

1 **AMERICA FIRST LEGAL FOUNDATION**

2 James K. Rogers (No. 027287)

3 *Senior Counsel*

4 611 Pennsylvania Ave., SE #231

5 Washington, D.C. 20003

6 Phone: (202) 964-3721

7 James.Rogers@aflegal.org

8 *Attorney for Maricopa County Recorder Justin 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 / Counterdefendant,

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 / Counterclaimants.

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 No.

CV2025-020621

(consolidated)

**APPLICATION FOR ORDER TO
SHOW CAUSE WHY DEFEND-
ANTS SHOULD NOT BE HELD IN
CIVIL CONTEMPT FOR WILL-
FULLY DISOBEYING THE
COURT'S APRIL 16, 2026 UNDER
ADVISEMENT RULING**

(Assigned to the Hon. Scott Blaney)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

INTRODUCTION

Pursuant to A.R.S. § 12-864, Arizona Rule of Civil Procedure 7.3, and Arizona Rule of Procedure for Special Actions 7(c), Plaintiff and Counter-Defendant Justin Heap, in his official capacity as Maricopa County Recorder, respectfully applies for an Order to Show Cause directing the Defendants (collectively, the “Board”) to appear before the Court and show cause why they should not be adjudged in civil contempt for willful, continuing, and escalating noncompliance with this Court’s April 16, 2026 Under Advisement Ruling (the “April 16 Order” or “the Order”).

The April 16 Order is unambiguous. It requires the Board to return to the Recorder’s direct custody and control the IT staff, servers, databases, software, and websites that were in the Recorder’s custody and control before October 2024—or immediately fund their replacement. It enjoins the Board from exercising any election functions that the Legislature has delegated to “the Recorder or other officer in charge of elections,” absent the Recorder’s consent. It declares that the Board has a nondiscretionary duty to fund all necessary expenses of the Recorder as set forth in Title 16 of the Arizona Revised Statutes.

None of these obligations has been meaningfully met. More than six weeks after the April 16 Order was issued, the Board has not returned a single IT position to the Recorder’s Office—though, on May 20, apparently in an attempt to prepare for stay briefing at the Court of Appeals and to forestall this contempt motion, it voted to allow the Recorder’s Office to *hire* 8 new IT positions. But the Board created entirely new, unfilled positions rather than transferring the experienced former Recorder’s Office IT staff—the employees who built and maintain the VRAS and ERO systems—who remain employed by the Board. The Recorder’s Office CIO has been given administrative privileges nominally equivalent to those of the Board’s Deputy CIO, but this is a false equivalence: the Board’s Deputy CIO distributes access among his subordinates. Hence, the Board’s IT department collectively retains full access to the Recorder’s former systems. At the same time, the Recorder’s CIO has only limited or read-only access to many of them, including the ERO/VRAS voter registration databases. The Board has not returned a single server, database, or website. It has not approved the use of funds specifically appropriated by the Arizona Legislature and the federal government for the

1 Recorder's election operations. It openly usurped the Recorder's authority over ballot replace-
2 ment sites during the May 2026 jurisdictional elections. And it passed a formal resolution arro-
3 gating to itself the Recorder's exclusive statutory authority to establish early-ballot drop boxes
4 during the early voting period.

5 The Recorder has not met the Board's noncompliance with reciprocal obstruction. In-
6 stead, as documented below and in the accompanying Declaration of Recorder Justin Heap,
7 attached hereto as Exhibit 1, he has extended repeated offers to cooperate, proposed phased
8 transition timelines, confirmed in writing that the Board's and Elections Department's access
9 to shared systems will be maintained throughout any transition, and bent over backward to
10 accommodate the Board's stated concerns. Those good-faith efforts have been met with delay,
11 procedural gamesmanship, and contempt in both the colloquial and the legal sense of the word.

12 A court order is not a starting point for negotiation. The Recorder respectfully requests
13 that the Court issue an Order to Show Cause, set an expedited hearing date, and—upon demon-
14 strating that the Board's conduct satisfies every element of civil contempt—adjudge the Board
15 in contempt, impose appropriate coercive sanctions, and award the Recorder his attorneys' fees
16 and costs.

17 **I. FACTUAL AND PROCEDURAL BACKGROUND**

18 **A. The April 16 Order: What the Court Commanded.**

19 This action arose from the Board's October 2024 seizure—engineered by the outgoing
20 lame-duck Recorder in the waning weeks of his tenure—of the Recorder's entire election-re-
21 lated IT infrastructure and the staff who operated it. April 16 Order, Findings of Fact (“FF”)
22 ¶¶ 5-8. Upon taking office on January 1, 2025, Recorder Heap terminated the shared services
23 agreement under which the transfer was purportedly effected, offered mediation, and pursued
24 relief in court when the Board refused to negotiate in good faith. FF ¶¶ 6-7.

25 After a full evidentiary hearing on January 26, 2026, and after reviewing extensive brief-
26 ing, this Court issued its April 16, 2026 Under Advisement Ruling. The Order contains the
following mandatory directives, each of which the Board has violated:

First, the Court ordered the Board to return to the Recorder's direct custody and/or
control the IT staff, servers, databases, software, websites, and equipment that were in the

1 Recorder’s custody and/or control before October 2024—or to “immediately fund” the Re-
2 corder to independently hire IT staff, secure office and warehouse space, develop replacement
3 databases and software, and procure all necessary equipment. April 16 Order, Order ¶ 4.

4 *Second*, the Court enjoined the Board from “further exercising any election functions
5 delegated by the Legislature to the Recorder or ‘other officer in charge of elections,’ absent the
6 Recorder’s consent.” April 16 Order, Order ¶ 5.

7 *Third*, the Court declared that the Board has a “nondiscretionary duty to fund all neces-
8 sary expenses of the Recorder as set forth in Title 16 of the Arizona Revised Statutes.” April
9 16 Order, Order ¶ 3.

10 These are not aspirational guidelines or hortatory recommendations. They are court or-
11 ders. As this Court emphasized in its April 16 Ruling, the Board’s “budgetary authority” cannot
12 be used “to usurp the functions of the Recorder or to coerce the Recorder into ceding statutory
13 authority as a precondition of receiving necessary funding.” April 16 Order, Conclusions of
14 Law (“COL”) ¶ 8. The Board had actual, specific knowledge of these obligations from the
15 moment the Order was issued.

16 **B. The Board’s February 18, 2026 Resolution: A Broken Promise.**

17 The Board’s pattern of bad faith long predates the April 16 Order. In the period between
18 the close of the January 26 evidentiary hearing and the matter being submitted to the Court for
19 decision on February 19 (the due date for proposed findings of fact and conclusions of law),
20 the Board voted unanimously on February 18, 2026, to adopt a resolution setting forth what it
21 described as its “policy” on the matters in dispute. Declaration of Recorder Justin Heap in
22 Support of Application for Order to Show Cause (“Heap Decl.”) ¶ 3.

23 Recorder Heap understood this resolution to be a tactical maneuver intended to moot
24 the litigation and forestall a ruling by this Court. Heap Decl. ¶ 4. This Court saw through that
25 tactic and declined to find the case moot. What followed confirmed the assessment: the Board
26 has honored none of the commitments it made in the resolution.

In the February 18 resolution, the Board specifically committed to: (a) approving and
funding half of the IT positions that had been housed in the Recorder’s Office before 2025—
“a total of 16 positions”—pending completion of a full IT system separation; and (b) providing

1 the Recorder's Chief Information Officer ("CIO") with "administrative privileges that are equal
2 to those of the Deputy CIO for Maricopa County." Heap Decl. ¶ 5.

3 As of the date of this Application, neither commitment has been honored in any mean-
4 ingful sense. The Board has not transferred any of its IT staff to the Recorder's Office; instead,
5 on May 20—more than three months after the resolution was adopted—it voted to allow the
6 Recorder to *hire* 8 brand-new, unfilled IT positions. That is not what the resolution promised.
7 The resolution promised the transfer of half of the positions that had been housed in the Re-
8 corder's Office before 2025—i.e., the experienced personnel who know the systems. The
9 Board's May 20 action creates positions that did not previously exist and must be filled by new
10 hires who are unfamiliar with the Recorder's voter registration and election systems, while the
11 experienced former Recorder's IT employees remain employed by the Board. As for the CIO's
12 administrative access, the Board has granted the Recorder's CIO privileges nominally equiva-
13 lent to those of the Board's Deputy CIO, but this is a false equivalence. The Board's Deputy
14 CIO distributes most administrative access among his subordinates, so he retains significantly
15 more collective access through his team than the Recorder's CIO holds individually or collec-
16 tively. Cumulatively, the Board's IT department has full access to all of the Recorder's former
17 systems and databases, while the Recorder's IT department has only limited admin or read-only
18 access to many of them—including, critically, the ERO/VRAS voter registration systems. Heap
19 Decl. ¶ 6.

20 The Board made solemn, public, written commitments in a resolution designed to in-
21 fluence this Court's deliberations—and then, having failed to achieve that goal, honored them
22 only at the last possible moment, and then only in a hollow, technical manner that perpetuates
23 the very problems the resolution purported to address. Recorder Heap asks this Court to take
24 careful note of this conduct when evaluating whether the Board's post-Order noncompliance
25 is the product of good-faith confusion or deliberate defiance.

26 **II. THE BOARD HAS NOT RETURNED THE RECORDER'S IT SYSTEMS OR STAFF.**

The April 16 Order's mandate to return the Recorder's IT resources—or immediately fund replacements—could not be clearer. The systems at issue are not peripheral or incidental

1 to the Recorder’s duties. As the Court found, they include the VRAS/ERO voter registration
2 system, the GIS system, the BeBallotReady public website, and the RDIS recordation system—
3 the core infrastructure through which the Recorder performs his statutory functions. FF ¶ 10.
4 The Court specifically found that these IT staff, servers, databases, and websites are “necessary
5 for the conduct of the Recorder's duties.” FF ¶ 21. The order is mandatory and self-executing.

6 On May 6, 2026, Recorder Heap sent a detailed letter to County Manager Jennifer
7 Pokorski. Heap Decl. ¶ 9; see also *id.* Ex. A (Letter from Recorder Heap to County Manager
8 Pokorski, May 6, 2026). That letter set forth a concrete, reasonable, and cooperative phased
9 proposal for implementing the IT provisions of the Court’s Order. Heap Decl. ¶ 12. In Phase
10 One—to be completed by May 8, 2026—the Board was to transfer to the Recorder’s Office
11 half of the IT staff positions removed from the Recorder in 2024 and to provide the Recorder’s
12 IT staff with access to the relevant systems and databases equivalent to the access held by the
13 Board’s IT staff. This first phase merely imposed the same conditions the Board had already
14 committed to in its own February 18 resolution—conditions that had never been implemented.
15 In Phase Two—to be completed by May 22, 2026—the Board was to complete the full return
16 of control over the IT systems and transfer the remaining IT positions. Heap Decl. ¶ 13.

17 Recorder Heap also committed in writing that, until the systems had been fully sepa-
18 rated, he would maintain the Board’s and the Elections Department’s access to all IT systems
19 needed to carry out their election-related duties. Heap Decl. ¶ 14. This commitment—made
20 unilaterally and in writing—directly refutes any claim that the Board would suffer harm from
21 compliance with the Court’s Order.

22 Both deadlines have now passed. The Board has not transferred any IT positions to the
23 Recorder's Office—though, as noted above, it voted on May 20 to allow the Recorder to hire
24 8 new, unfilled positions, this action does not constitute compliance with either the Court’s
25 Order or the Board’s own resolution. The Recorder’s CIO has been granted administrative
26 access nominally equivalent to that of the Board’s Deputy CIO. However, collectively, the Re-
corder’s Office still has only limited or read-only access to many of its former systems—including
the ERO/VRAS voter registration databases—and must still submit requests through the
Board’s ticketing system to make needed changes to those systems. The IT staff, servers,

1 databases, software, and websites that the Court ordered returned remain entirely under the
2 Board’s control. Heap Decl. ¶¶ 15-16. The backlog of unresolved IT support tickets—more
3 than 50% of all tickets at the time of trial—has not been resolved. Because the Recorder’s
4 Office CIO and IT staff still lack full access to critical systems and databases, the Recorder’s
5 Office must still rely on the Board’s ticketing system to request even routine changes to the
6 VRAS/ERO system and many other functions. The Recorder’s Office continues to lack the
7 change-management controls and maintenance-window scheduling authority necessary to pre-
8 vent the type of disruptive outages that have repeatedly impaired its operations since the 2024
9 transfer. Heap Decl. ¶ 16; FF ¶¶ 13-16.

10 The Board’s stated justification for non-compliance—that a “Service Level Agreement”
11 must first be negotiated—is not a defense; it is evidence of willfulness. As Recorder Heap’s
12 counsel explained to the Board’s counsel in the May 18, 2026 letter: “No service level agreement
13 was signed when the Board usurped those IT resources from the Recorder in late 2024, nor
14 does the court’s decision permit the Board to impose such a requirement as a precondition to
15 returning what the court has ordered returned.” Heap Decl., Ex. C. The Board’s claimed need
16 for a Service Level Agreement is obvious pretext—if past behavior is any indication, the Board
17 would intentionally delay any such “negotiation” of the agreement, setting up constant obsta-
18 cles in an attempt to run out the clock on Recorder Heap’s term.

19 The Court’s ruling is mandatory. It is not an invitation to negotiate the terms of com-
20 pliance. The Board does not get to impose bureaucratic obstacles or extract concessions as the
21 price of obeying a court order.

22 **III. THE BOARD CONTINUES TO USURP THE RECORDER’S AUTHORITY 23 OVER EARLY VOTING AND BALLOT REPLACEMENT SITES.**

24 The April 16 Order enjoined the Board from “further exercising any election functions
25 delegated by the Legislature to the Recorder or ‘other officer in charge of elections,’ absent the
26 Recorder’s consent.” April 16 Order, Order ¶ 5. The Board has repeatedly, openly, and shame-
lessly violated this injunction.

This section addresses two distinct categories of violation: (A) the Board’s interference
with the Recorder’s administration of ballot replacement sites during the recent May 2026

1 jurisdictional elections; and (B) the Board’s passage of a formal resolution arrogating to itself
2 the Recorder’s exclusive statutory authority to establish early-ballot drop boxes during the early
3 voting period.

4 **A. Interference with Ballot Replacement Site Administration.**

5 Under A.R.S. §§ 16-409(A) and 16-558.02(A), only the County Recorder has the author-
6 ity to provide for ballot replacement sites during jurisdictional mail ballot elections. On April
7 28, 2026, consistent with the Court’s Order and in an effort to cooperate under compressed
8 timeframes, Recorder Heap’s designated, through counsel, specific ballot replacement site lo-
9 cations for the May 2026 jurisdictional elections held in Tempe, Guadalupe, and the Goldfield
10 Ranch Fire District and confirmed a cooperative staffing arrangement under which Board-
11 employed poll workers would operate those sites under the supervision of Recorder’s Office
12 personnel. Heap Decl. ¶ 18; Ex. B (Letter from James K. Rogers to Board’s Counsel, April 28,
13 2026). Rather than introduce last-minute complications into the plans the Board had already
14 made before the April 16 Order had been issued, the Recorder generously chose to designate
15 as ballot replacement site locations the same sites already selected by the Board—a gesture of
16 cooperation that the Board exploited rather than honored.

17 During the May 2026 jurisdictional elections, Elections Director Scott Jarrett and Elec-
18 tions Department personnel actively undermined Recorder management staff at ballot replace-
19 ment sites. Heap Decl. ¶ 19. On May 15, 2026, Recorder staff discovered that poll workers had
20 not been instructed about voters’ statutory right under A.R.S. § 16-579(A)(4) to present identi-
21 fication instead of signature verification when delivering a completed early ballot—a right ex-
22 pressly created by the Arizona Legislature and effective starting in 2026. At Recorder Heap’s
23 direction, Recorder management staff directed that appropriate signage be posted and that poll
24 workers inform voters of this statutory option. Elections Department personnel responded by
25 instructing poll workers to disregard these directions and characterizing the staff members
26 whom the Recorder had sent to manage those sites as “merely observers” with no authority.
Heap Decl. ¶ 19.

The characterization of Recorder’s staff as observers is not only factually false; it defies
the Court’s Order. Recorder Heap is not an “observer” at ballot replacement sites. He is the

1 official the Legislature has designated by statute as the officer responsible for providing and
2 administering those sites. Section § 16-558.02(A) does not say the Recorder may “observe” a
3 ballot replacement center operated by someone else. It says the Recorder “shall provide for”
4 the ballot replacement center. Any ballot replacement site that is not under the direct manage-
5 ment and control of the Recorder or his designees is operating unlawfully. Ex. C (Letter from
6 James K. Rogers to Kory Langhofer, May 18, 2026).

7 The May 18, 2026 letter from Recorder Heap’s counsel detailed these violations, de-
8 manding that the Board immediately cease its interference with the Recorder’s lawful exercise
9 of his statutory authority, and specifically addressing the Elections Director’s pattern of “staff
10 shopping”—approaching individual Recorder staff members one-on-one to secure agreements
11 that would lock the Recorder’s Office into arrangements surrendering statutory authority, with-
12 out the Recorder’s knowledge or authorization. Heap Decl. ¶ 20; Ex. C. The Board did not
13 respond substantively or cure its violations.

14 **B. The Board’s Unlawful Drop Box Resolution.**

15 Rather than cure its violations, the Board escalated. On May 19, 2026, the Board placed
16 on its formal meeting agenda for May 20 a resolution purporting to authorize the Board to
17 establish and maintain drop boxes for the deposit of early ballots during the early voting period
18 for the 2026 primary election. This authority belongs exclusively to the Recorder. Heap Decl.
19 ¶ 21. Section 16-542(A) provides that the “*county recorder* may establish on-site early voting loca-
20 tions” and “may also establish any other early voting locations in the county the recorder deems
21 necessary.” (emphasis added.) Section 16-548(A) requires that early ballots must be “*delivered or*
22 *mailed to the county recorder* or other officer in charge of elections of the political subdivision in
23 which the elector is registered” and that “the ballot *must be received by the county recorder* or other
24 officer in charge of elections.” (emphasis added.)

25 A ballot drop box is, under any reasonable reading of the statute’s plain text, an “early
26 voting location”—a physical site where voters deliver their voted early ballots during the early
voting period. And even if a drop box were not an early voting location, Arizona law requires
that early ballots must be “delivered” to the Recorder and “received” by him. Ballots deposited
into a Board-owned and managed drop box are “delivered” to, and “received” by the Board,

1 in direct violation of Arizona law. Because the statute vests this authority exclusively in the
2 Recorder, the Board has no independent power to establish such locations. Ex. D (Letter from
3 James K. Rogers to Kory Langhofer, May 20, 2026). Indeed, A.R.S. § 16-1005(H) makes it a
4 class 6 felony for “[a] person who knowingly collects voted or unvoted early ballots from an-
5 other person,” with an exception for “an election official” when “engaged in official duties.”
6 Board employees who collect ballots at drop boxes established without the Recorder’s legal
7 authority are not acting within the scope of lawful “official duties,” because the drop boxes
8 themselves have not been lawfully established. Rather, through its drop boxes, the Board is
9 extra-statutorily inserting itself into the early voting process, collecting without authorization
10 “voted ... early ballots from another person” and then delivering them to the Recorder. In other
11 words, the Board will be running a ballot-harvesting operation that is specifically prohibited by
12 A.R.S. § 16-1005(H). Furthermore, A.R.S. § 16-1005(E) makes it a class 5 felony for any “per-
13 son or entity that knowingly solicits the collection of voted or unvoted ballots by misrepresent-
14 ing itself as an election official or as an official ballot repository or is found to be serving as a
15 ballot drop off site, other than those established and staffed by election officials.” Drop boxes
16 established by the Board without the Recorder’s statutory authority are not “established ... by
17 election officials” with the power to establish them.

18 The only statutory provisions that authorize the Board to maintain drop boxes are ex-
19 pressly limited to election day operations. A.R.S. § 16-579.02(A)(1) (election day, at voting cen-
20 ters); A.R.S. § 16-411(D) (jurisdictional elections, election day, at designated sites). No statute
21 grants the Board authority to establish drop boxes during the early voting period. This alloca-
22 tion is not accidental; it is the Legislature’s deliberate choice, and it is confirmed by the *expressio*
23 *unius* canon that this Court applied in the April 16 Order itself. See COL ¶ 20 (citing *ACLU of*
24 *Arizona v. Arizona DCS*, 251 Ariz. 458, 463 ¶ 20 (2021)).

25 On the morning of May 20, before the Board voted, Recorder Heap’s counsel sent an
26 urgent letter to the Board’s counsel explaining all of this, detailing why the drop box provision
was unlawful, citing the applicable statutes and the Court’s April 16 Order, and warning of the
potential criminal liability exposure. Heap Decl. ¶ 22; Ex. D. The Board proceeded to pass the
resolution anyway, without the Recorder’s consent, in deliberate disregard of a binding court

1 order. Heap Decl. ¶ 23. This is not inadvertent noncompliance. It is willful contempt.

2 **IV. THE BOARD HAS REFUSED TO FUND THE RECORDER'S NECESSARY**
3 **EXPENSES.**

4 The April 16 Order declared that the Board has a “nondiscretionary duty to fund all
5 necessary expenses of the Recorder as set forth in Title 16 of the Arizona Revised Statutes.”
6 April 16 Order, Order ¶ 3. The Board has not honored this obligation.

7 The Arizona Legislature, through SB 1735, appropriated \$4.1 million to the Recorder’s
8 Office for election-related operations for FY 2025-26 and expressly mandated that the Board
9 “shall not in any way reduce the funding to the Maricopa County recorder's office below the
10 amount of the adopted fiscal year budget.” April 16 Order, FF ¶ 22. Not a dollar of this legis-
11 lative appropriation has been spent. The Board has continued to deny the Recorder the use of
12 these funds by refusing to authorize expenditures, including for the IT positions that the
13 Court’s Order requires be returned or replaced. Heap Decl. ¶ 25.

14 Separately, the Recorder’s Office holds approximately \$1 million in Help America Vote
15 Act (“HAVA”) federal grant funds that the Recorder sought to use for IT personnel who would
16 report to and serve the Recorder. The Board has refused to authorize the use of these funds
17 for this purpose. Heap Decl. ¶ 26. This refusal is particularly notable given that the Board’s
18 own IT Director, Nate Young, submitted a competing request seeking to use the Recorder's
19 HAVA funds to hire staff who would report to the Board rather than the Recorder. FF ¶ 23.

20 The Court’s April 16 Order squarely addressed the statutory underpinning of this obli-
21 gation. The Court found that every other elected county officer in Maricopa County maintains
22 an independent IT department reporting to that officer. FF ¶ 11. The Court concluded that the
23 Board’s singling out of the Recorder for disparate treatment “appears to not be motivated by a
24 legitimate governmental purpose but instead serves to deprive him of the tools necessary to
25 perform his statutory duties.” *Id.* The Court held specifically that “the concept of ‘necessary
26 expenses’ under A.R.S. § 11-601(2) encompasses not merely the nominal allocation of funds,
but the provision of—or funding for—the systems, servers, databases, software, websites, em-
ployees, equipment, and facilities that the Recorder reasonably requires to exercise meaningful
control over the performance of his statutory duties.” COL ¶ 10.

1 The Board’s continued refusal to fund these positions is not a good-faith exercise of
2 budgetary discretion. The Court has already found it unlawful. Continuing to withhold these
3 funds in the face of the Court's Order is textbook contempt.

4 **V. LEGAL STANDARD FOR CIVIL CONTEMPT.**

5 Civil contempt in Arizona is governed by A.R.S. § 12-864, which states that “contempts
6 committed by failure to obey a lawful writ, process, order, judgment of the court, and all other
7 contempts not specifically embraced within this article may be punished in conformity to the
8 practice and usage of the common law.” “A finding of civil contempt requires that the contem-
9 nor (1) has knowledge of a lawful court order, (2) has the ability to comply and (3) fails to do
10 so.” *Lund v. Donahoe*, 227 Ariz. 572, 583 ¶ 41 (App. 2011). All three elements are clearly satisfied
11 here.

12 The procedural vehicle is supplied by Arizona Rule of Civil Procedure 7.3 and Arizona
13 Rule of Procedure for Special Actions 7(c). Under ARCP 7.3(a), the Court, “on application
14 supported by affidavit showing sufficient cause, may issue an order requiring a person to show
15 cause why the party applying for the order should not have the relief it requests in its applica-
16 tion.” Under RPSA 7(c), the plaintiff in a special action “may file an application for an order to
17 show cause why the requested relief should not be granted,” and if the Court issues the order
18 to show cause, “the court must set an expedited response date and may set a hearing.” Both
19 rules apply here, and together they permit the Court to compel the Board’s appearance and to
20 adjudge its compliance on an expedited schedule appropriate to the urgency of the matter.

21 **A. A Lawful Court Order Exists, and the Board Has Knowledge of It.**

22 The April 16, 2026 Under Advisement Ruling is a final, binding order of this Court,
23 issued after a full evidentiary hearing with the participation of both parties. The Board was
24 represented by counsel at every stage. Its attorneys received the Order the day it was issued.
25 The Board then filed a notice of appeal and sought a stay—demonstrating not only knowledge
26 of the Order but a fully considered, counseled decision about how to respond to it. The Board
chose to reject compliance. It was a knowing choice. Its decision to seek an appeal while this
Court’s decision is binding and in force, and in the absence of a stay, is not a defense to con-
tempt.

1 **B. The Board Has the Ability to Comply.**

2 The Board controls the Recorder’s IT systems, servers, databases, software, and web-
3 sites. It could return them at any time. The Recorder’s IT staff—former Recorder employees
4 transferred to the Board’s ETI division—continue to receive their salaries from the County. As
5 Recorder’s Office Chief of Staff Sam Stone testified at trial, returning these employees to the
6 Recorder’s Office “would not require the County to spend any additional money; it would
7 simply be ‘a shift in where the line item would be placed in the budget.’” FF ¶ 9. The Board
8 also controls the County’s budget and all appropriations from that budget. It can approve the
9 use of the \$4.1 million in SB 1735 funds and the \$1 million in HAVA funds for the Recorder’s
10 IT personnel—nothing stands in the way except the Board’s own will.

11 Ability to comply is not a close question here. The only obstacle to compliance is the
12 Board’s decision not to comply. That decision does not constitute a legal defense; it constitutes
13 contempt.

14 **C. The Board has failed to comply.**

15 Not only has the Board failed to comply, but it has also acted in bad faith. For civil
16 contempt, evidence of bad faith is not required, but here, the evidence of bad faith is over-
17 whelming and warrants the Court’s attention in fashioning appropriate sanctions.

18 The Board knew exactly what the April 16 Order required. It was represented by expe-
19 rienced counsel who drafted detailed arguments about the scope and effect of the Order in
20 connection with its stay proceedings. The Board’s response to the Order was not to seek clari-
21 fication or begin good-faith implementation. It was to ignore the order, even though it failed
22 to secure a stay, and then to file an appeal, apparently hoping to get an appellate stay and run
23 out the clock in the meantime, all the while passing a resolution usurping the Recorder’s drop
24 box authority and instructing its Elections Director to countermand lawful Recorder directives
in the field.

25 As Recorder Heap’s declaration documents, the Board was warned—in writing, in ad-
26 vance—of its noncompliance on each of these matters and given repeated opportunities to
cure. Heap Decl. ¶¶ 10-22. Those warnings were met with hostility, procedural excuses, and
continued defiance. As this Court itself observed in the April 16 Order: “The Recorder has

1 consistently expressed willingness to cooperate with the Board. The Court does not see the
2 same willingness from the Board.” FF ¶ 25.

3 Nothing that has occurred since the April 16 Order has changed this assessment. Heap
4 Decl. ¶ 29.

5 **VI. THE RECORDER’S CONTINUING GOOD-FAITH EFFORTS.**

6 It bears emphasis that the Recorder has not responded to the Board’s defiance in kind.
7 Throughout the post-Order period, Recorder Heap has made repeated, documented, concrete
8 proposals for cooperative implementation of the Court’s order in a manner designed to mini-
9 mize disruption to county operations. Heap Decl. ¶¶ 9-15, 28-32.

10 On May 6, 2026, the Recorder sent the County Manager a detailed, phased transition
11 plan that offered the Board a reasonable schedule and committed the Recorder in writing to
12 maintain the Board's access to all shared systems throughout the transition. Heap Decl. ¶¶ 9-
13 14; Ex. A. On April 28, 2026, the Recorder coordinated with the Board on ballot replacement
14 site arrangements and even adopted the Board’s preferred locations rather than insisting on his
15 own. Heap Decl. ¶ 18; Ex. B. On May 18, 2026, the Recorder sent a detailed letter documenting
16 the Board’s specific violations and giving the Board a final opportunity to cure before seeking
17 judicial intervention. Heap Decl. ¶ 20; Ex. C. On May 20, 2026, the Recorder’s counsel sent an
18 urgent pre-vote warning letter attempting to prevent the drop box resolution before it was
19 passed. Heap Decl. ¶ 22; Ex. D.

20 Moreover, delaying implementation of the April 16 Order would not reduce disruption
21 to county election operations—it would dramatically increase it. For more than six weeks, the
22 Recorder’s Office has been planning and preparing for the 2026 primary election under the
23 terms of the Court's Order. The Recorder has structured his operational planning, staffing de-
24 cisions, site designations, and attempts at reaching cooperative arrangements with the Board’s
25 Elections Department on the premise that the April 16 Order is in effect and that his statutory
26 authority over early voting, voter registration, and ballot replacement sites will be fully operative
this cycle. If that order is not implemented—with early primary ballots scheduled to be mailed
in less than a month—it would force the Recorder’s Office to abandon the work it has already
built toward compliance and restart from scratch under the framework this Court has already

1 found unlawful, at exactly the moment when that disruption would be most damaging to voters.
2 Heap Decl. ¶ 32.

3 The need for judicial clarity on the allocation of election administration responsibilities
4 between the Recorder and the Board was, moreover, a central animating purpose of this litigation
5 from the outset. The Board recognized this itself: it filed its own counterclaim and affirm-
6 atively sought a judicial interpretation of the “other officer in charge of elections” statutory
7 language so that the parties could better understand their respective roles. The Court provided
8 exactly that clarity in the April 16 Order. Allowing implementation of that Order to be further
9 delayed would strip away the only authoritative resolution this dispute has ever received and
10 return the parties to the same state of ambiguity and conflict that spawned this lawsuit—with
11 no clear lines of authority, no agreed operational framework, and a primary election bearing
12 down on both offices. The voters of Maricopa County deserve better. Heap Decl. ¶ 33.

13 The Recorder has given the Board every opportunity to comply with this Court’s Order.
14 The Board has declined them all. The Court’s intervention is now necessary.

15 **VII. REQUESTED RELIEF.**

16 The Court has robust authority to enforce its orders through civil contempt. Civil con-
17 tempt sanctions are coercive rather than punitive—their purpose is to compel compliance and
18 to compensate the aggrieved party for losses caused by the contemnor’s noncompliance. *Trombi*
19 *v. Donahoe*, 223 Ariz. 261, 264 ¶ 9 (App. 2009). “Any sanction that is imposed for civil contempt
20 must be designed to coerce the person to do or to refrain from doing some act. Equally im-
21 portant is that the sanction must fit the particular circumstances of the contempt.” *Stoddard v.*
22 *Donahoe*, 224 Ariz. 152, 157 ¶ 24 (App. 2010) (cleaned up). Here, it would be appropriate for
23 the Court to impose daily monetary sanctions, attorney’s fees, and specific performance re-
24 quirements

25 The Court should also consider that the 2026 primary election cycle is approaching rap-
26 idly, and that the Board’s ongoing usurpation of the Recorder’s authority creates serious risks
to the administration of that election. Every day of noncompliance is a day in which the Board
administers elections in a manner this Court has declared unlawful—with the attendant risks to
voter confidence and to the legal validity of the election results themselves. Expedited treatment

1 is therefore not only appropriate but necessary.

2 **CONCLUSION**

3 The Board of Supervisors has willfully disobeyed every material obligation imposed by
4 this Court's April 16, 2026 Order. It has not returned the Recorder's IT systems or staff. It has
5 not funded the Recorder's necessary expenses. It has usurped the Recorder's authority over
6 ballot replacement sites. It has passed a resolution arrogating to itself the Recorder's exclusive
7 statutory authority over early-vote drop boxes in open defiance of the Court's injunction. And
8 it has done all of this despite the Recorder's repeated, documented, good-faith efforts to achieve
9 voluntary compliance without burdening the Court.

10 Recorder Heap respectfully requests that the Court:

- 11 1. Issue an Order to Show Cause, directing the Board and its individual members to
12 appear before this Court on an expedited date—no later than seven days from the
13 filing of this Application—and show cause why they should not be adjudged in civil
14 contempt for willfully violating the April 16 Order;
 - 15 2. Upon the return date, adjudge the Board in civil contempt;
 - 16 3. Order the Board to immediately and fully comply with each provision of the April
17 16 Order within five (5) days of the contempt finding, with daily fines of no less
18 than \$100,000 per day accruing for each day of continued noncompliance thereafter,
19 money which is to be awarded to the Recorder to spend in the discharge of the
20 duties of his office as he judges fit;
 - 21 4. Award the Recorder his reasonable attorneys' fees and costs incurred in bringing
22 this Application; and
 - 23 5. Grant such other and further relief as the Court deems just and proper.
- 24
25
26

1 RESPECTFULLY SUBMITTED this 28th day of May, 2026.

2 **America First Legal Foundation**

3
4 By: /s/James Rogers

5 James K. Rogers (No. 027287)

6 *Senior Counsel*

7 America First Legal Foundation

8 611 Pennsylvania Ave., SE #231

9 Washington, D.C. 20003

10 Phone: (202) 964-3721

11 James.Rogers@aflegal.org

12 *Attorney for Maricopa County Recorder Justin Heap,*

13 *Plaintiff in Heap v. Galvin*

14 *Defendant in Mitchell v. Heap*

15 ORIGINAL filed and served via electronic
16 means this 28th day of May, 2026, upon:

17 Kory Langhofer

18 STATECRAFT PLLC

19 649 North Fourth Avenue, First Floor

20 Phoenix, Arizona 85003

21 kory@statecraftlaw.com

22 *Attorney for the Board of Supervisors Defendants / Counterclaimants*

23 Brett W. Johnson

24 Ryan P. Hogan

25 Charlene A. Warner

26 Snell & Wilmer

1 E Washington Street, Suite 2700

Phoenix, Arizona 85004

bwjohnson@swlaw.com

rhogan@swlaw.com

cwarner@swlaw.com

Attorneys for Maricopa County Attorney Rachel Mitchell