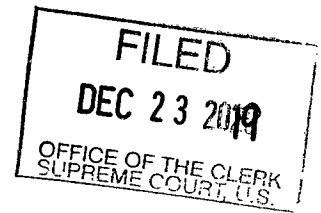


ORIGINAL

19-7558



IN THE

SUPREME COURT OF THE UNITED STATES

Erika Jacobs — PETITIONER  
(Your Name)

vs.

MIHCS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF ARIZONA  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Erika Jacobs  
(Your Name)

P O Box 6252  
(Address)

Broomfield, CO 80021  
(City, State, Zip Code)

602-434-3107  
(Phone Number)

QUESTION(S) PRESENTED

1. IS THE STATE OF ARIZONA JUDICIAL SYSTEM GUILTY OF BEING BIAS TO ITS OWN STATE GOVERNMENT VERSUS CONSTITUTIONAL PROVISIONS & REGULATIONS?

2. DOES THE STATE OF ARIZONA JUDICIAL SYSTEM CONSIDER ITSELF TO BE A SEPARATE STATE EXCLUDED FROM CONSTITUTIONAL PROVISIONS AND REGULATIONS?

3. SUPREME COURT OF ARIZONA AND ITS SUBORDINARIES HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, OR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER?

4. WAS THE APPELLANT, ERIKA JACOBS, CONSTITUTIONAL RIGHTS VIOLATED AS TO THE OFFSET OF AFFECTING CITIZENS RIGHTS EVERYWHERE?

## LIST OF PARTIES

☐ All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

APPELANT: ERIKA JACOBS  
PO Box 6252  
BLOOMFIELD, CO 800021  
602-434-3107  
Seneencat2@outlook.com

APPELLE: SIGURDS M. KROLLS  
RACHEL A. DAPENA  
CAMPBELL, Yost, CLARE & NORELL, P.C.  
COUNSEL FOR DEFENDANT  
3101 N. CENTRAL AVE, STE 1200  
PHOENIX, AZ 85012  
602-322-1600  
skrollsoncva-phx.com

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	16
STATEMENT OF THE CASE .....	3-9
REASONS FOR GRANTING THE WRIT .....	9-14
CONCLUSION.....	18

## INDEX TO APPENDICES

APPENDIX A	Supreme Court State of Arizona Order.
APPENDIX B	Arizona Court of Appeals Order.
APPENDIX C	Electronic Index of Record, MAR Case# CV 2018-050917
APPENDIX D	HHS / OCR RESPONSE
APPENDIX E	APPELLANTS WAIVER
APPENDIX F	COMPLAINTS AND RESPONSES OF DUE PROCESS

IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is SUPREME COURT OF ARIZONA

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the COURT OF APPEALS STATE OF ARIZONA court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,  
☒ has been designated for publication but is not yet reported; or, UNSURE OF WHERE PUBLISHED  
☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was September 23, 2019.  
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

- |  |       |
|--|-------|
| 1. Patricia Snyder, an individual, Plaintiff / Appellant<br>v.<br>Banner Health, an Arizona Corporation; Ramil Coel, M.D.,<br>an individual, Defendants / Appellees.<br>No 1 CA-CV 13-0630 | 12-13 |
| 2. HIPAA vs. Cignet Health (Cignet), of Prince<br>George's County of Maryland  | 13-14 |

### STATUTES AND RULES

- |   |            |
|---|------------|
| 1. A.R.S. 13.3.4.1  | 3-5, 11-12 |
| 2. A.R.S. 13.3.1 Liability Based on state law.                          | 3-5, 11-12 |
| 3. A.R.S. 13.3.2 Liability Based on federal law.                        | 3-5 11-12  |
| 1. A.R.S. 13.5.15 Claims Arising Under Federal law.                     | 3-5 11-12  |
| 5. A.R.S. 13.5.2.1 Time for Filing the Lawsuit (Statute of Limitations) | 3-5, 11-12 |
| 5. A.R.S. 13.5.2.2 Jurisdiction and Venue.                              | 3-5, 11-12 |

### OTHER

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Constitutional Amendment 7
2. Constitutional Amendment 14
3. HIPAA
4. 28 U.S. Code § 14.01 (1) Defamation
5. 42 U.S. Code § 1320d-6. Wrongful disclosure of individually identifiable health information



## STATEMENT OF THE CASE

To begin the Appellant will discuss the most important points of the case in question followed by a general overview of factual happenings:

The Superior Court of Arizona, Court of Appeals of Arizona (Division One), and the Supreme Court of Arizona all agree that the Appellant 1. Had no right to bring her case to court, 2. That a notice of claim was needed before the appellant could file her case in court pursuant Arizona statutes section 12-821.01 (A). 3. Failed to state a claim upon which relief can be granted under rule 12(b)(6). 4. Did not assert a claim under HIPAA and 5. MIHCS, the defendant, should be paid appellate cost by the appellant for violating the appellant's, Erika Jacobs, constitutional rights pursuant HIPAA.

### 1.

The Appellant had a right to file a civil lawsuit as a result of MIHCS violation of her HIPAA rights because she suffered a loss (financial and medical). The Appellant filed this case in 2018 when aggrieved persons of their HIPAA RIGHTS were permitted to file lawsuits against the violators.).

See Appendix C, Electronic Index of Record MAR Case # CV2018-050917, No. 1.

The Appellant had a right to file a law suit pursuant 42 U.S. code {1320d-6. Wrongful disclosure of individually identifiable health information and pursuant 28 U.S. Code [1401. (1) Defamation. HIPAA does state that individuals can bring their case to court in accordance with the state law.

Pursuant Arizona law A.R.S.13.3 Liability and Immunities of state Entities and Employees the Plaintiff had a right to sue. **Pursuant A.R.S. 13.3.1 Liability Based on State Law.** Almost any act or failure to act by a state officer or employee can become the basis for a lawsuit. Other possible state-law claims against state officer or employee's include gross negligence, battery, and **defamation**. Thus, Appellant did have a valid merit on filing her claim in Superior court for defamation. **Pursuant A.R.S.13.3.2 Liability Based on Federal Law. A claimant may also sue for the violation of federal rights. Suits based on federal rights may be brought in state court or federal court, subject to sovereign immunity or Eleventh Amendment defenses.** Sovereign immunity or the Eleventh Amendment does not legally deter the filing of the appellant civil suit.

**Pursuant A.R.S. 13.5.1.5 Claims Arising under Federal Law.** A notice of claim is not required for claims arising under federal law, whether suit is to be filed in federal or state court. *Felder v. Casey*, 487 U.S. 131, 138 (1988). The Appellant timely filed her claim in Arizona Superior Court in December of 2017 pursuant **A.R.S. 13.5.2.1 Time for Filing the Lawsuit** (Statute of Limitations). "All actions against any public entity or public employee shall be brought within one year after the cause of action accrues and not afterward." A.R.S. § 12-821. Arizona follows the discovery rule in determining when a cause of action accrues. A cause of action accrues when the plaintiff "discovers or by the exercise of reasonable diligence should have discovered that he or she has been injured by the defendant's negligent conduct. The Appellant filed her claim under the proper jurisdiction and venue. Pursuant A.R.S. 13.5.2.2 Jurisdiction and Venue. The Arizona Constitution provides that the superior court has original jurisdiction for matters involving claims of \$1,000 or more. Actions against the State may be brought in any county where venue is otherwise proper under the general venue statute, A.R.S. § 12-401

2.

The Appellant was following Arizona Statutes section 12-821.01 and was not required to file a notice of claim. The Appellant was following A.R.S. 12-821-01 in that she filed a claim with facts sufficient to permit the public entity to understand the basis on which liability is claimed. The Plaintiff initial request was for injunctive relief: correction of her medical records. The Superior Court of Arizona and the Court of Appeals stated the Plaintiff/appellant needed to request a monetary value for her claim to be valid. This is the only reason the Appellant requested \$5000 in the lawsuit. **Is it just for any judicial official to request the Plaintiff/appellant ask the defendant for money when the Plaintiff/appellant opposes such and only seeks injunctive relief?** The Plaintiff was forced to request monetary relief when filing her case in court. **Now pursuant A.R.S. 13.5.1.5 Claims arising Under Federal law. A notice of claim is not required for claims arising under federal law, whether suit is to be filed in federal or state court. The Plaintiff original civil complaint in the Superior Court of Arizona. imposed federal laws as follows: HIPAA violation, 42 U.S. code {1320d-6. Wrongful disclosure of individually identifiable health information and Defamation 28 U.S. Code {1401. (1). Thus, a notice of claim was not needed for the Appellant to file her civil suit in court.**

Plaintiff was in compliance with A.R.S. 12-821.01 in that she has exhausted all administrative remedies necessary for a lawsuit. Plaintiff sought relief for this matter of improper information on her medical records with the hospital administration, Medical Records and Department of Health and Human Services (HHS).

3.

The Appellant was in compliance with A.R.S. 12-821.01 which gave no rise to the Court of Appeals to dismiss her case under Rule 12(b)(6) which allows a court to dismiss a complaint before the development of the proceeding. The problem is when and how a Rule 12(b)(6) motion is to be granted. Although it has been said that a Rule 12(b)(6) motion is rarely granted. The Appellant's claim contained facts sufficient to permit the public entity, public school or public employee to understand the basis on which liability is claimed. The claim shall also contain a specific amount for which the claim can be settled and the facts supporting that amount. Per HIPAA no monetary value is supposed to be requested in suit of injunctive relief (the Plaintiff's original request was for injunctive relief). See Appendix C, Electronic Index of Record MAR Case # CV2018-050917, No.

1.

4.

The Appellant should not be required to pay the Appellee court cost or any other monies for defending her Constitutional rights. Please see Appendix B, Court of Appeals Order, page 6. The Constitutional Amendments applicable to this case are; Amendment 7 and Amendment 14.

#### **Amendment 7**

Provides for the right to trial by jury in certain civil cases, according to common law.

#### **Amendment 14 Annotations fn6**

Section.1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United states and of the State wherein they reside, No. State shall

make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Appellant had the right to bring her lawsuit under no penalty pursuant the following federal laws.

### **HIPAA**

Lawsuits violating privacy are protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and filed with the U.S. Department of Health & Human Services' Office for Civil Rights (OCR). HIPAA protects citizens' private health information including information contained in medical records. An actual lawsuit technically is not based on the HIPAA violation; rather the lawsuit is based on violation of personal privacy. Anyone has the right to file a lawsuit but should realize the basis is not the HIPAA act itself.

### **28.U.S. CODE [14.01. (1) DEFAMATION**

The term “defamation” means any action or other proceeding for defamation, libel, slander, or similar claim alleging that forms of speech are false, have caused damage to reputation or emotional distress, have presented any person in a false light, or have resulted in criticism, dishonor, or condemnation of any person.

42 U.S. Code § 1320d–6. Wrongful disclosure of individually identifiable health information

- U.S. Code

**(a)Offense** person who knowingly and in violation of this part—

**(1)**

uses or causes to be used a unique health identifier;

(2)

obtains individually identifiable health information HYPERLINK

"https://www.law.cornell.edu/uscode/text/42/1320d-6" relating to an individual;

or

(3)

discloses individually identifiable health information to another person,

shall be punished as provided in subsection (b). For purposes of the previous

sentence, a person (including an employee or other individual) shall be

considered to have obtained or disclosed individually identifiable health

information in violation of this part if the information is maintained by a covered

entity (as defined in the HIPAA privacy regulation described in section 1320d-

HYPERLINK

"https://www.law.cornell.edu/uscode/text/42/1320d%E2%80%939(b)(3) of this

title) and the individual obtained or disclosed such information without

authorization.

#### **BRIEF STATEMENT OF CASE:**

On 6-12-17, Erika Jacobs, Appellant, was discharged from Maricopa Hospital. On 6-12-17, **prior to discharge**, the appellant expressed to the medical staff (Dr. Koruon K. Daldalyan was one of the staff members) treating that she was dissatisfied with their service. Yet, the case filed is not about the Plaintiff's dissatisfaction with the medical service on 6-12-17, but the wrongful and defaming information placed on her medical records as stated in her complaint to Superior

Court. Dr. Koruon K. Daldalyan was very displeased by the Plaintiff's request to leave the hospital and kept trying to convince her to remain in the hospital. Dr. Daldalyan instructed the Plaintiff to stop taking the Eliquis (medicine for blood clots); prescribed by her Dr. in North Carolina. Dr. Daldalyan instructed the Plaintiff to stop taking her prescribed Eliquis without performing a chest x-ray to verify the clot was no longer present in the Plaintiff's chest. On 6-12-17, Dr. Koruon K. Daldalyan in retaliation to Ms. Jacobs comments (in which she had the right to make/state) wrote un-truthful information about her in the discharge summary. Dr. Koruon K. Daldalyan stated falsely on Ms. Jacobs medical records that 1. She was a poor historian and 2. Distributed strange/odd behavior etc. Ms. Jacobs was appalled at the comments made by Dr. Koruon K. Daldalyan and consulted with the Medical/Hospital Administrator, highest Department of any hospital, that enforce laws/rules/regulations/disciplinary actions of hospital staff. Melissa Trahn, patient advocate assistance of the Hospital administrator, instructed the Plaintiff to first file her complaint with medical records for removal of the untruthful information. Melissa Trahn, Hospital Administrator assistant, explained to Ms. Jacobs the process of filing a complaint to remove the un-truthful information from her medical records. The Court of appeals inferred to Melissa Trahn as general hospital staff giving directions in a hospital. On contrary, Melissa Trahn, was the assistant of the Hospital Administrator, the highest Administrative department of any hospital.

The court of appeals implied that the Plaintiff was reacting to erroneous and defaming information put on her discharge summary prior to deciding not to reside in the hospital. On contrary, a discharge summary is not done until the patient is discharged. Thus, the defaming information placed on the Plaintiff's discharge summary was done after the Plaintiff decided not to stay in the hospital (in which Dr. Daldalyan, Plaintiff's decision to stay in the hospital, was refuting before he wrote the discharge summary).

The court of appeals stated the Plaintiff filed a lawsuit against information placed on her discharge summary (medical records) in which she believed to be untrue. Yet, Dr. Daldalyan and

the court of appeals judges have not and cannot produce any tangible or intangible evidence to prove the false accusations were true. The false accusations on the Plaintiff's medical records written by Dr. Daldalyan were untrue. The Doctor never received one medical record from any hospital, doctor's office etc. to prove the false accusations. Nevertheless, there was no test performed that justified the defaming accusations written on the Plaintiff's medical records. The court of appeals made the decision to overlook false information placed on the Plaintiff's medical records by choice and personal feelings for the Plaintiff and not according to law.

### **REASONS FOR GRANTING THE WRIT**

The Plaintiff has clearly presented viable statutes, cases and evidence to prove that the Superior Court of Arizona, The Court of Appeals of Arizona and the Supreme Court of Arizona have denied the Appellant's Constitutional Rights and have departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this court's supervisory power. The Statutes and Constitutional Rights in support of granting the Plaintiff's petition are:

#### **Amendment 7**

Provides for the right to trial by jury in certain civil cases, according to common law.

#### **Amendment 14 Annotations fn6**

Section.1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United states and of the State wherein they reside, No. State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Appellant had the right to bring her lawsuit under no penalty pursuant the following federal laws.

### **HIPAA**

Lawsuits violating privacy are protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and filed with the U.S. Department of Health & Human Services' Office for Civil Rights (OCR). HIPAA protects citizens' private health information including information contained in medical records. An actual lawsuit technically is not based on the HIPAA violation; rather the lawsuit is based on violation of personal privacy. Anyone has the right to file a lawsuit but should realize the basis is not the HIPAA act itself.

### **28.U.S. CODE [14.01. (1) DEFAMATION**

The term “defamation” means any action or other proceeding for defamation, libel, slander, or similar claim alleging that forms of speech are false, have caused damage to reputation or emotional distress, have presented any person in a false light, or have resulted in criticism, dishonor, or condemnation of any person.

42 U.S. Code § 1320d–6. Wrongful disclosure of individually identifiable health information

- U.S. Code

**(a)Offense** person who knowingly and in violation of this part—

**(1)**

uses or causes to be used a unique health identifier;

**(2)**



obtains individually identifiable health information [HYPERLINK](https://www.law.cornell.edu/uscode/text/42/1320d-6)

"https://www.law.cornell.edu/uscode/text/42/1320d-6" relating to an individual;

or

**(3)**

discloses individually identifiable health information to another person, shall be punished as provided in subsection (b). For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1320d-9(b)(3) of this title) and the individual obtained or disclosed such information without authorization.

**IN ADDITION TO ARIZONA STATE LAWS AS FOLLOWS:**

Pursuant A.R.S. 13.3.4.1. A suit against a state official challenging the constitutionality of the official's action is not considered an action against the State to the limited extent that it seeks prospective injunctive relief as to the official's conduct rather than an award of damages for past conduct.

Pursuant A.R.S. 13.3.1 Liability Based on State Law. Almost any act or failure to act by a state officer or employee can become the basis for a lawsuit. Many suits against the State and state employees are based on the state's common law of negligence. Negligence is the failure to act as a reasonably prudent person would act in similar circumstances. Other possible state-law claims include gross negligence, battery, and defamation.

Pursuant A.R.S. 13.3.2 Liability Based on Federal Law. A claimant may also sue for the violation of federal rights. Suits based on federal rights may be brought in state court or federal court, subject to sovereign immunity or Eleventh Amendment defenses.

Pursuant A.R.S. 13.5.1.5 Claims Arising under Federal Law. A notice of claim is not required for claims arising under federal law, whether suit is to be filed in federal or state court.

Pursuant A.R.S. 13.5.2.1 Time for Filing the Lawsuit (Statute of Limitations). "All actions against any public entity or public employee shall be brought within one year after the cause of action accrues and not afterward." A.R.S. § 12-821. Arizona follows the discovery rule in determining when a cause of action accrues. A cause of action accrues when the plaintiff "discovers or by the exercise of reasonable diligence should have discovered that he or she has been injured by the defendant's negligent conduct.

Pursuant A.R.S. 13.5.2.2 Jurisdiction and Venue. The Arizona Constitution provides that the superior court has original jurisdiction for matters involving claims of \$1,000 or more. Actions against the State may be brought in any county where venue is otherwise proper under the general venue statute, A.R.S. § 12-401

**The cases in support of the Appellant's case for writ of certiorari granting are:**

1. Patricia SNYDER, an individual, Plaintiff/Appellant,

v.

BANNER HEALTH, an Arizona corporation; Ramil Goel, M.D., an individual, Defendants/Appellees.

No. 1 CA-CV 13-0630.

Oct. 7, 2014.

## **MEMORANDUM DECISION**

DOWNIE, Judge.

\*1 ¶ 1 Patricia Snyder ("Appellant") appeals the dismissal of her claims against Banner Health ("Banner") and Ramil Goel, M.D. (collectively, "Appellees"). For the following reasons, we affirm the dismissal of all claims except the intentional infliction of emotional distress claim against Banner and the defamation claims against Appellees.

### CONCLUSION

- ¶ 37 We affirm the dismissal of all claims against Appellees with the exception of the intentional infliction of emotional distress claim against Banner and the defamation claims against both Banner and Dr. Goel. We remand those causes of action for further appropriate proceedings, expressing no opinion about their substantive merits if challenged by a motion for summary judgment. We deny Appellant's and Banner's requests for attorneys' fees. We make no award of taxable costs, as each party has partially prevailed on appeal.
- **HIPAA vs. Cignet Health (Cignet), of Prince George's County of Maryland**

### GOVERNMENT IMPOSES FIRST EVER PENALTY FOR HIPAA PRIVACY VIOLATION

Medical Group Fails to Grant Access to Patient Records

On February 22, 2011, the Department of **Health** and Human Services (HHS) Office for Civil Rights (OCR) imposed a \$4.3 million civil monetary penalty against **Cignet Health (Cignet), of Prince George's County, Maryland**, a covered entity, for violating the **HIPAA** Privacy Rule. Although there have been a number of settlements arising from alleged **HIPAA** violations, never before has OCR

imposed a civil monetary penalty against a covered entity for violating the **HIPAA** Privacy Rule.

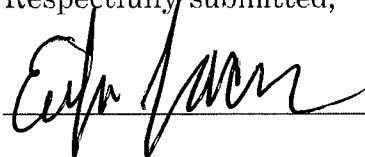
This is a landmark case that can help protect the rights of US citizens. Please review the **Appendix** for all supporting documentation. Especially, **See Appendix D or HHS/OCR Response** to submitted complaint.

In addition, the Court of appeals published a case submitted on waiver of fees/and or poverty affidavit which is a general rule of thumb not permitted for cases submitted by Plaintiff's that file their civil suits under poverty affidavit..See Appendix E, Poverty affidavit/waiver form. The Plaintiff filed her suit under financial poverty affidavit and thus her fees were waived.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



---

Date: 12-17-19