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IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

CONGRESS ELEMENTARY SCHOOL DISTRICT NO. 17 OF YAVAPAI COUNTY, Plaintiff, vs. JEAN WARREN, JENNIFER RENEE HOGE, CYNDI REGIS, AND BARBARA REJON, Defendants.	Case No. CV 201000162 **MOTION TO DISMISS** Oral Argument Requested; Expedited Hearing Mandatory Under A.R.S. § 12-752(A) *Hon. David L. Mackey*

This lawsuit, apparently without precedent in Arizona, represents on its face an effort by a governmental entity to invoke this Court's power to silence its critics by depriving them of rights protected by Public Records Law and the Arizona and United States Constitutions. As a crucial first step in curbing this outrageous action and in protecting Defendants' rights, this Court should promptly dismiss the action. Because the lawsuit implicates Defendants' right of petition, an expedited hearing on dismissal is mandatory under A.R.S. § 12-752(A).

MEMORANDUM OF POINTS AND AUTHORITIES

I. Summary of the District's Allegations

The District alleges that four women, who are allegedly residents and taxpayers in the Plaintiff District (Compl., ¶¶ 4-7)[1] and some of whom are allegedly guardians (mothers) of current students in the District (Compl., ¶¶ 66, 81), have made multiple requests with the District for public records from 2002 to 2009. The largest category of alleged public records requests is for the District's meeting minutes and agendas (Compl., ¶¶ 10, 13, 15, 20, 21, 25, 28, 34, 46, 67, 70, 71, 72, 85, 87, 88).[2] The other large category of alleged requests is for the education records and information for a particular District student, as requested by the Defendant mother of the child (Compl., ¶¶ 62, 68, 69, 73, 74, 75, 76, 89, 90, 91, 92, 93, 96, 99, 100, 101, 103, 104, 105, 106, 107, 108, 111, 112) (requesting, for example, child's lunch account balance, attendance records, disciplinary file, instructions given to School by child's father, etc.). Although the District often characterizes the latter requests as "public records requests" in the Complaint, requests for a specific child's education records and information are not "public records;" they are private. *See* 20 U.S.C. §§ 1232g(b)(1), 1417(c). The Defendant mothers have access to them only by virtue of their relationship to their child. Therefore, by the District's own allegations, Ms. Jennifer Renee Hoge (Behl-Hoge) requested no public records (*see* Compl., ¶¶ 56-63).

Another large category of alleged requests are not public records requests but rather are other requests, for example requests for the Board to hold meetings or form committees (Compl., ¶¶ 8, 18,

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[1] Contrary to the District's allegation (Compl., ¶ 7), Ms. Behl-Hoge does not live in the District. However, the allegation is not disputed on this Motion to Dismiss, and its falsity does not affect the analysis here.

[2] The District is required to create, maintain, and make publicly available meeting minutes (A.R.S. §§ 38-431.01(B) and (D)) and agendas (A.R.S. § 38-431.02). *See also* A.R.S. §§ 39-121.01(B) and (D)(1) (requiring disclosure of all public records upon request).

44), requests for the District to respond to previous requests (Compl., ¶¶ 9, 30, 61), requests for permission to speak at meetings (Compl., ¶¶ 11, 113) and place items on the agenda (Compl., ¶¶ 102, 110), requests for disability accommodations and contact information (Compl., ¶ 17), requests for the Board to attend Public Records Law training (Compl., ¶ 31) and review Education Laws (Compl., ¶ 60), requests that existing records be corrected (Compl., ¶¶ 14, 112, 114), etc. This leaves a limited number of public records requests actually alleged by the District.

The District also alleges that the Defendant women filed multiple complaints against it with the Arizona Ombudsman and one complaint against it with the State Fire Marshal (*see* Compl., ¶¶ 118-134).[3] According to the Complaint, a combined total of 16 complaints were filed with the Ombudsman by Defendants over the course of two years, or an average of two complaints per Defendant each year. The District alleges that these actions – requesting public records of primarily Board agendas and meeting minutes and education records of their children, and filing on average two complaints each year in two years – rise to the level of harassment and a nuisance that the District cannot tolerate. So much so, that the District initiated this lawsuit against the women. In this legal action, the District effectively attempts to preemptively forbid these parents and taxpayers access to all financial, school, and other records indefinitely, and stifle them from reporting all legal, fiscal, safety, health, management, and other concerns to any and all agencies, offices, and other forums.

As its requested relief, the District requests that the Court preliminarily and permanently enjoin each woman, including her agents, servants and employees, from ever requesting any "public records of [the District], its agents, servants, officers, and/or employees" without first obtaining leave of this Court (Compl., p. 37). The District also requests a declaratory judgment that it be permitted to deny each

[3] The Ombudsman receives complaints, conducts investigations, and issues findings on compliance of public entities with public access and other laws. A.R.S. §§ 41-1376, 41-1377, 41-1378.

woman, including her agents, servants and employees, all access to all public records requested previously or in the future, without her first seeking leave of this Court (*id.*). Finally, although the District does not allege that any of the women ever filed any "claim, charge or lawsuit" against it (except as the District's allegations that the Ombudsman "complaints" can be re-characterized as "claims" or "charges"), it also requests that the Court preliminarily and permanently enjoin each woman and her agents, servants and employees, from ever filing any "claims, charges or lawsuits in or before any court, administrative agency or other forum whatsoever" against the District, et. al, ever in the future without leave of this Court first (*id.*, pp. 37-38). The District's lawsuit is clearly an attempt to prevent Defendants from exercising their constitutional and other rights afforded under state and federal laws. The District's allegations and requested relief are not only shamefully inappropriate and without merit, they are sanctionable. Defendants request that the Court immediately dismiss the action.

II. The Requested Relief Violates Rights and Duties Under Arizona and Federal Laws

The Court may not issue relief that violates Defendants' rights or conflicts with the District's legal duties. *Lafaro v. Cahill*, 203 Ariz. 482, 487, 56 P.3d 56, 61 (App. 2002) (court cannot issue an injunction that violates constitutional rights); A.R.S. § 12-1802(4) (courts cannot issue an injunction that prevents enforcement of a statute for the public benefit). Here, the District's requested relief violates Defendants' right to access public and education records and their rights to free speech and petition for redress. It also conflicts with the District's statutory duties to produce public records upon request and communicate with parents of children in the District. Therefore, the claims must be dismissed.

A. Public Records Laws

All people have the right to request public records. A.R.S. § 39-121.01(D)(1). The right is permanent and cannot be abridged; it is equivalent for each person regardless of residency, citizenship, criminal record, or previous exercise of the right. Although not all records maintained by public entities

are open to the public at large, a public record that is open to one is open to all. Here, the District does not allege that the records Defendants allegedly requested (mainly meeting agendas and minutes) are not public. The District does not allege that it is not required by law to produce them upon request. According to the Complaint, the District appears willing to release records to *other people*; just not to Defendants or those acting for Defendants, including their agents, servants and employees. The District thus attempts to prohibit Defendants from obtaining public information independently and to deter other parents and taxpayers from sharing such information with Defendants.

The gravity of this request is overpowering. Ms. Cyndi Regis, whose son attends elementary school in the District (Compl. ¶ 66), will never be able to request records of school policies or lesson plans without expending resources and enduring procedural delays to obtain judicial permission first. Mrs. Jean Warren, a taxpayer in the District (Compl. ¶ 4), will be forever ignorant of the assets she helps to buy for the School without spending additional personal funds to request this Court's permission. This, and much more, merely because these engaged individuals requested public meeting minutes and agendas one too many times. That the District would even propose such relief in a Court of this State is appalling and anathema to the intent of Arizona Public Records Law, which is to allow the public to monitor the performance of their elected officials and scrutinize government activity. *Phoenix News., Inc. v. Keegan*, 201 Ariz. 344, 351, 35 P.3d 105, 112 (App. 2001); *Griffis v. Pinal County*, 215 Ariz. 1, 4, 156 P.3d 418, 421 (2007). The requested relief clearly violates Defendants' right of access to public records, and the Court is without jurisdiction to abridge that right.

On the flip side, the Court is also without authority to limit the District's statutory obligation to provide records. Public entities are required under A.R.S. § 39-121.01(D)(1) and (E) to *promptly* permit access to public records to any person upon request. Allowing the District to immediately and

permanently refuse access without a further Court order, as the District requests here, contravenes its legal obligation and therefore cannot be sustained.

B. Parental Rights to School Records

By this lawsuit, the District also attempts to deny mothers of current students access to their children's school information. Under A.R.S. § 15-102, the District "shall develop and adopt a policy to promote the involvement of parents and guardians of children enrolled in the schools." This includes parental participation, parent-teacher cooperation, knowledge of course materials, involvement in academic progress, and other communication with the School. *Id.* The law further requires the District to fulfill written requests for information within ten days. *Id.* In this legal action, the District attempts not to promote but to prescribe the parental involvement of Ms. Regis and Ms. Barbara Rejon, and it attempts to preemptively deny them mandatory timely responses to information they request. The relief sought by the District violates the rights the Legislature created for Ms. Regis and Ms. Rejon and contravenes the legal duties the Legislature has imposed upon the District. Accordingly, the claims must be dismissed.

The District's denial of access to school records, whether granted by Court order or practiced unilaterally by the District, requires it to forego all federal funding pursuant to federal law. Under 20 U.S.C. § 1232g(a)(1)(A), "No funds shall be made available . . . to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of such students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. . . . Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days

after the request has been made." As long as the District accepts federal funding, federal mandate requires dismissal of its claims.

C. Right to Free Speech and Petition

The First and Fourteenth Amendments to the U.S. Constitution provide that the State shall not infringe the right to free speech or the right to petition the government for a redress of grievances. The Arizona Constitution (Art. II, § 5) also protects the right to petition, and provides even broader free speech protection than the U.S. Constitution. *Mntn. States Tel. & Tel. Co. v. Ariz. Corp. Comm'n*, 160 Ariz. 350, 356, 773 P.2d 455, 461 (1989); Ariz. Const. Art. II, § 6 ("Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right"). Yet the District requests the Court to enjoin Defendants' rights to speak and petition under claims of mere nuisance and harassment under A.R.S. § 12-1809 (for which the District fails to state a claim for multiple other reasons, discussed *infra*). The Court clearly may not do so. *Lafaro*, 203 Ariz. at 486, 56 P.3d at 60 (reversing an injunction issued in response to a § 12-1809 claim of harassment because it restricted speech). By attempting to prevent Defendants in advance from filing claims, charges and lawsuits, the District seeks a prior restraint on speech and a limitation on the right of petition, neither of which can be constitutionally sustained upon the District's allegations. Therefore, the claims must be dismissed.

Short of prohibiting Defendants from participating *at all* in the public processes of the District, it attempts to prevent them from ever filing any claim, charge or lawsuit regarding any action of the District or any of its employees, at any time, ever in the future – including reporting safety hazards, health violations, employee misconduct, and all other types of claims and charges, no matter how relevant or vital to the well-being of their children and the community – without advance Court approval. This includes denying a Defendant the opportunity to seek compensation if a school bus hits her car, unless she first obtains leave from this Court. Even if the District's request were narrowed, *any*

injunction restricting Defendants' right to file claims would necessarily limit their rights of speech and petition. The District's allegations, taken as true, fail to remotely approach the significant governmental interest and narrow tailoring required for an injunction limiting Defendants' constitutional rights.

Injunctions carry greater risks of censorship than do legislation, and therefore they require "more stringent application of general First Amendment principles." *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 764-65 (1994). Injunctions that forbid communications "when issued in advance of the time that such communications are to occur" are a prior restraint on speech. *Alexander v. U.S.*, 509 U.S. 544, 550 (1993). The District's lawsuit for preliminary and permanent injunctions against claims, charges and lawsuits without prior permission of the Court is a prior restraint on speech. Prior restraints are "the most serious and least tolerable infringement on First Amendment rights" because a prior restraint "by definition, has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after [conduct] 'chills' speech, prior restraint 'freezes' it at least for the time." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). In the cases when a speech restriction is justified, governmental interests are ordinarily adequately served by imposing penalties *after* freedom of speech has been abused. *Carroll v. Princess Anne*, 393 U.S. 175, 180-81 (1968). That the law does not afford the District the opportunity to penalize individuals for making public records requests and complaints against it, underscores the fact that the relief the District seeks is not obtainable in the Courts of this State and that the District's claims cannot be sustained.

To say that the District's alleged interests are hopelessly inadequate to justify infringing Defendants' constitutional rights is an understatement. The District alleges merely cost (Compl., ¶¶ 148, 155-56) and operating efficiency (Compl. ¶ 154) as reasons to enjoin Defendants' fundamental rights to expression and petition. Neither allegation can overcome the right of speech. *CBS Inc. v. Davis*, 510 U.S. 1315, 1317-18 (1994) (economic harm cannot justify a prior restraint on speech); *Riley*

v. Nat'l Fed'n of Blind, 487 U.S. 781, 795 (1988) ("[T]he First Amendment does not permit the State to sacrifice speech for efficiency"). Likewise for the right of petition. Government restrictions "which actually affect the exercise of these vital rights cannot be sustained merely because they were . . . for the purpose of dealing with some evil . . . or even because the [restrictions] do in fact provide a helpful means of dealing with such an evil." *United Mine Workers v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967). Rather, fundamental First Amendment rights trump state interests even when they create incidental injury, as the District alleges here. *See Searle v. Johnson*, 646 P.2d 682, 689 (Utah 1982). If a defendant's Sixth Amendment right to a fair trial cannot outweigh the First Amendment, *Nebraska Press Ass'n*, 427 U.S. at 561, there is no interest the District alleges to sustain its lawsuit here.

III. The District's Complaint is a Strategic Lawsuit Against Public Participation (SLAPP)

Under Arizona's anti-SLAPP statute (A.R.S. § 12-752), Defendants are entitled to an expedited hearing on dismissal of the District's lawsuit because it was brought to intimidate and silence their criticisms by burdening them with the costs of defending a meritless claim. The District bears the burden to demonstrate two things. First, the District must prove that Defendants' actions caused the District actual compensable injury. A.R.S. § 12-752(B). Second, it must show that Defendants' right of petition lacks reasonable factual support or any arguable basis in law. *Id.* The right of petition includes constitutionally protected written and oral statements made to a legislative or executive body in connection with a pending issue for the purpose of influencing a governmental action, decision, or result. A.R.S. § 12-751(1). Here, it encompasses statements filed with the District itself (*Oracle Sch. Dist. No. 2 v. Mammoth High Sch. Dist. No. 88*, 130 Ariz. 41, 43, 633 P.2d 450, 452 (App. 1981) ("School districts are a legislative creation")), Attorney General (*Ariz. State Land Dep't v. McFate*, 87 Ariz. 139, 142, 348 P.2d 912, 914 (1960) (Attorney General's office is established "within the Executive Department of the State") – who has previously sanctioned the District for violations in response to

public records complaints (*see* Exhibits) – and countless other offices and agencies of the State.[4] No published cases could be found interpreting Arizona's anti-SLAPP statute, which the Legislature found so urgent a matter that it was enacted immediately as an emergency measure. 2006 Ariz. ALS 234 § 3 (HB 2440 (47th Legislature, Second Regular Session)). However, in enacting the law, the Legislature made the following Findings and Declarations that demonstrate the District cannot meet its burden of proof on either element:

> A. It is the policy of this state that the rights of citizens and organizations under the constitutions of the United States and this state to be involved and participate freely in the process of government shall be encouraged and safeguarded with great diligence. The information, reports, opinions, claims, arguments and other expressions that are provided by citizens and organizations are vital to effective law enforcement, the operation of government, the making of public policy and decisions and the continuation of representative democracy. The laws, courts and other agencies of this state and its political subdivisions shall provide the utmost protection for the free exercise of these petition, speech and association rights.
>
> B. The legislature finds that civil actions have been filed against citizens and organizations of this state as the result of the valid exercise of their constitutional rights of petition, speech and association. The threat of strategic lawsuits against public participation, personal liability and burdensome litigation costs significantly chill and diminish citizen participation in government, voluntary public service and the exercise of these important constitutional rights. The threat of strategic lawsuits against public participation further deprives government bodies of the free flow of ideas, information and opinions that are essential to carrying out their functions. This abuse of the judicial process can and has been used as a means of intimidating, harassing or punishing citizens and organizations for involving themselves in public affairs.
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> C. It is in the public interest and it is the purpose of this article to strike a balance between the rights of persons to file lawsuits for injury and the constitutional rights of persons of petition, speech and association, to protect and encourage public participation in government to the maximum extent allowed by law, to establish an efficient process for identification and adjudication of strategic lawsuits against public participation and to provide for costs and attorney fees.

Id. at § 3.

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[4] The Exhibits are matters of public record of which the Court may take judicial notice and therefore are appropriate to consider on a Motion to Dismiss. They are attached here merely for the convenience of the Court.

No imagined circumstances could be more fitting for dismissal under the anti-SLAPP statute than the District's action here to deprive Defendants their rights to speak freely and petition their government for redress of grievances. Indeed, the Complaint repeatedly alleges that Defendants requested it do such things as to meet, form committees, place items on the agenda, and allow them to speak at public meetings (Compl., ¶¶ 8, 11, 18, 44, 102, 110, 113) – the most basic of all forms of petitioning their government. That the District makes these complaints before this Court, it its failed attempt to manufacture a legal claim for harassment and nuisance, demonstrates its pure intent to preclude Defendants from participating in the public process. The District cannot satisfy its burden to prove otherwise, and the lawsuit should be dismissed accordingly.

IV. The Court Lacks Subject Matter Jurisdiction

In addition to the compelling constitutional bases for dismissing the District's claims, they should not be considered on the merits because the Court lacks jurisdiction. The District (Compl., ¶ 1) alleges only two sources of jurisdiction, declaratory action jurisdiction (A.R.S. § 12-1831) and jurisdiction to issue writs (Ariz. Const. Art. VI, § 18). Neither authorize this Court to grant the requested declaratory and injunctive relief. The District's first request is for a judgment declaring that it need not provide Defendants access to any public records without leave of Court (Compl., p. 37). However, the Court lacks jurisdiction to issue a declaratory judgment in a public records action initiated by a public entity. *Filarsky v. Superior Court*, 49 P.3d 194, 195 (Calif. 2002). Public Records Law provides a judicial remedy for citizens who are denied access to public records, and it is an abuse of discretion for a superior court to bypass that statutory procedure and grant declaratory relief in a preemptive action filed by the entity. *Filarsky*, 49 P.3d at 201; *see* A.R.S. § 39-121.02. Therefore, the Court lacks jurisdiction to grant the District's request for a declaratory judgment.

Moreover, by requesting that the Court order Defendants to first obtain its permission to request public records, the District attempts to reverse the standard for disclosure mandated by Public Records Law. When public records are requested, the burden is on the *government* to justify withholding, *Carlson v. Pima County*, 141 Ariz. 487, 490-91, 687 P.2d 1242, 1245-46 (1984), rather than on the requestor to demonstrate any need or interest, *Phoenix New Times, L.L.C. v. Arpaio*, 217 Ariz. 533, 544, 177 P.3d 275, 286 (App. 2008). The public entity must "specifically demonstrate" how production of the documents is detrimental, *Phoenix News., Inc. v. Ellis*, 215 Ariz. 268, 273, 159 P.3d 578, 583 (App. 2007), on a case-by-case basis not only for each request but for each individual record, *Bolm v. Custodian of Records of the Tucson Police Dep't*, 193 Ariz. 35, 40, 696 P.2d 200, 205 (App. 1998). A "generalized claim[] of broad state interest," for example that fulfilling requests creates an unreasonable burden, is insufficient for a public entity to overcome its burden of justifying a denial of access to public records. *Cox Ariz. Publications, Inc. v. Collins*, 175 Ariz. 11, 13, 852 P.2d 1194, 1197 (1993). Here, the District seeks to turn that standard on its head and require Defendants to bear the burden of justifying each and every future request to this Court. There is no basis to do so, and the District's claims should be dismissed.

The District's alleged constitutional source of jurisdiction, which authorizes superior courts to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and habeas corpus, is completely irrelevant to its claims. First, writs of mandamus, certiorari, and prohibition may not be obtained except by Special Action. Ariz. R. P. for Special Actions 1. The only questions that may be raised in a Special Action are whether the defendant failed to perform a duty required by law, the defendant is threatening to proceed without jurisdiction, or a determination was arbitrary. Ariz. R. P. for Special Actions 3. The District's Complaint raises none of those questions. Next, even if the District followed the procedure for quo warranto under A.R.S. § 12-2043, which it did not, the Complaint does not seek to prevent a

"continued exercise of authority unlawfully asserted." *State ex rel. Woods v. Block*, 189 Ariz. 269, 272, 942 P.2d 428, 431 (1997) (defining quo warranto). Finally, the District is not a "person unlawfully committed" seeking to inquire into the cause of imprisonment under habeas corpus. A.R.S. § 13-4121. Therefore, no writ of mandamus, quo warranto, review, certiorari, prohibition, or habeas corpus applies, and Article 6, § 18 confers no jurisdiction for the Court to grant the District's requested relief.[5]

The District's second through fifth requests for relief are for preliminary and permanent injunctions to restrain Defendants from requesting public records from the District and from filing claims, charges or lawsuits in any forum without first obtaining leave of Court (Compl., pp. 37-38). In asserting jurisdiction, the District (Compl., ¶ 1) fails to allege any source authorizing this Court to issue such preliminary or permanent injunctions. Therefore, the allegations against Defendants cannot stand.

V. The District Fails to State a Claim for Harassment and the Court Lacks Jurisdiction

The District asserts harassment under A.R.S. § 12-1809 (Compl., ¶ 150) because it alleges Defendants committed two types of acts, (1) filing Ombudsman "complaints" and (2) requesting public records from the District (Compl., ¶ 147). The District fails to state a claim for harassment, and the Court lacks jurisdiction to consider the merits. Harassment applies only when multiple acts of a specified character are "directed at a specific person." A.R.S. § 12-1809(R). Plaintiff District, a "unified school district . . . formed pursuant to Title 15, Arizona Revised Statutes" (Compl. ¶ 3) fails to allege it is a "specific person" at whom Defendants' alleged acts were directed (and, indeed, the District is not such a "person" as contemplated under A.R.S. § 12-1809). Therefore, the District fails to state a claim of harassment, and the claim must be dismissed pursuant to Rule 12(b)(6), Ariz. R. Civ. P.

[5] The constitutional provision cited by the District does add, "Injunctions, attachments, and writs of prohibition and habeas corpus may be issued and served on legal holidays and non-judicial days." However, this does not independently confer jurisdiction for the Court to issue the injunctions requested here. Rather, by its own language, the provision merely specifies the days on which injunctions *may* be issued, provided of course that the Court has jurisdiction to do so, which in this case, it does not.

Section 12-1809 also fails to confer jurisdiction for this Court to enjoin defendants, as requested, from "filing any additional claims, charges or lawsuits in or before any court, administrative agency or other forum whatsoever against Plaintiff" because the District did not allege that Defendants ever committed a series of such acts. Section 12-1809(F)(1) only authorizes the Court to enjoin a person "from committing a violation of one or more acts of harassment." Harassment is defined under A.R.S. § 1809(R) as a "series of acts," which requires a minimum of two incidents. *Lafaro*, 203 Ariz. at 486, 56 P.3d at 60. Because the District failed to allege that the Defendants filed a single "claim, charge or lawsuit" against it, let alone a "series" of such acts, the Court lacks jurisdiction to enjoin them from those future acts.

Even if the District re-characterized the "complaints" it alleges that some Defendants made with the Ombudsman as "claims" or "charges," it still fails to state a claim. As a preliminary matter, the District fails to allege that Ms. Behl-Hoge independently made *any* complaints with the Ombudsman, which itself requires dismissal against her. Likewise, it fails to allege that she made *any* public records requests.[6] More broadly, though, the District cannot state a claim of harassment as to the alleged Ombudsman complaints made by *any* of the Defendants because the District is prohibited by law from taking "any adverse action against an individual in retaliation because the individual cooperated with or provided information to the ombudsman." A.R.S. §§ 41-1376.01(D) & 41-1378(E). Likewise, there is no § 12-1809 cause of action for harassment against a person who files multiple public records requests. Harassment requires that the series of alleged harassing acts "serves no legitimate purpose." A.R.S. § 12-1809(R). However, the public's right to access public records is not conditioned on a legitimate

[6] The District alleges Ms. Behl-Hoge filed, in a single letter, a "public records request" for two related items (Compl., ¶ 62), but the District alleges those items relate to her son's hospital treatment records, which are not "public" records but rather are private records. *See, e.g.,* 20 U.S.C. §§ 1232g(b)(1), 1417(c).

purpose. "[I]t is well-established that the requestor's need, good faith, or purpose is entirely irrelevant to the disclosure of public records." *Phoenix New Times, L.L.C., v. Arpaio*, 217 Ariz. at 544, 177 P.3d at 286 (citing *Bolm v. Custodian of Records of the Tucson Police Dep't*, 193 Ariz. 35, 39, 969 P.2d 200, 204 (App. 1998)). For all these reasons, the District fails to state a claim of harassment for public records requests and Ombudsman complaints, and the Court also lacks jurisdiction.

Conclusion

Even assuming that every allegation Plaintiff makes is true, the Complaint does not remotely establish any cause of action against Defendants. To the contrary, the filing of the lawsuit, combined with the sweeping relief sought by the District, a serial violator of Arizona transparency laws (*see* Exhibits), chills Defendants' most basic rights as citizens and parents. The lawsuit should not be allowed to stand for a moment more than it takes this Court to dismiss it. Defendants respectfully request that the Court dismiss all of the District's claims with prejudice and award them costs and fees pursuant to A.R.S. §§ 12-752(D), 12-341, 12-341.01, and 12-347; 42 U.S.C. § 1988; and the private attorney general doctrine. They request that the Court make findings pursuant to A.R.S. § 12-752(B) that the District's lawsuit was brought to deter or prevent Defendants from exercising constitutional rights and to harass and therefore for an improper purpose, and permit Defendants to pursue additional sanctions.

RESPECTFULLY SUBMITTED this 11th day of March, 2010 by:

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ORIGINAL of the foregoing FILED this 11th day of March, 2010 with:

Clerk of the Court
Yavapai County Courthouse
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COPY of the foregoing HAND-DELIVERED this 11th day of March, 2010 to:

Hon. David L. Mackey
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COPY of the foregoing MAILED this 11th day of March, 2010 to:

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