

INDEX OF APPENDICES

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

Appendix B: Decision and Orders of Superior Court of Arizona

Appendix C: Decision and Orders of Arizona Board of Education

Appendix D: Review of litigation in the U.S. District Court of Arizona

Appendix E: Request for Review to Arizona Supreme Court

Appendix F: Arizona Supreme Court Denial Order

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

RAFAEL CEZAR DANAM,
Plaintiff/Appellant,

v.

ARIZONA BOARD OF EDUCATION,
Defendant/Appellee.

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

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

AFFIRMED

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

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.

JOHNSEN, 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

DANAM v. AZ BOARD OF EDUCATION
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 Danam 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.

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

¶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).¹ 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.

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

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

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).²

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

² 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." *Svensen v. Ariz. Dep't of Transp., Motor Vehicle Div.*, 234 Ariz. 528, 533, ¶ 13 (App. 2014).

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

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.*

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

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.³

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

³ 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. Cmty. 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.

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

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

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

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.⁴

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).

⁴ 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.

DANAM v. AZ BOARD OF EDUCATION
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

DANAM v. AZ BOARD OF EDUCATION
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).⁵ 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).

⁵ 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).

DANAM v. AZ BOARD OF EDUCATION
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.⁶

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

⁶ 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
) Division One
Plaintiff/Appellant,) No. 1 CA-CV 18-0668
)
v.) Maricopa County
) Superior Court
ARIZONA BOARD OF EDUCATION,) No. LC2018-00093-001
)
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 _____ dtn _____
Deputy Clerk



AMY M. WOOD
CLERK OF THE COURT

Court of Appeals

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 _____ dtn _____
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
) Division One
Plaintiff/Appellant,) No. 1 CA-CV 18-0668
)
v.) Maricopa County
) Superior Court
ARIZONA BOARD OF EDUCATION,) No. LC2018-00093-001
)
Defendant/Appellee.)
_____)

MANDATE

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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 _____ dtn _____
Deputy Clerk



AMY M. WOOD
CLERK OF THE COURT

Court of Appeals

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 _____ dtn _____
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 4th graders and

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000093-001 DT

09/27/2018

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 4th 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 4th grade students that upset students, made students cry, and interrupted the school day."

(2) Danam "sent numerous inappropriate and unprofessional emails to parents of 4th grade students . . ."

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000093-001 DT

09/27/2018

(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).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000093-001 DT

09/27/2018

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

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000093-001 DT

09/27/2018

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

LC2018-000093-001 DT

09/27/2018

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.**

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Appellant In *Propia Persona* "Noli Me Tangere"

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

RAFAEL CEZAR DANAM,

CASE NO: LC 2018-000093-001

Appellant.

Vs.

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

ARIZONA BOARD OF EDUCATION,

HON. PATRICIA ANN STARR, JUDGE

Appellee.

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

(1) TABLE OF CONTENTS.....	1
(2) APPELLANT INTRODUCTION.....	2
(3) STATEMENT OF THE CASE.....	2-3
(4) STATEMENT OF THE FACTS.....	3-4
(5) STATEMENT OF THE ISSUES.....	4-6
(6) APPELLANT ARGUMENT.....	6-8
(7) A "Notice under Rule 21 (a)".....	8-9
(8) APPELLANT CONCLUSION AND RELIEF SOUGHT BY JUDICIAL ORDER.....	9
JRAD Form 8: Certification of Word Count.....	10

1 **2. Appellant Introduction**

2 Presented before *Hon. Judge Patricia Ann Starr*, Presiding Judge (Arizona Constitution,
3 Article 6, § 26; A.R.S. §§ 38-231; cf. 28 U.S. Code § 453), Appellant has filed a Notice of
4 Appeal for a Trial De Novo in accordance with A.R.S. § 12- 910 and JRAD 11, pursuant to
5 Arizona Supreme Court No. R-17-0013 filed 08/31/2017 for Rules of Procedure for Judicial
6 Review of Administrative Decisions (JRAD) and Arizona Rules of Civil Appellate Procedure
7 (ARCAP), Rule 13, in accordance to authority and relief sought by A.R.S. §§ 12-124, **A.R.S. §§**
8 **12-901 to 914, 12-931—12-932, 41-1092**. Appellant's Opening Brief by Rafael Danam is
9 presented to revoke orders that issued REVOCATION OF TEACHING CERTIFICATE
10 (Substitute Certificate) AND NOTIFICATION TO ALL STATES AND TERRITORIES, which
11 was issued on 23rd of October 2017, from the final administrative decision BEFORE THE
12 ARIZONA BOARD OF EDUCATION In the Matter of RAFAEL DANAM FINDINGS OF
13 FACTS, CONCLUSIONS OF LAW AND ORDER issued by ARIZONA BOARD OF
14 EDUCATION on October 23rd, 2017 in case no. C-2016-585. Appellant presented Motion for
15 Rehearing to the Administrative Board of AZSBE on January 4, 2018, and was denied motion
16 for appeal on February 26, 2018. Appellant seeks judicial order to reverse the decision in whole
17 by authority of A.R.S. 12—911(A) (5) by Hon. Patricia Ann Starr.

18 **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."

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 numerous 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
28

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 23rd, 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 25th, 2018
25

26
27 _____
28 RAFAEL CEZAR DANAM, Appellant (signed)

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]
14

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.

18 DATED this 25th day of May 2018.
19

20 _____
21 Rafael C. Danam, Appellant
22
23
24
25
26
27

1 ORIGINAL filed on this 25th 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 25th 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 25th 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

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

Rafael Cezar Danam
6104 W. Townley Avenue
Glendale, AZ 85302
E-mail: rafaeldanam@gmail.com
Telephone: (909) 297-9171 cellular
Appellant In *Propia Persona* "Noli Me Tangere"

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

RAFAEL CEZAR DANAM,
Appellant.

Vs.
ARIZONA BOARD OF EDUCATION,
Appellee.

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

1. MOTION FOR NEW EVIDENCE AND WITNESSES

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

1 **MOTION FOR NEW EVIDENCE AND WITNESSES FOR JUDICIAL REVIEW OF**
2 **ADMINISTRATIVE DECISION**
3
4
5
6
7
8
9

10 Respectively Submitted to
11 HON. PATRICA ANN STARR, JUDGE
12 SUPERIOR COURT OF ARIZONA
13 MARICOPA COUNTY
14
15

16 DATED: Thursday, April 26th, 2018
17
18
19

20 _____
21 RAFAEL CEZAR DANAM, Appellant (signed)

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

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

25 Affidavit of _____ Signature

26 NOTARY PUBLIC _____ Signature

27 §12-2221(B) The oath or affirmation may be administered by any judge, clerk or deputy clerk of any
28 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 26th day of April 2018 with:

3 Clerk of the Court

4 Maricopa County Superior Court

5 201 West Jefferson

6 Phoenix, AZ 85003

7

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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

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23

24

25

26

27

28

1 RAFAEL CEZAR DANAM,

2 Appellant.

3 Vs.

4 ARIZONA BOARD OF EDUCATION,

5 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

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 1st, 5th, 6th,
18 14th; 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 4th
25 Grade Class 2016-2017; [REDACTED] Heritage
26 Elementary Charter School (HES) 4th 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 4th 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 th Grade 2017-2018
To Be Determined by Judicial Subpoena	25 Parents & Students of Diamondback Elementary School, 4 th Grade 2016-2017

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

25 Judicial Subpoena Order provides opportunity for "ALL" students and parents of
26 Diamondback Elementary School BCESD #16 4th Grade Class 2016-2017 and Heritage
27 Elementary Charter School 4th 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 4th Grade
13 Class 2016-2017 and HES 4th 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."¹ 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)²

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 ¹ Black's Law Dictionary, 2009 ed

26 ² 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.”³

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.⁴ 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’Connor⁵

15 Respectively Submitted to

16 HON. PATRICA ANN STARR, JUDGE

17 SUPERIOR COURT OF ARIZONA

18 MARICOPA COUNTY

19 DATED: Thursday, April 25th, 2018

20 _____
21 RAFAEL CEZAR DANAM, Appellant (signed)

22 _____
23 ³ Theodor Seuss Geisel, bka “Dr. Seuss” The Lorax (1971)

24 ⁴ Sandra Day O’Connor, U.S. Associate Justice, U.S. Library of Congress, accessed 04/24/2018
25 <https://www.loc.gov/item/2002715166/>

26 ⁵ Sandra Day O’Connor, The Majesty of the Law: Reflections of a Supreme Court Justice. Random House 2003
27 ISBN-13: 978-0375509254

Rafael Cezar Danam
6104 W. Townley Avenue
Glendale, AZ 85302
E-mail: rafaeldanam@gmail.com
Telephone: (909) 297-9171 cellular
Appellant In *Propia Persona* "Noli Me Tangere"

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

RAFAEL CEZAR DANAM,

Appellant.

Vs.

ARIZONA BOARD OF EDUCATION,

Appellee.

CASE NO: LC 2018-000093-001

MOTION FOR RECONSIDERATION OF
RULING BY APPELLANT
(Administrative Review)

HON. PATRICIA ANN STARR, JUDGE

MOTION FOR RECONSIDERATION OF RULING

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

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

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

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 4th 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 4th 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 4th grade class will prove testimony of
23 witnessed for Appellee was false.

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

1 of leave from position as 4th 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. PATRICA ANN STARR, JUDGE
12 SUPERIOR COURT OF ARIZONA
13 MARICOPA COUNTY
14

15
16 DATED: Friday, May 25th, 2018
17

18
19 _____
20 RAFAEL CEZAR DANAM, Appellant (signed)

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

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

24 Affidavit of _____ Signature

25 NOTARY PUBLIC _____ Signature

26 ~~§12-2221(B) The oath or affirmation may be administered by any judge, clerk or deputy clerk of any~~
27 ~~court of record, justice of the peace, notary public, referee or commissioner of a court of record.~~

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15 Kim S. Anderson, State Bar No. 010584

16 Assistant Attorney General

17 State Government Division

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21 Email: kim.anderson@azag.gov

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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
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

Investigator: D. Spelich

Case Number: C-2016-585

Respondent: Rafael C. Danam

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 4th 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 4th grade class.

Mr. Danam then returned to his 4th 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 schoolyear 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
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
Revised Statutes ("A.R.S.") § 15-203(A)(14) and (20).

1
2 II. PARTIES

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

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

8 III. FACTUAL ALLEGATIONS

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

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

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

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

21 5. Mr. Muecke attempted to arrange a meeting with Respondent for 4:00 p.m. on
22 September 21, 2016, at which time he was going to inform Respondent that he was being
23 relieved of his Substitute teacher assignment with the 4th grade class. However, Respondent
24 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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1 City; Police detective] These people should give you all direct resources for
2 official and formal complaint that warrants thorough investigation."

3 f. "NOTE: I have initiated a complaint already, every parent should finalize
4 official action by submitting investigation request."

5 g. "(3) Affidavits & Official Statements required for my defense and future civil
6 lawsuits: I have obtained Affidavits from prior and present 4th grade student
7 parents. I am requesting additional for support to ensure justice and
8 equality/equity under the law is applied to the malicious illegal actions of
9 representatives of BCESD #15. The Affidavit attached for those completing
10 needs to be completed by WEDNESDAY, OCTOBER 5, 2016 at 12 noon so I
11 can register and submit my case. (4) Remaining legal and investigation actions
12 will include: State Board of Education Arizona, civil lawsuits by Mr. Danam
13 against BCESD #15, Martin Muecke & Benje Hookstra."

14 h. "(2) I am aware some parents are uncomfortable getting involved, but I must
15 emphasize not only was your child directly affected to cause 'emotional
16 distress' and 'psychological injury' resulting in profuse tears (a lot of crying),
17 that has affected your child's health, and it is estimated that 200-300 of the
18 600+ students at Diamondback Elementary School suffered crying and
19 depression because of the illegal actions of Martin Muecke & Benje Hookstra.
20 . . . (6) Those completing Affidavits, I need them tomorrow, *Wednesday,*
21 *October 5th, 2016* by 12 noon so I can file with court. THANKS!!! RAFAEL
22 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
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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]:
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1 Justice, Vindication & Vengeance "Justitia, Vindicatia Et Vindicta" : Lesson 1

2 For

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

4 References:

5 "EST ENIM MIHI VINDICTAM EGO RETRIBUAM DICIT DOMINUS"

6 ...

7 According to a footnote Respondent included at the bottom of that document, the phrase that
8 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]:

21 The Investigative Unit is investigating allegations that on 21 Sep. 2016, you
22 inflicted emotional distress on your class by involving them in a private
23 employment matter. It is further alleged that on the 24th and 28th Sep. 2016,
24 you sent threatening and menacing letters to the school faculty and
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1 administration putting them in fear of their lives. The allegations states that
2 you may have acted in an unprofessional manner in violation of the
3 standards of conduct set by the Arizona State Board of Education
4 ("Board"). See Arizona Administrative Code R7-2-1308.

5 This letter is to inform you that the Investigative Unit of the Arizona
6 Department of Education ("Department") is presently conducting an
7 investigation into this matter. After a comprehensive review of this matter,
8 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 ("LESD").

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

20 IV. LEGAL AUTHORITY

21 1. Pursuant to A.R.S. § 15-203(A)(14) and (20), the Board has the authority to
22 supervise and control the certification of teachers and to "[i]mpose such disciplinary action,
23 including the issuance of a letter of censure, suspension, suspension with conditions or
24 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."

17 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 24th day of August, 2017.

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15 Karol Schmidt
16 Executive Director
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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.

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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"

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

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
6 Phoenix, Arizona 85007

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

9 Rafael Danam
10 

11 Respondent

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

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

22 KW

23 Doc PHX # 6146021
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APPENDIX D: Review of Litigation U.S. District Court of Arizona

APPENDIX D

1 **WO**

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Rafael Cezar Danam,
10 Plaintiff,

No. CV-18-1493-PHX-DGC

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
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
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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
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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
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16 Plaintiff’s response to Defendants’ motion cites additional legal authority, but fails
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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
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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,
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28 court may dismiss a complaint for failure to satisfy Rule 8 if it is so confusing that its ‘true

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

2. Leave to Amend.

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

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

III. Conclusion.

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

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

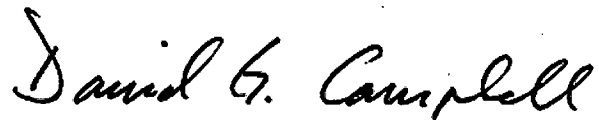
1 evidence that he is in fact a reserve member of the U.S. Armed Forces and has been
2 deployed during the times averred to the Court, the Court likely will dismiss this case for
3 failure to prosecute.

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.

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

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Rafael Cezar Danam,

10 Plaintiff,

11 v.

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

14 Defendants.
15

No. CV-18-1493-PHX-DGC

ORDER

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
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.
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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
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2. Leave to Amend.

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

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

III. Conclusion.

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

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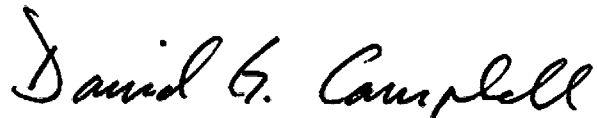
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5 Monetary Damage of Complaint, and Authorize Case Management Order. Docs. 31-33.
6 These motions will be denied as moot in light of this order.

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
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16 Dated this 30th day of May, 2019.

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20 David G. Campbell
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1 **WO**

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Rafael Cezar Danam,
10 Plaintiff,

No. CV-18-1493-PHX-DGC

ORDER

11 v.

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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

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

2. Leave to Amend.

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

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

III. Conclusion.

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

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

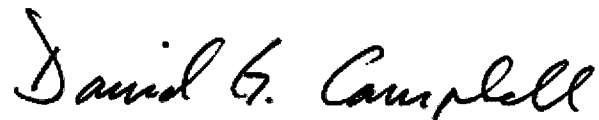
1 evidence that he is in fact a reserve member of the U.S. Armed Forces and has been
2 deployed during the times averred to the Court, the Court likely will dismiss this case for
3 failure to prosecute.

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.

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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
P.O. Box 336707
N. Las Vegas, NV 89033
Cell: (909) 297-9171 Email: rafaeldanam@gmail.com

/s/Rafael Danam

In "Pro Se" Petitioner/Plaintiff

TABLE OF CONTENTS

Table of Citations.....	3
Introduction.....	10
Statement of the Case, Facts and Procedural History.....	11
Issues Presented for Review	18
Compensatory Relief by Supreme Court of Arizona and Grand Jury of Arizona ...	22
Violations of Supremacy of U.S. Constitution and Arizona Constitution.....	19
VIOLATIONS OF CONSTITUTION OF THE UNITED STATES OF AMERICA AND CONSTITUTION OF THE STATE OF ARIZONA BY RESPONDENTS:	
Count 1: 42 U.S.C. 1983; U.S. Constitution, Article VI, Clause 2; Arizona Constitution, Article 2, Section 3.....	19
Count 2: 42 U.S.C. 1983; First Amendment U.S. Constitution; Arizona Constitution, Article 2, Sections 5 & 6.....	19
Count 3: 42 U.S.C. 1983; Fifth and Fourteenth Amendments U.S. Constitution; Arizona Constitution, Article 2, Sections 4, 13 & 15.....	20
Count 4: 42 U.S.C. 1983; Sixth Amendment U.S. Constitution; Arizona Constitution, Article 2, Section 19.....	20
Count 5: 42 U.S.C. 1983; 28 U.S. Code § 4101 & A.R.S. § 12- 541.....	20
Count 6: 42 U.S.C. 1983; 5 U.S.C. 3331; Arizona Constitution, Article 2, Section 7.....	20
Petitioner's Self-Examination of "Vexatious Litigant".....	21
Conclusion	22
Certificate of Service	25

TABLE OF CITATIONS

CASES FEDERAL

Supreme Court of the United States (SCOTUS)

<i>Ableman v. Booth,</i>	
62 U.S. 506 (1859).....	19
<i>Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.,</i>	
133 S. Ct. 2321, 2327 (2013), 547 U.S. at 61	20
<i>Board of Regents of State Colleges v. Roth,</i>	
408 U.S. 564 (1972).....	19
<i>Brown v. Board of Education of Topeka,</i>	
347 U.S. 483 (1954).....	20
<i>Caperton v. A.T. Massey Coal Co.,</i>	
556 U.S. 868 (2009).....	20
<i>Cohens v. Virginia,</i>	
19 U.S. 264 (1821).....	19
<i>Connick, DA in and for The Parish of Orleans, Louisiana v. Myers,</i>	
461 U.S. 138 (1983).....	19
<i>Delaware v Van Arsdall,</i>	
475 US 673 (I 986).....	21
<i>Elrod v. Burns,</i>	
427 U.S. 347, 373 (1976).....	20
<i>Ex Parte Young,</i>	
209 U.S. 123, 28 s. ct. 441, 52 l. ed. 714 (1908).....	19
<i>Givhan v. Western Line Consolidated School District,</i>	
439 U.S. 410 (1979).....	20
<i>Marbury v. Madison,</i>	
5 U.S. 137 (1803).....	19

<i>Martin v. Hunter's Lessee,</i>	
14 U.S. 304 (1816).....	19
<i>McCray v. Illinois,</i>	
386 U.S. 300, 313–14 (1967).....	21
<i>Moore v. Dempsey,</i>	
261 U.S. 86 (1923).....	20
<i>Patton v State of Mississippi,</i>	
332 U.S. 463 (1947).....	20
<i>Pennsylvania v. Nelson,</i>	
350 U.S. 497 (1956).....	19
<i>Pickering v. Board of Education,</i>	
391 U.S. 563 (1968).....	19, 20
<i>Strickland v. Washington,</i>	
466 U.S. 668 (1984).....	20
<i>United States v Louisiana (Bush v Orleans Parish School Board),</i>	
364 U.S. 500 (1960).....	20
<i>United States v. Schooner Amistad,</i>	
40 U.S. (15 Pet.) 518 (1841) U.S. Lexis 279.....	19, 20, 21
<i>Wieman v. Updegraff,</i>	
344 U. S. 183 (1952).....	21

9th Circuit U.S. Court

<i>Estate of Conners v. O'Connor,</i>	
846 F.2d 1205, 1208 (9th Cir.1988).....	
<i>Fargo v. City of San Juan Bautista,</i>	
857 F.2d 638, 641 (9th Cir.1988).....	
<i>Grossman v. City of Portland</i>	

33 F.3d 1200, 1208 (9th Cir.1994).....
Houghton v. South,
965 F.2d 1532, 1536 (9th Cir.1992).....
Neely v. Feinstein,
50 F.3d 1502, 1507 (9th Cir. 1995).....
Sweaney v. Ada County,
119 F.3d 1385, 1388 (9th Cir.1997).....

****Emmett Louis Till v. State of Mississippi*, Department of Justice 2018

CASES STATE OF ARIZONA

Arizona Dep't of Corr. v. State Pers. Bd.,
202 Ariz. 598, 600; P.3d 1208, 1210 (App. 2002).....
Coleman v. City of Mesa,
230 Ariz. 352, 361 n.5 (2012)
Indian Oasis Sch. Dist. v. Zambrano,
526 P.2d 408, 1974 Ariz. App. LEXIS 448, 22 Ariz. App. 201.....
Governing Bd. of Sanders Unified Sch. Dist. No. 18 v. Superior Court,
1992 Ariz. App. LEXIS 311, 127 Ariz. Adv. Rep. 11, 1992 WL 347154....
Guirey, Srnka Arnold, Architects v. City of Phoenix,
9 Ariz. App 70, 449 P2d 306 (1969).....
Lewis v. Ariz. State Pers. Bd.,
240 Ariz. 330, 379 P.3d 227, 2016 Ariz. App. LEXIS 166, 742 Ariz. Adv.
Rep. 14.....
Pavlik v. Chinle Unified Sch. Dist. No. 24,
195 Ariz. 148, 985 P.2d 633, 1999 Ariz. App. LEXIS 31, 290 Ariz. Adv.
Rep. 42.....

<i>Schmitz v. Aston, Aston,</i>	
197 Ariz. 264, 3 P. 3d 1184 (Ariz. App. Div. 2000).....	
<i>Shelby Sch. v. Ariz. State Bd. of Educ.,</i>	
192 Ariz. 156, 962 P.2d 230, 1998 Ariz. App. LEXIS 104, 271 Ariz. Adv.	
Rep. 13.....	
<i>Siglin v. Kayenta Unified Sch. Dist.,</i>	
134 Ariz. 233, 655 P.2d 353, 1982 Ariz. App. LEXIS 571.....	
<i>State v. Ferrari,</i>	
112 Ariz. 324, 334 (1975).....	
<i>Tovrea Land and Cattle Company v. Linsenmayer,</i>	
100 Ariz. 107, 412 P2d 47 (1966).....	
<i>Tucson Sch. Dist. v. Soder,</i>	
437 P.2d 996, 1968 Ariz. App. LEXIS 362, 7 Ariz. App. 244.....	
<i>Volk v. Hon. Brame/Alvrus,</i>	
Court of Appeals Division One, Special Appeals Case No. 1 CA-SA 14-	
0079, August 28, 2014.....	
<i>Winters v. Ariz. Bd. of Educ.,</i>	
207 Ariz. 173, 83 P.3d 1114, 2004 Ariz. App. LEXIS 25, 419 Ariz. Adv.	
Rep. 25.....	

CODES AND STATUTES

United States Constitution

Article VI, Clause 2

Amendments I, V, VI, VIII, XIV

Federalist 33, 78, 79

Federal Statutes

5 U.S.C. § 3331

28 U.S. Code § 453

28 U.S.C. § 1654

28 U.S.C. § 4101

42 U.S.C. § 1983

17B A.R.S. Special Actions, Rules of Proc., Rule 1,

State of Arizona**Arizona Constitution**

Article 2 § 3, 4, 5, 6 and 32

Article 6 § 26

State Statutes

A.R.S. § 12-102

A.R.S. § 12-120.21

A.R.S. § 12-541

A.R.S. §12-820.02

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A.R.S. § 12-910(E)

A.R.S. § 12-911 (B)

A.R.S. § 12-913

A.R.S. § 12-2101

A.R.S. § 15-203 (A) (20)

A.R.S. § 15-203 41 (B) (2)

A.R.S. § 38-231

Arizona Administrative Code (ACC) §R7-2-709(B)

Court Rules

U.S. Jurisdiction

Federal Rules of Civil Procedure Rule 5.1 “Constitutional Challenge to a Statute”

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

Federal Rules of Civil Procedure Rule

Federal Rules of Evidence, Articles VI, X

Rules of Practice of the U. S. District Court for the District of Arizona, F.R.Civ.P.
39, LRCiv 39.1 “Jury Trial”

Arizona Jurisdiction

A.R.S. Supreme Court Rules (Sup. Ct. Rules), Rule 26

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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INTRODUCTION

Presented to the Honorable Judicial Officers of the Arizona Supreme Court, Petitioner seeks, “Justice, most gracious [Judges]; O, grant me justice!”¹ 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.

¹ 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.”² 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-

² “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. 1983.³

This Petition to the Arizona Supreme Court is to “**right the unrightable wrong...**”⁴ 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

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

⁴ 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 (I 986), *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.”⁵ 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”

⁵ 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 erred 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.”⁶

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.⁷

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

⁷ 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...”⁸
-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 1st, 2020 MMXX

/s/ Rafael Cezar Danam

RAFAEL CEZAR DANAM-Pro Se Plaintiff,

⁸ 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 1st 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

COPY(s) to: by AZTurboCourt distribution

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

Amy Funari, Executive Assistant

State Capital of Arizona

1700 W Washington Street

Phoenix, AZ 85007

MARK BRNOVICH

Office of the Attorney General of the State of Arizona

2005 North Central Avenue

Phoenix, AZ 85004

ARIZONA SENATOR KAREN FANN, SENATE PRESIDENT

State Capital of Arizona

1700 W Washington Street

Phoenix, AZ 85007

ARIZONA SPEAKER OF THE HOUSE RUSSELL BOWERS

State Capital of Arizona

1700 W Washington Street

Phoenix, AZ 85007

Arizona Civil Rights Advisory Board (ACRAB)

Rebekah Browder, Executive Director

2005 N Central Ave

Phoenix, Arizona 85004

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Assistant Attorney General

State Government Division

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6 Plaintiff In Pro Se

7
8 **THE SUPREME COURT**
9 **OF THE STATE OF ARIZONA**

10 **RAFAEL CEZAR DANAM,**

11 Appellant/Plaintiff.

12 Vs.

13 **ARIZONA BOARD OF EDUCATION,**

14 Diane Douglas, et.al,

15 *(19) Listed Appellee/Defendants.*

16
17
18
19 Kim Anderson, Counsel for Appellee

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

20 **AMENDED NOTICE OF**
21 **CONSTITUTIONAL**
22 **CHALLENGE OF STATUTE**

23 A.R.S. §12-1841 "Parties; notice of
24 claim of unconstitutionality;"
25 A.R.S. §12-820.01 "Absolute Immunity"

26 **NOTICE OF CONSTITUTIONAL CHALLENGE OF STATUTE BY FRCP**
27 **RULE 5.1 & A.R.S. § 12-1841**

28 Pursuant to A.R.S. §12-1841 in conjunction with Federal Rules of Civil
Procedure (FRCP) Rule 5.1, Constitutional Challenge to a Statute applied in State
of Arizona for violation of U.S. Constitution and Arizona Constitution,
Appellant/Plaintiff-Rafael C. Danam has filed a standard of NOTICE in
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
28

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.,*
13 *Inc.*, 215 Ariz. 52, 18, 156 P.3d 1157, 1160 (App. 2007). We also
14 review de novo questions regarding the construction of statutes.
15 *Canon Sch. Dist. No. 50 v. W.E.S. Constr. Co.*, 177 Ariz. 526, 529,
16 869 P.2d 500, 503 (1994).

17 When construing a statute, we must "determine and give effect to
18 legislative intent." *City of Phoenix v. Phoenix Employment Relations*
19 *Bd.*, 207 Ariz. 337, ¶ 11, 86 P.3d 917, 920 (App. 2004). We look first
20 to the plain language of the statute because that is the best indicator of
21 legislative intent. *Mejak v. Granville*, 212 Ariz. 555, ¶ 8, 136 P.3d
22 874, 876 (2006). If the meaning of the language is clear, we do not
23 employ any further methods of constinaction. *N. Valley Emergency*
24 *Specialists, L.L.C. v. Santana*, 208 Ariz. 301, ¶ 9, 93 P.3d 501, 503
25 (2004).

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

Petition for Review to the Arizona Supreme Court specifically highlights in

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.
5
6
7

8 **QUESTION OF LAW A.R.S. §12-1861: JURISDICTION OF ARIZONA**
9 **SUPREME COURT “UNCONSTITUTIONALITY” A.R.S. §12-1841 OF**
10 **“ABSOLUTE IMMUNITY” A.R.S. §12-820.01**
11

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

25 Plaintiff/Appellant seeks jurisdiction by the Arizona Supreme Court
26 provides in A.R.S. § 12-2103(B) “B. When the judgment or order is reversed or
27
28

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 cited 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 14th 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.*

1 *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:
13
14
15
16
17

18 We the people are the rightful masters of both Congress and the
19 courts, not to overthrow the Constitution but to overthrow the men
20 who pervert the Constitution.¹

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
26

27

28 ¹ 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

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

4 JUSTICE O'Connor provides further insight of the authority of judicial
5 officers to enforce and protect the perpetual right of citizens by the U.S.
6 Constitution, further nullifying and voiding "Absolute Immunity" of
7 Appellees/Defendants, with reference to Federalist Nos. 78-80:
8

9
10 Apparently a great many people have forgotten that the framers of our
11 Constitution went to such great effort to create an independent judicial
12 branch that would not be subject to retaliation by either the executive
13 branch or the legislative branch because of some decision made by
those judges....

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

16 In "Stare Decisis" of the United States Supreme Court (SCOTUS) in specific
17 reference to 14th Amendment of U.S. Constitution emphasis on "Equal Protection
18 of the Laws" CHIEF JUSTICE Vinson delivered the opinion of the Court in
19 *Shelley v. Kraemer*, 334 U.S. 1 (1948), with supporting statement by JUSTICE
20 Kennedy, in that Appellant/Plaintiff has right of "equal protection" by the U.S.
21 Constitution, "As the Constitution endures, persons in every generation can invoke
22 its principles in their own search for greater freedom."
23

24 ² Associate Justice Sandra Day O'Connor. U.S. Supreme Court Archives. *New York v. United States*, 488 U.S. 1041
25 (1992). Accessed 11/01/2018 <https://www.archives.gov/research/guide-fed-records/groups/267.html>

26 ³ Sandra Day O'Connor. Biography. Accessed 08/23/2019 [https://www.biography.com/law-figure/sandra-day-](https://www.biography.com/law-figure/sandra-day-oconnor)
27 [oconnor](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 In *Ex parte Virginia*, 100 U. S. 339, 100 U. S. 347 (1880), the Court
15 observed: "A State acts by its legislative, its executive, or its judicial
16 authorities. It can act in no other way." In the Civil Rights Cases, 109
17 U. S. 3, 109 U. S. 11, 17 (1883), this Court pointed out that the
18 Amendment makes void "State action of every kind" which is
19 inconsistent with the guaranties therein contained, and extends to
20 manifestations of "State authority in the shape of laws, customs, or
21 judicial or executive proceedings." (Page 334 U. S. 15)
22 In numerous cases, this Court has reversed criminal convictions in
23 state courts for failure of those courts to provide the essential
24 ingredients of a fair hearing. (Page 334 U. S. 17) by the use of
25 perjured testimony known by the prosecution to be such (Page 334 U.
26 S. 18) [underline and italic added for exposure of violation]⁴

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

⁴ *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 purposé 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 [14th 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**
 without due process of law, or which denies to any of them the equal
 protection of the laws.” *Shelley v. Kraemer*, 334 U.S. 1 (1948)

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

24
25 Supreme Court found that the prohibitions of the Fourteenth
26 Amendment “have reference to actions of the political body
27 denominated by a State, by whatever instruments or in whatever
28 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.”⁵

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
27 ⁵ Jackson v. Metropolitan Edison Co, 419 U.S. 345 (1974) Accessed 11/01/2018
28 <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
generally determines whether he abused his immunity by acting for an
improper purpose or in an improper manner. Restatement (Second) of
Torts § 619, comment b (1977).

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

21 B. Absolute or Qualified Immunity

22 1. Competing Interests

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

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

The arguments favoring official immunity are countered by the legitimate complaints of those injured by government officials.

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

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

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
8 to a comparison of qualified and absolute immunity. **Before
9 proceeding to that comparison, however, it is important to note
10 that not all official conduct is protected by immunity.**

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

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

22 ⁶ This defamation action was brought by William Chamberlain, Wilda Dearie, Sue Ann Gundy, Arthur Reeves, and
23 Michael J. Savino (plaintiffs) against Donald Mathis (Mathis), Director of the Arizona Department of Health
24 Services (ADHS). The trial court dismissed plaintiffs' complaint on the grounds that Mathis enjoyed an absolute
25 privilege. The court of appeals reversed, holding that there was no absolute privilege and that whether Mathis was
26 entitled to "high level executive" immunity was a question of fact for the jury. *Chamberlain v. Mathis*, No. 1 CA-
27 CIV 7750 (Ariz.Ct.App. Aug. 27, 1985) (memorandum decision). We accepted review to clarify the law regarding
28 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

FORFEITURE of immunity by Defendants by standard of CONCLUSION in *Chamberlain v. Mathis*, 151 Ariz. 551 (Ariz. 1986), “He forfeits his immunity if, and only if, he ..., or (2) acted with malice in that he knew his statements regarding plaintiffs were false or acted in reckless disregard of the truth.” *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974); *Harlow v. Fitzgerald*, 457 U.S. at 816-17, 102 S.Ct. at 2737-39; *Stump v. Sparkman*, 435 U.S. 349 (1978); *Lavit v. Superior Court*, 173 Ariz. 96, 839 P.2d 1141 (App. 1992); *Adams v. State*, 916 P.2d 1156 (Ariz. Ct. App. 1996); *Lythgoe v. Guinn*, 884 P.2d 1085 (Alaska 1994); *Burk v. State*, 156 P.3d 423 (Ariz. Ct. App. 2007); *Politi v. Tyler*, 751 A.2d 788 (Vt. 2000); *Duff v. Lewis*, 958 P.2d 82 (Nev. 1998); *Griggs v. Oasis Adoption Servs., Inc.* 383 P.3d 1145 (Ariz. Ct. App. 2016); *Delcourt v. Silverman*, 919 S.W.2d 777 (Tex. App. 1996); *Johnson v. Kosseff* C.A. No. WC 2011-0366 (R.I. Super. Jan. 11, 2013); *Mission Oaks Ranch v. County of Santa 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 **U.S. Constitution & Arizona Constitution Laws in Violation to 42 U.S.C. § 1983**

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

12 NOTE: All dates of violation are directly recorded in record of case.
13

14 Defendant(s)	15 VIOLATIONS of Law, Policy, Right	16 Case Law
17 <u>COUNT 1:</u>		
18 Appellee/Defendants Violation of 42 U.S.C. 1983: Perpetual Right of U.S. Constitution		
19 Protections		
20 Arizona Board of	Supremacy of the U.S. Constitution,	<i>Marbury v. Madison</i> , 5 U.S. 137
21 Education	Bill of Rights;	(1803); <i>Martin v. Hunter's Lessee</i> ,
22 As Individual Members:	United States Constitution (Article VI,	14 U.S. 304 (1816); <i>Cohens v.</i>
23 AZSBE failure to apply	Clause 2)	<i>Virginia</i> , 19 U.S. 264 (1821);
24 due diligence to “Stare		<i>Pennsylvania v. Nelson</i> , 350 U.S.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Decisis" on "Freedom of Speech" identified by AZSBE in Case No. C- 2016-585 as unprofessional is contrary to Right of "Freedom of Speech." Numerous attempts by Appellant by right of "Redress Grievances" by appeal were thwarted. All rights to Appellant are preserved in Supremacy Clause of the Constitution		497 (1956); <i>Brown v. Board of Education of Topeka</i> , 347 U.S. 483 (1954),
19 20 21 22	<u>COUNT 2:</u> Appellee/Defendants Violation of 42 U.S.C. 1983: Right to "Freedom of Speech" "Redress Grievances"		
23 24 25 26	Arizona Board of Education As Individual Members:	U.S. Constitution First Amendment, Arizona Constitution Article 2 §§ 5 & 6	<i>Pickering v. Board of Education</i> , 391 U.S. 563 (1968); <i>Board of 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).
---	---	---	--

14 **COUNT 3:**
15
16 Appellee/Defendants Violation of 42 U.S.C. 1983: Right to "Due Process" & Not Suffer
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);
--	--	---	---

27
28

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

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

APPELLEE/DEFENDANT’S ABUSE OF POWER & VIOLATIONS OF

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 U.S. Constitution, Article VI

7 AMENDED NOTICE OF CONSTITUTIONAL CHALLENGE OF STATUTE

8
9 Respectively Submitted to
10 For the Judicial Officers of the
11 Supreme Court of the State of Arizona

12 DATED: Monday, August 26th 2019 /s/Rafael Danam 01/18/2020 (MMXX)

13
14 **RAFAEL CEZAR DANAM, Appellant/Plaintiff**

15
16 A.R.S. Title 12 - Courts and Civil Proceedings; Chapter 13; Article 3: Oath and Affirmation; §12-2221

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

19 Affidavit of _____ Signature

20 NOTARY PUBLIC _____ Signature

21 §12-2221(B) The oath or affirmation may be administered by any judge, clerk or deputy clerk of any
22 court of record, justice of the peace, *notary public*, referee or commissioner of a court of record.

1 ARIZONA SUPREME COURT

2
3 RAFAEL CEZAR DANAM,

4 Appellant/Plaintiff.

5 Vs.

6
7 ARIZONA BOARD OF EDUCATION,

8 Appellee/Defendants.

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

9
10 AMENDED NOTICE OF
11 CONSTITUTIONAL STATUE
12 CHALLENGE
13 CERTIFICATE OF COMPLIANCE

14 **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, Rule 14, Rule 22, Rule 23, or
22 Rule 29, as applicable.

23
24 /s/Rafael C. Danam-Appellant/Plaintiff

25 January 18, 2020 (MMXX)

1 ARIZONA SUPREME COURT

2
3 RAFAEL CEZAR DANAM,

4 Appellant.

5 Vs.

6
7 ARIZONA BOARD OF EDUCATION,

8
9 Appellee.

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

10 AMENDED NOTICE OF
11 CONSTITUTIONAL STATUE
12 CHALLENGE
13 CERTIFICATE OF SERVICE
14

15 **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 18th 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
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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
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1
2 **Office of Arizona Russell Bowers, Speaker of the House**

3 State of Arizona Capitol, House of Representatives

4 1700 West Washington

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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

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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

“...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

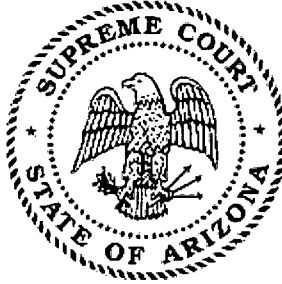


“There is only one who is all powerful, and his greatest weapon is love.” (Silver Surfer)

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

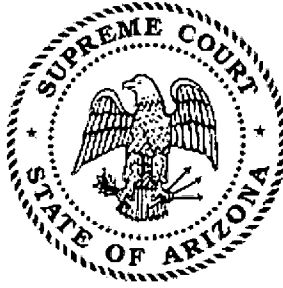
TO:

Rafael Cezar Danam

Kim S Anderson

Amy M Wood

jd



Supreme Court

STATE OF ARIZONA

ROBERT BRUTINEL
Chief Justice

ARIZONA STATE COURTS BUILDING
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