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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

JUSTIN HEAP, in his official capacity as
Maricopa County Recorder;

Plaintiff,

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;

Defendants.

Case No.

CV 2025-020621

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

1 Plaintiff Justin Heap (“Recorder Heap”), who is the duly elected Recorder of Maricopa
2 County, moves under A.R.S. § 12-1801, Arizona Rule of Civil Procedure 65, and RPSA 9 for
3 entry of a preliminary injunction prohibiting the Defendants, the members of the Maricopa
4 County Board of Supervisors (“BOS”) from refusing to pay “the necessary expenses incurred
5 in the conduct of [Recorder Heap’s] office[],” A.R.S. § 11-601(2).

6 A preliminary injunction is essential to ensure the timely administration of elections in
7 Maricopa County. Just this year, there are elections scheduled for July 15, September 23, and
8 November 4. As detailed in the Complaint and below, Arizona law requires the BOS to pay
9 the “necessary expenses incurred in the conduct of [Recorder Heap’s] office[]” A.R.S. § 11-
10 601(2). However, the BOS obstinately refuses to fund Recorder Heap’s exercise of the elec-
11 tion-related authorities and responsibilities delegated to him by Arizona statute.

12 **Factual Background**

13 This case involves a dispute between Recorder Heap and the BOS over the administra-
14 tion and funding of election-related duties in Maricopa County.

15 The dispute arose when the BOS refused to provide the necessary resources for Re-
16 corder Heap to conduct the duties of his office unless he ceded most of his authority to the
17 BOS. Compl. ¶¶ 23-60. Arizona’s statutes clearly delegate numerous responsibilities for elec-
18 tion administration only to the Recorder,¹ not the Board of Supervisors, and the Board has a
19 mandatory duty to fund the Recorder’s conduct of these duties.

20 Because Maricopa County is one of the largest voting jurisdictions in the United States,
21 for decades the Maricopa County Board of Supervisors (“BOS”) and the Maricopa County
22 Recorder have executed various election operations and Shared Services Agreements (“SSAs”)
23 to facilitate collaboration between themselves and to formalize division of labor, resource al-
24 location, and budget responsibilities. Compl. ¶¶ 19-22.

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26
¹ See, e.g., A.R.S. §§ 16-103, -112, -120, -121.01, -128, -132, -134, -138, -151, -161 through -169,
and -542 to -544; see also, 16-121.01, -204, -205, -222, -246, -351, -411, -542, -543, -543.02, -
544, -547, -548, -549, -550, -550.01, -551, -558.01, -558.02, -579.01, -579.02, -584, -602, -621.

1 Just before Recorder Heap's election, in October 2024, the BOS executed a Shared
2 Services Agreement (SSA) with the then-lame-duck Recorder, Stephen Richer, which signifi-
3 cantly constrained the Recorder's authority over elections by transferring key election func-
4 tions and budget to the BOS. Compl. ¶¶ 22-30. The timing of the 2024 SSA's effective date
5 appears to have been an effort to undermine voters' desire for improvements in the way early
6 voting was administered, which they expressed by electing a new recorder. Compl. ¶¶ 31-33.

7 Upon taking office in January 2025, Recorder Heap terminated the 2024 SSA, citing its
8 unenforceability and its violation of his statutory duties under Arizona's election statutes. De-
9 spite Recorder Heap's good-faith efforts to negotiate a new SSA that respected the statutory
10 division of labor and that would provide the Recorder with the necessary resources to conduct
11 his duties, the BOS has refused to negotiate a reasonable SSA that complies with Arizona law.
12 Compl. ¶¶ 34-60. Indeed, on June 5, Recorder Heap made an offer of mediation, but the BOS
13 ignored him and failed to respond in any way. Compl. ¶¶ 61-66

14 Rather, the BOS has taken retaliatory actions against Recorder Heap that make it im-
15 possible for him to do his job, including removing nearly all his election-related IT staff; seiz-
16 ing the servers, databases, and websites necessary to fulfill his duties; and restricting access to
17 necessary facilities and equipment. The BOS's actions make it increasingly unlikely that elec-
18 tions in Maricopa County can be properly conducted. Compl. ¶¶ 43-53, 69-89. The longer the
19 County's elections are unlawfully administered, the greater the risk of a catastrophic failure,
20 voter disenfranchisement, and litigation over election mishaps.

21 Legal Standard

22 In deciding whether to grant a preliminary injunction, courts consider "four factors:
23 (1) a strong likelihood of success on the merits, (2) irreparable harm, (3) [whether] the balance
24 of hardships favors that party, and (4) [whether] public policy supports an injunction." *Toma*
25 *v. Fontes*, 258 Ariz. 109, 116 ¶ 20 (App. 2024), review granted (Jan. 7, 2025) (quoting *Smith v.*
26 *Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410 ¶¶ 9-10 (2006)). Courts "analyze those
factors on a sliding scale." *Id.* "So, for example, probable success on the merits and the

possibility of irreparable injury is sufficient, and so is the presence of serious questions and that the balance of hardships tips sharply in favor of the moving party.” *Id.* (cleaned up).

Moreover, when the defendant is a government official who “has acted unlawfully and exceeded his constitutional and statutory authority, [the plaintiff] need not satisfy the standard for injunctive relief.” *Arizona Pub. Integrity All. v. Fontes* (“AZPLA”), 250 Ariz. 58, 64 ¶ 26 (2020) (citing *Burton v. Celentano*, 134 Ariz. 594, 596 (App. 1982) (“[W]hen the acts sought to be enjoined have been declared unlawful or clearly are against the public interest, plaintiff need show neither irreparable injury nor a balance of hardship in his favor.”)).

Notwithstanding this lowered standard for relief here and the blatant illegality of the BOS’s actions, Recorder Heap satisfies all four preliminary injunction factors.

Argument

I. Recorder Heap is likely to succeed on the merits because the BOS has refused to fulfill its mandatory statutory duty to fund the Recorder’s election administration responsibilities.

Recorder Heap is likely to succeed on the merits because the BOS has a mandatory duty to fund Recorder Heap’s election responsibilities, yet it refuses to do so. The absence of an SSA does not exempt the BOS from its statutory obligation to pay the costs for the Recorder to exercise his duties. Arizona law requires that “necessary expenses incurred in the conduct of their offices” of county officers are “[c]ounty charges” for which the BOS is responsible to pay.² A.R.S. § 11-601(2); *see also Maricopa Cnty. v. Biaett* (“*Biaett*”), 21 Ariz. App. 286, 287, 290 (1974) (holding that expenses incurred by Maricopa County Recorder to successfully contest the Board of Supervisors’ “usurpation of the recorder’s statutory powers” “were such ‘necessary expenses’ as to make them a county charge. To hold otherwise would leave the recorder at the complete mercy of those desirous of improperly usurping his

² As explained more fully below, Arizona statutes delegate substantial authority and responsibility for election administration to the Recorder. A.R.S. §§ 16-103, -112, -120, -121.01, -128, -132, -134, -138, -151, -161 through -169, and -542 to -544. *See also*, A.R.S. §§ 16-121.01, -204, -205, -222, -246, -351, -411, -542, -543, -543.02, -544, -547, -548, -549, -550, -550.01, -551, -558.01, -558.02, -579.01, -579.02, -584, -602, -621.

1 functions.”); *Lockwood v. Bd. of Sup’rs of Maricopa Cnty.*, 80 Ariz. 311, 316 (1956) (holding that
2 Maricopa County Board of Supervisors “could not under the budget law or any other law so
3 conduct county affairs as to prevent” the “existence and operation” of an independent organ
4 of county government).

5 Therefore, the BOS has a statutory obligation to pay for all necessary expenses incurred
6 in the conduct of the Recorder’s office. Notwithstanding this mandatory statutory duty, the
7 BOS refuses to pay all of Recorder Heap’s necessary expenses.

8 In the early 1970s, a dispute like this one arose between the Recorder and the BOS.
9 That dispute was about “the Board’s alleged usurpat[ion] of the recorder’s statutory powers in
10 regard to voter registrations” and involved questions about whether the BOS could attempt
11 that usurpation by “reject[ing] the expenditure of budgeted funds.” *Biaett*, 21 Ariz. App. at
12 287, 290. The BOS soundly lost that fight, losing a partial summary judgment motion, “[t]he
13 net result of” which was a “judicial determination ... that the county recorder was able to gain
14 control and supervision of the voter registration and election functions imposed by the various
15 state statutes upon the county recorder. He was further able to obtain the necessary personnel
16 to perform the statutory functions of the county recorder with respect to voter registration
17 and elections.” *Id.* at 288. That 1970s dispute established the unremarkable principle that the
18 BOS cannot unilaterally assign to itself election functions not delegated to it by statute and
19 that it cannot use its power of the purse to deprive the Recorder of his statutory duties. The
20 same principle applies here.

21 In an apparent effort to force Recorder Heap to submit to the will of the BOS, the
22 BOS refuses to provide Recorder Heap with the necessary resources to do his job. Compl. ¶
23 44.

24 For example, the BOS refuses to provide the IT staff that the Recorder’s Office needs
25 for Recorder Heap to carry out his statutorily required and authorized election duties, and the
26 BOS has seized the websites, computer servers, and software that the Recorder uses to carry
out his duties. Compl. ¶¶ 43-50; 69-88. The loss of his IT staff means that Recorder Heap

1 cannot perform all the voter list maintenance activities that are necessary to keep voter rolls
2 clean, in conformity with statutory requirements. For example, the lack of IT staff has meant
3 that the Recorder's Office cannot perform batch comparisons with federal databases and can-
4 not upgrade the registration database to pull and sort data to find mistakes in voter registra-
5 tions. Compl. ¶ 44.

6 Furthermore, because the Recorder's Office is now entirely reliant on County IT staff,
7 the only way to accomplish needed IT tasks is to submit support request tickets. Many tickets
8 have not been completed in a timely manner, and the Recorder has little to no recourse if the
9 County staff refuses to fulfill a request or if the BOS instructs them to ignore a request. Since
10 Recorder Heap took office, the Recorder's Office has submitted 158 support tickets to the
11 County IT department, and only 85 have been closed. This means that, as of June 3, the
12 County IT department has failed to fulfill 46% of the Recorder's Office's IT requests. Compl.
13 ¶¶ 44-50.

14 The BOS has taken control over systems that were developed by the Recorder's Office
15 under prior Recorders and that the Recorder uses to fulfill the duties of his office. For exam-
16 ple, under Arizona law, the County Recorder has exclusive authority over voter registration,
17 the maintenance of the voter rolls, and the Active Early Voting List. To carry out these duties,
18 the Recorder's Office relies on internally developed software systems—ERO and VRAS—
19 created through decades of investment by prior Recorders. However, the BOS transferred
20 control of these systems, including the IT personnel who developed and maintained them, as
21 well as the servers and equipment hosting the data, to itself. Depriving the Recorder of access
22 to and control over these systems prevents the lawful execution of his exclusive statutory
23 responsibilities. Compl. ¶¶ 73-74.

24 Arizona law also assigns the Recorder exclusive authority to record and preserve public
25 documents, including maintaining records for approximately 1.8 million parcels in Maricopa
26 County. The Recorder's responsibilities in this regard are extensive and require significant IT
systems. Approximately over the last month, the BOS returned most of the Recorder's RDIS

1 IT personnel to the Recorder's Office. However, even though the Recorder's Office now has
2 the needed personnel to manage RDIS, it still does not have the physical servers that house
3 the RDIS system and databases. In other words, the BOS has taken control of all the digitized
4 recorded property documents for the entire county, even though only the Recorder has the
5 authority under statute to record and store such documents. *See*, A.R.S. § 11-461(A). The Re-
6 corder's Office, therefore, cannot administer any of the Recorder's statutory responsibilities
7 that are managed through RDIS unless the BOS deigns to grant access. For example, the
8 Recorder's Office IT staff cannot independently make upgrades to the RDIS system. Rather,
9 they must first get approval from the BOS's IT department. The BOS's continued control of
10 RDIS impairs the Recorder's ability to fulfill his non-delegable statutory duty to maintain pub-
11 lic records. Compl. ¶¶ 75-80.

12 Additionally, the BOS has taken control of the Recorder's Geographic Information
13 System (GIS). The Recorder is the only authorized custodian for a variety of important rec-
14 ords, including "all records, maps and papers deposited in the recorder's office." A.R.S. § 11-
15 461(A). That custodianship requires that the Recorder keep accurate official records of street
16 center lines, address points, and city boundaries. The Recorder's GIS is where these records
17 are stored. It is unlawful for the BOS to maintain its control of the Recorder's GIS because
18 only the Recorder's Office is charged with the custodianship of the records it contains. Compl.
19 ¶¶ 83-84.

20 The BOS has also taken control of the BeBallotReady website, which is accessible
21 through the URLs BeBallotReady.com and BeBallotReady.Vote. BeBallotReady was created
22 and popularized by the Recorder's Office under prior Recorders to serve as an official, cen-
23 tralized source of election information for voters in Maricopa County. More than a simple
24 website, it integrates all of the Recorders' early voting and election functions into one central
25 user-friendly interface. It acts as a voter dashboard and allows users to view and update their
26 voter registration, request a mail-in ballot, explore the entire ballot, find information about
upcoming elections, sign up for voter registration and early ballot alerts, and find their polling

1 place for early and election voting, and more, all in one place. Virtually all of the functionalities
2 provided by BeBallotReady relate to responsibilities statutorily entrusted to the Recorder, such
3 as voter registration, mail-in ballot requests, early voting locations, tracking of the status of
4 early ballots and signature verification, and sending electronic notices about voters' early ballot
5 status and voter registration changes. Compl. ¶¶ 85-88.

6 By seizing control of the Recorder's servers, equipment, software, databases, and web-
7 sites used to manage voter registration, recordation of documents, GIS, and early voting, the
8 BOS has essentially taken for itself ultimate control over nearly all of the Recorder's statutory
9 duties. However, under Arizona law, Recorder Heap remains responsible for fulfilling all those
10 duties.

11 No statute authorized the BOS to seize control of the personnel, equipment, software,
12 databases, and websites that the Recorder uses to carry out the duties of his office. "Actions
13 taken by a board of supervisors by methods unrecognized by statute are without jurisdiction
14 and wholly void. A governmental body may not do indirectly what a statute does not give it
15 the power to do directly." *Hancock v. McCarroll*, 188 Ariz. 492, 498 (App. 1996). The BOS lacks
16 the authority to divest the Recorder of all the tools he needs to do his job if the BOS also
17 refuses to provide him the funding to acquire what he needs to replace what was taken from
18 him.

19 Two similar disputes have arisen over the last two decades in which official legal opin-
20 ions established that actions nearly identical to the BOS's conduct here are unlawful. One was
21 a 2015 dispute between the Yavapai County Assessor's Office and the Yavapai County Board
22 of Supervisors. The other was a 2008 dispute between the Maricopa County Treasurer and the
23 BOS.

24 In the Yavapai County dispute, that county's Board of Supervisors transferred "cartog-
25 raphy and property title personnel positions" from "the County Assessor's office and as-
26 sign[ed] those positions to a newly formed department that reports to the BOS." Ex. 1 at 1,
Ariz. Att. Gen. Op. I15-013 (Dec. 21, 2015). Attorney General Brnovich issued an official

1 opinion, attached hereto as Exhibit 1, concluding that the Yavapai County Board of Supervi-
2 sors did not “have the authority to withdraw” the relevant “personnel from the control of the
3 Yavapai County Assessor” because “the functions of those personnel are necessary for an
4 assessor to perform its statutory duties.” *Id.* at 2. This was because the assessor’s “duties ...
5 derive from the Constitution and statutes. Consequently, it is beyond a county board of su-
6 pervisors’ authority to divest a county assessor of those duties” by removing personnel neces-
7 sary for the assessor to carry out those duties. *Id.* at 7. Thus, the Attorney General concluded,
8 “[t]he BOS would unlawfully usurp the Assessor’s statutory authority by eliminating cartog-
9 raphy and title personnel positions within the Assessor’s Office or by performing the Asses-
10 sor’s cartography and title functions through personnel who report to the BOS.” *Id.* at 11. The
11 same holds true here. By divesting Recorder Heap of the Recorder’s Office IT personnel and
12 software, database systems, and websites necessary to carry out the functions of Recorder
13 Heap’s office, the BOS has unlawfully usurped the Recorder’s statutory authority. The Attor-
14 ney General opinion is directly on point, and the Plaintiff Heap incorporates by reference its
15 legal analysis.

16 Similarly, in the Maricopa County Treasurer dispute, the BOS “transfer[ed] expenditure
17 authority, positions, incumbents, supplies, services and capital,” which “comprise[d] the Treas-
18 urer’s Information Technology (IT) program, to the County’s Office of Enterprise Technol-
19 ogy, thereby leaving the Treasurer without direct control over those IT operations.” Ex. 2 at
20 1, Maricopa County Attorney Opinion 2008-002 (Jul. 23, 2008). As part of the dispute, the
21 Maricopa County Treasurer requested that the Maricopa County Attorney (MCAO) issue an
22 opinion about the legality of the BOS’s actions. Attached as Exhibit 2 is that official opinion,
23 in which the MCAO concluded that, because “[i]n this day and age, many of the statutory
24 duties of the Treasurer ... are fulfilled electronically by a competent and sufficient information
25 technology system and staff,” that when the BOS took away the Treasurer’s IT staff, control
26 over the Treasurer’s statutory duties was “placed under the control of the County’s Office of
Enterprise Technology,” which was under the control of the BOS. *Id.* at 2, 4. The MCAO

1 concluded that this transfer was unlawful because the relevant Arizona statutes establishing
2 the powers of the BOS “did not empower the Board to transfer functions to another county
3 department or to vest another with control of the Treasurer’s” statutory responsibilities and
4 that “[a] governmental body may not do indirectly what a statute does not give it the power to
5 do directly.” *Id.* at 5 (citing *Hancock v. McCarroll*, 188 Ariz. 492, 298 (1997)). The MCAO opin-
6 ion is directly on point, and Recorder Heap incorporates its legal analysis by reference.

7 If the BOS does not relinquish control of ERO, VRAS, RDIS, GIS, and BeBallotReady
8 to the Recorder, the Recorder will be obligated to create equivalent systems under his control
9 so that he may fulfill his statutory duties regarding voter registration, early voting, signature
10 verification, maintenance of the voter rolls and the Active Early Voting List, and recordation
11 of documents. The BOS must fund the Recorder’s necessary expenses to create those systems.

12 The BOS also refuses to provide access to the necessary County facilities that the Re-
13 corder’s Office needs for Recorder Heap to carry out his statutorily required and authorized
14 election duties. Compl. ¶¶ 51, 70, and 115. And the BOS refuses to provide access to the
15 necessary equipment that the Recorder’s Office needs for Recorder Heap to carry out his
16 statutorily required and authorized election duties. Compl. ¶¶ 51, 71.

17 If the BOS does not give back the employees, facilities, and equipment that it took
18 from Recorder Heap, then it is required to fund all necessary expenses for the conduct of his
19 office. Therefore, if the BOS refuses to give back all the resources that it took from Recorder
20 Heap, it has a mandatory duty to pay all necessary expenses for Recorder Heap to inde-
21 pendently hire the required IT staff; secure the necessary office and warehouse space; develop
22 replacement databases, software, and websites; and procure all of the necessary equipment for
23 him to conduct the duties of his office.

24 The BOS refuses to do so and is therefore violating Arizona law and preventing Re-
25 corder Heap from carrying out the duties of his office. By refusing to provide the necessary
26 resources, the BOS is shirking its mandatory statutory duties and preventing Recorder Heap

1 from executing his duties. The BOS is violating Arizona law, and Recorder Heap is therefore
2 likely to succeed on the merits of his claim.

3 **a. Arizona’s election statutes confer significant authority over election ad-**
4 **ministration on the Recorder.**

5 Arizona’s election statutes confer specific responsibilities for election administration
6 on the county recorder. In some places, the statutes confer absolute, non-delegable authority
7 to either the Recorder³ or the BOS.⁴ However, in more than a hundred places, Arizona’s elec-
8 tion statutes delegate presumptive authority to either the Recorder or BOS but allow a partic-
9 ular county’s board of supervisors and recorder to re-allocate those responsibilities to an
10 “other officer in charge of elections.” The statutes accomplish this result by naming the party
11 presumptively delegated with that authority and then allowing that authority to alternatively
12 be exercised by an “other officer in charge of elections” or an “other authority in charge of
13 elections.”

14 Accordingly, in 111 places, Arizona’s election statutes allocate authority to
15 “the county recorder or other officer in charge of elections,”⁵ and in 16 places, it designates
16

17 ³ See, e.g., A.R.S. §§ 16-103, -112, -120, -121.01, -128, -132, -134, -138, -151, -161 through -169,
18 and -542 to -544.

19 ⁴ See, e.g., A.R.S. §§ 11-251(3), 16-447, -511, -531, -551, -642, and -645.

20 ⁵ A.R.S. § 16-121.01 (fourteen delegations of authority to county recorder); A.R.S. § 16-204
21 (two delegations of authority to county recorder); A.R.S. § 16-205 (one delegation of authority
22 to county recorder); A.R.S. § 16-222 (one delegation of authority to county recorder); A.R.S.
23 § 16-246 (six delegations of authority to county recorder); A.R.S. § 16-351 (one delegation of
24 authority to county recorder); A.R.S. § 16-411 (eight delegations of authority to county re-
25 corder); A.R.S. § 16-542 (thirteen delegations of authority to county recorder); A.R.S. § 16-543
26 (seven delegations of authority to county recorder); A.R.S. § 16-543.02 (two delegations of
authority to county recorder); A.R.S. § 16-544 (twelve delegations of authority to county re-
corder); A.R.S. § 16-547 (five delegations of authority to county recorder); A.R.S. § 16-548
(two delegations of authority to county recorder); A.R.S. § 16-549 (nine delegations of author-
ity to county recorder); A.R.S. § 16-550 (thirteen delegations of authority to county recorder);
A.R.S. § 16-550.01 (one delegation of authority to county recorder); A.R.S. § 16-551 (four
delegations of authority to county recorder); A.R.S. § 16-558.01 (two delegations of authority
to county recorder); A.R.S. § 16-558.02 (two delegations of authority to county recorder);
A.R.S. § 16-579.01 (two delegations of authority to county recorder); A.R.S. § 16-579.02 (one
delegation of authority to county recorder); A.R.S. § 16-584 (one delegation of authority to
county recorder); A.R.S. § 16-602 (one delegation of authority to county recorder); A.R.S. §
16-621 (one delegation of authority to county recorder).

1 the “county board of supervisors or other officer in charge of elections” or “the board of
2 supervisors or other authority in charge of elections.”⁶

3 Whenever Arizona’s election statutes use this type of “other officer” or “other author-
4 ity” language, they always first contain a specific provision explicitly listing either the Recorder
5 or the Board of Supervisors followed by a general provision generically listing either an “other
6 officer in charge of elections” or an “other authority in charge of elections.”

7 A “basic principle of statutory interpretation instructs that specific statutes control over
8 general statutes.” *Mercy Healthcare Arizona, Inc. v. Arizona Health Care Cost Containment Sys.*, 181
9 Ariz. 95, 100 (App. 1994) (cleaned up). Arizona courts “honor the plain language of a statute”
10 while “also attempt[ing] to reconcile potentially conflicting statutory provisions, if possible”
11 and “also avoid[ing] constructions that render one portion of a statute a nullity. And, as men-
12 tioned earlier, [Arizona courts] give preference to specific statutory provisions over general
13 ones.” *State v. Jackson*, 210 Ariz. 466, 471-72 ¶ 26 (App. 2005) (cleaned up).

14 Because specific provisions trump general ones, whenever Arizona’s election statutes
15 contain specific language referring to the Recorder or the Board of Supervisors and then ge-
16 nerically to an “other officer in charge of elections,” the presumptive delegee of the power is
17 the party that is specifically named—either the Recorder or the Board of Supervisors. This is
18 also the only interpretation that reconciles the statutory language and ensures that no part of
19 the statutes is rendered a nullity.

20 The Attorney General has implicitly favored this interpretation. In a 1986 Attorney
21 General Opinion about absentee voting requirements, the opinion cites the statutory language
22 requiring that “an elector must submit a signed request for an absentee ballot to the *county*
23 *recorder or other officer in charge of elections*” and then explains that, in the rest of the opinion, the
24

25
26 ⁶ A.R.S. § 16-405 (one delegation of authority to board of supervisors); A.R.S. § 16-406 (one
delegation of authority to board of supervisors); A.R.S. § 16-447 (five delegations of authority
to board of supervisors); A.R.S. § 16-452 (one delegation of authority to board of supervisors);
A.R.S. § 16-513.01 (one delegation of authority to board of supervisors); A.R.S. § 16-532 (five
delegations of authority to board of supervisors); A.R.S. § 16-566 (one delegation of authority
to board of supervisors); A.R.S. § 16-621 (one delegation of authority to board of supervisors).

1 person to whom this request must be submitted will be “collectively referred to throughout as
2 ‘the county recorder.’” 1986 Ariz. Op. Att’y Gen. 119 (1986) (emphasis added).

3 The statutory language is clear. However, even if there were any ambiguity, that ambi-
4 guity would need to be resolved by examining “the context of the statute, the language used,
5 the subject matter, its historical background, its effects and consequences, and its spirit and
6 purpose.” *Wade v. Arizona State Ret. Sys.*, 241 Ariz. 559, 561 ¶ 10 (2017). All these factors
7 confirm that the interpretation proffered here is the correct one.

8 *First*, this interpretation is the one consonant with historical practice. In the decades-
9 long history of SSAs between the Recorder and the BOS, counsel is unaware of any instance
10 where a statutory duty delegated to the “recorder or other election officer” or to the “board
11 of supervisors or other election officer” was exercised by a party other than the one specifically
12 named in statute without that named parties’ consent to delegate the authority as memorialized
13 in an SSA or other agreement.

14 As explained above, the BOS and Recorder had a similar dispute in the early 1970s in
15 which it was established that the BOS cannot unilaterally assign to itself election functions not
16 delegated to it by statute and that it cannot use its power of the purse to deprive the Recorder
17 of his statutory duties. *See Biaett*, 21 Ariz. App. at 287, 290. The interpretation proffered here
18 is the only way to read the statutes consistent with the outcome of that dispute.

19 *Second*, the context of the statute also confirms this interpretation. The sheer number
20 of times that the Recorder is named—111 times—versus the number of times that the BOS
21 is listed—just 16—makes clear that the Legislature considers the county recorder to presump-
22 tively be the principal election officer and election administrator of a county. Any interpreta-
23 tion of the statutes that allows the BOS to unilaterally assign to itself the 111 duties presump-
24 tively delegated to the Recorder defeats the intent of the Legislature as manifested in the con-
25 text of Arizona’s election statutes. The same analysis applies to an examination of the spirit
26 and purpose of the statute.

1 *Finally*, the effects and consequences of the interpretation also confirm that this inter-
2 pretation is correct. As explained above, Arizona’s election statutes establish a division of labor
3 at the county level when it comes to the administration of elections. Any interpretation of the
4 statutes that allows the BOS to unilaterally seize election administration responsibilities nulli-
5 fies the balance crafted by the Legislature of dividing election responsibilities between the
6 Recorder and the BOS.

7 Because the BOS has refused to negotiate a new SSA with the Recorder, each party’s
8 election responsibilities and authorities default to the presumptive defaults in Arizona’s elec-
9 tion statutes. Thus, Recorder Heap has authority over every election function in Title 16 of
10 the Arizona Revised Statutes that refers to “the recorder or other officer in charge of elec-
11 tions.”

12 Therefore, the BOS has an obligation to fund Recorder Heap’s necessary expenses to
13 carry out the duties solely delegated to him by statute,⁷ but also for all those duties delegated
14 to “the Recorder or other office in charge of elections.”⁸

15 **II. The remaining injunction factors are met.**

16 Because the BOS “has acted unlawfully and exceeded [its] constitutional and statutory
17 authority, [Recorder Heap] need not satisfy the standard for injunctive relief,” *AZPLA*, 250
18 Ariz. at 64 ¶ 26 (citations omitted), and he is therefore entitled to a preliminary injunction
19 regardless of his showing on the other traditional preliminary injunction factors.

20 Notwithstanding this lowered standard for relief here, Recorder Heap fulfills the re-
21 maining standards.

22 The BOS has made it impossible to properly conduct elections in Maricopa County
23 and for Recorder Heap to carry out the duties of his office. This causes irreparable harm to
24 Recorder Heap and threatens the successful administration of upcoming elections.

25
26 ⁷ See, A.R.S. §§ 16-103, -112, -120, -121.01, -128, -132, -134, -138, -151, -161 through -169, and -542 to -544.

⁸ See, A.R.S. §§ 16-121.01, -204, -205, -222, -246, -351, -411, -542, -543, -543.02, -544, -547, -548, -549, -550, -550.01, -551, -558.01, -558.02, -579.01, -579.02, -584, -602, -621.

1 Nullification of a public officer's lawful authority constitutes irreparable harm. *Toma*, 258 Ariz.
2 at 117 ¶ 89. Additionally, "[h]arm is irreparable when it is 'not remediable by damages.'" *Id.* at
3 ¶ 88. Here, the harm is Recorder Heap's inability to carry out the duties of his office, which is
4 something that monetary damages cannot remedy.

5 Public policy also favors a preliminary injunction. The funding of Recorder Heap's
6 duties is essential to the proper and lawful conduct of elections in Maricopa County, and
7 "[t]here is a 'strong public policy favoring stability and finality of election results.'" *Arizona*
8 *City Sanitary Dist. v. Olson*, 224 Ariz. 330, 334 ¶ 12 (App. 2010) (quoting *Donaghey v. Attorney*
9 *General*, 120 Ariz. 93, 95 (1978)).

10 The balance of the hardships also favors Recorder Heap. If the BOS does not want to
11 fulfill its mandatory duty to fund Recorder Heap's independent exercise of his election func-
12 tions by paying for such things as Recorder Heap's hiring his own IT staff; procurement of
13 his own warehouse and office space; development of new software, databases, and websites;
14 and purchase of election equipment, then there is another option available. The BOS can
15 simply do what it had already been doing for decades and only suddenly stopped doing this
16 year—it can provide IT staff to Recorder Heap; it can share its office and warehouse space
17 with him; it can return to him the servers, databases, software, and websites developed by the
18 Recorder's Office and used to carry out its functions; and it can share its election equipment
19 with him. This course of conduct that the BOS had previously followed for literally *decades*
20 illustrates that it will suffer no hardship at all to provide Recorder Heap with the resources
21 necessary to do his job.

22 Conclusion

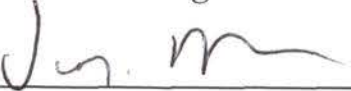
23 Because all of the requirements for a preliminary injunction have been met here, this
24 Court should issue an injunction ordering the BOS to stop withholding funds for all necessary
25 expenses of Recorder Heap as set forth in the following statutes: A.R.S. §§ 16-103, -112, -120,
26 -121.01, -128, -132, -134, -138, -151, -161 through -169, and -542 to -544 and A.R.S. § 16-
121.01, -204, -205, -222, -246, -351, -411, -542, -543, -543.02, -544, -547, -548, -549, -550, -

1 550.01, -551, -558.01, -558.02, -579.01, -579.02, -584, -602, -621; *see also Arizona Public Integrity*
2 *Alliance v. Fontes*, 250 Ariz. 58, 65 ¶ 31 (2020) (granting special action and injunctive relief in
3 special action regarding election procedures).

4 Unless this Court takes immediate action, elections in Maricopa County will continue
5 to be conducted unlawfully until this dispute is resolved. The longer this situation persists, the
6 higher the risk of a significant failure. It takes many months to prepare for each election, and
7 the clock is ticking. The consequences of delay are severe and multifaceted. The BOS's refusal
8 to fund the necessary expenses for the Recorder's Office, including IT staff, access to facilities,
9 and control over critical election systems, directly impairs the Recorder's ability to maintain
10 voter rolls, administer early voting, and conduct signature verification of early ballots. This not
11 only jeopardizes the integrity and legality of the upcoming elections but also increases the risk
12 of a catastrophic failure in the election process, which could lead to significant public distrust
13 and potential legal challenges.

14 RESPECTFULLY SUBMITTED this 12th of June, 2024.

15
16 **America First Legal Foundation**

17 By: 

18 James K. Rogers (No. 027287)

19 *Senior Counsel*

20 America First Legal Foundation

21 611 Pennsylvania Ave., SE #231

22 Washington, D.C. 20003

23 Phone: (202) 964-3721

24 James.Rogers@aflegal.org

25 *Attorney for Plaintiff*
26

Exhibit 1



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>December 21, 2015</p>	<p>No. I15-013 (R15-017)</p> <p>Re: The authority of a County Board of Supervisors regarding the County Assessor's Office.</p>
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To: **Sheila Polk**
Yavapai County Attorney

Questions Presented

- A. Does the Yavapai County Board of Supervisors ("BOS") have the authority to withdraw consent for previously approved cartography and property title personnel positions within the County Assessor's office and assign those positions to a newly formed department that reports to the BOS?
- B. Does the BOS usurp the County Assessor's authority in the following situations?
 - 1. By transferring cartography functions previously performed by the County Assessor to a county department that reports to the BOS?
 - a. May the County Assessor rely upon cartography services provided by a county department to fulfill her statutory duties or is the Assessor required to perform her own cartography functions or otherwise supervise those functions?
 - b. Does the assignment of assessor parcel numbers to parcels of property pursuant to the Arizona Department of Revenue ("ADOR") guidelines by a county department, usurp the authority of the County Assessor?
 - c. Does the assignment of tax area codes to parcels of property by a county department, usurp the authority of the Assessor?

2. By transferring property title functions previously performed by the County Assessor to a county department that reports to the BOS?
 - a. May the County Assessor rely upon property title functions provided by a county department to fulfill her statutory duties or is the Assessor required to perform her own property title functions or otherwise supervise those functions?
 - b. May a county department enter affidavit of value information into the County Assessor's database without usurping the County Assessor's statutory duties, when such entry is a verbatim account of the affidavit information?
 - c. Is there a usurpation of authority when affidavit of value information has been interpreted, adjusted or classified by the county department prior to entry into the County Assessor's database? Is there a usurpation if such data entry is done with the input of the County Assessor?
 - d. May a county department that reports to the BOS determine title and ownership of real property parcels or process splits and combination of parcels without usurping the Assessor's statutory duties?
3. If a[n] usurpation of authority has been found in numbers 1 or 2 above, does the County Assessor's ultimate ability to review and override any data entered into the Assessor's database by a county department change the analysis?

I. Summary Answers

The various questions articulated provide for a detailed review of what is, essentially, a singular primary question: Did the BOS act beyond its authority and usurp the County Assessor's authority when the BOS removed certain personnel from the County Assessor's control? The summary answer to that overriding question is yes, the BOS exceeded its authority.

The BOS does not have the authority to withdraw cartography and title personnel from the control of the Yavapai County Assessor ("Assessor") given that the functions of those personnel are necessary for an assessor to perform its statutory duties. Among other duties, an assessor is required to identify, by diligent inquiry, all real property in the county that is subject to taxation, to maintain uniform maps and records with assistance from ADOR, to report detailed property information on the tax roll, to account for all property in a county, and to supply

geographical information to various county taxing districts. Cartography and title functions are necessary to an assessor's performance of these and many other statutory duties.

II. Background

A. County Assessor Enabling Authority

Article 12, Sections 3 and 4 of the Arizona Constitution provide that county assessors are elected officials whose duties and powers are those "as prescribed by law." Arizona Revised Statutes ("A.R.S.") 11-541 similarly provides that county assessors "shall have the powers and perform the duties prescribed by law." Every assessor must hold an assessor's certificate issued or recognized by ADOR, which demonstrates that ADOR recognizes the assessor's competency. A.R.S. § 42-13006. Moreover, a county assessor is "liable for all taxes on taxable property within the county which, through the neglect of the assessor, remains unassessed." A.R.S. § 11-543. Thus, county assessors must perform, must be competent to perform, and must have the power and resources to perform their constitutional and statutory duties.

B. County Assessor's Duties

County assessors are tasked with "truly and fairly determin[ing] the valuation, without favor or partiality, of all the taxable property in [their] county at its full cash value." A.R.S. § 11-542 (assessor oath of office). Section 42-13051 provides:

A. Not later than December 15 of each year *the county assessor shall identify by diligent inquiry and examination all real property in the county that is subject to taxation* and that is not otherwise valued by the department as provided by law.

B. The assessor shall:

1. *Determine the names of all persons who own, claim, possess or control the property, including properties subject to the government property lease excise tax pursuant to chapter 6, article 5 of this title.*

2. *Determine the full cash value of all such property as of January 1 of the next year by using the manuals furnished and procedures prescribed by the department.*

3. List the property with the determined valuation for use on the tax roll and report to the department of education the determined valuations of properties that are subject to the government property lease excise tax pursuant to chapter 6, article 5 of this title.

C. *In identifying property pursuant to this section, the assessor shall use aerial photography, applicable department of revenue records, building permits and other documentary sources and technology.*

(Emphases added.)

With respect to their duty to identify property, county assessors must maintain uniform maps and records for their county with assistance from ADOR. A.R.S. § 42-13002(A)(3). ADOR is tasked with “exercis[ing] general supervision over county assessors in administering the property tax laws to ensure that all property is uniformly valued for property tax purposes.” A.R.S. § 42-13002(A)(1). An assessor must comply with the guidelines and manuals promulgated by ADOR when assessing property. A.R.S. § 42-11054(A)(1). In ADOR’s Assessment Procedures Manual (the “Procedures Manual”), ADOR describes an assessor’s duties as follows:

The County Assessor’s principle [sic] responsibilities include the location, inventorying and appraisal of all locally assessable property within their jurisdictions. The performance of these important functions requires a complete set of maps. Maps aid in determining the location of property, indicate the size and shape of each parcel, and can spatially reveal geographic relationships that contribute either negatively or positively to appraised values. In addition to the Assessors, many other governmental agencies, the general real estate community and the public rely on accurate maps. Computerized or digital mapping provides an accurate and cost effective method to map tax areas, appraisal maintenance areas and appraisal market areas.

Procedures Manual at 6.1.2. In furtherance of these duties the Procedures Manual tasks assessors as follows:

Assessors are responsible for discovering, listing and valuing all locally assessable properties within their jurisdictions. The discovery of real property (i.e., parcels of land and any improvements on them) is accomplished through:

1. Field Surveys.
2. The processing of Conveying Documents (Affidavits of Value, deeds, etc.).
3. The creation and processing of Plat Maps (a.k.a. cadastral maps).
4. Studying aerial and ground-based Photographs.
5. The processing of Building Permits.
6. The analysis of Ownership Status Maps (obtained from the State Land Department, the Bureau of Land Management, etc.).

Procedures Manual at 6.1.2-6.1.3.

As the Manual further explains:

“[A] well maintained cadastral mapping system (showing the extent and ownership of land) is essential to provide a standard, accurate *legal description*, which is needed for the accurate location, identification and inventory of property Property identification systems were designed and developed to produce a *legal description*, which prevents a specified parcel from being confused with any other parcel.”

Procedures Manual at 6.1.3 (emphasis in original).

Such duties and the resulting information enable county assessors to fulfill their statutory obligations to ensure that all property subject to the jurisdiction of the State is listed on the assessment roll and is cross-indexed. *See* A.R.S. §§ 42-15151 through 15153.

Many other corollary duties of an assessor as set forth throughout Title 42, Arizona Revised Statutes, depend upon or otherwise relate to an assessor's mapping and title duties.ⁱ Outside of Title 42, a county assessor has many duties that require the correct identification and mapping of property.ⁱⁱ Moreover, the assessor is a repository of documents and reports filed by other governmental entities relating to property locations for mapping, split, and ownership purposes, documents and reports that an assessor uses to perform its property valuation and assessment obligations.ⁱⁱⁱ Finally, numerous government bodies and individuals rely on the mapping and title records of county assessors to perform their obligations.^{iv}

Moreover, ADOR exercises general supervision over the assessors to ensure that all property throughout the State is fairly and uniformly valued. A.R.S. § 42-13002. ADOR has no authority over a county board of supervisors or its departments.

C. County Board of Supervisors

While Arizona statutes require a county board of supervisors to levy and equalize tax assessments (A.R.S. § 11-251(12)-(13)), they do not vest a county board with authority to identify property or to perform the mapping and titling functions necessary to assess property taxes. Arizona statutes presume that county boards rely upon the assessor's records when performing their duties. *See, e.g.*, A.R.S. §§ 40-344 (requiring the corporation commission, cities or towns, and board of supervisors to mail out notices to persons regarding the establishment of an underground conversion service area based on the records of the county assessor); 42-18303 (requiring county board of supervisors to rely on their county assessor's records related to common areas when selling property to a contiguous property owner).

III. Analysis

County assessors are elected officials responsible for identifying, mapping, and assessing all property in their counties for property tax and other purposes. They are also responsible for determining the ownership of property for tax and other purposes. These duties, as detailed above, derive from the Constitution and statutes. Consequently, it is beyond a county board of supervisors' authority to divest a county assessor of those duties.

Consistent with that premise, the Arizona Court of Appeals has recognized under analogous circumstances the inherent limitations on a county board of supervisors' authority. In *Romley v. Daughton*, 225 Ariz. 521 (App. 2010), the Maricopa County Board of Supervisors determined that the Maricopa County Attorney had a conflict of interest that prevented him from adequately representing the Board in most civil matters. The Board established a General Litigation Department to represent the County in most new civil litigation matters in place of the County Attorney, based on cases holding that a county board could hire outside counsel where a county attorney refuses to act, is incapable of acting, or is unavailable for some other reason. The Court of Appeals determined that although the County Board could employ outside counsel in situations in which an ethical conflict existed, the County Attorney still had the power and authority to represent the County in civil litigation matters:

[A] county board of supervisors would exceed its authority in effectively divesting the county attorney of his power to represent the county and its agencies without the requisite determination on a case-by-case basis of unavailability of the county attorney or a lack of harmony between the board and the county attorney.

Id. at 526, ¶ 25.

Similarly here, the Yavapai County Assessor must have the ability to identify and map properties and to determine the ownership of properties in order to fulfill her statutory duties relating to the valuation and assessment of property and her statutory obligations to other

governmental agencies. The BOS cannot remove cartography and property title personnel from the assessor's office without unlawfully divesting the assessor of mapping and title functions that she is required to perform under state law. Further, given that ADOR has no authority over a county board of supervisors, in contrast with its general supervisory authority over assessors, transferring these functions to a board of supervisors would obstruct ADOR's supervision of the assessment of property in Yavapai County.

A. Does the Yavapai County Board of Supervisors ("BOS") have the authority to withdraw consent for previously approved cartography and property title personnel positions within the County Assessor's office and assign those positions to a newly formed department that reports to the BOS?

No. For the reasons stated above, the BOS cannot preclude the County Assessor from controlling cartography and title departments necessary to the performance of the Assessor's duties. Given that cartography and title functions are necessary to the Assessor's performance of these duties, the Assessor must retain and control those departments.

B. Does the BOS usurp the County Assessor's authority in the following circumstances?

1. By transferring cartography functions previously performed by the County Assessor to a county department that reports to the BOS?

Yes. The BOS could not transfer cartography functions to a county department that is not controlled by the Assessor without impairing the Assessor's ability to perform her statutory duties, which specifically include maintaining uniform maps and records for the County with the assistance of ADOR. Moreover, ADOR's Procedures Manual, promulgated pursuant to A.R.S. § 42-11054, requires county assessors to create and maintain maps and related documents as part of their duties. Part 6, Procedures Manual, Eff. 3/1/11; *see also* A.R.S. § 42-13002(A)(3)(a) ("The department shall . . . [a]ssist county assessors [i]n maintaining uniform maps and

records.”). Moreover, as noted above, divesting the County Assessor of these tasks also prevents ADOR from overseeing the Assessors’ mapping and related assessment duties.

- a. **May the County Assessor rely upon cartography services provided by a county department to fulfill its statutory duties or is the Assessor required to perform its own cartography functions or otherwise supervise those functions?**

No. As set forth above, mapping properties and performing related cartography functions are duties the Assessor is statutorily obligated to perform in accordance with ADOR’s Procedures Manual. The BOS may not divest an assessor of those functions and of the personnel needed to perform those functions.

- b. **Does the assignment of Assessor parcel numbers to parcels of property pursuant to the Arizona Department of Revenue (the “Department”) guidelines by a county department usurp the authority of the County Assessor?**

Yes. Property identification is central to the Assessor’s duties, and numerous statutes require various entities to rely on the Assessor’s parcel number or otherwise address the assessor’s issuance of a parcel number. The Assessor plainly has the power to oversee and control the issuance of parcel numbers, including the execution of parcel splits and consolidations, as required by statute and ADOR’s Procedures Manual. *See, e.g., Premiere RV & Mini Storage LLC v. Maricopa Cnty.*, 222 Ariz. 440, 447 ¶ 29 (App. 2009) (holding that a split occurs, for tax purposes, when the assessor completes the process of identifying and valuing resulting parcels following sale of a portion of a parcel).

- c. **Does the assignment of tax area codes to parcels of property by a county department usurp the authority of the Assessor?**

Yes. Creating a department not controlled by the Assessor to assign tax area codes to parcels of property would directly impair the Assessor’s ability to perform her statutory duties and comply with ADOR’s Procedures Manual.

2. By transferring property title functions previously performed by the County Assessor to a county department that reports to the BOS?

Yes. Transferring property title functions to a county department that is not controlled by the Assessor would impair the Assessor's ability to perform her statutorily required duty to identify property and ownership for property tax purposes.

a. May the County Assessor rely upon property title functions provided by a county department to fulfill its statutory duties or is the Assessor required to perform its own property title functions or otherwise supervise those functions?

As set forth above, the BOS cannot divest the Assessor of the property title functions that an assessor is obligated to perform by statute and/or in accordance with ADOR's Procedures Manual. This question is thus moot.

b. May a county department enter affidavit of value information into the County Assessor's database without usurping the County Assessor's statutory duties when such entry is a verbatim account of the affidavit information?

No. As set forth above, statutes and ADOR's guidelines require the Assessor to maintain and update its database. Consequently, the BOS cannot usurp that function through one of its departments.

c. Is there a usurpation of authority when affidavit of value information has been interpreted, adjusted or classified by the county department prior to entry into the County Assessor's database? Is there a[n] usurpation if such data entry is done with the input of the County Assessor?

Yes. The BOS would significantly impair the ability of the Assessor to perform its duties by allowing a county department not controlled by the Assessor to interpret, adjust, or classify affidavit of value data. Divesting the Assessor of those functions would unlawfully usurp the Assessor's authority.

- d. May a county department that reports to the BOS determine title and ownership of real property parcels or process splits and combination of parcels without usurping the Assessor's statutory duties?**

No. The BOS would impair the Assessor's ability to perform its duties by allowing a county department not controlled by the Assessor to determine title and ownership of real property parcels or process splits or combinations of parcels. The Assessor is responsible for determining the names of all persons who own, claim, possess or control property in the County, and for processing parcel splits and combinations. Divesting the Assessor of those functions would unlawfully usurp the Assessor's authority.

- 3. If a[n] usurpation of authority has been found in numbers 1 or 2 above, does the County Assessor's ultimate ability to review and override any data entered into the Assessor's database by a county department change the analysis?**

No. As explained above, the Assessor can only fulfill her statutory duties by controlling the personnel who perform the functions necessary to those duties as well as the processes by which they perform those functions. The BOS would usurp those functions by relegating the Assessor to a "review and override" role. Moreover, by removing mapping and title personnel from the Assessor's authority, the BOS will have removed the Assessor's ability to review and analyze the data entered into the Assessor's database by BOS personnel.

IV. Conclusion

The BOS would unlawfully usurp the Assessor's statutory authority by eliminating cartography and title personnel positions within the Assessor's Office or by performing the Assessor's cartography and title functions through personnel who report to the BOS.

Mark Brnovich
Attorney General

ⁱ See, e.g., A.R.S. §§ 42-11009 (maintain public records related to property valuation and assessment); -11054 (follow standard appraisal methods and techniques as outlined by ADOR); -12052 (review assessment information on continuing basis to ensure proper classification of residential buildings and giving authority to assessors to enter into intergovernmental agreements with ADOR to exchange information related to same); -13004 (maintain data processing systems compatible with those of ADOR); -13151 through -13154 (identify and value golf courses); -13201 through 13206 (identify and value shopping centers); -13302 (process splits and consolidations of existing tax parcels); -13351 through -13355 (identify and value manufacturers, assemblers, and fabricators); -13401 through -13404 (identify and value common areas); -15054 (make investigations to ensure all property is included on assessor's property lists); -15151 (prepare the assessment roll in the form and containing the information prescribed by ADOR); -16251 through -16259 (perform administrative review of error claims); -17251 (compile the assessment roll); and -17257 (keep records related to boundaries of local taxing districts and assessment districts).

ⁱⁱ See, e.g., A.R.S. §§ 11-802 (requiring county assessor to advise county planning and zoning commissions); 15-442(C) (requiring county assessor and county superintendent to determine whether school district boundaries are in conflict with each other or other intersecting legal boundaries); 48-262(A)(1) (requiring county assessor to provide detailed list of all taxable properties within an area where one seeks a change in the boundaries of a district); 48-1594(B) ("The county assessor of each of the counties shall enter upon the rolls the property in the district assessed and taxed as required by this chapter, a description of such lands subject to assessment by the district, the name of each owner of property and the number of acres of land in each assessment, or if the owners of such lands are unknown, the lands shall be assessed to the unknown owner."); 48-3115 (requiring county assessor to enter on assessment roll a description of the lands of the subject irrigation or water conservation district and the acreage of such land).

ⁱⁱⁱ See, e.g., A.R.S. §§ 11-1135 (requiring county recorder to transmit records of deeds to county assessor); 11-321 (requiring board of supervisors to transmit copy of building permits and certificates of occupancy to assessor); 33-1902 (requiring owners of residential rental property to maintain records with the assessor); 37-253 (requiring state land department to report sales of land and a description thereof to county assessor); 37-254 (requiring state land department to notify assessor and tax collector of land that reverts to state so that assessor can cancel assessment of the land); 42-6206 (government lessors to provide assessor with list of development agreements, including locations of properties subject to agreements); 48-815.02(H) (requiring county board of supervisors to submit copy of signature sheets seeking dissolution of fire district to county assessor for verification of persons and property in district); 48-3604 (requiring board of flood control district to file map showing zone and boundary of district with county assessor); see also *Premiere RV & Mini Storage LLC v. Maricopa Cnty.*, 222 Ariz. 440 (App. 2009) (for tax purposes, tax parcel splits occur when Assessor completes the process of identifying and valuing the resulting parcels).

^{iv} See, e.g., A.R.S. § 37-1222 (requiring copy of county tax assessor's map for proposed land exchanges with federal government); 40-344 (requiring corporation commission, cities or towns, and board of supervisors to mail out notices to persons regarding establishment of underground

conversion service area based on the records of the county assessor); 42-18111 (county assessor's parcel number and description of property used for describing real property on delinquent tax list and notice of sale); 42-18202 (notice of intent to file foreclosure must be mailed to property owner of record based on records of county recorder or county assessor); 48-272 ("A special taxing district organized pursuant to this title that is submitting proposed district boundaries after November 1, 2007 shall include only entire parcels of real property within its proposed boundaries as determined by the county assessor and shall not split parcels."); 48-620 (as to improvement districts for underground utilities and cable television, ownership of property shall be determined by records of the county assessor or other public records); 48-1084.01 (assessments for road improvement districts based on each "separate assessor's parcel"); 48-2837 (requiring objections to extent of assessment district to show county assessor's parcel number); 48-3701 (defining "Parcel of member land" to be "any portion of member land for which the tax assessor for the county in which the member land is located has issued a separate county parcel number."); 48-4801 (defining "Parcel of water district member land" to be "any portion of water district member land for which the county assessor for the county in which the water district member land is located has issued a separate tax parcel number."); 49-762.07 (requiring owners or operators of solid waste facilities to submit notice that includes the county assessor's book, map and parcel number); 49-941 (requiring agencies and political subdivisions to send notices regarding hazardous waste to owners of real property as shown on the lists of the county assessor and ADOR).

Exhibit 2

Opinion No. 2008-002

July 23, 2008

The Honorable Charles Hoskins
Maricopa County Treasurer
Maricopa County Treasurer's Office
301 West Jefferson
Phoenix, Arizona 85003

SYLLABUS:

Arizona statutes impose a number of duties directly upon a county Treasurer. The Treasurer remains ultimately responsible for the fulfillment of those statutory duties, notwithstanding whether the Treasurer contracts for resources outside of his office to fulfill those duties. Further, the Board of Supervisors does not have authority to transfer expenditure authority, positions, incumbents, supplies, services and capital, where such comprise the Treasurer's Information Technology (IT) program, to the County's Office of Enterprise Technology, thereby leaving the Treasurer without direct control over those IT operations.

Dear Mr. Hoskins:

You have asked our office for an opinion that addresses two questions that arise from an action taken by the Maricopa County Board of Supervisors at its meeting on November 13, 2007. At that meeting the Board passed an agenda item that transferred expenditure authority from the Treasurer's Office to the County's Office of Enterprise Technology in the amount of \$1,791,232 for FY2007-08, and transferred sixteen (16) information technology (IT) positions and incumbents, supplies, services, and capital from the Treasurer's Office IT program to the Office of Enterprise Technology IT program. The agenda item also provided that a Service Level Agreement would be developed and entered into between the Treasurer's Office and the Office of Enterprise Technology that would define the specifics of the IT services to be provided by the Office of Enterprise Technology to the Treasurer's Office. Pursuant to that item, the employees have been transferred, and a Service Level Agreement has been prepared. You have indicated that you have not been willing to sign the proposed Service Level Agreement because you do not want to lose direct control of IT operations that enable you to keep the books and records for Maricopa County as required by state law.

As a result of that November 13, 2007 meeting, you have asked the following questions: first, whether the transfer of operational control of the Treasurer's IT program to a separate non-Treasurer controlled entity, such as the Office of Enterprise Technology, would relieve the Treasurer from liability for failure to perform those statutory Treasurer duties that rely on those transferred IT functions; and second, whether the Board of Supervisors had legal authority to

transfer the employees and capital that comprise the Treasurer's IT program to the Office of Enterprise Technology. We will address each of those questions below.

I. Would the Treasurer remain ultimately responsible for the fulfillment of his statutory duties, notwithstanding that he has contracted with an independent entity, such as the Office of Enterprise Technology, to perform IT services in order to fulfill those duties?

The Treasurer has numerous mandatory duties imposed by statute. Among those which are central to the Treasurer's function are the safekeeping of public money, A.R.S. § 11-491; collecting taxes, A.R.S. § 42-18001; apportioning public moneys held in the treasury to the proper special and general funds, A.R.S. § 11-492; keeping and rendering accounts, books and receipts for money received and disbursed, A.R.S. §§ 11-493 and 42-18102; administering the taxpayer information fund, A.R.S. § 11-495; and maintaining tax records, A.R.S. §§ 11-493 and 42-18102. In this day and age, many of the statutory duties of the Treasurer as noted above are fulfilled electronically by a competent and sufficient information technology system and staff.

Although our research did not find a case directly on point on this question, the Arizona Supreme Court provides guidance in *Cecil v. Gila County*, 71 Ariz. 320, 227 P.2d 217 (Ariz. 1951). In that case, the Gila County Treasurer had reported to the Board of Supervisors that the sum of \$5,650 was missing from the safe in her office, and she asserted that the money had been stolen by persons unknown to her. Gila County made demands that the Treasurer and her surety restore the missing money, which they refused to do, on the grounds that they were only liable for the loss of such funds through negligence or fault on the part of the Treasurer, i.e., that the Treasurer was not liable as an insurer. The Arizona Supreme Court rejected that defense, and held that the Treasurer, and thus her bonding agent, were liable for money missing from the county treasury even though there was no claim that the Treasurer had been negligent or had otherwise caused the money to be missing. The court noted that the Treasurer had a statutory duty to safely keep the funds. The court concluded that the duty was absolute and the doctrine of strict liability applies, noting:

This statute does not excuse a county treasurer from liability where a loss occurs without negligence or fault on his part, but on the contrary by implication makes him absolutely liable for the safekeeping of funds in his custody until disbursed in regular course.

Id. at 322, 227 P.2d at 218.

Based on the above holding, it stands to reason that the Treasurer could not defend a failure to fulfill his statutory duties by asserting that such failure occurred because of actions or inactions that were caused by the party to whom the functions had been transferred – the Office of Enterprise Technology. Thus, the *Cecil* decision indicates that there is no defense for breach of a statutory duty of the Treasurer; that the Treasurer's statutory duties are absolute; and that the

standard of liability is strict liability. In other words, the Treasurer is liable for a failure to fully perform his duties, regardless of whether the failure was the result of actions by his own employees or those of another entity.

Our analysis with respect to the authority for managing public revenue would be incomplete unless we also consider whether A.R.S. § 11-251(1) might provide a means to shift any potential exposure to another body, specifically the Board of Supervisors, and thus insulate the Treasurer from liability. In relevant part, A.R.S. § 11-251(1) provides:

The board of supervisors... may supervise the official conduct of all county officers... charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that such officers faithfully perform their duties and direct prosecutions for delinquencies, and, when necessary require the officers to renew their official bonds, make reports and present their books and accounts for inspection.

Case law construing this statute indicates that it does not result in the shifting of liability for breach of a statutory duty from the public officer charged with those duties, to the county. *Fridena v. Maricopa County*, 18 Ariz. App. 527, 504 P.2d 58 (1972). In *Fridena*, the plaintiff sued Maricopa County for damages based upon actions of Sheriff's deputies in serving a writ of restitution. The court acknowledged the oversight authority granted to the Board of Supervisors by A.R.S. § 11-251(1) but also noted that when the county had no right of control over the Sheriff or his deputies in the service of the contested writ, it could not be held liable for those actions. The court quoted with approval from 57 Am.Jur. 2d, Municipal, etc., Tort Liability, Sec. 86, as follows:

When duties are imposed upon a county treasurer, or upon a board of county commissioners by law rather than by the county, [the county] will not be responsible for their breach of duty or for their nonfeasance or misfeasance in relation to such duty.

Id. at 530, 504 P.2d at 61. *See also, State v. Pima County Adult Probation Department*, 147 Ariz. 146, 150, 708 P.2d 1337, 1341 (App. 1985) (Even though the county had provided probation officers with funds, facilities and equipment, the right of control over the probation officers rested with the court, not the county, and the court, not the county, was liable for their conduct.) Thus, even though the Board of Supervisors may exercise some limited supervisory authority related to "assessing, collecting, safekeeping, managing or disbursing of public revenues," the liability for the duties imposed upon the Treasurer by statute cannot be shifted.

Notably, courts in other states have also ruled that county boards of supervisors, or their equivalent, do not have the authority to control elected officers and thus are not liable for the actions of those officers. In *O'Connor v. County of Cook*, 337 Ill.App.3d 902, 907, 787 N.E. 2d 185, 188 (Ill. App. 2003), the Illinois Court of Appeals found that the sheriff's office was

responsible for maintenance of court facilities, not the county. Therefore, the county was not liable for injuries caused by improper maintenance. In *Board of Education of Granite School District v. Salt Lake County*, 659 P.2d 1030 (Ut. 1983), the Salt Lake County Treasurer was found liable for failure to comply with a state statute relating to remitting tax money to school districts. The county was found not liable as it could not be proven that the county benefitted from the treasurer's actions. Finally, in *Brown v Dorsey*, 276 Ga.App. 851, 625 S.E.2d 16 (Ga. App. 2005), DeKalb County was found not liable under a Section 1983 claim based on the actions of the county sheriff because the sheriff was an elected constitutional officer and the county did not have authority or control over his actions.

II. Does the Board of Supervisors have authority to transfer the Treasurer's IT program to the County's Office of Enterprise Technology?

The office of county treasurer is created by article XII, section 3 of the Arizona Constitution. Section 4 of that article provides that the duties, powers and qualifications of the office shall be as prescribed by law. Pursuant to that grant of authority, the Arizona Legislature has provided numerous, specific duties and powers for the office of county treasurer. Fundamentally, these duties and powers involve the safekeeping of public money and keeping of a system of books and ledgers that address the money received and disbursed by the county. See, for example, A.R.S. § 11-493, which provides that the Treasurer shall receive all money of the county and pay it out, keep an account of the receipt and expenditure of such money in books provided for that purpose, and keep his books so that separate funds or specific appropriations are exhibited in separate and distinct accounts. The county treasurer is also required to disburse money by county warrants issued by the board of supervisors and signed by the chairman of the board and clerk of the board.

You have advised us that the "books" referred to in A.R.S. § 11-493 and in other provisions of the statutes addressing the duties and powers of the Treasurer today consist of electronic data stored in computer files and maintained in the Treasurer's IT program. When the Board of Supervisors transferred the Treasurer's IT positions and IT capital equipment to the Office of Enterprise Technology, the Treasurer's control of these "books" was essentially taken away from the Treasurer and placed under the control of the County's Office of Enterprise Technology.

In order to answer your question of whether the Board of Supervisors had the legal authority to make such a transfer, we must examine the powers and duties legislatively granted to the Board of Supervisors. The case of *Hancock v. McCarroll*, 188 Ariz. 492, 937 P.2d 682 (1997), provides a guideline as to what some of the limitations are when examining actions or issues of authority of the Board of Supervisors. Specifically, *Hancock* held:

A county board of supervisors has only those powers "expressly conferred by statute, or [as] necessarily implied therefrom." *State ex rel. Pickrell v. Downey*, 102 Ariz. 360, 361, 430 P.2d 122, 125 (1967). County supervisors "may exercise

no powers except those specifically granted by statute and in the manner fixed by statute." *Mohave County v. Mohave-Kingman Estates, Inc.*, 120 Ariz. 417, 420, 586 P.2d 978, 981 (1978) (citing *State Board of Control v. Buckstegge*, 18 Ariz. 277, 158 P. 837 (1916)).

Actions taken by a board of supervisors by methods unrecognized by statute are "without jurisdiction and wholly void." (Citations omitted.) A governmental body may not do indirectly what a statute does not give it the power to do directly. *Davis v. Hale*, 96 Ariz. 219, 225, 393 P.2d 912, 916 (1964).

The question whether authority exists for the county to act "must be approached from the affirmative, that is, what constitutional or statutory authority can the county rely upon to support its questioned conduct?" (Citations omitted.) The absence of a statutory prohibition does not mean the county has inherent authority to engage in certain conduct.

Hancock v. McCarroll, 188 Ariz. 492, 498, 937 P.2d 682, 688 (1997).

Next, we must examine A.R.S. § 11-251(1) which grants certain explicit powers to the Board of Supervisors with respect to the supervision of county officers who are responsible for handling public money. That statute provides:

The board of supervisors ... may [s]upervise the official conduct of all county officers... charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that such officers faithfully perform their duties and direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection.

This statute is specific in designating certain actions that might be taken by the Board in its "supervisory" capacity, including references, for example, to the inspection of books, renewal of bonds, and direction of prosecutions. This statute does not provide the Board with the specific power to remove or transfer books and accounts from the public officer charged with direct responsibility for keeping them, and place them under the control of another county officer or employee.

In the agenda item passed by the Board on November 13, 2007, the Board cited A.R.S. § 42-17106(B) as its authority to transfer expenditure authority from the Treasurer to the Office of Enterprise Technology. That statute provides:

A governing body may transfer monies between budget items if all of the following apply:

1. The monies are available.

2. The transfer is in the public interest and based on a demonstrated need.
3. The transfer does not result in a violation of the limitations prescribed in article IX, sections 19, and 20, Constitution of Arizona.
4. A majority of the members of the governing body votes affirmatively on the transfer at a public meeting.

However, when A.R.S. § 42-17106(B) is read in context with A.R.S. § 42-17106(A), it becomes clear that it is nothing more than a mechanism to provide some limited range of flexibility for a governmental body that needs to make an adjustment to its budget during the budget year. If the only issue raised by the Board's action on November 13, 2007 related to whether or not the Board had complied with the requisite conditions for making a change in the budget (i.e., shifting dollars) mid-year, there would probably be little dispute over the agenda item passed by the Board. However, compliance with the conditions of A.R.S. § 42-17106(B) does not empower the Board to transfer functions to another county department or to vest another with control of the Treasurer's books and ledgers. A governmental body may not do indirectly what a statute does not give it the power to do directly. *Hancock v. McCarroll*, 188 Ariz. 492, 298, 937 P.2d 682, 688 (1997).

We therefore conclude that the Board of Supervisors did not have authority to transfer those specific IT program functions related to the Treasurer's books and records to the County's Office of Enterprise Technology.

III. CONCLUSION

Based on the authorities discussed above, we conclude that the Treasurer remains ultimately responsible for performance of his statutory duties, whether or not he contracts with another entity to perform some of the operations of the office. A county Board of Supervisors has only limited authority to oversee the actions of the Treasurer and is not liable for the fulfillment of the statutory duties of the Treasurer. The delegation of specific functions such as information technology to another entity would not relieve the Treasurer from responsibility for fulfilling his statutory duties.

We further conclude that the Board of Supervisors did not have authority to transfer the expenditure authority, positions, incumbents, supplies, services and capital comprising the Treasurer's IT program to the Office of Enterprise Technology, where the Treasurer would have no control over the IT operations.

Sincerely,



ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY