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Attorney for Recorder Justin Heap - Plaintiff (Heap v. Galvin) / *Defendant* (Mitchell v. Heap)

**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.

AND

RACHEL MITCHELL, in her official
capacity as the Maricopa County Attorney;

Plaintiff,

v.

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

Defendant.

Case Nos.

CV2025-020621

CV2025-022266

(consolidated)

**RECORDER HEAP'S MOTION
FOR JUDGMENT ON THE
PLEADINGS AGAINST COUNTY
ATTORNEY MITCHELL**

(Assigned to the Hon. Scott Blaney)

1 This case exposes a breathtaking abuse of power. Rather than fulfill her duty to protect
2 the public and give candid legal advice, Maricopa County Attorney Rachel Mitchell has weapon-
3 ized her office against an elected colleague—Recorder Justin Heap—because he dared to resist
4 the Board of Supervisors’ (“BOS”) unlawful stranglehold on his budget and operations. When
5 Recorder Heap sought independent counsel so he could perform his statutory duties, the County
6 Attorney’s response was not assistance or neutrality, but retaliation: she sued her own client to
7 silence the very attorneys he retained to defend the integrity of Maricopa County’s elections.

8 The audacity would be remarkable if it were not so corrosive. County Attorney Mitchell
9 first hand-picked an “advisor” for the Recorder, then shackled that lawyer with an engagement
10 letter forbidding litigation. When negotiation inevitably failed and Recorder Heap had no
11 choice but to file suit, she blocked that same lawyer from litigating, publicly declared his inde-
12 pendent counsel “unauthorized,” and orchestrated a parallel lawsuit—colluding with the BOS,
13 the Recorder’s adversary—all while professing to represent the Recorder’s interests. This is
14 the ethics-defying equivalent of appointing a fire marshal, barring him from using water, and
15 then suing him for watching the building burn.

16 The resulting conflict of interest is not a technical hiccup; it is a constitutional crisis in
17 miniature. A county attorney who is attacking her own client, leaking privileged communica-
18 tions, and advancing the BOS’s litigation strategy against him cannot credibly claim to safeguard
19 the Recorder’s rights. Arizona law does not arm one elected official with a veto over another’s
20 counsel—especially when that official has turned herself into the opposing party’s legal spear.
21 By any measure, County Attorney Mitchell’s actions offend the Ethical Rules, the common-law
22 right to counsel, and the bedrock separation of powers that protects every Arizona voter.

23 This Motion for Judgment on the Pleadings therefore asks for an uncomplicated remedy:
24 end the farce. Dismiss County Attorney Mitchell’s complaint, uphold Recorder Heap’s right to
25 independent counsel, and reaffirm that wielding public office as a cudgel against political ene-
26 mies finds no shelter in Arizona’s courts. Anything less rewards gamesmanship over governance
and invites further intrusions into the autonomy of constitutionally independent officers.

Factual Background

This dispute arises out of a separate controversy between Recorder Heap and the BOS

1 regarding its refusal to fund Recorder Heap’s “necessary expenses incurred in the conduct of
2 [his] office[],” as required by law. A.R.S. § 11-601(2). The dispute’s initial phase involved ne-
3 gotiations over a new Shared Services Agreement (SSA) between the BOS and Recorder Heap.

4 Attorney Mitchell originally appointed a criminal defense attorney to advise the Recorder
5 on the dispute. Answer ¶ 22. Accordingly, in April 2025, Recorder Heap retained America First
6 Legal (AFL) to provide pro bono representation for him in those negotiations. Answer, Ex. 10.
7 On April 18, 2025, County Attorney Mitchell sent a letter to Recorder Heap claiming that he
8 did not have the authority to retain AFL and demanding that “[y]ou are to inform Mr. Rogers
9 immediately that he is not your attorney.” *Id.* County Attorney Mitchell did not follow up on
10 this letter in any way, either by communicating with Recorder Heap to confirm whether he had
11 continued to make use of AFL services or by seeking redress in court. Answer ¶¶ 62-63.

12 When the Recorder complained that the original attorney appointed for him lacked suf-
13 ficient subject matter expertise, County Attorney Mitchell appointed former Arizona Supreme
14 Court Justice Andrew Gould to advise the Recorder only during negotiations with the Board.
15 Answer ¶ 22. However, County Attorney Mitchell and the Board did not allow Justice Gould to
16 litigate on the Recorder’s behalf. *Id.* ¶¶ 22-23, 33, 61, 64, Ex. 4-5. In May of 2025, Justice Gould
17 specifically asked the Maricopa County Attorney’s Office for permission to litigate on Recorder
18 Heap’s behalf but was not allowed to do so because the scope of his representation was limited
19 to negotiation of the SSA and did not include litigation, and, accordingly, the County would not
20 compensate him for litigation-related work. *Id.* ¶¶ 61, 64. In fact, the County Attorney’s April
21 22, 2025 engagement letter with Justice Gould specifically limited the scope of his work to “ad-
22 vice and representation to the Maricopa County Recorder related to the Shared Services Agree-
23 ment between Maricopa County and the Maricopa County Recorder.” *Id.* Ex. 4.

24 In other words, since the beginning of Recorder Heap’s dispute with the BOS, County
25 Attorney Mitchell has attempted to control the course of negotiations and to prevent Recorder
26 Heap from suing the BOS. Accordingly, when it became clear that the BOS was unwilling to
come to a reasonable settlement of the parties’ dispute, Recorder Heap was forced to use
AFL’s services to pursue litigation. Indeed, once Recorder Heap sued the BOS, Justice Gould
withdrew from representation because, “[a]s is reflected in the attached April 22, 2025 Retainer

1 Agreement from the County, my engagement in this matter is limited to providing advice and
2 representation to Mr. Heap regarding the SSA negotiation, not litigation. Based on the lawsuit
3 filed yesterday through separate counsel, this effectively ends the scope of my engagement and
4 representation in this matter.” *Id.*, Ex. 5.

5 About two weeks after County Attorney Mitchell sent her letter to Recorder Heap
6 complaining of his retention of AFL, on May 6, 2025, County Attorney Mitchell wrote a letter
7 addressed to the members of the BOS and to Recorder Heap about a dispute over the legality
8 of mailing a small number of early ballots to registered voters in the CD07 special election.
9 Answer ¶¶ 61(b), 64(b) and Ex. 6. In that letter, County Attorney Mitchell claimed that “no
10 attorney from my Office gave such approval [for the Recorder’s Election Plan]. In fact, no
11 one from the Recorder’s Office requested advice from any attorney in my Office on this topic,
12 and no attorney in my Office was aware that the Recorder’s Office intended to do this.” An-
13 swer, Ex. 6. However, in reality, Recorder Heap *had* sought and received such approval from
14 MCAO attorneys. Within a day, the letter was leaked to the public—on May 7, 2025 at 4:35
15 pm, it was posted on X by an account purporting to belong to a reporter for the Washington
16 Post.¹ The news outlet Axios also published a copy of the letter on May 7.² The BOS itself
17 published the letter on May 9 through its online govdelivery.com account.³ It is not clear who
18 leaked County Attorney Mitchell’s letter to the press, but given that the BOS only made the
19 letter public on May 9 and that the letter only listed six recipients, it is certainly possible that

20 ¹ Yvonne Wingett Sanchez (@yvonneWingett), X (May 7, 2025, at 04:35 MT),
21 <https://x.com/yvonneWingett/status/1920200779916587237> [<https://perma.cc/CCY2-52ZA>].
22 This X post is not cited for the truth of its content but to demonstrate the fact of its publication
23 as of a certain date. Accordingly, Recorder Heap asks the Court to take judicial notice of the fact
24 of publication. “Courts may take judicial notice [under Fed. R. Evid. 201] of publications intro-
25 duced to indicate what was in the public realm at the time, not whether the contents of those
26 articles were in fact true.” *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960
(9th Cir. 2010) (cleaned up); *Napear v. Bonneville Int’l Corp.*, 669 F. Supp. 3d 948, 958–59 (E.D.
Cal. 2023) (collecting cases where judicial notice taken of online articles and social media posts);
see also State v. Arizona Bd. of Regents, 253 Ariz. 6, 14 ¶33 (2022) (Arizona courts “recognize the
persuasive value of federal courts’ interpretation of a federal procedural rule”).

² Jessica Boehm, *Recorder’s mail ballot plan deepens GOP rift in Maricopa County*, Axios (May 7,
2025), <https://tinyurl.com/4mcfayps>. This article is not being cited for the truth of its content
but to demonstrate its publication as of a certain date. For the same reasons cited, *supra*, note
1, Recorder Heap asks this Court to take judicial notice of the fact of the publication.

³ Rachel Mitchell, Letter RE: Mailing early ballots to voters who have not requested them, May
6, 2025, posted online May 9, 2025, [https://content.govdelivery.com/attachments/AZ-MARIC/2025/05/09/file_attachments/3256031/County%20Attorney%20Ra-
chel%20Mitchell%20Letter.pdf](https://content.govdelivery.com/attachments/AZ-MARIC/2025/05/09/file_attachments/3256031/County%20Attorney%20Ra-chel%20Mitchell%20Letter.pdf).

1 County Attorney Mitchell was who leaked it.

2 After Recorder Heap filed his special action against the BOS, County Attorney Mitchell
3 concluded that there was only one law firm in the State capable of litigation this matter. *Id.* Ex.
4 2. Accordingly, she had one of her subordinates submit to the Maricopa County Office of Pro-
5 curement Services a “GOODS AND SERVICES COMPETITION IMPRACTICABLE”
6 form to engage the services of the law firm of Statecraft PLLC to represent the BOS in the
7 special action. *Id.* That form, which is how the County accomplishes a sole-source procurement,
8 identified Statecraft as being “the only firm qualified and able to represent the Board of Super-
9 visors a[t] this time,” “[b]ased on the very specific subject matter, elections, separations of power,
10 statutory construction and communications.” *Id.* In other words, there was no law firm on the
11 county’s list of available contracted attorneys capable of handling this case, and there was no
12 other law firm in the state available to handle it. Presumably County Attorney Mitchell believed
13 that Justice Gould was also capable of handling the litigation, but would not be able to represent
14 the BOS because of his prior representation of Recorder Heap. Therefore, County Attorney
15 Mitchell’s refusal to allow Justice Gould to litigate the case deprived Recorder Heap of the only
16 attorney in the State (at least, in Mitchell’s estimation) who was capable of litigating the case.

17 Before County Attorney Mitchell filed this special action, it appears the BOS and she
18 coordinated their efforts to undermine Recorder Heap’s prosecution of his case by trying to
19 prevent him from retaining competent counsel of his choice. For example, on June 12, 2025,
20 BOS Chairman Thomas Galvin and Vice Chair Kate Brophy McGee issued an official joint
21 statement declaring that “the firm that filed the lawsuit on behalf of the Recorder in his official
22 capacity may not have been authorized to do so by the Maricopa County Attorney” and claiming
23 (incorrectly) that this arrangement “runs counter to state statute.” *Id.* Ex. 7. Their statement then
24 threatened that “serious legal consequences may result because board members expect the
25 County Attorney to assert her lawful authority and not permit the Recorder to usurp her statu-
26 tory powers in this instance.” Galvin and McGee did not explain what they meant by “serious
legal consequences,” but the sentence in which they make the threat is focused entirely on their
demand for action from County Attorney Mitchell, and it is relevant to note that the BOS had
not yet at that time approved County Attorney Mitchell’s budget for the year. Chairman Galvin

1 followed up with a social media post on X stating “I expect Mitchell to assert her lawful authority
2 & not permit the Recorder to usurp her statutory powers.” *Id.* Ex. 9.

3 Further confirming that attorney Mitchell coordinated with the BOS is that at a status
4 conference in *Heap v. Mitchell* held before Judge Julian, counsel for the BOS stated that “I also
5 know that on the choice of counsel issue, at least one other party will have some filings. And so
6 they’ll, at some point, make their filings in the Court...” *Id.* Ex. 8 at 10:18-10:21. The only party
7 that made any court filings on AFL’s representation of Recorder Heap was County Attorney
8 Mitchell. The reasonable inference, therefore, is that counsel for the BOS knew that County
9 Attorney intended to challenge AFL’s representation of Recorder Heap, which means that
10 County Attorney Mitchell has been coordinating or communicating behind the scenes with the
11 BOS (or its counsel) about the BOS’s defense of Recorder Heap’s special action. Thus, the
12 reasonable inference from the present facts is that County Attorney Mitchell has chosen to make
13 herself directly adverse to Recorder Heap in his special action against the BOS. At the very least,
14 she has created the appearance of doing so.

15 At the same June 12, 2025 status conference, counsel for the BOS stated that the
16 BOS’s intent at the time was to file a motion to dismiss the entire special action based on the
17 BOS’s belief that AFL lacked authority to represent Recorder Heap. *Id.* at 9:22-10:17. How-
18 ever, the BOS never filed its planned motion to dismiss because County Attorney Mitchell filed
19 a separate special action making the same argument the BOS had intended to raise. At the status
20 conference held before this Court on July 22, 2025, counsel for the BOS stated that “as to the
21 idea that we would have a different briefing schedule than ... the County Attorney, the legal
22 issues in that case do overlap with the issues in ours. And we were sort of planning, I suppose,
23 to not brief the choice of counsel issue redundantly in both our case and his.... But I think it
24 may be better if we don’t have sort of staggered deadlines for the two different cases because
25 the issues do overlap.” Exhibit A, attached hereto, Transcript of July 22, 2025 hearing at 11:5-
26 11:16. At the July 22, 2025 status conference, counsel for County Attorney Mitchell agreed with
counsel for the BOS that “we think that the cases are overlapping in some of the legal issues.”
Id. at 12:1-3. In other words, counsel for County Attorney Mitchell confirmed that she continues
to share the same objective of the BOS in *Heap v. Galvin*: removing AFL from representation in

1 the case and obstructing Recorder Heap's ability to obtain the relief he seeks.

2 Instead of allowing the Board of Supervisors to raise any concerns about Recorder
3 Heap's choice of counsel through appropriate procedural means (such as filing a motion to
4 disqualify counsel), Attorney Mitchell chose to sue what she claims to be her own client. This
5 action demonstrates the fundamental conflict of interest inherent in Attorney Mitchell's posi-
6 tion and her failure to properly represent the Recorder's interests. She is directly adverse to
7 Recorder Heap in both of the consolidated matters that are before this Court.

8 **Standard of Review**

9 "A motion for judgment on the pleadings pursuant to Rule 12(c) . . . tests the suffi-
10 ciency of the complaint, and judgment should be entered for the defendant if the complaint
11 fails to state a claim for relief." *Giles v. Hill Lewis Marce*, 195 Ariz. 358, 359 ¶ 2 (App. 1999).
12 Recorder Heap's Motion should be granted because Country Attorney Mitchell's Complaint
13 requests relief that is unavailable and her claims fail as a matter of law.

14 **Argument**

15 **I. County Attorney Mitchell does not have the authority to appoint counsel for 16 Recorder Heap.**

17 The County Attorney only has those powers delegated to her by the Legislature in
18 statute. Ariz. Const. art. XII, § 3. County officers may exercise those powers expressly or
19 impliedly delegated to them by state or federal law. The County Attorney's role is statutorily
20 defined under A.R.S. § 11-532(A), which provides that the county attorney is the legal advisor
21 to the Board of Supervisors and is responsible for defending claims against them. The statute
22 further provides that the County Attorney is to provide written opinions to other officers
23 concerning the duties of their offices when required. *Id.*

24 No statute requires that the County Recorder be represented by the County Attorney
25 when he pursues litigation against other parties. And no statute gives her the power to select
26 the attorney who will represent county officers when she has a conflict of interest in the matter.
The County Attorney has made bold claims about her authority while citing to A.R.S. § 11-
532(A), however, nowhere in that statute is there any language conferring on her the authority
she claims. That she lacks this authority is even more obviously true here, where there is a

1 conflict of interest, and her ethical obligations prohibit you from involvement in the matter.

2 Indeed, it is surprising she is even trying to claim broad power to control who repre-
3 sents the Recorder. Starting in the 1970s, her predecessors have tried multiple times to con-
4 vince courts to accept the same argument. Every single time, they have failed, and Arizona
5 courts have held the opposite.

6 In *Maricopa County. v. Biaett*, the Maricopa County Recorder retained private outside coun-
7 sel to represent him in a suit against the BOS. 21 Ariz. App. 286, 287 (1974). The Recorder's
8 attorney had not been approved by the BOS or the County Attorney. After the Recorder pre-
9 vailed in the case, the BOS argued that it was not obligated to pay for the Recorder's attorney's
10 fees because the attorney had not been approved in advance. *Id.* The Court of Appeals rejected
11 the BOS's argument, holding that not only did the County Recorder have the authority to choose
12 his own lawyer to represent him in litigation, but that the BOS had to pay the attorney's fees as
13 well. The Court of Appeals explained that "[t]o hold otherwise would leave the recorder at the
14 complete mercy of those desirous of improperly usurping his functions." *Id.* at 290.

15 The BOS itself has had two similar disputes with prior County Attorneys in which the
16 County Attorney had a conflict of interest, the BOS hired its own attorney to represent it, and
17 the County Attorney objected. In both cases, Arizona courts held that the BOS could inde-
18 pendently choose its own outside attorney, regardless of the wishes of the County Attorney.
19 *See, Bd. of Sup'rs of Maricopa Cnty. v. Woodall*, 120 Ariz. 379, 382-83 (1978); *Romley v. Daughton*,
20 225 Ariz. 521, 524 ¶ 13 (App. 2010).

21 It is puzzling that the County Attorney cited *Woodall* in her Complaint in support of
22 her argument, Compl. ¶¶ 12, 20, 43, 53, as that case held the *precise opposite* of what she claims
23 it does. *Woodall* dealt with two questions. First, it dealt with the BOS's authority "to hire 'in-
24 house' counsel independent of the County Attorney for the purpose of advising [the BOS]
25 and the various county officers relative to legal matters." *Woodall*, 120 Ariz. at 381. The Coun-
26 ty Attorney only quoted language from that first portion of the opinion. Of course, that part
of the opinion has no bearing here because Recorder Heap has not retained America First
Legal to provide general "in-house" advice.

The second part of *Woodall* is the only part of the decision that is pertinent here. That

1 part of the decision dealt with the authority of the BOS “to engage counsel independent of
2 the County Attorney for the purpose of prosecuting and defending legal actions brought on
3 behalf of or against the county.” *Id.* at 382. The Supreme Court could not have been clearer
4 that county officers are not required to use the County Attorney to represent them in litigation
5 and that they *do* have the authority to choose their own outside counsel:

6 [T]he public interest would require that the men who had the final authority in all mat-
7 ters in regard to the action should be allowed to choose the counsel who actually han-
8 dled its legal phases. Since there is no specific prohibition against it in the statutes, we
9 think [Arizona statute] gives implied authority to the board of supervisors in its discre-
10 tion to employ counsel in the handling of all matters to which the county is a party.

11 *Id.* at 383 (cleaned up). Thus, our Supreme Court held that Arizona law does not prohibit “the
12 Board of Supervisors from hiring all outside legal counsel for the purpose of litigation.” *Id.*

13 Thirty-two years later, a similar dispute arose between the County Attorney and the
14 BOS. The Court of Appeals broadened *Woodall*, holding that the BOS even had the authority
15 to hire outside counsel to provide advice outside of litigation: “when the county attorney has
16 conflicts of interest that render him ‘unavailable’ to represent the county in certain matters,
17 the board may retain outside counsel to advise the Board in those matters.” *Romley v. Daughton*,
18 225 Ariz. 521, 524 ¶ 13 (App. 2010).

19 The County Attorney’s citation, Compl. ¶ 6, to *Romley v. Arpaio* is also inapposite. 202
20 Ariz. 47 (App. 2002). That case was not about the County Attorney’s authority to select coun-
21 sel for a county officer pursuing litigation against another party, but only about providing
22 representation when an officer is a *defendant*. Indeed, the relevant statute at issue was A.R.S. §
23 11–532(A)(9), which empowers County Attorneys to “*oppose* claims against the county,” but
24 not to affirmatively *prosecute* them on behalf of county officers, and which never delegates to
25 the County Attorney the authority to appoint counsel for other county officers when the
26 County Attorney has a conflict of interest. A.R.S. § 11-532(A)(9) (emphasis added); *see Romley*,
202 Ariz. at 52 ¶ 17 (quoting A.R.S. § 11-532(A)(9)).

Biaett, which specifically affirmed the authority of the County Recorder to hire outside
counsel for litigation, confirms that *Romley*’s and *Woodall*’s holdings about the BOS apply
equally to the County Recorder.

1 **A. Recorder Heap has the right to choose his own lawyer.**

2 Because County Attorney Mitchell lacks any statutory authority to choose counsel for
3 Recorder Heap, he has the same right as any other litigant to choose his lawyer. In 1907, the
4 Legislature enacted a statute making the common part of the law of this State, and that statute
5 remains on the books to this day. A.R.S. § 1-201. It is a longstanding principle of the common
6 law that a litigant has the right to select his own attorney. “Counsel was recognized as an
7 important element in civil causes early in English legal history.... The right to retain counsel in
8 civil proceedings emerged in recognition of the need for legal assistance. Indeed, by the mid-
9 thirteenth century, lawyers seem to have so monopolized the courts in London that the King
10 was forced to decree that, except in specified suits, litigants might plead their own causes
11 without lawyers.”⁴

12 “[T]he right to change attorneys, with or without cause, has been characterized as ‘uni-
13 versal.’” *Echlin v. Superior Ct. of San Mateo Cnty.*, 13 Cal. 2d 368, 372, 90 P.2d 63 (1939) (citing
14 5 Am. Jur. 281; 7 C. J. S. 940; 19 Ann. Cas. 592; 1 Thornton, Attorneys at Law, p. 253 and
15 collecting citations to California cases). “The interest of the client in the successful prosecution
16 or defense of the action is superior to that of the attorney, and he has the right to employ such
17 attorney as will in his opinion best subserve his interest.” *Fracasse v. Brent*, 6 Cal. 3d 784, 790,
18 494 P.2d 9 (1972) (cleaned up). “[A] client may fire a lawyer at any time, for good or bad
19 reasons.” Supreme Court of Arizona Attorney Ethics Advisory Committee, Ethics Op. EO-
20 20-0001 <https://perma.cc/ZN36-ZLHH>. And if a client has an absolute right to *fire* his lawyer
21 at any time, he, of course, also has an absolute right to *hire* a lawyer at any time.

22 Accordingly, because no statute gives County Attorney Mitchell the power to choose
23 Recorder Heap’s lawyer for him, he retains his common law right to select his own lawyer and
24 County Attorney Mitchell’s special action must be dismissed.

25 **II. Even if the County Attorney did have the right to select counsel for Recorder**
26 **Heap, he has the right to select his attorney in *Heap v. Galvin* because she is**
 adverse to him in that matter.

 Because County Attorney Mitchell is directly adverse to Recorder Heap in *Heap v. Gal-*
vin, he has a right to select his own attorney independent of the right articulated *supra* at § I.

⁴ *The Right to Counsel in Civil Litigation*, 66 Columbia L.R. 1322, 1325 (Nov., 1966).

1 Even County Attorney Mitchell concedes that when she is directly adverse to Recorder Heap,
2 he has the right to select his own attorney. Compl. ¶ 34 (“There is no dispute that, when an
3 actual legal conflict exists between the County Attorney and the Recorder (such as in this
4 litigation), the Recorder is entitled to select his preferred attorney to represent him.”). The
5 County Attorney's attempt to control Recorder Heap's choice of counsel in *Heap v. Galvin*
6 creates an irreconcilable conflict of interest that violates the Arizona Rules of Professional
7 Conduct. This conflict fundamentally undermines any purported authority the County Attor-
8 ney may claim to have over Recorder Heap's representation.

9 **A. The County Attorney cannot simultaneously represent and oppose the same**
10 **client.**

11 The Arizona Rules of Professional Conduct explicitly prohibit a lawyer from represent-
12 ing a client while simultaneously acting as an advocate against that same client in another matter.
13 ER 1.7(a)(1) establishes that “a lawyer shall not represent a client if the representation involves
14 a concurrent conflict of interest[.]” which exists when “there is a significant risk that the repre-
15 sentation of one or more clients will be materially limited by ... a personal interest of the lawyer.”

16 Comment 10 to ER 1.7 specifically addresses this precise scenario in the government
17 context: “A government lawyer owes a duty of loyalty to a government organization and fulfills
18 that duty by providing advice to the organization's client representatives. Therefore, a govern-
19 ment lawyer cannot provide advice to, or represent, the client representative in one matter,
20 and act as an advocate against the client representative in another matter, even when the mat-
21 ters are unrelated.” This prohibition exists regardless of whether the County Attorney believes
22 the matters are unrelated or distinct.

23 **B. The County Attorney's use of information violates client confidentiality.**

24 The County Attorney's conduct toward Recorder Heap regarding the CD07 election
25 also shows that she has taken a general adverse position to him in his conduct of the duties of
26 his office. This is for three reasons.

First, County Attorney Mitchell purported to disclose confidential information, which
is an additional ethical violation under ER 1.8(b), which provides that “[a] lawyer shall not use
information relating to representation of a client to the disadvantage of the client unless the

1 client gives informed consent, except as permitted or required by these Rules.” Comment 3 to
2 ER 1.8 explains that “[u]se of information relating to the representation to the disadvantage
3 of the client violates the lawyer's duty of loyalty.” It also clarifies that this rule “applies when
4 the information is used to benefit either the lawyer or a third person, such as another client or
5 business associate of the lawyer.” County Attorney Mitchell purported to disclose the content
6 (or lack thereof) of her privileged communications to the BOS, who was adverse to Recorder
7 Heap in the matter at issue. She made this forbidden disclosure in an attempt to benefit the
8 BOS. This is a per se violation of ER 1.8 and illustrates her adversity to Recorder Heap.

9 *Second*, her purported “disclosure” was incorrect. Recorder Heap *had* consulted with
10 MCAO staff and *had* gotten their approval for his planned conduct of the CD07 election (and
11 it is no surprise they did approve his planned course of action, as his plan to mail out early
12 ballots to voters in outlying areas had been the normal course of operations under his three
13 predecessors as well).

14 *Third*, it appears likely that she leaked her letter to the press, or at least sent it to the BOS
15 knowing it would soon be leaked to the press, which violated her duty of loyalty to her client.

16 **C. County Attorney Mitchell chose to directly sue Recorder Heap herself, rather
17 than referring the matter to outside counsel, as required by the Ethical
18 Rules, making her directly adverse to him, .**

19 If County Attorney Mitchell really believed that AFL’s representation of Recorder
20 Heap were improper or unlawful, the Ethical Rules clearly set out the required course of action
21 for her to take without violating her duties to her client and without becoming directly adverse
22 to him. ER 1.16(e) states that “[w]hen a government lawyer has a good faith belief that appli-
23 cable law imposes an affirmative duty to initiate an action against a client representative, *the*
24 *government lawyer must refer the commencement and pursuit of that action to another government law firm or*
25 *outside counsel*, unless it is feasible for the government lawyer to cease advising the government
26 organization through that client representative and to advise the government organization only
through other client representatives.” (emphasis added).

Comment 4 to ER 1.16 explains the reason for this requirement: “Because a govern-
ment lawyer cannot terminate representation of the government organization, if the govern-
ment lawyer cannot feasibly cease advising and representing the government organization

1 through the client representative against whom an action must be initiated, then referral of
2 that action to another government law firm or outside counsel is *required* to address conflict of
3 interest issues.” (emphasis added).

4 The County Attorney’s initiation of *Mitchell v. Heap* while simultaneously claiming the
5 right to control Recorder Heap’s representation in *Heap v. Galvin* violates this mandatory referral
6 requirement. County Attorney Mitchell ignored the clear requirements of the Ethical Rules and
7 committed a significant violation by making herself directly adverse to her own client. She has
8 so poisoned the relationship of trust that must exist between an attorney and her client that it
9 will likely be impossible for her to represent Recorder Heap in *any* matter, whether related to
10 this dispute or not. It was to avoid this very risk that the Supreme Court recently amended Rule
11 1.16(e) to impose the requirement for outside referral. County Attorney Mitchell should have
12 referred this matter to another County Attorney in the State or to the Attorney General. She
13 failed to do so, and now she has created a situation of direct adversity of such magnitude that
14 would allow the County Recorder to choose his own counsel in *all* matters, not just this one.

15 **D. County Attorney Mitchell’s coordination with the BOS demonstrates her di-**
16 **rect adversity to Recorder Heap.**

16 The factual record establishes that County Attorney Mitchell coordinated her efforts with
17 the Board of Supervisors to undermine Recorder Heap’s ability to obtain effective representa-
18 tion in *Heap v. Galvin*, thereby making herself directly adverse to Recorder Heap in that litigation.

19 **1. Pre-Litigation Coordination to Control Choice of Counsel**

20 From the outset of Recorder Heap’s dispute with the BOS, County Attorney Mitchell
21 strategically limited his access to effective legal representation. When Recorder Heap com-
22 plained that the original attorney lacked sufficient expertise, Mitchell appointed Justice Gould
23 but explicitly restricted his scope of representation to “advice and representation to the Mari-
24 copo County Recorder related to the Shared Services Agreement between Maricopa County
25 and the Maricopa County Recorder,” specifically excluding litigation. Answer, Ex. 4. This lim-
26 itation made it so Justice Gould was unable to commence litigation and forced him to with-
draw once litigation commenced, which, but for AFL, would have left Recorder Heap without
counsel at the critical juncture when he needed to file suit against the BOS.

Meanwhile, when the same dispute required litigation counsel for the BOS, County

1 Attorney Mitchell concluded there was only “one law firm in the State capable of litigation
2 this matter” and arranged sole-source procurement for Statecraft PLLC to represent the BOS.
3 This created an asymmetric situation where Mitchell ensured the BOS had access to what she
4 deemed the only qualified litigation counsel while simultaneously depriving Recorder Heap of
5 competent representation.

6 **2. Coordination between the BOS and County Attorney Mitchell.**

7 The record reveals explicit coordination between County Attorney Mitchell and the
8 BOS leadership. On June 12, 2025, BOS Chairman Thomas Galvin and Vice Chair Kate Bro-
9 phy McGee issued an official joint statement specifically demanding that County Attorney
10 Mitchell “assert her lawful authority and not permit the Recorder to usurp her statutory pow-
11 ers,” threatening that “serious legal consequences may result.” Answer, Ex. 7. Chairman Gal-
12 vin reinforced this coordination through a social media post stating: “I expect Mitchell to
13 assert her lawful authority & not permit the Recorder to usurp her statutory powers.” *Id.*, Ex.
14 9. Significantly, this statement came before the BOS had approved County Attorney Mitchell’s
15 budget, suggesting potential leverage in their coordination.

16 The coordination is further evidenced by counsel for the BOS’s statement at a status
17 conference that “I also know that on the choice of counsel issue, at least one other party will
18 have some filings.” *Id.* Ex. 8 at 10:18-10:21. Since County Attorney Mitchell was the only party
19 that subsequently filed regarding AFL’s representation, it appears that the BOS (or counsel
20 for the BOS) had advance knowledge of Mitchell’s litigation strategy, further confirming be-
21 hind-the-scenes coordination between the BOS and County Attorney Mitchell.

22 **3. Aligned Strategic Objectives**

23 County Attorney Mitchell and the BOS share identical strategic objectives in both *Heap*
24 *v. Galvin* and *Mitchell v. Heap*. At the July 22, 2025 status conference, counsel for County At-
25 torney Mitchell explicitly agreed with BOS counsel that “we think that the cases are overlap-
26 ping in some of the legal issues.” Ex. A at 12:1-3. BOS counsel acknowledged their shared
approach, stating they were “planning, I suppose, to not brief the choice of counsel issue
redundantly in both our case and his.” *Id.* at 11:5-11:16.

Most tellingly, BOS counsel revealed that the BOS’s original intent was to file a motion

1 to dismiss the entire *Heap v. Galvin* special action based on AFL's alleged lack of authority to
2 represent Recorder Heap. However, the BOS never filed its planned motion to dismiss be-
3 cause County Attorney Mitchell filed a separate special action making the same argument the
4 BOS had intended to raise. This demonstrates that County Attorney Mitchell assumed the
5 BOS's litigation strategy, effectively serving as their advocate while purporting to represent
6 Recorder Heap's interests.

7 **4. Creation of Direct Adversity**

8 Through this coordination and shared objectives, County Attorney Mitchell has made
9 herself directly adverse to Recorder Heap in *Heap v. Galvin*. Rather than allowing the BOS to
10 raise procedural challenges through appropriate means such as a motion to disqualify counsel,
11 County Attorney Mitchell chose to file a separate lawsuit advancing the same arguments and
12 seeking the same relief. As counsel for County Attorney Mitchell confirmed, she continues to
13 share the same ultimate objective of the BOS in *Heap v. Galvin*: removing AFL from represen-
14 tation in the case and obstructing Recorder Heap's ability to obtain the relief he seeks.

15 The consolidation of the two cases makes this all the more apparent. Both cases arise
16 from the same set of facts and overlapping legal issues. That the BOS and County Attorney
17 Mitchell consented to consolidation makes this all the more apparent. Her direct adversity to
18 Recorder Heap in both the consolidated matters makes any claim to control his choice of
19 counsel ethically untenable and legally improper.

20 **E. Recorder Heap has a right to conflict-free counsel.**

21 Given these ethical violations, Recorder Heap has not only the right but the obligation
22 to select independent counsel for *Heap v. Galvin*. Any attempt by the County Attorney to con-
23 trol this selection while simultaneously prosecuting *Mitchell v. Heap* would perpetuate the very
24 conflicts of interest that the Arizona Rules of Professional Conduct are designed to prevent.

25 The County Attorney's conflict of interest thus eliminates any claim she might other-
26 wise have to control Recorder Heap's choice of counsel. Recorder Heap must be permitted to
select his own attorney to ensure compliance with the Arizona Rules of Professional Conduct
and to protect his right to conflict-free representation.

F. Alternatively, if any doubt exists regarding the extent of County Attorney

1 **Mitchell's adversity, discovery should be permitted to establish the full scope**
2 **of coordination.**

3 Should this Court have any uncertainty about County Attorney Mitchell's direct adver-
4 sity to Recorder Heap, dismissal of her claims would remain premature without first allowing
5 discovery into the extent of coordination between County Attorney Mitchell and the Board of
6 Supervisors. The factual record already reveals substantial evidence of coordination: the BOS's
7 public demands for County Attorney Mitchell to take action against Recorder Heap, advance
8 knowledge by BOS counsel of Mitchell's intended filings, and their acknowledged shared legal
9 strategy. However, the full extent of their behind-the-scenes communications remains unclear.
10 As the factual background demonstrates, County Attorney Mitchell's May 6, 2025 letter criti-
11 cizing Recorder Heap's election procedures was leaked to the press within hours, appearing
12 on social media and in news outlets before the BOS officially published it. While it is not clear
13 who leaked County Attorney Mitchell's letter to the press, the limited distribution list makes
14 it certainly possible that County Attorney Mitchell leaked the letter to the press.

15 Such coordination, if fully established through discovery, would definitively demon-
16 strate that County Attorney Mitchell is directly adverse to Recorder Heap in *Heap v. Galvin* and
17 therefore does not have any authority to select counsel for him. Accordingly, if this Court
18 determines that additional factual development is necessary, the appropriate remedy is to per-
19 mit targeted discovery rather than to grant County Attorney Mitchell's motion on the current
20 record.

21 **III. County Attorney Mitchell's claims are also barred by multiple additional**
22 **grounds.**

23 Even if County Attorney Mitchell had the authority she claims and lacked any conflict
24 of interest, her claims must nonetheless be dismissed on several additional independent grounds.

25 **A. Estoppel**

26 County Attorney Mitchell is estopped from seeking the relief requested due to her own
conduct that created the very situation she now challenges. Having appointed Justice Gould
with explicit limitations preventing him from providing litigation services to Recorder Heap,
County Attorney Mitchell cannot now complain that Recorder Heap was forced to seek alter-
native counsel when litigation became necessary. When Justice Gould specifically asked the

1 Maricopa County Attorney's Office for permission to litigate on Recorder Heap's behalf but
2 was not allowed to do so because the scope of his representation was limited to negotiation of
3 the SSA, County Attorney Mitchell effectively forced Recorder Heap to retain independent
4 counsel.

5 Moreover, County Attorney Mitchell made demonstrably false public statements re-
6 garding her office's communications with Recorder Heap, claiming "no attorney from my
7 Office gave such approval [for the Recorder's Election Plan]," Answer, Ex. 6, when Recorder
8 Heap had, in fact, sought and received such approval from MCAO attorneys. Having misrep-
9 resented the attorney-client relationship publicly, she cannot now seek to control that same
10 relationship through litigation.

11 Finally, County Attorney Mitchell coordinated her lawsuit with the BOS—the oppos-
12 ing party in *Heap v. Galvin*—rather than with her purported client, Recorder Heap. This con-
13 duct estops her from claiming to act in Recorder Heap's interests.

14 **B. Waiver and Laches**

15 County Attorney Mitchell was aware of Recorder Heap's retention of AFL as early as
16 April 18, 2025, yet waited until June 25, 2025—over two months—to initiate this litigation.
17 This delay constitutes both waiver of her claims and inexcusable laches, particularly given the
18 time-sensitive nature of election-related matters and the approaching election cycle.

19 The doctrine of laches bars stale claims where delay in assertion causes prejudice to the
20 opposing party. Here, County Attorney Mitchell's delay has forced Recorder Heap to expend
21 substantial resources defending his choice of counsel rather than focusing on the underlying
22 dispute with the BOS, creating precisely the type of prejudice that laches is designed to prevent.

23 **C. Unclean Hands**

24 County Attorney Mitchell's inequitable conduct bars her from obtaining the equitable
25 relief she seeks. The same conduct that supports estoppel—limiting Justice Gould's represen-
26 tation, making false public statements about attorney-client communications, and coordinating
with the BOS against her purported client—also demonstrates the unclean hands that preclude
equitable relief.

A party seeking equitable relief must come to court with clean hands. County Attorney

1 Mitchell's deliberate creation of the situation she now challenges, combined with her public
2 misstatements and coordination with Recorder Heap's opponents, renders her hands suffi-
3 ciently unclean to bar the relief requested.

4 **D. Lack of authority and standing**

5 County Attorney Mitchell lacks both statutory authority to control Recorder Heap's
6 choice of counsel and standing to challenge that choice. As demonstrated above, no statute
7 grants her the authority she claims, and her conflict of interest in this matter eliminates any
8 beneficial interest she might otherwise possess.

9 To the extent County Attorney Mitchell seeks to interfere with the internal operations
10 and discretionary decisions of an independent elected office, her claims exceed her legal au-
11 thority and improperly intrude upon the separation of powers between county offices.

12 **E. Additional Grounds**

13 County Attorney Mitchell's claims are also subject to dismissal based on governmental
14 immunity principles and Recorder Heap's good faith compliance with all applicable statutes
15 and legal authority. Recorder Heap has acted at all times within the scope of his lawful author-
16 ity and official duties, rendering claims of ultra vires conduct baseless.

17 For these additional and independent reasons, County Attorney Mitchell's complaint
18 fails as a matter of law and must be dismissed in its entirety.

19 **Conclusion**

20 For all of these reasons—decades of precedent contradicting her position, County At-
21 torney Mitchell's manifest conflict of interest, her collusion with the Board of Supervisors, her
22 ethical breaches, and the independent defenses of estoppel, waiver, laches, unclean hands, lack
23 of authority, and governmental immunity—the Complaint collapses under its own weight; the
24 Court should therefore grant Recorder Heap's Motion for Judgment on the Pleadings, dismiss
25 the County Attorney's claims with prejudice with an award of fees and costs, and confirm that
26 an elected officer's constitutional and statutory right to conflict-free counsel cannot be hi-
jacked by an adversary in disguise.

1 RESPECTFULLY SUBMITTED this 11th day of August, 2025.

2 **America First Legal Foundation**

3
4 By: /s/James Rogers

5 James K. Rogers (No. 027287)

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14 *Defendant in Mitchell v. Heap*

15 ORIGINAL filed and served via electronic
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Exhibit A

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

JUSTIN HEAP,

Plaintiff,

vs.

THOMAS GALVIN, ET AL.,

Defendants.

No. CV2025-020621

Phoenix, Arizona

July 22, 2025

11:00 a.m.

BEFORE THE HONORABLE SCOTT A. BLANEY

TRANSCRIPT OF PROCEEDINGS

Status Conference

Proceedings recorded by electronic sound recording; transcript
produced by eScribers, LLC.

JENNIFER L. SULLIVAN
Transcriptionist



I N D E XJuly 22, 2025

<u>PLAINTIFF'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VD</u>
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None

<u>DEFENDANTS' WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VD</u>
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None

M I S C E L L A N E O U SPAGE

Calendaring Matters

8

EXHIBITS

None

APPEARANCESJuly 22, 2025

Judge: Scott A. Blaney

For the Plaintiff:

James K. Rogers

Witnesses:

None

For the Defendants:

Kory Langhofer

Witnesses:

None

For the Intervenor:

Ryan P. Hogan

Brett W. Johnson

Witnesses:

None

Phoenix, Arizona

July 22, 2025

(The Honorable Scott A. Blaney Presiding)

STATUS CONFERENCE:

THE COURT: All right. Good morning, folks. This is CV 2025-020621, the matter of Heap v. Galvin, et al. Counsel, please announce for the record starting with Plaintiff.

MR. ROGERS: Good morning, Your Honor. James Rogers, on behalf of Plaintiff Recorder Justin Heap.

THE COURT: All right. Good morning.

MR. LANGHOFER: Good morning, Your Honor. Kory Langhofer for the County Defendants.

THE COURT: All right. That's the Board of Supervisors, right, Mr. Langhofer?

MR. LANGHOFER: Yes, Your Honor.

THE COURT: Okay.

MR. HOGAN: Good morning, Your Honor. Ryan Hogan and Brett Johnson, on behalf of County Attorney Mitchell in the consolidated case.

THE COURT: All right. Good morning as well. Anybody remaining? All right. This is a time set for a status conference on the parties' respective special actions. Normally, I like to come into these hearings a lot better prepared. And I was notified by my staff. They sent it to me. I didn't see it, but that a document was filed, kind of a

1 stipulation. Mr. Rogers, I believe you're the one who filed
2 it, regarding briefing and everything going forward. Have you
3 had a chance to speak with County Attorney Mitchell's counsel
4 on that?

5 MR. ROGERS: Yes, Your Honor. And I believe we've
6 reached a tentative agreement. I'm happy to go over that right
7 now or later, whenever you're ready for that.

8 THE COURT: Yeah. I've got my list of questions I
9 normally ask. But let me get your stipulations on the record.
10 Everybody else, just hold on while he does that. And then I'm
11 going to go around my Hollywood Squares thing here and get
12 everybody's approval. But Mr. Rogers, go ahead and make it as
13 slow as you can, please.

14 MR. ROGERS: Okay. Thank you. And of course,
15 subject to my correct characterization, I invite counsel for
16 Attorney Mitchell to correct me if I'm wrong. But what we've
17 tentatively agreed is an answer deadline for the Recorder for
18 July 25th, cross motions for judgment on the pleadings --

19 THE COURT: Slow down.

20 MR. ROGERS: I'm sorry. I'm sorry.

21 THE COURT: The answer for the Recorder is when?

22 MR. ROGERS: July 25th.

23 THE COURT: July 25th.

24 MR. ROGERS: So a week this Friday.

25 THE COURT: Okay. Go ahead.

1 MR. ROGERS: And then cross motions for judgment on
2 the pleadings would be due August 8th.

3 THE COURT: Pleadings, August 8th. Okay.

4 MR. ROGERS: Then simultaneous responses would be due
5 August 22nd with no replies.

6 THE COURT: August 22nd, no replies.

7 MR. ROGERS: And then with one final caveat, is the
8 County Attorney would like to see the answer first, just to
9 verify that they don't believe there might be any factual
10 issues or other issues that would complicate matters and
11 perhaps necessitate a change in their position on when those
12 deadlines would be. And if that were to happen, we would file
13 a notice with the Court and either seek a new status conference
14 or file a new stipulation on new deadlines.

15 THE COURT: Okay. All right. And I just want to
16 make sure. You said judgment on the pleadings. Did you mean
17 motion for summary judgment or did you actually mean judgment
18 on the pleadings?

19 MR. ROGERS: Judgment on the pleadings.

20 THE COURT: All right. And then what are you asking
21 the Court to do with the case in the meantime? Obviously we're
22 not setting hearings or anything. Everything's resting on
23 basically a Rule 12 motion.

24 MR. ROGERS: Well, in the meantime, I believe the
25 County Attorney would abandon her PI motion. And we would just

1 ask the Court just to stay or vacate any other deadlines or
2 motions, and we just proceed just based on the answer and the
3 motion, the motion for judgment on the pleadings.

4 THE COURT: Okay. And then the other -- there's
5 another preliminary injunction motion out there that I believe
6 was yours. What what's going on with that?

7 MR. ROGERS: Correct. Same thing. We would
8 forego -- abandon the PI motion. And then in the other matter
9 against the Board of Supervisors, we would proceed just
10 directly to motions for summary judgment with the deadlines as
11 stated in our notice that we filed with the Court.

12 THE COURT: Okay. Now this is where I'm getting kind
13 of confused. So you've got motions for summary judgment that
14 you're planning down the road. All we're addressing right now
15 is you're voluntarily dismissing, let's say it that way, or
16 voluntarily withdrawing your motions for preliminary
17 injunction, correct?

18 MR. ROGERS: Correct.

19 THE COURT: All right. And Mr. Hogan or Mr. Johnson,
20 is that your understanding as well, voluntarily withdrawing
21 those motions?

22 MR. HOGAN: So Your Honor, this is kind of all
23 contingent on what we see in the answer. If the answer
24 introduces facts that make motion for judgment on the pleadings
25 not a good vehicle to resolve this case, then we wouldn't

1 abandon our motion for preliminary injunction. So I think as
2 of right now, it can be stayed pending what we see in the
3 answer. And then if we -- the answer shows us that our
4 tentative plan here is a good one to expeditiously resolve the
5 case, then we can proceed on the motion for judgment on the
6 pleadings.

7 THE COURT: How long will it take you to review that
8 answer and actually make that decision? I mean, obviously, it
9 takes ten minutes to review an answer, but you need time to
10 digest it and look through the facts. How long do you need
11 realistically, a week?

12 MR. HOGAN: I mean, I think we could get it done in a
13 matter of days, but a week is perfectly fine with us if that's
14 what the Court is willing to give.

15 THE COURT: Yeah. What I'm thinking here, you guys
16 have done a good job. Mr. Rogers, you've done a good job
17 laying out a plan here. But it sounds like we've got some
18 contingencies in the meantime. I'd rather issue a clean order
19 in a minute entry. So what I'm going to do, I'm going to
20 continue the hearing. I'll hear from everybody still today, in
21 case there's something else we can talk about. I'm going to
22 continue the hearing and that's when we'll set the briefing
23 schedule. Erin, do I have you on the line?

24 THE CLERK: Yes, Judge. I'm here.

25 THE COURT: All right. Once we go off the record or

1 once I go off the record, this is for you. But it's really for
2 all the attorneys here as well, I'm going to have you all stay
3 on line, speak with Erin, and we're going to come up with a
4 different date just like a week or two down the road to redo
5 this hearing and actually come up with a briefing schedule that
6 everybody's agreed to. Okay. I'm seeing nods. So it's
7 probably good enough.

8 All right. But as for right now, until we have that
9 next hearing, that next status conference, I'm going to hold
10 off. I'm just going to continue to stay all deadlines in this
11 case until we get to that status conference. I would ask -- I
12 need a couple days. Let's say Thursday of next week, that
13 counsel for all parties shall meet and confer by Thursday of
14 next week, whatever date that is, regarding the deadlines in
15 this case and the plan that Mr. Rogers has already put forward
16 and whether there's any tweaks to that because of the answer.

17 All that being said, Mr. Rogers, let me go back to
18 you. Is there anything beyond the scheduling, the briefing
19 scheduling we just talked about that we should talk about
20 today? Anything procedurally you'd like to bring up?

21 MR. ROGERS: I just wanted to clarify for the
22 briefing schedule. What we had proposed is, I guess, different
23 dates for the two different matters so that because from the
24 Recorder's perspective, resolving this as soon as possible
25 is -- time is of the essence here because there's elections

1 that are coming up and they're continually, every few months
2 another election. And just the longer this stands out there,
3 the more difficult it gets for him to do his job.

4 So the Recorder's hope was to continue with the same
5 schedule that we'd set with the Board of Supervisors, which
6 would have made his answer due to their counterclaim due on the
7 24th, and then simultaneous motions for summary judgment due on
8 the 31st and then simultaneous responses due on August 14th. I
9 can understand if the Court would prefer just to have the same
10 deadlines in both cases for ease of administration. But that
11 would be the Recorder's preference is to still move the case
12 with the Board of Supervisors on an expedited basis, just to
13 get that resolved as soon as possible.

14 THE COURT: Okay. Mr. Langhofer, anything to add?

15 MR. LANGHOFER: Just a little bit, Your Honor. Thank
16 you. I think that in our case, we're likely going to be able
17 to stipulate to nearly all the facts and perhaps all the
18 material facts.

19 THE COURT: Good.

20 MR. LANGHOFER: I think there's probably going to be
21 some facts on the margin that we won't stipulate to, whether
22 those are material, I think is not entirely clear. And so what
23 we had contemplated in our discussions with Mr. Rogers was that
24 we would set an oral argument date and each of us may present a
25 couple of witnesses, perhaps 30 minutes each, to fill in the

1 gaps of unstipulated facts so that you would have all the legal
2 argument, stipulated facts, then on the margins, a little bit
3 of testimony so that the case could be fully submitted to you
4 after this round of briefing.

5 And as to the idea that we would have a different
6 briefing schedule than Mr. Hogan and the County Attorney, the
7 legal issues in that case do overlap with the issues in ours.
8 And we were sort of planning, I suppose, to not brief the
9 choice of counsel issue redundantly in both our case and his.
10 And so I would prefer to keep the same briefing schedule. I'm
11 kind of hoping that when we talk next week on Thursday, the
12 answer looks good to Mr. Hogan and we can keep the case moving
13 quickly. We would also like to move it relatively quickly.
14 But I think it may be better if we don't have sort of staggered
15 deadlines for the two different cases because the issues do
16 overlap.

17 THE COURT: I tend to agree. And one thing I would
18 note, I think every one of you has appeared in front of me on a
19 special action in one case or another. And it seems like in
20 every case there's one party that files a 12(b) motion and then
21 the other parties file motions for summary judgment. And the
22 12(b) motion is almost always subsumed by the motions for
23 summary judgment and ends up being not helpful. And Mr. Hogan
24 or Mr. Johnson, anything to add before I issue a couple quick
25 rulings?

1 MR. HOGAN: No, not from our perspective, Your Honor.
2 I mean, we think that the cases are overlapping in some of the
3 legal issues. And I think what everyone said has made sense.
4 I saw Brett on mute for a moment. So if he wants to say
5 anything, that's --

6 MR. JOHNSON: No, Your Honor. They're always
7 helpful.

8 THE COURT: You're not the one adjudicating them.
9 But yeah. Fair enough. All right. So this is what I'll do.
10 Let me move up the date, Patricia, the date for the meet and
11 confer. The parties shall meet and confer. The attorneys
12 shall meet and confer by close of business on Wednesday of next
13 week, Wednesday of next week. And then I'll ask Mr. Rogers to
14 be the one to draft to file the whatever kind of stipulation
15 you come up with the dates, as comprehensively as you can. A
16 few have been thrown around here.

17 I would like to issue an order that encompasses both
18 cases because they're all one case now. And can you get that
19 filed by close of business on Friday? That would give you two
20 full days. I don't know what your schedule looks like.

21 MR. ROGERS: Yes, Your Honor, that's fine.

22 THE COURT: Okay. And I would ask -- you guys all
23 work well together. So I know I don't have to say it. But I
24 would ask you all to work with Mr. Rogers to make sure that he
25 has some -- he's not working at 8 o'clock on Friday night

1 trying to get this thing filed. Okay. I've heard from Mr.
2 Rogers. I've heard from Mr. Langhofer. Mr. Hogan, I kind of
3 cut you off. Anything else to add?

4 MR. HOGAN: No, we don't have anything else to add.
5 And that schedule works well with our calendar.

6 THE COURT: All right. Perfect. I have a feeling
7 you guys are going to stipulate to almost everything and I'm
8 going to be able to just sign an order. But if we have to
9 bring you back, then I'll have you come back for a status
10 conference. My earlier comment about remaining on the line and
11 talking to Erin when I'm done, I'll vacate that mini order.
12 And we'll just wait for the filings from the parties.

13 All right. Thank you all for your time today. Stay
14 safe out there. And we're off the record.

15 (Proceedings concluded at 11:12 a.m.)
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CERTIFICATE

eScribers has a current transcription contract with the Maricopa County Superior Court under contract # 13010-001, as such, eScribers is an "authorized Transcriber"

I, JENNIFER L. SULLIVAN, CDLT-308, a court-approved transcriber, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

/s/

JENNIFER L. SULLIVAN, CDLT-308
Transcriber

July 26, 2025