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

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

14 Plaintiff,

15 v.

16 SCOTTSDALE UNIFIED SCHOOL  
17 DISTRICT #48, an Arizona Political  
18 Subdivision; HUNT & CARAWAY  
19 ARCHITECTS, LTD., an Arizona  
20 corporation; BRIAN ROBICHAUX;  
21 JOHN/JANE DOES 1-100; XYZ  
22 CORPORATIONS 1-100,

23 Defendants.

Case No: CV 2018-003472

**COMPLAINT**

(Non-classified: Procurement Violations)

(Assigned to the Hon. \_\_\_\_\_)

1 Plaintiff, the State of Arizona, *ex rel.* Mark Brnovich, Attorney General (“the State”),  
2 brings this action to obtain injunctive and other relief against Scottsdale Unified School District  
3 #48 (“SUSD”), Hunt & Caraway Architects, Ltd. (“Hunt Caraway”), Brian Robichaux  
4 (“Mr. Robichaux”), and John/Jane Does 1-100 and XYZ Corporations 1-100 (collectively with  
5 the other Defendants, “Defendants”), and for its Complaint alleges as follows:

6 **I. INTRODUCTION**

7 1. This Complaint relates to procurement violations that occurred in connection with  
8 SUSD’s bid process for construction projects at the Cheyenne Traditional School (“Cheyenne”)  
9 and Hohokam Elementary School (“Hohokam”). As an Arizona public school district, SUSD  
10 was at all times required to comply with laws and regulations set forth in the Arizona Education  
11 Act and the School Procurement Code, including all rules and regulations promulgated by the  
12 State Board of Education and the Auditor General for purchasing goods, services, construction,  
13 materials, and any other tangible or intangible things. As part of the bid process for obtaining  
14 construction services for the Cheyenne and Hohokam projects, the SUSD Construction Manager  
15 at Risk (“CMAR”) Committee violated the state procurement rules, resulting in the award of  
16 contracts in violation of state law. Therefore, the State of Arizona now brings this action against  
17 the Defendants under the Arizona Procurement Code, A.R.S. § 41-2501 *et seq.*; A.R.S. § 15-  
18 213; A.R.S. § 15-271; and A.A.C. R7-2-1001 *et seq.* Through this action, the State of Arizona  
19 seeks to stop the continuation of the identified procurement violations and obtain other  
20 appropriate relief.

21 **II. JURISDICTION, VENUE, AND PARTIES**

22 2. This Complaint is filed under the Arizona Education Act, A.R.S. § 15-101 *et seq.*,  
23 and the Arizona Procurement Code, A.R.S. § 41-2501 *et seq.*, for violations of Arizona’s school  
24 procurement laws and regulations.

25 3. Jurisdiction is proper under A.R.S. § 15-213(G) and A.R.S. § 12-1801.  
26

1 4. Venue in Maricopa County is proper for all claims pursuant to A.R.S. § 12-401,  
2 including A.R.S. § 12-401(1) and § 12-401(17).

3 5. Plaintiff the State is authorized to bring this action by the Arizona Education Act,  
4 A.R.S. § 15-213(G), and the Arizona Procurement Code, A.R.S. § 41-2616(D).

5 6. Defendant SUSD is an Arizona political subdivision based in Scottsdale, in  
6 Maricopa County, Arizona.

7 7. Defendant Hunt Caraway is an Arizona corporation that has operated from  
8 January 2, 2003 to the present, with its principal place of business in Maricopa County, Arizona.

9 8. Defendant Mr. Robichaux resides in Maricopa County, Arizona. At times relevant  
10 to this Complaint, he directed, managed, and controlled Hunt Caraway as the company's  
11 president and had knowledge of and actively participated in the acts and practices described in  
12 this Complaint.

13 9. John/Jane Does 1-100 and XYZ Corporations 1-100 are individuals and business  
14 entities, some of whose identities are currently unknown, who participated in the acts alleged  
15 herein, benefitted from the acts, or who engaged in other unlawful conduct related to the subject  
16 of this Complaint. Plaintiff may amend this complaint to join additional Defendants.

17 **III. FACTUAL ALLEGATIONS**

18 10. Pursuant to A.R.S. § 15-213, the State Board of Education has adopted rules  
19 located in the School Procurement Code at A.A.C. R7-2-1001 *et seq.*, prescribing procurement  
20 practices applicable to all school districts in Arizona.

21 11. On November 2016, the voters of SUSD voted on and passed a bond measure,  
22 Scottsdale USD #48 Question 1, for capital projects and school renovations ("2016 Bond").

23 12. Hunt Caraway was selected on or about April 2016 by SUSD as the district's  
24 architecture firm for future SUSD construction projects related to the 2016 Bond.

25 13. SUSD specifically chose Hunt Caraway for their experience in school  
26 construction.

1           14.    SUSD specifically desired the services of Mr. Robichaux due to his past  
2 experiences working with SUSD administrators.

3           15.    Mr. Robichaux, as president of Hunt Caraway, was SUSD's principal architect  
4 during the pertinent time periods for certain projects funded by the 2016 Bond, including the  
5 Hohokam and Cheyenne projects.

6           16.    SUSD used a CMAR committee system for ranking and selecting construction  
7 bids for certain projects financed by the 2016 Bond, including at Cheyenne and Hohokam.

8           17.    On information and belief, SUSD's principal architect attends and often leads the  
9 CMAR meeting as the person most aware of the building needs for each project.

10          18.    An SUSD CMAR committee meeting was scheduled on Tuesday, April 25, 2017  
11 with the purpose of evaluating and ranking construction firms for the Hohokam and Cheyenne  
12 projects.

13          19.    The firms under consideration at the April 25 meeting included at least the  
14 following: CORE Construction, Inc. ("CORE"); Chasse Building Team ("Chasse"); and  
15 McCarthy Building Companies, Inc. ("McCarthy").

16          20.    The members of the SUSD CMAR committee attending the April 25 meeting  
17 included Mr. Robichaux, Dennis Roehler, Steve Nance, Louis Hartwell, AJ Alvarez, and Mark  
18 Rafferty.

19          21.    Dennis Roehler, Steve Nance, and Louis Hartwell were all employed by SUSD at  
20 the time of the April 25 SUSD CMAR meeting.

21          22.    On information and belief, observers were also present at, but did not participate  
22 in, the CMAR meeting.

23          23.    On information and belief, prior to the beginning of the April 25 SUSD CMAR  
24 meeting, Mr. Robichaux made a phone call to one of the other members of the SUSD CMAR  
25 committee relating to the upcoming April 25 SUSD CMAR meeting.

26

1           24.    On information and belief, during that phone call, Mr. Robichaux explained that  
2 he would like to see the construction vendors for the projects under consideration at the April 25  
3 SUSD CMAR meeting ranked as follows:

4                   a.   Hohokam - #1 CORE, #2 Chasse, #3 McCarthy

5                   b.   Cheyenne - #1 Chasse, #1 CORE, #3 McCarthy

6           25.    On information and belief, construction vendors' proposals were only provided to  
7 members of the SUSD CMAR upon arrival at the April 25 meeting.

8           26.    On information and belief, upon entering the April 25 SUSD CMAR committee  
9 meeting, an employee of The Professional Group Public Consulting, Inc. coordinated the SUSD  
10 CMAR committee discussion, handed out packets, and provided instructions relating to the  
11 consideration and ranking of the construction vendors for the projects under consideration.

12           27.    On information and belief, approximately one hour was allotted to consider each  
13 construction proposal during the April 25 SUSD CMAR committee meeting.

14           28.    On information and belief, there was no discussion at the April 25 CMAR meeting  
15 of a creation of a "short list."

16           29.    On information and belief, no vendors were chosen to "short list" in connection  
17 with the review and ranking of proposals at the April 25 CMAR meeting.

18           30.    On information and belief, no vendors were chosen to interview in connection  
19 with the review and ranking of proposals at the April 25 CMAR meeting.

20           31.    On information and belief, despite the length of the proposals, one of the  
21 committee members finished their review in approximately 15 minutes.

22           32.    On information and belief, certain members of the SUSD CMAR committee  
23 present at the April 25 SUSD CMAR committee meeting believed that the SUSD CMAR  
24 committee could not award projects to McCarthy because the former superintendent of SUSD  
25 now worked for McCarthy.

26

1           33.    On information and belief, these members of the SUSD CMAR committee still  
2 ranked McCarthy third in the ranking on April 25, rather than disqualifying McCarthy due to a  
3 conflict of interest.

4           34.    As to the Hohokam project vote, every committee member at the April 25 SUSD  
5 CMAR committee meeting gave their highest score to CORE.

6           35.    CORE received two perfect scores from committee members at the April 25  
7 SUSD CMAR committee meeting in the vote for the Hohokam project.

8           36.    In the vote for the Hohokam project, all but one second place score was given to  
9 Chasse by committee members at the April 25 SUSD CMAR committee meeting.

10          37.    In the vote for the Hohokam project, all but one third place score was given to  
11 McCarthy by committee members at the April 25 SUSD CMAR committee meeting.

12          38.    As to the Cheyenne project vote, every committee member at the April 25 SUSD  
13 CMAR committee meeting gave their highest score to Chasse.

14          39.    Chasse received three perfect scores from committee members at the April 25  
15 SUSD CMAR committee meeting in for the Cheyenne project.

16          40.    Every second place score was given to CORE by the committee members at the  
17 April 25 SUSD CMAR committee meeting in the vote for the Cheyenne project.

18          41.    With the exception of two scores, every third place score was given to McCarthy  
19 in the vote for the Cheyenne project.

20          42.    On information and belief, during the April 25 SUSD CMAR committee meeting  
21 it was announced that the Hohokam project was awarded to CORE and the Cheyenne project  
22 was awarded to Chasse.

23 //

24 //

25 //

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1 **IV. CLAIMS**

2 **COUNT I – VIOLATION OF A.R.S. § 15-213, A.R.S. §§ 41-2501 to 41-2673,**  
3 **and A.A.C. R7-2-1001 et seq.**

4 43. The allegations set forth in the previous paragraphs are realleged and incorporated  
5 by reference as though fully set forth herein.

6 44. A.R.S. § 15-213 makes provisions in state procurement code applicable to school  
7 procurements.

8 45. Pursuant to A.R.S. § 15-213, the State Board of Education has adopted rules  
9 located in the Arizona Administrative Code at A.A.C. R7-2-1001 *et seq.*, prescribing  
10 procurement practices applicable to all school districts in Arizona.

11 46. A.A.C. R7-2-1111(H)-(I) require that a CMAR committee score a proposal “using  
12 the scoring method in the request for proposals.”

13 47. A.A.C. R7-2-1111(J) further requires that “[n]o other factors or criteria may be  
14 used in evaluation and scoring.”

15 48. In connection with the Hohokam and Cheyenne projects, one or more members of  
16 the SUSD CMAR engaged in improper behavior in violation of the Arizona Administrative  
17 Code at A.A.C. R7-2-1001 *et seq.*, including the actions of SUSD’s principal architect  
18 Mr. Robichaux. SUSD therefore awarded construction contracts relating to the Hohokam and  
19 Cheyenne projects in violation of the rules of procurement.

20 49. Defendant Mr. Robichaux unlawfully influenced the outcome of a bid by  
21 contacting another member of the CMAR and encouraging them to vote for bidders in a  
22 particular order rather than through evaluating the proposals based on the factors set forth in the  
23 request for proposals.

24 50. At least one member of the CMAR used that outside factor in ranking the  
25 proposed vendors.

1           51. Because procurement contracts were entered in to based upon unlawful  
2 procurement procedures, said contracts should be voided.

3           52. For all violations alleged, Defendants knew or should have known that the acts,  
4 practices, and conduct described in this Complaint were unlawful under the Arizona  
5 Procurement Code.

6           53. Under A.R.S. §15-213 and A.R.S. §§ 41-2501 to 41-2673, Defendants' violations  
7 of the Arizona Procurement Code entitle the State to awards of injunctive relief, attorneys' fees  
8 and costs, and any other relief necessary to prevent the unlawful actions and practices alleged in  
9 this Complaint and to remedy the consequences of past unlawful acts.

10           **COUNT 2 – VIOLATION OF A.R.S. §§ 15-213 and 41-2501 to 41-2673**

11           54. The allegations set forth in the previous paragraphs are realleged and incorporated  
12 by reference as though fully set forth herein.

13           55. A.R.S. § 15-213 makes provisions in state procurement code applicable to school  
14 procurements.

15           56. SUSD's CMAR committee violated the Arizona Procurement Code, A.R.S. §§ 41-  
16 2501 to 41-2673.

17           57. A.R.S. § 41-2578(C)(3) requires that "a selection committee for the procurement  
18 of construction services ... shall include ... one person who is an architect or engineer who is  
19 registered pursuant to section 32-121."

20           58. SUSD's Principal Architect Mr. Robichaux was a member of the CMAR  
21 committee in considering Hohokam project, ostensibly as the statutorily-required registered  
22 architect.

23           59. However, at the time of the CMAR committee meeting, Mr. Robichaux was not  
24 licensed as an architect in the state of Arizona.

25           60. Because Mr. Robichaux was not a licensed architect at the time of the  
26 procurement, the contracts resulting from the CMAR committee relating to the Hohokam project



1 were entered in to based upon an unlawful procurement procedure and said contracts should be  
2 voided.

3 61. For all violations alleged, Defendants knew or should have known that the acts,  
4 practices, and conduct described in this Complaint were unlawful under the Arizona  
5 Procurement Code.

6 62. Under A.R.S. §15-213 and A.R.S. §§ 41-2501 to 41-2673, Defendants' violations  
7 of the Arizona Procurement Code entitle the State to awards of injunctive relief, attorneys' fees  
8 and costs, and any other relief necessary to prevent the unlawful actions and practices alleged in  
9 this Complaint and to remedy the consequences of past unlawful acts.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, the State respectfully requests that the Court enter Judgment against the  
12 Defendants as follows:

13 1. Order the halt of construction at Hohokam and Cheyenne;

14 2. Order that the construction and related services contracts entered into by the  
15 winning vendors for the Hohokam and Cheyenne projects (as selected and announced at the  
16 April 25 SUSD CMAR committee meeting) be voided;

17 3. Order SUSD to re-bid the construction and related services contracts for the  
18 Hohokam and Cheyenne projects;

19 4. Order Defendants to restore to all persons any money and property acquired by  
20 any unlawful means or practices alleged in the Complaint, as deemed appropriate by the Court,  
21 pursuant to A.R.S. § 41-2616;

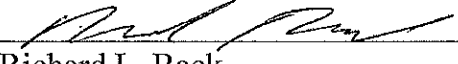
22 5. Enter preliminary and permanent injunctive relief against Defendants, their agents,  
23 employees, and all other persons or entities in active concert or participation with any of them,  
24 prohibiting them from engaging in the unlawful acts and procurement practices alleged in this  
25 Complaint and from doing any acts in furtherance of such unlawful acts and practices, pursuant  
26 to A.R.S. § 41-2504;

1 6. Order Defendants to pay the State of Arizona its costs of investigation and  
2 prosecution of this matter, including reasonable attorneys' fees, pursuant to A.R.S. § 41-2616;  
3 and

4 7. Order such other relief as the Court deems just and proper.  
5

6 RESPECTFULLY SUBMITTED: February 22, 2018.  
7

8 MARK BRNOVICH,  
9 ATTORNEY GENERAL  
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11 BY:   
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