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.	CV-24-0307-PR No. 1 CA-SA 24-0205 Maricopa County Superior Court No. CV2022-005719

SUPPLEMENTAL BRIEF OF PETITIONER PHOENIX UNION HIGH SCHOOL DISTRICT NO. 210

Christopher S. Welker (020060)
Richard R. Carpenter (030752)
Brett R. Steele (034716)
WELKER & PAUOLE PLC
10429 South 51st Street, Suite 285
Phoenix, Arizona 5044
(480) 961-0040
cwelker@wplawfirm.com
rcarpenter@wplawfirm.com
bsteele@wplawfirm.com
Attorneys for Defendant/Petitioner
Phoenix Union High School District

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases **Page**

Argument

Without addressing the established limitations of the school-student special relationship, or applying basic principles of duty in Arizona, Plaintiff's response to the District's petition incorrectly cites this Court's dicta in *Dinsmoor* regarding *ingress* (the act of entering) as establishing that "***a duty is owed to a student injured because a school did not provide a safe way for students to get to campus***."[1] Not only is this a brazen misstatement of the Court's holding in *Dinsmoor*, but it is *undisputed* that Plaintiff *did* have a safe way to get to school.[2] And, tellingly, Plaintiff's response brief does not define "ingress" or indicate the alleged *limits* of the purported duty because Plaintiff's argument is based purely on alleged *case-specific facts*.

Contrary to this Court's repeated emphasis that "the existence of duty 'is a legal matter to be determined *before* the case-specific facts are considered,'"[3] Plaintiff continues to argue that the school owed him a duty—while he was jaywalking across a city street on his way to school—because the school was

---

[1] Plaintiff's response brief at 13 (emphasis in original).

[2] *See*, *e.g.*, Appendix to the District's petition for review ("Appx.") 44-45, 87-88. *See also* Petitioner's Supplemental Appendix ("Supp. Appx.") 17:15-17 (Plaintiff's counsel: "there's certainly a different route that Christopher Lucero could have taken that day where he wasn't crossing the street"), 20:16-18 ("there's a sidewalk that has multiple spinoffs that allow individuals to enter the campus at multiple different locations.").

[3] *See* *Perez v. Circle K Convenience Stores, Inc.*, 564 P.3d 623, 628 ¶ 13 (Ariz. 2025) (*quoting* *Gipson v. Kasey* , 214 Ariz. 141, 145 ¶ 21 (2007)).

allegedly aware of an "unreasonably dangerous condition" (i.e., traffic on the city street) and failed to warn or otherwise protect him from it (conflating issues of duty and breach). But as Plaintiff's counsel admitted at oral argument in the Court of Appeals, Plaintiff "was absolutely jaywalking" and "basically darting in between traffic."[4] Of course, traffic is always a "dangerous condition" for *jaywalkers "darting in between traffic" in a city street*, especially when they do not look both ways.

But most importantly, it is beyond dispute that the risks of traffic and jaywalking while traveling to school did not arise within the school-student relationship or the landowner-invitee relationship. As this Court reemphasized most recently in *Perez v. Circle K Convenience Stores*, "[t]he purpose in examining case-specific facts in the duty inquiry involving a special relationship is determining *when* and *where* the alleged risk of harm arose—within or outside the scope of the special relationship—not *whether* the alleged risk actually constituted an unreasonably dangerous condition."[5]

[4] Supp. Appx. 17:20, 24:5-6. Although the surveillance video that captured Plaintiff "darting in between traffic" was not submitted to the Court of Appeals, it is in the trial court's record, and the District would be happy to provide it if the Court wishes to review it.

[5] *Perez*, 564 P.3d at 628 ¶ 15.

The Court further noted in *Perez*, while quoting *Gipson v. Kasey*,[6] that "courts should not 'define duties of care in terms of the parties' actions in particular cases' because 'a fact-specific discussion of duty conflates the issue with the concepts of breach and causation.'"[7] Yet, in direct contravention of this standard, Plaintiff's response brief asserts that "[t]he District's actions and inactions . . . created a duty to students like [Plaintiff]."[8]

In *Perez,* this Court also found *Markowitz v. Arizona Parks Board*[9] illustrative, and the Court's discussion of *Markowitz* is particularly instructive here. In *Markowitz*, the plaintiff was injured after diving into a shallow lake at a state recreation area. This Court explained that, had the plaintiff in *Markowitz* "been injured in a car accident ***on the way to or from the state recreation area, the state would not have owed a duty to him***" because "[t]he tangible risk of injury from a traffic accident away from the recreation area and outside the state's control would have existed outside the land possessor-invitee relationship."[10]

Despite this very recent guidance and emphasis from this Court on the elements of legal duty, Plaintiff does not even try to show that the relevant risk of

---

[6] 214 Ariz. 141 (2007).
[7] *Perez*, 564 P.3d at ¶ 18 (*quoting Gipson*, 214 Ariz. at 145 ¶ 21).
[8] Plaintiff's response brief at 13.
[9] 146 Ariz. 352 (1985).
[10] *Perez*, 564 P.3d at 630 ¶ 19 (emphasis added).

jaywalking across a city street arose within a school's legally recognized special relationship, nor could he.

1. Plaintiff effectively concedes that the risk of jaywalking across a city street does not arise within the school-student relationship.

In *Dinsmoor*, this Court unequivocally held 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.'***"[11] "The key consideration is whether a known and tangible risk of harm arose that endangered the student ***while under the school's custody and control***."[12] And "once students safely leave the school's control, the special relationship ends."[13]

Even though the trial court cited *Dinsmoor* in purportedly finding a school-student duty at the time of Plaintiff's injury, Plaintiff's response brief does not contain even a single reference to "custody" or "control." Apparently conceding that the relevant risk of traffic and jaywalking does not arise within the school-student relationship articulated in *Dinsmoor*, Plaintiff now focuses on the *landowner-invitee* duty, which includes "a duty to provide a reasonably safe means of ingress and egress."[14]

---

[11] *Dinsmoor v. City of Phoenix*, 251 Ariz. 370, 374 ¶ 17 (2021) (quoting *Monroe v. Basis Sch., Inc.*, 234 Ariz. 155, 157-58 (App. 2014)) (emphasis added).
[12] *Id.* at 376 ¶ 24 (emphasis added).
[13] *Id.* at 375 ¶ 20.
[14] *Id.* at 376 ¶ 23.

Thus, the sole remaining issue is whether Plaintiff's injury—while jaywalking across a city street outside of the school's custody and control—arose within the school's premises duty (as landowner) to provide a reasonably safe means of ingress. It clearly does not.

2. Jaywalking across a city street is not *ingress*.

Without defining "ingress," Plaintiff's response to the District's petition demonstrates the folly of his argument by noting that "[a]ll entities in Arizona that are open to the public—including and especially schools—have a duty to patrons to make access to their premises reasonably safe."[15] Given that it is undisputed that Plaintiff's injury occurred as he was jaywalking across a city street while en route to school, his argument suggests that *all* landowners and businesses owe a duty to prospective invitees—even jaywalkers—to protect them from traffic on city streets *while they're traveling to the premises*.[16] Not surprisingly, such an expansive concept of a landowner's duty is not found in Arizona jurisprudence.

As this Court reemphasized (again) very recently, "'a duty based on special relationships . . . applies ***only to risks that arise within the scope of the relationship***,' and 'the scope of such relationships is generally bounded by

[15] Plaintiff's response brief at 12.
[16] *See id.* at 13.

geography and time.'"[17] Although a landowner's failure to provide a means of ingress (an entrance) can cause an injury off premises—as in *Stephens v. Bashas' Inc.*[18]—the relevant risk must still arise from the defendant's land and the plaintiff's status as an invitee entering the premises.

Again, *ingress* means "*the act of entering*."[19] Significantly, Plaintiff does not propose any other definition of *ingress*, apply basic principles of duty in Arizona, cite any case law that suggests that *ingress* somehow includes jaywalking across city streets, or address any of the District's arguments. Instead, he merely mischaracterizes this Court's *dicta* in *Dinsmoor* as creating a case-specific duty to students *traveling to school*, outside of the school's control, if they are *close to campus* or—as happened in this case—if the trial judge believes that, based on *case-specific facts*, the school had the ability to do something more.

Even incorrectly assuming that Plaintiff was somehow an invitee of the District when he darted into traffic on the city street (which the District does not own or control), the District's premises duty (as a landowner) was only to provide "a reasonably safe means of ingress," not to make safe whatever means *of travel*

---

[17] *Perez*, 564 P.3d at 628 ¶ 12 (quoting *Dinsmoor*, 251 Ariz. at 374 ¶ 17) (emphasis added).
[18] 186 Ariz. 427 (App. 1996).
[19] *See* BLACK'S LAW DICTIONARY, *ingress* (12th ed. 2024); MERRIAM-WEBSTER, *ingress*, https://www.merriam-webster.com/dictionary/ingress (last visited December 19, 2024).

that Plaintiff *chose*, no matter how clearly unreasonable or even illegal. Indeed, as this Court has previously recognized, although "[t]he landowner has a duty to provide a reasonably safe means of ingress and egress for those who enter onto the land," "[t]he landowner . . . ***does not have to provide the shortest route to any destination area***."[20]

Importantly, unlike the present case, in *Stephens v. Bashas' Inc.*, the defendant supermarket *denied the plaintiff access* to the property due to a condition on the premises, preventing the plaintiff's *ingress*.[21] *Stephens* relied upon *O'Rielly Motor Co. v. Rich*[22] for the duty to provide a reasonable means of ingress and egress. Significantly, in *O'Rielly*, the defendant car dealership locked a prospective customer and his family inside the dealership's lot, trapping the plaintiff and preventing his exit (i.e., egress) from the property, which ultimately caused his injuries.[23] Thus, it is apparent from the only Arizona cases applying a landowner's duty to provide "a reasonable means of ingress and egress," that the duty's focus is on providing "a means" to enter and exit a premises—*not* to make safe every

---

[20] *Nicoletti v. Westcor, Inc.*, 131 Ariz. 140 (1982) (emphasis added). *See also Coburn v. City of Tucson*, 143 Ariz. 50, 54 (1984) ("[w]hat is 'reasonably safe' takes into consideration certain minimal expectations that travelers follow the usual rules of the road.").

[21] 186 Ariz. at 428 ("when Stephens began turning onto the Bashas' premises, Bashas' security guard . . . stopped him" and "told Stephens he would have to park somewhere off Bashas' property.").

[22] 3 Ariz. App. 21 (1966).

[23] *Id.* at 23.

potential invitee's chosen route of travel *to the premises*.

Finally, Plaintiff also disingenuously asserts that the District "created" an "unreasonably dangerous condition" because *other students* jaywalked (while in their parents' custody and control) from a vacant lot, which the District did not own or control, after the students' parents dropped them off. Not only are such alleged case-specific facts wholly irrelevant to the threshold legal issue of duty, but such facts are additionally irrelevant because Plaintiff was not dropped off at the vacant lot. He simply darted into traffic while walking to school from his home.[24] And this Court has previously noted that "[t]he common law does not place the possessor of land abutting public highways under any obligation to use or refrain from using his land so as to protect members of the traveling public on abutting streets."[25]

Moreover, it is *undisputed* that Plaintiff *did* have a safe way to get to school (by simply following the rules of the road), and he was not denied reasonable *ingress* to the school when he *chose* to "dart" into traffic on the city street. Because the obvious risks of traffic and jaywalking on a city street did not arise in the school-student relationship or the landowner-invitee relationship, those duties are wholly irrelevant and do not apply to this case.

---

[24] *See*, *e.g.*, Appx. 44-45, 87-88; Supp. Appx. 17, 24.
[25] *Coburn*, 143 Ariz. at 52-53.

Once again, as this Court recognized in expressly approving *Monroe v. Basis School* and its "more limited view of the school-student duty,"[26] Arizona schools do ***not*** owe a duty to students traveling to and from school on city streets outside of the school's "custody and control."[27] As the Court stated in *Dinsmoor*: "Because the school's roles forming the basis for the duty—custodian, land possessor, and quasi-parental figure—apply ***when the school supervises and controls students and their environment***, . . . we are convinced the duty exists ***only*** while the school is fulfilling these roles."[28]

Conclusion

The trial court did not find that Plaintiff's injury resulted from a risk arising in the school-student relationship or the landowner-invitee relationship. Rather, the trial court focused on alleged *case-specific facts* to conflate the issues of duty and breach. And Plaintiff does not even try to show that his injury arose from a risk arising in the school-student relationship or the landowner-invitee relationship. Instead, contrary to this Court's repeated guidance and recent clarification, Plaintiff argues for an unlimited and indefinable duty to protect students jaywalking across city streets based on case-specific purported facts regarding

---

[26] *Dinsmoor*, 251 Ariz. at 374-75 ¶¶ 18-20.
[27] *Id.* at 375, ¶ 20 (noting that, when a student is released from the school's control, "the school is relieved of any duty to affirmatively protect students from any hazards they encounter.").
[28] *Id.* (emphasis added).

knowledge, ability, and proximity.

In light of this Court's clear holding in *Dinsmoor* that a school's duty to a student arises specifically from the school's "custody and control" of the student, the District did not owe Plaintiff a legally recognized duty while he was jaywalking across a city street on his way to school outside of the District's custody, and the District respectfully asks that the Court vacate the trial court's March 6, 2024 order denying summary judgment, and order the trial court to grant summary judgment in the District's favor.

DATED this 21st day of April, 2025.

WELKER & PAUOLE PLC

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

Certificate of Compliance

This Certificate of Compliance concerns a Supplemental Brief and is submitted under Rule 23. The undersigned certifies that the Supplemental Brief to which this Certificate is attached uses type of at least 14 points, is double-spaced, and contains 2,217 words. The document to which this Certificate is attached does not exceed the word limit that is set by Rule 23.

Dated April 21, 2025.

WELKER & PAUOLE PLC

By /s/ Christopher S. Welker

Christopher S. Welker
Richard R. Carpenter
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 21st day of April, 2025, the foregoing Supplemental Brief 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
Maribel.Rivas@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 April 21, 2025.

WELKER & PAUOLE PLC

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