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Counsel for Plaintiffs

5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE STATE OF ARIZONA

7 CURTIS ACOSTA, SEAN)
8 ARCE, MARIA FEDERICO)
9 BRUMMER, DOLORES)
10 CARRION, ALEXANDRO)
11 ESCAMILLA, JOSE)
12 GONZALEZ, NORMA)
13 GONZALEZ, LORENZO)
14 LOPEZ, JR., RENE F.)
15 MARTINEZ, SALLY RUSK,)
16 and YOLANDA SOTELO,)

17 Plaintiffs,

18 v.

19 TOM HORNE, Superintendent
20 of Public Instruction and
21 Executive Director of the
22 Arizona State Board of
23 Education, in his Official
24 Capacity, the Arizona State
25 Board of Education, including
26 all members in their Official
27 Capacity; VICKI BALANTINE,
28 JACOB MOORE, JOHN
HAEGER, JAIME MOLERA,
AMY HAMILTON, EILEEN
KLEIN, GREGORY MILLER,
JAMES HORTON, DIANNE
ORTIZ-PARSONS, and
THOMAS TYREE,

Defendants.

No.

COMPLAINT

(Action for Declaratory and Injunctive Relief)

Plaintiffs alleges:

I. JURISDICTION

1. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331.

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II. VENUE

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2 2. Venue is proper in the United States District Court for the District of Arizona
3 under 28 U.S.C. §1391(b).

III. PARTIES

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5 3. Plaintiff Curtis Acosta is a citizen of the United States, a resident of the State
6 of Arizona residing in Pima County and employed by the Tucson Unified School
7 District No. 1 in a teaching position for the Mexican-American Studies
8 Department.
- 9 4. Plaintiff Sean Arce is a citizen of the United States, a resident of the State of
10 Arizona residing in Pima County and employed by the Tucson Unified School
11 District No. 1 as the Director of the Mexican-American Studies Department.
- 12 5. Plaintiff Maria Federico Brummer is a citizen of the United States, a resident of
13 the State of Arizona residing in Pima County and employed by the Tucson
14 Unified School District No. 1 in a teaching position for the Mexican-American
15 Studies Department.
- 16 6. Plaintiff Dolores Carrion is a citizen of the United States, a resident of the State
17 of Arizona residing in Pima County and employed by the Tucson Unified School
18 District No. 1 in a teaching position for the Mexican-American Studies
19 Department.
- 20 7. Plaintiff Alexandro Escamilla is a citizen of the United States, a resident of the
21 State of Arizona residing in Pima County and employed by the Tucson Unified
22 School District No.1 in a teaching position for the Mexican-American Studies
23 Department.
- 24 8. Plaintiff Jose Gonzalez is a citizen of the United States, a resident of the State
25 of Arizona residing in Pima County and employed by the Tucson Unified School
26 District No.1 in a teaching position for the Mexican-American Studies
27 Department.
- 28 9. Plaintiff Norma Gonzalez is a citizen of the United States, a resident of the

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State of Arizona residing in Pima County and employed by the Tucson Unified School District No. 1 in a teaching position for the Mexican-American Studies Department.

10. Plaintiff Lorenzo Lopez is a citizen of the United States, a resident of the State of Arizona residing in Pima County and employed by the Tucson Unified School District No.1 in a teaching position for the Mexican-American Studies Department.

11. Plaintiff Rene F. Martinez is a citizen of the United States, a resident of the State of Arizona residing in Pima County and employed by the Tucson Unified School District No. 1 in a teaching position for the Mexican-American Studies Department.

12. Plaintiff Sally Rusk is a citizen of the United States, a resident of the State of Arizona residing in Pima County and employed by the Tucson Unified School District No. 1 in a teaching position for the Mexican-American Studies Department.

13. Plaintiff Yolanda Sotelo is a citizen of the United States, a resident of the State of Arizona residing in Pima County and employed by the Tucson Unified School District No. 1 in a teaching position for the Mexican-American Studies Department.

14. Defendant Tom Horne is the Superintendent of Public Instruction and the Executive Officer of the Arizona State Board of Education, and as such is the highest ranking state officer for K-12 Public Instruction and whose powers include making a determination that the Tucson Unified School District No. 1 Mexican-American Studies Department is in violation of ARS § 15-112(A), and 60 days thereafter directing the Arizona Department of Education to withhold 10% of the monthly apportionment of State aid that would otherwise be due to Tucson Unified School District No. 1, an amount that is estimated to be or exceed three million dollars a month. ARS § 15-112(B). See, the House Bill

1 2281, Exhibit A hereto.

2 15. The Arizona State Board of Education exists pursuant to statutory authority
3 provided by the Legislature of the State of Arizona.

4 16. Vicki Balentine is a Member of the Arizona State Board of Education.

5 17. Jacob Moore is a Member of the Arizona State Board of Education.

6 18. John Haeger is a Member of the Arizona State Board of Education.

7 19. Jaime Molera is a Member of the Arizona State Board of Education.

8 20. Amy Hamilton is a Member of the Arizona State Board of Education.

9 21. Eileen Klein is a Member of the Arizona State Board of Education.

10 22. Gregory Miller is a Member of the Arizona State Board of Education.

11 23. James Horton is a Member of the Arizona State Board of Education.

12 24. Diane Ortiz-Parsons is a Member of the Arizona State Board of Education.

13 25. Thomas Tyree is a Member of the Arizona State Board of Education.

14 **IV. PLAINTIFF'S ACTION**

15 26. This is an action seeking equitable relief against House Bill 2281 (the "Act"),
16 because its enforcement would violate Plaintiffs rights under the First and
17 Fourteenth Amendment to the Constitution of the United States, and the Act is
18 also void for vagueness.

19 27. Plaintiff asserts this action pursuant to the Civil Rights Act of 1871, 42 U.S.C.
20 §1983, and the Declaratory Judgment Act of 1934, 28 U.S.C. §2201.

21 **V. GENERAL ALLEGATIONS**

22 28. All Plaintiffs are college graduates and at all times relevant to this action have
23 met the qualifications and possessed the credentials required for their
24 respective positions as educators employed by the Tucson Unified School
25 District No. 1.

26 29. At all times relevant to this action, all Plaintiffs have possessed all qualifications
27 and certifications required by the State of Arizona for their respective positions
28 as educators employed by the Tucson Unified School District No. 1.

1 30. At all times relevant to this action, all Plaintiffs have complied with all lawful
2 guidelines and requirements of the State of Arizona in teaching their respective
3 courses as educators employed by the Tucson Unified School District No. 1.

4 Curtis Acosta

5 31. Plaintiff Curtis Acosta is Hispanic, and bilingual in English and Spanish.

6 32. Plaintiff Curtis Acosta is employed in a teaching position with the Tucson
7 Unified School District for the Mexican-American Studies Department and is
8 assigned to Tucson High School teaching courses offered by the Mexican-
9 American Studies Department for Junior and Senior students.

10 33. Tucson High School has a student population that is 67% Hispanic.

11 Sean Arce

12 34. Plaintiff Sean Arce is Hispanic, and bilingual in English and Spanish.

13 35. Plaintiff Sean Arce is employed in an administrator's position with the Tucson
14 Unified School District as Director for the Mexican-American Studies
15 Department with responsibility for the oversight, management and supervision
16 of the Mexican-American Studies Department throughout the Tucson Unified
17 School District.

18 36. The Tucson Unified School District currently has a student population that is
19 61% Hispanic serving a community that has a Hispanic population of
20 approximately 36%.

21 Maria Federico Brummer

22 37. Plaintiff Maria Federico Brummer is Hispanic, and bilingual in English and
23 Spanish.

24 38. Plaintiff Maria Federico Brummer is employed in a teaching position with the
25 Tucson Unified School District for the Mexican-American Studies Department
26 and is assigned to Tucson High School teaching courses offered by the
27 Mexican-American Studies Department for Junior and Senior students.

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Dolores Carrion

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2 39. Plaintiff Dolores Carrion is Hispanic, and bilingual in English and Spanish.

3 40. Plaintiff Dolores Carrion is employed in a teaching position with the Tucson
4 Unified School District for the Mexican-American Studies Department and is
5 assigned to Pueblo High School teaching art courses offered by the Mexican-
6 American Studies Department for Freshmen to Senior students.

7 41. Pueblo High School has a student population that is 89% Hispanic.

8 Alexandro Escamilla

9 42. Plaintiff Alexandro Escamilla is Hispanic, and bilingual in English and Spanish.

10 43. Plaintiff Alexandro Escamilla is employed in a teaching position with the Tucson
11 Unified School District for the Mexican-American Studies Department and is
12 assigned to Wakefield Middle School teaching courses offered by the Mexican-
13 American Studies Department for Middle School students.

14 44. Wakefield Middle School has a student population that is 92% Hispanic.

15 Jose Gonzalez

16 45. Plaintiff Jose Gonzalez is Hispanic, and bilingual in English and Spanish.

17 46. Plaintiff Jose Gonzalez is employed in a teaching position with the Tucson
18 Unified School District for the Mexican-American Studies Department and is
19 assigned to Rincon High School teaching courses offered by the Mexican-
20 American Studies Department for Junior and Senior students.

21 47. Rincon High School has a student population that is 49% Hispanic.

22 Norma Gonzalez

23 48. Plaintiff Norma Gonzalez is Hispanic, and bilingual in English and Spanish.

24 49. Plaintiff Norma Gonzalez is employed in a teaching position with the Tucson
25 Unified School District for the Mexican-American Studies Department and is
26 assigned to Ochoa and Van Buskirk Elementary Schools and School teaching
27 courses offered by the Mexican-American Studies Department for elementary
28 students and also Rincon High School.

1 50. Ochoa Elementary and Van Buskirk have student populations that are
2 predominately Hispanic.

3 Lorenzo Lopez

4 51. Plaintiff Lorenzo Lopez is Hispanic, and bilingual in English and Spanish.

5 52. Plaintiff Lorenzo Lopez is employed in a teaching position with the Tucson
6 Unified School District for the Mexican-American Studies Department and is
7 assigned to Cholla High School teaching courses offered by the Mexican-
8 American Studies Department for Junior and Senior students.

9 53. Cholla High School has a student population that is 71% Hispanic.

10 Rene F. Martinez

11 54. Plaintiff Rene F. Martinez is Hispanic, and bilingual in English and Spanish.

12 55. Plaintiff Rene F. Martinez is employed in a teaching position with the Tucson
13 Unified School District for the Mexican-American Studies Department and is
14 assigned to Cholla High School teaching courses offered by the Mexican-
15 American Studies Department for Junior students.

16 Sally Rusk

17 56. Plaintiff Sally Rusk is an Anglo non-Hispanic, and bilingual in English and
18 Spanish.

19 57. Plaintiff Sally Rusk is employed in a teaching position with the Tucson Unified
20 School District for the Mexican-American Studies Department and is assigned
21 to Pueblo High School teaching courses offered by the Mexican-American
22 Studies Department for Junior and Senior students.

23 Yolanda Sotelo

24 58. Plaintiff Yolanda Sotelo is Hispanic, and bilingual in English and Spanish.

25 59. Plaintiff Yolanda Sotelo is employed in a teaching position with the Tucson
26 Unified School District for the Mexican-American Studies Department and is
27 assigned to Pueblo High School teaching courses offered by the Mexican-
28 American Studies Department for all students.

Mexican-American Studies Department

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- 2 60. The Tucson Unified School District No. 1 Mexican-American Studies
- 3 Department was created in 1998 and has operated as a District approved,
- 4 Governing Board sanctioned, entity for the past 12 consecutive school years.
- 5 61. The Mexican-American Studies Department was created to develop and
- 6 provide course offerings for students that focused on the history, culture ,
- 7 literature and art of Hispanics as a means of directly addressing and combating
- 8 the consistent and persistent failure of Hispanic students in the Tucson Unified
- 9 School District No.1, which included excessive drop out/push out rates,
- 10 excessive grade failure rates, excessive discipline, poor attendance, poor
- 11 graduation rates and extremely poor matriculation to post high school
- 12 educational institutions, especially four year colleges/universities.
- 13 62. Since the inception of the Mexican-American Studies Department all course
- 14 offerings and assistance has been open to all students and their families with
- 15 out consideration of race, national origin, gender, religion, language or
- 16 economic status.
- 17 63. Since the inception of the Mexican-American Studies Department all course
- 18 offerings have been provided in conformity with applicable State adopted
- 19 standards and/or guidelines.
- 20 64. Since the inception of the Mexican-American Studies Department all course
- 21 offerings have included a diverse student population reflective the specific
- 22 school site's population.
- 23 65. Since the inception of the Mexican-American Studies Department, Hispanics
- 24 have comprised the largest and most significant portion of the student
- 25 population enrolling and completing the Department's course offerings;
- 26 enrollment that reflects the de facto segregation present throughout the Tucson
- 27 Unified School District No.1, which has been exacerbated since the advent of
- 28 Charter Schools.

1 66. Since the inception of the Mexican-American Studies Department all course
2 offerings have been subjected to annual scrutiny and as appropriate
3 modification to determine and improve the educational efficacy of the course
4 offerings; these evaluations have consistently shown that students who take
5 and complete Mexican-American Studies course offerings pass the State
6 required AIMS test at higher rates, graduate from High School at higher
7 rates, have improved grades and matriculate to college at high rates while
8 decreasing in the areas of discipline, poor attendance or dropping out of
9 High School. These results have occurred for all students, irrespective of
10 race or national origin.

11 Mexican-American Studies Department: Topic & Materials Utilized

12 67. The Tucson Unified School District No. 1 Mexican-American Studies
13 Department utilizes text books and materials that are specific to the
14 curriculum; this includes Occupied America, A History of Chicanos by
15 Rodolfo F. Acuna. This text, published by Longman and Charlyce Jones
16 Owens is currently in its seventh edition and is a standard High School and
17 College level course book.

18 68. Mexican-American Studies offers courses that focus on Hispanic history,
19 culture, literature, art and persons who have contributed in some manner to
20 those subject matter areas; all topics are addressed through the utilization of
21 critical thinking.

22 69. In October of 2009 the Tucson Unified School District No. 1 central
23 administration imposed a unilateral name change on the Mexican-American
24 Studies Program, which had been since 1998 the "Mexican American/Raza
25 Studies"; a name change that was the result of Defendant Tom Horne's
26 constant criticism and disparaging comments about the word "Raza" a term
27 in Spanish that he did not understand, took offense to and insisted it be
28 eliminated.

1 70. Defendant Tom Horne has also made known his objection to text books
2 utilized in the Mexican-American Studies Program, such as "Occupied
3 America", making known his objection to the book, and insisting that it no
4 longer be utilized, relied upon or referenced in the Public Schools.

5 71. Defendant Tom Horne as the Superintendent of Public Instruction and the
6 Executive Officer of the Arizona State Board of Education, and as such is the
7 highest ranking state officer for K-12 Public Instruction and whose powers
8 include making a determination that the Tucson Unified School District No. 1
9 Mexican-American Studies Department is in violation of ARS § 15-112(A),
10 and 60 days thereafter directing the Arizona Department of Education to
11 withhold 10% of the monthly apportionment of State aid that would otherwise
12 be due to Tucson Unified School District No. 1, has engaged in a consistent
13 pattern of conduct that has chilled the use of text books, material, posters,
14 content, and the name of the Mexican-American Studies Department by all
15 Plaintiffs, thus impermissibly infringing on their Free Speech which is
16 permitted by the Tucson Unified School District No. 1 but subject to an
17 imminent adverse sanction and irreparable harm by Defendants.

18 House Bill 2281

19 72. Defendant Tom Horne is the Superintendent of Public Instruction and the
20 Executive Officer of the Arizona State Board of Education, was the principal
21 advocate for the passage of House Bill 2281, legislation that he sought for
22 the purpose of having a mechanism that would allow him to "shut down" the
23 Mexican-American Studies Department in the Tucson Unified School District
24 No. 1.

25 73. On April 29, 2010 final passage of House Bill 2281 occurred; the Act was
26 then transmitted to the Governor on April 30, 2010.

27 74. Defendant Jan Brewer is the Governor of Arizona.

28 75. Acting in her official capacity as the Governor of Arizona, on May 11, 2010,

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Governor Brewer elected to sign into law House Bill 2281.

76. A true and correct copy of the Act is attached hereto as Exhibit A.

77. Had Governor Brewer exercised her authority to veto the Act, it would not have become law.

78. House Bill 2281 becomes effective on December 31, 2010.

79. Since House Bill 2281 was signed into law, Defendant Tom Horne as the Superintendent of Public Instruction and the Executive Officer of the Arizona State Board of Education, as stated repeatedly and publicly that he intends to find the Tucson Unified School District No.1 Mexican-American Studies Department to be in violation of ARS § 15-112(A), a determination that 60 days thereafter would result in directing the Arizona Department of Education to withhold 10% of the monthly apportionment of State aid that would otherwise be due to Tucson Unified School District No. 1.

80. Since House Bill 2281 was signed into law, Defendant Tom Horne as the Superintendent of Public Instruction and the Executive Officer of the Arizona State Board of Education, has determined that the Tucson Unified School District No.1 Mexican-American Studies Department to be in violation of ARS § 15-112(A), thus "[p]romotes the overthrow of the United States Government."

81. Since House Bill 2281 was signed into law, Defendant Tom Horne as the Superintendent of Public Instruction and the Executive Officer of the Arizona State Board of Education, has determined that the Tucson Unified School District No.1 Mexican-American Studies Department to be in violation of ARS § 15-112(A), thus "[p]romotes resentment toward a race or a class of people."

82. Since House Bill 2281 was signed into law, Defendant Tom Horne as the Superintendent of Public Instruction and the Executive Officer of the Arizona State Board of Education, has determined that the Tucson Unified School

1 District No.1 Mexican-American Studies Department to be in violation of
2 ARS § 15-112(A), thus "[a]re designed primarily for pupils of a particular
3 race."

4 83. Since House Bill 2281 was signed into law, Defendant Tom Horne as the
5 Superintendent of Public Instruction and the Executive Officer of the Arizona
6 State Board of Education, has determined that the Tucson Unified School
7 District No.1 Mexican-American Studies Department to be in violation of
8 ARS § 15-112(A), thus "[a]dvocates ethnic solidarity instead of the treatment
9 of pupils as individuals."

10 84. Defendant Tom Horne as the Superintendent of Public Instruction and the
11 Executive Officer of the Arizona State Board of Education, has never visited
12 or observed any class offered by the Tucson Unified School District No.1
13 Mexican-American Studies Department.

14 85. Defendant Tom Horne as the Superintendent of Public Instruction and the
15 Executive Officer of the Arizona State Board of Education, has no lawful
16 non-discriminatory facts to support or establish that the Tucson Unified
17 School District No.1 Mexican-American Studies Department has violated
18 ARS § 15-112(A).

19 86. Defendant Tom Horne as the Superintendent of Public Instruction and the
20 Executive Officer of the Arizona State Board of Education, has singled out
21 the Tucson Unified School District No.1 Mexican-American Studies
22 Department to be in violation of ARS § 15-112(A) while allowing all other
23 programs, racial, ethnic, national origin and religious groups to offer courses
24 which teach the history, culture, literature and art of such groups; a
25 distinction in classification and treatment that is suspect and for which the
26 State of Arizona has no legal justification or any compelling state interest.

27 87. A determination by Defendant Tom Horne as the Superintendent of Public
28 Instruction and the Executive Officer of the Arizona State Board of Education

1 that Tucson Unified School District No.1 Mexican-American Studies
2 Department is in violation of ARS § 15-112(A), will cause immediate and
3 irreparable harm to the Plaintiffs including elimination of the Mexican-
4 American Studies Department and the loss of employment.

5 88. At all times relevant to this Complaint, Defendant Tom Horne has
6 announced and made clear his intent to implement and enforce the Act,
7 enacted legislation of the State of Arizona, a session law that places every
8 Hispanic educator and student within the Tucson Unified School District No.
9 1 and the State of Arizona, at substantial risk of the immediate loss of rights
10 guaranteed by the United States Constitution, including unlawful
11 infringement of Free Speech, denial of due process and denial of equal
12 protection based solely on their race, Hispanic or association with Hispanics.

13 89. The Act was enacted by the Legislature of the State of Arizona and signed
14 into law by Defendant Brewer as a result of racial bias and anti-Hispanic
15 beliefs and sentiments.

16 90. Plaintiffs believe that the Act is the product of racial bias aimed specifically at
17 Hispanics, is unlawful, results in impermissible deprivations of rights
18 guaranteed by the United States Constitution, have voiced their opinions of
19 such in the work place and been confronted by for expressing such beliefs.

20 91. But for Defendant Tom Horne's Legislative lobbying and Governor Brewer's
21 signing the Act into law, Plaintiffs would not be chilled from exercising their
22 First Amendment rights and subject to the enforcement actions created by
23 the Act, resulting in the loss of their positions and employment.

24 **COUNT ONE**

25 **FOURTEENTH AMENDMENT: EQUAL PROTECTION**

26 **(42 U.S.C. §1983)**

27 92. Plaintiffs hereby re-alleges and incorporates all allegations contained in
28 paragraphs 1 through 91 as if fully set forth herein.

1 93. Defendants' actions against Plaintiff constitutes a violation of equal
2 protection and 42 U.S.C. §1983.

3 94. As a direct and proximate result of the conduct of Defendants, Plaintiffs have
4 suffered injury.

5 **COUNT TWO**

6 **FIRST AMENDMENT: FREE SPEECH**

7 95. Plaintiffs hereby re-alleges and incorporates all allegations contained in
8 paragraphs 1 through 94 as if fully set forth herein.

9 96. Defendants' actions against Plaintiffs constitutes a violation of free speech
10 and 42 U.S.C. §1983.

11 97. As a direct and proximate result of the conduct of Defendants, Plaintiffs have
12 suffered injury.

13 **COUNT THREE**

14 **FOURTEENTH AMENDMENT: DUE PROCESS**

15 **(42 U.S.C. §1983)**

16 98. Plaintiffs hereby re-alleges and incorporates all allegations contained in
17 paragraphs 1 through 97 as if fully set forth herein.

18 99. Defendants' actions constitute violations of due process and 42 U.S.C.
19 §1983.

20 100. As a direct and proximate result of the conduct of Defendants, Plaintiffs have
21 suffered injury.

22 **DECLARATORY JUDGMENT**

23 **(28 U.S.C. §2201)**

24 101. Plaintiffs hereby re-alleges and incorporates all allegations contained in
25 paragraphs 1 through 100 as if fully set forth herein.

26 102. Plaintiff seeks a declaratory judgment as provided in 28 U.S.C. § 2201 et.
27 seq.

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V. PRAYER FOR RELIEF

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3 WHEREFORE, Plaintiffs prays:

- 4 1. That this court declare the actions complained of herein to be in
5 violation of 42 U.S.C. §1983, the First and Fourteenth Amendments to
6 the United States Constitution.
- 7 2. That Defendants be ordered to take appropriate injunctive and
8 affirmative acts to insure that the actions complained of herein are not
9 engaged in again by them or any of their agents.
- 10 3. That Defendants, including their officers, directors, agents, employees
11 and successors, be permanently enjoined from engaging in any action
12 that harms the Tucson Unified School District No. 1 Mexican-American
13 Studies Department, administrator, educators or staff.
- 14 4. That Plaintiffs be awarded their attorneys' fees;
- 15 5. That Plaintiffs be awarded their costs; and
- 16 6. That Plaintiffs be awarded all other relief that this court deems just and
17 proper under the circumstances.

18 DATED this 18th day of October 2010.

19 s/Richard M. Martinez, Esq.
20 Richard M. Martinez, Esq.
21 Counsel for Plaintiffs
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