

**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 Response to Motion for Leave to File Brief of Amici
Curiae League of United Latin American Citizens and League of
Women Voters of Arizona and Response to Amicus Brief**

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INTRODUCTION

This dispute has generated significant public discourse and media coverage. The public wants fair elections administered according to the law. Hence, Recorder Heap's warning in his Petition for Special Action that the court of appeals' stay of the superior court's ruling "allows elections to be administered in a manner a court has already declared unlawful, casting a shadow over the validity of those results" and that "once the Board's Elections Director has administered a primary under the Board's claimed authority, no appellate decision can un-administer it." Pet. at 6, 43. The League of United Latin American Citizens ("LULAC") and the League of Women Voters of Arizona ("LWV-AZ") (collectively, the "Leagues") fixated on these phrases, misread their meaning, and generated an entire brief refuting arguments that Recorder Heap never made.

Recorder Heap never claimed that leaving the court of appeals' stay in place would render the primary election results legally invalid. He was making a public policy argument that allowing the stay to remain in place will significantly reduce public confidence in the election's validity. Indeed, the "shadow" language was in the section of the Petition dealing with public policy. The Leagues apparently failed to notice this.

Recorder Heap agrees that eligible voters should be encouraged to participate in elections, that lawfully cast ballots should be counted, and that voters should not lose their votes merely because county officials complied with a then-operative court order later modified on review. But that proposition does not answer the question before this Court. It does not show that the court of appeals properly stayed a permanent injunction entered after an evidentiary hearing. It does not show that the Board is likely to prevail on the statutory merits. It does not justify leaving a blanket stay in place when tailored relief can preserve every voter-facing aspect of the Primary Election. And it does not answer whether it is good public policy to allow the Board to administer an election when the Board's administration of that election has already been adjudicated to be unlawful.

The Leagues attack a straw man. Recorder Heap's petition did not threaten to contest the Primary Election or invalidate voters' ballots. The petition explained that if the stay remains in effect, no later appellate decision can "un-administer" the election by restoring to the Recorder the statutory authority he was prevented from exercising during that

election. That is bad public policy and an irreparable institutional injury. It is not a request to disenfranchise voters.

Amici's argument, if accepted on its own terms, supports tailored relief rather than a blanket stay. Amici insist that this dispute does not affect voter qualifications, ballot validity, counting rules, or the legal finality of election results. If so, then the election-timing concerns used to justify the stay are weaker, not stronger. The question is an internal governmental allocation of statutory authority. The Court can preserve existing voter-facing procedures while restoring final legal authority to the office the Legislature named, except where a concrete operational risk requires narrow interim treatment.

The Court should deny leave or, at minimum, disregard the request for a broad advisory declaration about future election validity. If the lodged brief is considered, it should be considered only for the limited proposition Recorder Heap already accepts: voters should not be punished for an interoffice dispute. That voter-protective principle is not a reason to deny the petition. It is a reason to grant prospective, tailored relief now.

ARGUMENT

I. The Proposed Amicus Brief Does Not Satisfy ARCAP 16 and Seeks Advisory Relief.

ARCAP 16 permits amicus participation when an amicus provides “information, perspective, or argument that can help the appellate court beyond the help that the parties’ lawyers provide.” ARCAP 16(b)(1)(C)(iii). The lodged brief does not do that. Its legal propositions are conventional: parties should obey court orders; election officials acting under color of authority may be protected by the de facto officer doctrine; election contests are limited by statute; and Arizona law favors finality. None of those arguments contribute to the decision of the dispute currently before the Court.

Amici also seek to enlarge the issues. They ask the Court to “make clear” that administration of both the 2026 Primary Election and the 2026 General Election under the court of appeals’ order casts no “shadows” over the validity of the elections or their results. Leagues Br. at 2, 18, 20. That request is not a response to the June 23 Order or to the stay factors. It asks this Court to opine now on hypothetical future election contests, including contests that may never be filed, on facts that are not known, under theories no party has asserted. And it would not even

address the argument Recorder Heap made about a “shadow” being cast over the election. That metaphorical shadow will be cast over the minds of voters, who will have lost confidence that their elections were properly administered. An order from this Court about legal technicalities will do nothing to assuage voters’ minds when they will have already seen that the Recorder they elected to administer early voting and oversee a number of other election functions was prevented from doing so.

Amici may not “create, extend, or enlarge” the issues before the Court. *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, 4 ¶ 7 n.2 (2013) (quoting *City of Tempe v. Prudential Ins. Co. of Am.*, 109 Ariz. 429, 432 (1973)). Nor should this Court issue advisory opinions or decide unnecessary issues. Arizona “courts exercise restraint to ensure they refrain from issuing advisory opinions, that cases be ripe for decision and not moot, and that issues be fully developed between true adversaries.” *Fann v. State*, 251 Ariz. 425, 432 ¶ 11 (2021).

The Leagues’ request is particularly overbroad as to the General Election. The present emergency concerns the stay of the April 16 Order and interim administration of the July 21 Primary Election. The Court’s June 23 Order directed briefing on deadlines, undisputed functions,

tailored interim relief, and six identified operational subjects. It did not invite nonparties to obtain a prospective immunity ruling for the Primary and General Elections regardless of what occurs in the future.

If the Court grants leave, it should limit the brief to the only point properly before the Court: whether concern for voters supports denying the petition or maintaining a blanket stay. It does not.

II. Amici’s Premise is a Straw Man: The Recorder Does Not Ask to Invalidate Voters’ Ballots.

The petition’s statement that an election cannot be “un-administered” is not a threat to invalidate ballots. It is an explanation of irreparable harm. Election administration consists of thousands of official decisions made before, during, and after Election Day. If the stay remains in place, the Board and its appointees will exercise functions that the superior court determined belong to the Recorder. Even if the Recorder ultimately prevails on appeal, the Court cannot later return to him the authority he was prevented from exercising during the Primary. The election will already have been administered under the stayed allocation of authority.

That injury exists even if every voter’s ballot remains valid. A court can protect voters from disenfranchisement and still recognize that an

elected county officer suffers irreparable harm when statutory authority assigned to his office is exercised by another office during the finite period of an election. The two concepts are different. Amici conflate them.

Recorder Heap, therefore, has no quarrel with the basic proposition that a voter should not lose a vote merely because election officials complied with a then-operative stay. The Recorder does not dispute that Arizona law requires compliance with court orders until they are modified through orderly proceedings. But the existence of a duty to obey a stay while it is in effect does not prove that the stay was properly entered or should remain in effect. That is the question this special action presents.

And the existence of a duty to obey a stay will do nothing to allay voters' concerns about the Board's usurpation of the Recorder's duties. That injury *will* cast a shadow over the 2026 primary. A court order cannot mandate public opinion.

Amici's court-order argument thus proves only that officials should follow the operative order until this Court says otherwise. Recorder Heap has done exactly what the law requires: he petitioned this Court for prospective relief from the Court of Appeals' stay. He does not ask officials to disregard that stay. He asks this Court to vacate or tailor it.

III. Amici's Voter-confidence Argument Undercuts the Case for a Blanket Stay.

The Court of Appeals relied on election-timing concerns to stay the superior court's permanent injunction. But amici's own theory undermines the premise that the injunction threatens voters. They repeatedly emphasize that this case does not alter voter eligibility, ballot counting, election-contest standards, or the legal validity of ballots. That is the Recorder's point as well. The April 16 Order changes no voter qualification, registration deadline, ballot format, voting location, identification requirement, or rule governing whether a ballot is lawful. It addresses which county office has final authority over internal statutory functions and the resources needed to perform them.

That distinction matters. Election-timing concerns are strongest when a court order changes the legal rules voters must follow or election workers must apply to voters: voter-registration eligibility, ballot deadlines, identification requirements, ballot-counting standards, or polling-place access. They are weakest when the requested relief preserves the public-facing election plan and clarifies only internal governmental authority. Recorder Heap has proposed exactly that: preserve existing locations, hours, deadlines, ballot formats, public instructions, poll-worker

assignments, equipment, the published manual, and existing workflows, while assigning final authority over each statutory function to the proper office and deferring physical IT migration through the Primary canvass.

If voters' ballots remain protected by the doctrines amici invoke, then those doctrines eliminate—not create—the supposed emergency requiring a blanket stay. They also do not favor one side of this interoffice dispute. An election administered under a prospective order from this Court granting tailored relief would be just as valid as an election administered under the Court of Appeals' stay. Either way, voters would be voting under the operative judicial order in effect at the time. Amici's voter-protection theory therefore supplies no reason to prefer the Board's all-or-nothing stay over the Recorder's function-specific interim proposal. A responsibility matrix, reciprocal systems access, joint command-center protocol, shared incident log, and expedited dispute-resolution process will not confuse voters or invalidate ballots. They will clarify which public official is accountable for each statutory function.

Arizona Public Integrity Alliance confirms that public confidence is served by lawful election administration, not by preserving a practice merely because an election is near. There, this Court ordered relief

against unauthorized election administration and held that public policy favored enjoining unlawful conduct when compliance was feasible. *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 64–65 ¶¶ 26–30 (2020). The same principle applies here. Voter confidence is not advanced by telling voters that statutory violations do not matter because post-election doctrines may protect the results. Voter confidence is advanced by ensuring that elections are administered lawfully *now*.

IV. Post-election Validity Doctrines Are Shields for Voters, Not Swords for Officials Resisting Prospective Relief.

Amici invoke the de facto officer doctrine, the election-contest statute, the presumption of validity, and substantial compliance. Those doctrines protect voters and the public after an election has occurred. They are not doctrines of prospective immunity. They do not authorize courts to leave an unlawful allocation of authority in place before the election. And they do not permit a stay applicant to avoid the *Smith* stay factors.

The de facto officer doctrine is a public-protection doctrine. It prevents private rights and public acts from collapsing because of later-discovered defects in an official’s title or authority. *See Johnson v. Maehling*, 123 Ariz. 15, 19 (1979); *Jennings v. Woods*, 194 Ariz. 314, 332 (1999). That doctrine exists to protect the public; it does not give government

officials a license to continue exercising disputed authority after a court has held that authority belongs elsewhere. A de facto-officer defense may validate acts as to third parties. It does not decide who is lawfully entitled to act prospectively.

The same is true of substantial compliance. In *Wenc v. Sierra Vista Unified School District No. 68*, the Court of Appeals refused to void a canvass after an unauthorized employee participated, because the error did not compel invalidation of the election result. 210 Ariz. 183, 185–86 ¶¶ 7–14 (App. 2005). That is a remedial rule for completed elections. It is not a rule allowing a court to ignore a prospective statutory violation simply because a later court might decline to void the election. Otherwise, substantial compliance would swallow statutory compliance. Election officials could violate directory statutes before an election and respond that the remedy after the election might be limited. Arizona law does not work that way.

Amici's reliance on A.R.S. § 16-672(A) has the same flaw. The Recorder does not bring an election contest. He brings a pre-election special action seeking review of a stay that suspends a permanent injunction. The limits on post-election contests therefore do not answer whether this

Court should grant prospective relief. Indeed, Arizona law generally requires challenges to election procedures to be brought before the election, not after voters have acted. *Tilson v. Mofford*, 153 Ariz. 468, 470 (1987). That principle supports deciding the present dispute now rather than postponing statutory compliance until after the election.

Nor does the presumption of validity resolve the stay factors. The presumption protects the finality of completed elections. *Cf. Donaghey v. Att’y Gen.*, 120 Ariz. 93, 95 (1978). It does not convert a legally erroneous stay into a legally correct one. It does not make the Board likely to prevail on the statutory merits. It does not erase the Recorder’s irreparable loss of authority. It does not restore public confidence in an election administered by a Board that usurped the Recorder’s authority. And it does not justify a blanket stay where narrower relief can preserve both election continuity and statutory accountability.

V. The Proper Voter-Protective Remedy is Tailored Interim Relief.

The Court can protect voters without accepting amici’s broad advisory request and without leaving the blanket stay in place. The Recorder’s proposed relief is designed precisely to avoid voter-facing disruption. It preserves the existing Primary voting plan, including locations,

hours, deadlines, ballot formats, public instructions, poll-worker assignments, equipment, and published procedures. It does not require a second check-in line, new e-pollbooks, new ballot printers, duplicate tabulation, a second canvass, or physical migration of shared IT systems before the Primary canvass.

At the same time, the proposal respects the statutory allocation the superior court enforced. The Recorder would exercise final authority over Recorder-specific functions and functions assigned to the “county recorder or other officer in charge of elections,” subject to any concrete operational exception the Court identifies. The Board would continue exercising Board-specific functions and functions assigned to the “board of supervisors or other officer in charge of elections.” Shared personnel and systems would remain in place. Employees would continue performing existing mechanical tasks. Mixed-function disputes would be escalated through designated liaisons and, if necessary, expedited superior-court review.

That structure answers the principal voter-confidence concern. Voters will see the same election. They will use the same locations, the same SiteBook workflow, the same ballots, the same tabulators, and the same

published instructions. The only change is internal: the office with final statutory authority will direct the component assigned to that office. If amici are correct that ballots remain protected by de facto-officer, substantial-compliance, and election-finality doctrines, then there is no justification for maintaining an all-or-nothing stay that deprives the Recorder of every adjudicated function.

This is also the best answer to concerns about election contests. The surest way to avoid post-election uncertainty is not to issue an abstract declaration about hypothetical future contests. It is to define authority clearly before Election Day. Clarity prevents conflict at voting locations, ensures consistent escalation paths, and reduces the risk that any official will later claim confusion over who was responsible for a statutory task. Tailored relief, therefore, protects voters more effectively than a blanket stay.

CONCLUSION

The Court should deny leave to file the League's amicus brief. If the Court considers the lodged brief, it should reject the request for an advisory declaration about future election validity and should treat the brief as confirming a narrow point Recorder Heap does not dispute: voters

should not be disenfranchised because county officials complied with a then-operative court order.

That point does not justify a blanket stay. It supports prospective tailored relief that protects voters while restoring lawful authority. The Court should grant the petition, vacate the blanket stay, and enter or direct function-specific interim relief that preserves every voter-facing aspect of the Primary Election while respecting the superior court's judgment.

Dated: July 3, 2026

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