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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 / Counterdefendant,

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 / 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 DEFENDANTS SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR WILLFULLY DISOBEYING THE COURT'S APRIL 16, 2026 UNDER ADVISEMENT RULING

(Assigned to the Hon. Scott Blaney)

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

Recorder's election operations. It openly usurped the Recorder's authority over ballot replacement sites during the May 2026 jurisdictional elections. And it passed a formal resolution arrogating to itself the Recorder's exclusive statutory authority to establish early-ballot drop boxes during the early voting period.

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

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

I. FACTUAL AND PROCEDURAL BACKGROUND

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

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

After a full evidentiary hearing on January 26, 2026, and after reviewing extensive briefing, 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

Recorder's custody and/or control before October 2024—or to "immediately fund" the Recorder to independently hire IT staff, secure office and warehouse space, develop replacement databases and software, and procure all necessary equipment. April 16 Order, Order ¶ 4.

Second, the Court enjoined the Board from "further exercising any election functions delegated by the Legislature to the Recorder or 'other officer in charge of elections,' absent the Recorder's consent." April 16 Order, Order ¶ 5.

Third, the Court declared 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." April 16 Order, Order ¶ 3.

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

B. The Board's February 18, 2026 Resolution: A Broken Promise.

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

Recorder Heap understood this resolution to be a tactical maneuver intended to moot the litigation and forestall a ruling by this Court. Heap Decl. ¶ 4. This Court saw through that tactic and declined to find the case moot. What followed confirmed the assessment: the Board 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

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

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

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

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

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

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

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

Both deadlines have now passed. The Board has not transferred any IT positions to the Recorder's Office—though, as noted above, it voted on May 20 to allow the Recorder to hire 8 new, unfilled positions, this action does not constitute compliance with either the Court's Order or the Board's own resolution. The Recorder's CIO has been granted administrative access nominally equivalent to that of the Board's Deputy CIO. However, collectively, the Recorder'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,

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

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

The Court's ruling is mandatory. It is not an invitation to negotiate the terms of compliance. The Board does not get to impose bureaucratic obstacles or extract concessions as the price of obeying a court order.

III. THE BOARD CONTINUES TO USURP THE RECORDER'S AUTHORITY OVER EARLY VOTING AND BALLOT REPLACEMENT SITES.

The April 16 Order enjoined the Board from "further exercising any election functions delegated by the Legislature to the Recorder or 'other officer in charge of elections,' absent the Recorder's consent." April 16 Order, Order ¶ 5. The Board has repeatedly, openly, and shamelessly 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

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

A. Interference with Ballot Replacement Site Administration.

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

During the May 2026 jurisdictional elections, Elections Director Scott Jarrett and Elections Department personnel actively undermined Recorder management staff at ballot replacement sites. Heap Decl. ¶ 19. On May 15, 2026, Recorder staff discovered that poll workers had not been instructed about voters' statutory right under A.R.S. § 16-579(A)(4) to present identification instead of signature verification when delivering a completed early ballot—a right expressly created by the Arizona Legislature and effective starting in 2026. At Recorder Heap's direction, Recorder management staff directed that appropriate signage be posted and that poll workers inform voters of this statutory option. Elections Department personnel responded by instructing poll workers to disregard these directions and characterizing the staff members 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

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

The May 18, 2026 letter from Recorder Heap's counsel detailed these violations, demanding that the Board immediately cease its interference with the Recorder's lawful exercise of his statutory authority, and specifically addressing the Elections Director's pattern of "staff shopping"—approaching individual Recorder staff members one-on-one to secure agreements that would lock the Recorder's Office into arrangements surrendering statutory authority, without the Recorder's knowledge or authorization. Heap Decl. ¶ 20; Ex. C. The Board did not respond substantively or cure its violations.

B. The Board's Unlawful Drop Box Resolution.

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

A ballot drop box is, under any reasonable reading of the statute's plain text, an "early 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,

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

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

On the morning of May 20, before the Board voted, Recorder Heap's counsel sent an 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

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

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

The April 16 Order declared 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." April 16 Order, Order ¶ 3. The Board has not honored this obligation.

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

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

The Court's April 16 Order squarely addressed the statutory underpinning of this obligation. The Court found that every other elected county officer in Maricopa County maintains an independent IT department reporting to that officer. FF ¶ 11. The Court concluded that the Board's singling out of the Recorder for disparate treatment "appears to not be motivated by a legitimate governmental purpose but instead serves to deprive him of the tools necessary to perform his statutory duties." *Id.* The Court held specifically that "the concept of 'necessary 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, employees, equipment, and facilities that the Recorder reasonably requires to exercise meaningful control over the performance of his statutory duties." COL ¶ 10.

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

V. LEGAL STANDARD FOR CIVIL CONTEMPT.

Civil contempt in Arizona is governed by A.R.S. § 12-864, which states that "contempts committed by failure to obey a lawful writ, process, order, judgment of the court, and all other contempts not specifically embraced within this article may be punished in conformity to the practice and usage of the common law." "A finding of civil contempt requires that the contemnor (1) has knowledge of a lawful court order, (2) has the ability to comply and (3) fails to do so." *Lund v. Donahoe*, 227 Ariz. 572, 583 ¶ 41 (App. 2011). All three elements are clearly satisfied here.

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

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

The April 16, 2026 Under Advisement Ruling is a final, binding order of this Court, issued after a full evidentiary hearing with the participation of both parties. The Board was represented by counsel at every stage. Its attorneys received the Order the day it was issued. The Board then filed a notice of appeal and sought a stay—demonstrating not only knowledge 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 contempt.

B. The Board Has the Ability to Comply.

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

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

C. The Board has failed to comply.

Not only has the Board failed to comply, but it has also acted in bad faith. For civil contempt, evidence of bad faith is not required, but here, the evidence of bad faith is overwhelming and warrants the Court's attention in fashioning appropriate sanctions.

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

As Recorder Heap's declaration documents, the Board was warned—in writing, in advance—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

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

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

VI. THE RECORDER'S CONTINUING GOOD-FAITH EFFORTS.

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

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

Moreover, delaying implementation of the April 16 Order would not reduce disruption to county election operations—it would dramatically increase it. For more than six weeks, the Recorder's Office has been planning and preparing for the 2026 primary election under the terms of the Court's Order. The Recorder has structured his operational planning, staffing decisions, site designations, and attempts at reaching cooperative arrangements with the Board's Elections Department on the premise that the April 16 Order is in effect and that his statutory 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

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

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

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

VII. REQUESTED RELIEF.

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

The Court should also consider that the 2026 primary election cycle is approaching rapidly, 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

is therefore not only appropriate but necessary.

CONCLUSION

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

Recorder Heap respectfully requests that the Court:

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

RESPECTFULLY SUBMITTED this 28th day of May, 2026.

America First Legal Foundation

By: */s/James Rogers*

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

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