SUPREME COURT OF ARIZONA

PHOENIX UNION HIGH SCHOOL DISTRICT NO. 210, Petitioner, v. HON. JOAN M. SINCLAIR, Judge of the Superior Court of the State of Arizona, in and for the County of Maricopa, Respondent, and CHRISTOPHER A. LUCERO, a minor child, by and through his natural father, CHRISTOPHER J. LUCERO, Real Party in Interest.	No. 1 CA-SA 24-0205 Maricopa County Superior Court No. CV2022-005719

PETITION FOR REVIEW

Christopher S. Welker (020060)
Brett R. Steele (034716)
WRIGHT WELKER & PAUOLE PLC
10429 South 51st Street, Suite 285
Phoenix, Arizona 5044
(480) 961-0040
cwelker@wwpfirm.com
bsteele@wwpfirm.com
Attorneys for Defendant/Petitioner
Phoenix Union High School District

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Introduction

This Court's *dicta* in *Dinsmoor v. City of Phoenix*[1] has created confusion among the lower courts as to the existence and extent of a school's duty to students traveling to and from school on public rights-of-way despite *Dinsmoor's* clear holding that, "in the school-student relationship, ***the duty 'encompasses risks such as those that occur while the student is at school or otherwise under the school's control.***'"[2] Just in this one case, the lower-court judges have applied *three different analyses* to the threshold legal issue of whether the Phoenix Union High School District ("District") owed Plaintiff a duty while he was jaywalking across a city street on his way to school from his home.

First, in denying summary judgment, the trial court started its conclusion by correctly citing the *Dinsmoor* standard of ***"custody and control,"*** but then immediately disregarded the standard and found a duty based on the District's purported *knowledge* of jaywalking and *ability* ***"to pursue safer options for students coming and going from school grounds through the city, or . . . to warn students of the traffic dangers."***[3]

Second, apparently recognizing the trial court's manifest error, a 2-1 panel

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[1] 251 Ariz. 370 (2021).
[2] *Id.* at 374 ¶ 17 (quoting *Monroe v. Basis Sch., Inc.*, 234 Ariz. 155, 157-58 (App. 2014)) (emphasis added).
[3] Appx. 5.

majority in Division One denied special-action review based on *Dinsmoor*'s *dicta* about a *different duty*: "The facts presented . . . are insufficient to permit meaningful review of the superior court's conclusion that Lucero's claims fell within Petitioner's 'duty to provide a reasonably safe means of ingress and egress,' which 'does not evaporate if a student is injured off campus while trying to enter school property to attend classes.'"[4]

What the majority characterizes as "insufficient facts" were those presented after the close of full discovery in a motion for summary judgment. The panel majority defied decades of well-established precedent by making the duty determination a question of fact for the jury rather than a decision by the court as a matter of law before consideration of case-specific facts.[5]

Third, the dissenting judge correctly concluded, consistent with this Court's holding in *Dinsmoor*, that the District owed Plaintiff no duty and should be granted summary judgment because it is *undisputed* that Plaintiff was illegally jaywalking across a city street when he was struck by a car on his way to school, and that he had safe access to the high-school campus had he simply chosen to follow basic traffic laws.[6]

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[4] Court of Appeals' Dec. 4, 2024 Order Declining Jurisdiction ("Ct. App. Order"), p. 2 (quoting *Dinsmoor*, 251 Ariz. at 376 ¶ 23). A copy of the order is attached.
[5] *See, e.g.*, *Quiroz v. Alcoa Inc.*, 243 Ariz. 560, 564 ¶ 7 (2018).
[6] Ct. App. Order, p. 3.

While it was within the Court of Appeals' discretion to deny special-action review, the apparent confusion and disagreement among the lower-court judges demonstrate a need for this Court to reaffirm *Dinsmoor* and again clarify the limits of a school's duty to students off school grounds. As this Court emphasized, "the duty owed by schools to their students" is "a recurring issue of statewide importance."[7] Indeed, Arizona has over 2,000 publicly funded schools,[8] most of which abut public rights-of-way, and they are entitled to predictability regarding the scope their legal duties.

Also of statewide importance is the extent of the summary-judgment rule, including whether the Superior Court may decline to apply it to the issue of causation simply because it is factual, regardless of the evidence or lack thereof. In this case, the trial court disregarded the *undisputed* facts and simply concluded that "[b]reach and causation are factual matters for the jury's determination,"[9] even though it would be sheer baseless speculation to conclude that this 14-year-old Plaintiff would not have been injured had the District warned him about the dangers of jaywalking, or tried harder to persuade the City to install a crosswalk

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[7] *Dinsmoor*, 251 Ariz. at 373 ¶ 12.
[8] *See, e.g.*, Ariz. Dep't of Educ., AZ School Report Cards, https://azreportcards.azed.gov/state-reports (last visited Aug. 15, 2024).
[9] Appx. 5.

despite the contrary judgment of the City's traffic engineers.[10]

Moreover, were this Court to decline review, the parties and the Superior Court "would be subjected to the unnecessary expenditure of time and money associated with further proceedings,"[11] including a pointless trial tainted by manifest error on a *threshold legal issue*. In fact, the unnecessary trial would be unfair because a finding of an affirmative duty based on an *ability* to take action implies that any inaction by a defendant is negligence and caused the plaintiff's injury.

Because the Court can easily dispose of this case by reaffirming the standard from *Dinsmoor* and applying basic duty principles to *undisputed* facts, the District respectfully requests that the Court grant review.

Statement of Issues

1. Whether the trial court erred in holding that the District owed Plaintiff a duty of care while he was illegally jaywalking across a city street on his way to school.

2. Whether the trial court erred in failing to apply the summary-judgment rule to the issue of causation or in otherwise failing to grant summary judgment based on Plaintiff's inability to present evidence of causation beyond sheer speculation.

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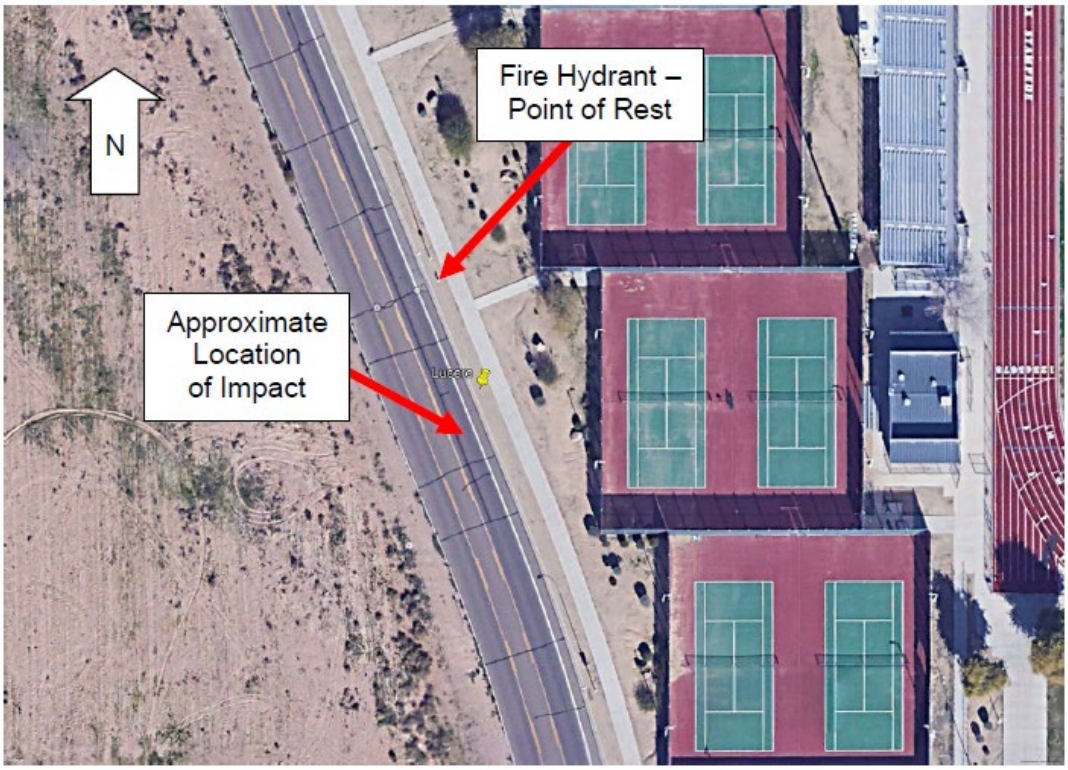
[10] *See* *Badia v. City of Casa Grande*, 195 Ariz. 349, 357 ¶ 29 (App. 1999) ("Sheer speculation is insufficient to establish the necessary element of proximate cause or to defeat summary judgment.").

[11] *See* *State v. Bryson*, 256 Ariz. 457, ¶ 8 (App. 2023). *See also* *Citizen Publishing Co. v. Miller*, 210 Ariz. 513 (2005) (granting review of trial court's denial of motion to dismiss after Court of Appeals denied special-action review by 2-1 vote).

Statement of Facts

Plaintiff "CJ" Lucero was a 14-year-old freshman at Betty Fairfax High School in Phoenix.[12] On August 3, 2021, he was hit by a car while jaywalking across 59th Avenue on his way to school.[13] It is *undisputed* that the collision did not occur on school property, but in the middle of a city street, while Plaintiff was jaywalking across the road from east to west, as shown in the following image from the report of *Plaintiff's retained accident reconstructionist*:[14]



The accident was captured by one of the school's security cameras.[15]

[12] Appx. 11-12 (¶¶ 10-11).
[13] Appx. 12 (¶¶ 12-15), 19-20 (¶¶ 2-4, 7-8), 26-36, 58-59 (¶¶ 2-4, 7-8).
[14] *See* Appx. 30.
[15] *See* Appx. 30-33, 82.

Unfortunately, Plaintiff simply darted into traffic while running to school, and was hit by a car.[16] Nevertheless, in addition to suing the driver and the City of Phoenix, Plaintiff is suing the District in negligence for allegedly failing to protect him from the "unreasonably dangerous condition" of traffic on the city street.[17]

Argument

The Superior Court defied controlling Arizona precedent in holding that the District owed Plaintiff a legal duty while he was jaywalking across a city street on his way to school because the school purportedly had *knowledge* of potential jaywalking and the *ability* to take some action. So manifestly erroneous is the trial court's conclusion, that the Court of Appeals apparently saw fit to substitute a *different duty*, even while denying review.

But as the dissenting appellate judge recognized, it is undisputed that Plaintiff was illegally jaywalking across a city street when he was hit by a car, and that he not only had safe means of ingress (entering the school), but also a safe way to walk to school had he simply followed traffic laws and crossed at the signalized intersection. Accordingly, this Court should reverse the trial court's denial of summary judgment while clarifying *Dinsmoor* and again reaffirming Arizona

[16] *See* Appx. 20 (¶¶ 7-8), 58-59 (¶¶ 7-8).
[17] *See* Appx. 13-16.

precedent that a school owes no duty to students while they are traveling to and from school outside of the school's "custody and control."

1. The relevant risks of jaywalking on a city street did not arise within the school-student relationship.

"Whether a duty exists 'is a legal matter to be determined *before* the case-specific facts are considered.'"[18] As this Court has repeatedly emphasized, "duty in Arizona is based on either recognized common law special relationships or on relationships created by public policy."[19]

One such special relationship is the school-student relationship. But "[a] school's duty to its students is not limitless."[20] As with other special relationships, the duty "applies only to 'risks that arise within the scope of the relationship.'"[21] Thus, "in the school-student relationship, the duty 'encompass[es] risks such as those that occur while the student is at school or otherwise under the school's control.'"[22]

In *Dinsmoor*, this Court clarified: "***The key consideration is whether a known and tangible risk of harm arose that endangered the student while under***

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[18] *Quiroz v. Alcoa Inc.*, 243 Ariz. 560, 564 ¶ 7 (2018) (citation omitted) (emphasis in original).
[19] *Id.* at 565 ¶ 14.
[20] *Dinsmoor v. City of Phoenix*, 251 Ariz. 370, 374 ¶ 17 (2021).
[21] *Id.* (citation omitted).
[22] *Id.* (citation omitted).

the school's custody and control."[23] Further, this Court expressly *approved* *Monroe v. Basis School, Inc.*,[24] in which the Court of Appeals declared that, "absent a statute to the contrary or an undertaking specifically assumed, an educational institution has no duty to conduct or supervise school children in going to or from their homes."[25] In *Monroe*, Division Two correctly focused on *custody* in holding that the school owed the plaintiff no duty to protect her from a nearby busy intersection: "Monroe left BASIS's custody to travel from the school to her home. Because BASIS did not have custody, it did not have a protective obligation and lacked the special, student-school relationship with Monroe after she left the school."[26]

Yet, despite this precedent, the Superior Court concluded that the District owed Plaintiff a duty when he attempted to jaywalk across 59th Avenue on his way to school. Although the trial court started its conclusion by quoting the *Dinsmoor* standard of custody and control, it curiously proceeded to disregard the standard—and basic precedent regarding legal duty—in finding a duty based on the school's purported *knowledge* and *ability*:

> In this case, the school was aware since 2021 that many students were crossing 59th Avenue to get to and from

[23] *Id.* at 376 ¶ 24 (emphasis added).
[24] 234 Ariz. 155 (App. 2014).
[25] *Id.* at 158 ¶ 7 (quoting 5 James M. Rapp, *Education Law*, § 12.10[5], at 12-296.5 (2013)).
[26] *Id.* ¶ 9.

> school by jaywalking. This created a known and tangible risk of harm to those students. ***The District had at least some control over whether to pursue safer options for students coming and going from school grounds through the City, or whether to warn students of the traffic dangers.***[27]

A fundamental principle of legal duty in Arizona is that ***"[k]nowledge of a risk of harm and the ability to take some action to ameliorate that risk do not alone impose a duty to act."***[28] This is consistent with the principle that "[w]hether a duty exists 'is a legal matter to be determined ***before the case-specific facts are considered***.'"[29] Yet, the trial judge found *an affirmative duty based solely on an alleged ability to take some action.*

Manifestly, the trial court did not apply the *Dinsmoor* standard or even try to distinguish *Monroe.* Although the trial court quoted *dicta* from *Dinsmoor* that "[u]nique circumstances may exist where a school has a duty to protect students from ***risks*** that arise while under school supervision and control even though such risks result in ***harm*** when students are outside school supervision and control,"[30] it did not identify any such unique circumstances, nor did it explain how the risks of jaywalking arose while Plaintiff was under the school's "supervision and control."

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[27] Appx. 5 (emphasis added).
[28] *Collette v. Tolleson Unified Sch. Dist. No. 214*, 203 Ariz. 359, 363, ¶ 13 (App. 2002) (emphasis added).
[29] *Quiroz*, 243 Ariz. at 564 ¶ 7 (citation omitted) (emphasis added).
[30] *Dinsmoor*, 251 Ariz. 375 ¶ 23 (emphasis added).

Under clear Arizona precedent, Plaintiff cannot create a duty after the fact by inundating the trial court with purported case-specific facts and claiming that the school should have done something to prevent Plaintiff's jaywalking. Instead, the District was entitled to know the scope of its legal duty *before* allegedly failing to perform it. As this Court has articulated, "we cannot provide any meaningful guidance to courts and practitioners without defining the rights and obligations of the parties *before* a plaintiff is injured."[31]

Accordingly, this Court should reverse the trial court's manifestly erroneous denial of summary judgment while clarifying *Dinsmoor* and again reaffirming that the school-student duty is based on "*custody and control*."

2. The duty of a business to provide a means of ingress is inapplicable because Plaintiff was not entering the school when his injury occurred, and he did have safe means of ingress.

The panel majority apparently misreads *Dinsmoor*'s *dicta* regarding ingress and "trying to enter school property" as recognizing a school-student duty based on *proximity* to a school. But *ingress* means "the act of entering"—not the act of *traveling to*.[32] In *Dinsmoor*, this Court briefly referenced *Stephens v. Bashas' Inc.*,[33] which was not a school case, but involved an injury to a truck driver who

[31] *Quiroz*, 243 Ariz. at 576 ¶ 76 (emphasis added).
[32] *Ingress*, BLACK'S LAW DICTIONARY (12th ed. 2024). *See also* MERRIAM-WEBSTER, *ingress*, https://www.merriam-webster.com/dictionary/ingress (last visited December 19, 2024).
[33] 186 Ariz. 427 (App. 1996).

was *denied entry* to the defendant's premises because of *conditions on the premises itself*.

In *Stephens*, the plaintiff truck driver attempted to make a scheduled delivery of grocery products to a Bashas warehouse. But when he attempted to enter Bashas' premises, the security guard stopped him and told him to park the truck off the premises. The plaintiff ended up parking his truck in the center turning lane on the same street, 35th Avenue.[34]

While parked in the street waiting for dock clearance, the plaintiff realized that his truck would block traffic on 35th Avenue if he partially backed into Bashas' property before opening his back doors. Consequently, once he saw a truck exiting his assigned dock, he exited and opened the back doors. But as he returned to the cab, a truck strayed into the center lane and hit him.[35]

Thus, the injury was directly caused by *conditions on Bashas' premises itself* that *prevented ingress* and put the plaintiff in danger as he was *attempting to enter*. Accordingly, in rejecting Bashas' no-duty argument, the Court of Appeals cited the duty of a *business* to *invitees*: "In Arizona, a business owner has a ***duty to maintain its premises in a reasonably safe condition*** for invitees. ***This duty*** includes an obligation 'to provide reasonably safe means of ingress and egress.'"[36]

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[34] *Id.* at 428-29.
[35] *Id.* at 429.
[36] *Id.* at 430 (citation omitted) (emphasis added).

Here, in contrast, Plaintiff points to no defect or condition on the *school's premises* that prevented him from safely entering the school. To the contrary, his parents unequivocally conceded, as the dissenting judge noted, that he had safe access to the school had he simply followed rules of the road.[37] Thus, his injury had nothing to do with a lack of "means of ingress" or the landowner-invitee relationship, but resulted from the obvious risks of jaywalking on city streets.

Moreover, even if the District's "duty to provide a reasonably safe means of ingress" somehow included a duty to make city streets safe for students walking to school (it does not), "[w]hat is 'reasonably safe' takes into consideration certain minimal expectations that travelers follow the usual rules of the road."[38] The street was only unsafe for Plaintiff because he chose to dart into traffic. And the purported duty was only "to provide *a reasonably safe means of ingress*,"[39] which clearly does not include a duty to make safe whatever means (including illegal means) of "ingress" that an invitee might choose.

Accordingly, this court should clarify *Dinsmoor*'s *dicta* regarding a business owner's "duty to provide a reasonably safe means of ingress," reject the Court of Appeals' substitution of that clearly inapplicable duty in this case, and join the dissenting judge in finding no duty based on the undisputed facts.

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[37] Ct. App. Order, p. 3. *See also* Appx. 44-45 (pp. 28-31) and 87-88 (pp. 64-66).
[38] *See* *Coburn v. City of Tucson*, 143 Ariz. 50, 54 (1984).
[39] *Dinsmoor*, 251 Ariz. at 376 ¶ 23 (emphasis added).

3. The trial court erred in declining to apply the summary-judgment rule to the issue of causation, which Plaintiff cannot prove beyond sheer speculation.

Although it is undisputed that the District lacked the authority or ability to install a crosswalk or reduce the speed limit on 59th Avenue,[40] the trial court found a duty because "[t]he District had at least some control over whether to *pursue safer options* for students coming and going from school grounds ***through the City***, or whether to *warn of the traffic dangers*."[41] This raises the obvious question whether such action would have prevented Plaintiff—a 14-year-old who was well aware of the obvious potential dangers of traffic—from darting into traffic on his way to school. But the trial court disregarded the undisputed evidence and the District's arguments and caselaw and simply concluded that "[b]reach and causation are issues for the jury's determination."[42]

As this Court has clarified, "[a]lthough breach and causation are factual matters, summary judgment may be appropriate if no reasonable juror could conclude that the standard of care was breached or that the damages were proximately caused by the defendant's conduct."[43] Proof of causation requires admissible evidence: "A party may prove proximate causation by presenting facts

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[40] Appx. 20 (¶ 9), 52 (p. 83), 59 (¶ 9).
[41] Appx. 5 (emphasis added).
[42] Appx. 5.
[43] *Gipson v. Kasey*, 214 Ariz. 141, 143 n.1 (2007).

from which a causal relationship may be inferred, but ***the party cannot leave causation to the jury's speculation***."[44] Of course, ***"[s]heer speculation is insufficient to establish the necessary element of proximate cause or to defeat summary judgment."***[45]

In fact, to suppose that any *reasonable* efforts to "pursue safer options" would have persuaded the City of Phoenix to install a crosswalk—*and* that it would have prevented Plaintiff from being hit by a car while jaywalking—would be worse than sheer speculation given the abundant contrary evidence. For example, Phoenix's Rule 30(b)(6) witness Briiana Velez, Assistant Director of the Street Transportation Department, confirmed that Phoenix had made an informed decision not to install a crosswalk or change the speed limit on 59th Avenue based on *its engineering judgment*.[46] In fact, Phoenix concluded that installing a crosswalk would create a safety hazard.[47]

Similarly, it would be sheer speculation to suppose that Plaintiff would not have been injured had the District, although it had no duty, warned him about the obvious dangers of jaywalking, even though he was a teenager and his parents had

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[44] *Salica v. Tucson Heart Hosp.-Carondelet, L.L.C.*, 224 Ariz. 414, 419 ¶ 16 (App. 2010) (emphasis added).
[45] *Badia v. City of Casa Grande*, 195 Ariz. 349, 357 ¶ 29 (App. 1999) (emphasis added).
[46] Appx. 20-21 (¶¶ 10-11), 52-53, 59 (¶¶ 10-11).
[47] *Id.*

taught him to follow traffic rules, not jaywalk, and to look both ways before crossing a street.[48] The trial court did not hold otherwise or even address the undisputed evidence or any of the District's arguments or caselaw.

Respectfully, this Court should take the opportunity to remind the lower courts that the summary-judgment rule applies to the issue of causation, and that they should grant summary judgment in the absence of a genuine issue of material fact regarding causation.

Conclusion

For these reasons, the District respectfully requests that this Court accept special-action jurisdiction, vacate the trial court's March 6, 2024 order denying summary judgment, and order the trial court to grant the District summary judgment.

DATED this 23rd day of December, 2024.

WRIGHT WELKER & PAUOLE PLC

By: /s/ Christopher S. Welker
Christopher S. Welker
Brett R. Steele
10429 South 51st Street, Suite 285
Phoenix, Arizona 5044
Attorneys for Defendant/Petitioner
Phoenix Union High School District

[48] Appx. 41 (pp. 35-36), 88 (p. 66), 100 (pp. 22-23).

Certificate of Compliance

This Certificate of Compliance concerns a Petition for Review and is submitted under Rule 23(h). The undersigned certifies that the Petition for Review to which this Certificate is attached uses type of at least 14 points, is double-spaced, and contains 3,288 words. The document to which this Certificate is attached does not exceed the word limit that is set by Rule 23.

Dated December 23, 2024.

WRIGHT WELKER & PAUOLE PLC

By /s/ Christopher S. Welker

Christopher S. Welker
Brett R. Steele
10429 South 51st Street, Suite 285
Phoenix, Arizona 5044
Attorneys for Defendant/Petitioner
Phoenix Union High School District

Certificate of Service

The undersigned hereby certifies that on this 23rd day of December, 2024, the foregoing Petition for Review and Appendix were e-filed via TurboCourt with the Arizona Supreme Court, and a copy was emailed to the following recipients:

Honorable Joan M. Sinclair
Maricopa County Superior Court
Durango Facility
3131 W. Durango St.
Phoenix, AZ 85009
Jujo6@jbazmc.maricopa.gov
Respondent Judge

Douglas A. Loefgren
LAW OFFICES OF DOUGLAS LOEFGREN, PLC
2198 East Camelback Road, Suite 360
Phoenix, AZ 85016-4772
dloefgren@loefgrenlaw.com
Attorneys for Plaintiff

Jonathan V. O'Steen, Esq.
Lincoln Combs, Esq.
Matthew P. MacLeod, Esq.
O'STEEN & HARRISON, PLC
300 W. Clarendon Ave., Suite 400
Phoenix, Arizona 85013-3424
josteen@vanosteen.com
lcombs@vanosteen.com
mmacleod@vanosteen.com
Attorneys for Plaintiff

Sean P. Healy
Kristian E. Nelson
J. Randall Jue
LEWIS BRISBOIS BISGAARD & SMITH LLP
2929 North Central Ave., Ste. 1700
Phoenix, AZ 85012-2761
Sean.Healy@lewisbrisbois.com
Kristian.Nelson@lewisbrisbois.com
James.Jue@lewisbrisbois.com
Attorneys for Defendant City of Phoenix

Laurence R. Sharlot
Joseph A. Brophy
Tyler Schwenke
JENNINGS HAUG KELEHER MCLEOD WATERFALL LLP
2800 N. Central Ave., Suite 1800
Phoenix, AZ 85004
lrs@jkwlawyers.com
jab@jkwlawyers.com
ths@jkwlawyers.com
Attorneys for Defendant Shadia Sabali Barnett

Dated December 23, 2024.

WRIGHT WELKER & PAUOLE PLC

By /s/ Christopher S. Welker
Christopher S. Welker
Brett R. Steele
10429 South 51st Street, Suite 285
Phoenix, Arizona 5044
Attorneys for Defendant/Petitioner
Phoenix Union High School District