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10 Attorneys for Defendants

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE STATE OF ARIZONA**

13 CURTIS ACOSTA, SEAN ARCE, MARIA
14 FEDERICO BRUMMER, DOLORES
15 CAARRION, ALEANDRO ESCAMILLA,
16 JOSE GONZALEZ, NORMA GONZALEZ,
17 LORENZO LOPEZ, JR., RENE F.
18 MARTINEZ, SALLY RUSK, and
19 YOLANDA SOTELO,

20 Plaintiff,

21 vs.

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

No. CV-10-623-TUC-JMR

**ANSWER OF DEFENDANT
THOMAS C. HORNE**

1 Pursuant to Fed. R. Civ. P. 12, Defendant Superintendent Thomas C. Horne
2 (“Defendant”) answers the Complaint as follows:

3 1. With regard to the allegations in paragraph 1 of the Complaint, Defendant
4 admits that Plaintiffs have asserted claims arising under the Constitution of the United
5 States; Defendant denies the remaining allegations and affirmatively states that
6 Plaintiffs do not have standing to bring this action.

7 2. With regard to the allegations in paragraph 2, Defendant admits the allegations
8 contained therein.

9 3. With regard to the allegations in paragraph 3 of the Complaint, Defendant lacks
10 knowledge or information sufficient to form a belief as to the truth of the allegations
11 contained therein and therefore denies the same.

12 4. With regard to the allegations in paragraph 4 of the Complaint, Defendant lacks
13 knowledge or information sufficient to form a belief as to the truth of the allegations
14 contained therein and therefore denies the same.

15 5. With regard to the allegations in paragraph 5 of the Complaint, Defendant lacks
16 knowledge or information sufficient to form a belief as to the truth of the allegations
17 contained therein and therefore denies the same.

18 6. With regard to the allegations in paragraph 6 of the Complaint, Defendant lacks
19 knowledge or information sufficient to form a belief as to the truth of the allegations
20 contained therein and therefore denies the same.

21 7. With regard to the allegations in paragraph 7 of the Complaint, Defendant lacks
22 knowledge or information sufficient to form a belief as to the truth of the allegations
23 contained therein and therefore denies the same.

24 8. With regard to the allegations in paragraph 8 of the Complaint, Defendant lacks
25 knowledge or information sufficient to form a belief as to the truth of the allegations
26 contained therein and therefore denies the same.

1 9. With regard to the allegations in paragraph 9 of the Complaint, Defendant lacks
2 knowledge or information sufficient to form a belief as to the truth of the allegations
3 contained therein and therefore denies the same.

4 10. With regard to the allegations in paragraph 10 of the Complaint, Defendant
5 lacks knowledge or information sufficient to form a belief as to the truth of the
6 allegations contained therein and therefore denies the same.

7 11. With regard to the allegations in paragraph 11 of the Complaint, Defendant
8 lacks knowledge or information sufficient to form a belief as to the truth of the
9 allegations contained therein and therefore denies the same.

10 12. With regard to the allegations in paragraph 12 of the Complaint, Defendant
11 lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations contained therein and therefore denies the same.

13 13. With regard to the allegations in paragraph 13 of the Complaint, Defendant
14 lacks knowledge or information sufficient to form a belief as to the truth of the
15 allegations contained therein and therefore denies the same.

16 14. With regard to the allegations in paragraph 14 of the Complaint, Defendant
17 state that Arizona law speaks for itself and admits that he is the Superintendent of
18 Public Instruction and the Executive Officer of the Arizona State Board of Education,
19 and as such is the highest ranking state officer for K-12 Public Instruction and whose
20 powers include making a determination that the Tucson Unified School District No. 1.
21 Mexican-American Studies Department is in violation of Arizona Revised Statutes
22 (“A.R.S.”) 15-112, and 60 days thereafter directing the Arizona Department of
23 Education to withhold 10% of the monthly apportionment of State aid that would
24 otherwise be due to Tucson Unified School District No. 1. Defendant denies the
25 remaining allegations.

26 15. With regard to the allegations in paragraph 15, Defendant admits the allegations
27 contained therein. Defendant affirmatively states that the Arizona State Board of
28 Education is also established in the Arizona State Constitution.

1 16. With regard to the allegations in paragraph 16, Defendant admits the allegations
2 contained therein.

3 17. With regard to the allegations in paragraph 17, Defendant admits the allegations
4 contained therein.

5 18. With regard to the allegations in paragraph 18, Defendant admits the allegations
6 contained therein.

7 19. With regard to the allegations in paragraph 19, Defendant admits the allegations
8 contained therein.

9 20. With regard to the allegations in paragraph 20, Defendant admits the allegations
10 contained therein.

11 21. With regard to the allegations in paragraph 21, Defendant admits the allegations
12 contained therein.

13 22. With regard to the allegations in paragraph 22, Defendant admits the allegations
14 contained therein.

15 23. With regard to the allegations in paragraph 23, Defendant admits the allegations
16 contained therein.

17 24. With regard to the allegations in paragraph 24, Defendant admits the allegations
18 contained therein.

19 25. With regard to the allegations in paragraph 25, Defendant admits the allegations
20 contained therein.

21 26. With regard to the allegations in paragraph 26, Defendant admits that Plaintiffs
22 have brought an action seeking equitable relief with regard to House Bill 2281 and
23 claims under the First and Fourteenth Amendments to the United States Constitution
24 including a void-for-vagueness claim. Defendant denies the remaining allegations
25 therein.

26 27. With regard to the allegations in paragraph 27, Defendant admits that Plaintiffs
27 have brought this action under 42 U.S.C. § 1983 and the Declaratory Judgment Act, 28
28 U.S.C. § 2201.

1 28. With regard to the allegations in paragraph 28 of the Complaint, Defendant
2 lacks knowledge or information sufficient to form a belief as to the truth of the
3 allegations contained therein and therefore denies the same.

4 29. With regard to the allegations in paragraph 29 of the Complaint, Defendant
5 lacks knowledge or information sufficient to form a belief as to the truth of the
6 allegations contained therein and therefore denies the same.

7 30. With regard to the allegations in paragraph 30 of the Complaint, Defendant
8 lacks knowledge or information sufficient to form a belief as to the truth of the
9 allegations contained therein and therefore denies the same.

10 31. With regard to the allegations in paragraph 31 of the Complaint, Defendant
11 lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations contained therein and therefore denies the same.

13 32. With regard to the allegations in paragraph 32 of the Complaint, Defendant
14 lacks knowledge or information sufficient to form a belief as to the truth of the
15 allegations contained therein and therefore denies the same.

16 33. With regard to the allegations in paragraph 33 of the Complaint, Defendant
17 lacks knowledge or information sufficient to form a belief as to the truth of the
18 allegations contained therein and therefore denies the same.

19 34. With regard to the allegations in paragraph 34 of the Complaint, Defendant
20 lacks knowledge or information sufficient to form a belief as to the truth of the
21 allegations contained therein and therefore denies the same.

22 35. With regard to the allegations in paragraph 35 of the Complaint, Defendant
23 lacks knowledge or information sufficient to form a belief as to the truth of the
24 allegations contained therein and therefore denies the same.

25 36. With regard to the allegations in paragraph 36 of the Complaint, Defendant
26 lacks knowledge or information sufficient to form a belief as to the truth of the
27 allegations contained therein and therefore denies the same.
28

1 37. With regard to the allegations in paragraph 37 of the Complaint, Defendant
2 lacks knowledge or information sufficient to form a belief as to the truth of the
3 allegations contained therein and therefore denies the same.

4 38. With regard to the allegations in paragraph 38 of the Complaint, Defendant
5 lacks knowledge or information sufficient to form a belief as to the truth of the
6 allegations contained therein and therefore denies the same.

7 39. With regard to the allegations in paragraph 39 of the Complaint, Defendant
8 lacks knowledge or information sufficient to form a belief as to the truth of the
9 allegations contained therein and therefore denies the same.

10 40. With regard to the allegations in paragraph 40 of the Complaint, Defendant
11 lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations contained therein and therefore denies the same.

13 41. With regard to the allegations in paragraph 41 of the Complaint, Defendant
14 lacks knowledge or information sufficient to form a belief as to the truth of the
15 allegations contained therein and therefore denies the same.

16 42. With regard to the allegations in paragraph 42 of the Complaint, Defendant
17 lacks knowledge or information sufficient to form a belief as to the truth of the
18 allegations contained therein and therefore denies the same.

19 43. With regard to the allegations in paragraph 43 of the Complaint, Defendant
20 lacks knowledge or information sufficient to form a belief as to the truth of the
21 allegations contained therein and therefore denies the same.

22 44. With regard to the allegations in paragraph 44 of the Complaint, Defendant
23 lacks knowledge or information sufficient to form a belief as to the truth of the
24 allegations contained therein and therefore denies the same.

25 45. With regard to the allegations in paragraph 45 of the Complaint, Defendant
26 lacks knowledge or information sufficient to form a belief as to the truth of the
27 allegations contained therein and therefore denies the same.
28

1 46. With regard to the allegations in paragraph 46 of the Complaint, Defendant
2 lacks knowledge or information sufficient to form a belief as to the truth of the
3 allegations contained therein and therefore denies the same.

4 47. With regard to the allegations in paragraph 47 of the Complaint, Defendant
5 lacks knowledge or information sufficient to form a belief as to the truth of the
6 allegations contained therein and therefore denies the same.

7 48. With regard to the allegations in paragraph 48 of the Complaint, Defendant
8 lacks knowledge or information sufficient to form a belief as to the truth of the
9 allegations contained therein and therefore denies the same.

10 49. With regard to the allegations in paragraph 49 of the Complaint, Defendant
11 lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations contained therein and therefore denies the same.

13 50. With regard to the allegations in paragraph 50 of the Complaint, Defendant
14 lacks knowledge or information sufficient to form a belief as to the truth of the
15 allegations contained therein and therefore denies the same.

16 51. With regard to the allegations in paragraph 51 of the Complaint, Defendant
17 lacks knowledge or information sufficient to form a belief as to the truth of the
18 allegations contained therein and therefore denies the same.

19 52. With regard to the allegations in paragraph 52 of the Complaint, Defendant
20 lacks knowledge or information sufficient to form a belief as to the truth of the
21 allegations contained therein and therefore denies the same.

22 53. With regard to the allegations in paragraph 53 of the Complaint, Defendant
23 lacks knowledge or information sufficient to form a belief as to the truth of the
24 allegations contained therein and therefore denies the same.

25 54. With regard to the allegations in paragraph 54 of the Complaint, Defendant
26 lacks knowledge or information sufficient to form a belief as to the truth of the
27 allegations contained therein and therefore denies the same.
28

1 55. With regard to the allegations in paragraph 55 of the Complaint, Defendant
2 lacks knowledge or information sufficient to form a belief as to the truth of the
3 allegations contained therein and therefore denies the same.

4 56. With regard to the allegations in paragraph 56 of the Complaint, Defendant
5 lacks knowledge or information sufficient to form a belief as to the truth of the
6 allegations contained therein and therefore denies the same.

7 57. With regard to the allegations in paragraph 57 of the Complaint, Defendant
8 lacks knowledge or information sufficient to form a belief as to the truth of the
9 allegations contained therein and therefore denies the same.

10 58. With regard to the allegations in paragraph 58 of the Complaint, Defendant
11 lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations contained therein and therefore denies the same.

13 59. With regard to the allegations in paragraph 59 of the Complaint, Defendant
14 lacks knowledge or information sufficient to form a belief as to the truth of the
15 allegations contained therein and therefore denies the same.

16 60. With regard to the allegations in paragraph 60 of the Complaint, Defendant
17 lacks knowledge or information sufficient to form a belief as to the truth of the
18 allegations contained therein and therefore denies the same.

19 61. With regard to the allegations in paragraph 61, Defendant admits the allegations
20 contained therein.

21 62. With regard to the allegations in paragraph 62 of the Complaint, Defendant
22 lacks knowledge or information sufficient to form a belief as to the truth of the
23 allegations contained therein and therefore denies the same.

24 63. With regard to the allegations in paragraph 63 of the Complaint, Defendant
25 lacks knowledge or information sufficient to form a belief as to the truth of the
26 allegations contained therein and therefore denies the same.

27 64. With regard to the allegations in paragraph 64 of the Complaint, Defendant
28 denies the allegations therein.

1 65. With regard to the allegations in paragraph 65 of the Complaint, Defendant
2 admits that Hispanics have comprised the largest and most significant portion of the
3 student population enrolling and completing the Mexican-American Studies
4 Department's course offerings. Defendant lacks knowledge or information sufficient
5 to form a belief as to the truth of the remaining allegations contained therein and
6 therefore denies the same.

7 66. With regard to the allegations in paragraph 66 of the Complaint, Defendant
8 lacks knowledge or information sufficient to form a belief as to the truth of the
9 allegations contained therein and therefore denies the same.

10 67. With regard to the allegations in paragraph 67 of the Complaint, Defendant
11 admits that one of the textbooks used by the Mexican-American Studies Department is
12 *Occupied America, A History of Chicanos*, by Rodolfo F. Acuna. Defendant lacks
13 knowledge or information sufficient to form a belief as to the truth of the remaining
14 allegations and therefore denies same.

15 68. With regard to the allegations in paragraph 68 of the Complaint, Defendant
16 lacks knowledge or information sufficient to form a belief as to the truth of the
17 allegations contained therein and therefore denies the same.

18 69. With regard to the allegations in paragraph 69 of the Complaint, Defendant
19 admits that the current name of the program is the Mexican-American Studies
20 Program. Defendant denies the remaining allegations.

21 70. With regard to the allegations in paragraph 70 of the Complaint, Defendant
22 admits the allegations contained therein.

23 71. With regard to the allegations in paragraph 71 of the Complaint, Defendant
24 admits that Tom Horne is the Superintendent of Public Instruction and the Executive
25 Officer of the Arizona State Board of Education. Defendant states that the office of
26 the Superintendent of Public Instruction has the authority to enforce A.R.S. § 15-
27 112(A) and seek the withholding of funds. Defendant denies the remaining allegations
28 contained in paragraph 71 of the Complaint.

1 72. With regard to the allegations in paragraph 72 of the Complaint, Defendant
2 admits that Tom Horne is the Superintendent of Public Instruction and the Executive
3 Officer of the Arizona State Board of Education. Defendant states that Tom Horne
4 advocated for the passage of House Bill 2281. Defendant denies the remaining
5 allegations contained in paragraph 72 of the Complaint.

6 73. With regard to the allegations in paragraph 73 of the Complaint, Defendant
7 admits the allegations contained therein.

8 74. With regard to the allegations in paragraph 74 of the Complaint, Defendant
9 admits the allegations contained therein.

10 75. With regard to the allegations in paragraph 75 of the Complaint, Defendant
11 admits the allegations contained therein.

12 76. With regard to the allegations contained in paragraph 76 of the Complaint,
13 Defendant admits that a copy of House Bill 2281 is attached to Plaintiffs' Complaint.
14 However, Defendant states that the copy of House Bill 2281 is not the final chaptered
15 copy of the complaint and is therefore without sufficient knowledge or information to
16 form a belief as to the allegation that it is a correct copy of House Bill 2281 and
17 therefore denies same.

18 77. With regard to the allegations contained in paragraph 77 of the Complaint,
19 Defendant admits the allegations contained therein.

20 78. With regard to the allegations contained in paragraph 78 of the Complaint,
21 Defendant denies the allegations contained therein and affirmatively states that the law
22 becomes effective "from and after" December 31, 2010.

23 79. With regard to the allegations contained in paragraph 79 of the Complaint,
24 Defendant denies the allegations contained therein.

25 80. With regard to the allegations contained in paragraph 80 of the Complaint,
26 Defendant denies the allegations contained therein and affirmatively states that he has
27 not as of the date of this pleading issued a finding of violation under A.R.S. § 15-112
28 to Tucson Unified School District.

1 81. With regard to the allegations contained in paragraph 81 of the Complaint,
2 Defendant denies the allegations contained therein and affirmatively states that he has
3 not as of the date of this pleading issued a finding of violation under A.R.S. § 15-112
4 to Tucson Unified School District.

5 82. With regard to the allegations contained in paragraph 82 of the Complaint,
6 Defendant denies the allegations contained therein and affirmatively states that he has
7 not as of the date of this pleading issued a finding of violation under A.R.S. § 15-112
8 to Tucson Unified School District.

9 83. With regard to the allegations contained in paragraph 83 of the Complaint,
10 Defendant denies the allegations contained therein and affirmatively states that he has
11 not as of the date of this pleading issued a finding of violation under A.R.S. § 15-112
12 to Tucson Unified School District.

13 84. With regard to the allegations contained in paragraph 84 of the Complaint,
14 Defendant admits the allegations contained therein.

15 85. With regard to the allegations contained in paragraph 85 of the Complaint,
16 Defendant denies the allegations contained therein.

17 86. With regard to the allegations contained in paragraph 86 of the Complaint,
18 Defendant denies the allegations contained therein.

19 87. With regard to the allegations contained in paragraph 87 of the Complaint,
20 Defendant denies the allegations contained therein.

21 88. With regard to the allegations contained in paragraph 88 of the Complaint,
22 Defendant denies the allegations contained therein.

23 89. With regard to the allegations contained in paragraph 89 of the Complaint,
24 Defendant denies the allegations contained therein.

25 90. With regard to the allegations contained in paragraph 90 of the Complaint,
26 Defendant denies the allegations contained therein.

27 91. With regard to the allegations contained in paragraph 91 of the Complaint,
28 Defendant denies the allegations contained therein.

1 92. With regard to the allegations in paragraph 92 of the Complaint, Defendant
2 hereby incorporates his responses to the allegations as set forth in the foregoing
3 paragraphs.

4 93. With regard to the allegations in paragraph 93 of the Complaint, Defendant
5 denies the allegations contained therein.

6 94. With regard to the allegations in paragraph 94 of the Complaint, Defendant
7 denies the allegations contained therein.

8 95. With regard to the allegations in paragraph 95 of the Complaint, Defendant
9 hereby incorporates his responses to the allegations as set forth in the foregoing
10 paragraphs.

11 96. With regard to the allegations in paragraph 96 of the Complaint, Defendant
12 denies the allegations contained therein.

13 97. With regard to the allegations in paragraph 97 of the Complaint, Defendant
14 denies the allegations contained therein.

15 98. With regard to the allegations in paragraph 98 of the Complaint, Defendant
16 hereby incorporates his responses to the allegations as set forth in the foregoing
17 paragraphs.

18 99. With regard to the allegations in paragraph 99 of the Complaint, Defendant
19 denies the allegations contained therein.

20 100. With regard to the allegations in paragraph 100 of the Complaint, Defendant
21 denies the allegations contained therein.

22 101. With regard to the allegations in paragraph 101 of the Complaint, Defendant
23 hereby incorporates his responses to the allegations as set forth in the foregoing
24 paragraphs.

25 102. With regard to the allegations in paragraph 102, Defendant admits that
26 Plaintiffs seek a declaratory judgment as provided in 28 U.S.C. § 2201 et seq.
27 Defendant denies the remaining allegations contained therein.
28

1 **AFFIRMATIVE DEFENSES**

2 103. As his first affirmative defense, Defendant states that Plaintiffs lack standing to
3 bring this action.

4 104. As his second affirmative defense, Defendant states Plaintiffs' claims are not
5 ripe and are moot.

6 105. There may be other affirmative defenses contemplated by Rule 8 and 12 of the
7 Federal Rules of Civil Procedure, the facts of which are currently unknown to
8 Defendant, and, therefore, the Defendant reserves the right to assert such defenses as
9 these facts become available.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, having answered each and every allegation contained in the
12 Complaint, Defendants request that the Court enter Judgment in favor of Defendants
13 and against Plaintiffs on the following items:

- 14 1. Dismissing all claims of the Plaintiffs alleged in the Complaint with prejudice,
15 or, in the alternative, denying Plaintiffs' claims and request for relief;
- 16 2. Awarding Defendants their reasonable attorney's fees and costs to the extent
17 allowed by law; and
- 18 3. Awarding Defendants all such other relief or remedies at law or in equity that
19 the Court deem just and proper.

20 Dated this 30th day of December 2010.

21 TERRY GODDARD
22 Attorney General

23 s/ Carrie Brennan
24 Carrie J. Brennan
25 Kevin D. Ray
26 Assistant Attorney General
27 Attorneys for Defendant Thomas C. Horne
28

1 **ORIGINAL** filed and **COPY**
2 of the foregoing hand-delivered
3 this 30th day of December, 2010 to:

4 **COPY** of the foregoing mailed
5 this 30th day of December, 2010 to:

6 I certify that I electronically
7 transmitted the attached document
8 to the Clerk's Office using the
9 CM/ECF System for filing and
10 transmittal of a Notice of Electronic
11 Filing to the following, if CM/ECF
12 registrants, and mailed a copy of
13 same to any non-registrants, this
14 this 30th day of December, 2010 to:

15 s/ Kristi Tesori

16 #1451706

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