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APPENDIX A: Decision of the Appeals Court of Arizona-Division One

# APPENDIX A

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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RAFAEL CEZAR DANAM,  
*Plaintiff/Appellant,*

*v.*

ARIZONA BOARD OF EDUCATION,  
*Defendant/Appellee.*

No. 1 CA-CV 18-0668  
FILED 10-31-2019

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Appeal from the Superior Court in Maricopa County  
No. LC2018-000093-001  
The Honorable Patricia A. Starr, Judge

**AFFIRMED**

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COUNSEL

Rafael Cezar Danam, N. Las Vegas, NV  
*Plaintiff/Appellant*

Arizona Attorney General's Office, Phoenix  
By Kim S. Anderson  
*Counsel for Defendant/Appellee*

**DANAM v. AZ BOARD OF EDUCATION**  
**Decision of the Court**

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**MEMORANDUM DECISION**

Judge Diane M. Johnsen delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge James B. Morse Jr. joined.

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**J O H N S E N, Judge:**

**¶1** Rafael Cezar Danam appeals from the superior court's judgment affirming a decision by the Arizona State Board of Education ("Board") to revoke his teaching certificates and to notify other states of that revocation. We conclude the Board's decision was supported by substantial evidence and was not contrary to law, arbitrary, capricious or an abuse of discretion. Accordingly, we affirm the superior court's judgment.

**FACTS AND PROCEDURAL BACKGROUND**

**¶2** According to the record before the Board, Danam obtained a substitute teaching certificate and in August 2016, was working as a long-term substitute fourth-grade teacher at Diamondback Elementary School ("Diamondback") in the Bullhead Elementary School District. Danam did not have a contract for the school year, but rather worked on a "day-by-day basis." A month into the school year, the principal met with Danam outside his classroom and notified him that his substitute teaching assignment was ending and that a fully certified teacher would be returning to the school to replace him.

**¶3** Immediately after the meeting, Danam asked an instructional aide to accompany him back to his classroom and be "a witness"; inside the classroom, Danam told his students "he would no longer be their teacher" and was "being asked to leave." As he spoke to the students, Danam became emotional and told them to "go home and tell your parents what [the principal] and the School Board is doing to me." This upset the students, some of whom became "very distraught" and began crying. The principal eventually arrived, calmed the students and sent Danam home.

**¶4** Over the next few days, Danam repeatedly emailed the students' parents, the principal, the district assistant superintendent and others, demanding hearings and threatening litigation. Danam suggested parents could receive monetary damages if a lawsuit were filed and encouraged them to obtain medical attention for their children so they

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**Decision of the Court**

could document "emotional and psychological distress." In one email, he suggested he would sue for \$19,999.98 in damages in small claims court and would distribute \$260 of that sum to each of his former students as compensation for their "emotional and psychological damages." Danam also recommended parents consider filing a class-action lawsuit for emotional and psychological damages exceeding one million dollars.

¶5 Damam also mailed a lengthy compilation of documents to the superintendent, with copies to the school board, other school administrators, parents, the Board, the mayor of Bullhead City and other municipal officials. The packet of documents purported to seek "Authorized & Sanctioned Board Review for Wrongful Termination" and to constitute "Official Notice of Pending Litigation & Preparation for Civil Proceedings, Notification of Multiple Federal & State Laws, Statutes and Regulations Violations." One page of the packet was directed to the principal and assistant superintendent. In it, Danam asserted that the "current circumstances" were the "direct consequence of" actions by the principal and assistant superintendent and asserted, "Whoever sows injustice reaps calamity," "Be assured that exact and precise justice will be manifested," and "You will not escape the consequences." Another document he later faxed to the school read "Justice, Vindication & Vengeance" and "Vengeance is MINE, I will repay." This last document prompted the principal to obtain an injunction against workplace harassment against Danam.

¶6 In October 2016, the Board notified Danam he was the subject of a formal professionalism investigation based on his conduct with the students on the day he was terminated and the threatening documents he sent to school officials thereafter. In March 2017, Danam applied for a teaching position at Laveen Elementary School District; on his application, he answered "[n]o" in response to the question, "Have you ever been the subject of a school district or Department of Education . . . investigation, inquiry, or review of alleged misconduct?" After the Laveen district hired Danam, it learned he was under Board investigation. When the district asked Danam about his apparent false statement, he resigned.

¶7 In August 2017, the Board served Danam with a complaint that alleged professional misconduct based on his statements to his students and their parents, his harassing communications to school officials and the misrepresentation on his application for employment in the Laveen district.

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¶8 The Board's Professional Practices Advisory Committee ("Committee") conducted a hearing on the Board's complaint. In the hearing, Danam was permitted to testify, call and cross-examine witnesses and offer documents in evidence. After the hearing, the Committee concluded Danam engaged in three types of unprofessional conduct: (1) he failed to "make reasonable efforts to [protect] pupils from conditions harmful to learning, health, or safety," Arizona Administrative Code ("A.A.C.") R7-2-1308(A)(1); (2) he "[f]alsif[ied] or misrepresent[ed] documents, records, or facts related to professional qualifications or educational history or character," A.A.C. R7-2-1308(B)(6); and (3) he "[e]ngag[ed] in conduct which would discredit the teaching profession," A.A.C. R7-2-1308(B)(15).<sup>1</sup> The Committee recommended the Board discipline Danam by revoking his teaching certificates and informing "all states and territories" of the revocation.

¶9 The Board adopted the Committee's findings of fact with minor changes, adopted the Committee's conclusions of law, and ordered Danam's teaching certificates revoked and that other states and territories be notified of the revocation. Danam filed a motion for rehearing; the Board denied it, concluding he failed to establish any grounds for a rehearing as required by A.A.C. R7-2-709(B).

¶10 Danam filed a notice of appeal to the superior court, then, 55 days later, filed in that court a "Motion for New Evidence and Witnesses for Judicial Review of Administrative Decision." The superior court treated Danam's filing as a motion for an evidentiary hearing and denied it.

¶11 The superior court then affirmed the Board's decision. It concluded (1) the Board did not violate Danam's right to due process or his right to free speech, (2) the Board's decision was not arbitrary, capricious or an abuse of discretion, (3) substantial evidence supported the Board's decision and (4) the Board properly denied Danam's motion for rehearing.

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<sup>1</sup> Absent material revision after the relevant date, we cite the current version of a statute or rule.

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Danam timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2019) and -913 (2019).<sup>2</sup>

**DISCUSSION**

**¶12** We will affirm an administrative agency's decision unless it is "contrary to law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion." A.R.S. § 12-910(E) (2019). "We defer to the agency's factual findings if they are supported by substantial evidence, even if other evidence before the agency would support a different conclusion." *Waltz Healing Ctr., Inc. v. Ariz. Dep't of Health Servs.*, 245 Ariz. 610, 613, ¶ 9 (App. 2018). "We consider the evidence in a light most favorable to upholding the agency's decision." *Id.* Nonetheless, we apply our "independent judgment" to questions of law. *See Webb v. State ex rel. Ariz. Bd. of Med. Exam'rs*, 202 Ariz. 555, 557, ¶ 7 (App. 2002).

**A. The Board Did Not Violate Danam's Due-Process Rights.**

**¶13** Danam argues the Board violated his due-process rights by denying, ignoring or omitting evidence he wanted to offer at the Committee hearing. *See generally* U.S. Const. amend. XIV; Ariz. Const. art. 2, § 4. We review questions of law *de novo*. *See Webb*, 202 Ariz. at 557, ¶ 7.

**¶14** Board rules set out the procedures that govern disciplinary hearings. The Board established the Committee to "conduct hearings related to certification" issues involving unprofessional conduct and the revocation of certificates. A.A.C. R7-2-701(8); *see* A.A.C. R7-2-205(A) (Committee "shall act in an advisory capacity to the [Board] in regard to certification or recertification matters related to immoral conduct, unprofessional conduct, unfitness to teach, and revocation, suspension, or surrender of certificates."). At the hearing before the Committee, parties have the "right to submit evidence in open hearing and conduct cross examination." A.A.C. R7-2-705(C); *see also* A.A.C. R7-2-715(C). Upon request of a party, the Department of Education ("Department") may issue subpoenas for witnesses, documents and other evidence. A.A.C. R7-2-712(A). After the Committee issues its recommendation following a

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<sup>2</sup> Although § 12-913 expressly allows a party to appeal to the "supreme court," we have construed this provision as "also allowing an appeal to the court of appeals, which was created after § 12-913 was enacted." *Svendsen v. Ariz. Dep't of Transp., Motor Vehicle Div.*, 234 Ariz. 528, 533, ¶ 13 (App. 2014).

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hearing, the Board reviews the hearing record and the Committee's recommendation and issues its decision. *See A.A.C. R7-2-718.*

**¶15** The right to procedural due process "includes the right to notice and opportunity to be heard at a meaningful time and in a meaningful manner." *Salas v. Ariz. Dep't of Econ. Sec.*, 182 Ariz. 141, 143 (App. 1995). Here, the Board provided Danam with adequate opportunity to be heard at the hearing before the Committee. In its complaint, the Board notified Danam of the factual allegations against him, the three grounds on which the charges of unprofessional conduct were based, and the nature of the discipline the Board proposed to impose. The complaint also listed the witnesses and exhibits the Board anticipated offering at the hearing.

**¶16** When the hearing commenced, the hearing officer asked Danam if he had any exhibits to offer; Danam replied that he had submitted documents to the Department's Investigation Unit, but "nothing has been done . . . on those at all." The hearing officer then told Danam he "ha[d] the opportunity to submit relevant documents." Danam then offered, and the hearing officer admitted, Danam's response brief and two letters signed by the Diamondback school principal. During the hearing, Danam testified and cross-examined each of the State's witnesses.

**¶17** Although Danam expressed concern at the hearing that he was unfamiliar with the Committee's "protocol" and that he could not bring the students' parents to testify for lack of financial resources, Danam had the option to, and contends he did, obtain affidavits from some of the parents. He did not, however, offer the affidavits in evidence at the hearing.

**¶18** As noted, Danam filed a "Motion to Rehear Case," but he did not argue in that motion that the hearing officer rebuffed any attempt he had made to call witnesses or offer affidavits at the hearing. The same day Danam filed his motion for rehearing, he also filed with the Board an "Appeal Brief" to which he attached several documents he characterized as affidavits. But he did not argue the hearing officer had precluded him from calling witnesses on his behalf. Nor did he argue that the hearing officer refused to admit or the Committee or the Board failed to consider any affidavits he offered in evidence. Instead, in his "Appeal Brief," Danam cited as an error the Department's "[f]ailure . . . to provide official record of affidavits obtained by current and former parents of Diamondback Elementary School." But it was Danam's choice to offer evidence on his behalf, not the Board's obligation to do so. When a party is provided the opportunity to be heard and "chooses not to exercise it," that party cannot later claim to have been denied procedural due process. *Watahomigie v.*

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*Ariz. Bd. of Water Quality Appeals*, 181 Ariz. 20, 27 (App. 1994). Moreover, unrepresented parties such as Danam are held "to the same standards as attorneys." *Flynn v. Campbell*, 243 Ariz. 76, 83, ¶ 24 (2017).

**¶19** Because the Board provided Danam with meaningful notice and opportunity to be heard at the hearing, it did not violate his due-process rights.<sup>3</sup>

**B. Substantial Evidence Supported the Board's Factual Findings.**

**¶20** "We will not disturb an agency's factual findings that the evidence substantially supports." *JH2K I LLC v. Ariz. Dep't of Health Servs.*, 246 Ariz. 307, 310, ¶ 8 (App. 2019). "If two inconsistent factual conclusions could be supported by the record, then there is substantial evidence to support an administrative decision that elects either conclusion." *DeGroot v. Ariz. Racing Comm'n*, 141 Ariz. 331, 336 (App. 1984) (citation omitted).

**¶21** The Board found Danam (1) upset his students by emotionally telling them that he would no longer be their teacher, (2) later sent emails to parents encouraging litigation and documents to school officials threatening vengeance, then (3) still later, lied on an employment application about not having been under Department investigation.

**¶22** In support of those findings, Diamondback's principal testified that after he told Danam his teaching assignment was ending, the principal entered Danam's classroom and found the fourth-grade students "look[ing] disheveled" and saw "a lot of kids crying, a lot of people upset [and] a few kids yelling." The instructional aide in the classroom testified that Danam became "emotional" when telling the students he would "no longer be their teacher" and was "being asked to leave." She testified that an "agitated" Danam then insisted the students "go home and tell their parents what [the principal] and the School Board was doing to him," and that the students "were very distraught" and started crying. The aide

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<sup>3</sup> Danam also argues the Board violated due process by relying on "false and perjured testimony," but for that proposition he relies only on evidence not offered at the hearing. *See A.R.S. § 12-910(D)* (review by appellate court limited to "record of the administrative proceeding" unless superior court holds evidentiary hearing or trial *de novo*); *GM Dev. Corp. v. Cnty. Am. Mortg. Corp.*, 165 Ariz. 1, 4 (App. 1990) ("An appellate court's review is limited to the record before the trial court."). He also argues that the Board and the superior court violated due process because they were biased, but he offers no evidence to support this argument.

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explained she then took the students to the bathrooms to "calm themselves down."

**¶23** Further evidence showed Danam sent written threats to the school principal and the district's assistant superintendent, which prompted the principal to obtain a workplace harassment injunction against Danam. *See supra* ¶ 5. Danam also repeatedly emailed parents, urging them to seek medical attention for the emotional distress their children purportedly experienced and encouraging a multimillion-dollar lawsuit on their behalf. One parent testified Danam left her multiple late-night voicemails and asked her to "set fire on his behalf" and "write papers."

**¶24** Finally, the Committee heard evidence that in Danam's 2017 application to Laveen Elementary School District, he falsely answered "[n]o" when asked whether he has "ever been the subject of a school district or Department of Education . . . investigation, inquiry or review of alleged misconduct." At the hearing, Danam admitted he received and responded to the Department's "Notice of Investigation" letter in 2016.

**¶25** As reflected by this account of the evidence, the Board's factual findings were amply supported by substantial evidence. *See A.R.S. § 12-910(E).*

**C. The Board's Legal Conclusions and the Discipline It Imposed Were Not Arbitrary, Capricious or an Abuse of Discretion.**

**¶26** We also conclude that based on the Board's factual findings, its conclusions that Danam acted unprofessionally under R7-2-1308(A)(1), (B)(6), and (B)(15) and its decision to revoke his teaching certificates were not arbitrary, capricious or an abuse of discretion. *See A.R.S. § 12-910(E).* A decision is "arbitrary" if it is "unreasoning action, without consideration and in disregard of the facts and circumstances." *Maricopa County Sheriff's Office v. Maricopa County Emp. Merit Sys. Comm'n*, 211 Ariz. 219, 222, ¶ 14 (2005) (citation omitted). "An 'abuse of discretion' is discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Torres v. N. Am. Van Lines, Inc.*, 135 Ariz. 35, 40 (App. 1982). "A decision supported by substantial evidence may not be set aside as being arbitrary and capricious." *Smith v. Ariz. Long Term Care Sys.*, 207 Ariz. 217, 220, ¶ 14 (App. 2004).

**¶27** On the record presented, the Board did not err by concluding Danam acted unprofessionally by failing to "[m]ake reasonable efforts to prevent pupils from conditions harmful to learning, health, or safety," R7-2-1308(A)(1); "[f]alsify[ing] or misrepresent[ing] documents, records, or

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facts related to professional qualifications or educational history or character," R7-2-1308(B)(6); and "[e]ngag[ing] in conduct which would discredit the teaching profession," R7-2-1308(B)(15). The Board's decision was reasonable and well-supported by the evidence. *See Smith*, 207 Ariz. at 220, ¶ 14; *Torres*, 135 Ariz. at 40.

**¶28** The Board also did not err in revoking Danam's teaching certificates and notifying other states of the revocation. Contrary to Danam's contention that the revocation violated A.R.S. § 15-203(A)(20) (2019) as an excessive penalty, the Board's discipline fell squarely within its statutory authority to "supervise and control the certification of persons engaged in instructional work" and "[i]mpose such disciplinary action, including the . . . revocation of a certificate, on a finding of immoral or unprofessional conduct." A.R.S. § 15-203(A)(14), (20); *see also* A.A.C. R7-2-1308(C) ("Individuals found to have engaged in unprofessional or immoral conduct shall be subject to, and may be disciplined by, the Board."); *Petras v. Ariz. State Liquor Bd.*, 129 Ariz. 449, 452 (App. 1981).

**¶29** In sum, we conclude the Board's conclusions and the discipline it imposed were not arbitrary, capricious or an abuse of discretion.<sup>4</sup>

**D. The Board Did Not Abuse Its Discretion in Denying Danam's Motion for Rehearing.**

**¶30** Danam argues the Board improperly denied his motion for rehearing. We review the Board's denial of a motion for rehearing for abuse of discretion. *See O'Neal v. Indus. Comm'n*, 13 Ariz. App. 550, 552 (1971).

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<sup>4</sup> Danam also argues the decisions of the Board and the superior court defamed him in violation of his constitutional rights under 42 U.S.C. § 1983 (2018). Any cause of action for defamation or claim under § 1983 falls outside the scope of our review. *See* A.R.S. § 12-910(E) (limiting superior court review to whether agency action was "contrary to law, . . . not supported by substantial evidence, . . . arbitrary and capricious or . . . an abuse of discretion"); A.R.S. § 12-913. In any event, to be defamatory, a publication must be false, *Turner v. Devlin*, 174 Ariz. 201, 203 (1993), and we already have determined that substantial evidence supported the Board's factual findings. *See supra* ¶¶ 21-25.

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Decision of the Court

¶31 Arizona Administrative Code R7-2-709(B) provides:

A rehearing of a decision by the Board may be granted for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings of the hearing body, or abuse of discretion, whereby the moving party was deprived of a fair hearing.
2. Misconduct of the hearing body or the prevailing party.
3. Accident or surprise which could not have been prevented by ordinary prudence.
4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the hearing.
5. Excessive or insufficient penalties.
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing.
7. That the decision is not justified by the evidence or is contrary to the law.

¶32 A motion for rehearing must "specify[] the particular grounds therefor." A.A.C. R7-2-709(A). Here, Danam's motion for rehearing did not cite any grounds under R7-2-709(B); rather, it generally alleged due-process violations and discrepancies in the hearing. As we discussed above, *see supra* ¶¶ 13-19, no due-process violation occurred. In the "Appeal Brief" he filed at the same time, Danam offered an extensive list of evidence he wanted to use at the rehearing but failed to show any of it was "[n]ewly

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**Decision of the Court**

discovered material evidence" that he could not have discovered and offered at the original hearing with reasonable diligence. A.A.C. R7-2-709(B)(4).<sup>5</sup> Danam also failed to substantiate the other numerous grounds he cited for rehearing.

¶33 Because Danam failed to establish any grounds for a rehearing under R7-2-709(B), the Board did not abuse its discretion by denying his motion for rehearing.

**E. The Superior Court Did Not Abuse Its Discretion by Denying Danam's Motion for an Evidentiary Hearing.**

¶34 Danam argues the superior court erred by denying his motion for an evidentiary hearing. We review the court's denial of a motion for an evidentiary hearing for abuse of discretion. *Am. Power Prods., Inc. v. CSK Auto, Inc.*, 239 Ariz. 151, 154, ¶ 10 (2016).

¶35 The superior court properly denied Danam's motion as untimely. Arizona Rule of Procedure for Judicial Review of Administrative Decisions 10(c) required Danam to file his motion for an evidentiary hearing "within 30 days after the filing of the notice of appeal." Danam filed his motion 55 days after filing his notice of appeal. Even though he was representing himself, he still was required to comply with applicable procedural rules. *See Flynn*, 243 Ariz. at 83, ¶ 24.

¶36 Timeliness aside, the superior court also did not abuse its discretion by denying Danam's motion because he failed to "identif[y] why new evidence and/or witnesses [were] required in order for the Court to make its determination on appeal." *See A.R.S. § 12-910(A)* (instructing court to hold evidentiary hearing "to the extent necessary to make the determination required by subsection E") (emphasis added).

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<sup>5</sup> We note that the affidavits Danam attached to his motion for rehearing did not refute any material findings of fact underlying the Board's decision. The affidavits purportedly were authored by students and their parents or caretakers; they said Danam was a good, well-liked teacher and that students were sad and upset when he left. They also expressed displeasure at Danam's termination. These affidavits were not material to the issues of whether Danam acted unprofessionally after he was terminated and what discipline, if any, was appropriate. *See A.A.C. R7-2-709(B)(4)*.

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**Decision of the Court**

**F. The Board and the Superior Court Did Not Violate Danam's Free-Speech Rights.**

¶37 Danam argues the Board and superior court violated his rights to free speech under the federal and state constitutions. *See generally* U.S. Const. amend. I; Ariz. Const. art. 2, § 6. Specifically, he contends that because his statements addressed issues of public concern and he was not unprofessional in criticizing Diamondback's principal, the Board's discipline violated his free-speech rights. In support of this argument, he cites *Pickering v. Board of Education of Township High School District 205*, 391 U.S. 563 (1968). We review questions of law *de novo*. *See Webb*, 202 Ariz. at 557, ¶ 7.

¶38 Danam's reliance on *Pickering* is misplaced. In that case, the board of education fired a teacher after the local newspaper published the teacher's letter criticizing the board's handling of bond proposals and resource allocation and accused the superintendent of preventing teachers from criticizing the bond proposal. 391 U.S. at 564-66. The Court held the board violated the teacher's First Amendment rights by firing him for the letter. *Id.* at 565.

¶39 In concluding that the teacher's letter constituted protected speech, the Court made clear that the teacher's statements concerned school funding, an issue of "legitimate public concern," and were "neither shown nor [could] be presumed to have in any way either impeded the teacher's proper performance of his daily duties in the classroom or to have interfered with the regular operation of the schools generally." *Id.* at 569, 571-73 (footnote omitted). Thus, as Danam himself acknowledges, the proper free-speech analysis under *Pickering* hinges on whether the speech at issue was "inappropriate and unprofessional."

¶40 Here, Danam's statements are a far cry from the teacher's letter to the editor in *Pickering*. First, the statements Danam made to his students, the threatening documents he sent to school officials and his communications to parents all concerned a private employment matter, not an issue of public concern. Second, the evidence showed Danam interrupted and impeded the school day by making students distraught, required the instructional aide to calm the students down by taking them outside and forced the principal to have a discussion with students about the situation in the middle of the school day. Further, Danam's threatening communications to school officials prompted the principal to obtain an injunction against workplace harassment, and Danam's emails, late-night calls and voicemails to parents were inappropriate and caused concern.

DANAM v. AZ BOARD OF EDUCATION  
Decision of the Court

**¶41** In short, the Board disciplined Danam not for what he said, but for what he *did*: He failed to protect students from "conditions harmful to learning, health, or safety," he lied on his 2017 employment application about having been under Department investigation, and he acted in a manner which "discredit[ed] the teaching profession." A.A.C. R7-2-1308(A)(1), (A)(6), (B)(15). For these reasons, Danam's claimed free-speech violation fails.<sup>6</sup>

**CONCLUSION**

**¶42** We conclude substantial evidence supported the Board's decision and the decision was not contrary to law, arbitrary, capricious or an abuse of discretion under A.R.S. § 12-910(E). Accordingly, we affirm the superior court's judgment upholding the Board's decision.



AMY M. WOOD • Clerk of the Court  
FILED: AA

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<sup>6</sup> Danam also argues the Board and the superior court violated his right to petition for redress of grievances. *See generally* U.S. Const. amend. I; Ariz. Const. art. 2, § 5. As relevant here, this right "bars state action interfering with access to . . . the judicial branch." *Ruiz v. Hull*, 191 Ariz. 441, 457, ¶ 61 (1998). Danam offers no evidence that the administrative or appellate process unconstitutionally interfered with his access to the judicial branch. As we have discussed, *see supra* ¶¶ 13-19, Danam received adequate opportunity to be heard at the Committee hearing and he has availed himself of his right to appeal the Board's decision.

IN THE  
**COURT OF APPEALS**  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE

FILED: 04/23/2020  
AMY M. WOOD,  
CLERK  
BY: DN

RAFAEL CEZAR DANAM, ) Court of Appeals  
Plaintiff/Appellant, ) Division One  
                          ) No. 1 CA-CV 18-0668  
                          )  
                          v. ) Maricopa County  
                          ) Superior Court  
ARIZONA BOARD OF EDUCATION, ) No. LC2018-000093-001  
                          )  
Defendant/Appellee. )  
                          )

**MANDATE**

TO: The Maricopa County Superior Court and the Honorable Patricia A Starr, Judge, in relation to Cause No. LC2018-000093-001.

This cause was brought before Division One of the Arizona Court of Appeals in the manner prescribed by law. This Court rendered its MEMORANDUM DECISION and it was filed on October 31, 2019.

The time for the filing of a motion for reconsideration has expired and no motion was filed. A petition for review was filed. By order, dated March 31, 2020, the Arizona Supreme Court denied the petition for review. Arizona Supreme Court No. T-19-0006-CV.

NOW, THEREFORE, YOU ARE COMMANDED to conduct such proceedings as required to comply with the MEMORANDUM DECISION of this court; a copy of which is attached hereto.

I, Amy M. Wood, Clerk of the Court of Appeals, Division One, hereby certify the attachment to be a full and accurate copy of the MEMORANDUM DECISION filed in this cause on October 31, 2019.

IN WITNESS WHEREOF, I hereunto set my hand and affix the official seal of the Arizona Court of Appeals, Division One, on April 23, 2020.



AMY M. WOOD, CLERK

By \_\_\_\_\_ dtm \_\_\_\_\_  
Deputy Clerk



## Court of Appeals

AMY M. WOOD  
CLERK OF THE COURT

STATE OF ARIZONA  
DIVISION ONE  
STATE COURTS BUILDING  
1501 WEST WASHINGTON STREET  
PHOENIX, ARIZONA 85007

Phone: (602) 452-6700  
Fax: (602) 452-3226

April 23, 2020

Jeff Fine, Clerk  
Maricopa County Superior Court  
201 West Jefferson Street  
Phoenix, Arizona 85003

Dear Mr. Fine:

RE: 1 CA-CV 18-0668

DANAM v. AZ BOARD OF ED  
Maricopa County Superior Court  
LC2018-000093-001

The following are attached in the above entitled and numbered cause:

Original MANDATE  
Copy of MEMORANDUM DECISION

There are no physical record items to be returned to your Court.

AMY M. WOOD, CLERK

By \_\_\_\_\_ dtm \_\_\_\_\_  
Deputy Clerk

A copy of the foregoing  
was sent to:

Rafael Cezar Danam  
Kim S Anderson  
Hon Patricia A Starr

IN THE  
**COURT OF APPEALS**  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE

FILED: 04/23/2020

AMY M. WOOD,

CLERK

BY: DN

RAFAEL CEZAR DANAM, ) Court of Appeals  
Plaintiff/Appellant, ) Division One  
v. ) No. 1 CA-CV 18-0668  
ARIZONA BOARD OF EDUCATION, )  
Defendant/Appellee. )  
\_\_\_\_\_  
 ) Maricopa County  
 ) Superior Court  
 ) No. LC2018-00093-001  
 )

**MANDATE**

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This cause was brought before Division One of the Arizona Court of Appeals in the manner prescribed by law. This Court rendered its MEMORANDUM DECISION and it was filed on October 31, 2019.

The time for the filing of a motion for reconsideration has expired and no motion was filed. A petition for review was filed. By order, dated March 31, 2020, the Arizona Supreme Court denied the petition for review. Arizona Supreme Court No. T-19-0006-CV.

NOW, THEREFORE, YOU ARE COMMANDED to conduct such proceedings as required to comply with the MEMORANDUM DECISION of this court; a copy of which is attached hereto.

I, Amy M. Wood, Clerk of the Court of Appeals, Division One, hereby certify the attachment to be a full and accurate copy of the MEMORANDUM DECISION filed in this cause on October 31, 2019.

IN WITNESS WHEREOF, I hereunto set my hand and affix the official seal of the Arizona Court of Appeals, Division One, on April 23, 2020.



AMY M. WOOD, CLERK

By \_\_\_\_\_ dtm \_\_\_\_\_  
Deputy Clerk



## Court of Appeals

AMY M. WOOD  
CLERK OF THE COURT

STATE OF ARIZONA  
DIVISION ONE  
STATE COURTS BUILDING  
1501 WEST WASHINGTON STREET  
PHOENIX, ARIZONA 85007

Phone: (602) 452-6700  
Fax: (602) 452-3226

April 23, 2020

Jeff Fine, Clerk  
Maricopa County Superior Court  
201 West Jefferson Street  
Phoenix, Arizona 85003

Dear Mr. Fine:

RE: 1 CA-CV 18-0668

DANAM v. AZ BOARD OF ED  
Maricopa County Superior Court  
LC2018-000093-001

The following are attached in the above entitled and numbered cause:

Original MANDATE  
Copy of MEMORANDUM DECISION

There are no physical record items to be returned to your Court.

AMY M. WOOD, CLERK

By \_\_\_\_\_ dtm \_\_\_\_\_  
Deputy Clerk

A copy of the foregoing  
was sent to:

Rafael Cezar Danam  
Kim S Anderson  
Hon Patricia A Starr

APPENDIX B: Decision and Orders of Superior Court of Arizona

# APPENDIX B

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# APPENDIX B

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2018-000093-001 DT

09/27/2018

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT

C. Avena

Deputy

RAFAEL CEZAR DANAM

RAFAEL CEZAR DANAM  
6104 W TOWNLEY AVE  
GLENDALE AZ 85302

v.

ARIZONA BOARD OF EDUCATION (001)  
PROFESSIONAL PRACTICES ADVISORY  
COMMITTEE (001)  
OFFICE OF ATTORNEY GENERAL STATE OF  
ARIZONA (001)

KIM SUSAN ANDERSON

JUDGE STARR  
OFFICE OF ADMINISTRATIVE  
HEARINGS  
REMAND DESK-LCA-CCC

**RECORD APPEAL RULING / REMAND**

Appellant Rafael Cezar Danam seeks reversal of the October 23, 2017 Decision of the Arizona State Board of Education (“the Board”) revoking Danam’s teaching certificate. For the following reasons, this Court affirms that Decision.

**I. FACTS AND PROCEDURAL BACKGROUND**

Danam held a substitute teaching certificate which expired in 2022. From 2015 through 2016, he worked as a substitute teacher at Bullhead City Elementary School. Beginning in August of 2016, Danam worked as a long-term substitute teacher at Diamondback Elementary School. He was paid the daily rate for a long-term substitute teacher and did not have a contract.

In September of 2016, the principal at Diamondback informed Danam that he would be relieved of his substitute teacher assignment. Danam then went to his class of 4<sup>th</sup> graders and

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told them he would not be their teacher anymore; while talking to the class, Danam became emotional and began to cry. Danam told the students to go home and tell their parents what had been done to him. Upon seeing Danam cry, the students became upset and began to cry as well. The principal then arrived and told Danam to leave immediately.

Danam began sending emails to district personnel, city officials, community leaders, and parents. Based on the content of some of the communications, the principal sought and obtained an Injunction Against Workplace Harassment.

In October of 2016, a Board investigator sent a Notice of Investigation letter to Danam. After receipt of the Notice, Danam responded in writing. The investigator later interviewed Danam.

In March of 2017, Danam applied for a job as a teacher with the Laveen Elementary School District. On the application, Danam answered "no" when asked if he had ever been the subject of a district or Department of Education investigation or inquiry. The Laveen District hired Danam to teach for the 2017-2018 school year. Shortly after he signed his employment contract, a human resources professional was notified that Danam was under investigation by the Department of Education. After he was confronted, Danam resigned.

On August 30, 2017, the Board served Danam with a Complaint, which alleged that he had engaged in unprofessional conduct by: (1) making inappropriate and unprofessional statements to his 4<sup>th</sup> grade class; (2) sending inappropriate and unprofessional communications to parents and school personnel; and (3) making a false statement, representation, or certification in an application for employment. The Board sought appropriate discipline for those violations.

The matter proceeded to a hearing before the Professional Practices Advisory Committee ("PPAC"). Danam appeared at the hearing, at which he testified, examined witnesses, and submitted exhibits. After the hearing, the PPAC reached the following conclusions:

- (1) On September 21, 2016, Danam "failed to make reasonable efforts to prevent pupils from conditions harmful to learning, health, or safety when he made inappropriate and unprofessional comments to 4<sup>th</sup> grade students that upset students, made students cry, and interrupted the school day."
- (2) Danam "sent numerous inappropriate and unprofessional emails to parents of 4<sup>th</sup> grade students . . ."

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MARICOPA COUNTY

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(3) Danam "widely disseminated written communications" containing threats.

(4) Danam made a false statement, representation or certification when he denied ever having been the subject of an investigation.

Accordingly, the PPAC found that Danam violated A.R.S. § 15-512(N) by making a false statement, representation or certification in his application for employment with the Laveen Elementary School District. The PPAC further found that Danam engaged in unprofessional conduct as defined by A.A.C. R7-2-1308(A)(1) (failing to make reasonable efforts to prevent pupils from conditions harmful to learning, health or safety), and A.A.C. R7-2-1308(B)(6) (falsifying or misrepresenting documents, records, or facts related to his professional qualifications, education history or character). Finally, the PPAC found that Danam engaged in unprofessional conduct in violation of A.A.C. R7-2-1308(B)(15) (engaging in conduct which discredited the teaching profession).

The PPAC recommended that the Board revoke Danam's teaching license.

The Board considered the PPAC's recommendation and heard argument from Danam at a public hearing. The Board modified some of the PPAC's findings of fact, adopted the PPAC's conclusions of law, and ordered that any and all teaching certificates held by Danam be revoked, and that all states and territories be notified.

The Board later denied Danam's request for rehearing/reconsideration. Danam filed a timely appeal from that decision. This Court has jurisdiction pursuant to A.R.S. §§ 12-124(A) and 12-905(A).

**II. STANDARD OF REVIEW**

A reviewing court shall affirm the action of an agency unless, after reviewing the record, the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion. A.R.S. § 12-910(E).

A reviewing court must defer to the agency's factual findings if they are supported by substantial evidence. *Gaveck v. Arizona State Bd. of Podiatry Examiners*, 222 Ariz. 433, 436, ¶ 11 (App. 2009). If the record supports two inconsistent factual conclusions, then there is substantial evidence to support an administrative decision that adopts either conclusion. *DeGroot v. Arizona Racing Comm'n*, 141 Ariz. 331, 336 (App. 1984).

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III. LEGAL ANALYSIS

*1. Danam has not established that the Board wrongly excluded or refused to admit affidavits, evidence or testimony at the hearing.*

Danam appeared at the hearing held by the PPAC, testified, examined witnesses, and provided exhibits. While he claims he was prevented from presenting affidavits, witnesses, and testimony, nothing in the record supports that assertion.

Danam's procedural due process rights were honored. "Procedural due process includes the right to notice and opportunity to be heard at a meaningful time and in a meaningful manner." *Salas v. Arizona Dept. of Econ. Sec.*, 182 Ariz. 141, 143 (App. 1995). Here, Danam had an opportunity to be heard in a meaningful time and manner: he received notice of the hearing, attended the hearing, participated in the hearing, and has now availed himself of his right of appeal. No more was required.

*2. The Board did not violate Danam's constitutional rights.*

Danam next argues that the Board violated his right to freedom of speech, and right to redress of grievances. But he provides no support for that assertion.

Here, the Board disciplined Danam based on unprofessional and inappropriate statements made to children, and threats made to school district personnel. Those facts distinguish this case from that of *Pickering v. Board of Education*, 391 U.S. 563 (1938), upon which Danam relies.

In *Pickering*, the teacher's statements could not be shown to have impeded the teacher's duties or interfered with the operation of the school. *Id.* at 572-73. The opposite situation is presented here. Moreover, Danam has not shown that any constitutional right he possesses was violated by the proceedings that took place here.

*3. The Board's decision was not arbitrary, capricious, or an abuse of discretion.*

The Court has reviewed the record to determine whether the Board's decision constituted an abuse of discretion, or was arbitrary and capricious.

An entity abuses its discretion when it exercises its discretion in a manner that is unreasonable, on untenable grounds, or for untenable reasons. *Tilley v. Delci*, 220 Ariz. 233, 238, ¶ 16 (App. 2009). An action is arbitrary and capricious if it is taken with a disregard for the facts and circumstances; when an action is taken honestly and upon due consideration, it is not

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MARICOPA COUNTY

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arbitrary and capricious. *Shaffer v. Arizona State Liquor Bd.*, 197 Ariz. 405, 411, ¶ 28 (App. 2000).

Here, the record establishes that the Board acted well within its statutory authority and rules when it revoked Danam's teaching certificate. Danam has presented no factual or legal argument that establishes an abuse of discretion, or that the Board's actions were arbitrary or capricious.

*4. Substantial evidence supports the Board's decision to revoke Danam's license*

Substantial evidence supports the Board's decision to revoke Danam's teaching license. Moreover, even if the record supported two inconsistent factual conclusions, there would be substantial evidence to support an administrative decision that adopts either conclusion. *DeGroot v. Arizona Racing Comm'n*, 141 Ariz. 331, 336 (App. 1984). In any event, in this case, the record only supports the conclusions reached by the Board.

*5. The discipline imposed did not constitute an abuse of discretion.*

On the record before it, the Court finds that the discipline imposed by the Board did not constitute an abuse of its discretion. In this case, the discipline imposed was within the statutory authority of the Board. *See A.R.S. § 15-203(A)(20).*

*6. The Board acted within its authority when it denied Danam's motion for rehearing.*

Finally, the Board appropriately denied Danam's motion for rehearing, because it failed to establish grounds for rehearing. *See A.A.C. R7-2-709(B)(1-7) (grounds for rehearing).*

IV. CONCLUSION

Based on the foregoing, this Court concludes there is substantial evidence to support the Board's decision, and that the decision was not contrary to law, was not arbitrary or capricious, and was not an abuse of discretion.

If any party wishes to appeal this decision, that party must do so pursuant to A.R.S. § 12-913 and Rule 9(a), Ariz. R. Civ. App. Proc.

IT IS THEREFORE ORDERED affirming the October 23, 2017 Decision of the Arizona State Board of Education revoking Danam's teaching license and informing all state and territories of that revocation.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

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IT IS FURTHER ORDERED that this is a final judgment for purposes of appeal, as no further matters remain pending. See Rule 54(c), Ariz. R. Civ. P.

IT IS FURTHER ORDERED signing this minute entry as a formal order of the Court.

/s/ Patricia A. Starr

THE HON. PATRICIA A. STARR  
JUDGE OF THE SUPERIOR COURT

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any new filings.

COURT STAMP

1 Rafael Cezar Danam  
2 6104 W. Townley Avenue  
3 Glendale, AZ 85302  
4 E-mail: [rafaeldanam@gmail.com](mailto:rafaeldanam@gmail.com)  
5 Telephone: (909) 297-9171 cellular.  
6 Appellant In *Propria Persona* "Noli Me Tangere"

5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
6 IN AND FOR THE COUNTY OF MARICOPA**

7 RAFAEL CEZAR DANAM,

CASE NO: LC 2018-000093-001

8 Appellant.

9 Vs.

10 ARIZONA BOARD OF EDUCATION,

APPELLANT OPENING BRIEF  
FOR JUDICIAL REVIEW OF  
ADMINISTRATIVE DECISION  
(Administrative Review)

11 Appellee.

HON. PATRICIA ANN STARR, JUDGE

14

15

16

17 **1. Table of Contents Appellant (JRAD Rule 17-0013, Rule 7 (a))**

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- 1 -

CASE NO: LC 2018-000093-001  
RAFAEL CEZAR DANAM  
Appellant

## **2. Appellant Introduction**

### **3. Statement of the Case Appellant**

19        4.1) On September 13, 2017 the Arizona Board of Education's Professional Practices  
20      Advisory Committee (PPAC) held hearing on AZSBE Case No. C-2016-585 in the Matter of  
21      Arizona Board of Education v. Rafael Danam. AZSBE presented all facts and evidence it  
22      amassed against Defendant-Rafael Danam (Appellant). During hearing Defendant-Rafael Danam  
23      (Appellant) noted absence of evidence and documentation presented to the AZSBE Investigative  
24      Unit, such as affidavits by parents and students, documentation of contract agreement and  
25      numerous contacts for interviews on content and subject of investigation by AZSBE  
26      Investigative Unit. AZSBE PPAC adopted all of its own findings of facts and evidence,  
27      excluding all noted affidavits, witnesses and documentation as evidence for cause of Defendant-

1 Rafael Danam (Appellant). Defendant-Rafael Danam (Appellant) provided supplementary briefs  
2 and documents to further requests of review by AZSBE PPAC on pertinent facts and evidence  
3 not reviewed, excluded or omitted by AZSBE PPAC.

4 4.2) On October 23, 2017 the AZSBE Members convened to review AZSBE PPAC's  
5 findings and recommendations. Defendant-Rafael Danam (Appellant) supplied final document  
6 for AZSBE review prior to final decision and order. AZSBE administrative decision against  
7 Defendant-Rafael Danam (Appellant) was to revoke all certification and to notify all states of  
8 action. No further inquiry was made by AZSBE on content and subject addressed by Defendant-  
9 Rafael Danam (Appellant) for inquiry and further review of evidence, pertinent facts, witnesses  
10 and affidavits.

11 4.3) On January 4, 2018, Defendant-Rafael Danam (Appellant) filed a Motion for  
12 Rehearing with Appeal Brief and Exhibits to the AZSBE. On February 26, 2018 the Motion for  
13 Rehearing was denied by the AZSBE. Included in Defendant-Rafael Danam (Appellant) Appeal  
14 Brief included citation and reference of Arizona Administrative Code §R7-2-709 for the  
15 following reasons for Motion for Rehearing §R7-2-709(B): "1. Irregularity in the proceedings of  
16 the hearing officer or prevailing party, or any order or abuse of discretion, whereby the moving  
17 party was deprived of a fair hearing." "2. Misconduct of the hearing body or the prevailing  
18 party." "5. Excessive or insufficient penalties." "6. Error of law occurring at the hearing or  
19 during the progress of the proceeding." And "7. That the findings of fact or decision is not  
20 justified by the evidence or is contrary to law."

21 4.4) On March 2, 2018, Appellant-Rafael Danam filed with the Superior Court of  
22 Arizona for Judicial Review of Administrative Decision for current Case No. LC 2018-000093-  
23 001 before Hon. Patricia Ann Starr.

24 **4. Statement of Facts**

25 5.1) From the inception of original filing by Appellant of complaint against former  
26 administrative staff (Principal-Martin Muecke) and executive administrative staff (Asst.  
27 Superintendent-Benji Hookstra) at Bullhead City Elementary School District (BCESD) to the

28

1 AZSBE Investigative Unit; to include Notice of Investigation (NOI) dated October 13, 2016  
2 against Appellant, the prehearing phase of collecting and reviewing facts, evidence and  
3 witnesses, in addition to reviewing all pertinent laws and/or statutes of violation from September  
4 21, 2016 thru May 26, 2017 from the AZSBE Investigative Unit's Notice of Case Transfer dated  
5 05/26/2017, to the hearing of AZSBE PPAC on September 13, 2017 and final decision of  
6 AZSBE on October 23, 2017, to the final denial of Motion for Rehearing on February 26, 2018,  
7 the entire scope of AZSBE Case No. C-585-2016 presented numerous acts of ***gross negligence***  
8 and ***abuse of discretion*** that compelled Appellant to prove errors committed by AZSBE of  
9 A.A.C. §R7-2-709(B) (1)(2)(5)(6)(7) by Judicial Review of Administrative Decision and blatant  
10 violations of U.S. Constitutional and Arizona Constitutional Laws against Appellant by authority  
11 of 42 U.S.C. § 1983; A.R.S. § 12-1841; cf. The Supremacy Clause of the United States  
12 Constitution (Article VI, Clause 2), U.S. Constitution Amendments 1st, 5th, 6th, 14th; Arizona  
13 Constitution Article 2, § 4, 5,6 and 32 (Marbury v. Madison, 5 U.S. 137 (1803); Martin v.  
14 Hunter's Lessee, 14 U.S. 304 (1816); Cohens v. Virginia, 19 U.S. 264 (1821); Pennsylvania v.  
15 Nelson, 350 U.S. 497 (1956); Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)).

16 5.2) Appellant seeks Judicial Review of Administrative Decision to reverse in whole  
17 decision of AZSBE against Appellant for reasons of unconstitutionality of entire administrative  
18 hearing and proceedings pursuant to A.R.S. §12-931 and A.A.C. §R7-2-709(B) (1)(2)(5)(6)(7).

19 **5. Statement of the Issues**

20 6.1) Appellee never established the true legal definition of preponderance of evidence  
21 against Appellant that validated the AZSBE administrative decision to revoke certification and  
22 notification to all states and territories of decision. Appellee committed gross negligence and  
23 abuse of discretion in denying and/or omitting affidavits, evidence and witnesses that exonerated  
24 Appellant from all allegations presented against Appellant by Appellee in addition to violating  
25 U.S. Constitutional and Arizona Constitutional Laws afforded to Appellant by "freedom of  
26 speech" and "redress of grievances."

27

28

1           6.2) Reference to case record titled Findings of Facts, Conclusions of Law,  
2       Recommendations dated September 12, 2017 16-pages; Findings of Facts 6-8 narrative accepted  
3       by the AZSBE from PPAC shows gross negligence and abuse of discretion in not reviewing  
4       criteria for employment agreements by contractual documentation which Appellant provided in  
5       original AZSBE Defendant Packet as well as numerously referenced in hearing, trial and  
6       supporting correspondence.

7           6.3) Findings of Facts 9-11 narrative accepted by the AZSBE from PPAC shows gross  
8       negligence and abuse of discretion by not accepting and/or omitting affidavits and supporting  
9       evidence presented by Appellant that nullified the testimony of witness by affidavit, evidence  
10      and lack of validation from entirety of former class by both parents and students.

11          6.4) Findings of Facts 12-20 narrative accepted by the AZSBE from PPAC shows gross  
12       negligence and abuse of discretion by directly violating constitutional right and legal precedence  
13       by Appellant of "freedom of speech" and "to redress grievances."

14          6.5) Findings of Facts 24-28 narrative accepted by the AZSBE from PPAC shows gross  
15       negligence and abuse of discretion due to the fact Appellant directly submitted numerous  
16       communications to Garnett Winders, Chief Investigator of AZSBE Investigative Unit who was  
17       continuously providing information concerning on-going investigation which was perpetrating  
18       errors of gross negligence and abuse of discretion against Appellant that was also violating  
19       constitutional laws and rights ascribed to Appellant in addition to defamation against Appellant  
20       by Appellee representative.

21          6.6) Conclusions of Law paragraphs 1-3, noting paragraph 3 reference to unprofessional  
22       or immoral conduct as authority of law in A.A.C. R7-2-1308(C) was never substantiated by a  
23       preponderance of evidence in case record of evidence by Appellee, in addition to establishing  
24       reference to law in legal cases in which Appellant had a personal standard of ethical and moral  
25       standards of professional conduct referenced in evidence presented by Appellant and Appellant  
26       by affidavits and exhibits established numerous positive academic and social professional  
27       relationships amongst students of all grades throughout the BCESD #16 school community

1 nullifying reference by Appellee to Winters v. Arizona Board of Education, 207 Ariz. 173; 83  
2 P.3d 1114 (2004) in addition to Appellant established numerous positive academic and social  
3 relationships throughout the BCESD #16 community that also nullifies Appellee's reference to  
4 Welch v. Bd. of Ed. of Chandler U. Sch. Dist., 667 P.2d 746 (Ariz. Ct. App. 1983).

5 6.7) Conclusions of Law 10, 12 accepted by AZSBE by PPAC and representation by  
6 Asst. Attorney General Office present gross negligence and abuse of discretion by ignoring,  
7 omitting and/or rejecting evidence and exhibits that Appellant presented to nullify Appellee's  
8 claim of a preponderance of evidence against Appellant.

9 **6. Appellant's Argument**

10 Appellee revoked certificate of Appellant and notified all territories and states of decision  
11 against Appellant by claim AZSBE as Appellee claimed they fulfilled the legal term of a  
12 preponderance of evidence against Appellant. Appellee committed gross negligence and abuse of  
13 discretion by committing the following violations against Appellant in which Appellant seeks  
14 judicial order to reverse the decision in whole by authority of A.R.S. 12- 911(A) :

15 7.1) Violation of A.A.C. §R7-2-709(B): "1. Irregularity in the proceedings of the hearing  
16 officer or prevailing party, or any order or abuse of discretion, whereby the moving party was  
17 deprived of a fair hearing." Appellee by abuse of discretion deprived Appellant of a fair hearing,  
18 right to appeal and defamation by violating the U.S. Constitution and Arizona Constitution by  
19 failing to provide affidavits, exhibits and evidence for the cause Appellant and refused to  
20 acknowledge and review with impartiality pertinent affidavits, exhibits and evidence that  
21 provided a preponderance of evidence in favor of Appellant, violation of constitution reference  
22 to 42 U.S.C. § 1983; A.R.S. § 12-1841; cf. The Supremacy Clause of the United States  
23 Constitution (Article VI, Clause 2), U.S. Constitution Amendments 1st, 5th, 6th, 14th; Arizona  
24 Constitution Article 2, § 4, 5,6 and 32 (Marbury v. Madison, 5 U.S. 137 (1803); Martin v.  
25 Hunter's Lessee, 14 U.S. 304 (1816); Cohens v. Virginia, 19 U.S. 264 (1821); Pennsylvania v.  
26 Nelson, 350 U.S. 497 (1956); Brown v. Board of Education of Topeka, 347 U.S. 483 (1954));  
27 violation of impartiality reference to Witherspoon v. Illinois, 391 U.S. 510 (1968); McCray v.

1 Illinois, 386 U.S. 300, 313–14 (1967); Pennsylvania v. Ritchie, 480 U.S. 39, 51–54 (1987);  
2 Olden v. Kentucky, 488 U.S. 227 (1988) (per curiam); Michigan v. Lucas, 500 U.S. 145 (1991);  
3 violation of due process reference to Moore v. Dempsey, 261 U.S. 86 (1923); violation of  
4 freedom of speech and redress of grievances reference to **Pickering v. Board of Education, 391**  
5 **U.S. 563 (1968)**; Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972); Givhan v.  
6 Western Line Consolidated School District, 439 U.S. 410 (1979); Wieman v. Updegraff, 344 U.  
7 S. 183 (1952); Shelton v. Tucker, 364 U. S. 479 (1960); Keyishian v. Board of Regents, 385 U. S.  
8 589 (1967); Hartman v. Moore, 547 U.S. 250, 256, 126 S.Ct. 1695, 164 L.Ed.2d 441 (2006);  
9 defamation against Appellant by gross negligence and abuse of discretion by Appellee, reference  
10 to A.R.S. § 12–541; cf. A.R.S. §12-3101; cf. 28 U.S. Code § 4101; Denmark, Danish Penal Code  
11 Article 267; United Kingdom Defamation Act 2013; Italy Article 368, Penal Code; Spain Article  
12 205 of the Penal Code; Switzerland, Swiss Penal Code Articles 174-1 and 174-2; “General  
13 comment No. 34”, U.N. Human Rights Committee, 102nd session, published 12 September  
14 2011, reference to Deer Valley Unified Sch. Dist. No.97, 214 Ariz. at 296 ¶ 9, 152 P.3d at 493,  
15 pg. 13-20 Office of Attorney General Handbook, 2013; Knox v. New York City Dept. of Educ.,  
16 85 A.D.3d 439 (N.Y. App. Div. 1st Dept. 2011. Appellee has violated A.A.C. §R7-2-709(B) (1)  
17 which by this alone merits judicial order and judgment to reverse in whole the decision of the  
18 AZSBE as Appellee against Appellant which primary reference of legal authority is **Pickering v.**  
19 **Board of Education, 391 U.S. 563 (1968)**.

20 7.2) Violation of A.A.C. §R7-2-709(B): “2. Misconduct of the hearing body or the  
21 prevailing party.” By direct violation by Appellee of due process by gross negligence and abuse  
22 of discretion during the investigation phase, pre-trial phase, hearing phase, trial phase and motion  
23 of rehearing phase Appellee has violated the Appellant’s constitutional rights in violation of 42  
24 U.S.C. § 1983; A.R.S. § 12-1841; cf. The Supremacy Clause of the United States Constitution  
25 (Article VI, Clause 2), U.S. Constitution Amendments 1st, 5th, 6th, 14th; Arizona Constitution  
26 Article 2, § 4, 5, 6 and 32. Review of Appellant’s hearing on September 13, 2017, Appellant’s  
27 trial on October 23, 2017 and Appellant’s motion for rehearing on February 26, 2018 and all

1 supporting documents and record of dates will prove a preponderance of evidence in favor of  
2 Appellant to reverse in whole decision of AZSBE as Appellee.

3         7.3) Violation of A.A.C. §R7-2-709(B): “5. Excessive or insufficient penalties.” Appellee  
4 has caused numerous damages by administrative decision against Appellant, by Appellant’s loss  
5 of employment, loss of future employment, loss of graduation from graduate program, loss of  
6 ability to repay TEACH grant by U.S. Department of Education, loss of financial ability for  
7 financial obligations and responsibilities for daughters, canine pets and final internment of  
8 Appellant’s maternal parent “mother,” intentional infliction of emotional distress in directly  
9 witnesses hundreds of former students suffer severe emotional distress and finally intentional  
10 infliction of emotional distress as a combat veteran and unnecessary added pressures of  
11 professional development and preparations for current and near future duties as officer candidate  
12 for U.S. Air Force Reserve under Department of Defense. This is a direct violation of the Eighth  
13 Amendment (Amendment VIII) of the United States Constitution which prohibits the federal  
14 government from imposing excessive bail, excessive fines, or cruel and unusual punishments.

15         7.4) Violation of A.A.C. §R7-2-709(B): “6. Error of law occurring at the hearing or  
16 during the progress of the proceeding.” Appellee has violated Appellant’s right of “freedom of  
17 speech” and “redress of grievances” by concurrence of complete ruling of U.S. Supreme Court in  
18 **Pickering v. Board of Education, 391 U.S. 563 (1968)** that favors cause of Appellant in current  
19 case before Hon. Patricia Ann Starr.

20         7.5) Violation of A.A.C. §R7-2-709(B): “7. That the findings of fact or decision is not  
21 justified by the evidence or is contrary to law.” Appellant reference to both the context of ruling  
22 and scope of application of ruling in favor of Appellant against Appellee in **Pickering v. Board**  
23 **of Education, 391 U.S. 563 (1968)**.

24                     7.) “**notice under Rule 21(a),”**

25         Appellant will provide future motion for rightful and proper monetary compensation that  
26 is lawful within JRAD and is not a violation double jeopardy of Appellee’s constitutional  
27 protection and right in reference to pending Arizona Superior Court case and United States Court

1 of District of Arizona case against Appellee by Appellant. Proper notification of federal case has  
2 been presented for judicial notice to Hon. Patricia Ann Starr.

3 **8. Conclusion**

4 Before Hon. Patricia Ann Starr Appellant prays judicial order in favor of cause of  
5 Appellant by judicial order to reverse the decision in whole by authority of A.R.S. 12—911(A)  
6 (5) of the Arizona Board of Education's decision on October 23<sup>rd</sup>, 2017 in Case No. C-2016-585  
7 ordering *Revocation of Teaching Certificate and Notification to All States and Territories*.  
8 Appellant has suffered numerous damages of defamation to include loss of employment and  
9 future employment, loss of graduation ability from Grand Canyon University College of  
10 Education Master's in Elementary Education Program with a G.P.A. of 3.9 and intentional  
11 emotional distress by directly witnessing the emotional distress of hundreds former students from  
12 Bullhead City Elementary School District and Heritage Elementary Charter School. A  
13 scrutinized and thorough review of entire case and record by Hon. Patricia Ann Starr will  
14 validate on its own objectively impartial review of record a preponderance of evidence in favor  
15 of Appellant's claim of gross negligence and abuse of discretion by Appellee. Appellant prays  
16 Hon. Patricia Ann Starr to rule in favor of cause of Appellant to reverse decision of Appellee in  
17 whole by authority of A.R.S. 12—911(A) (5).

18

19

Respectively submitted to

20

HON. PATRICIA ANN STARR, JUDGE

21

SUPERIOR COURT OF ARIZONA

22

MARICOPA COUNTY

23

24

DATED: Friday, May 25<sup>th</sup>, 2018

25

26

27

RAFAEL CEZAR DANAM, Appellant (signed)

28

- 9 -

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CASE NO: LC 2018-000093-001  
RAFAEL CEZAR DANAM  
Appellant

1 ~~A.R.S. Title 12 Courts and Civil Proceedings; Chapter 13; Article 3: Oath and Affirmation; §12-2221~~

2 ~~"I declare in the County of Maricopa, State of Arizona under penalty of perjury that the foregoing is true~~  
3 ~~and correct. Executed on \_\_\_\_\_ (date).~~

4 ~~Affidavit of \_\_\_\_\_ Signature~~

5 ~~NOTARY PUBLIC \_\_\_\_\_ Signature~~

6 ~~§12-2221(B) The oath or affirmation may be administered by any judge, clerk or deputy clerk of any~~  
7 ~~court of record, justice of the peace, notary public, referee or commissioner of a court of record.~~

8 **JRAD Form 8: Certification of Word Count**

9 A.R.S. § 12-904(B)

10 The undersigned certifies that the brief/motion to which this Certificate is attached uses  
11 type of at least 14 points, is double-spaced, and contains 2,808 words. [not including heading;  
12 includes table of contents thru notary certification of Appellant, total word count of 3,081 of  
13 entire Appellant Opening Brief]

15 The document to which this Certificate is attached does not/does exceed the word limit  
16 that is set by JRAD Rule 8 as applicable (must not exceed 14,000 words).

17 The information provided in this Certification is true and complete.

19 DATED this 25<sup>th</sup> day of May 2018.

21 Rafael C. Danam, Appellant

1 ORIGINAL filed on this 25<sup>th</sup> day of May 2018 with:

2 Clerk of the Court

3 Maricopa County Superior Court

4 201 West Jefferson

5 Phoenix, AZ 85003

6

7 COPY of filed court documents mailed on this 25<sup>th</sup> day of May 2018 to:

8 Honorable Patricia Ann Starr, Presiding Judge

9 Maricopa County Superior Court

10 Old Courthouse #309

11 125 West Washington

12 Phoenix, AZ 85003

13

14 COPY of filed court documents emailed on this 25<sup>th</sup> day of May 2018 to:

15 Kim S. Anderson, State Bar No. 010584

16 Assistant Attorney General

17 State Government Division

18 Education and Health Section

19 2005 N. Central Avenue

20 Phoenix, AZ 85004

21 Email: kim.anderson@azag.gov

22

23

24

25

26

27

28

COURT STAMP  
COURT CERTIFIED  
04/26/2018  
CHRIS DEROSE, CLERK  
R. MALLARD  
DEPUTY CLERK

1 Rafael Cezar Danam  
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3 Glendale, AZ 85302  
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5 Telephone: (909) 297-9171 cellular  
6 Appellant In *Propria Persona* "Noli Me Tangere"

5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
6 IN AND FOR THE COUNTY OF MARICOPA**

7 RAFAEL CEZAR DANAM,  
8 Appellant.  
9 Vs.  
10 ARIZONA BOARD OF EDUCATION,  
11 Appellee.  
12  
13

CASE NO: LC 2018-000093-001

**REDACTED**

MOTION FOR NEW EVIDENCE AND  
WITNESSES FOR JUDICIAL REVIEW OF  
ADMINISTRATIVE DECISION  
(Administrative Review)

HON. PATRICIA ANN STARR, JUDGE

15 **1. MOTION FOR NEW EVIDENCE AND WITNESSES**

16 Presented before Hon. Patricia Ann Star, Presiding Judge (Arizona Constitution, Article  
17 6, § 26; A.R.S. §§ 38-231; cf. 28 U.S. Code § 453) Appellant moves the Court for New Evidence  
18 and Witnesses for Judicial Review of Administrative Decision Case No. LC 2018-000093-001  
19 pursuant to A.R.S. § 12-910 (A) (B), §§ 12-2201, 12-2261, Rules of Procedure for Judicial  
20 Review of Administrative Decision Rule 10, to introduce exhibits and testimony not offered  
21 during the Administrative Hearing in addition to the relevant and admissible exhibits and  
22 testimony contained in the record of Arizona State Board of Education (AZSBE) filed in this  
23 Court. The additional evidence sought to be introduced is described and the reasons why this  
24 Motion may be granted are stated in the attached Memorandum of Points and Authorities.  
25 Motion of new evidence and testimony by witnesses requires Judicial Subpoena Order A.R.S. §  
26 12-2212 pursuant to Family Educational Rights and Privacy Act of 1974 (FERPA) reference to  
27 34 C.F.R. § 99.3; 20 U.S.C. § 1232g (b) (1) (J) (i) and (ii), (b) (2) (B); 34 C.F.R. § 99.31(a) (9).

28

- 1 -

CASE NO: LC 2018-000093-001  
RAFAEL CEZAR DANAM  
Appellant

**MOTION FOR NEW EVIDENCE AND WITNESSES FOR JUDICIAL REVIEW OF  
ADMINISTRATIVE DECISION**

Respectively Submitted to  
HON. PATRICA ANN STARR, JUDGE  
SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

DATED: Thursday, April 26<sup>th</sup>, 2018

RAFAEL CEZAR DANAM, Appellant (signed)

**A.R.S. Title 12 - Courts and Civil Proceedings; Chapter 13; Article 3: Oath and Affirmation; §12-2221**

"I declare in the County of Maricopa, State of Arizona under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_ (date).

**Affidavit of** \_\_\_\_\_ **Signature**

NOTARY PUBLIC \_\_\_\_\_ Signature \_\_\_\_\_

§12-2221(B) The oath or affirmation may be administered by

§12-2221(B) The oath or affirmation may be administered by any judge, clerk or deputy clerk of any court of record, justice of the peace, *notary public*, referee or commissioner of a court of record.

1 MEMORANDUM OF POINTS AND AUTHORITIES Pages 4-8 OF THIS MOTION

2 ORIGINAL filed on this 26<sup>th</sup> day of April 2018 with:

3 Clerk of the Court

4 Maricopa County Superior Court

5 201 West Jefferson

6 Phoenix, AZ 85003

7

8 COPY of filed court documents mailed on this 26<sup>th</sup> day of April 2018 to:

9 Honorable Patricia Ann Starr, Presiding Judge

10 Maricopa County Superior Court

11 Old Courthouse #309

12 125 West Washington

13 Phoenix, AZ 85003

14

15 COPY of filed court documents emailed on this 26<sup>th</sup> day of April 2018 to: (ARCAP Rule 5)

16 Kim S. Anderson, State Bar No. 010584

17 Assistant Attorney General

18 State Government Division

19 Education and Health Section

20 2005 N. Central Avenue

21 Phoenix, AZ 85004

22 Email: kim.anderson@azag.gov

23

24

25

26

27

28

1  
2 RAFAEL CEZAR DANAM,  
3  
Appellant.

4 Vs.  
5  
6 ARIZONA BOARD OF EDUCATION,  
7  
Appellee.

CASE NO: LC 2018-000093-001

MEMORANDUM OF POINTS AND  
AUTHORITIES FOR  
MOTION FOR NEW EVIDENCE AND  
WITNESSES FOR JUDICIAL REVIEW OF  
ADMINISTRATIVE DECISION  
(Administrative Review)

HON. PATRICIA ANN STARR, JUDGE

10  
11 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S**  
12 **MOTION FOR NEW EVIDENCE AND WITNESSES**

13 A.R.S. § 12-910 (A) (B) authorizes by JRAD Rule 10 (A) (B) provides Plaintiff  
14 constitutional rights denied, ignored and omitted during the scope of the AZSBE Administrative  
15 Hearing process during pre-hearing, hearing and post hearing/motion of appeal of AZSBE Case  
16 C-2016-585 (ref. 42 U.S.C. § 1983; A.R.S. § 12-1841), which violated The Supremacy Clause of  
17 the United States Constitution (Article VI, Clause 2), U.S. Constitution Amendments 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup>,  
18 14<sup>th</sup>; Arizona Constitution Article 2, § 4, 5,6 and 32 (Marbury v. Madison, 5 U.S. 137 (1803);  
19 Martin v. Hunter's Lessee, 14 U.S. 304 (1816); Cohens v. Virginia, 19 U.S. 264 (1821);  
20 Pennsylvania v. Nelson, 350 U.S. 497 (1956); Brown v. Board of Education of Topeka, 347 U.S.  
21 483 (1954)), by excluding, omitting and/or prohibiting relevant facts by evidence and testimony  
22 of witnesses directly provided by Appellant in original Administrative Hearing of AZSBE. To be  
23 admitted for the record is the affidavit and witness testimony of [REDACTED] from  
24 Diamondback Elementary School, Bullhead City Elementary School District (BCESD) #16 4<sup>th</sup>  
25 Grade Class 2016-2017; [REDACTED] Heritage  
26 Elementary Charter School (HES) 4<sup>th</sup> Grade Class 2017-2018, in addition testimony from parents  
27

1 [REDACTED], will provide factual evidence  
2 that exonerates Appellant from AZSBE order against Appellant, Rafael C. Danam and expose  
3 gross negligence and biased judgement of AZSBE order against Appellant. In addition, admitted  
4 as evidence affidavit of [REDACTED]

5 [REDACTED] Diamondback Elementary School BCESD #16 4<sup>th</sup> Grade Class  
6 2015-2016, affidavit of Rebecca Scott, BSN-RN/WARMC-ED.

Name: First and Last	Admittance of Affidavit and Testimony by Appearance
[REDACTED]	Affidavit and Testimony by Appearance
[REDACTED]	Affidavit and Testimony by Appearance
[REDACTED]	Testimony by Appearance (Affidavit in Original Record)
[REDACTED]	Testimony by Appearance
[REDACTED]	Affidavit Only
[REDACTED]	Affidavit Only
[REDACTED]	Affidavit Only
Rebecca Scott	Affidavit Only

To Be Determined by Judicial Subpoena	27 Parents & Students of Heritage Elementary Charter School, 4 <sup>th</sup> Grade 2017-2018
To Be Determined by Judicial Subpoena	25 Parents & Students of Diamondback Elementary School, 4 <sup>th</sup> Grade 2016-2017

17 *NOTE: Judicial consideration to assign all costs of travel of parents and students volunteering to*  
18 *provide actual testimony as witnesses should be authorized against AZSBE for costs, to include*  
19 *planning of parents and students to visit Phoenix Children's Museum at 215 N 7th St, Phoenix,*  
20 *AZ 85034, during presentation of witness testimonies during trial.*

21 Judicial Subpoena Order provides opportunity for "ALL" students and parents of  
22 Diamondback Elementary School BCESD #16 4<sup>th</sup> Grade Class 2016-2017 and Heritage  
23 Elementary Charter School 4<sup>th</sup> Grade Class 2017-2018 to provide essential facts and truth

1 regarding negative effects of removal of Appellant as primary teacher of former students. In  
2 addition opportunity exposes the mockery and unprofessional gross negligence exhibited by  
3 Counsel for AZSBE during trial session of Administrative Hearing with concurrence by AZSBE,  
4 AZSBE PPAC and AZSBE Investigative Unit. AZSBE individual members to include public  
5 employees of AZSBE Professional Practices Advisory Committee (PPAC), AZSBE Investigative  
6 Unit and counsel for AZSBE from AZ Attorney General Office. The burden of proof and  
7 establishing a preponderance of evidence against Appellant has been utterly failed by the gross  
8 negligence of Appellee AZSBE.

9 Primary authority is *Pickering v. Board of Education*, 391 U.S. 563 (1968), in which U.S.  
10 Supreme Court ruled numerous errors by lower administrative and judicial venues of trial against  
11 Plaintiff/Appellant Marvin L. Pickering. Admission of affidavits with additional affidavits and  
12 testimony by parents and students of Diamondback Elementary School BCESD #16 4<sup>th</sup> Grade  
13 Class 2016-2017 and HES 4<sup>th</sup> Grade Class 2017-2018 will provide a preponderance of evidence  
14 exonerating Appellant and completely nullifying all negative allegations and charges rendered  
15 against Appellant by AZSBE administrative decision and order, exposing gross negligence and  
16 biased judgment of AZSBE. The Ninth Circuit previously held that certain types of gross  
17 negligence can implicate [violation of] the Due Process Clause. See, e.g., *Neely v. Feinstein*, 50  
18 F.3d 1502, 1507 (9th Cir. 1995) (“conscious indifference amounting to gross negligence”);  
19 *Houghton v. South*, 965 F.2d 1532, 1536 (9th Cir. 1992); *Estate of Conners v. O'Connor*, 846  
20 F.2d 1205, 1208 (9th Cir. 1988); see also *Fargo v. City of San Juan Bautista*, 857 F.2d 638, 641  
21 (9th Cir. 1988). In addition, 42 U.S.C. §1983 imposes liability on one who, under color of law,  
22 deprives a person of any “rights, privileges, or immunities secured by the Constitution and laws.”  
23 Government officials performing discretionary functions receive qualified immunity from § 1983  
24 actions unless their conduct violated a clearly established constitutional or federal statutory right  
25 of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102  
26 S.Ct. 2727, 73 L.Ed.2d 396 (1982); *Weatherford ex rel. Michael L. v. State*, 206 Ariz. 529, 532,  
27 P.3d 320, 323 (2003).

1                   Appellee accepted perjured testimony A.R.S. § 13-2702(A) of witness (Ms. Laura  
2 Kapusta) against Plaintiff without confirming credibility of testimony with (26) parents of 4th  
3 grade class 2016-2017, affidavit and testimony provided by Plaintiff invalidating false and  
4 perjured testimony submitted by Appellee/Defendant was presented officially before all entities  
5 of the AZSBE to include PPAC and AZSBE Investigative Unit, "Knowing use of perjured or  
6 false testimony by the prosecution is a denial of due process and is reversible error without the  
7 necessity of a showing of prejudice to the defendant." State v. Ferrari, 112 Ariz. 324, 334 (1975)  
8 cf. Larsen v. Decker, 196 Ariz. 239, 241 ¶ 6 (App. 2000).

9                   Furthermore, gross negligence is defined as "a conscious, voluntary act or omission in  
10 reckless disregard of a legal duty and of the consequences to another party, who may typically  
11 recover exemplary damages."<sup>1</sup> Defendant failed their duty by acts of gross negligence by the  
12 standard of judicial review for negligence:

13                   Four elements are required to establish a *prima facie* case of negligence:

- 14                   (1) The existence of a legal duty that the defendant owed to the plaintiff
- 15                   (2) Defendant's breach of that duty
- 16                   (3) Plaintiff's sufferance of an injury
- 17                   (4) Proof that defendant's breach caused the injury (typically defined through  
18                   proximate cause)<sup>2</sup>

19                   Appellant further validates purpose of motion because of the enormous harm against  
20 former students that AZSBE has committed against, which affidavits and testimony of children  
21 and parents will prove an abhorrent perpetration of uncompassionate, inconsiderate,  
22 unprofessional gross negligence that demands justice by the trier of facts because of the harm  
23 suffered by the emotional distress of children. Appellant pursues justice for the sake of former  
24

---

25                   <sup>1</sup> Black's Law Dictionary, 2009 ed

26                   <sup>2</sup> Cornell Law School, Legal Information Institute, Accessed 04/24/2018

27                   <https://www.law.cornell.edu/wex/negligence>

1 students under his care, "Unless someone like you cares a whole lot, nothing's going to change.  
2 It's not."<sup>3</sup>

### 3 CONCLUSION

4 Before Hon. Patricia Ann Starr, Presiding Judge, this motion for new evidence and  
5 witnesses for testimony during judicial review of administrative decision is presented for  
6 affirmation and authorizing of order approving motion by Plaintiff. Plaintiff confides judicial  
7 prudence and scrutiny in application of law and trier of facts by Hon. Patricia Ann Starr,  
8 confiding the judicial doctrine and practice of “Parens Patriae” of Family Court and Juvenile  
9 Justice venue to the Administrative Review venue, “The proper role of the judiciary is one of  
10 interpreting and applying the law...”U.S. Associate Justice Sandra Day O’Connor.<sup>4</sup> Plaintiff has  
11 had to apply diligence and perseverance in ensuring both exoneration and reversal of  
12 Administrative Order of AZSBE be nullified and reversed with prejudice in the final review of  
13 case before Hon. Patricia Ann Starr, “It is the individual who has acted or tried to act who will  
14 not only force a decision but also have a hand in shaping it.” –Justice Sandra Day O’Connor<sup>5</sup>

Respectively Submitted to

HON. PATRICA ANN STARR, JUDGE

**SUPERIOR COURT OF ARIZONA**

## MARICOPA COUNTY

19 DATED: Thursday, April 25<sup>th</sup>, 2018

RAFAEL CEZAR DANAM, Appellant (signed)

<sup>3</sup> Theodor Seuss Geisel, bka "Dr. Seuss" The Lorax (1971)

<sup>4</sup> Sandra Day O'Connor, U.S. Associate Justice, U.S. Library of Congress, accessed 04/24/2018

<https://www.loc.gov/item/2002715166/>

<sup>5</sup> Sandra Day O'Connor, *The Majesty of the Law: Reflections of a Supreme Court Justice*, Random House 2003.

ISBN 13: 978-0375600254

COURT STAMP

1 Rafael Cezar Danam  
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3 Glendale, AZ 85302  
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5 Telephone: (909) 297-9171 cellular  
6 Appellant In *Propria Persona* "Noli Me Tangere"

5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
6 IN AND FOR THE COUNTY OF MARICOPA**

7 RAFAEL CEZAR DANAM,

CASE NO: LC 2018-000093-001

8 Appellant.

9 Vs.

MOTION FOR RECONSIDERATION OF  
10 RULING BY APPELLANT  
11 (Administrative Review)

12 ARIZONA BOARD OF EDUCATION,

HON. PATRICIA ANN STARR, JUDGE

13 Appellee.

14 **MOTION FOR RECONSIDERATION OF RULING**

15 Presented before Hon. Patricia Ann Star, Presiding Judge (Arizona Constitution, Article  
16 6, § 26; A.R.S. §§ 38-231; cf. 28 U.S. Code § 453) Appellant moves the Court for Motion for  
17 Reconsideration of Ruling in Minute Entry dated May 17<sup>th</sup>, 2018, Ordering Denial of Motion for  
18 New Evidence and Witnesses by Appellant. This request of reconsideration is authorized by Rule  
19 7.1 Ariz. R. Civ. P. reference to Arizona Supreme Court No. R-17-0013 for JRAD.

21

22 **1. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**  
23 **FOR RECONSIDERATION OF RULING**

24 1.1) Per authorization of Arizona Supreme Court No. R-17-0013 for JRAD Appellant  
25 requested extension of time for filing Motion for New Evidence and Witnesses noting applicable  
26 rules of the court and direct quotation of JRAD Rule 2 (b): "(b) Enlargement of Time. The court  
27 for good cause shown may shorten or extend the time for doing any act required by these rules or

28

- 1 -

CASE NO: LC 2018-000093-001  
RAFAEL CEZAR DANAM  
Appellant

MOTION FOR RECONSIDERATION OF RULING BY APPELLANT

1 by A.R.S. §§ 12–901 to –914, except the court may not extend the time for the filing of a notice  
2 of appeal.” Appellant provided references to law and court rules in addition to supporting facts  
3 that proved cause of motion for new evidence and/or testimony before Hon. Patricia Ann Starr  
4 for consideration of extension of time. Appellant believes opinion of judge in order did not apply  
5 objective consideration of pertinent facts, circumstances and references to law and court rules  
6 addressed in motion and reply motion of Appellant.

7       1.2) New Evidence and/or Witnesses on Appeal A.R.S. § 12-910(E). Appellant addressed  
8 relevance of evidence and testimony of parents and students of former 4<sup>th</sup> grade class of 2016-  
9 2017 at Diamondback Elementary School of BCESD #16 to negate the false testimony presented  
10 during hearing, as noted in original motion:

11           Appellee accepted perjured testimony A.R.S. § 13–2702(A) of witness (Ms. Laura  
12 Kapusta) against Plaintiff without confirming credibility of testimony with (26)  
13 parents of 4<sup>th</sup> grade class 2016-2017, affidavit and testimony provided by Plaintiff  
14 invalidating false and perjured testimony submitted by Appellee/Defendant was  
15 presented officially before all entities of the AZSBE to include PPAC and AZSBE  
16 Investigative Unit, “Knowing use of perjured or false testimony by the  
17 prosecution is a denial of due process and is reversible error without the  
18 necessity of a showing of prejudice to the defendant.” State v. Ferrari, 112 Ariz.  
19 324, 334 (1975) cf. Larsen v. Decker, 196 Ariz. 239, 241 ¶ 6 (App. 2000).  
20 Plaintiff has already presented exhibit of affidavit by minor which testifies of the false statement  
21 made by witness in addition to content of what actually occurred on September 21, 2016. The  
22 testimony of parents and students of noted former 4<sup>th</sup> grade class will prove testimony of  
23 witness for Appellee was false.

24           Testimony and evidence of former 4<sup>th</sup> grade class of Heritage Elementary Charter School  
25 will prove same situation occurred of emotional distress amongst former 4<sup>th</sup> grade students  
26 without presence and/or any communication made by Appellant to address parents and students  
27

1 of leave from position as 4<sup>th</sup> grade teacher for 2017-2018. Appellant has presented relevant laws,  
2 statutes and case law to substantiate Appellant's motion.

### 3 Conclusion

4 Appellant presents motion for reconsideration of ruling by Hon. Patricia Ann Starr by  
5 review of A.R.S. § 12-910 (A) (B). Appellant has presented reasons for admission of evidence  
6 and testimony of witnesses due to gross negligence and abuse of discretion against Appellant  
7 during administrative decision scope of entire proceedings.

8

9

10 Respectively Submitted to

11 HON. PATRICIA ANN STARR, JUDGE  
12 SUPERIOR COURT OF ARIZONA  
13 MARICOPA COUNTY

14

15

16 DATED: Friday, May 25<sup>th</sup>, 2018

17

18

19 RAFAEL CEZAR DANAM, Appellant (signed)

A.R.S. Title 12, Courts and Civil Proceedings, Chapter 13, Article 3: Oath and Affirmation; §12-2221

"I declare in the County of Maricopa, State of Arizona under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_ (date)."

Affidavit of \_\_\_\_\_ Signature \_\_\_\_\_

~~NOTARY PUBLIC~~ \_\_\_\_\_ Signature \_\_\_\_\_

~~§12-2221(B) The oath or affirmation may be administered by any judge, clerk or deputy clerk of any court of record, justice of the peace, notary public, referee or commissioner of a court of record.~~

1       ORIGINAL filed on this 25<sup>th</sup> day of May 2018 with:

2       Clerk of the Court

3       Maricopa County Superior Court

4       201 West Jefferson

5       Phoenix, AZ 85003

6

7       COPY of filed court documents mailed on this 26<sup>th</sup> day of April 2018 to:

8       Honorable Patricia Ann Starr, Presiding Judge

9       Maricopa County Superior Court

10      Old Courthouse #309

11      125 West Washington

12      Phoenix, AZ 85003

13

14      COPY of filed court documents emailed on this 26<sup>th</sup> day of April 2018 to: (ARCAP Rule 5)

15      Kim S. Anderson, State Bar No. 010584

16      Assistant Attorney General

17      State Government Division

18      Education and Health Section

19      2005 N. Central Avenue

20      Phoenix, AZ 85004

21      Email: kim.anderson@azag.gov

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- 5 -

CASE NO: LC 2018-000093-001  
RAFAEL CEZAR DANAM  
Appellant

MOTION FOR RECONSIDERATION OF RULING BY APPELLANT

APPENDIX C: Decision and Orders Arizona Board of Education

# APPENDIX C

APPENDIX C: Decision and Orders Arizona Board of Education

# APPENDIX C

APPENDIX C: Decision and Orders Arizona Board of Education

# APPENDIX C



## Arizona State Board of Education

1700 W. Washington Street  
Executive Tower, Suite 300  
Phoenix, Arizona 85007  
(602) 542-5057  
FAX (602) 542-3046  
[azsbe.az.gov](http://azsbe.az.gov)  
[inbox@azsbe.az.gov](mailto:inbox@azsbe.az.gov)

August 22, 2017

**Sent via U.S.P.S. Certified Mail**  
**# 7017 0530 0000 9196 6778**

Rafael C. Danam  
5635 Pasadena Rd  
Fort Mohave, AZ 86426

**RE: Rafael C. Danam**  
**Case No. C-2016-585**  
**Educator No. 471-3856**

Dear Rafael C. Danam,

You are hereby notified that the Professional Practices Advisory Committee has set the following date, time and place for your complaint hearing.

**DATE:** September 12, 2017  
**TIME:** 9:00 a.m.  
**PLACE:** Arizona Department of Education Building  
1535 W. Jefferson, Room 122  
Phoenix, AZ 85007

Your attendance is strongly recommended. If all cases cannot be heard on September 12, the PPAC chairman may decide to hear cases on September 13, 2017 as well.

If you have any questions about the time, or any other aspect of the proceeding, please contact this office at (602) 542-5057.

Sincerely,

Alicia Williams  
Deputy Director - Policy and Initiatives  
State Board of Education

Attachments: PPAC MATERIALS

---

*Board Members: President: Tim Carter Vice President: Lucas Narducci  
Calvin Baker Dr. Rita H. Cheng Dr. Daniel P. Corr Michele Kaye  
Janice Mak Jared Taylor Patricia Welborn  
Superintendent of Public Instruction: Diane Douglas  
Executive Director: Dr. Karol Schmidt*

## **PROFESSIONAL PRACTICES ADVISORY COMMITTEE INFORMATION SHEET**

**PPAC:** September 12-13, 2017  
**Case Number:** C-2016-585  
**Respondent:** Rafael C. Danam

**Investigator:** D. Spelich  
**EIN:** 471-3856

### **Reason for PPAC review:**

Rafael C. Danam holds a Substitute certificate, which expires January 8, 2022.

From approximately September 1, 2015 through September 21, 2016, Mr. Danam was employed as a Substitute teacher by the Bullhead City Elementary School District #15 ("BCESD") located in Bullhead City, Arizona.

Beginning in August of 2016, Mr. Danam worked as a long-term Substitute teacher for a 4<sup>th</sup> grade class at Diamondback Elementary School ("Diamondback") in the BCESD. Respondent worked for a daily substitute rate of \$90 per day, and was not under contract.

In September of 2016, Martin Muecke, the Principal at Diamondback, decided to relieve Mr. Danam of his long-term Substitute teacher assignment, due to a fully certified teacher returning from medical leave ready to return to work.

On September 21, 2016, after a failed attempt to meet with Mr. Danam at a set date and time, Mr. Muecke encountered Mr. Danam during lunch period. At that time, Mr. Muecke informed Mr. Danam that he would be relieved of his Substitute teacher assignment with the 4<sup>th</sup> grade class.

Mr. Danam then returned to his 4<sup>h</sup> grade classroom where he had been working, and along the way he encountered Instructional Aide Laura Kapusta. Mr. Danam informed Ms. Kapusta that he needed her to come into his classroom because he needed a "witness". Ms. Kapusta followed Mr. Danam into the classroom.

Mr. Danam then informed his students that he would not be their teacher anymore. Mr. Danam became very emotional and then began to cry. Mr. Danam also told the students to go home and tell their parents what Mr. Muecke and the school had done to him, and to have their parents go to the district and tell them how unfair it was.

Due to what had transpired, the students also became emotional and began to cry as well. Mr. Muecke arrived shortly after and directed Mr. Danam to go home immediately.

Mr. Danam then went to BCESD district offices, where he met with Benje Hookstra, then Assistant Superintendent. Mr. Hookstra expressed to Mr. Danam that he was aware of the situation that had taken place, and that he supported Mr. Muecke's decision.

On September 22, 2016, Mr. Hookstra filled out and signed an "Employee Separation Form", indicating that Mr. Danam was being involuntarily terminated due to "Unsatisfactory Work Performance" and "Non Compliance with Rules".

Shortly after being relieved of his Substitute teacher assignments, Mr. Danam began an email campaign directed against Mr. Muecke, and Mr. Hookstra. The emails included

demands for hearings and investigations regarding Mr. Muecke and Mr. Hookstra, and threats of civil lawsuits against Mr. Muecke and Mr. Hookstra.

In some of the emails, Mr. Danam tried to recruit parents to file complaints against Mr. Muecke and Mr. Hookstra with such entities as the BCESD, the police, the Arizona State Board of Education. Mr. Danam expressed to parents his intentions to file lawsuits against Mr. Muecke and Mr. Hookstra and that he would give some of the money received from the lawsuits to their children.

On or about September 27, 2016, Mr. Danam sent a one-page fax to various schools in BCESD, including Diamondback. The heading of the fax was "Justice, Vindication and Vengeance", the fax included a footnote at the bottom of the fax in Latin, which translates to "Vengeance is MINE, I will repay."

On September 28, 2016, Mr. Muecke filed for an Injunction Against Workplace Harassment against Mr. Danam with the Bullhead City Municipal Court. The injunction was granted on that day.

On October 6, 2016, at a hearing that Mr. Danam requested in regard to the Injunction, the Bullhead City Municipal Court ordered that the Injunction would remain in effect. The Injunction remains in effect to date.

On October 13, 2016, Investigator David W. Spelich of the Investigative Unit of the Arizona Department of Education sent a "Notice of Investigation" letter to Mr. Danam.

In an eight-page document dated October 14, 2016, Mr. Danam acknowledged having received the letter from Mr. Spelich, and offered written responses to the allegations.

On October 14, 2016, Investigator Spelich interviewed Mr. Danam.

On March 10, 2017, Mr. Danam submitted an application for employment as a teacher in the Laveen Elementary School District ("LESD").

On the application form, Mr. Danam answered "No" to the question "Have you ever been the subject of a school district or Department of Education (in any state) investigation, inquiry, or review of alleged misconduct?"

On April 11, 2017, Mr. Danam was hired as a teacher by LESD for the 2017-2018 school year beginning July 24, 2017.

On May 16, 2017, Holly King, LESD Human Resources Certified Specialist, was notified that Mr. Danam was under investigation by the Arizona Department of Education.

On May 17, 2017, Ms. King and the Assistant Superintendent of Human Resources, Dr. Jeffrey Sprout, spoke with Mr. Danam to provide due process regarding the answer of "No" to the question "Have you ever been the subject of a school district or Department of Education (in any state) investigation, inquiry, or review of alleged misconduct?" on his employment application.

On May 18, 2017, Dr. Sprout, Ms. King and Mr. Danam spoke again, and Mr. Danam requested to resign, then submitted a letter of resignation to LESD via email.

**Possible Rule violations:**

R7-2-1308(A)

Certificate holders shall:

- (1) Make reasonable efforts to prevent pupils from conditions harmful to learning, health, or safety.

R7-2-1308(B)

Individuals holding certificates issued by the Board pursuant to R7-2-601 et seq. and individuals applying for certificates issued by the Board pursuant to R7-2-601 et seq. shall not:

- (15) Engage in conduct which would discredit the teaching profession
- (6) Falsify or misrepresent documents, records, or facts related to professional qualifications or educational history or character."

# Complaint & Exhibits

1 KAROL SCHMIDT  
2 EXECUTIVE DIRECTOR  
3 STATE BOARD OF EDUCATION  
4 1700 W. Washington St., Suite 300  
5 Phoenix, Arizona 85007  
6 Complainant

7 MARK BRNOVICH  
8 ARIZONA ATTORNEY GENERAL  
9 Firm Bar No. 14000

10 Eric Schwarz, State Bar No. 013402  
11 Assistant Attorney General  
12 Education and Health Section  
13 1275 West Washington Street  
14 Phoenix, Arizona 85007-2926  
15 Telephone: (602) 542-2284  
16 Fax: (602) 364-0700  
17 E-mail: [EducationHealth@azag.gov](mailto:EducationHealth@azag.gov)  
18 Attorneys for the State of Arizona

19 **BEFORE THE ARIZONA STATE BOARD OF EDUCATION**  
20 **THROUGH THE PROFESSIONAL PRACTICES ADVISORY COMMITTEE**

21 In the Matter of: Case No. C-2016-585

22 RAFAEL DANAM, COMPLAINT

23 Holder of Arizona Education Certificate(s),  
24 Educator Identification No. 471-3856,  
25 Respondent.

26 **I. JURISDICTION**

27 This Complaint is prepared, and these proceedings are instituted, pursuant to Arizona  
28 Revised Statutes ("A.R.S.") § 15-203(A)(14) and (20).

## III. PARTIES

1. The Arizona State Board of Education ("Board") is the duly constituted authority that supervises and controls the certification of persons engaged in instructional work in Arizona public educational institutions below the community college, college, or university level.

2. Rafael Danam ("Respondent") holds State of Arizona certificate(s) under Educator Identification No. 471-3856.

### III. FACTUAL ALLEGATIONS

1. Respondent holds a Substitute certificate, which expires January 8, 2022.

2. From approximately September 1, 2015 through September 21, 2016, Respondent was employed as a Substitute teacher by the Bullhead City Elementary School District #15 ("BCESD") located in Bullhead City, Arizona.

3. Beginning in August of 2016, Respondent worked as a long-term Substitute teacher for a 4th grade class at Diamondback Elementary School ("Diamondback") in the BCESD. While working in that position, Respondent did not have a contract and he was paid the daily rate for a Substitute teacher, which was \$90.

4. In September of 2016, Martin Muecke, the Principal at Diamondback, decided that he was going to relieve Respondent of his long-term Substitute teacher assignment because another Diamondback teacher who had been out on medical leave, but who was fully certified and not just certified as a Substitute, was ready to return to work.

5. Mr. Muecke attempted to arrange a meeting with Respondent for 4:00 p.m. on September 21, 2016, at which time he was going to inform Respondent that he was being relieved of his Substitute teacher assignment with the 4th grade class. However, Respondent informed Mr. Muecke that he would not be able to attend a meeting at that time.

1           6.    Mr. Muecke then encountered Respondent during the lunch period on September  
2 21, 2016, shortly after noon, and at that time Mr. Muecke informed Respondent that he was  
3 being relieved of his Substitute teacher assignment with the 4th grade class.

4           7.    Respondent then headed back to the 4th grade classroom where he had been  
5 working, and along the way he encountered Instructional Aide Laura Kapusta. Respondent told  
6 Ms. Kapusta that he needed her to come into his classroom because he needed "a witness", and  
7 Ms. Kapusta followed Respondent into the classroom.

8           8.    The 4th grade students were already inside the classroom, and Respondent began  
9 speaking to the students while Ms. Kapusta observed. Respondent told the 4th grade students  
10 that he would not be their teacher anymore, and he became very emotional and began to cry.  
11 Respondent also told the students that he wanted them to go home and tell their parents what  
12 Mr. Muecke and the school had done to him and to have their parents go to the district and tell  
13 them how unfair this was.

14           9.    The students became very upset after hearing Respondent's statements and seeing  
15 him crying, and they began crying too. Mr. Muecke soon arrived in the classroom and told  
16 Respondent to go home immediately. After Respondent left, Diamondback staff began trying  
17 to calm the students down and to help them regain their composure.

18           10.    Respondent then went to the BCESD district offices and met with Benje Hookstra,  
19 who was the BCESD Assistant Superintendent at the time. Mr. Hookstra informed Respondent  
20 that he was aware that Mr. Muecke had relieved Respondent of his Substitute teaching  
21 assignment and that he supported Mr. Muecke's decision.

22           11.    On September 22, 2016, Mr. Hookstra filled out and signed an "Employee  
23 Separation Form" for Respondent indicating that Respondent was being involuntarily  
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1 terminated. The Involuntary Termination Codes cited by Mr. Hookstra on that form were  
2 "Unsatisfactory Work Performance" and "Non Compliance with Rules".

3       12. Shortly after he was relieved of his Substitute teaching assignment by Mr.  
4 Muecke, Respondent embarked on an email campaign against Mr. Muecke and Mr. Hookstra  
5 that included emails sent to Mr. Muecke and Mr. Hookstra, as well to BCESD personnel,  
6 Bullhead City officials, Bullhead City community leader, and parents of Diamondback students.  
7 Included in those emails were demands for hearings and investigations regarding Mr. Muecke  
8 and Mr. Hookstra, and threats of civil lawsuits against Mr. Muecke and Mr. Hookstra.

9       13. Among the emails that Respondent sent to parents of Diamondback students,  
10 Respondent attempted to recruit parents to file complaints against Mr. Muecke and Mr.  
11 Hookstra with such entities as the BCESD, the police, and the Arizona State Board of  
12 Education. Additionally, Respondent told parents that he was going to file lawsuits against Mr.  
13 Muecke and Mr. Hookstra and that he was going to give some of the money he received from  
14 the lawsuits to their children. Respondent even suggested to parents that they could receive  
15 large cash payments if a class action lawsuit was filed.

16       14. Some excerpts from emails Respondent sent to parents of Diamondback students  
17 include the following [quotations typed as written]:

18           a. "I am convinced upon thorough investigation serious violations on the part of  
19           Martin Muecke and Benji Hookstra will reveal corrupt and unprofessional  
20           practices directly violating principles of the United States Constitution and  
21           Laws and of The Constitution of the State of Arizona and Laws."

22           b. "Additional amended request in accordance with discovery procedures,  
23           proceedings in preparation of legal litigation and potential criminal and civil  
24           prosecution are formally in process against Martin Muecke and Benji Hookstra.

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1 As civilians and authorities to your children I request you motion to Governing  
2 Board of Bullhead City Elementary SD the suspension of Martin Muecke and  
3 Benji Hookstra until completion of thorough process review of facts, evidence  
4 and proof admissible to Superior Court of Arizona."

5 c. "I have been specifically asked to assist with required procedures in initiating  
6 official complaint. . . . Parents you are authorized to officially request Peace  
7 Officers identified to initiate official report."

8 d. "Parents it is highly recommended you are educated on compensation your  
9 child can be awarded from a civil lawsuit via CLASS ACTION LAWSUIT  
10 FIRM representing your collective interest for your child's emotional distress  
11 and psychological damages. Estimation of collective award can be from  
12 \$100,000.00 to over \$1,000,000.00-plus of monetary damages. . . . PLEASE  
13 review this email with scrutiny and thoroughness and I pray you are a diligent  
14 advocate for your child."

15 e. "I am officially aware by multiple accounts by parents that my current and last  
16 year's 4th grade students are in serious emotional distress, my encouragement  
17 is get a medical record via doctor appointment for emotional and psychological  
18 distress, than as a parent to parent love them as you do. There are I believe  
19 over 200+ students from Diamondback Elementary School experience this  
20 which should be an immense warning sign something very bad happened. I  
21 would email all these individuals and keep records the way this is going the  
22 State of Arizona will investigate as soon as you the parents file complaints.  
23 For emails for immediate action email the following: [email addresses for  
24 Mayor of Bullhead City; Superintendent of BCESD; Manager of Bullhead  
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26  
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City; Police detective] These people should give you all direct resources for official and formal complaint that warrants thorough investigation."

- f. "NOTE: I have initiated a complaint already, every parent should finalize official action by submitting investigation request."
- g. "(3) Affidavits & Official Statements required for my defense and future civil lawsuits: I have obtained Affidavits from prior and present 4th grade student parents. I am requesting additional for support to ensure justice and equality/equity under the law is applied to the malicious illegal actions of representatives of BCESD #15. The Affidavit attached for those completing needs to be completed by WEDNESDAY, OCTOBER 5, 2016 at 12 noon so I can register and submit my case. (4) Remaining legal and investigation actions will include: State Board of Education Arizona, civil lawsuits by Mr. Danam against BCESD #15, Martin Muecke & Benje Hookstra."
- h. "(2) I am aware some parents are uncomfortable getting involved, but I must emphasize not only was your child directly affected to cause 'emotional distress' and 'psychological injury' resulting in profuse tears (a lot of crying), that has affected your child's health, and it is estimated that 200-300 of the 600+ students at Diamondback Elementary School suffered crying and depression because of the illegal actions of Martin Muecke & Benje Hookstra. . . . (6) Those completing Affidavits, I need them tomorrow, *Wednesday, October 5th, 2016* by 12 noon so I can file with court. THANKS!!! RAFAEL DANAM, The Jedi Master/Ninja Turtle"

23 15. In a 23-page attachment to an email that Respondent sent to numerous individuals,  
24 including Mr. Muecke and Mr. Hookstra, on September 24, 2016, Respondent devoted an entire

1 section to directly addressing Mr. Muecke and Mr. Hookstra. Respondent began that section  
2 with the salutation "TO MARTIN MUECKE & BENJI HOOKSTRA", and in that section  
3 Respondent wrote, in part, the following [quotations typed as written]:

- 4 a. "Your personal and concurring collective actions, that have resulted in current  
5 circumstances are the direct consequence of your actions, as prescribed by the  
6 omnipotent standards of ethics, morals and professional conduct the Founding  
7 Fathers of the United States of America often alluded to in personal and public  
8 discourse citing the providential text of the Scripture, 'Whoever sows injustice  
9 reaps calamity...' (Proverbs 22:8, NIV)"
- 10 b. "Be assured that exact and precise justice will be manifested ...."
- 11 c. "You will not escape the consequences you have permeated by removing all  
12 internet access via my BCESD #15 assigned email domain ...."
- 13 d. "Be assured my resolve is as solid as Plymouth rock and I will endeavor to  
14 right the wrongs you both have instigated and perpetrated against a citizen and  
15 veteran of innocent virtues and ambitions ...."
- 16 e. "The emotional distress and harm you have caused minors in your care is  
17 utterly reprehensible and worthy of the severest consequences to include your  
18 own termination from Bullhead City Elementary School District #15."
- 19 f. "Lasciate ogne speranza, voi ch'intrate." [Which, according to Respondent's  
20 footnote, translates to "abandon all hope, ye who enter here"]

21 16. On or about September 27, 2016, Respondent sent a one-page fax to various  
22 schools in BCESD, including Diamondback. That document states, in part [typed as written]:

Justice, Vindication & Vengeance “Justitia, Vindicatio Et Vindicta” : Lesson 1

For

## *Martin Muecke "Actus Reus" & Benjie Hookstra "Actus Reus"*

## References:

“EST ENIM MIHI VINDICTAM EGO RETRIBUAM DICIT DOMINUS”

According to a footnote Respondent included at the bottom of that document, the phrase that begins "EST ENIM MIHI ..." translates to "Vengeance is MINE, I will repay."

9       17. Mr. Muecke and Mr. Hookstra felt threatened by Respondent's statements in the  
10 email and fax described in paragraphs 15 and 16 above, and on September 28, 2016 Mr. Muecke  
11 went to the Bullhead City Municipal Court and filed for an Injunction Against Workplace  
12 Harassment ("Injunction") against Respondent. That Injunction was granted on September 28,  
13 2016, and Respondent then requested a hearing regarding the Injunction.

14        18. After a hearing in Bullhead City Municipal Court on October 6, 2016, at which  
15 Respondent appeared, the Court ordered that the Injunction would remain in effect. To date,  
16 that Injunction is still in effect.

17       19. On October 13, 2016, Investigator David W. Spelich of the Investigative Unit of  
18 the Arizona Department of Education sent a "Notice of Investigation" letter to Respondent  
19 notifying Respondent that he was the subject of an investigation of alleged misconduct. The  
20 letter states, in part [typed as written]:

The Investigative Unit is investigating allegations that on 21 Sep. 2016, you inflicted emotional distress on your class by involving them in a private employment matter. It is further alleged that on the 24<sup>th</sup> and 28<sup>th</sup> Sep. 2016, you sent threatening and menacing letters to the school faculty and

administration putting them in fear of their lives. The allegations states that you may have acted in an unprofessional manner in violation of the standards of conduct set by the Arizona State Board of Education (“Board”). See Arizona Administrative Code R7-2-1308.

This letter is to inform you that the Investigative Unit of the Arizona Department of Education ("Department") is presently conducting an investigation into this matter. After a comprehensive review of this matter, the Department may pursue disciplinary action against your certificate.

9       20.    Respondent received that October 13, 2016 "Notice of Investigation" letter. In an  
10    eight-page document dated October 14, 2016, Respondent acknowledged having received the  
11    October 13, 2016 letter, and he offered written responses to the allegations contained in the  
12    October 13, 2016 letter.

13       21. On October 14, 2016, Investigator Spelich interviewed Respondent regarding the  
14 investigation.

15       22. On March 10, 2017, Respondent submitted an application for employment as a  
16 teacher in the Laveen Elementary School District (“LES”).

- a. On that application form, Respondent answered "No" to the question "Have you ever been the subject of a school district or Department of Education (in any state) investigation, inquiry, or review of alleged misconduct?"
- b. Respondent affirmed his agreement with all of the terms contained in the LESD application form, including the following: "I affirm that all information set forth in this application is accurate, truthful and complete. . . . In the event that I am employed by the District and in the further event that I have provided false or misleading information in this application or in subsequent

1 employment interviews, I understand that my employment may be terminated  
2 at any time after the discovery of the false or misleading information."

3       23. On April 11, 2017, Respondent was hired as a teacher by LESD for the 2017-2018  
4 school year beginning July 24, 2017 and ending May 24, 2018. The Certified Employment  
5 Contract that Respondent signed on April 11, 2017, for the 2017-2018 school year contains the  
6 following provision: "Teacher affirms that all Teacher's representations in this Contract, the  
7 Teacher's employment application, and any other document or oral statement submitted to the  
8 District concerning qualifications, fitness to teach, and representations about arrest and  
9 conviction record are true and accurate."

10       24. On May 16, 2017, Holly King, LESD Human Resources Certified Specialist, was  
11 notified that Respondent was under investigation by the Arizona Department of Education.

12        25. On May 17, 2017, Ms. King and Dr. Jeffrey Sprout, LESD Assistant  
13 Superintendent of Human Resources, spoke with Respondent to provide due process regarding  
14 Respondent's answer of "No" to the question "Have you ever been the subject of a school  
15 district or Department of Education (in any state) investigation, inquiry, or review of alleged  
16 misconduct?" on his employment application.

17       26. On May 18, 2017, Dr. Sprout, Ms. King, and Respondent spoke again, and  
18 Respondent requested to resign. Respondent submitted a letter of resignation to LESD via email  
19 on May 18, 2017.

#### IV. LEGAL AUTHORITY

1. Pursuant to A.R.S. § 15-203(A)(14) and (20), the Board has the authority to  
supervise and control the certification of teachers and to “[i]mpose such disciplinary action,  
including the issuance of a letter of censure, suspension, suspension with conditions or  
revocation of a certificate, upon a finding of immoral or unprofessional conduct.”

1           2. Pursuant to Arizona Administrative Code ("A.A.C.") R7-2-1308(C),  
2 "[i]ndividuals found to have engaged in unprofessional or immoral conduct shall be subject to,  
3 and may be disciplined by, the Board." Certificate holders who violate A.A.C. R7-2-1308 are  
4 deemed to have engaged in immoral or unprofessional conduct.

5           3. In deciding whether a teacher's conduct is immoral or unprofessional, such that  
6 disciplinary action may be imposed, the Board must determine whether such conduct "relate[s]  
7 to his/her fitness as a teacher and ... ha[s] an adverse effect on or within the school community."  
8 *Winters v. Ariz. Bd. of Ed.*, 207 Ariz. 173, 178, 83 P.3d 1114, 1119 (2004). Such adverse effect  
9 need not have caused actual harm; the Board may act "to prevent or control predictable future  
10 harm." *Welch v. Bd. of Ed. of Chandler Unified School Dist. No. 80 of Maricopa Cty.*, 136 Ariz.  
11 552, 555, 667 P.2d 746, 749 (1983). Moreover, "[t]here may be conduct which by itself gives  
12 rise to reasonable inferences of unfitness to teach or from which an adverse impact on students  
13 can reasonably be assumed." *Id.*

14           4. A.R.S. § 15-512(N) states: "A person who makes a false statement, representation  
15 or certification in any application for employment with the school district is guilty of a class 3  
16 misdemeanor."

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18           V. ALLEGATIONS OF UNPROFESSIONAL CONDUCT

19           1. The conduct and circumstances described above constitute unprofessional conduct  
20 pursuant to A.A.C. R7-2-1308(A)(1), which states that certificate holders shall "[m]ake  
21 reasonable efforts to prevent pupils from conditions harmful to learning, health, or safety."

22           2. The conduct and circumstances described above constitute unprofessional conduct  
23 pursuant to A.A.C. R7-2-1308(B)(6), which states that certificate holders shall not "[f]alsify or  
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1 misrepresent documents, records, or facts related to professional qualifications or educational  
2 history or character."

3       3. The conduct and circumstances described above constitute unprofessional conduct  
4 pursuant to A.A.C. R7-2-1308(B)(15), which states that certificate holders shall not "[e]ngage in  
5 conduct which would discredit the teaching profession." Therefore, pursuant to A.R.S. § 15-  
6 203(A)(20) and A.A.C. R7-2-1308(C), Respondent is subject to disciplinary action by the  
7 Board.

8       WHEREFORE, based upon the foregoing, the State Board of Education seeks  
9 disciplinary action – which may include a letter of censure, suspension, suspension with  
10 conditions, or revocation – against any and all certificates held by Rafael Danam.

11       DATED this 24<sup>th</sup> day of August 2017.

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Karol Schmidt  
Executive Director

**STATE'S INITIAL LIST OF WITNESSES**

The State reserves the right to call other individuals as witnesses in addition to the following:

1. Martin Muecke, Principal, Diamondback Elementary School, Bullhead City Elementary School District #15, is expected to testify regarding his involvement in this case.
2. Benje Hookstra, Superintendent, Bullhead City Elementary School District #15, is expected to testify regarding his involvement in this case.
3. Laura Kapusta, Instructional Aide, Diamondback Elementary School, Bullhead City Elementary School District #15, is expected to testify regarding her involvement in this case.
4. Kristen Degler, Parent of Diamondback Elementary School student, is expected to testify regarding her involvement in this case.
5. Jeffrey Sprout, Assistant Superintendent of Human Resources, Laveen Elementary School District, is expected to testify regarding his involvement in this case.
6. David Spelich, Investigator for the Arizona Department of Education, is expected to testify regarding the investigation of the allegations contained in this Complaint.
7. Garnett Winders, Chief Investigator for the Arizona Department of Education, is expected to testify regarding the investigation of the allegations contained in this Complaint.
8. Rafael Danam is expected to testify regarding his involvement in this case.
9. Any witness listed by Respondent.

Witness contact information may be obtained through David Spelich, who may be reached at the Arizona Department of Education, Investigative Unit, telephone number 602-542-2972.

## STATE'S INITIAL LIST OF EXHIBITS

The following is a list of Exhibits which the State may submit at Hearing (the State reserves the right to supplement Exhibits after the filing of this Complaint):

1. Screenshot detailing Respondent's Arizona Teaching Certificate(s)
2. Applicant/New Hire or Rehire form for Respondent
3. Employee Separation Form for Respondent
4. September 21, 2016 4:41 PM email from Respondent with Subject "Notice for Request Board Hearing/Pre Court Civil Proceedings"
5. September 23, 2016 2:46 PM email from Respondent with heading "Official Request for Authorized & Sanctioned Board Review for Wrongful Termination"
6. September 24, 2016 5:29 AM email from Respondent with heading "Official Request for Authorized & Sanctioned Board Review for Wrongful Termination"
7. September 24, 2016 7:55 AM email from Respondent with Subject "AMENDED Official Request for Authorized & Sanctioned Board Review for Wrongful Termination", plus 23-page attachment
8. September 25, 2016 10:53 AM email from Respondent with heading "Official Request for Authorized & Sanctioned Board Review for Wrongful Termination"
9. September 27, 2016 7:00 AM email from Respondent with heading "Honorable Mayor Tom Brady & Respective Officials & Parents of 4th Grade Diamondback Elementary School BCESD #15"
10. September 28, 2016 11:49 AM email from Respondent with heading "IMPORTANT PARENTAL REVIEW REQUESTED"
11. September 28, 2016 12:32 PM email from Respondent with heading "IMPORTANT PARENTAL REVIEW REQUESTED"

1           12. September 28, 2016 2:04 PM email from Respondent with Subject "Re:  
2           IMPORTANT PARENTAL REVIEW REQUESTED"  
3           13. October 3, 2016 11:18 AM email from Respondent with Subject "Notice of Court  
4           Hearing & Pending Court Actions & Investigations"  
5           14. October 4, 2016 10:10 AM email from Respondent with Subject "Re: Notice of  
6           Court Hearing & Pending Court Actions & Investigations"  
7           15. Two copies of one-page document with heading "Justice, Vindication &  
8           Vengeance 'Justitia, Vindicatio Et Vindicata' : Lesson 1"  
9           16. September 28, 2016 Injunction Against Workplace Harassment issued in Bullhead  
10           City Municipal Court Case No. M-842-CV-201600419, and related documents  
11           17. October 6, 2016 Hearing Order regarding Injunction Against Workplace  
12           Harassment in Bullhead City Municipal Court Case No. M-842-CV-201600419,  
13           and related documents  
14           18. October 13, 2016 Notice of Investigation letter sent to Respondent by Arizona  
15           Department of Education Investigator David W. Specich  
16           19. Eight-page "Plaintiff/Defendant Response to Notice of Investigation, Dated  
17           October 13, 2016" prepared by Respondent and dated October 14, 2016  
18           20. Certified Employment Contract with Laveen Elementary School District No. 59  
19           signed by Respondent on April 11, 2017  
20           21. May 24, 2017 letter from Jeffrey C. Sprout, Laveen Elementary School District  
21           Assistant Superintendent of Human Resources, to Garnett Winders along with  
22           Appendices A-D attached to the letter  
23           22. Any exhibit disclosed by Respondent

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1 ORIGINAL of the foregoing  
2 filed this 21st day of August, 2017,  
3 with:

4 Arizona State Board of Education  
5 1700 W. Washington St., Suite 300  
Phoenix, Arizona 85007

7 EXECUTED COPY of the foregoing mailed certified mail  
8 this 22nd day of August, 2017, to:

9 Rafael Danam  
[REDACTED]

10 Respondent

12 EXECUTED COPY of the foregoing mailed  
13 this 22nd day of August, 2017, to:

14 Eric Schwarz  
15 Assistant Attorney General  
16 Arizona Attorney General's Office  
17 Education and Health Section  
18 1275 West Washington Street  
Phoenix, Arizona 85007  
19 Attorneys for the State of Arizona

20 KW

21 Doc PHX # 6146021

APPENDIX D: Review of Litigation U.S. District Court of Arizona

# APPENDIX D

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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8  
9 Rafael Cezar Danam,

No. CV-18-1493-PHX-DGC

10 Plaintiff,

**ORDER**

11 v.

12 Arizona Board of Education, as individual  
13 members of the Arizona Board of Education,

14 Defendants.

15  
16 Pro se plaintiff Rafael Cezar Danam filed this action against the 18 members of the  
17 Arizona Board of Education, asserting various state and federal claims and seeking more  
18 than \$2 million in damages. Doc. 25. Defendants have moved to dismiss Plaintiff's first  
19 amended complaint on several grounds. Doc. 36. The motion is fully briefed. Docs. 37,  
20 39. As explained below, Plaintiff must respond to this order by July 16, 2019.

21 **I. Background.**

22 Neither Plaintiff's first amended complaint nor his response to Defendant's motion  
23 clearly explain the relevant factual background for his claims. Defendant notes that  
24 Plaintiff's "claims appear to arise out of the Board's investigation and subsequent  
25 revocation of Plaintiff's teaching license." Doc. 36 at 2. An exhibit attached to Plaintiff's  
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1       **II. Discussion.**

2       Defendants assert that Plaintiff failed to properly serve all Defendants; Plaintiff fails  
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4 May 16, 2017 are barred by the statute of limitations in A.R.S. § 12-541; Defendants have  
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7       **A. Failure to Serve all Defendants.**

8       Rule 4 governs service of the complaint and summons on parties. Rule 4(m)  
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20       Defendants assert that the Court must dismiss this action because Plaintiff failed to  
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14 Defendants assert that Plaintiff’s complaint fails to identify specific factual bases  
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21 The caption and substance of Plaintiff’s complaint seem to identify 42 U.S.C.  
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25 To state a claim under § 1983, Plaintiff must allege that an individual acting under  
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16 Plaintiff's response to Defendants' motion cites additional legal authority, but fails  
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18 **III. Conclusion.**

19 In conclusion, by **Tuesday, July 16, 2019**, Plaintiff must (1) show good cause why  
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21 (2) provide proof that he is in fact a reserve member of the U.S. Armed Forces and has  
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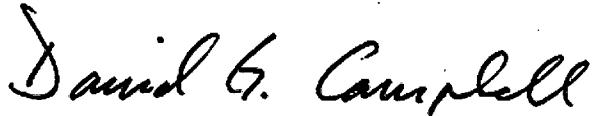
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4 Plaintiff has filed motions to Amend/Correct Caption of Complaint, Amend/Correct  
5 Monetary Damage of Complaint, and Authorize Case Management Order. Docs. 31-33.  
6 These motions will be denied as moot in light of this order.

7 **IT IS ORDERED:**

8 1. Defendant's motion to dismiss (**Doc. 36**) is **granted in part and denied in**  
9 **part.** Dismissal for failure to state a claim under Rule 12(b)(6) will be  
10 granted, with leave to amend, if Defendants are properly served.  
11 2. Plaintiff's pending motions (Docs. 31, 32, 33) are **denied** as moot.  
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13 grant an extension to serve all 18 Defendants under Rule 4, and (2) provide  
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16 Dated this 30th day of May, 2019.

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20 **David G. Campbell**  
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7 **FOR THE DISTRICT OF ARIZONA**

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9 Rafael Cezar Danam,

No. CV-18-1493-PHX-DGC

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**ORDER**

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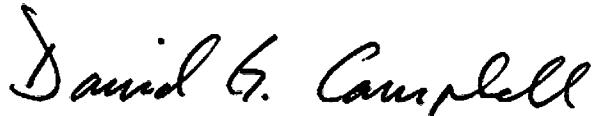
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23 clearly explain the relevant factual background for his claims. Defendant notes that  
24 Plaintiff's "claims appear to arise out of the Board's investigation and subsequent  
25 revocation of Plaintiff's teaching license." Doc. 36 at 2. An exhibit attached to Plaintiff's  
26 original complaint also refers to his termination and the revocation of his substitute teacher  
27 certification. Doc. 1 at 9.

28 ///

1       **II. Discussion.**

2       Defendants assert that Plaintiff failed to properly serve all Defendants; Plaintiff fails  
3 to state a claim under Rule 12(b)(6); any defamation claims based on events before  
4 May 16, 2017 are barred by the statute of limitations in A.R.S. § 12-541; Defendants have  
5 absolute immunity pursuant to A.R.S. § 12-820.01 for state law claims against them; and  
6 Defendants are not liable for punitive damages.

7       **A. Failure to Serve all Defendants.**

8       Rule 4 governs service of the complaint and summons on parties. Rule 4(m)  
9 provides that if “a defendant is not served within 90 days after the complaint is filed, the  
10 court – on motion or on its own after notice to the plaintiff – must dismiss the action without  
11 prejudice against that defendant or order that service be made within a specified time. But  
12 if the plaintiff shows good cause for the failure, the court must extend the time for service  
13 for an appropriate period.” Fed. R. Civ. P. 4(m). Thus, “Rule 4(m) requires a two-step  
14 analysis in deciding whether or not to extend the prescribed time period for the service of  
15 a complaint.” *In re Sheehan*, 253 F.3d 507, 512 (9th Cir. 2001). “First, upon a showing  
16 of good cause for the defective service, the court must extend the time period. Second, if  
17 there is no good cause, the court has the discretion to dismiss without prejudice or to extend  
18 the time period.” *Id.*; *see also Tagata v. Schwarz Pharma., Inc.*, No. CV 14-2238-TUC-  
19 JAS, 2014 WL 12642791, at \*1 (D. Ariz. Dec. 8, 2014).

20       Defendants assert that the Court must dismiss this action because Plaintiff failed to  
21 serve a summons on Defendant Douglass and failed to personally serve the remaining 17  
22 Defendants within 90 days of filing his complaint on May 16, 2018. Doc. 36 at 3-4.  
23 Plaintiff has not filed notices of service as required by Rule 4(l), and his response to the  
24 motion is unclear. He states that the record shows “obstruction of justice” by Defendants  
25 in receiving service, but he also seems to argue that he executed proper service. Doc. 37  
26 at 8-9. Plaintiff also requests an “extension for confirmation of service by Fed. R. Civ. P  
27 (m)” without explanation. *Id.* at 9. Plaintiff has failed to show that he properly served  
28 Defendants under Rule 4, and the Court will order Plaintiff to show good cause why an

1 extension should be granted and this action should not be dismissed for lack of service.  
2 Doc. 37 at 8-9.

3 One of Plaintiff's pending motions states that he is now out of the country for the  
4 month of June 2019 on active military duty, and the Court will not require Plaintiff's  
5 showing of good cause during that time. But the Court notes that this is the third time  
6 Plaintiff has filed a notice of active military service for the U.S. Air Force Reserve since  
7 the beginning of this case. *See* Doc. 7 (orders from May 17, 2018 to October 15, 2018);  
8 Doc. 21 (November 4, 2018 to March 30, 2019).

9 The Court has taken several steps to confirm that Plaintiff currently is a reserve  
10 member of the U.S. Armed Forces. Between April 26 and May 2, 2019, the Court's staff  
11 placed 15 calls to various numbers at Nellis Air Force Base. Five calls were placed to  
12 Chief Master Sergeant Andy Weeks, as identified in the letter filed by Plaintiff at Doc. 7,  
13 page 5. The Court also attempted to locate Colonel Raymond Tsui, whose signature  
14 appears on the same letter, but no number was available for him. Phone calls were made  
15 to and messages left for the First Sergeant of the 555 RHS, and no call was returned. Phone  
16 calls were made to and messages left for the First Sergeant of the 820th (the public affairs  
17 office and the base operator at Nellis Air Force Base identified the 820th as the unit to  
18 which the 555 RHS was assigned), and no call was returned. The individual answering the  
19 phone at the main number for the 820th had no knowledge of anyone with the last name of  
20 Danam currently assigned to the 555 RHS. Another person at the 820th, apparently named  
21 "Snyder," also confirmed no knowledge of a current member by the name of Danam. Calls  
22 were placed to the Legal Office at Nellis Air Force Base as well as the Reserve Legal Office  
23 at Nellis Air Force Base, but were not returned.

24 Other than Plaintiff's own assertions and the letter he filed, the Court has no clear  
25 evidence, and has been unable to confirm, that he is on reserve status or is deployed.  
26 Absent such evidence, the Court will not continue to prolong this litigation, especially  
27 given that Plaintiff has failed to show that Defendants have been served and are properly  
28

1 parties to this case. By Tuesday, **July 16, 2019**, Plaintiff must provide proof that he is on  
2 reserve status and has been deployed during the periods he has stated to the Court.

3 **B. Dismissal Under Rule 12(b)(6).**

4 A successful motion to dismiss under Rule 12(b)(6) must show either that the  
5 complaint lacks a cognizable legal theory or fails to allege facts sufficient to support its  
6 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A complaint  
7 that sets forth a cognizable legal theory will survive a motion to dismiss as long as it  
8 contains “sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
9 plausible on its face.’” *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S.  
10 544, 570 (2007)). A claim has facial plausibility when “the plaintiff pleads factual content  
11 that allows the court to draw the reasonable inference that the defendant is liable for the  
12 misconduct alleged.” *Id.*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).

13 **1. Failure to State a Claim.**

14 Defendants assert that Plaintiff’s complaint fails to identify specific factual bases  
15 that Defendants could admit or deny, and only lists legal conclusions. Doc. 36 at 3. The  
16 Court agrees. Plaintiff’s first amended complaint includes almost no factual allegations  
17 related to his claims. *See* Doc. 25. Rather than setting out a “short and plain statement of  
18 the claim showing that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(1), Plaintiff’s  
19 14-page complaint quotes extensively from various federal, state, and international law  
20 sources, but fails to plead specific factual allegations supporting his claims.

21 The caption and substance of Plaintiff’s complaint seem to identify 42 U.S.C.  
22 § 1983, federal and state defamation statutes, and the First, Fifth, Sixth, and Fourteenth  
23 Amendments as the principal bases for his action. Doc. 25 at 1-5, 7-10. He also cites  
24 Article 2, §§ 4-6 and 32 of the Arizona Constitution. *Id.* at 2-3.

25 To state a claim under § 1983, Plaintiff must allege that an individual acting under  
26 color of state law violated his constitutional rights or a federal law. To the extent Plaintiff  
27 brings claims against the Board as an entity, a local governmental entity cannot be liable  
28 under § 1983 on a respondeat superior theory. *Monell v. Dep’t of Soc. Servs.*, 436 U.S.

1 658, 694 (1978). Plaintiff must show a policy, practice, or custom by the entity which  
2 permitted the alleged constitutional violation to occur. *See Christie v. Iopa*, 176 F.3d 1231,  
3 1234-35 (9th Cir. 1999). Alternatively, Plaintiff can show that a government official  
4 "(1) had final policymaking authority concerning the action alleged to have caused the  
5 particular constitutional or statutory violation at issue and (2) was the policymaker for the  
6 local governing body for the purposes of the particular act." *Cortez v. Cty. of Los Angeles*,  
7 294 F.3d 1186, 1189 (9th Cir. 2002) (internal quotations and citation omitted).

8 Plaintiff alleges no specific facts supporting a violation of constitutional rights or  
9 federal law by Defendants, nor a policy, custom, or practice of the Board that violated his  
10 rights. The Court cannot discern the basis for Plaintiff's other claims. The Sixth  
11 Amendment is inapplicable to this civil action, and his other asserted violations include  
12 numerous citations to legal sources with no factual support. Doc. 25 at 6-11. Plaintiff  
13 generally asserts that his complaint is sufficient, Doc. 37 at 5, but points to no factual  
14 content that allows the court to draw the reasonable inference that Defendants are liable for  
15 the misconduct alleged. *Twombly*, 550 U.S. at 556.

16 Plaintiff's response to Defendants' motion cites additional legal authority, but fails  
17 to shed light on the nature of his claims by identifying specific claims for relief and their  
18 factual support. *See* Doc. 37. He asserts that he "listed all Defendants and causes of  
19 violations" in pages 7-10 of his complaint (*id.* at 5), but those pages include only threadbare  
20 assertions that various Defendants failed to provide evidence, interview witnesses,  
21 thoroughly review law and documents, and failed to be impartial, without linking the  
22 allegations to specific causes of action. Doc. 25 at 7-10.

23 With dozens of legal citations and only minimal factual allegations, Plaintiff's  
24 complaint identifies no cognizable legal theory supported by "sufficient factual matter,  
25 accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S.  
26 at 678 (citing *Twombly*, 550 U.S. at 570). The Court cannot write Plaintiff's complaint for  
27 him. *Hearns v. San Bernardino Police Dep't*, 530 F.3d 1124, 1131 (9th Cir. 2008) ("The  
28 court may dismiss a complaint for failure to satisfy Rule 8 if it is so confusing that its 'true

1 substance, if any, is well disguised.'"); *see also McHenry v. Renne*, 84 F.3d 1172, 1180  
2 (9th Cir. 1996) (complaint "without simplicity, conciseness and clarity as to whom  
3 plaintiffs are suing for what wrongs, fails to perform the essential functions of a  
4 complaint.").

5 **2. Leave to Amend.**

6 In the Ninth Circuit, "[a] pro se litigant must be given leave to amend his or her  
7 complaint unless it is absolutely clear that the deficiencies of the complaint could not be  
8 cured by amendment." *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 623 (9th  
9 Cir.1988) (citing *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987)); *Waters v. Young*,  
10 100 F.3d 1437, 1441 (9th Cir. 1996) ("As a general matter, this court has long sought to  
11 ensure that pro se litigants do not unwittingly fall victim to procedural requirements that  
12 they may, with some assistance from the court, be able to satisfy.").

13 Plaintiff has filed one amended complaint as a matter of course, but Defendants do  
14 not argue that permitting another amendment would result in prejudice, undue delay, or be  
15 futile. *See Doc. 36 at 5*. Plaintiff may still be able to craft a second amended complaint  
16 that alleges sufficient factual support for his claims. If Plaintiff satisfies the Court's  
17 requirements as set forth above, the Court will grant Plaintiff leave to amend.<sup>1</sup>

18 **III. Conclusion.**

19 In conclusion, by **Tuesday, July 16, 2019**, Plaintiff must (1) show good cause why  
20 the Court should grant an extension to serve all 18 Defendants under Rule 4, and  
21 (2) provide proof that he is in fact a reserve member of the U.S. Armed Forces and has  
22 been deployed during the times averred to the Court. If Plaintiff satisfies these  
23 requirements, the Court will permit additional time to serve, and, if service is completed,  
24 will dismiss Plaintiff's first amended complaint for failure to state a claim and will grant  
25 him leave to amend. If Plaintiff does not make the good cause showing explained above,  
26 the Court will dismiss this action for lack of service. If Plaintiff fails to provide clear  
27

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28 <sup>1</sup> Defendants make various other arguments, but the Court cannot address them in  
the absence of a clear complaint.

1 evidence that he is in fact a reserve member of the U.S. Armed Forces and has been  
2 deployed during the times averred to the Court, the Court likely will dismiss this case for  
3 failure to prosecute.

4 Plaintiff has filed motions to Amend/Correct Caption of Complaint, Amend/Correct  
5 Monetary Damage of Complaint, and Authorize Case Management Order. Docs. 31-33.  
6 These motions will be denied as moot in light of this order.

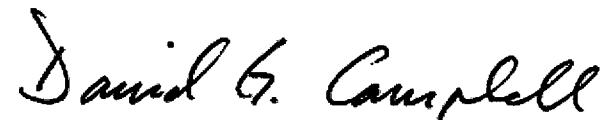
7 **IT IS ORDERED:**

8 1. Defendant's motion to dismiss (**Doc. 36**) is **granted in part and denied in**  
9 **part.** Dismissal for failure to state a claim under Rule 12(b)(6) will be  
10 granted, with leave to amend, if Defendants are properly served.

11 2. Plaintiff's pending motions (Docs. 31, 32, 33) are **denied** as moot.

12 3. **By July 16, 2019**, Plaintiff must (1) show good cause why the Court should  
13 grant an extension to serve all 18 Defendants under Rule 4, and (2) provide  
14 proof that he is in fact a reserve member of the U.S. Armed Forces and has  
15 been deployed during the times averred to the Court.

16 Dated this 30th day of May, 2019.

17  
18   
19

20 **David G. Campbell**  
21 **Senior United States District Judge**

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APPENDIX E: Request for Review to Arizona Supreme Court

# APPENDIX E

**THE SUPREME COURT  
OF THE STATE OF ARIZONA**

RAFAEL CEZAR DANAM,

Petitioner.

Vs.

ARIZONA BOARD OF EDUCATION,

Respondents.

Supreme Court Case No. CV-19-0284

Court of Appeals

Division One No.: 1 CA-CV 18-0668

Maricopa County

Superior Court No.: LC2018-00093-001

AZSBE Admin. No.: C-2016- 585

**PETITION FOR REVIEW**

**PETITION FOR REVIEW FROM APPEALS COURT OF ARIZONA-**

**DIVISION ONE TO SUPREME COURT OF ARIZONA**

Petitioner Rafael C. Danam presents Petition for Review “*Certiorari*”

pursuant to Arizona Rules of Civil Appellate Procedure (ARCAP) Rule 23, A.R.S.

§ 12-2103 with jurisdiction over Court of Appeals-Division One judicial panel’s

final decision on case to the ARIZONA SUPREME COURT based on the First

Amendment of U.S. Constitution and Arizona Constitution, Article 2, Section 6 by

Petitioner by “Freedom of Speech” for “Redress of Grievances.”

Rafael Danam  
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/s/Rafael Danam

In “Pro Se” Petitioner/Plaintiff

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Federal Rules of Civil Procedure Rules 38 & 39 “Trial By Jury & By Court”

Federal Rules of Civil Procedure Rule

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Rules of Practice of the U. S. District Court for the District of Arizona, F.R.Civ.P.

39, LRCiv 39.1 “Jury Trial”

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Arizona Supreme Court No. R-17-0010, Amendments to the Arizona Rules of Civil Procedure Rule 8

Arizona Rules of Civil Procedure Rule 9 (a)(1)(A)(B)(2)(g)(h)

Arizona Rules of Civil Procedure Rule 24

Arizona Rules of Civil Appellate Procedure (ARCAP) Rule 1 (b)

ARCAP Rule 19 (a)(3)

Arizona Rules of Evidence

Rules of Procedure for Judicial Review of Administrative Decisions

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Arizona Education Association, “Free Speech for School Employees” Publication

## **INTRODUCTION**

Presented to the Honorable Judicial Officers of the Arizona Supreme Court, Petitioner seeks, “Justice, most gracious [Judges]; O, grant me justice!”<sup>1</sup> For this case is now presented before the Judicial Officers of the Arizona Supreme Court.

Petitioner as Propria Persona “Pro Per” 28 U.S.C. § 1654 will diligently and prudently seek to apply standards of law in accordance with the State of Arizona Law in *Smith v. Rabb*, 95 Ariz. 49, 53 (1963) that “We hold unrepresented litigants in Arizona to the same standard as attorneys, *Flynn v. Campbell*, 243 Ariz. 76 (2017) ¶24. Paramount is the “Right of Freedom of Speech” (Amend. I, U.S. Const; AZ Const. Art. 2, Sect. 6) by argument and petition presented by Petitioner for “Redress of Grievances”, pursuant to official record of U.S. Library of Congress, First President George Washington, address to officers of the Continental Army (15 March 1783):

If men are to be precluded from offering their sentiments on a matter which may involve the most serious and alarming consequences that can invite the consideration of mankind, reason is of no use to us; the freedom of speech may be taken away...

The SCOTUS has also held that the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Petitioner now presents argument and reason for “*Certiorari*” before the Arizona Supreme Court.

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<sup>1</sup> William Shakespeare, “King Lear” Act 5, Scene 1.

## **STATEMENT OF THE CASE, FACTS AND PROCEDURAL HISTORY**

From the beginning “ab initio” Petitioner has suffered numerous violations of U.S. Constitution and Arizona Constitution Laws and Rights that Petitioner presents “a fortiori” of reason for granting of Petition for Review. Petitioner in the “letter and spirit” of Whistleblower Protection Act of 1989, 5 U.S.C. 2302(b)(8)-(9) in jurisdictional agreement with Arizona Employment Protection Act (AEPA) A.R.S. § 23-1501 “...the employer, has violated, is violating or will violate the Constitution of Arizona...” (c, ii) this Petition is presented before the Judicial Officers of the Arizona Supreme Court, Chief Justice Robert M. Brutinel, Vice Chief Justice Ann A. Scott Timmer, Justice Clint Bolick, Justice Andrew Gould, Justice John R. Lopez IV and Justice James Beene to the tune of Rocky Theme Song with brass instruments “Gonna Fly Now” (Bill Conti) this Petition is presented in violation of 42 U.S.C. 1983.

This Petition for Review comes from the Court of Appeals-Division One, Case No. 1 CA-CV 18-0668 under the jurisdiction of Honorable Judicial Officers; Hon. Kenton D. Jones, Hon. Diane M. Johnsen and Hon. James B. Morse Jr. whom have unanimously “AFFIRMED” Petitioner’s Appeal from Superior Court of Administrative Office of Appeals “ORDER” by Hon. Judge Patricia Ann Starr in LC Case No. LC2018-00093-001 affirming decision and order of the Arizona

Board of Education (ABOE) Defendants administrative issuance order in ABOE Case No. C-2016-585 “Revoking Substitute License and Notifying All States and Territories.” Plaintiff is expressing the right “to petition the government for redress of grievances” by relief of damages caused by violation of U.S. Constitution and Arizona Constitution rights violated by Defendants against Petitioner. Petition for Review by Petitioner is based upon authority for relief by 42 U.S.C. § 1983 for Defendants violating United States Constitution (Article VI, Clause 2), Constitution Amendments I, V, VI, XIV; Arizona Constitution Article 2 § 3, 4, 5, 6 and 32; by Arizona Supreme Court pursuant to Arizona Rules of Civil Procedure Rule 8, A.R.S. § 12-2103(B), and “Stare Decisis” of the Supreme Court of the United States (SCOTUS) on violations of the U.S. Constitution.

Petitioner has endured both an administrative and judicial “hell” of U.S. Constitution and Arizona Constitution violations that has significantly damaged public stature of Plaintiff in which Petitioner continues to strive, “To fight for the right-Without question or pause-To be willing to march-Into hell for a heavenly cause.”<sup>2</sup> Plaintiff seeks to clearly expose the horrendous violations of constitutional rights perpetrated by Defendants before the Arizona Supreme Court of Arizona with request for Grand Jury for review of final order “AFFIRMING” from Court of Appeals-Division One, rendering decision of “Affirm” from Case No. LC2018-

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<sup>2</sup> “The Impossible Dream (The Quest)” Andy Williams lyrics, Writers Darion Joseph, Leigh Mitch.

00093-001 from Appeal of Administrative Decision of ABOE Case No. C-2016-585.

CHIEF JUSTICE WILLIAM REHNQUIST spoke clearly of the fact that administrative/judicial error is evident and present in decisions that can significantly affect and harm litigants (Petitioner) in *Herrera v. Collins*, 506 U.S. 390 (1993): “It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible.” Plaintiff seeks to expose violations of “Due Process” guaranteed by Amendments V, XIV of U.S. Constitution, and Arizona Constitution Article 2 § 4. ABOE issued administrative order, with affirming order of judicial officers from the Arizona Superior Court and Arizona Court of Appeals-Division One that directly violated right to present evidence and witnesses to expose perjury of witness and false evidence against Plaintiff. In *Napue v. Illinois*, 360 U.S. 264 (1959) (“a State may not knowingly use false evidence”) and *United States v. Agurs*, 427 U.S. 97, 104 (1976) (the government’s knowing use of false factual assertions “involve[s] a corruption of the truth seeking function of the” Courts) and *Miller v. Pate*, 386 U.S. 1, 7 (1967) (“the Fourteenth Amendment cannot tolerate a state [court determination; administrative and judicial] obtained by the knowing use of false evidence”) was specifically decided that state court Judges are forbidden from Lying.”

Failure by judicial officers and administrative officials in applying prudence, impartiality, “due diligence” and standards of established constitutional law procedures certifies why Petition for Review should be granted.

CHRONOLOGY OF PETITIONER FACTS, ADMINISTRATIVE AND COURT FILINGS

Petitioner was a Substitute Teacher for Bullhead City Unified School District No. 15 (BCUSD) starting in Fall 2015. Petitioner filed complaint against former Administrators of BCUSD Martin Muecke-Principal and Benji Hookstra-Asst. Superintendent for “Wrongful Termination” and causing “Emotional Distress to Children” and constitutional violations on September 21, 2016 to the Arizona Board of Education’s Investigative Unit (Appellees/Respondents), providing affidavits and list of witnesses for investigation during the week of September 26-29, 2016 and following week of October 2016. Appellees, Garnett Winders-Chief Investigator and David W. Spelich-Investigator III, failed to investigate complaint and issued “Notice of Investigation” against Petitioner on October 13, 2016. From October 13, 2016 thru May 26, 2017 Garnett Winders and David Spelich (Respondents) conducted and completed investigation and transferred case to the ABOE’s Professional Practices Advisory Committee (PPAC).

Petitioner filed Notice of Appeal for Judicial Review of Administrative Decision on March 2, 2018 pursuant to A.R.S. § 12-904 from ABOE Case No. C-2016-585 administrative decision on October 23, 2017. Plaintiff filed Notice of Appeal for Judicial Review of Administrative Decision after denied motion for appeal to Rehear Case to and by ABOE on February 26, 2018 pursuant to JRAD Rule 1. Request for “Trial De Novo” in LC2018-000093-001 pursuant to JRAD Rule 11 was requested to present evidence and testimony by numerous direct

witnesses and key facts of law ignored by ABOE during case proceedings of C-2016-585.

Notice to ABOE in Case No. C-2016-585 was filed on April 12, 2018 to Lower Court (LC) of Superior Court of Arizona No. LC2018-000093-001 assigned to Hon. Patricia Ann Starr. Plaintiff filed Motion for New Evidence and Witnesses for Judicial Review of Administrative Decision on April 26, 2018, pursuant to JRAD Rule 10, and was denied motion by ruling by Hon. Patricia Ann Starr on May 21, 2018. Final ruling order by Hon. Patricia Ann Starr was filed on September 27, 2018 affirming ABOE pursuant to ARCAP Rule 54(c).

Petitioner filed Notice of Appeal of LC ruling on October 11, 2018 to the Arizona Court of Appeals, Division One pursuant to ARCAP Rule 9 (a), A.R.S. §§ 12-913, 12-2101 and JRAD. Arizona Court of Appeals-Division One Case No. 1 CA-CV 18-0668 have “AFFIRMED” LC ruling on October 31, 2019.

Plaintiff had presented Motion to Transfer Case by Chief Justice of Court of Appeals-Division One, Hon. Chief Justice Peter B. Swann by authority of ARCAP Rule 19 (c) for the fact that jurisdiction of Compensatory Relief from Damages caused by Defendants is in the authority and jurisdiction of the Supreme Court of Arizona pursuant to ARCAP Rule 19 (a)(3)(c), A.R.S. §§ 12-2102, 12-2103 (B). Grand Jury of Arizona was cited in Motion pursuant to A.R.S. § 21-422 (B) (1) [Article III of the U.S. Constitution. Grand Jury of Arizona with

jurisdiction of the Supreme Court of Arizona pursuant to Arizona Constitution, Article 2, Section 23; Article 6, Sections 5, 26 for trial for Compensatory Damages by authority of A.R.S. §§ 12-2103 (A)(B), 12-3005, 12-3019, 13-2022, 13-2025, 13-2026, where Jury provides constitutional remedy and “redress of grievances” by application of 18 U.S. Code § 3333 “Reports,” for violations of constitutional law 42 U.S.C. 1983.<sup>3</sup>

This Petition to the Arizona Supreme Court is to “right the unrightable wrong...”<sup>4</sup> by authority of ARCAP Rule 23 and A.R.S. § 12-2103 (B) for Supreme Court Trial with Grand Jury of Arizona for violations of U.S. Constitution and Arizona Constitution by right of redress in 42 U.S.C. § 1983 pursuant to Arizona Constitution, Article 2, Section 23; Article 6, Sections 5, 26 for trial for Compensatory Damages by authority of A.R.S. §§ 12-2103 (A)(B), 12-3005, 12-3019, 13-2022, 13-2025, 13-2026 i.e. A.R.S. §§ 12-2901(11)-(14); A.R.S §§ 21-401, 21-407, 21-421, 21-422 with final authority by Federalist No. 78 for Judicial Officers to rule against any and all violations of the U.S. Constitution as the “Supreme Law of the Land” U.S. Constitution Article VI, Clause 2 and

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<sup>3</sup> Cornell Law, “Jury” Accessed on 12/14/19 <https://www.law.cornell.edu/constitution-conan/amendment-6/jury-trial>

<sup>4</sup> Sinatra, Frank “The Impossible Dream (The Quest)” from 1966 Album “That’s Life.” Reprise Records.

Arizona Constitution, Article 2 Section 2.1. The authority of the SCOTUS by “Stare Decisis” validates this right of Petitioner as stated by JUSTICE HARLAN in *Ex Parte Young*, 28 S. Ct. 441, 209 U.S. 123 (1908) [ 209 U.S. Pages 176-177]:

And this court has said: “A state court of original jurisdiction, having the parties before it, may consistently with existing Federal legislation determine cases at law or in equity arising under the Constitution or laws of the United States or involving rights dependent upon such Constitution or laws. **Upon the state courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them; for the judges of the state courts are required to take an oath to support that Constitution, and they are bound by it**, and the laws of the United States made in pursuance thereof, and all treaties made under their authority, as the supreme law of the land, ‘anything in the Constitution or laws of any State to the contrary notwithstanding.’ If they fail therein, and withhold or deny rights, privileges, or immunities secured by the Constitution and laws of the United States, **the party aggrieved may bring the case from the highest court of the State** in which the question could be decided to this court for final and conclusive determination.” *Robb v. Connolly*, 111 U.S. 624, 637

Furthermore, JUSTICE HARLAN warrants public officials being brought before the jurisdiction of the court to answer for violations of the U.S. Constitution 42 U.S.C. 1983 *Ex Parte Young*, 28 S. Ct. 441, 209 U.S. 123 (1908) [ 209 U.S. Page 182]:

In my opinion the Eleventh Amendment has not been modified in the slightest degree as to its scope or meaning by the Fourteenth Amendment, and a suit which, in its essence, is one against the State

remains one of that character and is forbidden even when brought to strike down a state statute alleged to be in violation of that clause of the Fourteenth Amendment forbidding the deprivation by a State of life, liberty or property without due process of law. **If a suit be commenced in a state court, and involves a right secured by the Federal Constitution, the way is open under our incomparable judicial system to protect that right, first, by the judgment of the state court, and ultimately by the judgment of this court, upon writ of error.**

These facts of case presented by Petitioner clearly present basis for Supreme Court of Arizona to commence this petition for trial with Grand Jury.

#### **ISSUES PRESENTED FOR REVIEW**

**DEFENDANTS ARE RESPONSIBLE BY OATH TO THE U.S. CONSTITUTION AND ARIZONA CONSTITUTION AND VIOLATIONS OF THE SUPREMACY OF CONSTITUTIONS ARE SUBJECT TO JURISDICTION OF THE SUPREME COURT OF ARIZONA AND GRAND JURY OF ARIZONA.** All orders must be reversed in violation of constitutions.

#### **COMPENSATORY RELIEF BY SUPREME COURT OF ARIZONA AND GRAND JURY OF ARIZONA**

Jurisdiction by the Arizona Supreme Court provides in A.R.S. § 12-2103(B) “**B. When the judgment or order is reversed or modified the court may make complete restitution of all property and rights lost by the erroneous judgment or order.”**

**VIOLATIONS OF SUPREMACY OF U.S. CONSTITUTION AND  
ARIZONA CONSTITUTION AUTHORIZE PETITION BE GRANTED**

Plaintiff presents in Petition for Review violations of the U.S. Constitution and Arizona Constitution as “unalienable” right that cannot be violated. Pursuant to 42 U.S.C. 1983 in violation of U.S. Constitution Article III, Sections I and II; Article VI, Para. II; and Constitution of the State of Arizona, Article 2, Section 3, this Petition should be granted without hindrance or hesitation. These foundational truths of the U.S. Constitution validate Petition’s merit.

**Count 1: 42 U.S.C. 1983; U.S. Constitution, Article VI, Clause 2; Arizona  
Constitution, Article 2, Section 3**

**COUNT 1:** Defendants Violation of 42 U.S.C. 1983: Perpetual Right of U.S. Constitution Protections, Supremacy of the U.S. Constitution, Bill of Rights; United States Constitution (Article VI, Clause 2). ARGUMENT by Plaintiff presented in full text in original Petition to Transfer of Appeals Court of Arizona-Division One to Supreme Court of Arizona. ¶ 13-19 “The Board Did Not Violate Danam's Due-Process Rights” of Court of Appeals Division One clearly reveal the scope of administrative and judicial error that directly cites origins of foundation of the U.S. National Documents of the Declaration of Independence of failure to provide true justice from constitutional rights of “Due Process.” *Pickering v. Board of Education*, 391 U.S. 563 (1968); cf. *Marbury v. Madison*, 5 U.S. 137 (1803), *McCulloch v. Maryland* 17 U.S. 316 (1819), *Worcester v. Georgia* 31 U.S. 515 (1832), *Ableman v. Booth* 62 U.S. 506 (1858), *Pennsylvania v. Nelson* 350 U.S. 497 (1956), *Printz v. United States* 521 U.S. 898 (1997).

Count 2: 42 U.S.C. 1983; First Amendment U.S. Constitution; Arizona Constitution, Article 2, Sections 5 & 6

**COUNT 2:** Defendants Violation of 42 U.S.C. 1983: Right to “Freedom of Speech” “Redress Grievances,” U.S. Constitution First Amendment, Arizona Constitution Article 2 §§ 5 & 6. ¶ 20-25, 37-41 reflects decisions of administrative and judicial officers continued “deafness” to clearly presented communication to expose “illegal and prohibited” actions of officials in public capacity that U.S. National Documents forbid and prohibit. *Pickering v. Board of Education*, 391 U.S. 563 (1968).

Count 3: 42 U.S.C. 1983; V-Fifth, VIII-Eighth and XIV-Fourteenth Amendments U.S. Constitution; Arizona Constitution, Article 2, Sections 4, 13 & 15

**COUNT 3:** Defendants Violation of 42 U.S.C. 1983: Right to “Due Process” & Not Suffer “Cruel and Unusual Punishment,” U.S. Constitution Fifth, Eighth and Fourteenth Amendments, Arizona Constitution Article 2 § 4, 13, & 15. ¶ 20-25 provides evidence that administrative and judicial error compels the truth presented throughout the canon of case be finalized before the Supreme Court of Arizona for violation of “Due Process” and officiating order that invoked “Cruel and Unusual Punishment” violation both U.S. Constitution and Arizona Constitution by public servants.

Count 4: 42 U.S.C. 1983; Sixth Amendment U.S. Constitution; Arizona Constitution, Article 2, Section 19

**COUNT 4:** Defendants Violation of 42 U.S.C. 1983: Right to “Evidence” “Witnesses,” U.S. Constitution Sixth Amendment; A.R.S. § 41-1403. ¶ 34-36 exhibits the continued practice of failing to review and permit the testimony of those precious children affected, supplemental parental affects and documents as

evidence that exposes errors and faults of administrative and judicial officers. *Delaware v Van Arsdall*, 475 US 673 (1986), *Patton v State of Mississippi*.

Count 5: 42 U.S.C. 1983; 28 U.S. Code § 4101 & A.R.S. § 12-541

**COUNT 5:** Defendants Violation of 42 U.S.C. 1983: “Defamation” “Blacklisted,”; 28 U.S. Code § 4101 & A.R.S. § 12-541; A.R.S. § 23-1361; A.R.S. § 38-504 (B). ¶ 26-29 substantiates by overwhelming evidence of constitutional violations by order originally issued and affirmed by judicial jurisdictions indicates violations of “eternal principles of justice” affirmed by CHIEF JUSTICE STORY in *United States v. Schooner Amistad*, 40 U.S. 518, which ancient Roman wisdom affirms in Marcus Tullius Cicero who similarly argued that human law ought to be in conformity with eternal principles of “right reason.”<sup>5</sup> Defendants have violated Providential Law depicted in central figure of the SCOTUS, Moses of Exodus 20:16.

Count 6: 42 U.S.C. 1983; 5 U.S.C. 3331; Arizona Constitution, Article 2, Section 7

**COUNT 6:** Defendants Violation of 42 U.S.C. 1983: “Dereliction of Duty” “Negligence” “Failure to Oath of Office,” Arizona Revised Statutes (A.R.S.) Title 38. Public Officers and Employees; A.R.S. § 13-105(10). ¶ 42 Affirmation Conclusion clearly depicts that Defendants must beheld to the highest of Justice by reference to the “Supreme Judge of the World” declared in the U.S. Declaration of Independence. This truth is depicted in Marvel Studios “Logan (Wolverine)” closing theme song by Johnny Cash “The Man Comes Around.”

**PETITIONER’S SELF EXAMINATION OF “VEXATIOUS LITIGANT”**

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<sup>5</sup> THE U.S. SUPREME COURT and NATURAL LAW Paul Moreno, Hillsdale College Accessed 01/01/2020 MMXX <http://www.nlnrac.org/american/u.s.-supreme-court>

A.R.S. § 12-3201 in light of *Madison v. Groseth*, 230 Ariz.8, 13 n.8, ¶ 16 (app. 2012) and *re Vexatious Litigant Request*, Admin. Order No. 2014-134 (Nov. 19, 2014), Plaintiff prayerfully applies stringent scrutiny and profound self-reflection to ensure all pursuits of Petitioner are endeavors of “JUSTICE.” In light of *United States v. Schooner Amistad*, 40 U.S. (15 Pet.) 518 (1841) U.S. Lexis 279, whom Sixth President John Quincy Adams argued case before the SCOTUS who argued important facts relevant to this Petition, in that official judicial and administrative orders faltered in erroneous and “unconstitutional” affirmation orders:

...among all the persons concerned in this business, as to have perverted their minds with regard to all the most sacred principles of law and right, on which the liberties of the United States are founded; and a course was pursued, from the beginning to the end, which was not only an outrage upon the persons whose lives and liberties were at stake, but hostile to the power and independence of the judiciary itself.

The “eternal principles of justice” affirmed by CHIEF JUSTICE STORY in *United States v. Schooner Amistad* directly affirm the U.S. Declaration of Independence solemn statement, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of happiness.” Further, direct inference to Respondents constant violations of the U.S. Constitution and Arizona Constitution represent severe acts of injustices directly disdained of by the U.S. Declaration of Independence, **“In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury...They too**

**have been deaf to the voice of justice..." JUSTICE BRENNAN in *Elrod v. Burns*, 427 U.S. 347 (1976):**

...may not deny a benefit to a person on a basis that infringes his constitutionally protected interests, especially his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would, in effect, be penalized and inhibited. This would allow the government to 'produce a result which [it] could not command directly.' *Speiser v. Randall*, 357 U. S. 513, 357 U. S. 526. Such interference with constitutional rights is impermissible. (408 U.S. at 408 U. S. 597)

### **PETITION CONCLUSION**

Petitioner, Rafael C. Danam, prays Petition be granted with judicial courage Alexander Hamilton stated in Federalist No. 78, which judicial colleagues of the Judicial Officers of the Arizona Supreme Court have errored in judgment, "**...it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the constitution, where legislative invasions of it had been instigated by the major voice of the community.**" Petitioner seeks the solemn protection of the U.S. Constitution as stated by JUSTICE O'CONNOR in *New York v. United States*, 505 U.S. 144 (1992), "**The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides**

**authority between federal and state governments for the protection of individuals.** Petitioner has endured constitutional violations of which “Redress of Grievances” have had arduous litigation labors in judicial system of the State of Arizona that provide statement of JUSTICE O’CONNOR as true for Plaintiff as Petitioner, “It is the individual who has acted or tried to act who will not only force a decision but also have a hand in shaping it.”<sup>6</sup>

Petitioner presents to the SUPREME COURT OF THE STATE OF ARIZONA for “Justice consists not in being neutral between right and wrong, but in finding out the right and upholding it, wherever found, against the wrong.” – President Theodore Roosevelt. Plaintiff PRAYS for acceptance of this Petition for Review to the SUPREME COURT OF THE STATE OF ARIZONA for the sake of the children of the State of Arizona this case has affected. ARCAP Rule18 Oral argument requested by Petitioner to expose the darkness of injustice as JUSTICE originates from the U.S. Seal like Captain America’s Shield as expression of Divine Providence of Light, which red/violate is the light that carries greatest energy.<sup>7</sup>

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<sup>6</sup> Justice Sandra Day O’Connor. *The Majesty of the Law: Reflections of a Supreme Court Justice* (2003).

<sup>7</sup> U.S. Seal. Accessed 01/01/2020 MMXX <https://statesymbolsusa.org/symbol-official-item/national-us/state-seal/united-states-seal> and <https://www.greatseal.com/>

“Most things are good, and they are the strongest things; but there are evil things too, and you are not doing a child a favor by trying to shield him from reality. The important thing is to teach a child that good can always triumph over evil...”<sup>8</sup>

-Walt Disney

Plaintiff Rafael Cezar Danam PETITION FOR REVIEW

Respectively submitted to the Judicial  
Judicial Officers of the SUPREME COURT  
OF THE STATE OF ARIZONA  
Chief Justice Robert M. Brutinel  
Vice Chief Justice Ann A. Scott Timmer  
Justice Clint Bolick  
Justice Andrew Gould  
Justice John R. Lopez IV  
Justice James Beene  
Justice William G. Montgomery

DATED: Wednesday, January 1<sup>st</sup>, 2020 MMXX

/s/ Rafael Cezar Danam

RAFAEL CEZAR DANAM-Pro Se Plaintiff,

---

<sup>8</sup> Walt Disney. *Deeds Rather Than Words* (1963).

**CERTIFICATE OF SERVICE**

Copy of the foregoing NOTICE was served e-file from AZTurboCourt per  
Administrative Order No. 2012-02:

This day 1<sup>st</sup> of January 2020 MMXX

Clerk of the Arizona Supreme Court

Janet Johnson

ARIZONA SUPREME COURT

1501 W. Washington, Suite 402,

Phoenix, AZ 85007-3232

State Courts Building

Arizona Court of Appeals, Division One

Amy M. Wood, Clerk of the Appeals Court,

1501 West Washington Street

Phoenix, AZ 85007

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APPEALS COURT OF ARIZONA-DIVISION ONE

Panel of Judicial Officers

Hon. Judge Kenton D. Jones

Hon. Judge Diane M. Johnsen

Hon. Judge James B. Morse Jr.

1501 West Washington Street

Phoenix, AZ 85007

**OFFICE OF THE GOVERNOR OF ARIZONA**

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**ARIZONA SPEAKER OF THE HOUSE RUSSELL BOWERS**

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Arizona Civil Rights Advisory Board (ACRAB)  
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6 Plaintiff In Pro Se

5 **THE SUPREME COURT**  
6 **OF THE STATE OF ARIZONA**

7  
8 RAFAEL CEZAR DANAM,

Supreme Court Case No. CV-19-0284

9 Appellant/Plaintiff.

Court of Appeals  
10 Division One No.: 1 CA-CV 18-0668

11 Vs.

12 ARIZONA BOARD OF EDUCATION,  
13 Diane Douglas, et.al,  
14 (19) Listed Appellee/Defendants.

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**AMENDED NOTICE OF  
CONSTITUTIONAL  
CHALLENGE OF STATUTE**

29 A.R.S. §12-1841 “Parties; notice of  
30 claim of unconstitutionality;”  
31 A.R.S. §12-820.01 “Absolute Immunity”

32 Kim Anderson, Counsel for Appellee

**NOTICE OF CONSTITUTIONAL CHALLENGE OF STATUTE BY FRCP**

**RULE 5.1 & A.R.S. § 12-1841**

33 Pursuant to A.R.S. §12-1841 in conjunction with Federal Rules of Civil  
34 Procedure (FRCP) Rule 5.1, Constitutional Challenge to a Statute applied in State  
35 of Arizona for violation of U.S. Constitution and Arizona Constitution,  
36 Appellant/Plaintiff-Rafael C. Danam has filed a standard of NOTICE in  
37 accordance with direct Rule 5.1(a)(1). Supreme Court of Arizona, Court Clerk

1 must “(2)(b) CERTIFICATION BY THE COURT, in conjunction with A.R.S.  
2 Article 7 “Stay of Proceedings Under Statute or Order Claimed Unconstitutional”  
3 ARS § 12-931 and ARS § 12-932. The court must, under 28 U.S.C. § 2403, certify  
4 to the appropriate attorney general that a statute has been questioned.” FRCP Rule  
5 5.1 is referenced for violation by Appellee/Defendants of 42 U.S.C. § 1983;  
6 authority of The Supremacy Clause of the United States Constitution (Article VI,  
7 Clause 2), U.S. Constitution Amendments 1st, 5th, 6th, 14th; Arizona Constitution  
8 Article 2, § 4, 5, 6 and 32.

9 Plaintiff presents in conjunction with Petition for Review filed Form Set  
10 #4053218 dated 01/01/2020 (MMXX) for Arizona Supreme Court, Notice of  
11 Constitutional Challenge and Notice of Order Claimed Unconstitutional affirmed  
12 by Court of Appeals-Division One Case #1 CA-CV 18-0668, affirming Lower  
13 Court Superior Court Office of Administrative Hearing Case # LC2018-00093-  
14 001.

15

16 **NOTICE SUBMITTED TO ARIZONA OFFICIALS OF THE STATE OF**  
17 **ARIZONA CONGRESS FOR AMICUS CURIAE:**

18

19 Pursuant to A.R.S. § 12-1841 Arizona Senator Karen Fann as President of  
20 the Senate and Arizona Congressman Russell Bowers as Speaker of the House in  
21 direct citation of A.R.S. 12-1841(B) “speaker of the house of representatives and  
22 the president of the senate” are officially notified of Notice of Constitutional  
23 Challenge of Statute as “Unconstitutional” in regards to “Absolute Immunity”  
24 statute in A.R.S. §12-820.01 ascribed to Appellee/Defendants of the  
25 ABOE/AZSBE.

26 Purpose of Amicus Curiae Brief will be to scrutinize all aspects of violation  
27 to U.S. Constitution and Arizona Constitution by Appellee/Defendants against

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- 2 -

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ARIZONA SUPREME COURT CASE NO: CV-19-0284  
RAFAEL CEZAR DANAM  
Plaintiff

AMENDED NOTICE OF CONSTITUTIONAL CHALLENGE OF STATUTE

1 Appellant/Plaintiff and to provide objective record to the Arizona Supreme Court  
2 on behalf of Appellant/Defendant's cause, reviewing standards of judicial review  
3 through perspective of legislative officers for judgment against  
4 Appellee/Defendants, in citing standard of review of statute citation of is noted  
5 *Arizona Department of Administration v. Cox* (2 CA-CV 2008-0198) (August 17,  
6 2009):

7  
8 Summary judgment is proper when "there is no genuine issue as to  
9 any material fact and . . . the moving party is entitled to a judgment as  
10 a matter of law." Ariz. R. Civ. P. 56(c)(1). We review de novo  
11 whether there are any genuine issues of material fact and whether the  
12 trial court applied the law properly. *Brookover v. Roberts Enters., Inc.*, 215 Ariz. 52, 18, 156 P.3d 1157, 1160 (App. 2007). We also  
13 review de novo questions regarding the construction of statutes.  
14 *Canon Sch. Dist. No. 50 v. W.E.S. Constr. Co.*, 177 Ariz. 526, 529,  
15 869 P.2d 500, 503 (1994).

16 When construing a statute, we must "determine and give effect to  
17 legislative intent." *City of Phoenix v. Phoenix Employment Relations Bd.*, 207 Ariz. 337, ¶ 11, 86 P.3d 917, 920 (App. 2004). We look first  
18 to the plain language of the statute because that is the best indicator of  
19 legislative intent. *Mejak v. Granville*, 212 Ariz. 555, ¶ 8, 136 P.3d  
20 874, 876 (2006). If the meaning of the language is clear, we do not  
employ any further methods of construction. *N. Valley Emergency  
Specialists, L.L.C. v. Santana*, 208 Ariz. 301, ¶ 9, 93 P.3d 501, 503  
(2004).

21 For violations of U.S. Constitution by Appellee/Defendants I have sought  
22 the additional legislative office aid of U.S. Senator Martha McSally and U.S.  
23 Senator Krysten Sinema for additional Amicus Curiae Briefs on subject of  
24 violation of the U.S. Constitution by public officials of State of Arizona.  
25  
26

27 Petition for Review to the Arizona Supreme Court specifically highlights in

28

1 simple language and references ALL Counts of violations to the U.S. Constitution  
2 and Arizona Constitution in support of Petition for Review to the Arizona Supreme  
3 Court. A Summary of constitutional violations have been referenced in text of this  
4 Amended Notice of Constitutional Challenge of Statute.

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**QUESTION OF LAW A.R.S. §12-1861: JURISDICTION OF ARIZONA**  
**SUPREME COURT “UNCONSTITUTIONALITY” A.R.S. §12-1841 OF**  
**“ABSOLUTE IMMUNITY” A.R.S. §12-820.01**

8

9 Notice of Constitutional Challenge of Statute of “Absolute Immunity” has  
10 been filed and presented in accordance with Federal Rules of Civil Procedure  
11 (FRCP) Rule 5.1 in the U.S. District Court of Arizona Phoenix Division Case No.  
12 CV-18-1493-PHX-DGC citing A.R.S. §12-820.01 “Absolute Immunity” before  
13 Hon. Senior Judge David G. Campbell with no action or reply by Attorney General  
14 Mark Brnovich. “Absolute Immunity” and was subsequently filed in the Arizona  
15 Court of Appeals Division One and remains challenged by Petitioner/Plaintiff in  
16 violation of U.S. Constitution and Arizona Constitution reference to A.R.S. § 12-  
17 1841 and this question of law remains before the Supreme Court of Arizona  
18 pursuant A.R.S. § 12-1861 (Article 3 Certification of Questions of Law Act) of  
19 A.R.S. §12-820.01 “Absolute Immunity” of Respondents and conflict of law in  
20 A.R.S. § 15-203 “Powers & Duties” 41(B)(2), “B. The state board of education  
21 may:” “2. Sue and be sued.”

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28 Plaintiff/Appellant seeks jurisdiction by the Arizona Supreme Court  
provides in A.R.S. § 12-2103(B) “B. When the judgment or order is reversed or

1 modified the court may make complete restitution of all property and rights lost by  
2 the erroneous judgment or order.”

3

4 **MEMORANDUM OF POINTS AND AUTHORITIES FOR NOTICE OF**  
5 **CONSTITUTIONAL CHALLENGE OF STATUTE BY FRCP RULE 5.1 &**  
6 **A.R.S. § 12-1841: A.R.S. §12-820.01 “Absolute Immunity” is**  
7 **UNCONSTITUTIONAL**

8

9 I. **FEDERAL ARGUMENT in Favor of Plaintiff**

10

11 Plaintiff has filed a Notice of Constitutional Challenge of Statute for official  
12 court record in relation to current case before the Arizona Supreme Court.  
13 Appellant/Plaintiff attempted to file Complaint and Amended Complaint filed  
14 against the Arizona State Board of Education as Individual Members as  
15 Defendants to Complaint in the U.S. Court District of Arizona. Defendants under  
16 statute of Arizona Law have either “Absolute Immunity or Qualified Immunity”  
17 pursuant to A.R.S. §§12-820.01 & 12-820.02. “Absolute Immunity” is not  
18 authorized by direct establishment of U.S. Constitution and supporting statements  
19 against any types of legislation or official acts of public servants that violate the  
20 U.S. Constitution, “It will not be denied that power is of an encroaching nature and  
21 that it ought to be effectually restrained from passing the limits assigned to it.” –  
22 James Madison, Federalist 48, 1788. FRCP 5.1 and A.R.S. § 12-1841 provide legal  
23 review of statute to enable Appellant/Plaintiff right to judicial jurisdiction for legal  
24 redress of violations of constitutional rights by authority of 42 U.S.C. 1983 as  
25 solemnly stated by JUSTICE Marshall, “*The constitution controls any legislative*  
26 *act repugnant to it.*” Asst. Attorney General Kara Klima as counsel for AZSBE in  
27 U.S. District Court Arizona case no. CV-18-1493-PHX-DGC citated A.R.S. §12-  
28

1 820.01 “Absolute Immunity” for Appellees/Defendants. The authority of the U.S.  
2 Constitution strikes down and nullifies or voids A.R.S. §12-820.01 for the  
3 preeminence of the right of citizens, whom public servants equally share, as  
4 JUSTICE Sotomayor states, “I don't believe we should bend the Constitution under  
5 any circumstance. It says what it says. We should do honor to it.”:

6 Section 1 of the Fourteenth Amendment provides, in relevant and  
7 authoritative parts:

8 **No State shall make or enforce any law which shall abridge the  
9 privileges or immunities of citizens of the United States; nor shall  
10 any State deprive any person of life, liberty, or property, without due  
11 process of law; nor deny to any person within its jurisdiction the  
12 equal protection of the laws.**

13 14<sup>th</sup> Amendment, emphasis added

14 Furthermore, Alexander Hamilton clearly stated that any and all types of  
15 legislation that is contrary to the U.S. Constitution such as “Absolute Immunity”  
16 by persons who violate the rights of citizens to the U.S. Constitution and Arizona  
17 Constitution are a direct violation of the authority of the U.S. Constitution:

18 [E]very act of a delegated authority, contrary to the tenor of the  
19 commission under which it is exercised, is void. No legislative act,  
20 therefore, contrary to the Constitution, can be valid. To deny this,  
21 would be to affirm, that the deputy is greater than his principal; that  
22 the servant is above his master; that the representatives of the people  
23 are superior to the people themselves; that men acting by virtue of  
24 powers, may do not only what their powers do not authorize, but what  
25 they forbid.-Alexander Hamilton

26 The particular phraseology of the Constitution of the United States  
27 confirms and strengthens the principle, supposed to be essential to all  
28 written constitutions, that a law repugnant to the Constitution is void;  
and that courts, as well as other departments, are bound by that  
instrument. - John Marshall: Opinion as Chief Justice in *Marbury vs.*

*Madison*, 5 U.S. (1 Cranch) 137 (1803).

2 It is by fact that former Superintendent Diane Douglass was not re-elected to  
3 her public position for her negative stance against the Arizona State Teachers  
4 Union “Red for Ed” in 2018, which thousands of public teachers and support staff  
5 rallied against former Superintendent Diane Douglass, and a thorough an  
6 investigative research of data and opinions will prove thousands of public-school  
7 teachers disdained her leadership. In addition to this social fact, former  
8 Superintendent Diane Douglass in this case before the Arizona Supreme Court  
9 subverted the perpetual right and supreme rule of the U.S. Constitution in the  
10 canon record of this case, which judicial colleagues have concurred by orders of  
11 affirmation. President Abraham Lincoln solemn words of commentary fit with  
12 precise enlightenment in favor of Appellant/Plaintiff:

We the people are the rightful masters of both Congress and the courts, not to overthrow the Constitution but to overthrow the men who pervert the Constitution.<sup>1</sup>

21 The great American National Hymns of the United States are pillars of the  
22 truth of bravery and courage to withstand injustice as hallmarked in the stanzas of  
23 “The Star Spangled Banner,” “The Battle Hymn of the Republic,” and the great  
24 American poem “The Coming American” by Sam Walter Foss, of which a famous  
25 quote from poem were traditional principle of character of the United States Air

<sup>1</sup> Abraham Lincoln. U.S. Library of Congress. Access 08/23/2019 <https://www.loc.gov/item/2008680376/>

1 Force Academy, “Bring me men to match my mountains.” The staunch principles  
2 of Sir Winston Churchill on inference to rights and law, represent the bold stance  
3 Appellant/Plaintiff has against the enumerated violations of the U.S. Constitution  
4 perpetrated by Appellee/Defendants, “Never turn your back on a threatened danger  
5 and try to run away from it. If you do that, you will double the danger. But if you  
6 meet it promptly and without flinching, you will reduce the danger by half. Never  
7 run away from anything. Never!” The great renaissance artist whom the creators of  
8 Teenage Mutant Ninja Turtles (TMNT) named the leading TMNT Leonardo said,  
9 “I love those who can smile in trouble, who can gather strength from distress, and  
10 grow brave by reflection. ‘Tis the business of little minds to shrink, but they whose  
11 heart is firm, and whose conscience approves their conduct, will pursue their  
12 principles unto death.”-Leonardo da Vinci. “Courage is the first of human qualities  
13 because it is the quality which guarantees the others.”-Aristotle. Appellant/Plaintiff  
14 has the right to enforce rights and protections of the U.S. Constitution as “Supreme  
15 Law of the Land” and completely obliterate false protections ascribed to  
16 Appellee/Defendants of ABOE, “To know the laws is not to memorize their letter  
17 but to grasp their full force and meaning.”- Marcus Tullius Cicero.

18 Accountability to the U.S. Constitution and Arizona Constitution by  
19 Appellees/Defendants are authorized by “redress of grievances” by Appellant for  
20 constitutional violations by authority of 42 U.S.C. § 1983 and Arizona Constitution  
21 Article 2 §9 in violation of The Supremacy Clause of the United States  
22 Constitution (Article VI, Clause 2), U.S. Constitution Amendments 1st, 5th, 6th,  
23 14th; Arizona Constitution Article 2, § 4, 5, 6 and 32. Federalists No. 78 provide  
24 further redress of grievances of violations for Appellant/Plaintiff against  
25 Appellees/Defendants for judicial accountability to the U.S. Constitution and  
26 Arizona Constitution. Appellant/Plaintiff has suffered innumerable losses of public  
27 stature, loss of employment and means of support for responsibilities to daughters,

1 canine family, philanthropic endeavors with AYSO and numerous positive non-  
2 profit organizations, that defense against violations by Appellee/Defendants is  
3 “ABSOLUTE” and necessary, by right of the U.S. Constitution, “*Minorities have*  
4 *a right to appeal to the Constitution as a shield against such oppression.*” -  
5 President James K. Polk. Appellee/Defendants do not have “Absolute Immunity”  
6 when actions they committed are direct violations of the U.S. Constitution, “The  
7 whole of the Bill [of Rights] is a declaration of the right of the people at large or  
8 considered as individuals ... It establishes some rights of the individual as  
9 unalienable and which consequently, no majority has the right to deprive them of.”  
10 - Albert Gallatin of the New York Historical Society, October 7, 1789.

11 Furthermore, “Democracy arises out of the notion that those who are equal in any  
12 respect are equal in all respects; because men are equally free, they claim to be  
13 absolutely equal.”-Aristotle; **“WE HOLD THESE TRUTHS TO BE SELF**  
14 **EVIDENT, THAT ALL MEN ARE CREATED EQUAL, THAT THEY ARE**  
15 **ENDOWED BY THEIR CREATOR WITH CERTAIN UNALIENABLE**  
16 **RIGHTS.”** U.S. Declaration of Independence. Attorney General Mark Brnovich  
17 pursuant to ARS 12-1841(C)(D) is sought to impart objective oversight and  
18 intervention into this case that has now progressed to current stage of “redress of  
19 grievances” against the ABOE as Appellee/Defendants, “We can have justice  
20 whenever those who have not been injured by injustice are as outraged by it as  
21 those who have been.” - Solon, author of the Constitution of Athens, 594 B.C.

22 Associate JUSTICE Sandra Day O’Connor’s statement on constitutional  
23 rights supports Appellant/Plaintiff’s right to redress grievances of constitutional  
24 violations by judicial review and nullification of “Absolute Immunity” ascribed to  
25 Appellees/Defendants:

26

27

The Constitution does not protect the sovereignty of States for the

28

benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals.<sup>2</sup>

JUSTICE O'Connor provides further insight of the authority of judicial officers to enforce and protect the perpetual right of citizens by the U.S. Constitution, further nullifying and voiding "Absolute Immunity" of Appellees/Defendants, with reference to Federalist Nos. 78-80:

Apparently a great many people have forgotten that the framers of our Constitution went to such great effort to create an independent judicial branch that would not be subject to retaliation by either the executive branch or the legislative branch because of some decision made by those judges....

The framers of the Constitution were so clear in the federalist papers and elsewhere that they felt an independent judiciary was critical to the success of the nation.<sup>3</sup>

In “Stare Decisis” of the United States Supreme Court (SCOTUS) in specific reference to 14<sup>th</sup> Amendment of U.S. Constitution emphasis on “Equal Protection of the Laws” CHIEF JUSTICE Vinson delivered the opinion of the Court in *Shelley v. Kraemer*, 334 U.S. 1 (1948), with supporting statement by JUSTICE Kennedy, in that Appellant/Plaintiff has right of “equal protection” by the U.S. Constitution, “As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.”:

<sup>2</sup> Associate Justice Sandra Day O'Connor. U.S. Supreme Court Archives. *New York v. United States*, 488 U.S. 1041 (1992). Accessed 11/01/2018 <https://www.archives.gov/research/guide-fed-records/groups/267.html>

<sup>3</sup> Sandra Day O'Connor. Biography. Accessed 08/23/2019 <https://www.biography.com/law-figure/sandra-day-oconnor>

1  
2 That the action of state courts and judicial officers in their official  
3 capacities is to be regarded as action of the State within the meaning  
4 of the Fourteenth Amendment is a proposition which has long been  
5 established by decisions of this Court. That principle was given  
6 expression in the earliest cases involving the construction of the terms  
7 of the Fourteenth Amendment. Thus, in *Virginia v. Rives*, 100 U. S.  
8 313, 100 U. S. 318 (1880), this Court stated: "It is doubtless true that a  
9 State may act through different agencies, either by its legislative, its  
10 executive, or its judicial authorities; and the prohibitions of the  
11 amendment extend to all action of the State denying equal protection  
12 of the laws, whether it be action by one of these agencies or by  
13 another."

14  
15 In *Ex parte Virginia*, 100 U. S. 339, 100 U. S. 347 (1880), the Court  
16 observed: "A State acts by its legislative, its executive, or its judicial  
17 authorities. It can act in no other way." In the Civil Rights Cases, 109  
18 U. S. 3, 109 U. S. 11, 17 (1883), this Court pointed out that the  
19 Amendment makes void "State action of every kind" which is  
20 inconsistent with the guaranties therein contained, and extends to  
21 manifestations of "State authority in the shape of laws, customs, or  
22 judicial or executive proceedings." (Page 334 U. S. 15)  
23 In numerous cases, this Court has reversed criminal convictions in  
24 state courts for failure of those courts to provide the essential  
25 ingredients of a fair hearing. (Page 334 U. S. 17) by the use of  
26 perjured testimony known by the prosecution to be such (Page 334 U.  
27 S. 18) [underline and italic added for exposure of violation]<sup>4</sup>

28  
29 In the letter and spirit of Alexander Hamilton's Federalists No. 78 and  
30 context of *Shelley v. Kraemer*, 334 U.S. 1 (1948) Appellees/Defendants protection  
31 by Arizona statute of "Absolute and Qualified Immunity" by A.R.S. §§12-820.01  
32 & 12-820.02 are unconstitutional by violation of 42 U.S.C. 1983, and statement by  
33 JUSTICE Harlan refutes any provision of "Absolute Immunity" of public servants,

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27     <sup>4</sup> *Shelley v. Kraemer*, 334 U.S. 1 (1948) Accessed 11/01/2018 <https://supreme.justia.com/cases/federal/us/334/1/>

1       **“But in view of the [C]onstitution, in the eye of the law, there is in this country**  
2       **no superior, dominant, ruling class of citizens...”** Standard of Judicial Review  
3       of 42 U.S.C. 1983 provides Appellant/Plaintiff remedy for litigation in U.S.  
4       Federal Court or the highest court the SCOTUS as last resort if failure of  
5       “JUSTICE” is denied in the Supreme Court of Arizona as already in Appeals Court  
6       of Arizona-Division One. Appellant/Plaintiff seeks scrutinized and thorough due  
7       process by judicial duty and obligation as “trier of facts” of constitutional  
8       violations by Appellees/Defendants by presenting Notice of Constitutional  
9       Challenge of Statue of Absolute and Qualified Immunity of Appellees/Defendants  
10      for the purpose of nullifying protections ascribed to Appellees/Defendants in order  
11      to participate in complete trial. As CHIEF JUSTICE VINSON stated in U.S.  
12      Supreme Court opinion:

13  
14       “It is State action of a particular character that is prohibited.  
15       Individual invasion of individual rights is not the subject matter of the  
16       amendment [14<sup>th</sup> Amendment]. It has a deeper and broader scope. It  
17       nullifies and makes void all State legislation, and State action of  
18       every kind, which impairs the privileges and immunities of citizens of  
19       the United States, or which injures them in life, liberty, or property  
20       without due process of law, or which denies to any of them the equal  
21       protection of the laws.” *Shelley v. Kraemer*, 334 U.S. 1 (1948)

22       Furthermore, “Stare Decisis” in *Jackson v. Metropolitan Edison Co*, 419  
23       U.S. 345 (1974) provides support of constitutional challenge to “Absolute and  
24       Qualified Immunity” of Appellees/Defendants by opinion delivered by JUSTICE  
25       Rehnquist:

26       Supreme Court found that the prohibitions of the Fourteenth  
27       Amendment “have reference to actions of the political body  
28       denominated by a State, by whatever instruments or in whatever  
29       modes that action may be taken. A State acts by its legislative, its

1 executive, or its judicial authorities. It can act in no other way. The  
2 constitutional provision, therefore, must mean that no agency of the  
3 State, or of the officers or agents by whom its powers are exerted,  
4 shall deny to any person within its jurisdiction the equal protection of  
5 the laws. Whoever, by virtue of public position under a State  
6 government, deprives another of property, life, or liberty, without due  
7 process of law, or denies or takes away the equal protection of the  
8 laws, violates the constitutional inhibition; and as he acts in the name  
9 and for the State, and is clothed with the State's power, his act is that  
10 of the State.”<sup>5</sup>

11 The burden of argument rest on Appellant/Plaintiff to expose “Absolute  
12 Immunity” as unconstitutional, and a perpetual right of “redress of grievances” of  
13 the First Amendment is superior to “Absolute Immunity” of Appellees/Defendants  
14 by authority of Federalist No. 78 and further provides for Appellant that:

15 A law is facially overbroad under the First Amendment only if—a  
16 substantial number of its applications are unconstitutional, judged in  
17 relation to the statute’s plainly legitimate sweep.|| *United States v.*  
18 *Stevens*, 130 S. Ct. 1577, 1587 (2010) (internal quotation marks and  
19 citation omitted); *McConnell*, 540 U.S. at 207 (noting that plaintiffs  
20 bear the —heavy burden of proving that law is overbroad  
—not only in an absolute sense, but also relative to the scope of the  
law’s plainly legitimate applications) (quoting *Virginia v. Hicks*, 539  
U.S. 113, 120 (2003)).

21 Appellant/Plaintiff has endeavored to present this case against  
22 Appellee/Defendants having violated 42 U.S.C. 1983 through Appeal for  
23 Rehearing in Administrative Decision, Appeal for LC Judicial Review of

24  
25  
26 <sup>5</sup> *Jackson v. Metropolitan Edison Co*, 419 U.S. 345 (1974) Accessed 11/01/2018

27 <https://supreme.justia.com/cases/federal/us/419/345/>

1       Administrative Decision, Complaint to U.S. District Court (pending new  
2       Complaint) and current Court of Appeals Division One, clearly demonstrating  
3       Appellant's resolve to ensure "JUSTICE" as with applicable standards of Fed.  
4       Rules of Civil Procedure (FRCP) state that the facts alleged in the complaint are  
5       accepted as true. *Scheuer v. Rhoades*, 416 U.S. 232, 236 (1974); *Franks v. Ross*,  
6       313 F.3d 184,192 (4th Cir. 2002). Appellant/Plaintiff now directly citing Motion to  
7       Dismiss by Asst. Attorney General Kara Klima in DANAM v. AZSBE (Case #  
8       CV-18-1493-PHX-DGC) As Individual Members, will specify violations for  
9       support of Notice of Constitutional Challenge to Statute, "A civil complaint must  
10      contain "a short and plain statement of the claim showing that the pleader is  
11      entitled to relief." Fed. R. Civ. P. 8(a)(2). Generally, the complaint must state each  
12      of the elements of the cause of action and recite facts that, if shown to be true,  
13      would establish each of those elements." Appellant/Plaintiff has established  
14      elements of U.S. Constitution violations in conjunction with Arizona Constitution  
15      violations.

22       II. STATE OF ARIZONA ARGUMENT in Favor of Plaintiff

23       Legislative Branch enacted the "Actions Against Public Entities or Public  
24      Employees" ARS §§12-820 through 826. ARS § 12-820.01 is contradictory to the  
25      Arizona Constitution, Article 2, Sections 3, 13, 32 are is a direct violation of the  
26  
27

1 U.S. Constitution Article VI, Clause 2.

2 Arizona Supreme Court rejected the governmental immunity doctrine.

3 *Stone v. Arizona Highway Commission*, (1963) 93 Ariz. 384, 381 P.2d 107

4

5 Argument Presented from *Chamberlain v. Mathis*, 151 Ariz. 551 (1986)

6 729 P.2d 905, Justice Feldman:

7

8 Once an immunity defense has been raised properly, the court  
9 determines whether defendants are entitled to immunity. *Green Acres*,  
10 141 Ariz. at 613, 688 P.2d at 621; Restatement (Second) of Torts §  
11 619 (1977). If the existence of immunity turns on disputed factual  
12 issues, the jury determines the facts and the court then determines  
13 whether those facts are sufficient to establish immunity. If the court  
14 finds that Mathis is entitled only to qualified immunity, then the jury  
15 generally determines whether he abused his immunity by acting for an  
16 improper purpose or in an improper manner. Restatement (Second) of  
17 Torts § 619, comment b (1977).

18 Having determined that Mathis properly raised the defense of  
19 immunity in this case and that defining the scope of immunity is a  
20 legal question for the court, we turn to the question whether he is  
21 entitled to absolute or qualified immunity. The primary distinction  
22 between qualified and absolute immunity is that the former protects  
23 only those acts done in good faith, while the latter shields all acts, no  
24 matter how malicious. *Barr v. Matteo*, 360 U.S. 564, 79 S. Ct. 1335, 3  
25 L. Ed. 2d 1434 (1959).

26 B. Absolute or Qualified Immunity

27 1. Competing Interests

28 The rationale for granting executive government officials  
29 immunity for conduct within the scope of their employment is that  
30 government must be allowed to govern. If executive officials are  
31 denied immunity, they may elevate personal interest \*555 above  
32 official duty. Public servants would be obligated to spend their time in  
33 court justifying their past actions, instead of performing their official  
34 duties. Ultimately, government, including good government, may be  
35 hampered and qualified individuals may be hesitant to serve in

1 positions that require great responsibility. See generally *Grimm v.*  
2 *Arizona Bd. of Pardons and Paroles*, 115 Ariz. 260, 264-65, 564 P.2d  
3 1227, 1231-32 (1977) (discussing various rationales for judicial and  
4 official immunity); Schuck, Suing Our Servants: The Court, Congress,  
281. and the Liability of Public Officials for Damages, 1980 SUP.CT.REV.

5 **The arguments favoring official immunity are countered by the**  
6 **legitimate complaints of those injured by government officials.**  
7 *Grimm*, 115 Ariz. at 265, 564 P.2d at 1231. One's reputation is a  
8 significant, intensely personal possession that the law strives to  
9 protect. The entire common law of defamation attests to the  
10 importance we attach to an individual's right to seek compensation for  
11 damage to his reputation. *Dombey v. Phoenix Newspapers, Inc.*, 150  
12 Ariz. 476, 479-80, 724 P.2d 562, 565-66 (1986). Not even the critical  
13 need for open and robust public debate on issues of public concern is  
14 sufficient to completely shield malicious defamations. *New York*  
15 *Times v. Sullivan*, 376 U.S. 254, 280, 84 S. Ct. 710, 726, 11 L. Ed. 2d  
16 686 (1964).

17 The interests furthered by absolute official immunity are also  
18 countered by basic principles of equal justice. "Our system of  
19 jurisprudence rests on the assumption that all individuals, whatever  
20 their position in government, are subject to [the] law." *Butz v.*  
21 *Economou*, 438 U.S. 478, 506, 98 S. Ct. 2894, 2910, 57 L. Ed. 2d 895  
22 (1978) (federal executive officials entitled only to qualified immunity  
23 when "constitutional tort" is alleged). As we stated in Grimm, "**[t]he**  
24 **more power bureaucrats exercise over our lives, the more ... some**  
25 **sort of ultimate responsibility [should] lie for their most**  
26 **outrageous conduct.**" 115 Ariz. at 266, 564 P.2d at 1233. **Grimm**  
27 **recognized that imposing liability for wrongful acts serves two**  
Id. **important goals: compensating victims and deterring wrongdoers.**

28 This case requires us to reconcile the competing interests furthered by  
immunity and responsibility. In Arizona, as elsewhere, courts  
generally have reconciled these interests by granting public officials  
either absolute or qualified immunity. E.g., *Green Acres*, 141 Ariz. at  
613, 688 P.2d at 621 (absolute immunity from defamation action for  
statements made in connection with judicial proceedings); *Portonova*  
*v. Wilkinson*, 128 Ariz. 501, 503, 627 P.2d 232, 234 (1981) (qualified

1 immunity for police officer accused of defamation); Grimm, 115 Ariz.  
2 at 265, 564 P.2d at 1232 (qualified immunity for board of pardons and  
3 paroles); see also A.R.S. § 41-621(G) (relieving state employees of  
4 personal liability for acts within the employee's discretion "done in  
5 good faith without wanton disregard of his statutory duties"). Because  
6 the decisions just cited establish that government executive employees  
7 are presumptively entitled to some immunity, our analysis is limited  
to a comparison of qualified and absolute immunity. **Before**  
proceeding to that comparison, however, it is important to note  
that not all official conduct is protected by immunity.

8

9 In *Chamberlain v. Mathis*, 151 Ariz. 551 (Ariz. 1986)<sup>6</sup> "...*Carlson v. Pima*  
10 *County*, 141 Ariz. 487, 492, 687 P.2d 1242, 1247 (1984) ("There is no absolute  
11 privilege in Arizona for public officers and employees of the state and its political  
12 subdivisions.") (\*558).

13

14 Although there may be some government offices that require absolute  
15 immunity, e.g., *Nixon v. Fitzgerald*, 457 U.S. 731, 102 S.Ct. 2690, 73  
16 L.Ed.2d 349 (1982), we believe the general rule of qualified immunity  
17 announced in Grimm should govern the case before us. Qualified  
18 immunity protects government officials from liability for acts within  
19 the scope of their public duties **unless the official knew or should  
have known that he was acting in violation of established law or**

20

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21 <sup>6</sup> This defamation action was brought by William Chamberlain, Wilda Dearie, Sue Ann Gundy, Arthur Reeves, and  
22 Michael J. Savino (plaintiffs) against Donald Mathis (Mathis), Director of the Arizona Department of Health  
23 Services (ADHS). The trial court dismissed plaintiffs' complaint on the grounds that Mathis enjoyed an absolute  
24 privilege. The court of appeals reversed, holding that there was no absolute privilege and that whether Mathis was  
25 entitled to "high level executive" immunity was a question of fact for the jury. *Chamberlain v. Mathis*, No. 1 CA-  
26 CIV 7750 (Ariz.Ct.App. Aug. 27, 1985) (memorandum decision). We accepted review to clarify the law regarding  
27 immunity for executive government officials. Rule 23(c)(4), Ariz.R. Civ.App.P., 17A A.R.S. We have jurisdiction  
pursuant to Ariz. Const. art. 6, § 5(3) and A.R.S. § 12-120.24. Accessed 01/18/2020  
<https://casetext.com/case/chamberlain-v-mathis>

**acted in reckless disregard of whether his activities would deprive another person of their rights.** *Butz v. Economou*, 438 U.S. at 497-98, 98 S.Ct. at 2906; *Wood v. Strickland*, 420 U.S. 308, 322, 95 S.Ct. 992, 1001, 43 L.Ed.2d 214 (1975); *Green Acres*, 141 Ariz. at 616, 688 P.2d at 624; Restatement (Second) of Torts § 600 (1977). We believe this to be the better rule for several reasons. (bold font added)

### III. PRECEDENCE BY CASE LAW: JUDICIAL AUTHORITY

7 FORFEITURE of immunity by Defendants by standard of CONCLUSION in  
8  
9 *Chamberlain v. Mathis*, 151 Ariz. 551 (Ariz. 1986), “He forfeits his immunity if,  
10 and only if, he . . . , or (2) acted with malice in that he knew his statements  
11 regarding plaintiffs were false or acted in reckless disregard of the truth.”  
12  
13 *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974); *Harlow v.*  
14 *Fitzgerald*, 457 U.S. at 816-17, 102 S.Ct. at 2737-39; *Stump v. Sparkman*, 435 U.S.  
15 349 (1978); *Lavit v. Superior Court*, 173 Ariz. 96, 839 P.2d 1141 (App. 1992);  
16  
17 *Adams v. State*, 916 P.2d 1156 (Ariz. Ct. App. 1996); *Lythgoe v. Guinn*, 884 P.2d  
18 1085 (Alaska 1994); *Burk v. State*, 156 P.3d 423 (Ariz. Ct. App. 2007); *Politi v.*  
19  
20 *Tyler*, 751 A.2d 788 (Vt. 2000); *Duff v. Lewis*, 958 P.2d 82 (Nev. 1998); *Griggs v.*  
21  
22 *Oasis Adoption Servs., Inc.* 383 P.3d 1145 (Ariz. Ct. App. 2016); *Delcourt v.*  
23  
24 *Silverman*, 919 S.W.2d 777 (Tex. App. 1996); *Johnson v. Kosseff* C.A. No. WC  
25 2011-0366 (R.I. Super. Jan. 11, 2013); *Mission Oaks Ranch v. County of Santa*  
26  
27 *Barbara*, 65 Cal.App.4th 713 (Cal. Ct. App. 1998); *Muzingo v. St. Luke's Hosp.*,  
518 N.W.2d 776 (Iowa 1994).

1           **NOTICE TO ATTORNEY GENERAL OF ARIZONA FOR STATE GRAND**  
2           **JURY APPLICATION**

3           Pursuant to A.R.S. § 21-421 this Notice is for implementation of Arizona  
4           Law Standard for State Grand Jury for Petition to the Supreme Court of Arizona by  
5           Plaintiff as Petitioner is presented. Attorney General Mark Brnovich.  
6  
7

8           **U.S. Constitution & Arizona Constitution Laws in Violation to 42 U.S.C. § 1983**

9           Appellee/Defendants violated: U.S. Constitution First Amendment *Pickering*  
10           *v. Board of Education*, 391 U.S. 563 (1968) cf. Arizona Constitution Article 2 §§  
11           5, 6 & 32 as primary violation of The Bill of Rights and is the fundamental  
12           principal that is “Law of the Land” as right of “Freedom of Speech” by Appellant.  
13  
14

15           NOTE: All dates of violation are directly recorded in record of case.

16 <b>Defendant(s)</b>	17 <b>VIOLATIONS of Law, Policy, Right</b>	18 <b>Case Law</b>
<b><u>COUNT 1:</u></b>		
19           Appellee/Defendants Violation of 42 U.S.C. 1983: Perpetual Right of U.S. Constitution 20           Protections		
22           Arizona Board of 23           Education	Supremacy of the U.S. Constitution, Bill of Rights;	<i>Marbury v. Madison</i> , 5 U.S. 137 (1803); <i>Martin v. Hunter's Lessee</i> ,
24           As Individual Members: 25           AZSBE failure to apply 26           due diligence to “Stare	United States Constitution (Article VI, Clause 2)	<i>14 U.S. 304 (1816); Cohens v.</i> <i>Virginia</i> , 19 U.S. 264 (1821); <i>Pennsylvania v. Nelson</i> , 350 U.S.

1 Decisis" on "Freedom of	497 (1956); <i>Brown v. Board of</i>
2 Speech" identified by	<i>Education of Topeka</i> , 347 U.S. 483
3 AZSBE in Case No. C-	(1954),
4 2016-585 as	
5 unprofessional is	
6 contrary to Right of	
7 "Freedom of Speech."	
8 Numerous attempts by	
9 Appellant by right of	
10 "Redress Grievances" by	
11 appeal were thwarted. All	
12 rights to Appellant are	
13 preserved in Supremacy	
14 Clause of the	
15 Constitution	

19 <b><u>COUNT 2:</u></b>	20 Appellee/Defendants Violation of 42 U.S.C. 1983: Right to "Freedom of Speech"	21 "Redress Grievances"
23 Arizona Board of	24 U.S. Constitution First Amendment,	25 <i>Pickering v. Board of Education</i> ,
24 Education	25 Arizona Constitution Article 2 §§ 5 &	26 391 U.S. 563 (1968); <i>Board of</i>
25 As Individual Members:	26 6	27 <i>Regents of State Colleges v. Roth</i> ,

27

28

1 2 3 4 5 6 7 8 9 10 11 12 13	Violations of right to “Freedom of Speech” and “Redress of Grievances” are evident in case record of Case No. C-2016-585 where attempts to secure right of “Freedom of Speech” were denied and “Redress of Grievances” by Appeal were denied.	“Freedom of Speech” “Redress Grievances”	408 U.S. 564 (1972); <i>Givhan v. Western Line Consolidated School District</i> , 439 U.S. 410 (1979); <i>Wieman v. Updegraff</i> , 344 U.S. 183 (1952); <i>Shelton v. Tucker</i> , 364 U.S. 479 (1960); <i>Keyishian v. Board of Regents</i> , 385 U.S. 589 (1967); <i>Hartman v. Moore</i> , 547 U.S. 250, 256, 126 S.Ct. 1695, 164 L.Ed.2d 441 (2006).
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14 **COUNT 3:**

15 Appellee/Defendants Violation of 42 U.S.C. 1983: Right to “Due Process” & Not Suffer  
16  
17 “Cruel and Unusual Punishment”

18 19 20 21 22 23 24 25 26	Arizona Board of Education As Individual Members: Violations are evident as a matter of evidence throughout every official meeting during PPAC	U.S. Constitution Fifth, Fourteenth Amendments, Arizona Constitution Article 2 § 4 “Due Process”	<i>Moore v. Dempsey</i> , 261 U.S. 86 (1923);
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Hearing, AZSBE Decision, AZSBE Denial of Rehearing and subsequent continued violations in LC Administrative Judge review.  <b><u>COUNT 4:</u></b> Appellee/Defendants Violation of 42 U.S.C. 1983: Right to “Evidence” “Witnesses”	
	Arizona Board of Education As Individual Members: Blatant denial of affidavits, denial of testimony presentation by witnesses reveal horrendous abuse of discretion and violation of rights of “evidence” and “witnesses”	U.S. Constitution Sixth Amendment “Impartiality” “Present Relevant Evidence”  <i>Witherspoon v. Illinois</i> , 391 U.S. 510 (1968); <i>McCray v. Illinois</i> , 386 U.S. 300, 313–14 (1967); <i>Pennsylvania v. Ritchie</i> , 480 U.S. 39, 51–54 (1987); <i>Olden v. Kentucky</i> , 488 U.S. 227 (1988) ( <i>per curiam</i> ); <i>Michigan v. Lucas</i> , 500 U.S. 145 (1991).

26 NOTE: This format is presented in context to Common Core State Standards of diagrams.  
27

**APPELLEE/DEFENDANT'S ABUSE OF POWER & VIOLATIONS OF**

28

1        **THE U.S. CONSTITUTION AND ARIZONA CONSTITUTION**  
2        **(AMENDED)**

3            The (19) ABOE Members officially identified and listed as  
4        Appellee/Defendants have exhibited an atrocious abuse of discretion; actions,  
5        decisions and judgments that are contrary to law; of which actions, decisions and  
6        judgements are arbitrary and capricious; furthermore extending violations of gross  
7        negligence, severe biased prejudices and dereliction of duties equal to criminal  
8        conduct; all directly encompassed in the administrative and judicial acts violating  
9        the U.S. Constitution and Arizona Constitution that have directly committed  
10        injustices to Appellant/Plaintiff, “Power concedes nothing without demand. It  
11        never has and never will. Show me the exact amount of wrong and injustices that  
12        are visited upon a person and I will show you the exact amount of words endured  
13        by these people [that person].”-Frederick Douglass. The canon biographies of  
14        children’s literature, animation features, educational articles and features and  
15        comic illustrations by World War II Veterans, Charles Schulz, Stan Lee, Theodor  
16        Seuss Geisel, Fr. Joseph F. Flanagan and Walt Disney (WW I) all clearly condemn  
17        injustices directly ascribed to the (19) ABOE Members as Appellee/Defendants,  
18        especially those committed against children. Appellee/Defendants actions and  
19        conduct throughout entire case record exhibit unconstitutional acts of injustice,  
20        thwarting pursuits of justice sought by Appellant/Plaintiff, “Good people do not  
21        need laws to tell them to act responsibly, while bad people will find a way around  
22        the laws.”-Plato. In the adaption animation classic of Dr. Seuss “The Lorax” the  
23        lyrics to “How Bad Can I Be” depicts numerous catch-phrases stanzas that clearly  
24        depict the “bad” conduct of Members of the ABOE, not symbolic to the  
25        destruction of natural resources of the earth but of the precious resources of our  
26        future in the education of America’s children, in particular the assigned counsel as  
27        defense attorneys, “...And the lawyers are denying!”

1

2 **CONCLUSION OF NOTICE OF CONSTITUTIONAL CHALLENGE**

3

4           **Pursuant to A.R.S. §12-1841** Plaintiff presents Notice of Constitutional  
5 Challenge of Statute of Appellee/Defendants “Absolute and Qualified Immunity”  
6 per A.R.S. §§12-820.01 & 12-820.02 for the purpose of nullification and provision  
7 for all (19) listed Defendants in current case before the Supreme Court of Arizona  
8 to face judicial and grand jury trial before the Supreme Court of Arizona. Plaintiff  
9 has attempted Complaint and Amended Complaint in U.S. District Court of  
10 Arizona and sought judicial remedy in the Arizona Court of Appeals-Division One.  
11 “JUSTICE” is one of the perpetual pillars of the U.S. Constitution and National  
12 Documents of the United States, Appellant/Plaintiff exercises the perpetual right to  
13 obtain justice for the violations of injustices perpetrated by Appellee/Defendants,  
14 “Injustice anywhere is a threat to justice everywhere.”-Dr. Martin Luther King, Jr.,  
15 as Senator Robert Kennedy stated about the U.S. Constitution:

16

17           The glory of justice and the majesty of law are created not just by the  
18 Constitution - nor by the courts - nor by the officers of the law - nor  
19 by the lawyers - but by the men and women who constitute our  
20 society - who are the protectors of the law as they are themselves  
protected by the law.

21           Furthermore, the Appellee/Defendants are “not” GOD of which alone has  
22 Omniscience, Omnipotence and Omnipresence symbolizing the only “Absolute”  
23 entity on Earth, in Earth’s Solar System and the great expanse of the universe. U.S.  
24 Secretary of State William H. Seward of the Administration of President Abraham  
25 Lincoln supports this view, in cohesion to Founding National Documents of the  
26 United States, ***“the Supreme Judge of the world”***:

27

28

1                   **But there is a higher law than the Constitution, which regulates**  
2                   **our authority over the domain, and devotes it to the same noble**  
3                   **purposes.**

4                   Defendants failure of Oath of Office for State of Arizona by Arizona  
5                   Constitution, Article 2, Section 7; Article 5, Section 9; Article 11, Sections 3 & 4;  
6                   A.R.S. § 38-231 constitutes further nullification of immunities in order to  
7                   participate in trial by judicial officers of the Supreme Court of Arizona. This  
8                   Notice of Constitutional Challenge of Statute is officially presented to current  
9                   Attorney General of the State of Arizona Mark Brnovich in accordance with FRCP  
10                  Rule 5.1 (2).

11                  In final closure, this Notice of Constitutional Challenge of Statute is  
12                  presented to Attorney General of the State of Arizona Mark Brnovich for  
13                  intervention pursuant to 5.2(c), but more importantly and paramount of the People  
14                  of the State of Arizona it is presented before the solemn Office of the Judicial  
15                  Officers of the Supreme Court of Arizona, “Laws made by common consent must  
16                  not be trampled on by individuals.”-First U.S. President George Washington,  
17                  furthermore, “Don’t interfere with anything in the Constitution. That must be  
18                  maintained, for it is the only safeguard of our liberties.”-President Abraham  
19                  Lincoln, finally as **CHIEF JUSTICE John Marshall** stated:

20

21                  **The [C]onstitution is either a superior paramount law,**  
22                  **unchangeable by ordinary means, or it is on a level with**  
23                  **ordinary legislative acts, alterable when the legislature**  
24                  **shall please to alter it. It is emphatically the province and**  
25                  **duty of the judicial department to say what the law is.**  
26                  **This is the very essence of judicial duty.**

27

28

1 This Constitution, and the Laws of the United States..., under the  
2 Authority of the United States, shall be the **supreme Law of the**  
3 **Land**; and the **Judges in every State** shall be bound thereby, any  
4 Thing in the Constitution or Laws of any State to the Contrary  
5 notwithstanding.

6  
7 U.S. Constitution, Article VI  
8  
9

10 **AMENDED NOTICE OF CONSTITUTIONAL CHALLENGE OF STATUTE**  
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Respectively Submitted to  
For the Judicial Officers of the  
Supreme Court of the State of Arizona

DATED: Monday, August 26<sup>th</sup> 2019 /s/**Rafael Danam 01/18/2020 (MMXX)**

**RAFAEL CEZAR DANAM, Appellant/Plaintiff**

A.R.S. Title 12 - Courts and Civil Proceedings; Chapter 13; Article 3: Oath and Affirmation; §12-2221

"I declare in the County of Maricopa, State of Arizona under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_ (date).

Affidavit of \_\_\_\_\_ Signature

NOTARY PUBLIC \_\_\_\_\_ Signature

§12-2221(B) The oath or affirmation may be administered by any judge, clerk or deputy clerk of any court of record, justice of the peace, *notary public*, referee or commissioner of a court of record.

## ARIZONA SUPREME COURT

RAFAEL CEZAR DANAM,

Supreme Court Case No. CV-19-0284

Appellant/Plaintiff.

Court of Appeals  
Division One No.: 1 CA-CV 18-0668

Vs.

## ARIZONA BOARD OF EDUCATION,

Maricopa County  
Superior Court No.: LC2018-00093-001

### Appellee/Defendants.

**AMENDED NOTICE OF  
CONSTITUTIONAL STATUE  
CHALLENGE  
CERTIFICATE OF COMPLIANCE**

## **CERTIFICATE OF COMPLIANCE**

15 1. This certificate of compliance concerns:

16 [X] A NOTICE BRIEF, and is submitted under ARCAP Rule 14(a)(1);

17 2. The undersigned certifies that the motion/notice brief for constitutional

18 challenge of statute to which this Certificate is attached uses type of at least 14

19 points, is double-spaced, and contains 6,103 words. (6,951 total)

20 3. The document to which this Certificate is attached [X] does not, or [] does

21 exceed the word limit that is set by ARCAP Rule 4, Rule14, Rule 22, Rule 23, or

22 Rule 29, as applicable.

/s/Rafael C. Danam-Appellant/Plaintiff

January 18, 2020 (MMXX)

# ARIZONA SUPREME COURT

RAFAEL CEZAR DANAM,

Supreme Court Case No. CV-19-0284

Appellant.

Court of Appeals  
Division One No.: 1 CA-CV 18-0668

VS.

## ARIZONA BOARD OF EDUCATION,

Maricopa County  
Superior Court No.: LC2018-00093-001

Appellee.

**AMENDED NOTICE OF  
CONSTITUTIONAL STATUE  
CHALLENGE  
CERTIFICATE OF SERVICE**

## **Certificate of Service**

16 Copy of the foregoing NOTICE was served e-file from AZTurboCourt per

17 Administrative Order No. 2012-02; Rule 4.2(f)(1):

18 This day 18<sup>th</sup> of January 2020 (MMXX)

19 \*\*\*Processed Tuesday, 01/21/2020 by Court Clerk\*\*\*

20 Clerk of the Supreme Court of Arizona

21 Ms. Janet Johnson

22 SUPREME COURT OF ARIZONA

23 1501 W. Washington, Suite 402.

24 Phoenix, AZ 85007-3232

25

## 26 State Courts Building

27 Arizona Court of Appeals, Division One

1 Amy M. Wood, Clerk of the Appeals Court,  
2 1501 West Washington Street  
3 Phoenix, AZ 85007

4

5 COPIES to: by AZTurboCourt distribution  
6 Office of the State of Arizona Attorney General

7

8 **Attorney General Mark Brnovich**  
9 2005 North Central Avenue  
10 Phoenix, AZ 85004

11

12 **Martha McCally, U.S. Senator**  
13 Office of Senator McCally Phoenix Office  
14 2201 E. Camelback Rd, Suite 115  
15 Phoenix, AZ 85016

16

17 **Kyrsten Sinema, U.S. Senator**  
18 Office of Senator Sinema Phoenix Office  
19 3333 East Camelback Road, Suite 200  
20 Phoenix, AZ 85016

21

22 **Office of Arizona Senator Karen Fann, President of the Senate**  
23 State of Arizona Capitol, Arizona Senate  
24 1700 West Washington  
25 Room 205  
26 Phoenix, AZ 85007

27

28 - 29 -

---

ARIZONA SUPREME COURT CASE NO: CV-19-0284  
RAFAEL CEZAR DANAM  
Plaintiff

AMENDED NOTICE OF CONSTITUTIONAL CHALLENGE OF STATUTE

1

2 **Office of Arizona Russell Bowers, Speaker of the House**

3 State of Arizona Capitol, House of Representatives

4 1700 West Washington

5 Room 310

6 Phoenix, AZ 85007

7

8 Kim S. Anderson, State Bar No. 010584

9 Assistant Attorney General

10 State Government Division

11 Education and Health Section

12 2005 N. Central Avenue

13 Phoenix, AZ 85004

14 Email: kim.anderson@azag.gov

15

16 Email to Counsel(s) for Defendants: U.S. District Court Case No. CV-18-1493-

17 PHX-DGC

18 Kara Klima, Linda Hettich, Marie Cobb, Kathleen Hill

19 kara.klima@azag.gov , Linda.Hettich@azag.gov , Marie.Cobb@azag.gov ,

20 kathleen.hill@azag.gov

21

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**“...That person who helps others simply because it should or must be done, and because it is the right thing to do, is indeed without a doubt, a real superhero.”-STAN LEE**



“There is only one who is all powerful, and his greatest weapon is love.” (Silver Surfer)

**STAN “THE MAN” LEE ‘NUFF SAID!**

APPENDIX F: Arizona Supreme Court Denial Order

**APPENDIX F**



# Supreme Court

STATE OF ARIZONA

**ROBERT BRUTINEL**  
Chief Justice

ARIZONA STATE COURTS BUILDING  
1501 WEST WASHINGTON STREET, SUITE 402  
PHOENIX, ARIZONA 85007  
TELEPHONE: (602) 452-3396

**JANET JOHNSON**  
Clerk of the Court

April 1, 2020

**RE: RAFAEL CEZAR DANAM v ARIZONA BOARD OF EDUCATION**  
Arizona Supreme Court No. CV-19-0284-PR  
Court of Appeals, Division One No. 1 CA-CV 18-0668  
Maricopa County Superior Court No. LC2018-000093-001

**GREETINGS:**

The following action was taken by the Supreme Court of the State of Arizona on March 31, 2020, in regard to the above-referenced cause:

**ORDERED: Motion to Present Witness List = DENIED.**

**FURTHER ORDERED: Petition for Review from Appeals Court of Arizona - Division One to Supreme Court of Arizona = DENIED.**

Janet Johnson, Clerk

**TO:**

Rafael Cezar Danam  
Kim S Anderson  
Amy M Wood  
jd



# Supreme Court

STATE OF ARIZONA

**ROBERT BRUTINEL**  
Chief Justice

ARIZONA STATE COURTS BUILDING  
1501 WEST WASHINGTON STREET, SUITE 402  
PHOENIX, ARIZONA 85007  
TELEPHONE: (602) 452-3396

**JANET JOHNSON**  
Clerk of the Court

April 1, 2020

**RE: RAFAEL CEZAR DANAM v ARIZONA BOARD OF EDUCATION**  
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Janet Johnson, Clerk

**TO:**  
Rafael Cezar Danam  
Kim S Anderson  
Amy M Wood  
jd