

AMERICA FIRST LEGAL FOUNDATION

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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 SUMMARY JUDGMENT
AGAINST THE BOARD OF SUPERVISORS**

(Assigned to the Hon. Scott Blaney)

Introduction

The Defendants—the members of the Maricopa County Board of Supervisors (“BOS”)—have crossed from fiscal oversight into outright sabotage. Ignoring both A.R.S. § 11-601(2) and decades of precedent, the BOS has refused to fund the Recorder’s “necessary expenses”—from modern ballot-processing equipment to indispensable IT staff—while simultaneously seizing control of the very election functions its stonewalling endangers. The BOS’s obstruction is not mere bureaucratic foot-dragging; it is a calculated power grab that throttles the Recorder’s constitutional duty to administer secure, timely elections.

The undisputed facts demonstrate that the BOS’s budgetary chokehold and micromanagement violate Arizona law, imperil election integrity, and trample the autonomy of an independently elected officer. Furthermore, the Recorder’s statutory authority over election is far broader than the BOS is willing to admit, as whenever the phrase “recorder or other officer in charge of elections” appears in Title 16 of the Arizona Revised Statutes, it represents a delegation of authority to the Recorder unless he chooses to designate another officer to carry out that function. No genuine issue of material fact remains, and the Court should grant Recorder Heap’s Motion for Summary Judgment, confirm the longstanding and common interpretation of the meaning of “other officer in charge of elections” in Arizona statute, compel the Board to fund the Recorder’s essential operations, and restore the balance of power that Arizona’s Constitution demands.

Factual Background

This case involves a dispute between Recorder Heap and the BOS over the administration and funding of election-related duties in Maricopa County. The dispute arose when the BOS refused to provide the necessary resources for Recorder Heap to conduct the duties of his office unless he ceded most of his authority to the BOS. Heap Separate Statement of Facts (“HSSOF”) ¶ 1. Arizona’s statutes clearly delegate numerous responsibilities for election administration only to the Recorder,¹ not the Board of Supervisors, and the Board has a mandatory duty to fund the Recorder’s conduct of these duties.

Because Maricopa County is one of the largest voting jurisdictions in the United States,

¹ See, e.g., *infra*, notes 2 and 4.

1 for decades the BOS and County Recorder have executed various election operations and
2 Shared Services Agreements (“SSAs”) to facilitate collaboration between themselves and to
3 formalize division of labor, resource allocation, and budget responsibilities. HSSOF ¶ 2.

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

10 Upon taking office in January 2025, Recorder Heap terminated the 2024 SSA, citing its
11 unenforceability and its violation of his statutory duties under Arizona’s election statutes. De-
12 spite Recorder Heap’s good-faith efforts to negotiate a new SSA that respected the statutory
13 division of labor and that would provide the Recorder with the necessary resources to conduct
14 his duties, the BOS has refused to negotiate a reasonable SSA that complies with Arizona law.
15 HSSOF ¶ 5. Indeed, on June 5, Recorder Heap made an offer of mediation, but the BOS
16 ignored him and failed to respond in any way. HSSOF ¶ 6.

17 Rather, the BOS has taken retaliatory actions against Recorder Heap that make it im-
18 possible for him to do his job, including removing nearly all his election-related IT staff; seiz-
19 ing the servers, databases, and websites necessary to fulfill his duties; and restricting access to
20 necessary facilities and equipment. The BOS’s actions make it increasingly unlikely that elec-
21 tions in Maricopa County can be properly conducted. The longer the County’s elections are
22 unlawfully administered, the greater the risk of a catastrophic failure, voter disenfranchise-
23 ment, and litigation over election mishaps. HSSOF ¶ 7.

24 In an apparent effort to force Recorder Heap to submit to the will of the BOS, the
25 BOS refuses to provide Recorder Heap with the necessary resources to do his job. HSSOF ¶
26 8. For example, the BOS refuses to provide the IT staff that the Recorder’s Office needs for
Recorder Heap to carry out his statutorily required and authorized election duties, and the
BOS has seized the websites, computer servers, and software that the Recorder uses to carry
out his duties. HSSOF ¶ 9. The loss of his IT staff means that Recorder Heap cannot perform

1 all the voter list maintenance activities that are necessary to keep voter rolls clean, in conform-
2 ity with statutory requirements. For example, the lack of IT staff has meant that the Recorder's
3 Office cannot perform batch comparisons with federal databases and cannot upgrade the reg-
4 istration database to pull and sort data to find mistakes in voter registrations. HSSOF ¶ 10.

5 Furthermore, because the Recorder's Office is now entirely reliant on County IT staff,
6 the only way to accomplish needed IT tasks is to submit support request tickets. Many tickets
7 have not been completed in a timely manner, and the Recorder has little to no recourse if County
8 staff do not fulfill a request. Since Recorder Heap took office through the filing of the Com-
9 plaint, the Recorder's Office has submitted 158 support tickets to the County IT department,
10 and only 85 have been closed. This means that, as of June 3, the County IT department has
11 failed to fulfill 46% of the Recorder's Office's IT requests. HSSOF ¶ 11.

12 The BOS has taken control over systems that were developed by the Recorder's Office
13 under prior Recorders and that the Recorder uses to fulfill the duties of his office. For exam-
14 ple, under Arizona law, the County Recorder has exclusive authority over voter registration,
15 the maintenance of the voter rolls, and the Active Early Voting List. To carry out these duties,
16 the Recorder's Office relies on internally developed software systems—ERO and VRAS—
17 created through decades of investment by prior Recorders. However, the BOS transferred
18 control of these systems, including the IT personnel who developed and maintained them, as
19 well as the servers and equipment hosting the data, to itself. Depriving the Recorder of access
20 to and control over these systems prevents the lawful execution of his exclusive statutory
21 responsibilities. HSSOF ¶ 12.

22 Arizona law also assigns the Recorder exclusive authority to record and preserve public
23 documents, including maintaining records for approximately 1.8 million parcels in Maricopa
24 County. However, the Recorder's Office does not have the physical servers that house the RDIS
25 system and databases. In other words, the BOS has taken control of all the digitized recorded
26 property documents for the entire county, even though only the Recorder has the authority
under statute to record and store such documents. *See*, A.R.S. § 11-461(A). The Recorder's Of-
fice, therefore, cannot administer any of the Recorder's statutory responsibilities that are man-
aged through RDIS unless the BOS deigns to grant access. For example, the Recorder's Office

1 IT staff cannot independently upgrade the RDIS system, but must first get approval from the
2 BOS IT department. The BOS's continued control of RDIS impairs the Recorder's ability to
3 fulfill his non-delegable statutory duty to maintain public records. HSSOF ¶ 13.

4 Additionally, the BOS has taken control of the Recorder's Geographic Information Sys-
5 tem (GIS). The Recorder is the only authorized custodian for a variety of important records,
6 including "all records, maps and papers deposited in the recorder's office." A.R.S. § 11-461(A).
7 That custodianship requires that the Recorder keep accurate official records of street center
8 lines, address points, and city boundaries. The Recorder's GIS is where these records are stored.
9 It is unlawful for the BOS to maintain its control of the Recorder's GIS because only the Re-
10 corder's Office is charged with the custodianship of the records it contains. HSSOF ¶ 14.

11 The BOS also took control of the BeBallotReady website, which was created and popu-
12 larized by the Recorder's Office under prior Recorders to serve as an official, centralized source
13 of election information for voters. More than a simple website, it integrates all of the Recorders'
14 early voting and election functions into one central user-friendly interface. It acts as a voter
15 dashboard and allows users to view and update their voter registration, request a mail-in ballot,
16 explore the entire ballot, find information about upcoming elections, sign up for voter registra-
17 tion and early ballot alerts, and find their polling place for early and election voting, and more,
18 all in one place. Virtually all of the functionalities provided by the site relate to responsibilities
19 statutorily entrusted to the Recorder, such as voter registration, mail-in ballot requests, early
20 voting locations, tracking of the status of early ballots and signature verification, and sending
21 electronic notices about voters' early ballot status and voter registration changes. HSSOF ¶ 15.

22 The BOS also refuses to provide access to the necessary County facilities Recorder
23 Heap needs to carry out his statutorily required election duties. HSSOF ¶ 16. And the BOS
24 refuses to provide access to the necessary equipment that the Recorder's Office needs for
25 Recorder Heap to carry out his statutorily required election duties. HSSOF ¶ 17.

26 When the BOS withdrew significant resources from the Recorder's office and started
refusing to share equipment and facilities with the Recorder, it also reduced the Recorder's
budget by \$5 million. HSSOF ¶ 18. At an informal BOS meeting on May 19, 2025, where the
BOS took a unanimous vote on the adoption of the fiscal year 2026 tentative budget which

1 excluded many of the stated statutory responsibilities of the Recorder's Office, Assistant
2 County Manager Zach Schira confirmed to the BOS that, in the absence of an SSA, "if we're
3 going to our statutory corners, then [the Recorder] would be responsible for just early in-
4 person [voting] and [the BOS] would be responsible for emergency and election day [voting]"
5 and that early voting administered by the Recorder and election-day voting administered by
6 the BOS would likely require separate personnel, warehouse, and equipment used by each
7 party. HSSOF ¶ 19. After Supervisor Mark Stewart asked if the costs had to be duplicative if
8 the Recorder took back early voting per the statutes, Schira stated "in theory" both depart-
9 ments could use the same equipment if they coordinated. Accordingly, if the BOS returns to
10 the Recorder the systems and servers that it took and shares its equipment and facilities with
11 the Recorder, the Recorder would need an additional \$5 million added to his budget to allow
12 him to fulfill his statutory duties. HSSOF ¶ 20.

13 At the same May 19, 2025 meeting Schira's testimony gave "conservative estimates" of
14 how much additional money would need to be allocated to the Recorder to allow him to fulfill
15 his statutory duties if the BOS does not share resources and equipment and if he was, there-
16 fore, required to acquire them new. Specifically, Schira testified that the Recorder would need
17 "between \$11 million and \$13 million in one-time capital costs," "about \$1.8 million in ongo-
18 ing costs," and "almost \$900,000 ... to the ELE1 budget." Therefore, if the BOS does not
19 share equipment and resources with the Recorder, the Recorder would need an additional
20 \$20.7 million added to his budget for this year: \$15.7 million which, according to Mr. Schira,
21 is the amount necessary to allow the Recorder to pay for new equipment, facilities, and staff
22 to replace what the BOS refuses to share with the Recorder, plus the \$5 million that the BOS
23 took away from the Recorder, which are necessary for him to carry out his ongoing duties. In
24 subsequent years, he would require an ongoing increase of only an additional \$7.7 million per
25 year (with appropriate adjustments for inflation). HSSOF ¶ 21.

26 The 2025-26 budget enacted by the Legislature and signed by the Governor "appro-
priated" the Recorder's Office "\$4,100,000 ... from the state general fund ... for election-related
operations" and mandated that "the Maricopa county board of supervisors shall not in any
way reduce the funding to the Maricopa county recorder's office below the amount of the

1 adopted fiscal year budget for the Maricopa county recorder’s office.” HSSOF ¶ 22. However,
2 the BOS has obstructed the Recorder’s ability to spend this money. Therefore, none of this
3 budgeted money can be applied to offset the BOS’s obligations to fund the Recorder’s office.
4 For example, on August 5, 2025, the Recorder attempted to list a job posting to hire a new IT
5 staffer whose salary would be paid out of funds already available in the Recorder’s budget, or
6 alternatively, out of the \$4.1 million from the Legislature. However, County Manager Jen
7 Pokorski directly intervened to prevent the job posting and refused to allow the Recorder to
8 post the job listing because the BOS had not independently authorized it. HSSOF ¶¶ 22-25.

9 The County’s obstacles extend beyond personnel issues to equipment procurement as
10 well. Recorder Heap requested funding for an Agilis ballot-envelope processing machine be-
11 cause its automated imaging and sorting would accelerate signature verification, meet statutory
12 deadlines, and reduce labor costs. The Board of Supervisors denied the request despite ac-
13 knowledging hand-scanner delays as a justification for seizing ballot processing authority and
14 even though smaller counties already use Agilis systems. Heap then offered to buy the machine
15 with surplus Recorder funds, but County Manager Jen Pokorski still vetoed the purchase,
16 falsely claiming licensing costs and lack of space at election facilities. In reality, Heap’s budget
17 could cover the fee and MCTEC had ample room, leaving the Recorder’s Office stuck with
18 outdated equipment and avoidable processing bottlenecks. HSSOF ¶¶ 26-34.

19 **Standard of Review**

20 “The court shall grant summary judgment if the moving party shows that there is no
21 genuine dispute as to any material fact and the moving party is entitled to judgment as a matter
22 of law.” Ariz. R. Civ. P. 56(a). Courts should grant summary judgment “when the evidence
23 presents no genuine issue of material fact.” *Orme School v. Reeves*, 166 Ariz. 301, 305 (1990). The
24 moving party bears the “responsibility to persuade the court that there is no genuine issue of
25 material fact[.]” referred to as the “burden of persuasion.” *Nat’l Bank of Ariz. v. Thruston*, 218
26 Ariz. 112, 115 ¶15 (App. 2008).

Argument

- I. **The BOS has refused to fulfill its mandatory statutory duty to fund the Re-
corder’s election administration responsibilities.**

1 The BOS has a mandatory duty to fund Recorder Heap’s election responsibilities, yet it
2 refuses to do so. The absence of an SSA does not exempt the BOS from its statutory obligation
3 to pay the costs for the Recorder to exercise his duties. Arizona law requires that “necessary
4 expenses incurred in the conduct of their offices” of county officers are “[c]ounty charges” for
5 which the BOS is responsible to pay. A.R.S. § 11-601(2); *see also Maricopa Cnty. v. Biaett* (“*Biaett*”),
6 21 Ariz. App. 286, 287, 290 (1974) (holding that expenses incurred by Maricopa County Re-
7 corder to successfully contest the Board of Supervisors’ “usurpation of the recorder’s statutory
8 powers” “were such ‘necessary expenses’ as to make them a county charge. To hold otherwise
9 would leave the recorder at the complete mercy of those desirous of improperly usurping his
10 functions.”); *Lockwood v. Bd. of Sup’rs of Maricopa Cnty.*, 80 Ariz. 311, 316 (1956) (holding that
11 Maricopa County Board of Supervisors “could not under the budget law or any other law so
12 conduct county affairs as to prevent” the “existence and operation” of an independent organ of
13 county government).

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

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

By seizing control of the Recorder’s servers, equipment, software, databases, and

1 websites used to manage voter registration, recordation of documents, GIS, and early voting,
2 the BOS has essentially taken for itself ultimate control over nearly all the Recorder's statutory
3 duties. Yet, under Arizona law, Recorder Heap remains responsible for fulfilling all those duties.

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

11 There have been two similar disputes over the last two decades in which official legal
12 opinions established that actions nearly identical to the BOS's conduct here are unlawful: 2015
13 dispute between the Yavapai County Assessor's Office and the Yavapai County Board of Su-
14 pervisors and a 2008 dispute between the Maricopa County Treasurer and the BOS.

15 In the Yavapai County dispute, that county's Board of Supervisors transferred "cartog-
16 raphy and property title personnel positions" from "the County Assessor's office and assign[ed]
17 those positions to a newly formed department that reports to the BOS." HSSOF ¶ 34 and Ex.
18 B at 1. Attorney General Brnovich issued an official opinion concluding that the Yavapai County
19 Board of Supervisors did not "have the authority to withdraw" the relevant "personnel from
20 the control of the Yavapai County Assessor" because "the functions of those personnel are
21 necessary for an assessor to perform its statutory duties." *Id.* ¶ 35 and Ex. B at 2. This was
22 because the assessor's "duties ... derive from the Constitution and statutes. Consequently, it is
23 beyond a county board of supervisors' authority to divest a county assessor of those duties" by
24 removing personnel necessary for the assessor to carry out those duties. *Id.* ¶ 36 and Ex. B at 7.
25 Thus, the Attorney General concluded, "[t]he BOS would unlawfully usurp the Assessor's stat-
26 utory 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." *Id.* ¶ 37 and Ex. B at 11. The same holds true here. By divesting Recorder
Heap of the Recorder's Office IT personnel and software, database systems, and websites

1 necessary to carry out the functions of Recorder Heap's office, the BOS has unlawfully usurped
2 the Recorder's statutory authority. The Attorney General opinion is directly on point, and the
3 Plaintiff Heap incorporates by reference its legal analysis. *See* HSSOF Ex. B.

4 Similarly, in the Maricopa County Treasurer dispute, the BOS "transfer[ed] expenditure
5 authority, positions, incumbents, supplies, services and capital," which "comprise[d] the Treas-
6 urer's Information Technology (IT) program, to the County's Office of Enterprise Technology,
7 thereby leaving the Treasurer without direct control over those IT operations." HSSOF ¶ 38
8 and Ex. C at 1. As part of the dispute, the Maricopa County Treasurer requested that the Mari-
9 copo County Attorney (MCAO) issue an opinion about the legality of the BOS's actions. The
10 MCAO concluded in that opinion that, because "[i]n this day and age, many of the statutory
11 duties of the Treasurer ... are fulfilled electronically by a competent and sufficient information
12 technology system and staff," that when the BOS took away the Treasurer's IT staff, control
13 over the Treasurer's statutory duties was "placed under the control of the County's Office of
14 Enterprise Technology," which was under the control of the BOS. *Id.* ¶ 39 and Ex. C. at 2, 4.
15 The MCAO concluded that this transfer was unlawful because the relevant Arizona statutes
16 establishing the powers of the BOS "did not empower the Board to transfer functions to another
17 county department or to vest another with control of the Treasurer's" statutory responsibilities
18 and that "[a] governmental body may not do indirectly what a statute does not give it the power
19 to do directly." *Id.* ¶ 40 and Ex. C at 5 (citing *Hancock*, 188 Ariz. at 298). The MCAO opinion is
20 directly on point, and Recorder Heap incorporates its legal analysis by reference.

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

26 If the BOS does not give back the employees, facilities, and equipment that it took
from Recorder Heap, then it is required to fund all necessary expenses for the conduct of his
office. Therefore, if the BOS refuses to give back all the resources it took from Recorder Heap,
it has a mandatory duty to pay all necessary expenses for Recorder Heap to independently hire

1 the required IT staff; secure the necessary office and warehouse space; develop replacement
2 databases, software, and websites; and procure all the necessary equipment for him to conduct
3 the duties of his office. The BOS refuses to do so and is therefore violating Arizona law and
4 preventing Recorder Heap from carrying out the duties of his office. By refusing to provide
5 the necessary resources, the BOS is shirking its mandatory statutory duties and preventing
6 Recorder Heap from executing his duties. The BOS is violating Arizona law, and Recorder
7 Heap is therefore entitled to summary judgment.

8 **II. Arizona’s election statutes give significant election administration authority**
9 **to the Recorder because “recorder or other officer in charge of elections” del-**
10 **egates authority to the Recorder unless he consents to delegate that authority.**

11 Arizona’s election statutes confer specific responsibilities for election administration on
12 the county recorder. In some places, the statutes confer absolute, non-delegable authority to
13 either the Recorder² or the BOS.³ However, in more than a hundred places, Arizona’s election
14 statutes delegate presumptive authority to either the Recorder or BOS but allow a particular
15 county’s board of supervisors and recorder to re-allocate those responsibilities to an “other of-
16 ficer in charge of elections.” The statutes accomplish this result by naming the party presump-
17 tively delegated with that authority and then allowing that authority to alternatively be exercised
18 by an “other officer in charge of elections” or an “other authority in charge of elections.”

19 Accordingly, in 111 places, Arizona’s election statutes allocate authority to
20 “the county recorder or other officer in charge of elections,”⁴ and in 16 places, it designates
21 the “county board of supervisors or other officer in charge of elections” or “the board of

22 ² See, e.g., A.R.S. §§ 16-103, -112, -120, -121.01, -128, -132, -134, -138, -151, -161 through -169,
23 and -542 to -544.

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

25 ⁴ A.R.S. § 16-121.01 (14 delegations of authority); A.R.S. § 16-204 (2 delegations of authority);
26 A.R.S. § 16-205 (1 delegation of authority); A.R.S. § 16-222 (1 delegation of authority); A.R.S.
§ 16-246 (6 delegations of authority); A.R.S. § 16-351 (1 delegation of authority); A.R.S. § 16-
411 (8 delegations of authority); A.R.S. § 16-542 (13 delegations of authority); A.R.S. § 16-543
(7 delegations of authority); A.R.S. § 16-543.02 (2 delegations of authority); A.R.S. § 16-544
(12 delegations of authority); A.R.S. § 16-547 (5 delegations of authority); A.R.S. § 16-548 (2
delegations of authority); A.R.S. § 16-549 (9 delegations of authority); A.R.S. § 16-550 (13
delegations of authority); A.R.S. § 16-550.01 (1 delegation of authority); A.R.S. § 16-551 (4
delegations of authority); A.R.S. § 16-558.01 (2 delegations of authority); A.R.S. § 16-558.02
(2 delegations of authority); A.R.S. § 16-579.01 (2 delegations of authority); A.R.S. § 16-579.02
(1 delegation of authority); A.R.S. § 16-584 (one delegation of authority); A.R.S. § 16-602 (1
delegation of authority); A.R.S. § 16-621 (one delegation of authority).

1 supervisors or other authority in charge of elections.”⁵

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

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

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

19 The Attorney General has implicitly favored this interpretation. In a 1986 Attorney
20 General Opinion about absentee voting requirements, the opinion cites the statutory language
21 requiring that “an elector must submit a signed request for an absentee ballot to the *county*
22 *recorder or other officer in charge of elections*” and then explains that, in the rest of the opinion, the
23 person to whom this request must be submitted will be “collectively referred to throughout as
24 ‘*the county recorder*.’” 1986 Ariz. Op. Att’y Gen. 119 (1986) (emphasis added).

25 The statutory language is clear. However, even if there were any ambiguity, that ambi-
26 guity would need to be resolved by examining “the context of the statute, the language used,

⁵ A.R.S. § 16-405 (1 delegation of authority); A.R.S. § 16-406 (1 delegation of authority); A.R.S. § 16-447 (5 delegations of authority); A.R.S. § 16-452 (1 delegation of authority); A.R.S. § 16-513.01 (1 delegation of authority); A.R.S. § 16-532 (5 delegations of authority); A.R.S. § 16-566 (1 delegation of authority); A.R.S. § 16-621 (1 delegation of authority).

1 the subject matter, its historical background, its effects and consequences, and its spirit and
2 purpose.” *Wade v. Arizona State Ret. Sys.*, 241 Ariz. 559, 561 ¶ 10 (2017). All these factors
3 confirm that the interpretation proffered here is the correct one.

4 *First*, as more fully set forth below, this interpretation is the one consonant with historical
5 practice and the legislative record. In the decades-long history of SSAs between the Recorder
6 and the BOS, counsel is unaware of any instance where a statutory duty delegated to the “re-
7 corder or other election officer” or to the “board of supervisors or other election officer” was
8 exercised by a party other than the one specifically named in statute without that named parties’
9 consent to delegate the authority as memorialized in an SSA or other agreement.

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

15 *Second*, the context, spirit, and purpose of the statutes also confirm this interpretation.
16 The sheer number of times that the Recorder is named—111 times—versus the number of
17 times that the BOS is listed—just 16—makes clear that the Legislature presumes that the
18 county recorder is the principal election officer and election administrator of a county for most
19 purposes. Any interpretation of the statutes that allows the BOS to unilaterally assign to itself
20 the 111 duties presumptively delegated to the Recorder defeats the intent of the Legislature as
21 manifested in the context of Arizona’s election statutes.

22 If it were true the Legislature intended “or other officer in charge of elections” to mean
23 that boards of supervisors always have the authority to assign the election duty named in con-
24 junction with that phrase, it raises the question: why would the Legislature sometimes precede
25 that phrase with “board” and other times with “recorder”? To read the two different phrases as
26 being mere synonyms violates the canon against surplusage, which requires that Arizona courts
must “interpret a statute to avoid rendering any of its language mere surplusage, and instead give
meaning to each word, phrase, clause, and sentence so that no part of the statute will be void,
inert, redundant, or trivial.” *Jurju v. Ile*, 255 Ariz. 558, 562 ¶ 22 (App. 2023) (cleaned up).

1 Similarly, under the *expressio unius* canon, where the drafter “has specifically included a
2 term in some places within a statute and excluded it in other places, courts will not read that
3 term into the sections from which it was excluded,” *Am. C.L. Union of Arizona v. Arizona Dep’t*
4 *of Child Safety*, 251 Ariz. 458, 463 ¶ 20 (2021) (cleaned up). Thus, where the legislature has used
5 the term “board” in some statutes, but used the term “recorder” in others, the statutes con-
6 taining “recorder” cannot be read as including the board as well.

7 The *expressio unius* canon also applies across Title 16 where, in multiple places, the Legis-
8 lature used explicit language to specifically delegate authority to county boards to appoint offic-
9 ers or employees in the election context. *See, e.g.*, A.R.S. § 16-531(A) (“the board of supervisors
10 shall appoint for each election precinct, voting center or other voting location one inspector,
11 one marshal, two judges and as many clerks of election as deemed necessary.”); A.R.S. § 16-
12 531(B) (the board of supervisors may appoint not fewer than one inspector and two judges.”);
13 A.R.S. § 16-531(F) (“the board of supervisors may appoint to an election board to serve as a
14 clerk of election a person who is not eligible to vote if....”); A.R.S. § 16-447(E) (“The board of
15 supervisors shall designate a person to observe the installation and modification of any election
16 management software or computer programming used for county election administration. The
17 board of supervisors shall also designate a person to act as a substitute if the primary designee
18 is unavailable.”); A.R.S. § 16-230(A)(2) (“If a county office becomes vacant, the board of super-
19 visors shall appoint a person of the same political party as the person vacating the office to fill
20 the portion of the term....”). These statutes demonstrate that when the Legislature wants to del-
21 egate authority to a board of supervisors to make appointments in the election context, it knows
22 how to do so, and it does so with clear language. Therefore, applying the *expressio unius* canon,
23 because the legislature did not include in conjunction with the phrase “recorder or other officer
24 in charge of elections” clear language delegating to county boards the authority to appoint the
25 “other officer,” no such delegation of authority to appoint was intended.

26 Finally, the effects and consequences of the interpretation also confirm that it is correct.
As explained above, Arizona’s election statutes establish a division of labor at the county level
when it comes to the administration of elections. Any interpretation of the statutes that allows
the BOS to unilaterally seize election administration responsibilities nullifies the balance crafted

1 by the Legislature of dividing election responsibilities between the Recorder and the BOS.

2 Because the BOS has refused to negotiate a new SSA with the Recorder, and because
3 neither party has delegated to the other any authorities, each party's election authorities default
4 to the presumptive defaults in Arizona's election statutes. Thus, Recorder Heap has authority
5 over every election function in Title 16 of the Arizona Revised Statutes that refers to "the re-
6 corder or other officer in charge of elections." Therefore, the BOS has an obligation to fund
7 Recorder Heap's necessary expenses to carry out the duties solely delegated to him by statute,⁶
8 but also for all those duties delegated to "the Recorder or other office in charge of elections."⁷

9 **III. The legislative record reinforces that the use of the phrase "or other officer**
10 **in charge of elections" was never intended to empower boards of supervisors**
11 **to unilaterally reassign a Recorder's statutory election duties.**

12 Our laws have long recognized that, because not all elections are administered at the
13 county level, county officers are not always the ones "in charge of an election." Since 1955, Title
14 9 has required that "[t]he manner of conducting and voting at elections of a city or town, of
15 keeping the poll lists, counting and canvassing the votes, certifying the returns, declaring the
16 results and notifying the persons elected, contesting the election, and all acts relating to the
17 election, shall conform to the provisions of law relating to the general election of county officers
18 as nearly as possible, except that the returns shall be made to the clerk of the city or town, and
19 the governing body of the city or town shall canvass the returns, declare the result and issue the
20 certificates of the election." A.R.S. § 9-821. Another statute, enacted the same year, extends all
21 "powers and duties" conferred on county-level election officials to "similar officers" conducting
22 recall elections in other political subdivisions, such as cities. A.R.S. § 19-215.

23 Our elections statutes appear to have begun explicitly incorporating the phrase "or other
24 officer in charge elections" in the 1960s. *See e.g.*, H.B. 204 (Session laws, State of Arizona, 1966,
25 Twenty-Seventh Legislature, 2nd Regular Session, Ch. 92). In the 1970s, the Legislature engaged
26 in efforts to make absentee voting more accessible to Arizonans, efforts that had the side-effect
of making clear that "other officer in charge of elections," when no more specific meaning was
assigned, was intended to refer to the "similar" municipal officers to the named county-level

⁶ *See, supra*, note 2.

⁷ *See, supra*, note 4.

1 officer contemplated by Titles 9 and 19. In 1973, it amended A.R.S. § 16-1102 to allow an elector
2 to apply for a ballot by making a signed (instead of written) request to “the county recorder or
3 other officer in charge of elections of the county, city or town in which the elector is registered
4 for an application for a ballot[.]” *See* Session laws, 1973, Volume 2, Ch 183. In 1974, the Legis-
5 lature, via the enactment of Senate Bill 1071 (Laws 1974, ch. 134), required that absentee ballot-
6 ing be made available in all Arizona elections—not just those administered by counties, but also
7 city, town, school-district, and other local elections. *See* A.R.S. § 16-1101(A) (1974).

8 Ensuring this broad application required providing more specific guidance to help mu-
9 nicipalities ascertain who the “similar” county-level officers were for each task. Accordingly, the
10 contemporaneous statutory text reinforces the notion that the expanded use of the phrase, “or
11 other officer in charge of elections,” in the new legislation was intended to designate the ana-
12 logue to the county recorder (or board) at *each* level of government—not to create a discretionary
13 power for county boards to strip responsibilities from the recorder for county-administered
14 elections. For example, A.R.S. § 16-1102 was amended to read: “AN ELECTOR MAY MAKE
15 A SIGNED REQUEST TO THE COUNTY RECORDER, OR OTHER OFFICER IN
16 CHARGE OF ELECTIONS FOR THE APPLICABLE POLITICAL SUBDIVISION OF
17 THIS STATE ... FOR AN OFFICIAL ABSENTEE BALLOT.” A.R.S. § 16-1102 (1974). Sec-
18 tion 16-1103(A) was likewise amended to read: “APPLICATION FOR AN ABSENTEE BAL-
19 LOT SHALL BE MADE ... UPON BLANKS FURNISHED BY THE COUNTY RE-
20 CORDER, OR OTHER OFFICER IN CHARGE OF ELECTIONS OF THE POLITICAL
21 SUBDIVISION IN WHICH THE ELECTION IS TO BE HELD.” *See* A.R.S. § 16-1103(A)
22 (1974). A.R.S. § 16-1110 received similar treatment for special-election boards. *See* § 16-1110
23 (1974) (requiring that the “COUNTY RECORDER OR OTHER OFFICER IN CHARGE
24 OF ELECTIONS” deliver ballots to a confined voter “AT HIS PLACE OF CONFINEMENT
25 WITHIN THE COUNTY OR OTHER POLITICAL SUBDIVISION.”). These changes con-
26 firmed that, where a municipality administered the election, the duties that would otherwise rest
with the county recorder or board, respectively, devolved upon the cognate city official.

1 By law, the recorder is an elected constitutional county officer with defined functions,
2 while the board of supervisors is a separate body with its own prescribed powers. During its
3 1974 reforms, the Legislature was aware that the question of whether a board had the authority
4 to strip a recorder of his statutory duties without consent had been a subject of recent litigation—
5 litigation that had been resolved in favor of the Recorder. *See Biaett* at 287. Had the Legislature
6 wanted to empower boards of supervisors to involuntarily divest recorders of their duties, in the
7 1970s or at any time since then, it could have done so expressly—for example, by delegating
8 certain tasks to “the board of supervisors or its designee.” *Cf. Hancock*, 188 Ariz. at 498 (a board
9 of supervisors “may not do indirectly what a statute does not give it the power to do directly.”).
10 The legislature did not choose to do so in 1974, and it has not chosen to do so since.

11 **IV. The BOS’s actions have caused significant harm to Recorder Heap.**

12 The BOS has made it impossible to properly conduct elections in Maricopa County
13 and for Recorder Heap to carry out the duties of his office. This causes significant harm to
14 Recorder Heap and threatens the successful administration of upcoming elections. Nullifica-
15 tion of a public officer’s lawful authority constitutes irreparable harm. *Toma*, 258 Ariz. at 117
16 ¶ 89. Here, a major part of the harm is Recorder Heap’s inability to carry out the duties of his
17 office. Therefore, it is appropriate for this Court to issue relief in the form of mandamus, an
18 injunction, and declaratory judgment. Public policy also favors judgment in favor of Recorder
19 Heap. The funding of Recorder Heap’s duties is essential to the proper and lawful conduct of
20 elections in Maricopa County, and “[t]here is a ‘strong public policy favoring stability and
21 finality of election results.’” *Arizona City Sanitary Dist. v. Olson*, 224 Ariz. 330, 334 ¶ 12 (App.
22 2010) (quoting *Donaghey v. Attorney General*, 120 Ariz. 93, 95 (1978)).

23 If the BOS does not want to fulfill its mandatory duty to fund Recorder Heap’s inde-
24 pendent exercise of his election functions by paying for such things as Recorder Heap’s hiring
25 his own IT staff; procurement of his own warehouse and office space; development of new
26 software, databases, and websites; and purchase of election equipment, then there is another
option available. The BOS can simply do what it had already been doing for decades and only
suddenly stopped doing this year—it can provide IT staff to Recorder Heap; it can share its

1 office and warehouse space with him; it can return to him the servers, databases, software, and
2 websites developed by the Recorder's Office and used to carry out its functions; and it can
3 share its election equipment with him. This course of conduct that the BOS had previously
4 followed for literally *decades* illustrates that it will suffer no hardship at all to provide Recorder
5 Heap with the resources necessary to do his job.

6 Accordingly, this Court should order that the BOS must either: 1) increase the Re-
7 corder's budget by \$5 million; return to the Recorder the servers, systems, resources, staff
8 members, and equipment that were taken from him; and share necessary facilities and equip-
9 ment with the Recorder or 2) the BOS must increase the Recorder's budget for the 2025-2026
10 budget year by \$20.7 million and in subsequent years must provide him with an ongoing in-
11 crease of an additional \$7.7 million per year (with appropriate adjustments for inflation).

12 **Conclusion**

13 Because Recorder Heap is entitled to summary judgment, this Court should issue an
14 order requiring the BOS to stop withholding funds for all his necessary expenses as set forth in
15 the following statutes: A.R.S. §§ 16-103, -112, -120, -121.01, -128, -132, -134, -138, -151, -161
16 through -169, and -542 to -544 and A.R.S. § 16-121.01, -204, -205, -222, -246, -351, -411, -542,
17 -543, -543.02, -544, -547, -548, -549, -550, -550.01, -551, -558.01, -558.02, -579.01, -579.02, -
18 584, -602, -621; *see also Arizona Public Integrity Alliance v. Fontes*, 250 Ariz. 58, 65 ¶ 31 (2020)
(granting special action and injunctive relief in special action regarding election procedures).

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

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

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3
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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

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

13 Plaintiff,

14 v.

15 THOMAS GALVIN, in his official capac-
16 ity as a member of the Maricopa County
17 Board of Supervisors; MARK STEWART,
18 in his official capacity as a member of the
19 Maricopa County Board of Supervisors;
20 KATE BROPHY MCGEE, in her official
21 capacity as a member of the Maricopa
22 County Board of Supervisors; DEBBIE
23 LESKO, in her official capacity as a mem-
24 ber of the Maricopa County Board of Su-
25 pervisors; STEVE GALLARDO, in his of-
26 ficial capacity as a member of the Maricopa
27 County Board of Supervisors;

28 Defendants.

29 **AND**

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

32 Plaintiff,

33 v.

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

36 Defendant.

Case Nos.

CV2025-020621

CV2025-022266

(consolidated)

**RECORDER HEAP'S SEPARATE
STATEMENT OF FACTS IN SUP-
PORT OF MOTION FOR SUM-
MARY JUDGMENT AGAINST THE
BOARD OF SUPERVISORS**

(Assigned to the Hon. Scott Blaney)

1 Pursuant to Arizona Rule of Civil Procedure 56(c)(3)(A), Maricopa County Recorder
2 Justin Heap hereby submits the following Separate Statement of Facts in support of his Mo-
3 tion for Summary Judgment Against Board of Supervisors.

4 1. This dispute arose when the BOS refused to provide the necessary resources
5 for Recorder Heap to conduct the duties of his office unless he ceded most of his authority
6 to the BOS. Compl. ¶¶ 23-60.

7 2. Because Maricopa County is one of the largest voting jurisdictions in the United
8 States, for decades the Maricopa County Board of Supervisors (“BOS”) and the Maricopa
9 County Recorder have executed various election operations and Shared Services Agreements
10 (“SSAs”) to facilitate collaboration between themselves and to formalize division of labor,
11 resource allocation, and budget responsibilities. Compl. ¶¶ 19-22.

12 3. Just before Recorder Heap’s election, in October 2024, the BOS executed a
13 Shared Services Agreement (SSA) with the then-lame-duck Recorder, Stephen Richer, which
14 significantly constrained the Recorder’s authority over elections by transferring key election
15 functions and budget to the BOS. Compl. ¶¶ 22-30.

16 4. The timing of the 2024 SSA’s effective date appears to have been an effort to
17 undermine voters’ desire for improvements in the way early voting was administered, which
18 they expressed by electing a new recorder. Compl. ¶¶ 31-33.

19 5. Upon taking office in January 2025, Recorder Heap terminated the 2024 SSA,
20 citing its unenforceability and its violation of his statutory duties under Arizona’s election stat-
21 utes. Despite Recorder Heap’s good-faith efforts to negotiate a new SSA that respected the
22 statutory division of labor and that would provide the Recorder with the necessary resources
23 to conduct his duties, the BOS has refused to negotiate a reasonable SSA that complies with
24 Arizona law. Compl. ¶¶ 34-60.

25 6. Indeed, on June 5, Recorder Heap made an offer of mediation, but the BOS
26 ignored him and failed to respond in any way. Compl. ¶¶ 61-66.

7. Rather, the BOS has taken retaliatory actions against Recorder Heap that make
it impossible for him to do his job, including removing nearly all his election-related IT staff;
seizing the servers, databases, and websites necessary to fulfill his duties; and restricting access

1 to necessary facilities and equipment. The BOS's actions make it increasingly unlikely that
2 elections in Maricopa County can be properly conducted. The longer the County's elections
3 are unlawfully administered, the greater the risk of a catastrophic failure, voter disenfranchise-
4 ment, and litigation over election mishaps. Compl. ¶¶ 43-53, 69-89.

5 8. In an apparent effort to force Recorder Heap to submit to the will of the BOS,
6 the BOS refuses to provide Recorder Heap with the necessary resources to do his job. Compl.
7 ¶ 44.

8 9. For example, the BOS refuses to provide the IT staff that the Recorder's Office
9 needs for Recorder Heap to carry out his statutorily required and authorized election duties,
10 and the BOS has seized the websites, computer servers, and software that the Recorder uses
11 to carry out his duties. Compl. ¶¶ 43-50; 69-88.

12 10. The loss of his IT staff means that Recorder Heap cannot perform all the voter
13 list maintenance activities that are necessary to keep voter rolls clean, in conformity with stat-
14 utory requirements. For example, the lack of IT staff has meant that the Recorder's Office
15 cannot perform batch comparisons with federal databases and cannot upgrade the registration
16 database to pull and sort data to find mistakes in voter registrations. Compl. ¶ 44.

17 11. Furthermore, because the Recorder's Office is now entirely reliant on County
18 IT staff, the only way to accomplish needed IT tasks is to submit support request tickets. Many
19 tickets have not been completed in a timely manner, and the Recorder has little to no recourse
20 if the County staff refuses to fulfill a request or if the BOS instructs them to ignore a request.
21 Since Recorder Heap took office through the filing of the Complaint, the Recorder's Office
22 has submitted 158 support tickets to the County IT department, and only 85 have been closed.
23 This means that, as of June 3, the County IT department has failed to fulfill 46% of the Re-
24 corder's Office's IT requests. Compl. ¶¶ 44-50.

25 12. The BOS has taken control over systems that were developed by the Recorder's
26 Office under prior Recorders and that the Recorder uses to fulfill the duties of his office. For
example, under Arizona law, the County Recorder has exclusive authority over voter registra-
tion, the maintenance of the voter rolls, and the Active Early Voting List. To carry out these
duties, the Recorder's Office relies on internally developed software systems—ERO and

1 VRAS—created through decades of investment by prior Recorders. However, the BOS trans-
2 ferred control of these systems, including the IT personnel who developed and maintained
3 them, as well as the servers and equipment hosting the data, to itself. Depriving the Recorder
4 of access to and control over these systems prevents the lawful execution of his exclusive
5 statutory responsibilities. Compl. ¶¶ 73-74.

6 13. Arizona law also assigns the Recorder exclusive authority to record and preserve
7 public documents, including maintaining records for approximately 1.8 million parcels in Mar-
8 icopa County. The Recorder’s responsibilities in this regard are extensive and require signifi-
9 cant IT systems. Approximately over the month preceding the filing of the Complain, the BOS
10 returned most of the Recorder’s RDIS IT personnel to the Recorder’s Office. However, even
11 though the Recorder’s Office now has the needed personnel to manage RDIS, it still does not
12 have the physical servers that house the RDIS system and databases. In other words, the BOS
13 has taken control of all the digitized recorded property documents for the entire county, even
14 though only the Recorder has the authority under statute to record and store such documents.
15 *See*, A.R.S. § 11-461(A). The Recorder’s Office, therefore, cannot administer any of the Re-
16 corder’s statutory responsibilities that are managed through RDIS unless the BOS deigns to
17 grant access. For example, the Recorder’s Office IT staff cannot independently make upgrades
18 to the RDIS system. Rather, they must first get approval from the BOS’s IT department. The
19 BOS’s continued control of RDIS impairs the Recorder’s ability to fulfill his non-delegable
20 statutory duty to maintain public records. Compl. ¶¶ 75-80.

21 14. Additionally, the BOS has taken control of the Recorder’s Geographic Infor-
22 mation System (GIS). The Recorder is the only authorized custodian for a variety of important
23 records, including “all records, maps and papers deposited in the recorder’s office.” A.R.S. §
24 11-461(A). That custodianship requires that the Recorder keep accurate official records of
25 street center lines, address points, and city boundaries. The Recorder’s GIS is where these
26 records are stored. It is unlawful for the BOS to maintain its control of the Recorder’s GIS
because only the Recorder’s Office is charged with the custodianship of the records it contains.
Compl. ¶¶ 83-84.

15. The BOS has also taken control of the BeBallotReady website, which is

1 accessible through the URLs BeBallotReady.com and BeBallotReady.Vote. BeBallotReady was
2 created and popularized by the Recorder's Office under prior Recorders to serve as an official,
3 centralized source of election information for voters in Maricopa County. More than a simple
4 website, it integrates all of the Recorders' early voting and election functions into one central
5 user-friendly interface. It acts as a voter dashboard and allows users to view and update their
6 voter registration, request a mail-in ballot, explore the entire ballot, find information about
7 upcoming elections, sign up for voter registration and early ballot alerts, and find their polling
8 place for early and election voting, and more, all in one place. Virtually all of the functionalities
9 provided by BeBallotReady relate to responsibilities statutorily entrusted to the Recorder, such
10 as voter registration, mail-in ballot requests, early voting locations, tracking of the status of
11 early ballots and signature verification, and sending electronic notices about voters' early ballot
12 status and voter registration changes. Compl. ¶¶ 85-88.

13 16. The BOS also refuses to provide access to the necessary County facilities that
14 the Recorder's Office needs for Recorder Heap to carry out his statutorily required and au-
15 thorized election duties. Compl. ¶¶ 51, 70, and 115.

16 17. And the BOS refuses to provide access to the necessary equipment that the
17 Recorder's Office needs for Recorder Heap to carry out his statutorily required and authorized
18 election duties. Compl. ¶¶ 51, 71.

19 18. When the BOS withdrew significant resources from the Recorder's office and
20 started refusing to share equipment and facilities with the Recorder, it also reduced the Re-
21 corder's budget by \$5 million. Compl. ¶ 30.

22 19. At an informal BOS meeting on May 19, 2025, where the BOS took a unani-
23 mous vote on the adoption of the fiscal year 2026 tentative budget which excluded many of
24 the stated statutory responsibilities of the Recorder's Office, Assistant County Manager Zach
25 Schira confirmed to the BOS that, in the absence of an SSA, "if we're going to our statutory
26 corners, then [the Recorder] would be responsible for just early in-person [voting] and [the
BOS] would be responsible for emergency and election day [voting]" and that early voting
administered by the Recorder and election-day voting administered by the BOS would likely
require separate personnel, warehouse, and equipment used by each party. Compl. ¶ 60;

1 Maricopa County Board of Supervisors, May 19, 2025, Informal Meeting at 1:03:00-1:06:28,
2 <https://tinyurl.com/3dnxcbxn>.

3 20. After Supervisor Mark Stewart asked if the costs had to be duplicative if the
4 Recorder took back early voting per the statutes, Schira stated “in theory” both departments
5 could use the same equipment if they coordinated. Accordingly, if the BOS returns to the
6 Recorder the systems and servers that it took and shares its equipment and facilities with the
7 Recorder, the Recorder would need an additional \$5 million added to his budget to allow him
8 to fulfill his statutory duties. Compl. ¶ 60; Maricopa County Board of Supervisors, May 19,
9 2025, Informal Meeting at 1:03:00-1:06:28, <https://tinyurl.com/3dnxcbxn>.

10 21. At the same informal BOS meeting on May 19, 2025, Assistant County Manager
11 Zach Schira’s testimony to the BOS contained “conservative estimates” of how much addi-
12 tional money would need to be allocated to the Recorder to allow him to fulfill his statutory
13 duties if the BOS does not share resources and equipment with the Recorder and if he is,
14 therefore, required to acquire new equipment and facilities. Specifically, Schira testified that
15 the Recorder would need “between \$11 million and \$13 million in one-time capital costs,”
16 “about \$1.8 million in ongoing costs,” and “almost \$900,000 ... to the ELE1 budget.” There-
17 fore, if the BOS does not share equipment and resources with the Recorder, the Recorder
18 would need an additional \$20.7 million added to his budget for this year: \$15.7 million which,
19 according to Mr. Schira, is the amount necessary to allow the Recorder to pay for new equip-
20 ment, facilities, and staff to replace what the BOS refuses to share with the Recorder, plus the
21 \$5 million that the BOS took away from the Recorder, which are necessary for him to carry
22 out his ongoing duties. In subsequent years, he would require an ongoing increase of only an
23 additional \$7.7 million per year (with appropriate adjustments for inflation). Maricopa County
24 Board of Supervisors, May 19, 2025, Informal Meeting at 51:20-1:03:00, [https://ti-
nyurl.com/3dnxcbxn](https://tinyurl.com/3dnxcbxn).

25 22. The 2025-26 budget enacted by the Legislature and signed by the Governor
26 stated that “[t]he sum of \$4,100,000 is appropriated from the state general fund [to the Mari-
copa County Recorder’s Office] ... for election-related operations” and mandated that “the
Maricopa county board of supervisors shall not in any way reduce the funding to the Maricopa

1 county recorder's office below the amount of the adopted fiscal year budget for the Maricopa
2 county recorder's office.” S.B. 1735 (Session laws, State of Arizona, 2025, Fifty-Sevent Legis-
3 lature, 1stRegular Session), <https://perma.cc/TR24-4MUJ>.

4 23. On or about August 5, 2025, the Recorder’s Office attempted to post a recruit-
5 ment for an IT Infrastructure Manager whose salary would be paid from existing Recorder
6 funds or, alternatively, from a \$4.1 million legislative appropriation. Exhibit A, Declaration of
7 Maricopa County Recorder Justin Heap (“Heap Dec.”) ¶ 2.

8 24. County Manager Jen Pokorski intervened and blocked the posting, asserting the
9 Board of Supervisors had not authorized it. Heap. Dec. ¶ 3.

10 25. In an August 7, 2025 email to Chief Deputy Recorder Jeff Mason, County Man-
11 ager Pokorski stated the posting was submitted “in error” and exceeded the seven IT positions
12 the Board had approved pending completion of an IT audit. Heap. Dec. ¶ 4 and Ex. 1.

13 26. As part of the FY 2025 budget, Recorder Heap requested only one enhance-
14 ment to his baseline appropriation: funding to purchase an Agilis ballot-envelope processing
15 machine to accelerate signature verification and curing of mail-in ballots. Heap. Dec. ¶ 6.

16 27. Because the Recorder’s Office must presently rely on hand scanners to process
17 tens of thousands of envelopes, ballot processing is slowed, and that delay was one of the
18 Board’s cited reasons for seizing ballot-processing responsibility. Heap. Dec. ¶ 7

19 28. Recorder Heap transmitted to the Board a written justification explaining that
20 Agilis would automate imaging, signature capture, data extraction, and batch sorting; eliminate
21 off-site scanning; reduce temporary-staff costs; and ensure compliance with statutory dead-
lines. Heap. Dec. ¶ 8 and Ex. 2.

22 29. The Board nevertheless rejected the Agilis purchase, forcing the Recorder’s Of-
23 fice to continue using outdated hand-scanner technology. Heap. Dec. ¶ 9.

24 30. The Board’s refusal was perplexing because the far smaller counties of Pinal and
25 Yavapai already operate Agilis machines. Heap. Dec. ¶ 10.

26 31. After the Board refused to fund the purchase, Recorder Heap offered to buy
the machine with surplus Recorder’s Office funds saved by eliminating unnecessary positions,
but the Board still declined. Heap. Dec. ¶ 11.

1 32. County Manager Jen Pokorski then sent an email claiming that the County
2 would face a \$35,000 annual licensing fee and lacked space at MCTEC or the Recorder's build-
3 ing, and on that basis denied the purchase. Heap. Dec. ¶ 12 and Ex. 3.

4 33. Those assertions were untrue: the Recorder's Office had ample funds for the
5 license fee and sufficient space at MCTEC to install the machine. Heap. Dec. ¶ 13.

6 34. In a 2015 Yavapai County dispute, that county's Board of Supervisors trans-
7 ferred "cartography and property title personnel positions" from "the County Assessor's of-
8 fice and assign[ed] those positions to a newly formed department that reports to the BOS."
9 Ex. B at 1, Ariz. Atty. Gen. Op. I15-013 (Dec. 21, 2015).

10 35. Attorney General Brnovich issued an official opinion, attached hereto as Ex-
11 hibit B, concluding that the Yavapai County Board of Supervisors did not "have the authority
12 to withdraw" the relevant "personnel from the control of the Yavapai County Assessor" be-
13 cause "the functions of those personnel are necessary for an assessor to perform its statutory
14 duties." *Id.* at 2.

15 36. This was because the assessor's "duties ... derive from the Constitution and stat-
16 utes. Consequently, it is beyond a county board of supervisors' authority to divest a county
17 assessor of those duties" by removing personnel necessary for the assessor to carry out those
18 duties. *Id.* at 7.

19 37. Thus, the Attorney General concluded, "[t]he BOS would unlawfully usurp the
20 Assessor's statutory authority by eliminating cartography and title personnel positions within
21 the Assessor's Office or by performing the Assessor's cartography and title functions through
22 personnel who report to the BOS." *Id.* at 11.

23 38. Similarly, in a 2008 Maricopa County Treasurer dispute, the BOS "transfer[ed]
24 expenditure authority, positions, incumbents, supplies, services and capital," which "com-
25 prise[d] the Treasurer's Information Technology (IT) program, to the County's Office of En-
26 terprise Technology, thereby leaving the Treasurer without direct control over those IT oper-
ations." Ex. C at 1, Maricopa County Attorney Opinion 2008-002 (Jul. 23, 2008).

 39. As part of the dispute, the Maricopa County Treasurer requested that the Mar-
icopa County Attorney (MCAO) issue an opinion about the legality of the BOS's actions.

1 Attached as Exhibit C is that official opinion, in which the MCAO concluded that, because
2 “[i]n this day and age, many of the statutory duties of the Treasurer ... are fulfilled electronically
3 by a competent and sufficient information technology system and staff,” that when the BOS
4 took away the Treasurer’s IT staff, control over the Treasurer’s statutory duties was “placed
5 under the control of the County’s Office of Enterprise Technology,” which was under the
6 control of the BOS. *Id.* at 2, 4.

7 40. The MCAO concluded that this transfer was unlawful because the relevant Ar-
8 izona statutes establishing the powers of the BOS “did not empower the Board to transfer
9 func-tions to another county department or to vest another with control of the Treasurer’s”
10 statu-tory responsibilities and that “[a] governmental body may not do indirectly what a statute
11 does not give it the power to do directly.” *Id.* at 5 (citing *Hancock v. McCarroll*, 188 Ariz. 492,
12 298 (1997)).

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

14 **America First Legal Foundation**

15 By: /s/ James Rogers

16 James K. Rogers (No. 027287)

17 *Senior Counsel*

18 America First Legal Foundation

19 611 Pennsylvania Ave., SE #231

20 Washington, D.C. 20003

21 Phone: (202) 964-3721

22 James.Rogers@aflegal.org

23 *Attorney for Maricopa County Recorder Justin Heap,*

24 *Plaintiff in Heap v. Galvin*

25 *Defendant in Mitchell v. Heap*

26 ORIGINAL filed and served via electronic
means this 11th day of August, 2025, upon:

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Exhibit A

1 **AMERICA FIRST LEGAL FOUNDATION**

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7 James.Rogers@aflegal.org

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

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

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

13 Plaintiff,

14 v.

15 THOMAS GALVIN, in his official capac-
16 ity as a member of the Maricopa County
17 Board of Supervisors; MARK STEWART,
18 in his official capacity as a member of the
19 Maricopa County Board of Supervisors;
20 KATE BROPHY MCGEE, in her official
21 capacity as a member of the Maricopa
22 County Board of Supervisors; DEBBIE
23 LESKO, in her official capacity as a mem-
24 ber of the Maricopa County Board of Su-
25 perisors; STEVE GALLARDO, in his of-
26 ficial capacity as a member of the Maricopa
27 County Board of Supervisors;

28 Defendants.

AND

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

31 Plaintiff,

32 v.

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

35 Defendant.

Case Nos.

CV2025-020621

CV2025-022266

(consolidated)

**DECLARATION OF MARICOPA
COUNTY RECORDER JUSTIN
HEAP**

1 I, Justin Heap, declare as follows:

2 1. I am the Maricopa County Recorder.

3 2. On about August 5, 2025, my office attempted to list a job posting to hire a new
4 IT staffer whose salary would be paid out of funds already available in the Recorder's budget,
5 or alternatively, out of the \$4.1 million recently allocated to my office by the Legislature.

6 3. However, County Manager Jen Pokorski directly intervened to prevent the job
7 posting and refused to allow my office to post the job listing because the BOS had not inde-
8 pendently authorized it.

9 4. Specifically, on August 7, 2025, Ms. Pokorski sent an email to Chief Deputy
10 Recorder Jeff Mason stating the following

11 I wanted to bring to your attention that a recruitment request for an IT Infrastruc-
12 ture Manager was recently submitted by your staff in error. Upon review, we found
13 that this posting exceeds the seven IT positions previously approved by the Board of
14 Supervisors, which were authorized pending completion of the IT audit to evaluate and
15 separate IT duties.

16 As a result, we have cancelled the posting.

17 5. Attached as Exhibit 1 is a true and correct copy of that email.

18 6. As part of the 2025 Budget, my office asked the Board of Supervisors for only
19 one item above the baseline budget: to purchase an Agilis machine for our office. The Agilis
20 machine essentially sorts and processes ballot envelopes very quickly. This would greatly speed
21 up signature verification and curing of mail-in ballots.

22 7. Right now, my office must rely on hand scanners for tens of thousands of bal-
23 lots. This greatly slows down our ability to process provisional ballots and send them to the
24 Board for counting. In fact, this delay in scanning was a primary reason why the Board said it
25 needed to take over ballot processing.

26 8. Attached as Exhibit 2 is a document that my office prepared and sent to the
Board that provides the justification for procuring the Agilis machines. Specifically, Maricopa
County's late-arriving early ballots and provisional ballots are still processed largely by hand—
an approach that strains staff, slows signature verification, and risks missing strict statutory
deadlines. Deploying the Agilis system would automate envelope imaging, signature capture,
data extraction, and batch sorting, eliminating off-site scanning, cutting reliance on large

1 temporary workforces, and enabling real-time re-validation of provisional ballots if voters cure
2 deficiencies before canvass. By accelerating each step without sacrificing accuracy or account-
3 ability, Agilis would let my office meet the tight timelines in A.R.S. §§ 16-550.01, 16-584(D)
4 and 16-135(D), reduce costs, and ensure that all eligible ballots reach tabulation promptly,
5 thereby modernizing and strengthening Maricopa County's election administration.

6 9. In other words, my office presented a solution to the Board that would solve
7 the problem, yet they rejected that solution, requiring us to continue to use outmoded hand
8 scanners.

9 10. This rejection was particularly confusing and frustrating because Pinal and Ya-
10 vapai Counties both already have Agilis machines, yet they have only a fraction of the popu-
11 lation of Maricopa County.

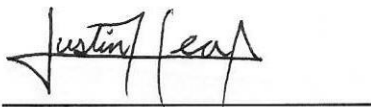
12 11. When the Board denied the funds in the budget for an Agilis Machine, my office
13 proposed purchasing it with surplus funds from our own Recorder's Office budget created by
14 the elimination of unnecessary positions after I took office. This would have come out of the
15 Recorder Office's existing funds and not caused the County to spend any additional money.
16 Nevertheless, the Board still rejected the purchase

17 12. Attached as Exhibit 3 is an email from County Manager Jen Pokorski denying
18 the purchase, claiming as the excuse that the County "would be paying a \$35,000 annual li-
19 censing fee for a machine that cannot be used as there is no space at MCTEC or the Recorder's
20 Office in the administration building."

21 13. However, none of Ms. Pokorski's claims were true. The Recorder's Office
22 budget had more than enough funds to cover the license fee, and there was ample space at
23 MCTEC to install the machine.

24 I declare under penalty of perjury that the foregoing is true and correct.

25 Executed on August 11, 2025 in Maricopa County, Arizona.

26 

Justin Heap

Exhibit 1

From: Jen Pokorski (COA) <Jen.Pokorski@Maricopa.Gov>
Sent: Thursday, August 7, 2025 12:38 PM
To: Jeff Mason (REC) <Jeff.Mason@maricopa.gov>
Subject: IT Position

Jeff,

I wanted to bring to your attention that a recruitment request for an IT Infrastructure Manager was recently submitted by your staff in error. Upon review, we found that this posting exceeds the seven IT positions previously approved by the Board of Supervisors, which were authorized pending completion of the IT audit to evaluate and separate IT duties.

As a result, we have cancelled the posting.

Thanks,
Jen



Jen Pokorski
COUNTY MANAGER
301 W. Jefferson Street
Phoenix, AZ 85008
O: 602-372-0688
MARICOPA.GOV
[Facebook](#) | [Instagram](#) | [Twitter](#) | [YouTube](#)

Exhibit 2



Maricopa County

Office of the Recorder

Agilis Use Information

Elections require effective, efficient, and accountable systems to securely process all ballots cast - whether in-person, early, or provisional. Two of these methods, early and provisional ballots, fall under the purview of the County Recorder's Office.

Consistent with our Office's philosophy of continuous improvement, we regularly evaluate processes, procedures, technology, and equipment to enhance efficiency while upholding best-in-class practices.

At present, we face significant challenges with the manual processing of small-batch late early ballot returns and the post-election handling of provisional ballots. These tasks can delay the Recorder's timely review and disposition of ballots, in turn postponing their advancement to final tabulation.

Given Maricopa County's size and the high volume of late-early and provisional ballots, particularly during federal elections, it is no longer practical to rely solely on manual processes. Adopting more advanced technology is essential to managing these workloads effectively.

The Agilis system, designed specifically for election environments, directly addresses these manual inbound processing challenges. It can integrate seamlessly with our in-house tracking and processing applications, enabling faster, more accurate, and more efficient ballot handling.

The following outlines the current issues, proposed solutions, and a summary of why adopting the Agilis system is critical to modernizing the Department's ballot processing operations.

Maricopa County's Main Obstacles to Resolve

Issue 1: Reduce Bottlenecks in Election Processing

- Upon receipt of early ballot envelopes and provisional ballot envelopes, each packet must be logged and credited for receipt.
- Currently, these are either manually scanned by staff or, in the case of small-batch early ballot envelopes, transported off-site to a third-party facility for delayed scanning. This step captures a digital image of that early voting affidavit envelope for use in the signature verification process.
- The manual verification or scanning process for both provisional and small-batch early ballot envelopes is labor-intensive and time-consuming. It involves multiple physical handling steps of packets containing live (voted) ballots, making it especially challenging to process thousands of envelopes within the strict statutory deadlines.

Issue 2: Comply with State Law for Early Ballot Signature Review and Notifications





Maricopa County

Office of the Recorder

- For late-early ballot packets, the Recorder's Office must scan these affidavit envelopes, crop the images, and upload the captured signatures into our ERO system within hours of acceptance to meet state requirements for notifying voters of receipt or deficiencies.
- Verified early ballot packets must be promptly delivered to the Pre-Tabulation Boards under the purview of the Elections Department (a division of the Board of Supervisors) for processing and preparation for tabulation.
- For early ballot affidavits with deficiencies (e.g., missing signature, signature mismatch), the Recorder's Office is legally required under A.R.S. §16-550 to contact the voter to allow them to correct or confirm their signature.
- The curing process is subject to strict statutory deadlines:
 - Missing signature: by 7:00 PM on Election Day.
 - Inconsistent signature: within 3 days after a local election or within 5 calendar days after a primary, general, or special election that includes a federal office.
- Signatures that cannot be verified or cured under A.R.S. §16-550.01 within the prescribed deadlines must be rejected.

Issue 3: Comply with State Law for Provisional Review and Notifications

- For provisional ballots cast, the Recorder's Office receives electronic data from the SiteBook check-in system. This is used to review the voter's eligibility.
- After review, the Recorder's Office determines the disposition for each provisional record (accept or reject). Under A.R.S. §16-584(F), the Office is legally required to provide a method of notifying the voter whether their provisional ballot was or was not counted.
- For **Conditional Provisional** ballots, A.R.S. §16-550(A) allows the voter to cure a "proof of identity" issue no later than:
 - The **fifth business day** after a primary, general, or special election that includes a federal office, or
 - The **third business day** after any other election.
- The Recorder's Office must complete the provisional ballot status review within the timeframes prescribed in A.R.S. §§16-584(D) and 16-135(D), and provide the results to the Elections Department, under the purview of the Board of Supervisors (BOS), which then takes the next steps for handling these packets
- The Elections Department manually scans the provisional ballot envelopes to identify disposition (accepted or rejected), manually sorts them according to that disposition, and readies them to be sent to the Pre-Tabulation Boards for processing and later for tabulation.

Issue 4: Comply with law which allows voters to cure their registration and become full ballot voters by providing required documentation by 7pm on Election Day.





Maricopa County

Office of the Recorder

We are statutorily out of compliance if we do not process DPOC/DPOR received as of 7pm and allow what would have been a *not-registered* or a *federal-only* voter's ballot to be processed as a full ballot.

Because we start processing Provisionals before Election Day, there are a few concerns:

Example 1: a provisional ballot is processed and accepted as *federal-only* but later the voter provides DPOC/DPOR, resulting in the provisional ballot needing to be re-dispositioned to be accepted as full ballot.

Example 2: voter is in "*not-registered*" status provisional is rejected but later voter provides DPOC by 7pm – provisional should be re-dispositioned as accepted.

The agilis would help by re-running validation on all provisional ballots before they are handed over for tabulation and/or potential duplication by Elections.

Issue 5: Increase in Overall Efficiency

- The inability to scan late-early ballot and provisional ballot envelopes in-house reduces efficiency and increases the risk of both departments missing statutory deadlines.

Steps to Resolution

Maricopa County has partnered with Runbeck Election Services to address many election challenges common across counties of all sizes nationwide. While we utilize a proven vote-by-mail system for large-batch early ballot returns, inefficiencies remain with small-batch early ballot returns. Principally, we do not have the in-house capability or high-speed scan-in capability for those small-batch returns.

Additionally, the inbound review and outbound sorting of provisional ballot packets lack efficiency due to the inability to capture images of those provisional ballot envelopes in-house and the continued reliance on manual scanning and human staffing resources to sort envelopes according to disposition.

Both processes involve critical deadlines essential to election success. Therefore, the solution must enhance efficiency, effectiveness, and speed without compromising accuracy and accountability.

Acquiring and deploying the Agilis system represents the necessary step toward resolving these challenges.

Summary: Problems and Resolutions

Issue 1: Bottleneck Reduction





Maricopa County

Office of the Recorder

- **Problem:** Manual, multi-step handling of late small-batch early ballot envelopes and provisional ballot envelopes slows processing and risks missing deadlines. Coupled with the need to transport these small-batch early ballot envelopes off-site to scan and capture images to perform the signature verification process.
- **Resolution:** Agilis automates these processes, greatly reducing manual handling, dramatically accelerating workflow, and all done in-house.

Issue 2: Regulatory Compliance

- **Problem:** Strict statutory deadlines for reviewing and notifying voters of deficiencies are difficult to meet due to reliance on one-off manual (human) scanning and delayed uploads for signature and registration verification.
- **Resolution:** Agilis provides high-speed image and data capture for both small-batch late-early ballots and provisional ballot affidavits. It also enables rapid sorting of both envelope types based on disposition status, facilitating daily uploads and ensuring timely compliance.

Issue 3: Efficiency Improvement

- **Problem:** Tight election deadlines require costly hiring and training of temporary staff to perform these manual scanning and sorting tasks.
- **Resolution:** Agilis automates scanning and sorting, reducing the time, labor, and budget needs by minimizing manual work and staffing requirements.

Agilis System Features

- High-definition camera captures images of each envelope, enabling efficient extraction of voter information and signatures for streamlined verification for both small-batch late-earlier and provisional ballot envelopes.
- Highly configurable sorting system for both envelope types with robust reporting and audit capabilities, including detailed tray tags for accurate archiving.
- Seamless integration with our Voter Registration System (ERO) to manage voter mail ballot statuses and capture provisional ballot envelope images, supporting and bolstering the status review process.
- Adjustable detection thresholds allow Agilis to identify envelopes that are too thick, too thin, or have incorrect dimensions (i.e., missing or empty envelopes).



Exhibit 3

From: Jen Pokorski (COA) <Jen.Pokorski@Maricopa.Gov>
Sent: Wednesday, June 11, 2025 4:56:54 PM
To: Jeff Mason (MCRO) <Jeff.Mason@maricopa.gov>
Subject: Agilis Sorter

Jeff,

I understand the Recorder's Office is attempting to purchase the Agilis sorter using current fiscal year vacancy savings.

The Board denied this purchase as part of the Office's \$300,000 above-baseline request in the FY26 budget. Based on documentation submitted to the Office of Procurement Services, the Agilis is not a cost-effective investment for the County at this time, regardless of how it is paid for.

In addition to the initial \$300,000 capital outlay, we would be paying a \$35,000 annual licensing fee for a machine that cannot be used as there is no space at MCTEC or the Recorder's Office in the administration building.

The new Elections Facility is being built to support high-capacity BlueCrest Vantage scanners that meet the County's processing demands. The smaller Agilis machine is not part of that future design.

Please let me know if you'd like to discuss further.

Thanks,
Jen



Jen Pokorski
COUNTY MANAGER
301 W. Jefferson Street
Phoenix, AZ 85008
O: 602-372-0688
MARICOPA.GOV
[Facebook](#) | [Instagram](#) | [Twitter](#) | [YouTube](#)

Exhibit B



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>
--------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------

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 C

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, 365, 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).

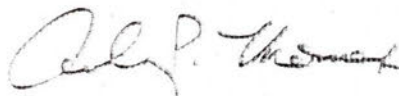
We therefore conclude that the Board of Supervisors did not have authority to transfer those specific IT program functions related to the Treasurer's books and records to the County's Office of Enterprise Technology.

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