

MICHAEL K. JEANES
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1 **MARK BRNOVICH**
2 **ATTORNEY GENERAL**
(Firm Bar No. 14000)

3 BRUNN ("BEAU") W. ROYSDEN III (Bar No. 28698)

4 KEITH J. MILLER (Bar No. 29885)

5 EVAN G. DANIELS (Bar No. 30624)

ASSISTANT ATTORNEYS GENERAL

6 1275 West Washington Street

Phoenix, Arizona 85007

7 Telephone: (602) 542-8594

8 Facsimile: (602) 542-4377

Keith.Miller@azag.gov

9 Attorneys for State of Arizona

10
11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF MARICOPA**

13 STATE OF ARIZONA, *ex rel.*
14 MARK BRNOVICH, Attorney General
Plaintiff,

Case No: CV2017-012115

15 v.

16 ARIZONA BOARD OF REGENTS

**COMPLAINT FOR DECLARATORY,
INJUNCTIVE, AND SPECIAL ACTION
RELIEF**

17
18 Defendant.
19
20

21 A four-year college degree is the most fundamental licensure of our modern society.
22 Providing one's children with the opportunity to earn that degree—or paying for it oneself even
23 if that means attending college part-time while working—is a critical part of the American
24 dream. However, Defendant Arizona Board of Regents ("ABOR") over the past fifteen years
25 has dramatically and unconstitutionally increased the price of in-state tuition and mandatory fees
26 at Arizona's public universities *by 315 to 370%*, such that those costs alone are now \$10,792 to

1 \$12,228 per year and the full price of attendance if living on campus is \$26,923 to \$28,900 per
2 year. But the Framers of the Arizona Constitution have already answered the question of the
3 purpose for which mandatory tuition and fees may be charged—the actual cost of furnishing
4 instruction less state appropriations. Ariz. Const. art XI, § 6 (“The university and all other state
5 educational institutions shall be open to students of both sexes, and *the instruction furnished*
6 *shall be as nearly free as possible.*” (emphasis added)). ABOR cannot lawfully disregard that
7 constitutional directive.

8 This Complaint relates to three types of unlawful conduct through which ABOR has
9 shirked its constitutional duty as follows.

10 1) ABOR’s tuition-setting policy does not comply with the constitutional mandate. R
11 Rather than basing tuition on the cost of furnishing instruction, ABOR’s formal tuition-setting
12 policy expressly considers at least three factors that are necessarily incompatible with reaching a
13 result that is “as nearly free as possible.” Those factors include the consideration of the national
14 educational market, *i.e.*, amounts charged by “peer universities” in other states; the broad
15 availability of student loans and other aid, essentially concluding that if students can borrow
16 enough money, ABOR is cleared to charge it; and ABOR has misinterpreted its “nearly free”
17 mandate (which is focused on the cost of furnishing instruction) to mean “affordable” (which is
18 focused on what students can afford to pay), thereby unduly asserting itself as the arbiter of
19 “affordability” for Arizona’s students and families. With its unconstitutional tuition-setting
20 policy, ABOR has abandoned its duty to serve as a check on the university presidents, and has
21 engaged in an unprecedented series of lockstep tuition hikes across Arizona’s three public
22 universities that has resulted in a tuition increase of over 300% at each school.

23 2) ABOR unlawfully charges students who must attend part-time or online significantly
24 more than actual cost, and ABOR requires students to pay for things other than instruction—
25 such as athletic, recreation, technology, and health fees—to access instruction.

3) Intertwined with these price hikes, ABOR is causing the illegal expenditure of public monies and the failure to collect tuition in direct contravention of clear and established Arizona law. ABOR's stated purpose in this regard, that "for many DACA students [any higher] rate may prove to be as unaffordable as the full out-of-state tuition rate," is especially perplexing in light of the past 15 years of tuition setting action. The third type of conduct risks triggering a federal law that would forfeit Arizona's ability to provide discounted in-state tuition to any of its residents, and instead would require all students, regardless of residency, to pay the same tuition charged to out-of-state students. Rather than running this risk, ABOR should be upholding its duty based on its constitutional mandate to make higher education as nearly free as possible for the people of Arizona.

Plaintiff State of Arizona, *ex rel.* Mark Brnovich, Attorney General for its complaint specifically alleges as follows:

PARTIES

1. Plaintiff State of Arizona, *ex rel.* Mark Brnovich, Attorney General ("the State") is authorized to bring this action by, among other things, A.R.S. § 35-212.

2. Defendant Arizona Board of Regents ("ABOR") is the governing board for The University of Arizona ("U of A"), Arizona State University ("ASU"), and Northern Arizona University ("NAU") (collectively, the "Universities"). ABOR is a corporate body that may be sued.

JURISDICTION AND VENUE

3. This Court has jurisdiction over actions seeking declaratory and injunctive relief under Article VI, Section 14 of the Arizona Constitution and A.R.S. §§ 12-123, 12-1801, and 12-1831.

4. This Court has jurisdiction over special actions against bodies, officers, and persons pursuant to Article VI, Section 18 of the Arizona Constitution and Arizona Rule of Procedure for Special Actions 4(a).

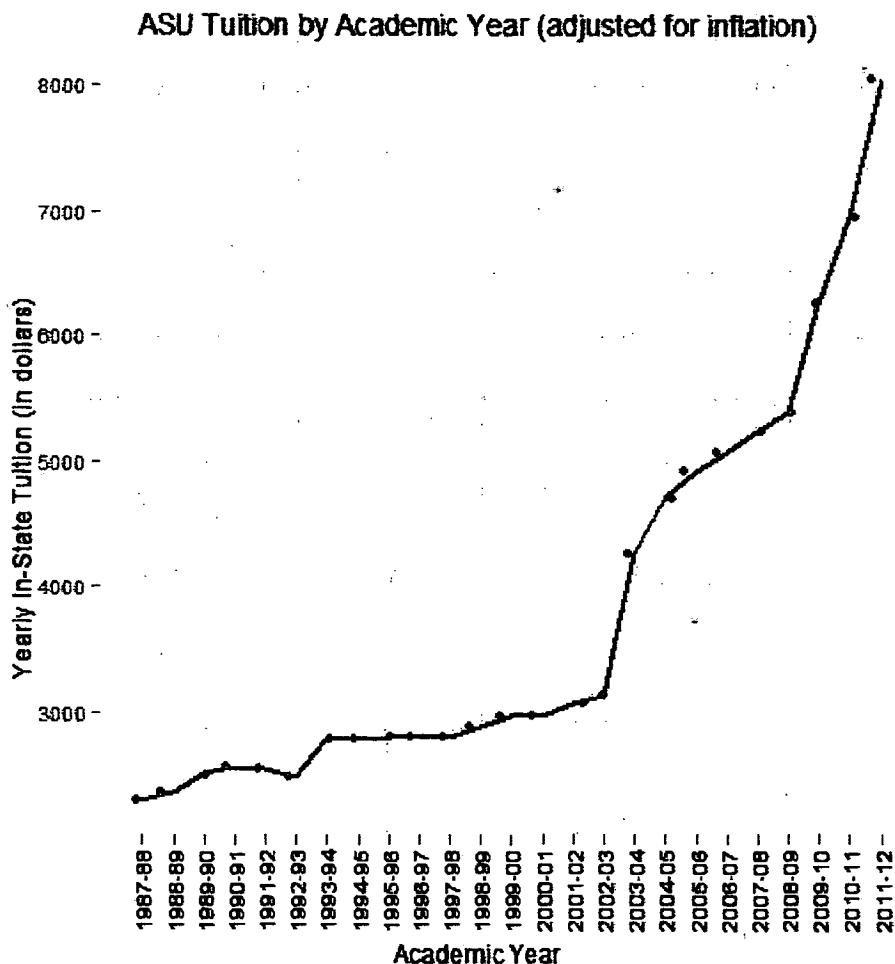
1	Arizona State University	\$10,792	315%
2	All Campuses		

3 12. In contrast to the increases in tuition, the consumer price index has increased only
4 36% over the same approximate period. Bureau of Labor Statistics data for change between
5 July 2002 and July 2017, available at goo.gl/k6GW2b, accessed Sep. 6, 2017.

6 13. All public universities, with the inflationary pressures of broad student loan
7 expansion, did mildly outpace the consumer price index over the same period of time. The
8 national average tuition for public 4-year institutions climbed slightly over 100% as opposed to
9 Arizona's wild increases of more than 300%. In 2002, when the constitutional mandate still
10 mattered to ABOR, Arizona tuition hovered around the 25th percentile nationally. After a mere
11 15 years of ignoring the constitutional madate, Arizona's public university tuition exceeds the
12 75th percentile nationally.

13 14. Similarly, median family income in Arizona increased only 27% over a
14 comparable period (from \$46,723 in 2000 to \$59,480 in 2015). Census Bureau data, available at
15 goo.gl/1Fwh5f, accessed Sep. 6, 2017.

16 15. This means that ABOR has raised the base tuition and fees for in-state students
17 starting as undergraduates at approximately *nine to ten times* the rate of inflation and
18 approximately *twelve to thirteen times* the rate of increase of median family income over the
19 period covering the last fifteen years. Below is a chart that on information and belief shows
20 ASU tuition and fees from 1987 to 2011.



<http://www.graphoftheweek.org/2011/12/description-arizona-state-university.html>

16. Each of the three public universities was able to operate for over one hundred years at the lower tuition levels, demonstrating that it is not necessary for ABOR to disregard and violate the constitutional mandate of Article XI, Section 6 in order for public universities to operate in Arizona.

17. In addition, tuition has increased *four times* the amount by which state aid to the Universities has been cut since 2008. The State is providing \$390 million less in revenue, but the Universities are charging \$1.5 billion more this year than they were charging in 2008.

<http://www.azcentral.com/story/news/politics/arizona-education/2017/05/01/arizona-tuition-hikes-have-generated-1-1-billion-more-universities/307733001/>

1 18. A student will now have to receive loans or other aid of approximately 70% of the
2 base in-state tuition and fees in order to pay what he or she would have to pay if ABOR had
3 limited tuition and fee increases to be in line with inflation over the last 15 years.

4 19. The above amounts are simply for the tuition and mandatory fees required to
5 attend classes, and do not include amounts for other potential expenses such as room and board.
6 The full cost of attendance per year, including room and board, is \$28,491 at ASU, \$28,900 at
7 U of A, and \$26,923 at NAU. <https://students.asu.edu/standard-cost-attendance#resident>;
8 <http://financialaid.arizona.edu/undergraduate/2017-2018-estimated-cost-attendance>;
9 <https://nau.edu/Finaid/Tuition-Expenses/>

10 **ABOR's Actions Over the Last Fifteen Years Show Either An Express or De Facto Policy**
11 **of Setting Tuition Based On An Overall Price Target. In Addition, ABOR Raised Tuition**
12 **For the Three Public Universities In Lockstep, Preventing Meaningful Competition.**

13 20. As former Arizona Attorney General Janet Napolitano stated, while comparison
14 with other public universities may offer insight into the reasonableness of tuition, ABOR "has
15 neither statutory nor constitutional authority to raise tuition solely in an attempt to be
16 competitive with other public universities." Ariz. Att'y Gen. Op. I99-011 (May 11, 1999).

17 21. On information and belief, average undergraduate in-state tuition and fees for
18 Arizona residents for the 2004-05 school year was \$4,078, which made Arizona the 35th most
19 expensive state for in-state tuition in the country and 15.8% less expensive than the median
20 state. College Board data, available at goo.gl/RTCMMX, accessed Sep. 6, 2017.

21 22. On information and belief, average in-state tuition and fees for Arizona residents
22 for the 2016-17 school year was \$10,957, which made Arizona the 13th most expensive state for
23 in-state tuition in the country and 17.2% more expensive than the median state. *Id.*

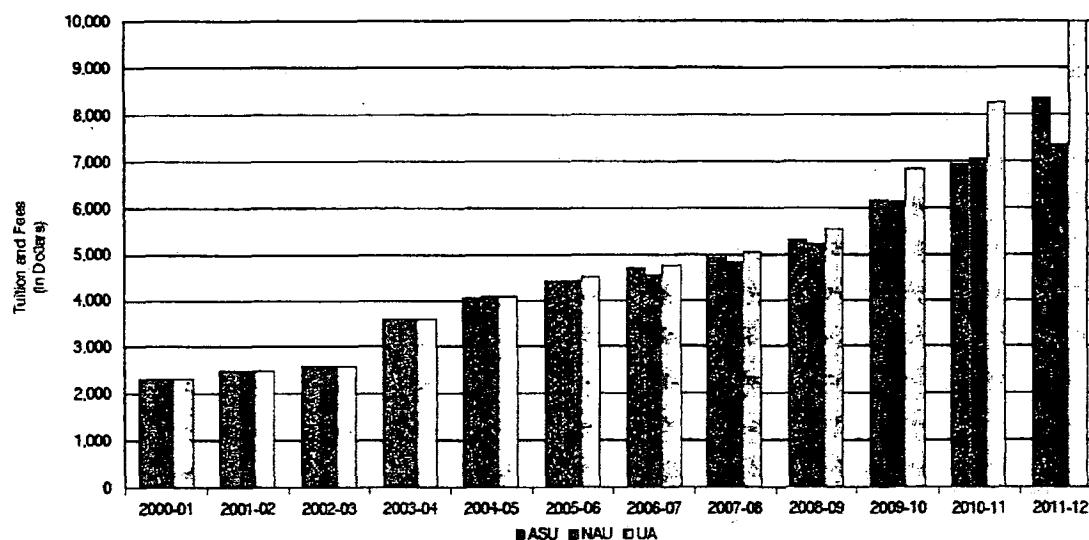
24 23. This annualized 14.1% rate of growth represents the third fastest rate of growth
25 among all fifty states. *Id.*

24. In a recent proposal to increase tuition, ASU President Michael Crow stated that the "ASU Market Price" was \$30,000 per year. https://students.asu.edu/sites/default/files/fy18-tuition-proposal-asu_final.pdf.

25. Not coincidentally, the full cost of attendance at ASU is now set at \$28,491.

26. The fact that all three institutions' tuition was hiked in lockstep over a fifteen-year period (as shown in part in the below chart prepared by the Auditor General) means that ABOR acted to prevent any meaningful competition based on price among the three public universities, notwithstanding a near quadrupling in price. This was an abuse of ABOR's statutory position as the single governing board for the three separate institutions and was in direct contravention of the statutory directive that ABOR "differentiate the tuitions and fees between institutions," A.R.S. § 15-1625(A)(6).

Figure 3: Undergraduate Base Tuition and Mandatory Fees for Continuing Students at Universities' Main Campuses 2000-2001 through 2011-2012 Academic Years



Source: Auditor General staff analysis of Arizona university system undergraduate base tuition and mandatory fees at the main campuses of ASU, NAU, and the UA obtained from <http://www.szregents.edu/reports/default.aspx> for the 2000-2001 through 2010-2011 academic years, and April 2011 board minutes.

https://www.azauditor.gov/sites/default/files/11-12Report_0.pdf

1 **Based on Available Information, Amounts Charged Are Not Derived From The Actual**
2 **Cost of Instruction Less State Appropriations**

3 27. At least three independent reasons show that ABOR has set tuition based on
4 factors other than the actual cost of furnishing instruction: ABOR's own policies, multiple
5 mandatory fees for things other than instruction, and a comparison to the tuition charged by the
6 community colleges.

7 28. ABOR's own policy 4-101(D) shows that ABOR examines several factors in
8 setting tuition, none of which is the actual cost of furnishing instruction. In addition, given
9 Article XI, Section 6's mandate, many of these factors are simply improper, including price-
10 based factors such as median tuition and fees charged by out-of-state universities and the
11 availability of student financial aid.

12 29. Each of the universities also charges several extraneous mandatory fees that must
13 be paid each semester in order for a student to access instruction:

- 14 a. The fees for in-state undergraduate students at the U of A enrolled for
15 7 or more hours include: Recreation Center Bond Fee -- \$25; Information
16 Technology and Library Fee -- \$267.50; Athletics Fee -- \$50; Student
17 Services Fee -- \$75; Health & Recreation Fee -- \$212.50; and
18 Recreation Fee -- \$25.
- 19 b. The fees for in-state undergraduate students at ASU enrolled for 7 or more
20 hours include: Resident Surcharge -- \$135; Technology Fee -- \$50; Student
21 Service Facility Fee -- \$75; Student Athletics Fee -- \$75; Student Programs
22 Fee -- \$30; Health & Wellness Fee -- \$40; and Recreation Fee -- \$25.
- 23 c. The fees for in-state undergraduate students at NAU enrolled for 1 or more
24 hours include: Information Technology Fee -- \$14 per credit/max \$168;
25 Student Activities Fee -- \$25; and Health & Recreation Fee -- \$250.
- 26

1 30. At 15 credit hours per semester, U of A's in-state tuition and fees is \$407.60/credit
2 hour; ASU's in-state tuition and fees equals \$359.73/credit hour; and NAU's tuition and fees
3 equals \$368.63/credit hour.

4 31. Upon information and belief, Maricopa County Community Colleges charge \$86
5 per credit hour for county residents plus a \$15 registration fee per semester.

6 32. Upon information and belief, Pima Community College charges \$81.50 per credit
7 hour for in-state residents plus a \$20.50 registration fee per semester.

8 33. Upon information and belief, Coconino Community College charges \$105 per
9 credit hour for in-state residents.

10 34. The vast differential (public universities charging full-time in-state students up to
11 five times per credit hour for what community colleges charge) is compelling evidence that
12 university tuition is not based solely on the cost of furnishing instruction but rather includes a
13 substantial subsidy for other university pursuits. This is particularly true for freshman and
14 sophomore level university classes, which overlap with community college offerings.

15 **ABOR's Actions Have Particularly Hurt Part Time and Online Students—Those Most**
16 **Likely to be Working to Support Themselves As They Pursue A Degree**

17 35. ABOR has approved tuition schedules at the Universities that charge more per
18 credit hour when a student is taking fewer credit hours.

19 36. For example, at ASU an in-state student starting as an undergraduate would be
20 required to pay \$917 for 1 credit hour and \$753/credit hour for six credit hours. In contrast, if
21 the student were taking fifteen credit hours, that student's base tuition and mandatory fees would
22 be \$359.73/credit hour. In other words, ASU's charges per credit hour vary by a factor of 2.5
23 depending on the number of credit hours. ASU data, available at goo.gl/fX5LJU, accessed Sep.
24 6, 2017.

25 37. And ASU's full-time tuition and mandatory fees for taking classes online can
26 range from \$12,438 to \$18,098 per year, depending on course of study and number of credits

1 taken. This amount is at least \$1,646 and up to \$7,306 more expensive than the cost of in-state
2 tuition for taking classes on campus.

3 38. ABOR has approved ASU's policy of charging residents and nonresidents the
4 same tuition and mandatory fees for online courses.

5 39. The University of Arizona's price per credit hour varies from \$733 if only taking
6 one credit hour to \$407.60 if taking fifteen credit hours. This varies by almost a factor of two.
7 <http://bursar.arizona.edu/students/fees>.

8 40. Northern Arizona University's price per credit varies from \$1054 for one credit
9 hour to \$368.67 per credit hour at 15 credit hours. This varies by a factor of 2.85.
10 https://nau.edu/SDAS/Tuition-Fees/Fall_Tuition/Fall_Undergraduate_Pledge/.

11
12 **ABOR Has Also Refused to Comply With Arizona Law Prohibiting State Subsidies For**
13 **Students Who Are Not Lawfully Present.**

14 41. In 2006, the people of Arizona enacted Proposition 300 (codified at A.R.S. §§ 15-
15 1803, 15-1825) which prohibits provision of education subsidies to students who are not
16 lawfully present residents of the United States.

17 42. In 2012, the executive branch of the Federal Government announced that it would,
18 through a putative exercise of its prosecutorial discretion, defer deportation of certain
19 unauthorized aliens who had entered the country as minors. This policy, known as Deferred
20 Action for Childhood Arrivals (DACA), is currently effective but the wind-down of the program
21 was announced on September 5, 2017.

22 43. The Maricopa County Community College District (MCCCD) began accepting
23 employment authorization documents from DACA recipients as evidence that they qualified for
24 in-state tuition.
25
26

1 44. In 2013, the Arizona Supreme Court strongly suggested in a unanimous three-
2 judge decision that Proposition 300 precluded those without lawful status from receiving in-state
3 tuition. *See Tobin v. Rea*, 231 Ariz. 189, 197 ¶ 32 (2013).

4 45. In 2013, the Arizona Attorney General filed a declaratory action, seeking a
5 determination that MCCCDC's policy violates Arizona law and an injunction prohibiting
6 MCCCDC from allowing DACA recipients to qualify for in-state tuition.

7 46. While this litigation was pending, ABOR announced a new "non-resident
8 undergraduate tuition rate for Arizona high school graduates that would be available to eligible
9 students who are not otherwise entitled to in-state tuition." This rate was set at 150% of the
10 resident tuition rate. [https://public.azregents.edu/Shared%20Documents/Frequently%20Asked
11 %20Questions_AZ%20High%20School%20Graduate%20Tuition%20Rate.pdf](https://public.azregents.edu/Shared%20Documents/Frequently%20Asked%20Questions_AZ%20High%20School%20Graduate%20Tuition%20Rate.pdf)

12 47. In 2015, the Maricopa County Superior Court judge found for MCCCDC in a since-
13 overturned decision that never had statewide precedential authority.

14 48. Immediately following the ruling, ABOR began charging DACA recipients in-
15 state tuition at the Universities.

16 49. On June 20, 2017, a unanimous panel of the Arizona Court of Appeals reversed
17 the lower court and held that "DACA recipients are not automatically eligible for in-state tuition
18 benefits." *State v. MCCCDC, et al.*, No. 1 CA-CV 15-0498, slip op. at 17 ¶35.

19 50. On June 29, 2017, ABOR announced that it would disregard the Court of Appeals
20 ruling and maintain its current practice of providing in-state tuition benefits to DACA recipients.
21 [https://www.azregents.edu/sites/default/files/news-
22 releases/ABOR%20Statement%20on%20Court%20Decision%20Regarding%20DACA%20Stud
23 ents%20June%2029%202017_0.pdf](https://www.azregents.edu/sites/default/files/news-releases/ABOR%20Statement%20on%20Court%20Decision%20Regarding%20DACA%20Students%20June%2029%202017_0.pdf).

24 51. To the extent that ABOR believes 150% of current in-state tuition is an
25 unaffordable price, that is largely a problem of ABOR's own making by quadrupling tuition
26 across all three universities in lockstep over a fifteen year period.

52. Regardless, ABOR has no statutory obligation to provide “nearly free” education to any class of non-residents. To the contrary, extending benefits to some non-residents risks triggering a federal requirement that in-state tuition benefits must be extended to *all* U.S. citizens and nationals, including those residing out-of-state, on the same terms that they are extended to any non-resident. [See *State v. MCCD* at n.5 & ¶ 58.]

53. There are judicially manageable standards for assessing Counts I-V, *infra*, and the question of the constitutionality of ABOR Policy 4-101(D) is a pure matter of law.

COUNT I:

**VIOLATION OF ARTICLE XI, SECTION 6 OF THE ARIZONA CONSTITUTION BY
ADOPTING A POLICY FOR SETTING IN-STATE TUITION BASED ON FACTORS
OTHER THAN THE COST OF FURNISHING INSTRUCTION**

54. Plaintiff re-alleges and incorporates the preceding paragraphs.

55. ABOR has engaged in activities that separately and collectively violate Article XI, Section 6 of the Arizona Constitution and implementing statutes: increasing the cost of mandatory tuition for items other than the cost of furnishing instruction and massively increasing tuition across the Universities in lockstep to prevent any meaningful price competition despite a quadrupling in price.

56. Since 1987, ABOR had observed a policy requiring all three of its universities to set in-state tuition at a level that was within the lower one-third of in-state tuition levels in other states.

57. In March 2003, ABOR relaxed this standard, but still required the Universities to set in-state tuition at a level not to exceed the tuition of institutions at the top of the bottom one-third of "senior public universities" in other states.

58. At the time of the relaxation of this policy, ABOR also approved a lock-step increase of \$1,000 (or 40%) in the price of tuition at each of the three universities.

1 59. Since the relaxation of this policy, ABOR has increased tuition at each of the three
2 universities over 300%.

3 60. ABOR's current policy 4-101(D) similarly lists several unconstitutional factors for
4 determining tuition. Those factors include considering the amounts charged by "peer
5 universities" in other states, 4-101(D)(3), the broad availability of student loans and other aid, 4-
6 101(D)(2), and median family income levels, 4-101(D)(7). Remarkably, this policy does not
7 even list the actual cost of furnishing instruction as one of the factors. Instead it focuses on a
8 price-based model.

9 61. Because the Arizona Constitution states that "the instruction furnished [at the
10 university and all other state educational institutions] shall be as nearly free as possible," ABOR
11 is required to make its tuition-setting determination based on the cost of "the instruction
12 furnished" less state appropriations, not on factors distinct from that cost.

13 62. ABOR does not have a general power to tax those who purchase instruction from
14 the public institutions under its control.

15 63. There is no constitutional or statutory directive that ABOR increase tuition at the
16 Universities in lock step, as ABOR has done over the last fifteen years. Indeed, this pattern of
17 increases contravenes ABOR's constitutional and statutory directives.

18 64. Providing loan-access, aid or scholarships to some students (in varying amounts)
19 is not the same thing as furnishing instruction as nearly free as possible.

20 65. ABOR violates its constitutional duty if it increases tuition for residents based on
21 factors unrelated to cost, such as the prices charged by universities in other states.

22 66. The effect of ABOR's policy of lock step increases in tuition over the last 15 years
23 based on tuition charges in other states has been to prevent any meaningful price competition
24 between the three public universities in Arizona, notwithstanding a quadrupling of price.

25 67. ABOR's tuition setting policies and practices over the last fifteen years and
26 continuing through the present have violated Article XI, Section 6 because they have not been

1 based on bottom-up determinations of cost for furnishing instruction, but rather have been based
2 on factors other than that cost.

3 **COUNT II:**

4 **VIOLATION OF ARTICLE XI, SECTION 6 OF THE ARIZONA CONSTITUTION BY**
5 **CHARGING GREATER AMOUNTS PER CREDIT HOUR TO PART-TIME**
6 **STUDENTS**

7 68. Plaintiff re-alleges and incorporates the preceding paragraphs.

8 69. Charging students different tuition and fees per credit hour rates based on number
9 of credits taken during that semester is not one of the distinctions justifying tuition pricing
10 disparities enumerated in A.R.S. § 15-1626(A)(5).

11 70. On information and belief, the marginal cost of instruction per credit hour is not
12 appreciably different for a full-time student compared to a part-time student at large public
13 universities such as Arizona's three public universities.

14 71. As a comparison, many of the community colleges in Arizona (such as the
15 Maricopa Community Colleges) charge on a flat per credit hour basis, showing that there is not
16 a high differential in cost in providing a particular course to a part-time versus full-time student.

17 72. Charging more for part-time students discriminates against, among others, older
18 students who may be trying to earn a degree while working and raising a family. In addition, on
19 information and belief such students may in some instances be less likely to receive scholarships
20 because FAFSA looks at the cost of education per year and a part time student necessarily pays
21 less per year over a longer number of years.

22 73. To the extent that the Board has approved university policies that charge part-time
23 students higher tuition and fees per credit hour than full-time students, that disparity violates
24 Article XI, Section 6 of the Arizona Constitution.

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**VIOLATION OF ARTICLE XI, SECTION 6 OF THE ARIZONA CONSTITUTION BY
CHARGING GREATER AMOUNTS FOR ONLINE INSTRUCTION THAN IN-
PERSON INSTRUCTION**

74. Plaintiff re-alleges and incorporates the preceding paragraphs.

75. The difference between online and in-person classes is not one of the distinctions justifying tuition pricing disparities enumerated in A.R.S. § 15-1626(A)(5).

76. In addition, A.R.S. § 15-1606, which authorizes ABOR and the Universities to offer correspondence classes, makes no mention of charging higher rates for such classes.

77. In direct contravention of the Arizona Constitution and these statutes, ABOR's policy 4-104(2)(B) describes "*market rates* and other factors" as the basis for tuition or online courses.

78. On information and belief, the production and delivery of online instruction is cheaper than in-person instruction.

79. At Arizona State University, online tuition is more expensive than in person tuition for in-state students.

80. On information and belief, by charging in-state students higher tuition for online classes, ABOR is forcing students who take those classes to double pay—paying for both the costs of a physical plant and the online delivery method.

81. ABOR's practice of approving higher tuition for online classes (particularly when combined with its additional practice of charging more for part time students) creates a unscalable barrier for many students who wish to start or finish their degree later in life, such as while working and raising a family without yet enjoying the economic benefits of a four-year college degree. This policy thereby contravenes the express language as well as the policy goal of Article XI, Section 6 – creating a broadly educated citizenry.

1 82. To the extent that the Board has approved university policies that charge higher
2 per-hour tuition and fees for online instruction than in-person instruction, that pricing structure
3 violates Article XI, Section 6 of the Arizona Constitution.

4 **COUNT IV:**

5 **VIOLATION OF ARTICLE XI, SECTION 6 OF THE ARIZONA CONSTITUTION BY**
6 **CHARGING RESIDENTS AND NONRESIDENTS THE SAME AMOUNT FOR**
7 **ONLINE INSTRUCTION**

8 83. Plaintiff re-alleges and incorporates the preceding paragraphs.

9 84. The difference between residents and nonresidents is one of the distinctions the
10 legislature instructs ABOR to take into account in setting differential tuition in A.R.S. § 15-
11 1626(A)(5).

12 85. In direct contravention of the Arizona Constitution and these statutes, ABOR has
13 approved a tuition structure for ASU's online courses that does not differentiate between in-state
14 students and other students.

15 86. ABOR's practice of approving identical tuition rates for in-state students and out-
16 of-state students fails to ensure that the general fund monies intended to subsidize in-state
17 students are used in a way that in-state students may access instruction at a rate as nearly as free
18 as possible.

19 87. To the extent that the Board has approved university policies that charge in-state
20 and out-of-state students the same amount for online instruction, that pricing structure violates
21 Article XI, Section 6 of the Arizona Constitution.

22 **COUNT V:**

23 **VIOLATION OF ARTICLE XI, SECTION 6 OF THE ARIZONA CONSTITUTION BY**
24 **FAILING TO SEPARATE ATHLETIC, RECREATIONAL, TECHNOLOGY, AND**
25 **HEALTH FEES FROM INSTRUCTION TUITION**

26 88. Plaintiff re-alleges and incorporates the preceding paragraphs.

1 89. To the extent that the Board has approved university policies which bundle in-state
2 tuition for instruction with a mandatory fee that provides cost-free unlimited access to all regular
3 season intercollegiate athletic events, that linkage of the purchase of instruction with a forced
4 purchase of entertainment violates Article XI, Section 6 of the Arizona Constitution.

5 90. To the extent that the Board has approved university policies which bundle in-state
6 tuition for instruction with a mandatory fee that provides access to state-of-the-art fitness centers
7 and other aspects of gym membership, that linkage of the purchase of instruction with a forced
8 purchase of fitness services violates Article XI, Section 6 of the Arizona Constitution.

9 91. To the extent that the Board has approved university policies which bundle in-state
10 tuition for instruction with a mandatory fee that provides for technology-enabled classrooms and
11 wireless internet, that linkage of the purchase of instruction with a forced purchase of
12 technology services violates Article XI, Section 6 of the Arizona Constitution.

13 92. To the extent that the Board has approved university policies which bundle in-state
14 tuition for instruction with a mandatory fee that provides nutritional counseling and nursing
15 services, that linkage of the purchase of instruction with a forced purchase of health care
16 services violates Article XI, Section 6 of the Arizona Constitution.

17 **COUNT VI:**

18 **VIOLATION OF A.R.S. §§ 35-143 and 35-212 BY ILLEGALLY EXPENDING**
19 **PUBLIC MONIES AND FAILING TO COLLECT TUITION**

20 93. Plaintiff re-alleges and incorporates the preceding paragraphs.

21 94. The Arizona voters passed Proposition 300 in 2006, which amended A.R.S. § 15-
22 1803 and added A.R.S. § 15-1825, among other changes. Section 15-1803(B) states in part, “a
23 person who was not a citizen or legal resident of the United States or who is without lawful
24 immigration status is not entitled to classification as an in-state student pursuant to section 15-
25 1802.” Section 15-1825(A) prohibits a student seeking postsecondary education in Arizona
26 “who is not a citizen of the United States [or] is without lawful immigration status” from

1 receiving "tuition waivers, fee waivers, grants, scholarship assistance, financial aid, tuition
2 assistance or any other type of financial assistance that is subsidized or paid in whole or in part
3 with state monies."

4 95. Should a state extend residence-based, in-state tuition benefits to non-qualified
5 aliens, the state risks triggering a federal requirement that the benefit be extended to *all* U.S.
6 citizens and nationals, including those residing out-of-state, thereby defeating the state's ability
7 to distinguish between students based upon their residency. [*State v. MCCD* at n.5 & ¶ 58.]

8 96. Students who attend any of the Universities and pay only in-state tuition are
9 receiving a subsidy in the form of expenditure of public monies toward their education.

10 97. If the State were required to offer in state tuition to all U.S. citizens and nationals,
11 including those residing out of state, and lose its ability to distinguish between students based on
12 their residency, the Universities would either have to dramatically cut services or substantially
13 increase the price for in-state tuition.

14 98. By directing or otherwise permitting the Universities to offer in-state tuition to
15 students who are not "lawfully present" for purposes of eligibility for in-state tuition or other
16 state or local public benefits, ABOR has contravened the express mandates of voter-approved
17 A.R.S. §§ 15-1803(B) and 15-1825(A); failed to collect monies accruing to it or to the State as
18 required by A.R.S. § 35-143; and caused the illegal payment of public monies in violation of
19 A.R.S. § 35-212.

20 **PRAYER FOR RELIEF**

21 Wherefore, Plaintiff respectfully requests that the Court:

22 1. Provide declaratory, injunctive, and special action relief that prevents and enjoins
23 the Arizona Board of Regents from violating the Arizona Constitution and Arizona law as
24 alleged in the counts above, including declaring ABOR Policy 4-101(D)(2), (3), and (7) in
25 violation of the Arizona Constitution.

2. Provide declaratory, injunctive, and special action relief that requires ABOR to fulfill its duties as required by Arizona law.

3. Require ABOR to sequester an amount of public monies equal to the amounts that are being paid to subsidize DACA students in the event the court ultimately holds that there is an illegal expenditure of funds pursuant to 35-212.

4. Award Plaintiff's reasonable costs and attorneys' fees.

5. Provide such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED: September 8, 2017.

MARK BRNOVICH,
ATTORNEY GENERAL

BY:

Brunn ("Bear") W. Roysden III

Keith J. Miller

Evan G. Daniels

Assistant Attorneys General