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Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE STATE OF ARIZONA

CURTIS ACOSTA, SEAN ARCE, MAYA ARCE, MARIA FEDERICO BRUMMER, DOLORES CARRION, ALEXANDRO ESCAMILLA, JOSE GONZALEZ, NORMA GONZALEZ, LORENZO LOPEZ, JR., KORINA ELIZA LOPEZ, RENE F. MARTINEZ, SARA "SALLY" RUSK, and YOLANDA SOTELO,

Plaintiffs,

v.

JOHN HUPPENTHAL, Superintendent of Public Instruction, in his Official Capacity; ARIZONA STATE BOARD OF EDUCATION, including all members in their Official Capacity, VICKI BALENTINE, JACOB MOORE, JAIME MOLERA, AMY HAMILTON, EILEEN KLEIN, GREGORY MILLER, JAMES HORTON, DIANNE ORTIZ-PARSONS, and THOMAS TYREE,

Defendants.

No. CV 10 - 623 TUC AWT

SECOND AMENDED COMPLAINT

(Action for Declaratory and Injunctive Relief)

Plaintiffs allege:

I. JURISDICTION

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

II. VENUE

2. Venue is proper in the United States District Court for the District of Arizona

1 under 28 U.S.C. §1391(b).

2 **III. PARTIES**

3 3. Plaintiff Curtis Acosta is a citizen of the United States, a resident of the State
4 of Arizona residing in Pima County and employed by the Tucson Unified School
5 District No. 1 in a teaching position for the Mexican-American Studies
6 Department.

7 4. Plaintiff Sean Arce is a citizen of the United States, a resident of the State of
8 Arizona residing in Pima County, employed by the Tucson Unified School
9 District No. 1 as the Director of the Mexican-American Studies Department, and
10 the natural parent and next best friend of Maya Arce, a minor who attends
11 Tucson Unified School District No. 1 as a full time Middle School student.

12 5. Maya Arce is a citizen of the United States, a resident of the State of Arizona
13 residing in Pima County, and the natural daughter of Plaintiff Sean Arce, her
14 next best friend; Maya Arce is Latina, and a minor who attends Tucson Unified
15 School District No. 1 as a full time seventh grade student at Safford K-8 Magnet
16 School and will attend Tucson High Magnet School starting in the ninth grade.
17 She attended Davis Bilingual for grades kindergarten through fifth grade, an
18 immersion Spanish-English school with a curriculum that includes as an integral
19 component the language, culture, history and literature of Hispanics operated
20 by Tucson Unified School District No. 1; Maya Arce and her parent/next best
21 friend intend for her to matriculate to Tucson High Magnet School and register
22 for all Mexican American Studies course offerings in English-Latino Literature,
23 American History-Mexican American Perspectives and American Government -
24 Social Justice Education Project. These course offerings are currently available
25 to Junior and Senior students by the Mexican American Studies Department
26 and are intended to be banned as a violation of HB 2281 (A.R.S. § 15-112) and
27 thus would not be available for Maya Arce to enroll in, or benefit from in
28 furtherance of her education.

- 1 6. Plaintiff Maria Federico Brummer is a citizen of the United States, a resident of
2 the State of Arizona residing in Pima County and employed by the Tucson
3 Unified School District No. 1 in a teaching position for the Mexican-American
4 Studies Department.
- 5 7. Plaintiff Dolores Carrion 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 8. Plaintiff Alexandro Escamilla is a citizen of the United States, a resident of the
10 State of Arizona residing in Pima County and employed by the Tucson Unified
11 School District No.1 in a teaching position for the Mexican-American Studies
12 Department.
- 13 9. Plaintiff Jose Gonzalez is a citizen of the United States, a resident of the State
14 of Arizona residing in Pima County and employed by the Tucson Unified School
15 District No.1 in a teaching position for the Mexican-American Studies
16 Department.
- 17 10. Plaintiff Norma Gonzalez is a citizen of the United States, a resident of the
18 State of Arizona residing in Pima County and employed by the Tucson Unified
19 School District No. 1 in a teaching position for the Mexican-American Studies
20 Department.
- 21 11. Plaintiff Lorenzo Lopez is a citizen of the United States, a resident of the State
22 of Arizona residing in Pima County, employed by the Tucson Unified School
23 District No.1 in a teaching position for the Mexican-American Studies
24 Department, and the natural parent and next best friend of Korina Eliza Lopez,
25 a minor who attends Tucson Unified School District No. 1 as a full time High
26 School student.
- 27 12. Korina Eliza Lopez is a citizen of the United States, a resident of the State of
28 Arizona residing in Pima County, and the natural daughter of Plaintiff Lorenzo

1 Lopez, Jr., her next best friend; Korina Eliza Lopez is Latina, and a minor who
2 attends Tucson Unified School District No. 1 as a full time ninth grade student
3 at Tucson High Magnet School and will graduate in the class of 2014. She
4 attended Pistor Middle School for grades five through eight, where her course
5 offerings included Mexican American Studies Program classes, a curriculum
6 that includes as an integral component the language, culture, history and
7 literature of Hispanics; Korina Eliza Lopez and her parent/next best friend
8 intend for her to register and attend all Tucson High Magnet School course
9 offerings in English-Latino Literature, American History-Mexican American
10 Perspectives and American Government - Social Justice Education Project.
11 These course offerings are currently available to Junior and Senior students by
12 the Mexican American Studies Department and are intended to be banned as
13 a violation of HB 2281 (A.R.S § 15-112) and thus would not be available for
14 Korina Eliza Lopez to enroll in, or benefit from in furtherance of her education.

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

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

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

27 16. Tom Horne was the Superintendent of Public Instruction and as such was the
28 highest ranking state officer for K-12 Public Instruction and whose powers

1 included making a determination that the Tucson Unified School District No. 1
2 Mexican-American Studies Department violates ARS § 15-112(A), and 60 days
3 thereafter directing the Arizona Department of Education to withhold 10% of the
4 monthly apportionment of State aid that would otherwise be due to Tucson
5 Unified School District No. 1, an amount that is estimated to be or exceed one
6 to three million dollars a month. ARS § 15-112(B). See, House Bill 2281, Exhibit
7 A hereto and incorporated in whole by reference.

8 17. Tom Horne as the Superintendent of Public Instruction issued Findings dated
9 December 30, 2010, one day before HB 2281 became effective, that the
10 Tucson Unified School District No. 1 Mexican-American Studies Department
11 was in violation of ARS § 15-112(A), thus subjecting the Tucson Unified School
12 District to a sanction commencing 60 days thereafter by directing the Arizona
13 Department of Education to withhold 10% of the monthly apportionment of State
14 aid that would otherwise be due to Tucson Unified School District No. 1, an
15 amount that is estimated to be or exceed one to three million dollars a month.
16 ARS § 15-112(B). See, Findings, Exhibit B hereto and incorporated in whole by
17 reference.

18 18. Defendant John Huppenthal is the current Superintendent of Public Instruction
19 and as such is the highest ranking state officer for K-12 Public Instruction and
20 whose powers include making a determination that the Tucson Unified School
21 District No. 1 Mexican-American Studies Department is in violation of ARS §
22 15-112(A), 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, an amount that is
25 estimated to be or exceed one to three million dollars a month. ARS § 15-
26 112(B).

27 19. The Arizona State Board of Education exists pursuant to statutory authority
28 provided by the Legislature of the State of Arizona.

1 20. Vicki Balentine is a Member of the Arizona State Board of Education.

2 21. Jacob Moore is a Member of the Arizona State Board of Education.

3 22. Jaime Molera is a Member of the Arizona State Board of Education.

4 23. Amy Hamilton is a Member of the Arizona State Board of Education.

5 24. Eileen Klein is a Member of the Arizona State Board of Education.

6 25. Gregory Miller is a Member of the Arizona State Board of Education.

7 26. James Horton is a Member of the Arizona State Board of Education.

8 27. Diane Ortiz-Parsons is a Member of the Arizona State Board of Education.

9 28. Thomas Tyree is a Member of the Arizona State Board of Education.

10 **IV. PLAINTIFF'S ACTION**

11 29. This is an action seeking equitable relief against House Bill 2281 (A.R.S. §§ 15-
12 111 and 112), because its enforcement would violate Plaintiffs rights under the
13 First and Fourteenth Amendments to the Constitution of the United States, is
14 void for vagueness and denies Plaintiffs and all Hispanics equal protection.

15 30. Plaintiff asserts this action pursuant to the Civil Rights Act of 1871, 42 U.S.C.
16 §1983, and the Declaratory Judgment Act of 1934, 28 U.S.C. §2201.

17 **V. GENERAL ALLEGATIONS**

18 31. All adult Plaintiffs are college graduates and at all times relevant to this action
19 have met the qualifications and possessed the credentials required for their
20 respective positions as educators employed by the Tucson Unified School
21 District No. 1.

22 32. At all times relevant to this action, all adult Plaintiffs have possessed all
23 qualifications and certifications required by the State of Arizona for their
24 respective positions as educators employed by the Tucson Unified School
25 District No. 1.

26 33. At all times relevant to this action, all adult Plaintiffs have complied with all
27 lawful guidelines and requirements of the State of Arizona in teaching their
28 respective courses as educators employed by the Tucson Unified School

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District No. 1.

Curtis Acosta

- 34. Plaintiff Curtis Acosta is Hispanic, and bilingual in English and Spanish.
- 35. Plaintiff Curtis Acosta is employed in a teaching position with the Tucson Unified School District for the Mexican-American Studies Department and is assigned to Tucson High School teaching courses offered by the Mexican-American Studies Department for Junior and Senior students.
- 36. Tucson High School has a student population that is 67% Hispanic.

Sean Arce

- 37. Plaintiff Sean Arce is Hispanic, and bilingual in English and Spanish.
- 38. Plaintiff Sean Arce is employed in an administrator’s position with the Tucson Unified School District as Director for the Mexican-American Studies Department with responsibility for the oversight, management and supervision of the Mexican-American Studies Department throughout the Tucson Unified School District.
- 39. The Tucson Unified School District currently has a student population that is 61% Hispanic serving a community that has a Hispanic population of approximately 36%,

Maria Federico Brummer

- 40. Plaintiff Maria Federico Brummer is Hispanic, and bilingual in English and Spanish.
- 41. Plaintiff Maria Federico Brummer is employed in a teaching position with the Tucson Unified School District for the Mexican-American Studies Department and is assigned to Tucson High School teaching courses offered by the Mexican-American Studies Department for Junior and Senior students.

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Dolores Carrion

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

3 43. 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 44. Pueblo High School has a student population that is 89% Hispanic.

8 Alexandro Escamilla

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

10 46. 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 47. Wakefield Middle School has a student population that is 92% Hispanic.

15 Jose Gonzalez

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

17 49. 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 50. Rincon High School has a student population that is 49% Hispanic.

22 Norma Gonzalez

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

24 52. 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 53. Ochoa Elementary and Van Buskirk have student populations that are
2 predominately Hispanic.

3 Lorenzo Lopez

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

5 55. 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 56. Cholla High School has a student population that is 71% Hispanic.

10 Rene F. Martinez

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

12 58. 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 Sara "Sally" Rusk

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

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

23 Yolanda Sotelo

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

25 62. 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.

Maya Arce

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2 63. Maya Arce is Hispanic, and bilingual in English and Spanish.

3 64. Maya Arce desires to register for and attend all Mexican American Studies
4 course offerings in English-Latino Literature, American History-Mexican
5 American Perspectives and American Government - Social Justice Education
6 Project at Tucson High Magnet School; course offerings that are currently
7 available to Junior and Senior students by the Mexican American Studies
8 Department and are intended to be banned as a violation of HB 2281 by the
9 Findings issued by Tom Horne and thus would not be available for Maya Arce
10 to enroll in, or benefit from in furtherance of her education.

11 Korina Eliza Lopez

12 65. Korina Eliza Lopez is Hispanic, and bilingual in English and Spanish.

13 66. Korina Eliza Lopez desires to register for and attend all Mexican American
14 Studies course offerings in English-Latino Literature, American History-Mexican
15 American Perspectives and American Government - Social Justice Education
16 Project at Tucson High Magnet School; course offerings that are currently
17 available to Junior and Senior students by the Mexican American Studies
18 Department and are intended to be banned as a violation of HB 2281 by the
19 Findings issued by Tom Horne and thus would not be available for Korina Eliza
20 Lopez to enroll in, or benefit from in furtherance of her education.

21 Mexican-American Studies Department

22 67. The Tucson Unified School District No. 1 Mexican-American Studies
23 Department was created in 1998 and has operated as a District approved,
24 Governing Board sanctioned, entity for the past 12 consecutive school years.

25 68. The Mexican-American Studies Department was created to develop and
26 provide course offerings for students that focused on the history, culture,
27 literature and art of Hispanics as a means of directly addressing and combating
28 the consistent and persistent failure of Hispanic students in the Tucson Unified

1 School District No.1, which included excessive drop out/push out rates,
2 excessive grade failure rates, excessive discipline, poor attendance, poor
3 graduation rates and extremely poor matriculation to post high school
4 educational institutions, especially four year colleges/universities.

5 69. Since the inception of the Mexican-American Studies Department all course
6 offerings and assistance has been open to all students and their families with
7 out consideration of race, national origin, gender, religion, language or
8 economic status.

9 70. Since the inception of the Mexican-American Studies Department all course
10 offerings have been provided in conformity with applicable State adopted
11 standards and/or guidelines.

12 71. Since the inception of the Mexican-American Studies Department all course
13 offerings have included a diverse student population reflective of the specific
14 school site's population.

15 72. Since the inception of the Mexican-American Studies Department, Hispanics
16 have comprised the largest and most significant portion of the student
17 population enrolling and completing the Department's course offerings;
18 enrollment that reflects the de facto segregation present throughout the Tucson
19 Unified School District No.1, which has been exacerbated since the advent of
20 Charter Schools.

21 73. Since the inception of the Mexican-American Studies Department all course
22 offerings have been subjected to annual scrutiny and as appropriate
23 modification to determine and improve the educational efficacy of the course
24 offerings; these evaluations have consistently shown that students who take
25 and complete Mexican-American Studies course offerings pass the State
26 required AIMS test at higher rates, graduate from High School at higher
27 rates, have improved grades and matriculate to college at high rates while
28 decreasing in the areas of discipline, poor attendance or dropping out of

1 High School. These results have occurred for all students, irrespective of
2 race or national origin.

3 74. The Mexican-American Studies Department, including all course offerings,
4 are part of the Tucson Unified School District's Federal Court adopted Post
5 Unitary School Desegregation Plan.

6 Mexican-American Studies Department: Topic & Materials Utilized

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

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

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

24 78. Tom Horne has also made known his objection to text books utilized in the
25 Mexican-American Studies Program, such as "Occupied America", making
26 known his objection to the book, and insisting that it no longer be utilized,
27 relied upon or referenced in the Public Schools.

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

13 80. Tom Horne as the Superintendent of Public Instruction issued Findings
14 dated December 30, 2010, Exhibit B, that the Tucson Unified School District
15 No. 1 Mexican-American Studies Department was in violation of ARS § 15-
16 112(A), thus exposing Tucson Unified School District No. 1 to a sanction
17 commencing 60 days thereafter of directing the Arizona Department of
18 Education to withhold 10% of the monthly apportionment of State aid that
19 would otherwise be due to; this sanction would result in the immediate
20 termination of the Mexican-American Studies Department and the
21 employment of the adult Plaintiffs, and thus impermissibly infringing on the
22 Free Speech of all Plaintiffs which is permitted by the Tucson Unified School
23 District No. 1 but subject to an imminent adverse sanction and irreparable
24 harm by Defendants.

25 House Bill 2281

26 81. Tom Horne as the Superintendent of Public Instruction was the principal
27 advocate for the passage of House Bill 2281, legislation that he sought for
28 the purpose of having a mechanism that would allow him to “shut down” the

1 Mexican-American Studies Department in the Tucson Unified School District
2 No. 1.

3 82. On April 29, 2010 final passage of House Bill 2281 occurred and was then
4 transmitted to the Governor on April 30, 2010.

5 83. Jan Brewer is the Governor of Arizona.

6 84. Acting in her official capacity as the Governor of Arizona, on May 11, 2010,
7 Governor Brewer elected to sign into law House Bill 2281.

8 85. A true and correct copy of the House Bill 2281 is attached hereto as Exhibit
9 A.

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

12 87. House Bill 2281 became effective on December 31, 2010.

13 88. After House Bill 2281 was signed into law, Tom Horne as the Superintendent
14 of Public Instruction stated repeatedly and publicly that he intended to find
15 the Tucson Unified School District No.1 Mexican-American Studies
16 Department to be in violation of ARS § 15-112(A), a determination that 60
17 days thereafter would result in directing the Arizona Department of
18 Education to withhold 10% of the monthly apportionment of State aid that
19 would otherwise be due to Tucson Unified School District No. 1; he signed
20 and issued such a Finding on December 30, 2010. Exhibit B hereto.

21 89. After House Bill 2281 was signed into law, Tom Horne as the Superintendent
22 of Public Instruction, determined that the Tucson Unified School District No.1
23 Mexican-American Studies Department was in violation of ARS § 15-112(A),
24 thus “[p]romotes the overthrow of the United States Government.”

25 90. After House Bill 2281 was signed into law, Tom Horne as the Superintendent
26 of Public Instruction, determined that the Tucson Unified School District No.1
27 Mexican-American Studies Department was in violation of ARS § 15-112(A),
28 thus “[p]romotes resentment toward a race or a class of people.”

- 1 91. After House Bill 2281 was signed into law, Tom Horne as the
2 Superintendent of Public Instruction determined that the Tucson Unified
3 School District No.1 Mexican-American Studies Department was in violation
4 of ARS § 15-112(A), thus “[a]re designed primarily for pupils of a particular
5 race.”
- 6 92. After House Bill 2281 was signed into law, Tom Horne as the Superintendent
7 of Public Instruction, determined that the Tucson Unified School District No.1
8 Mexican-American Studies Department was in violation of ARS § 15-112(A),
9 thus “[a]dvocates ethnic solidarity instead of the treatment of pupils as
10 individuals.”
- 11 93. Tom Horne as the Superintendent of Public Instruction never visited or
12 observed any class offered by the Tucson Unified School District No.1
13 Mexican-American Studies Department.
- 14 94. Tom Horne as the Superintendent of Public Instruction has no lawful non-
15 discriminatory facts to support or establish that the Tucson Unified School
16 District No.1 Mexican-American Studies Department violated ARS § 15-
17 112(A).
- 18 95. Tom Horne as the Superintendent of Public Instruction singled out the
19 Tucson Unified School District No.1 Mexican-American Studies Department
20 to be in violation of ARS § 15-112(A) while allowing all other programs,
21 racial, ethnic, national origin and religious groups to offer courses which
22 teach the history, culture, literature and art of such groups; a distinction in
23 classification and treatment that is suspect and for which the State of
24 Arizona has no legal justification or any compelling state interest.
- 25 96. The determination, Findings, by Tom Horne as the Superintendent of Public
26 Instruction that Tucson Unified School District No.1 Mexican-American
27 Studies Department violated ARS § 15-112(A), will cause immediate and
28 irreparable harm to the Plaintiffs including elimination of the Mexican-

- 1 American Studies Department and the loss of employment.
- 2 97. At all times relevant to this Complaint, Tom Horne publicly announced and
3 made clear his intent to implement and enforce the HB 2281, enacted
4 legislation of the State of Arizona, a session law, that places every Hispanic
5 educator and student within the Tucson Unified School District No. 1 and the
6 State of Arizona, at substantial risk of the immediate loss of rights
7 guaranteed by the United States Constitution, including unlawful
8 infringement of Free Speech and Association, denial of due process and
9 denial of equal protection based solely on their race, Hispanic or association
10 with Hispanics.
- 11 98. House Bill 2281 was enacted by the Legislature of the State of Arizona and
12 signed into law by Governor Brewer as a result of racial bias and anti-
13 Hispanic beliefs and sentiments.
- 14 99. Plaintiffs believe that House Bill 2281 is the product of racial bias aimed
15 specifically at Hispanics, is unlawful, results in impermissible deprivations of
16 rights guaranteed by the United States Constitution, have voiced their
17 opinions of such in the work place and publicly, and been confronted for
18 expressing such beliefs.
- 19 100. But for Tom Horne's Legislative lobbying and Governor Brewer's signing the
20 Act into law, Plaintiffs would not be chilled from exercising their First
21 Amendment rights and subject to the enforcement actions created by House
22 Bill 2281, resulting in the loss of their positions and employment.
- 23 101. John Huppenthal, the current Superintendent of Public Instruction, successor
24 to Tom Horne, openly and publicly campaigned on "Stop La Raza" a racial
25 message that reflected bias, prejudice and resentment towards Hispanics
26 and the Mexican American Studies Department; and instituted an audit of
27 the Tucson Unified School District No. 1 Mexican American Studies
28 Department.

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COUNT ONE

FOURTEENTH AMENDMENT: EQUAL PROTECTION

(42 U.S.C. §1983)

102. Plaintiffs hereby re-allege and incorporates all allegations contained in paragraphs 1 through 101 as if fully set forth herein.

103. Defendants' actions against Plaintiffs constitutes a violation of equal protection and 42 U.S.C. §1983.

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

COUNT TWO

FIRST AMENDMENT: FREE SPEECH

105. Plaintiffs hereby re-allege and incorporates all allegations contained in paragraphs 1 through 104 as if fully set forth herein.

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

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

COUNT THREE

FIRST AMENDMENT: FREEDOM OF ASSOCIATION

108. Plaintiffs hereby re-allege and incorporates all allegations contained in paragraphs 1 through 107 as if fully set forth herein.

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

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

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COUNT FOUR

FOURTEENTH AMENDMENT: DUE PROCESS

(42 U.S.C. §1983)

111. Plaintiffs hereby re-allege and incorporates all allegations contained in paragraphs 1 through 110 as if fully set forth herein.

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

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

DECLARATORY JUDGMENT

(28 U.S.C. §2201)

114. Plaintiffs hereby re-allege and incorporates all allegations contained in paragraphs 1 through 113 as if fully set forth herein.

115. Plaintiffs seeks a declaratory judgment as provided in 28 U.S.C. § 2201 et. seq.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

1. That this court declare the actions complained of herein to be in violation of 42 U.S.C. §1983, the First and Fourteenth Amendments to the United States Constitution.
2. That Defendants be ordered to take appropriate injunctive and affirmative acts to insure that the actions complained of herein are not engaged in again by them or any of their agents.
3. That Defendants, including their officers, directors, agents, employees and successors, be permanently enjoined from engaging in any action that harms the Tucson Unified School District No. 1 Mexican-American Studies Department, administrator, educators, staff or students.
4. That Plaintiffs be awarded their attorneys' fees;

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- 5. That Plaintiffs be awarded their costs; and
- 6. That Plaintiffs be awarded all other relief that this court deems just and proper under the circumstances.

DATED this 24th day of April 2011.
s/Richard M. Martinez, Esq.
Richard M. Martinez, Esq.
Counsel for Plaintiffs

COPY sent via ECF
this 24th day of April
2011 to all ECF registrants
in the instant matter.

s/Richard M. Martinez, Esq.