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Attorneys for Plaintiffs

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

WARREN PETERSEN, in his official
capacity as the President of the Arizona State
Senate; and BEN TOMA, in his official
capacity as the Speaker of the Arizona House
of Representatives,

Plaintiffs,

v.

ADRIAN FONTES, in his official capacity as
the Arizona Secretary of State,

Defendant.

No. CV2024-001942

**PLAINTIFFS' MOTION TO
CHANGE JUDGE FOR CAUSE**

(Assigned to the Hon. Timothy J. Ryan)

1 Pursuant to Arizona Rule of Civil Procedure 42.2 and A.R.S. § 12-409, Plaintiffs
2 Warren Petersen, in his official capacity as President of the Arizona Senate, and Ben Toma,
3 in his official capacity as the Speaker of the Arizona House of Representatives, respectfully
4 move for a change of judge for cause. As recounted below, Judge Ryan’s brother—a local,
5 Arizona Bar-licensed attorney—has commented publicly and extensively with respect to
6 the *specific* parties and *specific* claims and defenses at issue in this proceeding. In a frenzy
7 of social media postings, Judge Ryan’s brother denigrated the Plaintiffs as “two Yahoos,”
8 proclaimed this action “frivolous,” and warned that Plaintiffs “are about to go through some
9 things” when this Court (*i.e.*, Judge Ryan) issues a ruling. In light of these developments—
10 and even assuming that Judge Ryan is not subjectively persuaded by his brother’s
11 foundational misunderstanding of legislative standing principles—the Plaintiffs have ample
12 reason to believe that they “cannot obtain a fair and impartial trial,” A.R.S. § 12-409(B)(5).

13 **FACTUAL AND PROCEDURAL BACKGROUND**

14 The Plaintiffs initiated this action, which alleges that certain provisions of the 2023
15 Elections Procedures Manual are inconsistent with controlling statutes, on January 31,
16 2024. Arizona courts have long recognized that executive branch infringements or
17 derogations of the Legislature’s constitutional powers exact a cognizable institutional injury
18 that confers standing to sue. *See Forty-Seventh Legislature v. Napolitano*, 213 Ariz. 482,
19 487, ¶ 16 (2006). Each chamber of the Legislature has enacted procedural rules that
20 authorize each presiding officer to “to bring or assert in any forum on behalf of the
21 [chamber] any claim or right arising out of any injury to the [chamber]’s powers or duties
22 under the constitution or laws of this state.” State of Arizona, *Senate Rules*, 56th Legislature
23 2023-2024, Rule 2(N), <https://bit.ly/3WXFLDv>; State of Arizona, *Rules of the Ariz. House*
24 *of Representatives*, 56th Legislature 2023-2024, Rule 4(K), <https://bit.ly/3HuL9bz>. Who
25 may act or speak on behalf of a legislative body, and the interpretation of the body’s internal
26 rules, are nonjusticiable questions entrusted exclusively to the legislative branch. *See Ariz.*
27 *Const. art. IV, pt. 2, § 8; Puente v. Ariz. State Legislature*, 254 Ariz. 265, 270 ¶ 17 (2022)
28 (holding the courts “lack judicially discoverable and manageable standards to decide

1 whether the Legislature properly disregarded its own procedural rules”); *Rangel v. Boehner*,
2 20 F. Supp. 3d 148, 168 (D.D.C. 2013) (noting that “judicial review of House Rules can
3 take place only within a limited set of circumstances” involving a challenge to a rule as
4 being either unconstitutional or violative of an individual’s “fundamental rights”).

5 On February 1, 2024, Tom Ryan, a personal injury attorney and the brother of Judge
6 Ryan, took to X (formerly known as Twitter) to hold forth on the merits of this case and the
7 Plaintiffs’ right to bring it. Screenshots of the relevant tweets are appended hereto as
8 **Exhibit A**, and authenticated and discussed in the declaration of Arizona State Senate
9 President Petersen appended hereto as **Exhibit B**, but can be condensed as follows:

- 10 • Mr. Ryan opened with a partisan bromide about “more frivolous litigation being filed
11 by the AZ GOP. This time it is by two law firms that should know better.”
- 12 • Mr. Ryan assured his readership that “[t]hey will not be successful” and asserted that
13 “[i]t’s all performative litigation to destroy and undermine Arizona citizens’
14 confidence in Arizona Elections.”
- 15 • Mr. Ryan then proceeded to lob a series of his own ill-conceived legal arguments
16 against legislative standing, citing the inapposite case of *Bennett v. Napolitano*, 206
17 Ariz. 520 (2003),¹ and an apparent court proceeding in North Dakota.
- 18 • Mr. Ryan proclaimed the lawsuit a “cowpie.”
- 19 • Mr. Ryan concluded his outburst with an acknowledgment that Plaintiffs had pleaded
20 an institutional injury, to which he responded by (1) querying “[w]here is the proof
21 that the Senate and House authorized these two Yahoos to sue on their behalf?” and
22 (2) linking to a clip from the film *Dumb & Dumber*.
- 23 • The following day, on February 2, Mr. Ryan celebratorily retweeted an
24 announcement that non-party interest groups had filed a motion to intervene in this
25

26 ¹ In contrast to the legislative leaders in *Bennett*, Plaintiffs here have not alleged any
27 injury to themselves as individual legislators, but rather are asserting, pursuant to an express
28 authorization in their respective chamber’s rules, an institutional injury to the legislative
body. See *Forty-Seventh Legislature*, 213 Ariz. at 487, ¶ 16.

1 proceeding on behalf of the defense and added, “Sen Petersen and Rep Toma are
2 about to go through some things. Stay tuned!”

3 ARGUMENT

4 A party may seek a change as of right if it files a motion that is supported by an
5 affidavit “establish[ing] grounds” for disqualification under A.R.S. § 12-409.² *See* Ariz. R.
6 Civ. P. 42.2(b). A change of judge is required when the movant establishes that it “has
7 cause to believe and does believe that on account of the bias, prejudice, or interest of the
8 judge he cannot obtain a fair and impartial trial.” A.R.S. § 12-409(B)(5). In this vein, Rule
9 2.11(A) of the Arizona Code of Judicial Conduct (“ACJC”) provides that “[a] judge shall
10 disqualify himself or herself in any proceeding in which the judge’s impartiality might
11 reasonably be questioned.” Importantly, the presence of an *actual* bias is not a condition
12 precedent to disqualification under Rule 2.11; rather, it suffices that there is a reasonable
13 perception that the fairness of the proceeding has been compromised. As the Court of
14 Appeals has explained, “[e]ven where there is no actual bias, justice must appear fair.’ In
15 other words, ‘justice must not only be done fairly but ... it must be perceived as having been
16 fairly done.’” *Kay S. v. Mark S.*, 213 Ariz. 373, 380, ¶ 35 (App. 2006) (citations omitted).

17 Whether they embody or influence his brother’s views or not, Mr. Ryan’s public
18 tirade has justifiably undermined Plaintiffs’ confidence in the Court’s impartiality. The
19 mere fact that Mr. Ryan opined on the general subject matter of this case or expressed a
20 political preference would not, by itself, furnish grounds for disqualifying Judge Ryan. But
21 Mr. Ryan’s public statements do not merely relate in some indirect or tangential way to this
22 case; to the contrary, he advanced what is functionally equivalent to public *legal* advocacy
23 with respect to the merits of *specific* claims and issues pending in a *specific* proceeding
24 over which his brother is presiding. *Cf.* ACJC Rule 2.11(A)(2)(b) & cmt. 1 (listing one
25 non-exhaustive circumstance for mandatory disqualification when judge’s sibling is “acting
26 as a lawyer in the proceeding”).

27 _____
28 ² Because the grounds for this motion came into existence less than 20 days prior to
its filing, the motion is timely. *See* Ariz. R. Civ. P. 42.2(d).

1 Two additional attributes of Mr. Ryan’s commentary accentuate the appearance of
2 potential unfairness. First, Mr. Ryan did not merely ruminate in general terms about the
3 nature of this case; he effectively pronounced—in deliberately scornful terms (“Yahoos,”
4 “cowpie,” “frivolous”)—that the only option available to the judge (*i.e.*, his brother) is to
5 dismiss the Plaintiffs’ claims. Second, two of Mr. Ryan’s tweets suggest foreknowledge of
6 the proceeding’s disposition, including his admonition that the Plaintiffs “are about to go
7 through some things. Stay tuned!”

8 To reiterate, the Plaintiffs are not alleging that Judge Ryan has communicated with
9 his brother about any aspect of this proceeding, or even that he is subjectively aware of the
10 social media postings. But “[t]he unique circumstances of this case ‘create in reasonable
11 minds a perception that the judge’s ability to carry out judicial responsibilities with ...
12 impartiality is impaired.’” *Kay S.*, 213 Ariz. at 380, ¶ 35. Disqualification accordingly is
13 warranted.

14 CONCLUSION

15 For the foregoing reasons, the Court should grant the Motion.

16 In addition, pursuant to Ariz. R. Civ. P. 42.2(e)(3), Plaintiffs respectfully request that
17 the presiding judge ensure that, while this Motion remains pending, Judge Ryan “proceed
18 no further in the action except to make such temporary orders as are absolutely necessary
19 to prevent immediate and irreparable harm from occurring before the request is decided.”
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RESPECTFULLY SUBMITTED this 15th day of February, 2024.

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1 **ORIGINAL** of the foregoing filed electronically via TurboCourt on the 15th day of February,
2 2024 with:

3 MARICOPA COUNTY SUPERIOR COURT
4 201 West Jefferson Street
5 Phoenix, Arizona 85003

6 **COPY** served electronically this same date on:

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8 Karen Hartman-Tellez
9 Kyle Cummings

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16 *Attorneys for Arizona Secretary of State Adrian Fontes*

17 **COPY** hand-delivered on the 16th day of February, 2024 to:

18 The Honorable Timothy J. Ryan
19 201 West Jefferson Street
20 Phoenix, Arizona 85003

21 The Honorable Joseph Welty
22 Presiding Judge of the Judicial Branch, Maricopa County
23 201 West Jefferson Street
24 Phoenix, Arizona 85003

25 Raymond L. Billotte
26 Administrator for the Judicial Branch, Maricopa County
27 201 West Jefferson Street
28 Phoenix, Arizona 85003

/s/Thomas Basile

Thomas Basile

Exhibit A



Post



Tom Ryan
@tomryanlaw

Follow

Dear 'Zona Litigation Disaster Tourists, once again I must post about more frivolous litigation being filed by the AZ GOP. This time it is by two law firms that should know better. This involves a lawsuit brought by @votewarren & @RepBenToma vs. @Adrian_Fontes over the EPM. 1/

3:55 PM · 2/1/24 From Earth · 2.7K Views

11 Reposts 1 Quote 64 Likes 3 Bookmarks



Tom Ryan @tomryanlaw · 2h

Here's a copy of P.1 of the Petition. Petersen & Toma sued AZ SOS Fontes over the 2023 Elections Procedure Manual (EPM). They will not be successful, and I'll tell you why in a bit. But let's just say they are successful, all that happens is the 2019 EPM stays in place! 2/

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

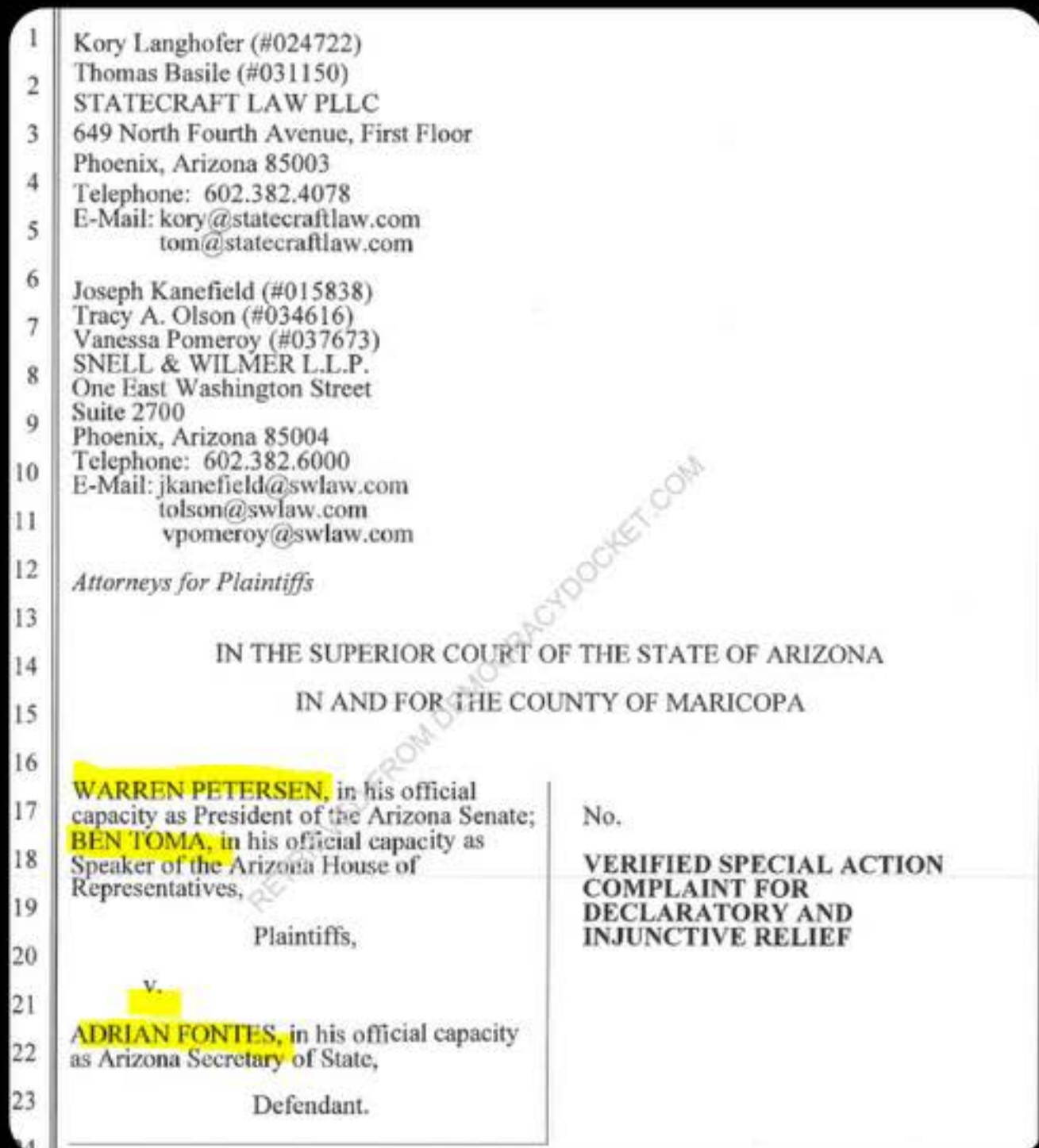
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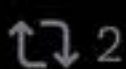


Tom Ryan @tomryanlaw · 2h

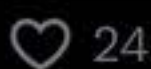
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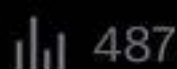
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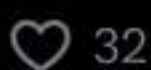


Tom Ryan @tomryanlaw · 2h

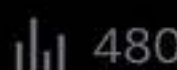
So why are Petersen & Toma suing Fontes if all that happens is the 2019 EPM stays in place? It's all performative litigation to destroy and undermine Arizona citizens' confidence in Arizona Elections. But Tom, you said it will fail. How so? 3/



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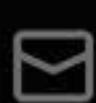


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Tom Ryan @tomryanlaw · 2h

Post your reply





Tom Ryan @tomryanlaw · 2h

Well, first, plaintiffs have to have what is known as "standing." And being the President of the Senate (Petersen) or Speaker of the House (Toma) without more, does not convey "standing". This has been litigated before and the Legislature got its biscuits scorched. 4/

▲ Bennett v. Napolitano

Copy Citation

Supreme Court of Arizona

December 4, 2003. Filed

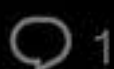
Arizona Supreme Court No. CV-03-0245-SA.

Reporter

206 Ariz. 520 * | 81 P.3d 311 ** | 2003 Ariz. LEXIS 138 *** | 414 Ariz. Adv. Rep. 3

KEN BENNETT, President, Arizona State Senate; FRANKLIN "JAKE" FLAKE, Speaker, Arizona House of Representatives; TIMOTHY BEE, Majority Leader, Arizona State Senate; EDDIE FARNSWORTH, Majority Leader, Arizona House of Representatives. Petitioners, v. JANET NAPOLITANO, Governor of the State of Arizona; ARIZONA DEPARTMENT OF ADMINISTRATION and BETSEY BAYLESS, Director; GENERAL ACCOUNTING OFFICE of the Arizona Department of Administration; D. CLARK PARTRIDGE, Arizona State Comptroller; ARIZONA DEPARTMENT OF AGRICULTURE and JACK PETERSON, Director; ARIZONA DEPARTMENT OF ECONOMIC SECURITY and WILLIAM BELL, Acting Director; ARIZONA DEPARTMENT OF HEALTH SERVICES and CATHERINE R. EDEN, Director; ARIZONA STATE LAND DEPARTMENT and MARK WINKELMAN, Commissioner; ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM and C.J. HINDMAN, Acting Director; ARIZONA DEPARTMENT OF EDUCATION and TOM HORNE, Superintendent; and ARIZONA STATE PARKS BOARD, Respondents.

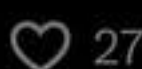
Disposition: [***] Jurisdiction accepted; relief denied.



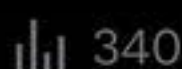
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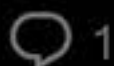


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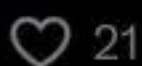


Tom Ryan @tomryanlaw · 2h

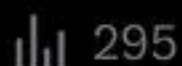
The case of Bennett v. Napolitano was a lawsuit filed by the same kind of AZ GOP legislators as this action. It seems they were upset by Gov. Napolitano's vetoes of their budget. So they sued the Governor in the AZ Supreme Court, which denied relief for lack of standing. 5/



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Tom Ryan @tomryanlaw · 2h

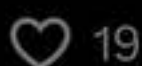
So what did our Supreme Court say about standing? If a litigant does not have standing, the Courts cannot consider the issue. 6/

standing

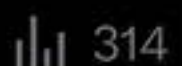
is particularly acute when legislators challenge actions undertaken by the executive branch. Without the standing doctrine, the courts would be too easily coerced into resolving political disputes between the executive and legislative branches, an arena in which they have no business intruding. The Arizona Supreme Court's standing inquiry has been especially rigorous when reaching the merits of a case in which the plaintiff sought to challenge an action taken by one of the other two branches of the Federal Government was unconstitutional. [More](#)



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Tom Ryan @tomryanlaw · 2h

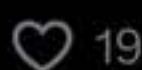
Well, what's it mean to have standing? How can one prove they're entitled to relief? The Az Supreme Court, relying on long standing federal principles said you have to show a particularized injury to YOU that can be fairly traced to the defendant. Something Petersen/Toma lack. 7/

Controversy Requirements

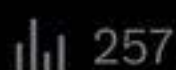
requires that a court refrain from addressing a case on its merits unless the parties can establish the most important of U.S. Constitution's Article III doctrines. To establish federal standing, the injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the court.



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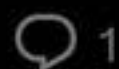
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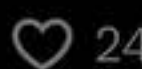
Tom Ryan @tomryanlaw · 2h

To be successful Petersen/Toma have to show they have been PARTICULARLY injured. Meaning, no one else suffers the injury that they do. But we are ALL subject to the EPM, and their claim will fail because it is not particular to them! 8/

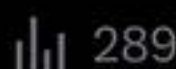
inquiry focuses on whether the plaintiff is the proper party to bring suit. See [more like this Headnote](#)



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Tom Ryan @tomryanlaw · 1h

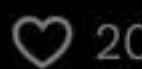
For any of you who want to understand the Raines Doctrine (it's not hard, really) I give you a snippet from the Bennett v. Napolitano opinion. 9/

P23 Raines involved six members of Congress who brought suit in federal court challenging the constitutionality of the Line Item Veto Act, which authorized the President to cancel certain spending provisions while signing other provisions into law. *Id.* at 814. Any provision that might be vetoed by the President remained subject to override by a two-thirds vote of the Congress. *Id.*

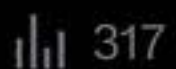
P24 The six plaintiffs, having voted against the Act, argued that the Act infringed on the legislative power granted in Article I of the U.S. Constitution. *Id.* at 816. [***17] [***26] They claimed standing on the basis that the Act reduced the "effectiveness" of their votes and injured them in their official capacity as members of Congress. *Id.* The Supreme Court rejected the argument holding that the members lacked standing to maintain the action because their alleged injury was not "particularized" to the individual claimants and was not sufficiently "concrete" to justify judicial intrusion into a dispute between the legislative and executive branches. *Id.* at 829. The Court reasoned that the injury alleged was "based on a loss of political power, not loss of any private right," and therefore the members suffered no injury personal to themselves. *Id.* at 821. In addition, the Court pointed out that the injury claimed was, at most, an institutional injury and that the six members had not been authorized to sue on behalf of their respective chambers of the Congress. *Id.* at 829.



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Tom Ryan @tomryanlaw · 1h

Now we need to talk about the other BIG reason this

Post your reply



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Tom Ryan @tomryanlaw · 1h

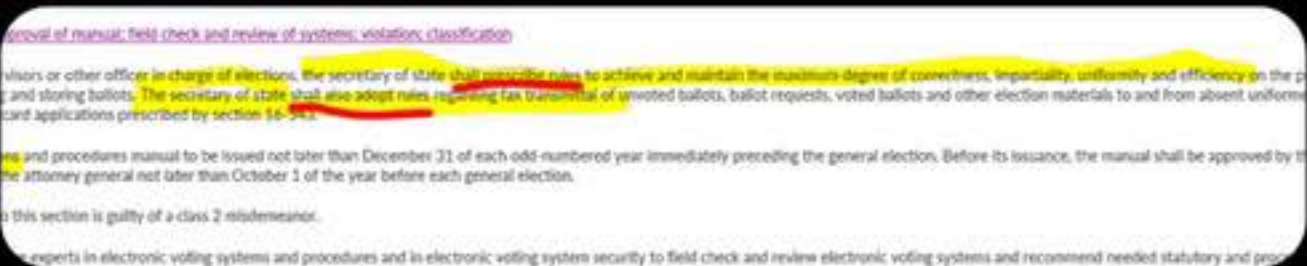
Now we need to talk about the other BIG reason this politically performative lawsuit is going to fail. It's called "The Doctrine of Exhaustion of Remedies." Gee, Mr. Ryan! This seems like an awful lot to learn. Stick with me, we're almost done here. 10/

1 1 13 230



Tom Ryan @tomryanlaw · 1h

@Adrian_Fontes as our duly elected Sec. of State has a duty pursuant to law passed by the AZ legislature to work with the Counties in AZ to develop ELECTION RULES for the EPM. See ARS 16-542. I've highlighted the word "rule" or "rules" below for a reason. I'll show you why. 11/



1 12 199



Tom Ryan @tomryanlaw · 1h

The AZ Legislature passed an Exhaustion of Remedies law for rule making in AZ. See ARS 41-1033 below. Before you file a lawsuit, you have to show the Courts that you followed the law to change a rule. THAT WAS NOT DONE HERE. In sum, they failed to give the Az SOS any chance. 12/



1 12 168



Tom Ryan @tomryanlaw · 1h

Now, for all of us who were choate and sensate back in the year 2000, aka the Year of the Alt Fuel Vehicles debacle, there was a lawsuit brought again against Gov

Post your reply



Tom Ryan @tomryanlaw · 1h

Now, for all of us who were choate and sensate back in the year 2000, aka the Year of the Alt Fuel Vehicles debacle, there was a lawsuit brought again against Gov. Napolitano over a claim alt fuel tax credits. Here's the cite to the case. 13/

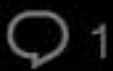
▲ Moulton v. Napolitano

📄 Copy Citation

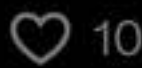
Court of Appeals of Arizona, Division One, Department C

August 5, 2003, Filed

1 CA-CV 02-0642



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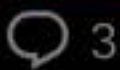
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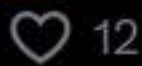
Tom Ryan @tomryanlaw · 1h

So what did the AZ Court of Appeals tell the alt fuel tax beggars: You lose. You did not exhaust your remedies. And when you fail to follow the rules, the courts lack jurisdiction. 14/

Exhaustion of Remedies, Administrative Remedies
 According to the doctrine of **exhaustion of remedies**, litigants may not seek judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted. The purpose of the doctrine is to allow an administrative agency to perform functions within its special competence, to make a factual record, to apply its expertise, and to correct its own errors so as to moot judicial controversies. The doctrine promotes both judicial economy and administrative agency autonomy by preventing premature judicial intervention in inchoate administrative proceedings. The doctrine is jurisdictional. If parties have statutory recourse to an administrative agency that has authority to grant appropriate remedies, they must scrupulously follow the statutory procedures. If they fail to utilize all their administrative remedies, the superior court lacks jurisdiction to consider their claim. [More](#)



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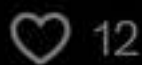


Tom Ryan @tomryanlaw · 1h

Look folks, I am just a humble unfrozen caveman lawyer from the dusty cotton town of Chandler. But even I KNOW that no matter how much whipped cream you put on a cowpie, it's never going to be delectable. END



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Tom Ryan @tomryanlaw · 57m

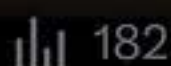
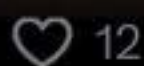
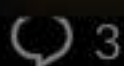
Dadgumit! I knew I forgot something!! At best what Petersen/Toma allege is an "institutional injury." Where is the proof that the Senate and House authorized these

Post your reply



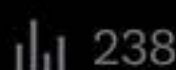
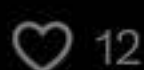
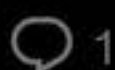
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Tom Ryan @tomryanlaw · 1h

Look folks, I am just a humble unfrozen caveman lawyer from the dusty cotton town of Chandler. But even I KNOW that no matter how much whipped cream you put on a cowpie, it's never going to be delectable. END



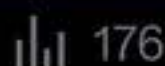
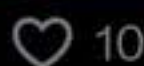
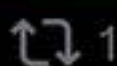
Tom Ryan @tomryanlaw · 57m

Dadgumit! I knew I forgot something!! At best what Petersen/Toma allege is an "institutional injury." Where is the proof that the Senate and House authorized these two Yahoos to sue on their behalf? Sheesh!



GIF

ALT



Martin Gardner @mglovesfun · 1h

But... not by filing lawsuits.

That's not how this works.

SUMMARY OF THE CASE

1. "The legislature has the exclusive power to declare what the law shall be."

State v. Prentiss, 163 Ariz. 81, 85 (1989); see also Ariz. Const. art. IV.

Post your reply





Tom Ryan

@tomryanlaw



Dear 'Zona Litigation Disaster Tourists, yesterday I did a thread on a new case filed by Sen. Petersen and Rep. Toma against Sec of State Fontes. I told you the case would fail because Petersen & Toma lack "standing" even though they are both leaders in the AZ legislature. 1/

3:42 PM · Feb 2, 2024 · **5,852** Views





Tom Ryan @tomryanlaw · Feb 2

Today, the US Dist. Cr. of North Dakota (hardly the bastion of liberal judges) issued an election procedures ruling. Here's the case. 2/

Case 1:23-cv-00123-DMT-CRH Document 31 Filed 02/02/24 Page 1 of 12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Mark Splonskowski,

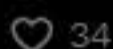
Plaintiff,

vs.

Erika White, in her capacity as State Election
Director of North Dakota,

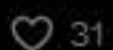
Defendant.

Case No. 1:23-cv-00123



Tom Ryan @tomryanlaw · Feb 2

Plaintiff Splonkowski is a County Auditor in North Dakota, who brought a suit against Erika White as the State Election Director of North Dakota. He brought the action in US District Court because he thought a conservative Republican judge would find in his favor. 3/



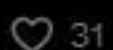
Tom Ryan @tomryanlaw · Feb 2

Auditor Splonkowski created a false dichotomy of whether he had a duty to follow Federal or North Dakota Election law, it would lead to his individual criminal conviction. 4/

BACKGROUND

[¶3] The facts as alleged in the Complaint are relatively unremarkable. Federal election law fixes the Tuesday after the first Monday in November in every even-numbered year as the date for federal elections. Doc. No. 1, ¶ 15. North Dakota permits mail-in absentee ballots as long as they are post-marked the day before election day and received prior to the county's canvassing board's meeting. *Id.* at ¶ 19. County canvassing boards in North Dakota meet on the thirteenth day after each election. *Id.* at ¶ 20. If the absentee ballots in North Dakota are post-marked the day prior to the election day and received by the canvassing board before it meets, that ballot must be counted. *Id.* at ¶ 21.

[¶4] Burleigh County Auditor Mark Splonskowski ("Splonskowski") believes North Dakota's process violates federal election law. He claims that by following North Dakota's law he will violate federal law. Conversely, he alleges that by following federal law and only counting ballots cast on election day, he will run afoul of North Dakota's law. According to Splonskowski, following his understanding of federal law will inevitably result in criminal prosecution under North Dakota law because he will have to forego his duty to follow North Dakota election law. See *id.* at ¶¶ 31-34. Here, Splonskowski avers he will not comply with North Dakota law. See Doc.



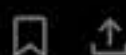
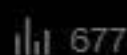
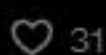


Tom Ryan @tomryanlaw · Feb 2

Elections Director White, through her counsel had no problem dispensing with the Auditor's "Potemkin Village" argument, especially NO EVIDENCE that the Elex Director would cause injury to the Auditor!! 5/

DISCUSSION

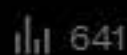
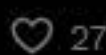
[¶6] White argues Splonskowski lacks standing to bring this lawsuit. In making this claim, White contends (1) Splonskowski's risk of criminal prosecution is speculative and does not constitute an injury in fact; (2) Splonskowski cannot show standing based on a theory of pre-enforcement review; (3) an alleged conflict between state and federal law does not create an injury; (4) Splonskowski cannot show White, as State Elections Director, would cause any injury to Splonskowski; and (5) Splonskowski cannot show redressability.



Tom Ryan @tomryanlaw · Feb 2

The Judge correctly noted that for there to be a "case or controversy" to give the court jurisdiction to hear the matter, the Auditor had to show he had standing. There is a three part test for standing. 6/

[¶9] It has long been established that the Court's constitutional authority permits it only to hear actual cases or controversies. Simon v. Eastern Ky. Welfare Rights Organization, 426 U.S. 26, 37 (1976) ("No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies."). The doctrine of standing to sue is "rooted in the traditional understanding of a case or controversy." Spokeo, Inc. v. Robins, 578 U.S. 330, 338 (2016). Because Splonskowski seeks federal jurisdiction, he must establish he "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." Id. (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)). This standard "limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong." Id. In making this determination, "courts should assess whether the alleged injury to the plaintiff has a 'close relationship' to a harm 'traditionally' recognized as providing a basis for a lawsuit in American courts." TransUnion LLC v. Ramirez,



Tom Ryan @tomryanlaw · Feb 2

Here is how "injury in fact" is defined in the law. 7/

I. Injury in Fact

[¶10] To establish an injury in fact, the Complaint must allege facts that show the injury is (1) concrete and particularized and (2) actual and imminent as opposed to hypothetical or conjectural. Lujan, 504 U.S. at 560. The injury must be "the actual or imminent invasion of a concrete and particularized legal interest." Kuehl v. Sellner, 887 F.3d 845, 850 (8th Cir. 2018) (quoting Sierra Club v. Kimbell, 623 F.3d 549, 556 (8th Cir. 2010)). It is possible future injury may constitute injury in fact. In re SuperValu, Inc., 870 F.3d 763, 768-69 (8th Cir. 2017). In such a case, "the plaintiff must demonstrate that 'the threatened injury is "certainly impending," or there is a "substantial risk' that the harm will occur.'" Id. (quoting Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014) (quoting in turn Clapper v. Amnesty Int'l USA, 568 U.S. 398, 409 (2013))).



Tom Ryan @tomryanlaw · Feb 2

Realizing that the "standing" argument was not going well for him, the Auditor came up with "oath of office" standing! Clever, but to no avail. Taking an oath of office without a PARTICULARIZED INJURY TO THE OFFICE HOLDER will not convey standing. 8/

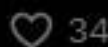
kowski has failed to establish the injury in fact and causation elements to show he has "oath-of-office" standing.



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Tom Ryan @tomryanlaw · Feb 2

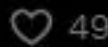
These same principles apply to the case filed by Petersen & Toma. (1) No particularized injury (2) No evidence enforcement will be taken against them immediately (or ever for that matter) & (3) no oath of office standing - all means no jurisdiction for the Court. Buhbye case! End



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Tom Ryan


@tomryanlaw



Dear 'Zona Litigation Disaster Tourists, Sen Petersen and Rep Toma are about to go through some things. Stay tuned!



Marc E. Elias  @marceelias · Feb 2

 **NEW:** On behalf of @AZRetiredAms and @votolatino, my team has filed to intervene in a Republican lawsuit challenging Arizona's new Election Procedures Manual.

We will defend voting rights and free and fair elections from GOP attack....

[Show more](#)

7:20 PM · Feb 2, 2024 · **2,633** Views



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Exhibit B

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

WARREN PETERSEN, in his official capacity as the President of the Arizona State Senate; and BEN TOMA, in his official capacity as the Speaker of the Arizona House of Representatives,

Plaintiffs,

v.

ADRIAN FONTES, in his official capacity as the Arizona Secretary of State,

Defendant.

No. CV2024-001942

DECLARATION OF ARIZONA SENATE PRESIDENT WARREN PETERSEN

(Assigned to the Hon. Timothy J. Ryan)

I, Warren Petersen, do upon oath declare as follows:

1. I am over 18 years of age and am competent to testify to the matters in this declaration.
2. I made this declaration based upon my own personal knowledge, except where a statement is made on information and belief, in which case I believe such statements to be true.
3. I am, and at all times relevant have been, a plaintiff in this matter and the President of the Arizona State Senate.
4. The judicial officer assigned to hear this case is the Honorable Timothy J. Ryan.
5. On information and belief (namely, public statements attributed to both individuals), Judge Ryan is the brother of a Chandler-based attorney named Tom Ryan.

1 6. Mr. Tom Ryan frequently comments on political matters generally, and has
2 made a series of public statements concerning the merits of legal issues that will be decided,
3 the parties, the proposed intervenors, and the attorneys for the plaintiffs in this case. Certain
4 of his comments reflect independent legal research, and constitute advocacy concerning
5 legal issues that will arise in the course of these proceedings. True and correct copies of
6 Mr. Tom Ryan’s tweets on these topics are attached to the Motion to Change Judge for
7 Cause as Exhibit A.

8 7. Specifically, in connection with these proceedings Mr. Tom Ryan has
9 publicly:

- 10 a. Described the case as “frivolous,” *see* Exhibit A at 1;
- 11 b. Depicted the President of the Senate and the Speaker of the house as
12 Dumb & Dumber and described them as “these two Yahoos,” *see id.* at
13 7;
- 14 c. Assailed the judgment of the plaintiffs’ attorneys in filing the case, *see*
15 *id.*;
- 16 d. Characterized the claims as “performative litigation,” *see id.* at 2;
- 17 e. Asserted, based on his own legal research, that the plaintiffs lack
18 standing and in previous litigation “got their biscuits scorched” on the
19 same issue, *see id.* at 3-4, 8-11;
- 20 f. Argued, again based on his own legal research, that the case lacks merit
21 because the plaintiffs failed to exhaust administrative remedies, *see id.*
22 at 5-6; and
- 23 g. Celebrated a motion to intervene filed by a national political law firm on
24 behalf of the defense, noting, “Sen[.] Petersen and Rep[.] Toma are
25 about to go through some things. Stay tuned!,” *see id.* at 12.

26 8. Mr. Tom Ryan’s comments demonstrate that he has more than a de minimis
27 interest in the subject matter of this proceeding.

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9. In light of the public comments of Mr. Tom Ryan and the close familial relationship between Judge Ryan and Mr. Tom Ryan, I have “cause to believe and [do] believe that on account of the bias, prejudice, or interest of the judge [the plaintiffs] cannot obtain a fair and impartial trial.” *See* Ariz. Rev. Stat. § 12-409(B)(5). At a minimum, the public comments of Mr. Tom Ryan and his close familial relationship with Judge Ryan creates “the appearance of impropriety.” *See generally* Ariz. Code Jud. Conduct R. 1.2; *see also id.* 2.4 cmt. (“An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with . . . the judge’s . . . family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.”); *id.* 2.11 (“A judge shall disqualify himself . . . in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to [when] . . . a person within the third degree of relationship [to the judge] . . has more than a de minimis interest that could be substantially affected by the proceeding”).

10. The foregoing is true and correct to the best of my knowledge.

Signed under penalty of perjury this 15th day of February, 2024.



Warren Petersen, President
Arizona State Senate