

1 Brian Bergin, #016375  
2 Anthony R. Napolitano, #034586  
3 **Bergin, Frakes, Smalley & Oberholtzer, PLLC**  
4 4343 East Camelback Road, Suite 210  
5 Phoenix, Arizona 85018  
6 Telephone: (602) 848-5449  
7 Facsimile: (602) 888-7856  
8 anapolitano@bfsolaw.com  
9 *Attorneys for Defendants*

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
7  
8 **IN THE COUNTY OF MARICOPA**

9 DANIEL CLATON WOOD, JOSEPH  
10 MICHAEL GRIMM, DEBORAH ANN  
11 BOEHM, BRIAN EDWARD STEINER,  
12 SAINTS OF ALMIGHTY GOD,

11 Plaintiffs,

12 vs.

13 THE STATE OF ARIZONA  
14 LEGISLATURE, THE STATE OF  
15 ARIZONA PRESIDENT OF THE SENATE  
16 WARREN PETERSEN ET AL., THE  
17 STATE OF ARIZONA SPEAKER OF THE  
18 HOUSE, BEN TOMA ET AL.,

17 Defendants.

Case No.: CV2023-093987

**DEFENDANTS' REPLY IN SUPPORT OF  
MOTION TO DISMISS**

19 Defendants State of Arizona Legislature, State of Arizona President of The Senate, Warren  
20 Petersen, and State of Arizona Speaker of the House, Ben Toma, et al. (collectively,  
21 "Defendants"), through undersigned counsel, respectfully submit this Reply in Support of their  
22 Motion to Dismiss ("MTD"), filed September 14, 2023, and respectfully reiterate their request  
23 that this Court grant the Motion to Dismiss.

24 **A. Plaintiffs' Response is Non-Responsive to the Substantive Arguments Advanced in**  
25 **the Motion to Dismiss**

26 Plaintiffs', mostly-incomprehensible, Response, filed on September 22, 2023, fails to  
27 address any of the issues raised as basis for dismissal in Defendants' MTD. Plaintiffs have  
28 conceded to the arguments raised in the MTD and dismissal is appropriate. Where a party fails to

1 respond to a motion to dismiss, or to address an argument raised by the moving party, the party  
2 has waived any defense to that argument or issue. *See Camboni v. Brnovich*, 1 CA-CV 18-0621,  
3 2020 WL 1158656, at \*2 (App. Mar. 10, 2020) (plaintiff “did not raise this argument in response  
4 to the motions to dismiss; therefore, it is waived.”); *Tripati v. Naquin*, 1 CA-CV 07-0079, 2008  
5 WL 4108404, at \*2, n. 5 (App. Mar. 27, 2008) (where plaintiff “fails to address this argument in  
6 his brief, he has waived this issue.”); *see also Hawkins v. Allstate Ins. Co.*, 152 Ariz. 490, 503  
7 (1987). In the MTD, Defendants explained that Plaintiffs: (a) have not stated a cognizable  
8 claim;(b) their claims are not justiciable;(c) they lack standing because their alleged injuries are  
9 not traceable to Defendants, nor are they redressable by an order against them; and (d) they have  
10 failed to allege a distinct and palpable injury. Defs.’ MTD. Plaintiffs’ response simply ignores  
11 these arguments, choosing instead to quizzically declare that “Defendant(s) challenges to  
12 Plaintiff(s) claims referring not rules, procedures and legislature [sic] are not applicable to the  
13 Plaintiff(s) due to the individual constitutional right which is at question.” Pltfs.’ Resp. Br. at 4-  
14 5. Plaintiffs provide no basis or legal authority—as none exists—for their bold assertion that they  
15 are exempt from applicable rules, procedures, and statutes. That conclusory declaration of  
16 independence is ineffective and does not constitute a meaningful defense to the MTD, which this  
17 Court should grant.

### 18 **B. Plaintiffs’ Attempted Procedural Defenses are Ineffective**

19 Plaintiffs’ Response appears to attempt two procedural defenses to the MTD, “unlawful  
20 service” and timeliness. The first is unfounded and the second is in conflict with orders issued by  
21 this Court. Pltfs.’ Resp. Br. at 4. Plaintiffs’ service argument is internally inconsistent because,  
22 while Plaintiffs claim they have “not received any properly filed documents through this court,”  
23 they filed a timely response to the MTD. Their response also complains of receiving  
24 “unenforceable ... minute entr[ies]” by mail from the Court. *Id.* Generously interpreted, the  
25 Response’s reference to Arizona Rule of Civil Procedure 4.1 suggests that Plaintiffs mistakenly  
26 believe that the personal service requirements of that Rule apply to the MTD and other documents  
27 served after commencement of this case. *Id.* Defendants properly complied with the Rule 5  
28

1 service requirements applicable to pleadings and written motions after the original complaint by  
2 sending a copy of the Motion to Dismiss to the only address Plaintiffs have provided to the court  
3 via U.S. mail and also providing a courtesy copy via email. *See* Exhibit 1.

4 Plaintiffs also incorrectly argue that the MTD was untimely filed. It was filed on September  
5 14, 2023, in compliance with this Court’s September 13, 2023 order allowing Defendants until  
6 September 29, 2023, to respond to the Complaint. Indeed, Plaintiffs’ arguments regarding default  
7 already were rejected by this Court in its September 15, 2023 minute entry. For these reasons,  
8 Plaintiffs’ procedural arguments should be rejected.

9 **C. The Remainder of Plaintiffs’ Response is Non-Responsive to the MTD**

10 The remainder of Plaintiff’s Response Brief is a mosaic of inconsistencies and non  
11 sequiturs. The remainder of the brief excoriates the use of “legalese” and the existence of the,  
12 non-party, State Bar of Arizona. *Id.* at 3. The advocacy of these causes are irrelevant to the  
13 cause(s) of action asserted in the Complaint, and the merits of the MTD at issue before this Court.

14 As Plaintiffs have not rebutted Defendants’ standing, justiciability, redressability, and  
15 cognizability arguments—and have waived the opportunity to do so—the Complaint must be  
16 dismissed for failure to state a claim on which relief can be granted and Defendants should be  
17 awarded their attorneys’ fees and expenses incurred in defense of this baseless case.

18  
19 RESPECTFULLY SUBMITTED this 2nd day of October, 2023.

20  
21 **Bergin, Frakes, Smalley & Oberholtzer, PLLC**

22 By: /s/ Brian Bergin  
23 Brian Bergin  
24 Anthony R. Napolitano  
25 4343 East Camelback Road, Suite 210  
26 Phoenix, AZ 85018  
27 *Attorneys for Defendants*  
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**FILED** this 2nd day of October, 2023  
through Maricopa County Superior Court via  
www.turbocourt.com

**COPY** of the foregoing emailed  
this 2nd day of October, 2023 to:

Daniel Clayton Wood  
Joseph Michael Grimm  
Deborah Ann Boehm  
Brian Edward Steiner  
Saints of Almighty God  
17253 North Rosemont Street  
Maricopa, Arizona 85138  
[dewsparky@protonmail.com](mailto:dewsparky@protonmail.com)  
*Plaintiffs Sui Juris*

**COPY** of the foregoing mailed by U.S. mail  
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*Plaintiffs Sui Juris*

By: /s/ Shelly Curry

# **EXHIBIT 1**

## Shelly Curry

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**From:** Shelly Curry  
**Sent:** Thursday, September 14, 2023 3:11 PM  
**To:** dcwsparky@protonmail.com  
**Cc:** Brian Bergin; Anthony Napolitano  
**Subject:** Wood et al., v. State of Arizona Legislature et al.; CV2023-093987; Motion to Dismiss  
**Attachments:** 2023-09-14 Motion to Dismiss.pdf

Good afternoon,

Attached please find the Motion to Dismiss filed today in the above-noted matter. A hard copy will follow via USPS.

Thank you,

Shelly Curry  
Paralegal  
Bergin, Frakes, Smalley & Oberholtzer, PLLC  
4343 East Camelback Road, Suite 210  
Phoenix, Arizona 85018  
Direct: 602.888.7862  
Fax: 602.888.7856

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