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2 NOT FOR PUBLICATION

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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

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9 James M. Houston,

No. CV-10-8160-PCT-GMS

10 Plaintiff,

**ORDER**

11 vs.

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13 Arizona State Board of Education, a  
political sub-division of the State of  
14 Arizona, et al.,

15 Defendants.

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17 Pending before the Court is Plaintiff’s Motion for a Temporary Restraining Order  
18 Issued Without Notice Due to Impending Unconstitutional Action(s) to be Undertaken by  
19 Defendants Leading to Additional Claims for Civil Rights Violations being Asserted by the  
20 Plaintiff (Doc. 10). For the following reasons, the Court denies the Motion.

21 This action arises out of Plaintiff’s claims that the Arizona State Board of Education  
22 denied his civil rights by voting to deny him a teaching certification; in addition to filing the  
23 instant lawsuit, Defendant has appealed the administrative action to the Superior Court, and,  
24 after apparently having been denied relief there, is pursuing relief at the Arizona Court of  
25 Appeals. Plaintiff now seeks a temporary restraining order without notice to prevent  
26 Defendants from revoking his substitute teaching license and notifying other states of that  
27 revocation.

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1           **1. Plaintiff’s Failure to Comply With Fed. R. Civ. P. 65(b)**

2           The first reason the temporary restraining order without notice will be denied is that  
3 Plaintiff provides no specific facts in his affidavit accompanying the motion suggesting that  
4 he will suffer immediate and irreparable injury, loss, or damage “before the adverse party can  
5 be heard in opposition.” Fed. R. Civ. P. 65(b) (1). Further, the attorney must certify in  
6 writing as to “any efforts made to give notice and the reasons why it should not be required.”  
7 Fed. R. Civ. P. 65(b)(2). Plaintiff, has not said why he should be granted a TRO without  
8 even permitting the Board of Education to challenge his claims, or why this Court should  
9 take action before even advising the Board of Education of this request. He has not  
10 established how, in the time prior to the December 6 hearing in which the Board of Education  
11 might have responded to his allegation he would likely suffer immediate and irreparable  
12 injury, loss or damage due to the action of the Board. The Board thus has had no adequate  
13 opportunity to address Plaintiff’s claims because despite the pendency of his suit for several  
14 months now, Plaintiff has not yet served any of the Defendants including the Board of  
15 Education even with the underlying suit. Therefore, Plaintiff is not entitled to the entry of  
16 a TRO without notice in this case.

17           Second, in his motion for TRO, Plaintiff apparently acknowledges that he is appealing  
18 the ruling already made by the Maricopa County Superior Court denying him relief on his  
19 administrative appeal from the action of the Arizona Board of Education. He alleges that if  
20 the Board is allowed to proceed in revoking his substitute teaching certificate it will only  
21 necessitate further administrative appeals within the state court appellate system. Assuming  
22 that such is true, as based on Plaintiff’s Motion it appears to be, this Court should abstain  
23 from exercising any further jurisdiction over this matter pursuant to the *Colorado River*  
24 and/or the *Younger* abstention doctrines. These matters are being handled in the state  
25 administrative and judicial systems and duplicate proceedings in a federal court system  
26 would be contraindicated.

27           Third, “the standard for issuing a [temporary restraining order] is the same as that for  
28 issuing a preliminary injunction.” *Phillips v. Fremont Inv. & Loan*, 2009 WL 4898259 at \*1

1 (D. Ariz. Dec. 11, 2009) (citing *Brown Jordan Int'l, Inc. v. The Mind's Eye Interiors, Inc.*,  
2 236 F. Supp. 2d 1152, 1154 (D. Haw. 2007)). Therefore, a district court may grant a  
3 preliminary injunction or temporary restraining order under two sets of circumstances.  
4 *Guzman v. Shewry*, 552 F.3d 941, 948 (9th Cir. 2009). First, a plaintiff must demonstrate:  
5 “(1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury to  
6 plaintiff if preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff,  
7 and (4) advancement of the public interest (in certain cases).” *Id.* (internal quotations  
8 omitted). Alternatively, a temporary restraining order or preliminary injunction is  
9 appropriate “if the plaintiff demonstrates *either* a combination of probable success on the  
10 merits and the possibility of irreparable injury *or* that serious questions are raised and the  
11 balance of the hardships tips sharply in [its] favor.” *Id.* (internal quotations omitted).

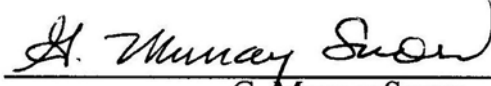
12 In this case, Plaintiff does not set forth a basis, supported by evidence in an admissible  
13 form, that establishes that it would likely be a violation of Plaintiff’s constitutional rights for  
14 the Defendants to revoke his substitute teaching certificate. Although Plaintiff has alleged  
15 certain irregularities in the earlier Board of Education proceedings and their transcription,  
16 he has not yet persuasively demonstrated, at least at this point in the proceedings, how those  
17 irregularities result in a deprivation of his constitutional rights. Many of Plaintiff’s assertions  
18 about what amounts to a deprivation of his federal rights are unsupported, and appear to be  
19 meritless. For example, Plaintiff’s assertion that “[i]t is axiomatic that [it is unconstitutional]  
20 for the Defendants to utilize as the basis to pursue disciplinary action against the Plaintiff an  
21 administrative decision that is under appellate review,” is both unsupported by authority and  
22 unpersuasive, especially in absence of any legal citation supporting the assertion. Further,  
23 as above-stated, Plaintiff has not served Defendants with his motion, nor has he justified why  
24 they should not have an opportunity to respond to it prior to the entry of a preliminary  
25 injunction. In the absence of a strong likelihood or probable success on the merits, or even  
26 a serious questions about the merits of the case, Plaintiff does not qualify for a Temporary  
27 Restraining Order Without Notice.

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**IT IS THEREFORE ORDERED** that Plaintiff's Motion for a Temporary Restraining Order (Doc. 10) is **DENIED**.

DATED this 2nd day of December, 2010.

  
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G. Murray Snow  
United States District Judge