

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-020621

01/30/2026

CLERK OF THE COURT

HONORABLE SCOTT A. BLANEY

P. McKinley
Deputy

JUSTIN HEAP

JAMES K ROGERS

v.

THOMAS GALVIN, et al.

THOMAS J. BASILE

RYAN P HOGAN
BRETT W JOHNSON
CHARLENE A WARNER
KORY A LANGHOFER
JUDGE BLANEY

UNDER ADVISEMENT RULING

The Court has reviewed and considered Plaintiff Maricopa County Attorney Rachel Mitchell's *Motion for Judgment on the Pleadings*, Defendant Maricopa County Recorder Justin Heap's *Motion for Judgment on the Pleadings Against Attorney Mitchell*, the parties' respective responses, the arguments received at the December 2, 2025 oral argument, and the limited record in this case.

This action arises from Recorder Heap's lawsuit against the Maricopa County Board of Supervisors ("BOS") (*Heap v. Galvin, et. al.* No. CV2025-020621). County Attorney Mitchell filed this additional special action against County Recorder Heap (*Mitchell v. Heap* No. CV2025-022266) and the Court consolidated the two cases into the broader case brought by Recorder Heap.

In Recorder Heap's lawsuit against the BOS, Recorder Heap chose to retain the services of an outside law firm – America First Legal Foundation – that is providing its representation *pro*

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bono. The County Attorney brought this action based in part upon her argument that she, as the County Attorney, has the *exclusive* statutory authority and duty to represent county officers in civil litigation. County Attorney's *Motion* at p. 1. Further, the County Attorney argues that when her office has a conflict and cannot represent a particular county officer, she as the County Attorney has the *exclusive* authority to choose the attorney or law firm that will represent the county officer in litigation, including when the county officer is initiating litigation as a plaintiff.

In her lawsuit against Recorder Heap, County Attorney Mitchell requests declaratory and injunctive relief, seeking: (1) a declaratory judgment that unless the County Attorney has a direct legal conflict with the Recorder, the Recorder is not lawfully permitted to select, retain, or otherwise utilize any outside counsel that has not been appointed by the County Attorney; (2) injunctive relief enjoining the Recorder from retaining the Recorder's current law firm – America First Legal – or any other outside counsel that has not been appointed by the County Attorney; (3) a declaratory judgment that the Recorder acted outside his lawful authority by expending public monies to hire America First Legal without the approval of the County Attorney; and (4) injunctive relief enjoining the Recorder from expending any additional funds to retain America First Legal or any other outside counsel that has not been appointed by the County Attorney.

Both parties move for judgment on the pleadings. Each party argues that the other party has not met its purported burden. For example, County Attorney Mitchell argues, *inter alia*, that Recorder Heap has not identified any legal authority for his decision to retain outside counsel without the approval of the County Attorney. Recorder Heap argues, *inter alia*, that County Attorney Mitchell has not identified any statute or case law establishing that she has the exclusive authority to determine who may represent the Recorder in his dispute with the County Board of Supervisors. The Recorder further points out that it was County Attorney Mitchell who brought this special action and therefore it is the County Attorney who bears the burden of establishing her standing to bring the case and the burden of ultimately proving her case.

THE COURT FINDS that the County Attorney, as the Plaintiff that brought this action seeking declaratory and injunctive relief, has the burden of establishing, *inter alia*, her: (1) standing to bring this action in her official capacity; (2) her entitlement to declaratory relief on the issues presented; and (3) her entitlement to injunctive relief.

A party may move for judgment on the pleadings after the pleadings are closed. Rule 12(c), Ariz.R.Civ.P. A Rule 12(c) motion tests the sufficiency of the complaint or the answer, and all well pleaded allegations are to be taken as true. *Mobile Community Council for Progress, Inc. v. Brock*, 211 Ariz. 196, 198 ¶ 5 (App. 2005).

The County Attorney's arguments turn on interpretation of the statute governing her position and her authority: A.R.S. § 11-532. "The cardinal rule of statutory construction is that

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the courts must primarily attempt to ascertain and give effect to the intent of the legislature.” *Hampton v. Glendale Union High School District*, 172 Ariz. 431, 434 (App. 1992). The Court’s task in statutory interpretation is “to effectuate the text if it is clear and unambiguous.” *BSI Holdings, LLC v. Arizona Department of Transportation*, 244 Ariz. 17, 19 ¶ 9 (2018).

THE COURT FINDS that the County Attorney has failed to identify any controlling authority establishing that she has the exclusive statutory authority and duty to represent county officers in civil litigation when the county official is initiating litigation as a plaintiff. The County Attorney has further failed to identify any controlling authority establishing that she has the exclusive statutory authority and duty – when her office has a conflict – to choose the attorney or law firm that will represent a county officer in litigation when the county officer is initiating litigation as a plaintiff.

The plain language of the statute governing the County Attorney’s powers and duties does not empower her with the authority she claims in this lawsuit. Nowhere in A.R.S. § 11-532 did the Legislature give the County Attorney veto power over the County Recorder’s ability to choose an attorney to represent the Recorder in litigation initiated by the Recorder. Indeed, the Legislature used very specific language when listing the County Attorney’s authority in the statute, expressly stating in relevant part that the County Attorney shall: (1) conduct all prosecutions for public offenses and seek warrants for persons charged with public offenses; (2) draw indictments and informations; (3) “defend” actions brought against the county; (4) “prosecute” actions to recover recognizances; (5) “prosecute” actions for recovery of debts, fines, penalties and forfeitures belonging to the state or county; (6) provide written opinions to county officers; (7) act as legal advisor to the Board of Supervisors; (8) “oppose” claims against the county; (9) act as the attorney specifically for school districts and community college districts, and in some cases, a school district governing board member; and (10) “defend” property tax appeals.

The authority that the County Attorney asserts in this case is simply not listed in the statute among the very specific, detailed list of her statutory powers, and this Court may not read into the law what the Legislature deliberately left out. *Arizona Public Service Co. v. Long*, 160 Ariz. 429, 435-36 (1989) (rejecting arguments in that case regarding what the Legislature must have intended to regulate, reasoning that if the Legislature had in fact intended to regulate the issue, it would have expressly done so). The Court will not engage in interpretation of a statute that “add[s] words to the statute that are not there[.]” *Qasimyar v. Maricopa Cnty.*, 250 Ariz. 580, 588 ¶ 26 (App. 2021).

The County Attorney relies on several cases that the Court finds factually distinguishable. For example, *Brnovich v. Arizona Board of Regents*, 250 Ariz. 137 (2020) focuses upon the authority of the Attorney General, not the County Attorney. The Attorney General’s authority derives from an entirely different statute: A.R.S. § 41-193. In *Brnovich*, the Arizona

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Supreme Court found that the statute's broad use of the word "prosecute" encompassed the authority that the County Attorney claims in the present case. But the Court notes that the Legislature used noticeably different language in the two statutes. For example, § 41-193 empowers the Attorney General to "prosecute any" and "all" proceedings in the Arizona Supreme Court or other Arizona courts in which the State or a state officer "is a party" in his/her official capacity. § 41-193(A)(1)&(2). It is difficult to see how that use of "prosecute" could be any broader. But the Legislature was far more specific – and limiting – with its use of "prosecute" in § 11-532, empowering the County Attorney to simply conduct prosecutions for "public offenses," § 11-532(A)(1), prosecute actions to recover recognizances, § 11-532(A)(4), and prosecute actions for recovery of debts, fines, penalties, and forfeitures, *id.* In other sections, the County Attorney is empowered to specifically "defend" actions brought against the county and "oppose" claims against the county. § 11-532(A)(4)&(9). Notably, the statute grants the County Attorney the authority to specifically "represent" school districts, community college districts, and in certain instances, school district governing board members. § 11-532(A)(10), (11), & (C). Regarding county officers, such as the Recorder, the County Attorney is merely empowered to "give a written opinion on matters relating to the duties of their offices." § 11-532(A)(7). Thus, the Legislature's decision to list detailed, specific, limited authorities that are granted to the County Attorney in § 11-532 indicates that the Legislature did not intend to grant the County Attorney the same broad authorities that it granted to the Attorney General in § 41-193. *See City of Surprise v. Arizona Corporation Commission*, 246 Ariz. 206, 211, ¶¶ 13, 14 (2019) ("Applying the *expressio unius* canon, we infer that the legislature's decision to include the terms "sell, lease, assign," and "mortgage," but not "condemn" or any variant thereof was intentional."). The *Brnovich* case is therefore unhelpful the County Attorney's argument.

As further examples, *Board of Supervisors v. Woodall*, 120 Ariz. 379 (1978) focused on expenditure of public funds for legal representation. Public funds are not at issue in the present case because Recorder Heap's legal counsel – America First Legal – is representing the Recorder *pro bono*. Another of the County Attorney's cited cases, *Romly v. Daughton*, 225 Ariz. 521 (2010), involved the *Board of Supervisors*' attempt to hire independent legal counsel to provide legal advice in lieu of the County Attorney. But the County Attorney is expressly empowered in § 11-532(A)(4)&(9) to defend and advise the county through the Board of Supervisors. As detailed above, there is nothing in the statute that empowers the County Attorney to serve as the exclusive legal representative for county officers who are initiating litigation.

THE COURT FURTHER FINDS that because the County Attorney has not established that she has the exclusive right to represent the County Recorder and/or the exclusive right to decide who the County Recorder may retain as his attorney in litigation, the County Attorney has not established that she has standing in her official capacity to challenge Recorder Heap's retention of America First Legal as his legal counsel in *Heap v. Galvin, et. al.* No. CV2025-020621. *See* County Recorder's *Verified Special Action Complaint for Declaratory and Injunctive Relief* at ¶ 1

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(“The County Attorney brings this lawsuit to vindicate her statutory and inherent responsibility and authority as the Recorder’s attorney and to appoint outside counsel for him when a conflict prevents her from personally representing him.”) and ¶ 12 (“The County Attorney brings this lawsuit in her official capacity.”).

Good cause shown:

IT IS ORDERED granting Defendant Maricopa County Recorder Justin Heap’s *Motion for Judgment on the Pleadings* and denying Plaintiff Maricopa County Attorney Rachel Mitchell’s *Motion for Judgment on the Pleadings*. The County Attorney’s action is dismissed from his case.

IT IS FURTHER ORDERED declining to address the parties’ remaining arguments – and specifically the arguments regarding the County Attorney’s conflicts - as moot.