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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 / 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)

**NOTICE OF FACTUAL DEVELOP-
MENT AND EMERGENCY MO-
TION FOR STATUS CONFER-
ENCE**

(Assigned to the Hon. Scott Blaney)

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INTRODUCTION

Recorder Justin Heap respectfully brings to the Court’s attention a significant and urgent factual development: the Maricopa County Board of Supervisors has, through the Maricopa County Elections Department and the Maricopa County Attorney’s Office, referred Maricopa County Recorder’s Office (MCRO) staff members for criminal investigation to the Pinal County Sheriff’s Department—for the act of attempting to retrieve the Recorder’s Office’s own property. On June 6, 2026, Pinal County Sheriff’s deputies appeared unannounced at the home of MCRO Chief Information Officer Bryan Colby to inform him that he was under investigation for theft.

The property at issue—two ImageTrac DS 1210 ballot envelope scanners with serial numbers HT50227 and HT50226—was purchased entirely with Recorder’s Office funds in 2023 and has never been lawfully transferred to the Elections Department. The scanners were acquired specifically for Early Voting Services, a function under the sole authority of the Recorder, and they were paid for exclusively from Unit 2140, the only non-shared budget unit under the Recorder’s sole control. No FA06 (Transfer of Fixed Asset) or FA09 (Fixed Asset Internal Sale) form was ever filed, and no transfer was ever authorized. The Elections Department has no legal claim to these machines. Exhibit A, Declaration of Chief Deputy Recorder Jeff Mason (hereinafter “Mason Decl.”) ¶¶ 2–15.

The timing and circumstances of this referral are deeply troubling. Contrary to the premise of the investigation, what Mr. Colby is apparently accused of doing would have been entirely lawful: attempting to retrieve equipment belonging to the Recorder’s Office so it could be used to process ballots in the upcoming 2026 Primary Election—a need created in the first instance by the Board’s own refusal to authorize the purchase of an Agilis machine that would have addressed the same operational challenge. The Board denied the Recorder the Agilis machine; now it seeks to criminalize his office’s efforts to find an alternative solution by using equipment the Recorder already owns. Mason Decl. ¶ 18.

The Board’s conduct must be understood in the context of this litigation. This Court has already found it necessary to enjoin the Board from retaliating against Recorder’s Office witnesses. This Court described prior Board conduct as “gamesmanship” and “shenanigans.”

1 The Board objected strenuously when Recorder Heap noted, in his own submissions to this
2 Court and in communications to the Board, that the Board’s conduct appeared to implicate
3 criminal statutes—yet the Recorder had not threatened prosecution of anyone. Now the Board
4 has done exactly what it had falsely accused the Recorder of doing: it has actively initiated a
5 criminal referral against a Recorder’s Office staff member for doing something entirely lawful,
6 in the middle of active litigation, just over two weeks before Early ballots are scheduled to be
7 mailed to voters. Mason Decl. ¶ 25.

8 This pattern of escalating interference with the Recorder’s ability to do his job—depriv-
9 ing him of equipment needed for the election, targeting his staff for prosecution, and doing
10 both under the cover of a facially pretextual claim of ownership—is itself a form of contempt
11 of this Court’s order restoring the Recorder’s operational authority. The Recorder respectfully
12 requests that the Court convene an emergency status conference to address these develop-
13 ments, to consider whether further relief is necessary to enforce its prior orders, and to ensure
14 that the upcoming primary election can be administered without disruption.

15 **BACKGROUND**

16 **A. The Court’s Prior Orders and the Board’s Pattern of Non-Compliance**

17 This litigation arises from the Board of Supervisors’ efforts to usurp the constitutional
18 and statutory authority of Recorder Heap over Early Voting Services. On April 16, 2026, this
19 Court issued an order restoring the Recorder’s operational authority over Early Voting Services
20 (the “April 16 Order”). That order was the product of a contested evidentiary proceeding in
21 which this Court evaluated the Board’s conduct directly.

22 Even before the April 16 Order, the Board’s litigation tactics prompted this Court to
23 take the extraordinary step of enjoining the Board from retaliating against or interfering with
24 Recorder’s Office witnesses. The Court characterized the Board’s conduct during that proceed-
25 ing with words such as “gamesmanship” and “shenanigans.” The Recorder has since filed an
26 Application for an Order to Show Cause regarding the Board’s continued failures to comply
with the April 16 Order.

Throughout this litigation, the Recorder has noted when the Board’s conduct appeared
to implicate potential violations of criminal law. The Board has vigorously protested those

1 observations, characterizing them as improper. Notably, the Board has never contested the
2 applicability of those statutes but merely complained about the Recorder pointing out their
3 existence and applicability. The Board’s objection, it now becomes clear, was not principled—
4 it was tactical. As detailed below, even as the Board was complaining about the Recorder’s
5 observations, it was laying the groundwork for a criminal referral against the Recorder’s own
6 staff.

7 **B. The Scanners Were Purchased with Recorder’s Office Funds**

8 In January 2022, Elections Director Scott Jarrett presented the FY 2023 Elections
9 budget request to the Board at a Special Meeting. In that presentation—on behalf of both the
10 Elections Department and the Recorder’s Office—Mr. Jarrett specifically identified a \$116,376
11 request for two envelope scanners needed for Early Voting functions: processing affidavit en-
12 velopes containing provisional ballots, and ballots with bad or missing signatures, that cannot
13 be processed through the standard scan process. The Board approved the budget. A January
14 26, 2022 memorandum submitted to County CFO Cindy Goelz by Scott Jarrett and Rey Valen-
15 zuela described the scanners as allowing “in-house scanning of affidavits from Uniform Over-
16 seas, Citizen, Absentee Voting Act (UOCAVA) voters, Provisional voters, and Special Elec-
17 tions Boards (SEB) voters.” Mason Decl. ¶¶ 4–5.

18 On January 25, 2023, County Purchase Order No. DO,230000003282-1 was issued,
19 identifying the scanners as funded from the ELE1 budget, Department D210, Unit 2140—
20 Early Voting Services. Unit 2140 was at all relevant times the only non-shared unit in Depart-
21 ment D210 that was under the sole authority of the Recorder’s Office. On February 9, 2023,
22 Electronic Funds Transfer Transaction ID 230000023235 transferred \$116,376 to Runbeck
23 Election Services, Inc. from Department D210, Unit 2140, in payment of Invoice No. 001558
24 for the two ImageTrac DS 1210 scanners (serial numbers HT50227 and HT50226). Mason
25 Decl. ¶¶ 8–9.

26 At no point were these scanners ever transferred to the Elections Department. Mari-
copa County Policy A2507, Section IV, Paragraph B requires that “all capital asset transactions
(including transfers) must be documented and have appropriate supporting documentation
attached within the County CGI Advantage financial system.” Mason Decl. ¶ 14. No FA06

1 (Transfer of Fixed Asset) form and no FA09 (Fixed Asset Internal Sale) form has ever been
2 filed with respect to these scanners. The county’s own financial system reflects no transfer of
3 ownership. These are, and have at all times been, Recorder’s Office property. Mason Decl.
4 ¶¶ 13–15.

5 Scott Jarrett himself had direct personal knowledge of all of these facts. He presented
6 the scanner request to the Board. He co-signed the budget memorandum to CFO Goelz. He
7 was copied on the August 2022 procurement emails in which Early Voting Assistant Director
8 Celia Nabor confirmed that “[t]he long term plan is that we purchase the scanners from Run-
9 beck” to “allow us to perform this task in-house” by the Recorder’s Office. Mason Decl. Ex.
10 4. At any point during the current ongoing controversy over the scanners, Mr. Jarrett could
11 have resolved the matter from his own knowledge. He chose instead to file an HR complaint
12 and to refer the matter to law enforcement. Mason Decl. ¶¶ 16–17.

13 **C. The March 2026 Incident and the Board’s Calculated Response**

14 In early March 2026, MCRO personnel were attempting to locate the two ImageTrac
15 DS 1210 scanners purchased by the Recorder’s Office in 2023, with the intent of repurposing
16 them to address an early ballot processing challenge that the Board of Supervisors had created
17 by denying the Recorder’s Office’s request to purchase an Agilis machine for the 2026 Primary
18 Election. Mason Decl. ¶ 18.

19 On March 5, 2026, Elections Finance Manager Berta Ramirez—who had personally
20 created the Purchase Order for the scanners in January 2023 and therefore knew they were
21 purchased with Recorder’s Office funds—independently confirmed the ownership and serial
22 numbers of the scanners. At 9:56 a.m., Ms. Ramirez emailed Sonia Galloway at Runbeck re-
23 questing confirmation of the serial numbers for the two ImageTrac DS 1210 scanners. At 11:51
24 a.m., Ms. Galloway confirmed the serial numbers (HT50227 and HT50226) and provided In-
25 voice No. 001558, which shows the purchase by the Early Voting Services unit. Mason Decl. ¶
26 19 and Ex. 9.

MCRO personnel allegedly attempted to relocate one of the MCRO’s ImageTrac DS
1210 scanners, which had been stored in the MCTEC pre-tabulation area. Mason Decl. ¶ 23.
As of the date of the Mason Declaration, the Elections Department has taken possession of

1 the ImageTrac DS 1210 scanners and refuses to relinquish them to the MCRO. Mason Decl.
2 ¶¶ 20, 22.

3 Rather than resolve the ownership question by reference to the county's own financial
4 records—which unambiguously confirm MCRO ownership—Elections Director Scott Jarrett
5 filed a complaint with the County Human Resources Department alleging that MCRO person-
6 nel had attempted to steal the scanners. Mason Decl. ¶ 23.

7 The Elections Department then apparently contacted the Maricopa County Attorney's
8 Office (MCAO), accusing the MCRO of theft for attempting to relocate one of its own scan-
9 ners. The MCAO referred the matter to the Pinal County Sheriff's Department (PCSD) for
10 investigation. On June 6, 2026, PCSD deputies appeared, unannounced, at the home of MCRO
11 IT Director Bryan Colby and informed him that he was under investigation for theft of the
12 scanners. (Mason Decl. ¶¶ 24–25.)

13 **D. The Board's Refusal to Provide the Agilis Machine and the Election Stakes**

14 MCRO's effort to locate the ImageTrac DS 1210 scanners was not incidental—it was
15 directly tied to the Recorder's ability to administer the 2026 Primary Election lawfully and with-
16 out disenfranchising voters. The Recorder had previously sought authorization to purchase an
17 Agilis machine, which was specifically designed to address the ballot processing challenge at
18 issue: the need to process affidavit envelopes. *See* April 16 Order, Findings of Fact ¶¶ 18-20.
19 The Board denied that request. Mason Decl. ¶ 21.

20 Faced with the Board's refusal to authorize the purchase of the Agilis machine, the
21 MCRO had been investigating whether the two ImageTrac DS 1210 scanners the Recorder
22 already owned could be repurposed to solve the same problem. That investigation—the act of
23 a responsible public servant trying to ensure that voters' ballots would be counted—is what the
24 Board has characterized as theft and referred for criminal prosecution. Mason Decl. ¶ 18.

25 Early ballots for the 2026 Primary Election are scheduled to be mailed on June 24, 2026.
26 The Recorder's ability to process provisional ballots, UOCAVA ballots, and other affidavit-
envelope ballots that require specialized scanning equipment is not an operational nicety—it is
a statutory obligation. The continued withholding of the Recorder's own equipment, combined
with the active prosecution of the MCRO official who was allegedly attempting to recover it,

1 directly threatens the Recorder’s capacity to ensure that every lawful ballot is found and
2 counted. Mason Decl. ¶ 21.

3 ARGUMENT

4 **I. The Board’s Criminal Referral Is an Act of Retaliation and Interference That** 5 **Implicates This Court’s Prior Orders**

6 This Court has already found it necessary to enjoin the Board from retaliating against
7 and interfering with Recorder’s Office witnesses and personnel. The Board’s referral of Mr.
8 Colby for criminal prosecution is the most aggressive act of retaliation and interference in this
9 litigation to date. It is not a peripheral administrative matter; it is a direct attack on MCRO
10 personnel arising out of facts that are at the heart of this case—the Recorder’s authority over
11 the equipment and resources of Early Voting Services. Mason Decl. ¶ 25.

12 Courts exercising civil contempt authority possess the inherent power to protect parties
13 and their counsel from retaliatory conduct intended to chill the exercise of rights being adjudi-
14 cated before the court. Statutorily, “[t]he court, and the judges thereof, shall have all powers
15 and may issue all writs necessary to the complete exercise of its jurisdiction.” A.R.S. § 12-123(B).
16 And as *Major v. Coleman* explains, “a superior court can issue orders as an exercise of its inherent
17 authority to take actions necessary to effectuate the administration of justice in cases pending
18 before it.” 251 Ariz. 345, 348 ¶ 13 (App. 2021) (cleaned up). Targeting MCRO’s CIO for crim-
19 inal prosecution—for allegedly attempting to retrieve property that the county’s own financial
20 records confirm belongs to MCRO—is precisely the kind of conduct that chills the Recorder’s
21 ability to exercise his court-vindicated authority and impedes the administration of justice.

22 The irony of the Board’s conduct should not be lost on the Court. In earlier communi-
23 cations with the Board involving this case, Recorder Heap observed that certain Board conduct
24 appeared to violate Arizona criminal statutes—not as a threat of prosecution, but as a factual
25 observation about the seriousness of the Board’s actions. The Board reacted with outrage, con-
26 demning those observations as improper and inflammatory. The Board now, while still voicing
that objection, has done precisely what it falsely condemned the Recorder of doing: it has filed
a criminal referral against MCRO staff, based on a pretextual claim of ownership that is con-
tradicted by documentary evidence the Board’s own employees possessed before the alleged

1 “theft” could have occurred. The Board’s selective sensitivity to criminal-law observations re-
2 veals that its objection was never principled—it was strategic.

3 **II. The Criminal Referral Is Premised on a Factual Falsehood the Board Knows to**
4 **Be False**

5 A theft referral requires, at a minimum, an arguable claim that the property at issue
6 belongs to the complainant. Here, the Board cannot plausibly make that claim. Every document
7 in the county’s financial system establishes that the ImageTrac DS 1210 scanners were pur-
8 chased with Recorder’s Office funds. The Purchase Order identifies Unit 2140—Early Voting
9 Services, Recorder’s Office—as the funding source. The EFT transaction record shows the
10 payment originating from Department D210, Unit 2140. No form to document the transfer of
11 capital assets was ever filed. Scott Jarrett personally knew all of this because he presented the
12 scanner request to the Board and signed the budget memorandum that described these as Early
13 Voting capital expenditures. Mason Decl. ¶¶ 7–9, 13–15.

14 Even more troubling: Berta Ramirez, the Elections Finance Manager who personally
15 created the Purchase Order in 2023, had already confirmed the serial numbers and invoice for
16 these scanners on the morning of March 5, 2026. The Elections Department did not simply
17 make an innocent mistake about ownership. Its own finance manager had contemporaneous
18 documentary proof of MCRO ownership. The referral for criminal prosecution of Mr. Colby
19 under these circumstances is not a good-faith assertion of property rights—it is an abuse of the
20 criminal referral process to harass and intimidate MCRO personnel. Mason Decl. ¶ 20.

21 Arizona courts have recognized that the improper commencement of criminal proceed-
22 ings as a weapon in civil litigation is itself actionable conduct. *See Nienstedt v. Wetzel*, 133 Ariz.
23 348, 353 (App. 1982) (“One who uses a legal process, whether criminal or civil, against another
24 primarily to accomplish a purpose for which it is not designed, is subject to liability to the other
25 for harm caused by the abuse of process.” (quoting Restatement (Second) of Torts (1977) §
26 682). The Recorder does not ask this Court at this stage to resolve that question, but the Court
should be aware of the nature and quality of the referral, and the evidence that it was made in
bad faith, in considering what relief is appropriate.

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2 **III. The Board’s Ongoing Withholding of MCRO Property and Interference with the**
3 **Upcoming Election Warrant Immediate Relief**

4 The April 16 Order restored the Recorder’s operational authority over Early Voting.
5 The Recorder cannot meaningfully exercise that authority without his equipment. The Im-
6 ageTrac DS 1210 scanners are not abstract property at issue in a commercial dispute—they are
7 election equipment needed to process provisional ballots, UOCAVA ballots, and affidavit-en-
8 velope ballots that cannot be handled by standard equipment. Early ballots are scheduled to be
9 mailed beginning June 24, 2026. Furthermore, **these scanners already belong to the Re-**
10 **recorder.** Every day that the Board continues to withhold the Recorder’s scanners is a day the
11 Recorder cannot prepare to administer an election he is legally and constitutionally required to
12 administer. Mason Decl. ¶¶ 20–21.

13 When government officials refuse to comply with court orders related to election ad-
14 ministration, the proper remedy is not to wait until harm has occurred—it is to act before voters
15 are harmed. *See* ARCP 65 (authorizing injunctive relief to prevent irreparable harm). The po-
16 tential disenfranchisement of voters who cast provisional ballots, UOCAVA ballots, and other
17 affidavit-envelope ballots is precisely the kind of irreparable harm that cannot be remedied after
18 the fact. A ballot that cannot be scanned cannot be counted, and a vote lost in a primary election
19 cannot be restored.

20 The Board’s conduct throughout this litigation reflects a calculated strategy: obstruct,
21 delay, and moot. Rather than comply with this Court’s orders, the Board has systematically
22 worked to render them ineffective — withholding resources the Recorder needs to do his job,
23 manufacturing pretextual disputes to occupy his attention and resources, and now weaponizing
24 the criminal referral process to intimidate his staff and deter any further effort to exercise the
25 authority this Court has already confirmed he possesses. Each individual act, viewed in isola-
26 tion, might be explained away. Viewed as a whole, the pattern is unmistakable: the Board in-
tends to make it functionally impossible for the Recorder to obtain the relief to which he is
entitled, and to run out the clock on an election that cannot wait. This Court should not permit
that result.

1
2 **IV. An Emergency Status Conference Is Necessary and Appropriate**

3 The Recorder does not bring this motion lightly. He recognizes that the Court has a
4 heavy docket and has already devoted substantial resources to this litigation. But the events of
5 June 6, 2026 represent a qualitative escalation in the Board's conduct that requires prompt ju-
6 dicial attention. The criminal referral of Mr. Colby is not an isolated act; it is the latest step in a
7 continuing course of conduct designed to obstruct the Recorder's ability to exercise his court-
8 ordered authority and to punish those who assist him in doing so.

9 A status conference would allow the Court to assess the full picture of the Board's recent
10 conduct, to consider whether that conduct constitutes a violation of the Court's prior orders—
11 including the April 16 Order and any orders regarding retaliation against MCRO personnel—
12 and to determine what relief is necessary to restore compliance and protect the Recorder's
13 ability to administer the upcoming election. The Recorder is prepared to present the evidence
14 described in this Motion, as well as the accompanying Declaration of Deputy Recorder Jeff
15 Mason, at the earliest opportunity the Court can provide.

16 The election clock is running. Early ballots begin mailing June 24, 2026. The time for
17 the Court to act is now.

18 **CONCLUSION**

19 For the foregoing reasons, Recorder Heap respectfully requests that this Court:

- 20 1. Convene an emergency status conference at the earliest practicable date to ad-
21 dress the developments described in this Motion;
- 22 2. Order the Board and the Maricopa County Elections Department to immedi-
23 ately return possession of both ImageTrac DS 1210 scanners (serial numbers HT50227 and
24 HT50226) to the Recorder's Office, pending resolution of any ownership dispute;
- 25 3. Issue an order directing the Board, the Elections Department, and those acting
26 in concert with them to refrain from initiating, advancing, or participating in any criminal in-
vestigation or prosecution of MCRO personnel arising from alleged actions by MCRO person-
nel to relocate the scanners or any other act of MCRO personnel taken in the exercise of the
Recorder's court-ordered authority;

1 ORIGINAL filed and served via electronic
2 means this 7h day of June, 2026, upon:

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