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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
PINAL COUNTY

STATE 48 THEATRE COMPANY INC d/b/a STATE 48 ARTS AND ACADEMICS, KARLI KEMPER, JUSTIN KEMPER, DEBORAH GILES, AND JAMES GILES,

Plaintiffs,

v.

PINAL COUNTY,

Defendant.

Case No. _____

PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND MEMORANDUM IN SUPPORT

MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs State 48 Theatre Company Inc. d/b/a as State 48 Arts and Academics, Karli Kemper, Justin Kemper, Deborah Giles, and James Giles respectfully move for a temporary restraining order under Ariz. R. Civ. P. 65(b). State 48 also requests an expedited hearing, *ex parte* if necessary, on the motion for a temporary restraining order to prevent irreparable harms, including interrupting the education of thirty-five students, many with special needs, in the middle of the school year. In support, State 48 states as follows:

1. State 48 Theatre Company Inc. d/b/a State 48 Arts and Academics ("State 48") is a registered 501(c)(3) nonprofit school run by Karli Kemper on her family's 1.5-acre property in a General Rural (GR) zone in Pinal County.

2. A "school" is a permissible use as a matter of right in the GR zone. PCDSC § 2.40.010(C). Pinal County says "school" includes only a public or charter school and that State 48, which is private, therefore may not operate as of right in the GR Zone.

3. The County recommended that State 48 apply for a special use permit ("SUP"), which might allow it to operate, so State 48 applied. State 48 also requested an interpretation of the term "school" from the Pinal County Board of Adjustments and Appeals (BOA). A BOA hearing on the interpretive question is set for December 10, 2026.

4. Given that an interpretation from the BOA that State 48 is a "school" would obviate the need for an SUP, the County agreed not to proceed with the SUP process until the BOA issues its interpretation. But on November 18, the Pinal County Board of Supervisors ignored the agreement and voted down the SUP without telling State 48 or its counsel that the hearing was even occurring. The SUP denial, in Pinal County's eyes, now renders State 48 an illegal use and potentially subjects State 48 to immediate enforcement, including an order to cease all operations at its current location.

5. Stopping all operations would interrupt the education of 35 students and force parents, who have exercised a federally-protected constitutional right when choosing State 48, to scramble to find a new option for their children in the middle of the academic year. Interrupting education is particularly disruptive and harmful for children who have special needs or who have struggled before in traditional environments. Ordering State 48 to cease operations would also harm the seven teachers who work there, and it would render Karli's family's investment valueless.

6. Under Rule 65(b)(1)(B), undersigned counsel hereby "certifies" Plaintiffs' "efforts made to give notice" to the County of Plaintiffs' intent to seek a temporary restraining order. Undersigned counsel makes this certification based on personal knowledge and further certifies under penalty of perjury that the following statements are true and correct.

7. On November 19, 2026, Plaintiffs' counsel Paul Avelar emailed the County's Planning Manager, attorneys for the County Scott Holcomb and Daron Garey, and other

county officials, asking the County to agree in writing by November 20 to nonenforcement against State 48 pending the BOA's interpretation and stating that the Board of Supervisors' action denying the permit made litigation likely.

8. The County did not provide that agreement and did not respond.

9. On November 20, undersigned counsel telephoned the County's attorney, Scott Holcomb, to follow up. Those calls were not returned.

10. On November 21, undersigned counsel emailed Mr. Holcomb and Mr. Garey, noting the lack of response and stating that, absent a written commitment not to enforce pending resolution of the BOA matter, Plaintiffs would be prepared to commence litigation and seek emergency relief during Thanksgiving week.

11. On November 23, undersigned counsel called Mr. Holcomb's office, spoke with his assistant, and followed up by email, stating that Plaintiffs were preparing for litigation and a request for emergency relief this week in the absence of a nonenforcement agreement.

12. Later that day, undersigned counsel spoke on the phone with Pinal County Attorney Brad Miller, who said that he could not speak with his client about nonenforcement until the Board of Supervisors' December 2 meeting and so could not provide a written agreement of nonenforcement before then. Undersigned counsel confirmed that conversation by email, copying Mr. Holcomb and Mr. Garey, and advised that Plaintiffs still anticipated seeking emergency relief this week because the County has not agreed to nonenforcement pending the BOA's interpretation.

13. Accompanying this certification as Exhibits A through F are true and accurate copies of emails described here.

14. Counsel plans, immediately after filing this motion, to email the Complaint and this motion to the County through its attorneys, and give the Court certification of that notice.

This Court is authorized to "issue a temporary restraining order without written or oral notice to the adverse party" because "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will likely

result to the movant before the adverse party can be heard in opposition." Ariz. R. Civ. P. 65 (b)(1)(A). Based on this motion, as well as the accompanying memorandum and declaration of Karli Kemper filed herewith, Plaintiffs respectfully request a temporary restraining order to prevent the County from initiating enforcement proceedings against State 48 based on its interpretation of PCDSC § 2.40.010(C) and to preserve the status quo until further proceedings may be had. Plaintiffs also request that the Court either wave the bond requirement or, in the alternative, set the bond for a nominal amount because this is a lawsuit to vindicate important public interests and the County will not suffer any nonrecoverable costs.

MEMORANDUM IN SUPPORT

With the permit denied, the County could proceed with enforcement against State 48. Enforcement proceedings would interrupt the students' education in the middle of the school year and violate State 48's statutory and constitutional rights.

STATEMENT OF FACTS

Karli Kemper founded State 48, a private microschool, on her family's property two years ago. Dec. of Karli Kemper ¶ 2.[1] Her parents bought the property to serve as a family home where Karli's school could operate. ¶ 3. Karli and her husband, Justin, researched the property and the zoning code to ensure that she could open State 48. ¶ 5. The property is in a general rural (GR) zone, *see* PCDSC § 2.40, where a "school" is a permissible use, PCDSC § 2.40.010(C), so they believed (reasonably and correctly) that State 48 was allowed. ¶¶ 4, 6. State 48 blends Karli's decades of teaching experience, love of theater, and passion for tailoring education to children's needs. ¶ 9. She created an innovative school for kids who had struggled in traditional school environments by providing core academic instruction in the morning and performing arts electives in the afternoon. ¶¶ 9-11. State 48 has seven teachers and thirty-five students, over half of whom have special

[1] All paragraph citations refer to Karli Kemper's Declaration, which accompanies this motion.

needs. ¶ 10. The home-based school setting and performing arts curriculum create a place where these students can thrive socially and academically. ¶ 11. State 48 has already sent graduates to college. *Id.*

In the fall of 2024, a neighbor complained about an unpermitted structure. ¶ 12. State 48 removed the structure, a temporary haunted house, almost immediately after the school's Halloween event. *Id.* But the complaint triggered a code violation warning (for the structure that no longer existed), and that warning was still outstanding in January 2025. ¶ 13. Karli reached out to the County to resolve the issue. ¶ 14. She was stunned when the County told her that State 48 could not operate in the GR zone. *Id.* Karli explained that State 48 was a "school" under PCDSC § 2.40.010(C), but the County insisted "school" includes only public and charter schools, not private schools. ¶¶ 14-15. The County recommended that Karli and State 48 apply for a special use permit under PCDSC §2.151.010 (A)(1)(o),[2] so State 48 did. ¶ 16.

The County allowed State 48 to remain open while the permit application was pending. ¶ 17. State 48 operated on the property for the entire 2025-26 school year and opened again this fall. *Id.* The Planning and Zoning Commission heard the permit application on July 16, 2026. ¶ 18. Several commissioners expressed support for State 48's mission and acknowledged its value, but the Commission voted 7-2 to recommend denying the permit. *Id.*

The permit application would not resolve the proper interpretation of "school," so on August 14, 2026, State 48 sought from the BOA an interpretation of "school" in PCDSC § 2.40.010(C). *See* PCDSC § 2.155.030(A); Dec. ¶ 19. In the first few weeks of September, State 48 promptly complied with each County staff request for resubmission and a statement of the interpretation proposed. Dec. ¶¶ 20-21. On September 30, Planning Director Harvey Krauss informed State 48's counsel that the BOA process should have

[2] SUPs are allowed for "[s]uch other uses as the planning commission may deem appropriate in the public interest." PCDSC § 2.151.010 (A)(1)(o).

begun with a written interpretation from the Planning Director. ¶ 22. The County's code does not require a written interpretation before seeking an interpretation. *Id.* Nor does it provide a process for requesting a written interpretation. *Id.* But Mr. Krauss indicated that a written interpretation was forthcoming. *Id.*

State 48 and the County agreed to postpone the BOS hearing on the permit until after the BOA process because if the BOA decides that "school" means all schools, State 48 could operate as a matter of right. ¶ 23. At the September 16 BOS meeting, Karli asked for a continuance so that State 48 could receive the BOA's official interpretation. ¶ 24. The BOA hearing was initially scheduled for October 22, so the BOS postponed the permit hearing until November for State 48 to complete the BOA interpretation process. ¶ 25. Planning Supervisor Deokar then told State 48 that the County staff needed more time to prepare its written interpretation, so it pushed the BOA hearing to November, past the new BOS hearing date set for December 10.[3] ¶ 26. Planning Supervisor Deokar recognized the new schedule meant the BOS hearing needed to be postponed until after the December BOA hearing and told Karli that, "Based on the revised schedule, we will also need to postpone the Board of Supervisors' hearing date." ¶ 27; *see also* Exhibit 1 to the Declaration (9.28.26 Email from Supervisor Deokar to Karli). Supervisor Deokar's email reflected the mutual understanding that the BOS would not act until the BOA had issued its interpretation after the December 10 hearing. Dec. ¶ 27. Relying on the agreement, State 48 believed the permit hearing would be postponed until after the December BOA hearing. ¶ 28. The County gave State 48 its written opinion (that "school" excludes private schools) on October 27; State 48 filed its responsive appeal November 23. ¶ 29.

Despite having agreed to wait for the BOA interpretation, the BOS took up the permit application at its November 18 meeting, without telling State 48 or its counsel. ¶¶ 30-31. Neither State 48 nor its counsel knew the BOS would do so, and thus neither

[3] Scheduling conflicts and the Thanksgiving holiday resulted in the December 10 date.

were present. At that meeting, the BOS recognized that State 48 had asked for a continuance until after the BOA proceeding ended, and the BOS considered continuing the permit proceeding until January to accommodate the December 10 BOA hearing date.[4] ¶ 32. That would have been consistent with what the Planning Supervisor told State 48. ¶ 23. But, instead, Planning Director Harvey Krauss misrepresented State 48's BOA position, telling the BOS that State 48 was arguing that it should be considered a public or charter school. ¶ 33. (State 48 in fact is arguing that it is a "private school" under the PCDSC and should thus be permitted as a "school" in the GR zone under PCDSC 2.40.010. *Id.*) Given Director Krauss' misrepresentation, Supervisor Vitiello believed a continuance was "a waste of staff's time"; he also falsely said "there's more buildings being put on the site." ¶¶ 33-34. Supervisor Miller, meanwhile, said that nothing would change as a result of the BOA hearing, and Planning Director Krauss agreed, even though a BOA ruling in State 48's favor would make a permit unnecessary. ¶ 32. The BOS did not continue the matter and instead denied the permit application without informing State 48 or its counsel. ¶ 35.

With the permit application no longer pending, the County could enforce against State 48 at any time, interrupting the education of thirty-five children and ending Karli's school. ¶¶ 36-39. This would violate statutory and constitutional rights of State 48, Karli, her family, and State 48's students' parents based on an incorrect interpretation of the zoning code.[5]

ARGUMENT

This Court should temporarily restrain County enforcement to protect State 48's rights and the education of its students. State 48 faces "immediate and irreparable injury,

[4] This rendition of the facts concerning what happened at the BOS hearing, including quoted statements, come from a review by State 48's counsel of a recording of the hearing. The discussion can be watched here: https://www.youtube.com/watch?v=p_TZae49qlU beginning at 2:29:08.

[5] State 48 is moving for a TRO based only on its statutory and Arizona Constitution claims.

loss, or damage." Ariz. R. Civ. P. 65(b)(1)(A). Based on its incorrect interpretation of "school," the County maintains that State 48 is illegal at its current location. If forced to stop operating, State 48 will no longer be able to provide academic instruction for its students in the middle of the school year. The disruption will harm special needs students who have struggled in traditional environments but thrive at State 48. Dec. ¶ 39. Enforcement action would also violate State 48's rights under the Arizona Constitution to be free from irrational, arbitrary, and discriminatory zoning laws. *See City of Tucson v. Ariz. Mortuary*, 34 Ariz. 495, 507-08 (1928).

Plaintiffs seeking relief under Ariz. R. Civ. P. 65 "must show (1) a strong likelihood of success on the merits, (2) the possibility of irreparable harm if the relief is not granted, (3) the balance of hardships favors the party seeking injunctive relief, and (4) public policy favors granting the injunctive relief." *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410 ¶ 10, 132 P.3d 1187, 1190 (2006). Moving parties may show either "probable success on the merits and the possibility of irreparable injury" or "the presence of serious questions and that the balance of hardships tips sharply in favor of the moving party." *Fann v. State*, 251 Ariz. 425, 432 (2021). Courts use a sliding scale analysis, not a strict balancing test. *Id*. Relative hardship to the parties is "the critical element in this analysis." *Shoen v. Shoen*, 167 Ariz. 58, 63 (Ct. App. 1990).

State 48 easily meets its burden. The County's interpretation of "school" as not including a private school like State 48 is wrong and conflicts with its own code definitions and the courts' approach to interpreting the zoning code. Interpreting "school" to exclude private schools raises serious "constitutional difficulties," too. *State v. Gomez*, 212 Ariz. 55, 60 ¶ 28 (2006). The balance of hardships clearly favors State 48. Ordering State 48 to cease operations will interrupt the school year for thirty-five children and their families and threaten the livelihoods of State 48's teachers. Dec. ¶¶ 39-42. A temporary restraining order would allow State 48 to continue operating as it has for more than a year and poses no new hardships for the County. Each factor favors State 48.

1. Plaintiffs are likely to succeed on the merits.

a. Plaintiffs are likely to succeed on the claim that State 48 is allowed as a matter of right as a "school" in the GR zone under PCDSC § 2.40.010(C).

State 48 is a "school," and "schools" are allowed as a matter of right in the GR zone. PCDSC § 2.40.010(C). The County's insistence that "school" means only public school defies common sense and clashes with other PCDSC provisions. PCDSC § 2.40.010(C) allows the following: "[p]ublic and quasi-public uses: church, club, museum, library, community service agency, clinic, public park, *school*, college, playground, athletic field, public or private utility and facilities, governmental structure; athletic, sport or recreation club; and hospital or sanatorium" (emphasis added). No provision requires these uses to be publicly owned or operated. Indeed, such a "church," if one existed, would pose obvious constitutional problems. And a "sport or recreation club" is rarely public.

Zoning ordinances, which derogate property rights, "must be strictly construed" in favor of property owners. *City of Scottsdale v. Scottsdale Associated Merchants, Inc*., 120 Ariz. 4, 5 (1978). Any ambiguities should be resolved in property owners' favor. *Kubby v. Hammond,* 68 Ariz. 17, 22 (1948). The County cannot narrow property rights with added, atextual qualifiers like "public" or "charter" to the term "school."

The PCDSC's own definitions make clear that a "private school" is a "school." The PCDSC includes three school-related definitions in PCDSC § 2.10.010:

- *School, private*, means any building or group of buildings, the use of which meets state requirements for education and which does not secure any major part of its funding from a government agency.[6]

[6] State 48 is a private school for zoning purposes under PCDSC § 2.10.010. It is a building or group of buildings, attending satisfies state requirements for education, and it is not funded by a government agency. It therefore is a private school under Pinal County's own definition. PCDSC § 2.10.010. State 48 and the County have previously agreed to this point. *See*, *e.g*., SUP-024-25 Staff Report P&Z, July 26, 2026.

- *School, public*, means an institution of learning belonging to the public and established and conducted under public authority; and pursuant to A.R.S. § 15-189.01, also includes charter schools for the purposes of zoning.
- *School, nursery*, means an institution intended primarily for the daytime care of children of preschool age. Even though some instruction may be offered in connection with such care, the institution shall not be considered a school within the meaning of this title.

In three ways, these definitions demonstrate that "school" includes the first two kinds of schools (private and public) and excludes nursery day cares for preschoolers.

First, the natural reading of these definitions is that private schools and public schools are subcategories of "school." This reading is consistent with common understanding and dictionary definitions.[7] A "school" is most commonly understood as a place where children receive academic instruction, whether that is a charter, public, parochial, traditional private, or innovative private school. Dictionaries, which demonstrate ordinary meaning, *see In re Drummond*, 257 Ariz. 15, 18 ¶ 7 (2024) (courts "may look to dictionary definitions" for ordinary meaning), define "school" as: "an organization that provides instruction: such as an institution for the teaching of children," *School*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/school (last visited Nov. 22, 2026); "a place where children go to be educated," *School*, Dictionary.com, https://www.dictionary.com/browse/school (last visited Nov. 22, 2026); and "[a]n institution of learning and education, esp. for children." *School*, Black's Law Dictionary (11th ed. 2024). Nothing in these definitions turns on a school being public.

Interpreting "school" to encompass public, charter, and private schools also aligns

[7] *See* PCDSC § 2.05.030(B). ("All terms used herein shall be interpreted according to their common, plain, natural and accepted usage when not otherwise defined herein."); *Fann v. State*, 251 Ariz. 425, 434 (2021) (courts must "give words their ordinary meaning unless it appears from the context or otherwise that a different meaning is intended" (internal quotations omitted)).

with the PCDSC's regulation of schools in § 2.150.280, titled "Schools." PCDSC § 2.150.280 includes separate provisions on public, private, and charter schools. If "school" meant only public or charter schools, then regulations outlined for private schools in PCDSC § 2.150.280(B) would be out of place in a section titled "Schools." PCDSC § 2.150.280 shows that when the PCDSC meant to delineate between public and private schools, it did so with clear labeling. By using "school" without "public" or "private," § 2.40.010 encompasses all schools, just like the title of PCDSC § 2.150.280.

Second, the County's interpretation of "school" would make "*school*, *public*" superfluous. *See Welch v. Cochise Cnty. Bd. of Supervisors*, 251 Ariz. 519, 524 ¶ 15 (2021) (statutes should be read to avoid "mere surplusage"). Courts read statutes "as a cohesive whole so that no word or provision is rendered superfluous." *State v. Serrato*, 259 Ariz. 493, 497 ¶ 16 (2025); *Welch*, 251 Ariz. at 524 ¶ 15. PCDSC § 2.150.280(A) provides that "[p]ublic schools are permitted in all zoning districts."[8] And under A.R.S. § 15-189.01(A), charter schools are also allowed in all zoning districts. As a result, if § 2.40.010 allowed only public and charter schools, it would add nothing to the code; it would be the repugnant "mere surplusage." *Welch*, 251 Ariz. at 524 ¶ 15. Reading "school" to include private schools properly gives independent meaning to the term in § 2.40.010(C) and ensures that "effect shall ... be given to every part" of the provision. *Serrato*, 259 Ariz. at 497 ¶ 16. Defining "school" to include public, private, and charter schools aligns with the rest of the PCDSC and is the "most reasonable with regard to the general purpose of this title and the goals, objectives, and policies of the comprehensive plan." PCDSC § 2.05.030(C).

When the PCDSC regulates private and public schools separately, it does so *explicitly* by referring to public and private schools. Nowhere in the PCDSC does the term "school" refer to public schools alone. Interpreting "school" that restrictively would not

[8] PCDSC § 2.150.280(B) and (C) impose certain requirements on "[p]rivate schools for K–12" and "[c]harter schools."

only render every "public" label in a host of provisions[9] superfluous, but would also make § 2.40.010(C) inconsistent with thirteen provisions that differentiate between "public" and "private" schools when regulating them differently.[10]

Third, the definition of "*school*, *nursery*" explicitly says that a nursery school "shall not be considered a school within the meaning of this title," even though it may provide instruction. PCDSC § 2.10.010. The "*school*, *private*" definition has no similar provision; without it, private schools are schools within the meaning of the title.

There is another reason to reject the County's interpretation of "school." Excluding private schools from the GR zone, as the County's interpretation does, produces inconsistent treatment of such schools. Similar rural and residential zones all expressly allow public and private ("parochial") schools without requiring a special use permit. *E.g.*, PCDSC §§ 2.20.010(D) (SR Suburban Ranch); 2.30.010(A) (SH Suburban Homestead); 2.55.010(B) (CR-1A); 2.60.010(B) (CR-1); 2.65.010 (CR-2); 2.70.010(B) (CR-3); 2.75.010(A) (CR-4); 2.80.010(A) (CR-5). Allowing public and private schools as a matter of right in the GR zone would be "most reasonable with regard to the general purpose of this title and the goals, objectives and policies of the comprehensive plan" in light of the regulations in similar other zones. PCDSC § 2.05.030(C). Otherwise, the GR zone would be an outlier among these similar zoning classifications by prohibiting private schools from operating as a matter of right. These provisions also use the term "public school" to mean public school; they do not use the term "school" to refer to a public school alone.

Moreover, as explained in part b. below, the County's interpretation of "school"

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[9] *See* PCDSC §§ 2.240.020(O), 2.240.030(I) (RU-1.25); §§ 2.245.020(R), 2.245.030(F) (RU-C); §§ 2.250.020(J), 2.250.030(I) (R-43); §§ 2.255.020(I), 2.255.030(G) (R-35); §§ 2.260.020(I), 2.260.030(F) (R-20); §§ 2.265.020(I), 2.265.030(F) (R-12); §§ 2.270.020(I), 2.270.030(F) (R-9); §§ 2.275.020(I), 2.275.030(F) (R-7); §§ 2.280.020(L), 2.280.030(H) (MD); §§ 2.285.020(H), 2.285.030(D) (MR); §§ 2.290.030(K), 2.290.050(G) (AC-1); §§ 2.295.030(O), 2.295.040(G) (AC-2); §§ 2.300.030(O), 2.300.040(C) (AC-3).

[10] *See supra* n.9.

creates significant constitutional concerns that this Court can (and should) avoid by declaring that State 48 is a "school."

b. Plaintiffs are likely to succeed on their claim that interpreting "school" to exclude State 48, a private school, violates the Arizona Constitution.

If the County is correct that PCDSC § 2.40.010(C) excludes private schools from permitted uses as a matter of right in the GR zone, then the provision likely violates the Arizona Constitution. Both the due process and equal privileges or immunities clauses of the Arizona Constitution protect property rights against zoning laws that go too far. Zoning laws must have a "substantial relation to the public health, safety, morals or general welfare," and they cannot be unreasonably, arbitrary, discriminatory, or oppressive. *City of Tucson v. Ariz. Mortuar*y, 34 Ariz. 495, 507-08(1928). The government must "justify legal classifications that subject individuals to adverse treatment." *Matthews v. Indus. Comm'n*, 254 Ariz. 157, 167 ¶ 50 (2022) (citing *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985)). Differential treatment is unjustified where there are not different threats to legitimate zoning interests. *Cleburne*, 473 U.S. at 448.

Here, State 48 does not threaten legitimate zoning interests differently than the other permissible uses in the GR zone. As noted above, there are many permitted uses in a GR Zone, including public schools, charter schools, museums, colleges, libraries, parks, sports or recreation clubs, etc. Prohibiting private schools from operating in a zone where public and charter school are allowed is unreasonable, arbitrary, and discriminatory. In *Roman Catholic Welfare Corp. v. Piedmont*, 289 P.2d 438, 439 (Cal. 1955), the California Supreme Court addressed whether there was a "reasonable basis for the ordinance prohibiting private schools in an area where public schools are permitted." *Id*. at 439. Piedmont argued the differentiation was based on the "character of the district, the conservation of property values, public opinion, matters affecting traffic control, size of streets, parking, noise, fire protection, over-burdening of water mains and sewers, and the peace, comfort and quiet of the district." *Id.* But the court held that it found it "difficult to make an argument that private

schools are inimical to the public welfare while public schools are not." *Id.* at 442.

The Illinois Supreme Court agreed when a town adopted an ordinance only allowing "[s]ingle-family dwelling, church or temple, public school, library, farm or truck garden." *Cath. Bishop of Chicago v. Kingery*, 20 N.E.2d 583, 584 (1939). A parochial school challenged the ordinance, and the court "fail[ed] to perceive to what degree a Catholic school of this type will be more detrimental or dangerous to the public health than a public school." *Id*. at 584. It was no more likely to be "detrimental or dangerous" than a public school, so the ordinance bore "no substantial relationship to the promotion of the public health, safety, morals, or welfare." *Id*. at 584-85. Similar cases around the country reached similar results. *See Mooney v. Vill. of Orchard Lake*, 53 N.W.2d 308, 310 (Mich. 1952) (church and school permitted); *State v. Nw. Preparatory Sch.*, 37N.W.2d 370, 371 (Minn. 1949) (distinguishing private schools based solely on ownership bore "no relation to the purposes of the ordinance" and was "arbitrary"); *Lumpkin v. Twp. Comm. of Bernards Twp.*, 134 N.J.L. 428, 48 A.2d 798, 799-800 (N.J. Sup. Ct. 1946) (denying private boarding school permit while allowing sectarian schools bore "no substantial relation to the public health, public morals, the public safety or the general welfare" and was an "an arbitrary, unreasonable and capricious exercise of power").

Here, there is no plausible zoning justification to treat State 48 differently than the other uses allowed as a matter of right. Zoning laws must be based on "facts demonstrating . . . harm [to] the community." *Coleman v. City of Mesa*, 230 Ariz. 352, 363 ¶ 44 (2012). Differential treatment is unjustified where the adversely treated use does not "threaten[] legitimate interests of the city in a way that other permitted uses . . . would not." *Cleburne*, 473 U.S. at 448. Small private schools like State 48 do not pose more noise, traffic, safety, or health concerns than other uses permitted as of right in the GR zone. Pinal County has no reason to believe such microschools create different threats to legitimate zoning interests than colleges, museums, libraries, sports clubs, or parks. *See* PCDSC § 2.40.010(C).

Pinal County also has no legitimate reason to ban private schools in the GR zone

while allowing charter and public schools. Nothing suggests that State 48 causes more noise or traffic than a public or charter school or that it is more harmful to the general welfare. A county staff member told State 48 that if it were a charter school, it could permissibly operate as it does now. Dec. ¶ 8. A 1700-student charter school down the street in the same zone causes more traffic and disturbances. ¶ 7. But that school is permitted, while State 48 is not, merely because it is a charter school. The County's labeling game based on ownership makes no sense. *Nw. Preparatory Sch.*, 37 N.W.2d at 371. It is the kind of irrational, arbitrary, and discriminatory zoning provision that Arizona law prohibits.

2. Plaintiffs face irreparable harm.

Forcing State 48 to cease its operations will cause irreparable harm. After the November 18 hearing, counsel for State 48 reached out four times and twice requested a written guarantee from the County that it would not bring an enforcement action against State 48 until after the BOA hearing. *See* Exhibits A–F accompanying this motion. The County's attorney responded on November 23 and stated that he could not provide that guarantee and would not consider nonenforcement until December 2, at the earliest. The County's refusal to agree not to enforce its interpretation leaves the threat of closure hanging over State 48. Dec. ¶¶ 36-38. In *Pierce*, the Supreme Court shielded private schools from "destruction" from state regulation based, in part, on the schools' business and property interests. *Pierce*, 268 U.S. at 535. The County's actions present the same threat of destruction to State 48, and this court should similarly approve injunctive relief to protect State 48 from "arbitrary, unreasonable, and unlawful interference with their patrons and the consequent destruction of their business and property." *Pierce*, 268 U.S. at 536.

An enforcement action against State 48 would also rip thirty-five thriving students out of their classrooms in the middle of the school year. Dec. ¶¶ 10, 39. Interference with education is irreparable harm. *See Sanders v. Folsom*, 104 Ariz. 283, 288 (1969) (equitable relief for school funding warranted when the parties hurt would include schoolchildren). That is particularly true for children with autism, ADHD, or other special needs, like many

of State 48's students. Dec. ¶ 39. It is "not remediable by damages." *IB Prop. Holdings, LLC v. Rancho Del Mar Apartments Ltd. P'ship*, 228 Ariz. 61, 65 (Ct. App. 2011). Monetary compensation cannot undo the emotional and academic damage interrupting the students' education will cause. State 48 parents, who exercised a constitutional right "to direct the upbringing and education of children" when choosing State 48, will have to scramble to try to place their children in another school while State 48 fights the enforcement action. Dec. ¶ 41; *see also Pierce*, 268 U.S. at 534. State 48, Karli and her family, and State 48 students and parents all face irreparable harm if the County moves forward with enforcement proceedings in the middle of the academic year. This factor favors restraining enforcement.

3. The balance of hardships clearly favors restraining enforcement.

The balance of hardships sharply tilts in State 48's favor. If the County brings an enforcement action, State 48 faces tremendous hardship. Its students will have their educations interrupted abruptly in the middle of the school year. The parents will have to scramble to find a new school for their children. For students and families at State 48, who have struggled in the past to find an educational environment that fits their needs, the interruption would be particularly harmful. Dec. ¶ 39. These students need continuity and stability, and the County ordering State 48 to cease operating would be extraordinarily detrimental. Karli and her family will also lose their jobs and their livelihood, as will State 48's teachers. Dec. ¶¶ 38, 40.

In contrast, allowing State 48 to continue operating, as it has for the past year and a half, will cause no new hardships to the County. It permitted State 48 to operate for two school years on Karli's family's property in the GR zone while the permit application was pending. Allowing the same thing during this litigation will not harm the County. This factor favors granting injunctive relief.

4. Public policy favors restraining enforcement.

The public policy recognizing the importance of education favors allowing State 48

to continue to operate so that thirty-five children do not have their school year dramatically interrupted, and the County has no interest in enforcing an incorrect interpretation of its code. Arizona's framers believed "that educated citizens are vital to a free and united society," and the Arizona legislature has long "encourage[d] the development of educational settings that would invigorate learning, improve academic achievement, and provide additional choices for parents and children." *Kotterman v. Killian*, 193 Ariz. 273, 290 (1999). State 48 embodies this kind of education innovation, and its students are thriving. Interrupting the education parents have chosen for nearly three dozen children is counter to the "purpose of ensuring that the state's citizenry is well-educated." *Kotterman*, 193 Ariz. at 278 (quoting *Mueller v. Allen*, 463 U.S. 388, 395 (1983)). An injunction will facilitate "the objective of making quality education available to all children within a state" and the role that private education alternatives to public school play in that goal. *Kotterman*, 193 Ariz. at 278; *see also Mueller*, 463 U.S. at 395.

CONCLUSION

Plaintiffs have established that each factor favors injunctive relief. They request that the Court enter a temporary restraining order enjoining Pinal County from enforcing its interpretation of PCDSC § 2.40.010(C) against State 48 so that State 48 may continue to operate on in the GR zone during the pendency of this litigation.

Respectfully submitted, this 24th day of November, 2026.

INSTITUTE FOR JUSTICE

By: /s/ Marie Miller

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CERTIFICATE OF SERVICE

I certify that on November 24, 2026, I electronically filed the foregoing Motion for Temporary Restraining Order, with its supporting exhibits, declaration of Karli Kemper with exhibit, with the Clerk of the Superior Court, Pinal County, Arizona.

I further certify that on November 24, 2026, a copy of the foregoing Motion and all exhibits was delivered to a process server for personal service on Defendant, together with the Summons, the Civil Cover Sheet, the Certificate on Compulsory Arbitration, and the Complaint, as follows:

Pinal County
Natasha Kennedy
Clerk of the Board of Supervisors, Pinal County
Administrative Complex
135 N. Pinal Street
Florence, AZ 85132

DATED this 24th day of November, 2026.

By: /s/ Marie Miller
Marie Miller (AZ Bar No. 040537)