

SUPREME COURT OF ARIZONA

JUSTIN HEAP,) Arizona Supreme Court
) No. CV-26-0189-SA
Petitioner,)
) Court of Appeals
v.) Division One
) No. 1 CA-CV 26-0446
THOMAS GALVIN, et al.,)
) Maricopa County
Respondents.) Superior Court
) Nos. CV2025-020621
) CV2025-022266
)
_____)

FILED 07/07/2026

EN BANC ORDER

Petitioner/County Recorder Heap (the "Recorder") filed a Petition for Special Action and Appendix on June 19, 2026, challenging a Court of Appeals' order granting a stay as requested by the Maricopa County Board of Supervisors (the "Board").

Superior Court Proceedings. On January 26, 2026, the superior court conducted an evidentiary hearing and, on April 16, entered an order (the "April 16 Order") declaring the relative responsibilities of the Recorder and the Board under statutes imposing responsibility on "a county recorder or an 'other officer in charge of elections,'" (April 16 Order at 11-12 ¶¶ 1-2); declaring that the Board has a "nondiscretionary duty to fund all necessary expenses of the Recorder," (*id.* ¶ 3); directing the return of "IT staff, servers, databases, software, websites, and equipment" that were under the Recorder's control prior to October of 2024 or immediate funding of their replacement, (*id.* at 11-12 ¶ 4); enjoining the Board from

exercising functions delegated to the Recorder, (*id.* at 12 ¶ 5); and declining to address specific expenditures or funding levels, leaving them to be addressed “through good faith negotiations between the Recorder and the Board of Supervisors,” (*id.*). The Court separately signed an order on May 18, incorporating the findings of the April 16 Order in an appealable order (collectively, the “Injunction Orders”).

On April 30, the Board sought a stay of the Injunction Orders. The trial court denied the motion on May 13.

On June 16, the Recorder filed an Application for Order to Show Cause asking the superior court to hold the Board in contempt. The application alleged various failures to comply with the Injunction Orders, requested a “coercive sanction” for continued non-compliance, and presented a “binary choice for the board to either return all IT systems and staff to the Recorder’s operational control or fund adequate independent MCRCO IT infrastructure.” (Pet. for Special Action at 46; Appendix in Support of Special Action App 116).

Court of Appeals Proceedings. The Board appealed the Injunction Orders and filed an Emergency Motion for a Stay Pending Appeal, seeking to stay the Injunction Orders (the “Board Stay Motion”). The Board Stay Motion explained that “the deadline for finalizing the poll worker manual for the July 2026 primary election, which will include provisions governing on-site tabulation activities, [was] May 1, 2026; and it is too late to purchase any additional equipment (e.g., e-pollbooks and ballot printers) for the 2026 election cycle”.

(Board Stay Motion at 36).

The Board urged application of *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006), which concluded that “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away.” (Board Stay Motion at 35). The Board cautioned that “judicially induced, last-minute changes to election systems are generally improvident because they pose the (interrelated) dangers of burdening elections workers and complicating the voting experience.” (Board Stay Motion at 35-36). In support of the request for stay, the Board submitted transcripts from the November 3, 2025 hearing and the January 26, 2026 evidentiary hearing. The Board also submitted the Fourth Declaration of Scott Jarrett (4/30/26) and the Second Declaration of Zach Schira (4/29/26). In its June 1, 2026 Reply, the Board identified five operational areas it argued would be affected by the Injunction Orders “in explicit alteration of the status quo.” (Reply at 10-11).

On June 18, the Court of Appeals, in a divided decision, entered an Order Granting Emergency Motion for a Stay Pending Appeal (the “Stay Order”). The court observed that “[a] party seeking a stay must establish (1) a strong likelihood of success on the merits, (2) irreparable harm if the stay is not granted, (3) the harm to the appellants outweighs the harm to appellee, and (4) public policy favors granting a stay.” (Stay Order at 2 (citing *Smith v. Ariz. Citizens Clean Elections*, 212 Ariz. 407, 410 ¶¶ 9-10 (2006))). “It is

a sliding scale, so 'the moving party may establish either 1) probable success on the merits and the possibility of irreparable injury or 2) the presence of serious questions and [that] the balance of hardships tip[s] sharply' in favor of the moving party." (*Id.* at 2 (quoting *Smith*, 212 Ariz. at 411 ¶ 10)). The court reasoned that pursuant to *Purcell*, courts are "reluctant to order last-minute changes in election rules and procedures because they can burden election workers and complicate and create confusion in the voting experience." (*Id.* at 2-3 (citing *Fontes v. Lewis*, CV-24-0251-T/AP, 2024 WL 4625950, at *2)). The court explained, "[s]o both the injunction and its opponents agree that the conflict before us has concrete, operational impacts on the public's voting experience," and listed from the Board's Reply five "impactful changes." (*Id.* at 3-4). The court concluded that "[t]he *Purcell* principle applies here and persuades us that the Board is very likely to succeed on the merits," and that "[t]he *Purcell* principle also speaks to the remaining three components of the injunction standard." (*Id.* at 3-4).

After entry of the Stay Order, the trial court halted all proceedings including the Board's request for contempt sanctions.

Proceedings in this Court. The Recorder filed his Petition for Special Action, and on June 23 this Court entered an order modifying the Stay Order to allow the parties to engage in settlement proceedings, which are ongoing. The order also directed the parties

to brief specific significant operational aspects of the 2026 Primary Election. In response, the Court received the "Report of the Maricopa County Board of Supervisors Majority" (the "Board Report") and the "Recorder's Supplemental Brief on Operational Issues for 2026 Primary Election" and exhibits (the "Recorder Report"). We refer to the reports collectively as the "June 25 Reports." On June 29, the Court directed the Board to file a response to the Petition for Special Action, and it did so.

The Court has considered the parties' briefing identified above and the following amicus briefs and responses:

- Brief of Amici Curiae President Petersen and Speaker Montenegro in Support of the Petition for Special Action;
- Brief of Amicus Curiae Maricopa County Attorney Rachel Mitchell;
- Brief of Amicus Curiae State of Arizona in Support of Respondents;
- Brief of Amici Curiae League of United Latin American Citizens and League of Women Voters of Arizona;
- Maricopa County Board of Supervisors Majority's Response to Brief of Amici Curiae President Petersen and Speaker Montenegro;
- Petitioner's Opposition to Arizona Attorney General's Amicus Brief;
- Petitioner's Response to Motion for Leave to File Brief of Amici Curiae League of United Latin American Citizens and League of Women Voters of Arizona and Response to Amicus Brief; and
- Petitioner's Opposition to Rachel Mitchell's Motion for Leave to File Amicus Curiae Brief and Response to Her Amicus Brief (including request for sanctions).

Primary Election. The June 25 Reports reflect that some of the operational difficulties articulated in earlier proceedings have reached a more-or-less acceptable status quo, with acceptance that the 2025 Elections Procedural Manual (the "EPM") addresses some of the areas in dispute, such as drop box locations and retrieval protocols for the primary. (Recorder Report at 31-32). Addressing the areas of operational control, such as early voting site management, poll worker supervision, and IT infrastructure and ballot tabulation (including the Voter Registration and Administration System and Early-ballot Registration and Organization System), the Court agrees that the *Purcell* principle should receive due consideration, but it does not displace the Smith four-factor analysis.

Notably, the appellate courts are poorly positioned to resolve factual issues concerning controversies that have arisen since the January 26 evidentiary hearing. Likewise, there is no evidentiary record or factual findings in the trial court's May 13 Order, which denied the Board's initial stay request.

The Court agrees with the superior court, however, that the statutory delegation of authority to "the county recorder or other officer in charge of elections" is "the general provision permitting designation by the county recorder of another officer to exercise that function when necessary." (April 16 Order at 8 ¶ 17).¹ The

¹ The Parties assert that this phrase ("the county recorder or other officer in charge of elections") occurs 111 times in Article 16. Examples include: A.R.S. § 16-621(D) ("For any statewide, county or

Court rejects the Board's contention that the statutory text authorizes "the Board, which controls the funding attached to that function, [to] authorize the task to be performed by the Board-appointed Maricopa County Elections Director." (Response at 3). Following *Lockwood v. Bd. of Supervisors of Maricopa Cnty.*, 80 Ariz. 311, 316 (1956), and *Maricopa County v. Biaett*, 21 Ariz. App. 286, 290 (1974), the Board cannot use budgetary authority to usurp an independently elected officer's statutory functions. And to the extent the Board may have attempted to do so, *Purcell* cannot now be invoked to permit it. Specifically, allowing the Board to appoint the officer would supplant the Legislature's direction that the Recorder perform this function.

The Court agrees with the Recorder that "*Purcell* does not itself resolve the statutory merits. At most, it informs the equitable assessment of timing, feasibility, and public consequences." (Pet. for Special Action at 30). The compressed timeframes involved may have dissuaded the Court of Appeals from examining the *Smith* elements of a stay. They may have also deterred the superior court from addressing new factual issues raised in the stay motion. Regardless,

legislative election, the county recorder or officer in charge of elections shall provide for a live video recording of the custody of all ballots while the ballots are present in a tabulation room in the counting center."); A.R.S. § 16-579.01(B) ("The county recorder or other officer in charge of elections shall do all of the following if the on-site tabulation of early ballots is allowed"); and A.R.S. § 16-579.02(G) ("The county recorder or other officer in charge of elections shall ensure that a voter is not in possession of another voter's ballot within the on-site early ballot tabulation area.").

this Court concludes that the likelihood of success on the merits weighs in favor of the Recorder where the dispute arises from statutory interpretation of the phrase "county recorder or other officer in charge of elections." It is with that in mind that consideration of *Purcell's* equitable assessment of timing, feasibility, and public consequences is due.

To the extent issues can be resolved without disrupting procedures that are actually ongoing in the primary election process, the Court wishes to do so. The Court of Appeals' reliance on the "impactful changes" listed in the Board's June 1, 2026 Reply in Support of Appellant's Emergency Motion for a Stay Pending Appeal included considerations never presented to the trial court or even in the Board's initial stay request, including ballot replacement center protocols, which were unique to the May jurisdictional elections. (Recorder Report at 32 n.14). Now that early voting for the 2026 Primary Election is underway, we cannot, based on this record, determine what is feasible.

As to the Board's concern that "whatever operational structures are cemented into place for the 2026 Primary will be difficult and disruptive to undo for the 2026 General Elections," (Pet. for Special Action at 38; Board Report at 4), issues concerning the general election operations may be better addressed by the superior court in the first instance. Noting the continuing disagreement over final authority and control, the Court encourages full access to

information and transparency in all aspects of the election process to ensure public confidence in the electoral process.

For purposes of this order, the Court observes that the Recorder has offered specific concrete provisions in a 12-point interim operational protocol. (Recorder Report at 21-29). The Court accepts the 12-point interim operational protocol as the Recorder's agreement to modify the terms of the Stay Order and Injunction Orders in accordance with the protocol for the Primary Election.²

The Court therefore accepts special action jurisdiction and for the reasons set forth above concludes that the Court of Appeals abused its discretion in entering the Stay Order.

Upon consideration of the entire Court en banc,

IT IS ORDERED vacating the June 18, 2026 Court of Appeals' Order Granting Emergency Motion for a Stay Pending Appeal and reinstating the Injunction Orders, as modified by the 12-point interim operational protocol. This order is without prejudice to permit the parties to move the Court of Appeals for additional interim modifications to the Injunction Orders pending the appeal. If factual findings are required to resolve such motions, the Court of Appeals should re-vest jurisdiction in the superior court to permit it to make findings of fact and conclusions of law as to the current status of

² Although the Recorder believes the 2025 EPM conflicts with the Recorder's authority over drop box locations (Recorder Report n.13), the Court would be concerned about a challenge to the EPM at this point under the doctrine of laches.

the election. But any challenge must acknowledge the Recorder's statutory authority.

IT IS FURTHER ORDERED denying the Recorder's Request for sanctions against Amicus Rachel Mitchell. This order is entered without prejudice to either party requesting future sanctions against any official who interferes with statutorily prescribed procedures or fails to carry out prescribed duties.

IT IS FURTHER ORDERED pursuant to Ariz. R.P. Spec. Act. 18(c), this order is effective immediately.

DATED this 7th day of July, 2026.

/s/

ANN A. SCOTT TIMMER
Chief Justice

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