

**RICHARD M. MARTINEZ, SBA No. 7763**  
307 South Convent Avenue  
Tucson, Arizona 85701  
(520) 327-4797 phone  
(520) 320-9090 fax  
[richard@richardmartinezlaw.com](mailto:richard@richardmartinezlaw.com)  
**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)

**Exhibit B**  
**To**  
**Second Amended Complaint**

**FINDING BY THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF VIOLATION BY TUCSON UNIFIED SCHOOL DISTRICT  
PURSUANT TO A.R.S. § 15-112(B)**

I. Philosophy of the Applicable Statute.

I make the findings contained in this document as the Arizona Superintendent of Public Instruction. I also was the author of the first draft of the applicable statute, A.R.S. § 15-112(A). It was amended somewhat in the legislature. The following is the philosophy which underlay the statute:

People are individuals, not exemplars of racial groups. What is important about people is what they know, what they can do, their ability to appreciate beauty, their character, and not what race into which they are born. They are entitled to be treated that way. It is fundamentally wrong to divide students up according to their racial group, and teach them separately.

In the summer of 1963, having recently graduated from high school, I participated in the civil rights march on Washington, in which Martin Luther King stated that he wanted his children to be judged by the content of their character rather than the color of their skin. That has been a fundamental principal for me my entire life. I believe it is a principle adopted by the legislature and the governor when this statute was passed. The Ethnic Studies courses in the Tucson Unified School District teach the opposite of this principle.

The United States in general, Arizona in particular, are enriched by the contributions of many cultures, very much including Mexican-American culture. I myself have studied the Spanish language diligently for the past several years, and have learned enough to do my interviews on the Univision and Telemundo television stations in Spanish. In the process, I have learned about Mexican history and culture. As a history buff, I have enjoyed very much being able to read Mexican history books in Spanish.

The standards promulgated by this Department of Education, including a number of specific performance objectives, require that students learn about the contributions of different cultures, including Mexican-American culture. But the point is that all students should be learning together, and they should be learning about the contributions of different cultures. Students should not be divided by race, with each race learning about only its own contribution. School is a place to broaden horizons, not narrow them.

II. The Language of A.R.S. § 15-112(D)

Section 15-112(A) of the Arizona Revised Statutes ("A.R.S.") prohibits a school district or charter school from including in its program any courses or classes that include any of the following:

1. Promote the overthrow of the United States Government.
2. Promote resentment toward a race or class of people.
3. Are designed primarily for pupils of a particular ethnic group.
4. Advocate ethnic solidarity instead of the treatment of pupils as individuals.

Please note that the violation of any one of the above four items constitutes a violation of the statute. A program could be in compliance as to three of the four, and in violation of one of the four, and that would constitute violation under the statute. This finding is that there is a violation of all four criteria, but the focus will be on criteria three and four.

Under paragraph B of A.R.S. § 15-112, either the Superintendent of Public Instruction or the State Board of Education may make a finding. This is a finding of the Superintendent of Public Instruction.

Tucson Unified School District ("District") has four courses under the heading of Ethnic Studies. Three of the four programs could be found in violation under criterion three, courses designed primarily for pupils of a particular ethnic group. However, all of the complaints received by the Superintendent of Public Instruction have been as to one of those programs: Mexican American Studies, previously known as Raza/Mexican American Studies. Therefore, this finding is as to that program alone.

Section 15-112(B) provides that if the State Board or the Superintendent determines that the district has failed to comply within 60 days after a notice has been issued, then 10% of the school district's budget may be withheld. The only way in which compliance can be effective within the next 60 days is by elimination of the Mexican American Studies program. In view of the long history regarding that program, which is set forth below, the violations are deeply rooted in the program itself, and partial adjustments will not constitute compliance. Only the elimination of the program will constitute compliance.

Pursuant to Section 15-112(D), the determination under this statute is subject to appeal pursuant to Title 41, Chapter 6, Article 10, which is a determination by an Administrative Hearing Officer.

III. Category (3): "Are Designed primarily for Peoples of a Particular Ethnic Group"

The Mexican American Studies program is not populated exclusively by students of Hispanic background. Other students attend the course. However, the percentage of students in the course that are of Hispanic background greatly exceeds their overall percentage in the relevant schools. As noted, I wrote the first draft of Section 15-112(B). The language in

subsection 3 was deliberately not “are designed exclusively for pupils of a particular ethnic group,” but rather was “are designed primarily for pupils of a particular ethnic group.” (Emphasis added.) The evidence shows this to be true.

For example, Augustine Romero was the Chairman of the Ethnic Studies Department at TUSD for many years, and is still involved. In a debate against the undersigned on CNN, he was asked the following question and gave the following answer:

Q [by the reporter]: And, Mr. Romero, I want to begin with you. Why not just call the class Mexican studies or – like you would have – Mexican-American studies? Why did you put the word la raza in there, which as you know, too many people connotes a political movement, as opposed to an educational course?

ROMERO: ...so that our students could recognize and connect to their indigenous side, just like the word “dine” for the Navajo translates to ‘the people,’ like the word ‘o’odham’ for the Tohono O’odham translates to ‘the people.’ The word ‘yoeme’ for the Yoeme people translates to ‘the people.’

It was an attempt to connect to our indigenous sides, as well as our Mexican side. (Emphasis added.)

If one of the purposes of this course is “an attempt to connect with our indigenous sides, as well as our Mexican side,” then obviously the course is designed primarily for pupils of a particular ethnic group.”

Furthermore, the page of the District’s website describing the program states that the components of the model under which the program was developed is specifically designed for Hispanic students: “For Latino students, each of [the model’s] components creates both a Latino academic identity and an enhanced level of academic proficiency. The end result is an elevated state of Latino academic achievement.” And, “The Mexican American Studies Department has found that its curriculum, because of its inclusiveness and its critical nature, offers Latino students the opportunity to engage in a learning process which transcends the depth of any previous experience.” Finally, the page includes a graphic indicating that the purpose of the Mexican American Studies Model is “Increased Academic Achievement for Latino Students,” “Academic Proficiency for Latino Students,” and “Academic Identity for Latino Students.” The District’s official description on its website leaves no room for doubt that the Mexican American Studies program is “designed primarily” for Hispanic students.

Additional evidence set forth below will support the satisfaction of this criterion, as well as the other three criteria in the statute.

IV. Testimony by Witnesses

A. Teacher Number 1

Doug MacEachern, a columnist for *The Arizona Republic*, ran a series of investigative reports on ethnic studies. One of his sources was a former TUSD teacher named John Ward, who despite his name, is Hispanic. Ward reports:

But the whole inference and tone was anger. (They taught students) that the United States was and still is a fundamentally racist country to those of Mexican-American kids.

Individuals in this (Ethnic Studies) department are vehemently anti-Western culture. They are vehemently opposed to the United States and its power. They are telling students they are victims and that they should be angry and rise up.

By the time I left that class, I saw a change (in the students), he said. An angry tone. They taught them not to trust their teachers, not to trust the system. They taught them the system wasn't worth trusting.

MacEachern further found:

In the past several weeks, messages have filtered out from teachers and other TUSD employees (some directed to Horne; others who have contacted me, following two previous columns on this subject) about what an officially recognized resentment-based program does to a high school.

In a word, it creates fear.

Teachers and counselors are being called before their school principals and even the district school board and accused of being racists. And with a cadre of self-acknowledged 'progressive' political activists in the ethnic-studies department on the hunt, the race transgressors are multiplying.

The director of the TUSD Ethnic Studies Department, who keeps a portrait of Ché Guevara on the wall of his classroom, spoke to MacEachern: 'Our teachers are left-leaning. They are progressives. They're going to have things (in their courses) that conservatives are not going to like,' he told me.

Ward eventually wrote his own column. He describes how the TUSD administration intimidated him by removing him from his class, and calling him a "racist," even though he himself is Hispanic. This tactic, he writes:

...is fundamentally anti-intellectual because it immediately stops debate by threatening to destroy the reputation of those who would provide counter arguments.

Unfortunately, I am not the only one to have been intimidated by the Raza studies department in this way.

Ward has written further on this subject:

**Condition:** TUSD uses tax payer funded programs to indoctrinate students, based primarily on ethnic divisions, in the belief that there is a war against Latino culture perpetrated by a white, racist, capitalist system.

**Cause:** TUSD has hired a group of radical socialist activists who promote an anti-capitalist and anti-Western Civilization ideology. They use ethnic solidarity as their vehicle of delivery. A climate of outright intimidation has stopped many from standing up to this group for fear of being labeled racists. Further, there is a collective action problem on the part of concerned Arizonans to make TUSD feel the financial pain of continuing these programs.

**Effect:** Impressionable youth in TUSD have literally been reprogrammed to believe that there is a concerted effort on the part of a white power structure to suppress them and relegate them to a second-class existence. This fomented resentment further encourages them to express their dissatisfaction through the iconoclastic behavior we see—the contempt for all authority outside of their ethnic community and their total lack of identification with a political heritage of this country.

B. **Teacher Number 2**

Teacher Number 2 wrote as follows:

I heard him [an ethnic studies teacher] tell his students that the U of A is a racist organization because only 12% of students are Latino and they do not support the Latin students there. I heard him tell students that they need to go to college so they can gain the power to take back the stolen land and give it back to Mexico. He personally told me that he teaches his students that republicans

hate Latinos and he has the legislation to prove it. When I asked him about Mexican American Republicans who are against illegal immigration, he said this is an example of 'self-racism.'

C. Teacher Number 3

Teacher Number 3 wrote as follows:

I have, during the last two years, been attacked repeatedly here at Tucson High by members of the Ethnic Studies department because I question the substance and veracity of their American History and Social Justice Government classes. I have been called racist by fellow Tucson High teachers, members of the Ethnic Studies department, and students enrolled in the departments' classes. These charges come simply because I ask the department to provide the primary source material for the perspective they preach. The teachers of these classes not only refuse to stop the name-calling but openly encourage the students' behavior.

D. Teacher Number 4

Teacher Number 4 wrote, as recently as October 21, 2010, as follows:

I applaud your keen and daring actions against La Raza studies at TUSD. Over the years I began noticing an "open" resentfulness by the Hispanic students. I clearly have been accused by Hispanic students of "not liking Mexicans". That is a quote. I have had Hispanic students tell me that this is NOT the United States of America . . . it is "occupied Mexico". . . I have made simple comments as a substitute such as "please pick up the paper under your desk" only to receive an immediate response of "You don't like Mexicans?" My response was to repeat my request of picking up the papers and calmly add that they must be REALLY confused . . . because I am also of Mexican descent.

E. Teacher Number 5

Hector Ayala was born in Mexico, and is an excellent English teacher at Cholla High School in TUSD. He reports that the director of Raza Studies accused him of being the "white man's agent," and that when this director was a teacher, he taught a separatist political agenda, and his students told Hector that they were taught in Raza Studies to "not fall for the white man's traps."

V. Written Materials

As noted earlier, the name of this course has been Raza Studies or Raza/Mexican American Studies. The very name "Raza" is translated as "the race." On the TUSD website, it said that the basic text for this program is "the Pedagogy of The Oppressed." The author is Paulo Freire, a Brazilian Marxist. Most of these students' parents and grandparents came to this country, legally, because this is the land of opportunity. They trust the public schools with their children. Those students should be taught that this is the land of opportunity, and that if they work hard they can achieve their goals. They should not be taught that they are oppressed.

During the hearings of the Senate Judiciary Committee on the Ethnic Studies bill, the school sent a number of students to testify how much they loved Ethnic Studies. A senator asked a girl whether she could have learned the things she spoke about in other courses. She responded: "No, before I took this course, I didn't realize that I was oppressed. Now that took this course, I realize that I am oppressed."

One of the textbooks is *Occupied America* (5<sup>th</sup> ed.). One of the leaders it talks about is described as follows: "José Angel Gutiérrez was one of the leaders, and he expressed the frustrations of the MAYO generation. His contribution was indispensable; it influenced Chicanos throughout the country."

One of Gutiérrez's speeches is described as follows:

We are fed up. We are going to move to do away with the injustices to the Chicano and if the 'gringo' doesn't get out of our way, we will stampede over him." Gutiérrez attacked the gringo establishment angrily at a press conference and called upon Chicanos to 'kill the gringo,' which meant to end white control over Mexicans.

The textbook's translation of what Gutiérrez meant contradicts his clear language. In describing the atmosphere in Texas where Gutiérrez spoke, the textbook states: "Texans had never come to grips with the fact that Mexicans had won at the Alamo." (P. 323.) It is certainly strange to find a textbook in an American public school taking the Mexican side of the battle at the Alamo.

Another textbook is the *Mexican American Heritage* (2<sup>nd</sup> ed.).

One of the chapters is "The Loss of Aztlan." Aztlan refers to the states taken from Mexico in 1848: Arizona, California, New Mexico and Colorado. This chapter states: "Apparently the U.S. is having as little success in keeping the Mexicans out of Aztlan as Mexico had when they tried to keep the North Americans out of Texas in 1830." (P. 107.) In other

words, books paid for by American taxpayers used in American public schools are gloating over the difficulty we are having in controlling the border. This page goes on to state: "...the Latinos are now realizing that the power to control Aztlan may once again be in their hands."

Materials for the course include a sheet titled "Chicano Resistance Vocabulary Squares."

The students are given an example of student writing including the sentence "we are slowly taking back Aztlan as our numbers multiply." The students are taught poems illustrated by the following:

"Going Back" – Victor E "El Vhu"

We're going back, back to where we came from, back to where the truth dwells,  
AZTLAN...We suffer colonial incarceration so we foster resistance of our own  
occupation.

"Decolonize" – "Aztlan Underground"

Some feel this oppression no longer exists Well here's something they missed – Self D means self determination...Stranger in your own land under exploitation...This is the state of the indigena today...**WE DIDN'T CROSS THE BORDERS, THE BORDERS CROSSED US! YET THE SETTLER NATION LIVES IN DISGUST!** The American dream only for some WASP – White Anglo Saxon Protestant...the frame of mind that keeps our oppression constant...Cihuatl is reclaiming...We have returned to Aztlan!!! We have returned to Aztlan!!!

They are taught an essay called AZTLAN The Lost Land, "The Chicano Homeland" by John R. Chavéz which includes the following:

But to Chicanos the Southwest is more than just their place of residence; it is their homeland, their lost homeland to be precise, the conquered northern half of the Mexican nation...In the mind of the Chicanos, this immense territory remains their patrimony...Mexicans are indigenous to and dispossessed of the region...Chicanos view Southwest as an extension of Mexico and Latin America, a Mexican region spreading beyond what is regarded as an artificial boundary.

A worksheet in association with this essay has a map at the top showing Aztlan as all of Mexico, and some American States, including Texas, Arizona, New Mexico, Utah, Colorado, California and Nevada. Among the questions asked on this worksheet are: "What are the four areas in the southwest that have had a Mexican cultural and demographic influence since the United States imposed its present boundary on Mexico?...In order for Chicanos to have cultural, political, and economic self-determination, what must Chicanos have control of in order to do so?"

In a section of materials called "Conquest and Colonización", the students are taught "We will see how half of Mexico was ripped off by trickery and violence. We will see how Chicanos became a colonized people. In the process of being colonized, we were robbed of land and other resources."

The students are taught "Critical Race Theory." A part of the "Critical Race Theory" is defined by the materials taught to the students as follows: "Unlike traditional civil rights, which embraces incrementalism and step-by-step progress, critical race theory questions the very foundation of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law." (Emphasis added.)

The materials for this class include "A Field Guide for Achieving Equity in School." These materials include: "We often hear people referred to as being privileged, which usually is a comment pertaining to the individual's financial or economic status...In Courageous Conversation, however, privilege takes on a different meaning: it refers to the amount of melanin in a person's skin, hair, and eyes. (This is followed by a table which promulgates racial stereotypes by detailing the differences between "white individualism" "colored group collectivism.") "White people tend to dominate the conversation by setting the tone for how everyone must talk and which words should be used. All of these "White ways" must be recognized, internalized, and then silently acted on by people of color". (This is an example, referring to the statute, of subsection 2, "promote resentment toward a race or class of people")...The aforementioned White cultural characteristics, such as individualism, blur into the consciousness of Whiteness, which becomes not only a way of behaving but also a way of thinking...White people depend on the overwhelming presence of other White people in positions of power and influence to maintain a system of racial advantage. At the same time, many White educators believe that gains in school, as in their own lives, come from individual effort and accomplishment."

At page 200 of these materials, there is a table setting forth in detail the difference between "White Talk" and "Color Commentary." These materials go on to state: "Anger, guilt, and shame are just a few of the emotions experienced by participants as they move toward greater understanding of Whiteness". [If one were to substitute any other race for "Whiteness," it would be obvious how this promotes resentment toward a race or a people.

The materials go on to state: "White Americans often feel a unique sense of entitlement to Americanism, partly because many never travel beyond the borders of the United States." All of these kinds of racist propaganda are fed to young and impressionable students, who swallow them whole, as illustrated by the rude behavior of some students during an address by Margaret Garcia Dugan and subsequent demonstrations. The education they are receiving, to deal with disagreements in an uncivil manner, will be dysfunctional for them as adults. It becomes the duty of the people of Arizona, through their elected leaders, as

authorized by A.R.S. § 15-112, to put a stop to this, and to be sure that taxpayer-funded public schools teach students to treat each other as individuals, and not on the basis of the race they happen to have been born into.

These are some examples, that and are not an exhaustive list of the ways in which this course violates ARS § 15-111.

VI. Conclusion

The Superintendent of Schools finds that the Tucson Unified School District is in violation of A.R.S. § 15-112 and A.R.S. § 15-843, and, pursuant to those statutes, the school district has 60 days to eliminate the Mexican American Studies courses, however they are named, and has 90 days to eliminate the race-based discipline rules. Failure to comply within those time periods will subject the Tucson Unified School District to having 10 percent of its budget withheld.



Tom Horne  
Superintendent of Public Instruction

Date: December 30, 2010