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11 *ex rel. Attorney General Thomas C. Horne*

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 ROY and JOSIE FISHER, et al.,
15 Plaintiffs,
16 UNITED STATES OF AMERICA,
17 Plaintiff-Intervenor

18 vs.
19 ANITA LOHR, et al.,
20 Defendants.

21 and
22 SIDNEY L. SUTTON, et al.,
23 Defendants-Intervenors.

24 MARIA MENDOZA, et al.,
25 Plaintiffs,
26 UNITED STATES OF AMERICA,
27 Plaintiff-Intervenor,

vs.
TUCSON UNIFIED SCHOOL DISTRICT NO.
ONE, et al.,
Defendants.

Case No. 4:74-cv-00090-DCB (lead)

COMPLAINT IN INTERVENTION

Case No. 4:74-cv-00204-DCB (consolidated)

Honorable David C. Bury

1 As the chief legal officer for the proposed Plaintiff-Intervenor State of Arizona, the
2 Attorney General of the State of Arizona brings this action for intervention on behalf of the
3 State and alleges as follows:

4 **PARTIES**

- 5 1. The Plaintiff-Intervenor, State of Arizona, is a sovereign state of the United
6 States.
- 7 2. Plaintiff United States of America is a sovereign government of those limited
8 enumerated powers specified in the Constitution of the United States.
- 9 3. Defendant Tucson Unified School District No. 1 (“TUSD”) is a school district
10 located in the State of Arizona.
- 11 4. The State incorporates by reference the designation of the remaining parties
12 identified in the Complaint. (Doc. 1.)

13 **JURISDICTION AND VENUE**

- 14 5. This Court has jurisdiction over this case under 28 U.S.C. § 1345 because the
15 United States initiated the civil action against TUSD.
- 16 6. This Court has jurisdiction over the complaint in intervention pursuant to 28
17 U.S.C. § 1331 because the State’s cause of action arises under the Constitution of the United
18 States.
- 19 7. This Court also has supplemental jurisdiction over the complaint in
20 intervention pursuant to 29 U.S.C. § 1367 because the State’s claims are so related to the
21 claims in the action that they form part of the same case or controversy under Article III of
22 the United States Constitution.
- 23 8. Venue lies in the District of Arizona pursuant to 28 U.S.C. § 1391 because a
24 substantial portion of the events or omissions giving rise to the claims alleged occurred
25 within the judicial district of the United States District Court for the District of Arizona.
- 26
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TENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

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2 9. The Tenth Amendment of the United States Constitution reserves any power
3 not expressly delegated to the federal government to the states. U.S. Const. amend. X.

4 10. The Tenth Amendment constrains the federal government from interfering
5 with the powers reserved to the states.

6 11. The education of Arizona’s school children is not delegated to the federal
7 government. As a sovereign state, Arizona retains the authority to set educational policy for
8 its citizens. The implementation of a Unitary Status Plan (“USP”) that impairs the
9 administration of state educational policy impermissibly interferes with Arizona’s exercise of
10 its retained powers under the federal constitution.

11 **HB 2281**

12 12. In 2010, the Arizona Legislature passed a bill that the governor signed into
13 law. The law, Arizona House Bill (“HB”) 2281, codified at Arizona Revised Statutes
14 (“A.R.S.”) § 15-111 and -112, is a legislative expression of state educational policy that went
15 into effect on January 1, 2011. HB 2281 prohibits any public district school or charter
16 school from including any courses or classes that (1) promote the overthrow of the United
17 States government, (2) promote resentment toward a race or class of people, (3) are designed
18 primarily for pupils of a particular ethnic group, or (4) advocate ethnic solidarity instead of
19 the treatment of pupils as individuals in its course of study. A.R.S. § 15-112.

20 13. If a public school district or charter school violates the law, the Superintendent
21 or the State Board of Education (“Board”) may notify a district that one or more of its
22 programs have been deemed to be in violation of the statute. A.R.S. § 15-112(B). If a notice
23 of violation is issued to any school district or charter school, the statute gives the district or
24 school sixty days to bring the program into compliance. *Id.* If compliance is not achieved
25 within sixty days, the statute empowers the Superintendent or the Board to “direct the
26 department of education to withhold up to ten per cent of the monthly apportionment of state
27 aid that would otherwise be due the school district or charter school.” *Id.* All withheld

1 monies are “restored” to the school district or charter school once the program has been
2 brought into compliance, even after the sixty-day window. *Id.*

3 **Tucson Unified School District’s Violation of HB 2281**

4 14. On January 3, 2011, the former Superintendent of Public Instruction, Tom
5 Horne, found that the Mexican-American Studies (“MAS”) program at Tucson Unified
6 School District No. 1 (“TUSD”) violated § 15-112. His successor in office, John Huppenthal
7 (“Superintendent”), initiated his own investigation into the MAS program at TUSD for
8 possible non-compliance of the law.

9 15. The Superintendent subsequently determined that TUSD’s MAS program
10 violated HB 2281 and initiated enforcement of HB 2281. TUSD appealed the
11 Superintendent’s decision to the state Office of Administrative Hearings. After a four-day
12 hearing, an independent and objective Administrative Law Judge Kowal (“ALJ”) found that
13 TUSD violated the law and upheld the Superintendent’s action. The Superintendent
14 accepted the decision of the ALJ and issued an order to the Arizona Department of
15 Education (“ADE”) to withhold ten percent of the monthly apportionment of state aid that
16 would otherwise be due to TUSD retroactive from August 15, 2011, until such time that
17 TUSD corrected its violation of A.R.S. § 15-112.

18 16. On or about January 10, 2012, before ADE withheld any funds, the TUSD
19 Governing Board suspended the MAS program in order to revise the curriculum and
20 implement a balanced pedagogy that would comply with HB 2281.

21 **The Unitary Status Plan**

22 17. On or around July 19, 2011, the Ninth Circuit Court of Appeals determined
23 that TUSD failed to achieve unitary status sufficient to terminate the district court’s
24 jurisdiction over the school district. *Fisher v. Tucson Unified Sch. Dist.*, 652 F.3d 1131 (9th
25 Cir. 2011).

26 18. On January 6, 2012, this Court appointed a Special Master to oversee the
27 development and implementation of a new USP for TUSD. (Doc. 1350.)

1 19. On January 13, 2012, TUSD filed a notice with the Court in this case,
2 informing the Court and the Special Master that TUSD's Governing Board had suspended
3 the MAS program. (Doc. 1352.)

4 20. In response to this notice, the Mendoza plaintiffs requested the Special Master
5 order TUSD to reinstate the MAS program. (Doc. 1354.)

6 21. The Special Master recommended that the Court acknowledge that the TUSD
7 Governing Board action violated the Post-Unitary Status Plan ("PUSP"), which was
8 supposed to govern the actions of the district until a USP is approved by the Court. (Doc.
9 1361.) However, the Special Master did not recommend that the Court order the
10 reinstatement of the MAS courses. (*Id.*) Instead, he asserted that the USP that he was
11 preparing would include "comprehensive strategies for moving forward to ensure a quality
12 education for all of the district's students, the majority of whom are Mexican American."
13 (*Id.*) The Special Master noted that "courses rich in the historical and contemporary
14 experiences-both negative and positive-of the different racial and ethnic groups represented
15 in the TUSD should be available, if not required, for all students in the district." (*Id.*)

16 22. The Special Master announced his intent to consult with the Tucson
17 community, district staff, the TUSD Governing Board, and nationally prominent scholars to
18 consider how best to implement a district-wide ethnically and culturally relevant curriculum.
19 (*Id.*) He did not indicate any intent to consult with any representative from the State who
20 would represent the State's interest in the administration of its laws. The breadth of the
21 Special Master's statement of intent suggests that the resulting ethnic studies curricula may
22 violate HB 2281.

23 23. On February 29, 2012, the Court issued an order refusing to reinstate the
24 TUSD MAS program, stating that "[t]he Court finds that the question of whether MASD
25 courses should be reinstated may be adequately addressed within the context of the
26 development of the USP in the same way that all the provisions in the PUSP are being
27 considered for inclusion in the USP." (Doc. 1360.)

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Dated this 10th day of May, 2012.

THOMAS C. HORNE
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CERTIFICATE OF SERVICE

I certify that I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following, if CM/ECF registrants, and mailed a copy of same to any non-registrants, this 10th day of May, 2012 to:

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