structure. It distinguishes Early Ballot Tabulators from Election Day Ballot Tabulators at the voting location, but it directs that the results materials and voted ballots from all tabulators be secured and transported through

the County’s closing process.¹⁹ Nothing in the superior court’s Order requires a separate Recorder counting center, an independent results-reporting system, or a second certification.

The tailored interim order should state this expressly: “Nothing in this Order requires more than one physical tabulation of any ballot or more than one county canvass. The Recorder shall provide the separate category, tally, and reconciliation required by A.R.S. § 16-579.01(B)(3)–(4), and the Board shall incorporate that information into its single canvass under A.R.S. §§ 16-642 and 16-645.”

F. The remaining asserted risks can be isolated and addressed without restoring all disputed authority to the Board.

1. IT systems. The principal concrete risk is a physical migration or duplication of shared infrastructure during active election operations. The Recorder’s proposal removes that risk by deferring physical migration until August 6. Reciprocal access and function-specific change control can be implemented without moving servers, replacing software, or purchasing equipment. The Recorder previously committed to maintaining the Board’s access to all systems needed for Board functions.

¹⁹ 2026 Primary Election Manual 140–49.

APP078–APP079. The proposed order likewise preserved Board “read-and-execute” access for emergency voting, Election Day operations, tabulation, and canvass. APP117 ¶ 14.1.

2. Staffing and training. The proposal retains existing staffing assignments, payroll, and equipment. It does not require the Board to recruit a parallel workforce. A short responsibility matrix directed to supervisors and Hotline personnel is materially different from rewriting a poll-worker manual or retraining thousands of workers. The existing manual already teaches the relevant voter-facing process.

3. Site contracts, facilities, and equipment. The proposal leaves procurement, contracting, facilities coordination, setup, breakdown, supply delivery, and equipment support with the Board and County departments. It does not cancel a site contract, relocate a vote center, or alter equipment quantities.

4. Public communications. The parties should use one coordinated public information protocol. Each office may answer questions within its statutory sphere; mixed questions should be jointly approved or attributed to the responsible office. No litigation-related disagreement

should be communicated to poll workers or voters except through the responsibility matrix approved under the interim order.

5. Poll-worker reluctance. The Board’s reply stated that Elections Director Jarrett was “prepared to testify” to post-record instances in which prospective workers allegedly expressed concern. Reply 12. The reply acknowledged that those alleged developments post-dated the superior-court record. They therefore are not a concrete risk “previously identified in the pleadings with factual support in the superior court,” as subpart (d)(6) of this Court’s Order requires. In any event, an interim order preserving the existing manual, staffing, and equipment—and directing all parties to refrain from communicating litigation disputes to temporary workers—addresses the concern more directly than a blanket stay. Furthermore, the Recorder’s Office has received communications from poll workers and voters who were extremely concerned about the Board’s attempts, in their view, to hide the new ID-verified option for early ballots from voters.

6. Statewide consequences. The superior court’s Order binds the Maricopa County parties. Tailored relief for the 2026 Maricopa County Primary would not require another county to change its personnel,

systems, or historical consensual arrangements. Other counties may continue any allocation to which their board and recorder agree.

7. Cost. The interim proposal requires no new e-pollbooks, ballot printers, tabulators, or replacement IT system before the Primary. It uses existing County personnel and infrastructure. Any incremental cost should be limited to liaison staffing, a short addendum, reciprocal access, and shared logging—ordinary coordination expenses that do not justify a stay of every adjudicated Recorder function.

V. The May Jurisdictional Elections Show That Clear Functional Authority and Shared Resources Are Workable.

The May 19 elections are the closest operational analogue in the existing record. The Recorder did not attempt to replace the County's election infrastructure. He accepted the Board's proposed sites and existing logistical support, permitted Board-recruited personnel and equipment to be used, designated a Recorder supervisor for the Recorder-administered replacement-site functions, and expressly invited continued working-level communications. APP077–APP083. He also proposed a phased IT transition and committed to preserve the Elections Department's access to the shared systems it needed. APP078–APP079.

The available record identifies no voter who received a different ballot, missed a deadline, encountered a closed site, or was unable to vote because the Recorder supervised the replacement-site function. Nor does it identify an equipment failure attributable to the allocation. The only dispute during those elections arose when Board personnel issued an instruction that conflicted with Recorder management concerning a Recorder-administered early-ballot procedure. APP086–APP090. That episode illustrates the value of the proposed responsibility matrix: one final authority for each function, existing personnel performing the same work, and rapid escalation of mixed issues. Indeed, the Recorder’s control over ballot replacement sites during the May jurisdictional elections *enhanced* voters’ experience by ensuring they were clearly informed about the new statutory ID-verified option for early ballots.

The Recorder remains willing to use that cooperative model for the Primary. He does not ask to displace Board expertise, discard completed planning, or change voter expectations. He asks for a lawful division of final authority, reciprocal access to the tools each office needs, and a neutral mechanism to resolve disagreements before they affect operations. The superior court found after hearing the evidence that “[t]he Recorder

has consistently expressed willingness to cooperate with the Board” and that it did not see the same willingness from the Board. APP037 ¶ 25. The tailored protocol gives both offices a structured opportunity to cooperate and protects voters if they disagree.

CONCLUSION

The Court can protect the Primary without suspending the superior court’s judgment in full. Recorder Heap respectfully requests that the Court accept special-action jurisdiction and:

1. Vacate the Court of Appeals’ blanket stay as to paragraphs 1–3 and 5 of the April 16 Order, subject to the interim protocol described above;
2. Continue the stay only as to the physical transfer or duplication of shared IT systems and personnel under paragraph 4 through the August 6 statewide canvass, while requiring immediate reciprocal access and function-specific change control;
3. Preserve all existing voter-facing locations, hours, deadlines, ballot formats, personnel assignments, the published 2026 Primary Election Manual, and existing equipment;

