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10 Attorneys for Plaintiffs

11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

12 IN AND FOR THE COUNTY OF MARICOPA

13 PERLA ESPINOZA; and HANNAH
14 GONZALES, on behalf of themselves and
all others similarly situated,

15 Plaintiffs,

16 v.

17 STATE OF ARIZONA; STATE BOARD
18 OF EDUCATION; AND TOM HORNE,
SUPERINTENDENT OF PUBLIC
19 EDUCATION,

20 Defendants.

No. CV2006-005616

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

21
22 **PRELIMINARY STATEMENT**

23 1. This case is brought on behalf of all students in Arizona, including low income
24 or economically disadvantaged students, racial and ethnic minority students, and current and
25 previous English Language Learners in Arizona, who have satisfied or will satisfy all state
26 and local school district high school graduation requirements, and are eligible or will be
27 eligible to graduate from an Arizona high school, except that they have not passed all three
28 parts of the state high stakes exit exam, called the Arizona Instrument to Measure

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1 Standards (“AIMS”). These students have attended up to thirteen years of public schooling.

2 2. Plaintiffs are students, including economically disadvantaged students and/or
3 racial and ethnic minority students and/or current or previous English Language Learners
4 in the Class of 2006 who have not passed the AIMS test.

5 3. Defendants are responsible for the funding and operation of Arizona public
6 and charter schools. Plaintiffs contend that because education is a fundamental right in
7 Arizona, Defendants cannot deprive students of the fruits of their education unless it is
8 necessary to further a compelling state interest. Plaintiffs contend there is no compelling
9 state interest in requiring the diploma penalty, and depriving these students of their diplomas
10 is not necessary to accomplish any state interest, when Defendants’ funding of education is
11 arbitrary and not related to educational need; Defendants have not offered students an
12 alternative path to graduation; and Defendants have not published their validity data for the
13 current AIMS test. Plaintiffs also contend that Defendants have failed to provide the
14 programs and services necessary so that Plaintiffs and other economically disadvantaged
15 students and/or racial and ethnic minority students and/or current or previous English
16 Language Learners could obtain the skills necessary to pass the AIMS tests, in violation of
17 the Arizona and Federal Constitutions and federal law.

18 4. As a result of Defendants’ high stakes test and diploma penalty thousands of
19 students may not graduate from high school. As a result of Defendants’ high stakes test,
20 diploma penalty and their failure to adequately fund and provide necessary programs and
21 services, low income students, minority students, and English Language Learners are failing
22 the AIMS test in disproportionate numbers and will not be able to graduate from high school
23 starting in 2006. The failure to graduate from high school will have drastic social and
24 economic impacts on these students. Students without a high school diploma will have a
25 75% higher unemployment rate than high school graduates; will be two times as likely to be
26 poor; will earn 30% less than high school graduates; and will have an increased reliance on
27 public assistance. Significantly, two-thirds of all state prison inmates in this country did not
28 graduate high school. In addition, students who do not graduate from high school cannot

1 attend universities and do not qualify for financial aid. The denial of a high school diploma
2 will cause these students and their families considerable emotional stress and humiliation.

3 5. Plaintiffs seek declaratory relief that Defendants' requirement that students
4 pass the AIMS test is unconstitutional because Defendants' educational funding is arbitrary;
5 Defendants have not provided an alternative path to graduation; and Defendants have not
6 published their validity data for the current AIMS test, and injunctive relief that Defendants
7 may not require students to pass the AIMS test in order to graduate. Plaintiffs also seek
8 declaratory relief that Defendants have not provided the funding and programs necessary for
9 them to achieve the academic standards and to pass the AIMS test, and injunctive relief that
10 Defendants may not require economically disadvantaged students, racial and ethnic minority
11 students and current or previous English Language Learners to pass the AIMS test in order
12 to graduate until the Defendants provide the necessary funding and programs.

13 **Parties**

14 6. The Plaintiffs are students, including low income students, racial and ethnic
15 minority students, and current and previous English Language Learners in the Arizona
16 public school system in the Class of 2006, and each succeeding class, who have not passed
17 the AIMS test.

18 7. Plaintiff Perla Espinoza is an 18 year old senior at Nogales High School in
19 Nogales, Arizona. She is Hispanic. Ms. Espinoza has met all the requirements to graduate,
20 or will meet those requirements this semester, except she has not passed any part of the
21 AIMS test. Ms. Espinoza wants to go to college and get a good job. The requirement that
22 she pass the AIMS test to graduate and receive a diploma, stands in her way. Ms. Espinoza
23 participates in the reduced lunch program at her high school. Previously, she was in English
24 Language Learner classes.

25 8. Plaintiff Hannah Gonzales is a 19 year old senior at Coronado High School
26 in Scottsdale. She is Native American. Ms. Gonzales has met all the requirements to
27 graduate, or will meet those requirements this semester, except that she has not passed the
28 mathematics and reading parts of the AIMS test. Ms. Gonzales wants to go to college, get

1 a good paying job and become independent. What stands in the way of her dreams is the
2 AIMS requirement to be able to graduate and receive a diploma.

3 9. The State of Arizona is a body politic.

4 10. Defendant State Board of Education is the agency of the State of Arizona with
5 the duties and responsibilities enumerated in the Arizona Constitution and statutes.

6 11. Defendant Tom Horne is the Superintendent of Public Instruction for the State
7 of Arizona, and is sued in his official capacity.

8 JURISDICTION AND VENUE

9 12. This action arises under the Arizona State Constitution, the United States
10 Constitution, 42 U.S.C. § 1983, and federal law. The Court has jurisdiction pursuant to
11 A.R.S. § 12-123.

12 13. Plaintiffs' action for declaratory, injunctive, and other appropriate relief is
13 authorized by A.R.S. §§ 12-1801 and 12-1831.

14 14. Venue is proper under A.R.S. § 12-401.

15 CLASS ALLEGATIONS

16 15. Plaintiffs bring this suit both individually and on behalf of a statewide class
17 of similarly situated persons pursuant to Arizona Rules of Civil Procedure, Rules 23(a) and
18 (b)(2). The class is comprised of high school students in Arizona in the Class of 2006 and
19 members of each succeeding senior class, who will satisfy or have satisfied all the
20 requirements to graduate from high school except the requirement to pass all three parts of
21 the AIMS test. The class has three subclasses:

- 22 a. Students who are economically disadvantaged;
- 23 b. Students who are racial and ethnic minorities; and
- 24 c. English Language Learners.

25 16. The prerequisites of Rule 23(a) are met in that:

- 26 a. The class is so numerous that joining all members is impracticable.
27 The exact size of the class is unknown but includes at least 10,000
28 Arizona public high school students in the Class of 2006. The class

1 members are geographically dispersed, have limited financial
2 resources, and are unlikely to institute individual actions;

3 b. There are issues of fact and law concerning Defendants' policies that
4 are common to all members of the class;

5 c. The claims of the named Plaintiffs are typical of the claims of the class
6 they represent; and

7 d. Plaintiffs and their counsel will fairly and adequately protect the
8 interests of the class.

9 17. The prerequisites of Rule 23(b) are met in that Defendants have acted or
10 refused to act on grounds generally applicable to all members of the class, making final
11 declaratory and injunctive relief appropriate with respect to the class as a whole.

12 **Arizona's Dismal Rankings in Education**

13 18. In almost every measure of the state of education, Arizona ranks at or near the
14 bottom in national rankings, including spending per pupil, classroom size and the ratio of
15 students to teachers.

16 19. A recent national study of 21 education factors placed Arizona in last place in
17 the 50-state rankings. "Results of the 2005 Smartest State Award." Morgan Quitno Press.

18 20. In another study "Quality Counts 2006," by Editorial Projects in Education,
19 Arizona was rated a "D+" in resource equity based on a finding of "a relatively high degree
20 of disparity in funding levels across the state's school districts" and a "D" in efforts to
21 improve teacher quality finding Arizona "second to last in the nation for its efforts to
22 improve teacher quality." www.edweek.org/ew/qc/2006/multiple_state_data.html.

23 21. The Arizona Department of Education's strategic plan for FY 2007-2011
24 acknowledges that per pupil spending in Arizona has declined. From 2001 to 2004, per
25 pupil spending in constant dollars decreased by 9%. [www.ade.az.gov/administration/2006-
26 10StrategicPlan.doc](http://www.ade.az.gov/administration/2006-10StrategicPlan.doc). (page 17).

27 22. The strategic plan also acknowledges that "[t]he number of students for every
28 teacher is getting larger in Arizona and, as a result, students are getting less individual

1 attention. Arizona ranks near the bottom (46 of 50) in the number of students for each
2 teacher.” (page 17).

3 23. In addition, the strategic plan acknowledges that “[e]lementary schools are too
4 large.” The average size of an Arizona elementary school is 12% higher than the national
5 average. The plan also conceded that “[s]chools desperately need repairs,” and parental
6 involvement is low in many schools. (page 17).

7 24. Given this state of education, the Department’s own projections for the
8 “overall percentage of high school students meeting or exceeding AIMS standards” by grade
9 and subject expect no improvement in achievement from 2005 to 2007. The Department
10 expects only 34% of 12th graders to meet or exceed state academic standards on AIMS in
11 reading; 41% in writing; and only 29% in math. (page 24).

12 25. In the strategic plan, under “Resource Assumptions,” the Department of
13 Education assumes “lack of appropriate funding;” “schools’ lack of ability to serve at risk
14 students;” “student drop out rate/juvenile crime increasing;” “shortage of certified CTE
15 teachers;” “teacher shortage/turnover (teaching out of content area);” and “inadequate
16 number of qualified teachers.” (page 57).

17 26. Arizona students score below the national average on the National Assessment
18 of Educational Progress (“NAEP”) tests. As an example, only 26% of the 8th graders in
19 2005 scored at or above the proficient level in mathematics and only 23% of 8th graders
20 scored at or above the proficient level in reading. National Center of Education Statistics.
21 www.nces.ed.gov/nationsreportcard/states/profiles.asp. Students who are economically
22 disadvantaged, scored significantly below students who are not economically disadvantaged,
23 and African-American, Hispanic and Native American students scored significantly below
24 white students.

25 27. Using graduation rates before the imposition of AIMS as a graduation
26 requirement, Arizona has one of the nation’s highest rates for students dropping out of high
27 school. Although Arizona does not report dropout rates using federal dropout definitions,
28 Arizona’s dropout rate for 12th graders since 2001 was 9.6 - 10.7% each year and for 11th

1 graders was 7.1 - 8.8% each year. www.ade.az.gov/researchpolicy/DropoutInfo2004-
2 2005_DOR_report010506.pdf. Table I. These high numbers do not include thousands of
3 students whose status is “unknown.” Table 2.

4 **Arizona Instrument to Measure Standards**

5 28. Under Arizona law, the State Board of Education (“Board”) is required to
6 prescribe academic standards for Arizona’s public schools. A.R.S. §§ 15-701, 15-701.01.
7 Pursuant to that requirement, the Board has adopted academic standards in at least the areas
8 of reading, writing, mathematics, science and social studies.

9 29. The State Board of Education is also required to prescribe competency
10 requirements that incorporate the academic standards adopted by the Board for promotion
11 of students from the third and eighth grades and for the graduation of students from high
12 school. A.R.S. § 15-701(A).

13 30. The State Board of Education is also required to develop and adopt
14 competency tests that incorporate the academic standards in at least the areas of reading,
15 writing and mathematics for the graduation of students from high school. A.R.S. § 15-
16 701.01(A)(3). Since at least 1995, the State Board of Education has adopted the Arizona
17 Instrument to Measure Standards (“AIMS”) prescribed by A.R.S. § 15-741 as the required
18 competency test for graduation from high school.

19 31. Beginning with the graduating Class of 2006, all public and charter high
20 school students must pass the AIMS test in order to graduate.

21 32. The psychometricians who build tests have always agreed that no one measure
22 should be used for such a high-stakes decision. Standard 13.7 of the Standards for
23 Educational and Psychological Testing by the American Educational Research Association,
24 American Psychological Association, and National Council on Measurement in Education
25 (1999) states that “In educational settings, a decision or characterization that will have major
26 impact on a student should not be made on the basis of a single test score. Other relevant
27 information should be taken into account to enhance the overall validity of the decision.”
28 (page 146). This standard reflects a belief that is held by nearly all test experts.

1 33. While approximately half of the states utilize high school exit exams, two-
2 thirds of the states that have an exit exam, allow for alternative paths, or alternative
3 performance assessments or measurements.

4 34. Defendants have not provided Arizona students with an alternative path, or
5 alternative performance assessment, to passage of the AIMS test, for high school graduation.

6 35. In May 2005, A.R.S. § 15-701.02 was amended to allow seniors in the class
7 of 2006 and 2007 to augment their AIMS scores under limited circumstances, based on
8 certain grades received in specified classes. The administrative rule, R7-2-302.05, was not
9 adopted until August 22, 2005, after most seniors in the class of 2006 had already begun
10 school and after most of their course work for graduation was completed. Students did not
11 have adequate notice of this limited process.

12 36. Thus, many public high school students who fail any part of AIMS will be
13 denied a high school diploma.

14 37. On information and belief, Defendants set the passing scores for the AIMS test
15 in Spring 2005 in an arbitrary manner and have not published any validity data for the
16 version of the AIMS test used since the Spring of 2005.

17 **Arizona's Educational Finance System**

18 38. The Arizona Constitution requires the state to take action including
19 appropriations "as shall insure the proper maintenance of all State educational institutions,
20 and shall make such special appropriations as shall provide for their development and
21 improvement." Arizona Constitution, Article XI, § 10.

22 39. Arizona's educational finance system generally provides each school district
23 will have a minimum amount of funds to spend for the education of each student. The
24 school finance system does this by authorizing school districts to establish budgets based
25 upon a minimum dollar amount for each student. The revenues to fund the system are
26 produced through a combination of state and local revenues. The school districts' relative
27 contribution to the total amount is related to the assessed valuation of property within the
28 school district. For school districts that cannot generate the budget limit through the levy

1 of the state's qualifying tax rate, the state provides the difference so that each school district
2 has approximately the same amount of funding to spend on each student.

3 40. Arizona's educational finance system is over 25 years old. The base level per
4 pupil was originally established in the late 1970's and has not been adjusted in the last 25
5 years, except for some inflation and retirement costs. This funding level was not adjusted
6 for the introduction of the state academic standards or the requirement that students pass the
7 AIMS test to graduate.

8 41. The school funding system is not based on educationally relevant factors and
9 is not based on any determinations of the funding levels that are necessary to provide an
10 adequate education for all students so they can meet the achievement standards.

11 42. Defendants have not determined or attempted to determine the funding that
12 is necessary to address the needs and costs of the public school system. Nor have
13 Defendants determined or attempted to determine the cost to provide students with an
14 adequate education in general, or specifically the costs to provide the services and programs
15 needed by economically disadvantaged students, who are disproportionately students of
16 color, to obtain an adequate education.

17 43. The educational finance system and its funding formula fail to provide
18 additional funds for resources and programs to address the special needs of economically
19 disadvantaged students in general, and specifically for those students who have not passed
20 the AIMS test.

21 44. The educational finance system and its funding formula fail to provide
22 additional funds for resources and programs for racial and ethnic minority students who
23 have not passed the AIMS test.

24 45. The minimum base level that the state educational finance system provides for
25 each student was not intended or designed to address the special educational needs of
26 economically disadvantaged students or the high failure rates of educationally disadvantaged
27 students and racial and ethnic minority students on the AIMS test.

28 46. Arizona's educational finance system results in Arizona having one of the

1 lowest state funding levels per student on education in the United States. Arizona's current
2 funding level per student places it next to the bottom of all states. Forty-four states spend
3 at least 20% more per pupil than Arizona. Morgan Quitno Press, "Results of the 2005
4 Smartest State Award," page 49.

5 47. Arizona's Superintendent of Public Education spent over twelve (12) million
6 dollars in "achievement testing" in the year ending June 30, 2005. In marked contrast, the
7 state provided only approximately \$500,000 last year for "AIMS Intervention - Dropout
8 Prevention," pursuant to A.R.S. § 15-809. Information from document entitled "Financial
9 Services - State Funds - Statement of Revenues and Expenditures July 1, 2004 to June 30,
10 2005," published by the Arizona Department of Education..

11 48. Defendants have failed to fund the programs and services the state's most at-
12 risk students need to achieve the academic standards and pass the AIMS test.

13 **The Right to an Education**

14 49. The right to an education is a fundamental right under the Arizona
15 Constitution.

16 50. The right to an education, and thus, the fruits of that education, a high school
17 diploma, cannot be denied except for a compelling state interest.

18 51. In addition, because education is a fundamental right for every student in
19 Arizona, Arizona's funding of education is subject to strict scrutiny. The state must
20 determine what the costs are to meet the educational needs of students and then provide
21 those costs.

22 52. Having set educational standards, the state must provide students with
23 sufficient resources and programs for the students to achieve those standards.

24 53. The Arizona Constitution prohibits discrimination in educational
25 opportunities. Arizona Constitution, Article II, § 13.

26 54. Defendants have a constitutional obligation to establish and maintain a general
27 and uniform public school system. Arizona Constitution, Article XI, § 1.

28 55. A general and uniform educational system is one that provides adequate

1 funding to provide all students with a constitutionally adequate education, including the
2 services and programs the students need for a meaningful opportunity to achieve the state's
3 prescribed minimum academic standards and pass the AIMS test.

4 56. A constitutional funding mechanism must provide sufficient funds to educate
5 children to enable the students to master the academic standards and pass the AIMS test. To
6 be constitutional, the funding mechanism must be based on educational needs and costs.

7 57. Arizona students have a property interest in the receipt of a high school
8 graduation diploma. United States Constitution, Amendment XIV; Arizona Constitution,
9 Article II, § 4.

10 **Economically Disadvantaged Students**

11 58. One measure of the socioeconomic status of students is their participation in
12 the federal free and reduced lunch program. Students with family incomes at or below 185%
13 of the federal poverty level are eligible for the reduced-price school lunches, and families
14 with incomes at or below 130% of the federal poverty level are eligible for the free school
15 lunches. 42 U.S.C. § 1758(b).

16 59. The federal law, No Child Left Behind, 20 U.S.C. § 6301 *et seq.*, requires the
17 State of Arizona to report how economically disadvantaged students perform on academic
18 tests. Arizona also is required to monitor the academic progress of economically
19 disadvantaged students. For economically disadvantaged students, Arizona reports the
20 academic test results of students participating in the free and reduced lunch program.

21 60. There are approximately 1,053,500 students currently attending Arizona's
22 public schools. On information and belief, at least 40% of the students in Arizona qualify
23 for free and reduced lunch programs.

24 61. Students from economically disadvantaged households are at substantial risk
25 of failing in public school if they are not provided with the programs and services that are
26 necessary in order for them to overcome the disadvantages that their socioeconomic status
27 creates for them.

28 62. In general, Arizona's educational finance system provides an amount to each

1 school district so that each district has approximately the same amount of funding to spend
 2 on each student. Arizona's educational finance system fails to provide any specific funding
 3 for programs or services necessary for economically disadvantaged students to succeed on
 4 the state's academic standards.

5 63. Economically disadvantaged students generally and disproportionately fail to
 6 achieve the academic standards adopted by the State Board of Education. As a result, they
 7 fail to meet the competency requirements prescribed by the State Board of Education and
 8 disproportionately fail to pass the AIMS test.

9 64. Plaintiffs' counsel submitted public records requests to Defendant Horne
 10 requesting the passing rate on the AIMS test for economically disadvantaged students in the
 11 class of 2006. Documents produced by the Arizona Department of Education show that
 12 economically disadvantaged students in the Class of 2006 have passing rates throughout
 13 high school far below the passing rates for non-economically disadvantaged students.

14 65. For Spring 2004, 10th grade students, their pass rates were the following:

<u>Students</u>	<u>Pass Rates</u>		
	<u>Mathematics</u>	<u>Reading</u>	<u>Writing</u>
Economically Disadvantaged	19%	35%	42.1%
Non-Economically Disadvantaged	45.2%	65.7%	66.3%

19 66. For Fall 2004, 11th grade students, their pass rates were the following:

<u>Students</u>	<u>Pass Rates</u>		
	<u>Mathematics</u>	<u>Reading</u>	<u>Writing</u>
Economically Disadvantaged	14.3%	22.3%	26.4%
Non-Economically Disadvantaged	28.4%	33.6%	39.6%

24 67. For Spring 2005, 11th grade students, their pass rates were the following:

<u>Students</u>	<u>Pass Rates</u>		
	<u>Mathematics</u>	<u>Reading</u>	<u>Writing</u>
Economically Disadvantaged	46.5%	40.4%	37.9%
Non-Economically Disadvantaged	58.9%	56.1%	57.1%

1 68. For Fall 2005, 12th grade students, their pass rates were the following:

<u>Students</u>	<u>Pass Rates</u>		
	<u>Mathematics</u>	<u>Reading</u>	<u>Writing</u>
Economically Disadvantaged	10.5%	17.6%	21.6%

5 The pass rates for non-economically disadvantaged students were not produced.

6 69. On information and belief, after the Fall 2005 AIMS test, at least 8,000
7 economically disadvantaged students in the senior Class of 2006 have not passed all three
8 parts of the AIMS test, although most have taken the AIMS test four times in high school.

9 70. Defendants have known that economically disadvantaged students were
10 disproportionately not achieving proficient academic levels since at least 1998 and
11 disproportionately failing AIMS since at least 2002. Despite this knowledge, Defendants
12 have not taken steps to provide the additional funding and programs necessary so that
13 economically disadvantaged students can obtain a basic education. The only additional
14 resources provided to assist students to pass AIMS were a one-time stipend for 10 hours of
15 instruction per student offered in the Spring of 2005 to all students in the Classes of 2005
16 and 2006, and a recent tutorial program. These programs were too little and too late.

17 71. There are known and effective programs to assist economically disadvantaged
18 students in overcoming those barriers to success in school and achieving the state's
19 prescribed academic standards. Those programs and strategies include smaller class sizes,
20 preschool programs, full-day kindergarten, after school programs, tutoring programs and
21 parental involvement programs.

22 72. Despite the known effectiveness of such programs in overcoming the barriers
23 to academic success for economically disadvantaged students, the Arizona's educational
24 finance system does not specifically provide funding for such programs.

25 73. Without the provision of the supplemental programs that are known to be
26 effective in overcoming barriers to academic success for economically disadvantaged
27 students, those students have been denied the opportunity to acquire the basic education that
28 is necessary in order for them to meet Arizona's prescribed minimum academic standards

1 and pass the AIMS test.

2 74. Defendants have denied economically disadvantaged students a meaningful
3 opportunity to acquire the skills necessary to master the state's minimum prescribed
4 academic standards by failing to provide the programs that are necessary and appropriate in
5 order for them to do so.

6 **Racial and Ethnic Minority Students**

7 75. There are approximately 530,000 racial and ethnic minority students in
8 Arizona's public schools.

9 76. These students include African-Americans, Hispanics and Native Americans.

10 77. Title VI of the Civil Rights Act of 1964 ("Title VI") provides that "[n]o person
11 ... shall, on the grounds of race, color, or national origin ... be subjected to discrimination
12 under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d
13 *et seq.*

14 78. Defendants receive federal financial participation to operate Arizona's public
15 schools.

16 79. As recipients of federal funds, Defendants are prohibited from discriminating
17 against students based on race, color or national origin.

18 80. The United States Department of Education ("USDE") is the federal agency
19 with the authority to enforce Title VI. Pursuant to that authority, USDE promulgated 34
20 C.F.R. § 100.3(b)(2), which prohibits activity in federally-funded programs that has the
21 effect of subjecting individuals to discrimination because of their race, color or national
22 origin. That regulation provides in relevant part:

23
24 A recipient, ... may not ... utilize criteria or methods of
25 administration which have the effect of subjecting individuals
26 to discrimination because of their race, color, or national origin,
or have the effect of defeating or substantially impairing
accomplishment of the objectives of the program as respect
individuals of a particular race, color, or national origin.

27 81. For over 26 years, the federal government has relied upon a regulation to
28 determine when a test has an adverse or discriminatory impact. That regulation provides

1 that if the passing rate on a test for any racial or ethnic group is less than 80% of the rate for
2 the highest group, then the impact of the test is adverse. 29 C.F.R. § 1607.4(D).

3 82. Since its inception, racial and ethnic minority students have failed all three
4 sections of the AIMS in disproportionate numbers.

5 83. Since its inception, AIMS tests results consistently show that African-
6 American, Hispanic, and Native American students have pass rates well below the 80% pass
7 rates for comparable white students.

8 84. The Arizona Department of Education publishes the pass rates for students
9 taking the AIMS test on its website www.ade.state.az.us. The following are the reported
10 pass rates on the AIMS test for the Class of 2006 throughout their high school years
11 published by the Arizona Department of Education on its website. For Spring 2004, 10th
12 grade students in category 1 (which excludes students in category 2 whose first language is
13 not English and are in the process of learning English) their pass rates were the following:

<u>Students</u>	<u>Pass Rates</u>		
	<u>Mathematics</u>	<u>Reading</u>	<u>Writing</u>
White	53%	76%	73%
African-American	23%	49%	58%
Hispanic	20%	37%	47%
Native American	17%	31%	43%

20 In each category, except for African-American students in writing, the racial and ethnic
21 minority students did not have pass rates at 80% of the pass rate for white students.

22 85. For Fall 2004, 11th grade students, their pass rates were the following:

<u>Students</u>	<u>Pass Rates</u>		
	<u>Mathematics</u>	<u>Reading</u>	<u>Writing</u>
White	32%	53%	59%
African-American	17%	34%	48%
Hispanic	15%	26%	36%
Native American	13%	25%	38%

1 Here, also, the only group that barely passed at 80% of the rate for white students, was
2 African-American students in writing.

3 86. For Spring 2005, 11th grade students, their pass rates were the following:

<u>Students</u>	<u>Pass Rates</u>		
	<u>Mathematics</u>	<u>Reading</u>	<u>Writing</u>
White	69%	67%	67%
African-American	54%	50%	48%
Hispanic	53%	49%	48%
Native American	47%	46%	41%

10 For this test, no racial or ethnic minority student group had a pass rate that was 80% of the
11 pass rate for white students.

12 87. For Fall 2005, 12th grade students, their pass rates were the following:

<u>Students</u>	<u>Pass Rates</u>		
	<u>Mathematics</u>	<u>Reading</u>	<u>Writing</u>
White	54%	67%	69%
African-American	35%	47%	45%
Hispanic	37%	47%	49%
Native American	34%	48%	45%

19 For this test, no racial or ethnic minority group had a pass rate that was 80% of the pass rate
20 for white students.

21 88. On information and belief, after the Fall 2005 AIMS test, in category 1, there
22 were over 4,000 Hispanic, 700 African-American and 900 Native American students in the
23 senior Class of 2006, who had not passed the AIMS test, although most had taken the AIMS
24 test four times in high school.

25 89. Defendants have known of the disproportionate adverse impact of the AIMS
26 test on racial and ethnic minority students for at least 10 years.

27 90. Despite this knowledge, Defendants have not taken action necessary to remedy
28 the discriminatory effects of the AIMS test. Defendants have failed to provide racial and

1 ethnic minority students with additional programs and services necessary to enable these
2 students to pass the AIMS test. The only additional resources provided were a one-time
3 stipend for 10 hours of instruction offered to all students in the spring of 2005 and a recent
4 tutorial program. These programs were too little and too late.

5 **ENGLISH LANGUAGE LEARNERS**

6 91. Students who are not proficient in English and are in English Language
7 Learner (“ELL”) classes have their AIMS results reported in a separate category, category
8 2. The largest percentage of these students is Hispanic. For English Language Learners in
9 the Class of 2005, approximately 2,500 students have not passed all three parts of the AIMS
10 test. Data published on www.ade.state.az.us.

11 92. In *Flores v. State of Arizona*, CV 92-596, the federal district court in January
12 2000, determined the state’s funding for English Language Learner programs bore no
13 rational relationship to the actual cost of providing such programs and these programs were
14 inadequately funded in an arbitrary and capricious manner in violation of the Equal
15 Education Opportunity Act, 20 U.S.C. § 1703. As of today, there has been no court
16 determination that the state has adequately funded the English Language Learner programs.

17 93. For at least 6 years, there has been a court order that English Language Learner
18 programs are not adequately funded. Therefore, students previously or currently placed in
19 English Language Learner programs have not received the programs and services needed
20 for them to achieve academically and to pass the AIMS test.

21 **CLAIMS FOR RELIEF**

22 **FIRST CLAIM FOR RELIEF**

23 **(Denial of Fundamental Right - State Constitution)**

24 94. Plaintiffs restate and incorporate by reference each of the allegations contained
25 in paragraphs 1 through 93 above.

26 95. Because education is a fundamental right in Arizona, any action that has a real
27 and appreciable impact on this right is subject to strict scrutiny.

28 96. The denial of a high school diploma would have a real and appreciable impact

1 on Plaintiffs' fundamental right to a public education because it would deprive them of the
2 fruits of that education, a high school diploma.

3 97. There is no compelling state interest that would justify this diploma penalty,
4 when the state's funding for education is arbitrary and not based on educational need; the
5 state has not published its validity data for the current AIMS tests; and the state does not
6 allow an alternative path to graduation. Under these circumstances, the use of the AIMS test
7 as a high stakes exit exam and the diploma penalty are not necessary to further any
8 compelling state interest

9 98. As a result of Defendants' actions, Plaintiffs and the class are suffering and
10 will continue to suffer irreparable harm. Plaintiffs and the class have no adequate remedy
11 at law.

12 **SECOND CLAIM FOR RELIEF**

13 **(Denial of Fundamental Right - State Constitution)**

14 99. Plaintiffs restate and incorporate by reference each of the allegations contained
15 in paragraphs 1 through 98 above.

16 100. Because education is a fundamental right in Arizona, any action that has a real
17 and appreciable impact on this right is subject to strict scrutiny. Therefore, Arizona's
18 educational funding system is subject to strict scrutiny, and the funding system must be
19 essential to serving a compelling state interest.

20 101. Arizona's educational funding system is not related to a legitimate educational
21 objective.

22 102. Arizona's drastically low per pupil funding is not related to the funding needed
23 for a constitutionally adequate education for economically disadvantaged students and
24 students of color.

25 103. Arizona's educational finance system fails to provide economically
26 disadvantaged students and students of color with the programs, services, and resources they
27 need to achieve the state's minimum academic standards and pass the AIMS test.

28 104. Arizona's funding system is arbitrary and capricious and results in the denial

1 of the fundamental right to an education for economically disadvantaged students, the
2 majority of whom are students of color.

3 105. As a result of Defendants' actions, Plaintiffs and the class are suffering and
4 will continue to suffer irreparable harm. Plaintiffs and the class have no adequate remedy
5 at law.

6 **THIRD CLAIM FOR RELIEF**

7 **(Denial of General and Uniform Education - State Constitution)**

8 106. Plaintiffs restate and incorporate by reference each of the allegations contained
9 in paragraphs 1 through 105 above.

10 107. The Arizona Constitution, Article XI, § 1, requires the state establish and
11 maintain a general and uniform public school system.

12 108. A general and uniform public school system is one in which the state provides
13 students with the programs, services, and resources that are necessary and appropriate in
14 order for students to achieve the state's prescribed academic standards.

15 109. The state has failed to provide the programs, services, and resources that are
16 necessary in order for economically disadvantaged students to achieve the state's prescribed
17 academic standards.

18 110. As a result, the Arizona educational finance system is not general and uniform
19 as required by Article XI, § 1 of the Arizona Constitution.

20 111. Economically disadvantaged students have not received a general and uniform
21 state-funded education.

22 112. As a result of Defendants' actions, Plaintiffs and the class are suffering and
23 will continue to suffer irreparable harm. Plaintiffs and the class have no adequate remedy
24 at law.

25 **FOURTH CLAIM FOR RELIEF**

26 **(Denial of Equal Protection - State Constitution)**

27 113. Plaintiffs restate and incorporate by reference each of the allegations contained
28 in paragraphs 1 through 112 above.

1 114. The right to an education is a fundamental right in Arizona.

2 115. The equal protection clause requires that each student have the right to achieve
3 a sound basic education.

4 116. A constitutionally adequate educational system will provide students with the
5 programs, services, and resources necessary and appropriate to enable the students to master
6 the educational goals set by Defendants.

7 117. Economically disadvantaged students require additional programs, services,
8 and resources to meet the state's minimum academic standards and pass the AIMS test.

9 118. Defendants have not provided economically disadvantaged students with the
10 programs, services, and resources that are necessary and appropriate to provide the students
11 with a meaningful opportunity to achieve the state's prescribed academic standards and pass
12 the AIMS test.

13 119. Because the Arizona school finance system does not provide funding based
14 on the educational need for programs and services for economically disadvantaged students,
15 it is arbitrary and capricious, unrelated to any educational objective, and unconstitutional.

16 120. Economically disadvantaged students in Arizona have been denied their
17 fundamental right to the basic education that is guaranteed to them under the Arizona
18 Constitution.

19 121. As a result of Defendants' actions, Plaintiffs and the class are suffering and
20 will continue to suffer irreparable harm. Plaintiffs and the class have no adequate remedy
21 at law.

22 **FIFTH CLAIM FOR RELIEF**

23 **(Violation of Title VI of the Civil Rights Act)**

24 122. Plaintiffs restate and incorporate by reference each of the allegations contained
25 in paragraphs 1 through 121 above.

26 123. Defendants have shown a deliberate indifference to the adverse impact the
27 AIMS test has on the passing rate of racial and ethnic minority students and thus, their rate
28 of graduation from high school and receipt of a diploma.

1 124. This deliberate indifference constitutes discrimination under Title VI of the
2 Civil Rights Act and is enforceable by Plaintiffs pursuant to 28 U.S.C. § 1331 and 42 U.S.C.
3 § 1983.

4 125. As a result of Defendants’ actions, Plaintiffs and the Class are suffering and
5 will continue to suffer irreparable harm. Plaintiffs and the class have no adequate remedy
6 at law.

7 **SIXTH CLAIM FOR RELIEF**

8 **(Violation of the Due Process Clause- State Constitution)**

9 126. Plaintiffs restate and incorporate by reference each of the allegations contained
10 in paragraphs 1 through 125 above.

11 127. The due process clause of the Arizona Constitution, Art. II, § 4, prohibits the
12 State from depriving a person of property by an action that is arbitrary.

13 128. Defendants’ educational funding scheme is arbitrary and capricious and bears
14 no reasonable relationship to the educational needs of economically disadvantaged students,
15 who are disproportionately students of color.

16 129. Arizona’s educational funding system denies economically disadvantaged
17 students their due process rights under the Arizona Constitution to a high school diploma.

18 130. As a result of Defendants’ actions, Plaintiffs and the class are suffering and
19 will continue to suffer irreparable harm. Plaintiffs and the class have no adequate remedy
20 at law.

21 **SEVENTH CLAIM FOR RELIEF**

22 **(Violation of the Due Process Clause- United States Constitution)**

23 131. Plaintiffs restate and incorporate by reference each of the allegations contained
24 in paragraphs 1 through 125 above.

25 132. The due process clause of the United States Constitution, Amendment XIV,
26 prohibits the State from depriving a person of property by an action that is arbitrary.

27 133. Defendants’ educational funding scheme is arbitrary and capricious and bears
28 no reasonable relationship to the educational needs of economically disadvantaged students,

1 who are disproportionately students of color, and denies these students their due process
2 rights under the United States Constitution and is enforceable by Plaintiffs pursuant to 28
3 U.S.C. § 1331 and 42 U.S.C. § 1983.

4 134. Arizona's educational funding system denies economically disadvantaged
5 students their due process rights to a high school diploma.

6 135. As a result of Defendants' actions, Plaintiffs and the class are suffering and
7 will continue to suffer irreparable harm. Plaintiffs and the class have no adequate remedy
8 at law.

9 **EIGHTH CLAIM FOR RELIEF**

10 **(Violation of Due Process - ELL Students - State Constitution)**

11 136. Plaintiffs restate and incorporate by reference each of the allegations contained
12 in paragraphs 1 through 125 above.

13 137. The due process clause of the Arizona Constitution, Art. II, § 4, prohibits the
14 State from depriving a person of property by an action that is arbitrary.

15 138. Defendants' educational funding scheme is arbitrary and capricious and bears
16 no reasonable relationship to the educational needs of English Language Learners.

17 139. Arizona's educational funding system denies current and previous English
18 Language Learners their due process rights under the Arizona Constitution to a high school
19 diploma.

20 140. As a result of Defendants' actions, Plaintiffs and the class are suffering and
21 will continue to suffer irreparable harm. Plaintiffs and the class have no adequate remedy
22 at law.

23 **NINTH CLAIM FOR RELIEF**

24 **(Violation of Due Process - ELL Students - United States Constitution)**

25 141. Plaintiffs restate and incorporate by reference each of the allegations contained
26 in paragraphs 1 through 125 above.

27 142. The due process clause of the United States Constitution, Amendment XIV,
28 prohibits the State from depriving a person of property by an action that is arbitrary.

1 143. Defendants' educational funding scheme is arbitrary and capricious and bears
2 no reasonable relationship to the educational needs of English Language Learners, and
3 denies these students their due process rights under the United States Constitution and is
4 enforceable by Plaintiffs pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983.

5 144. Arizona's educational funding system denies current and previous English
6 Language Learners their due process rights to a high school diploma.

7 145. As a result of Defendants' actions, Plaintiffs and the class are suffering and
8 will continue to suffer irreparable harm. Plaintiffs and the class have no adequate remedy
9 at law.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs respectfully ask that this Court:

- 12 A. Certify this case as a class action.
- 13 B. Issue a declaratory judgment holding that Defendants have violated:
- 14 1. The Arizona Constitution, in that education is a fundamental right, and
15 Defendants' requirement that students pass the AIMS exit exam is not
16 a compelling state interest;
- 17 2. The Arizona Constitution, in that education is a fundamental right and
18 Defendants' educational funding system is unconstitutional because it
19 is arbitrary, capricious, and not essential to a compelling state interest;
- 20 3. The general and uniform requirement of the Arizona Constitution,
21 Article XI, Section 1, by failing to provide the programs and services
22 necessary for economically disadvantaged students to achieve the
23 state's standards and pass the AIMS test;
- 24 4. The equal protection clause of the Arizona Constitution because the
25 Arizona school finance system is not based on educational need and is
26 arbitrary and capricious;
- 27 5. Title VI of the Civil Rights Act by failing to adequately fund and
28 provide the necessary programs, services, and resources to enable

1 racial and ethnic minority students to meet the state's academic
2 standards and pass the AIMS test;

3 6. The due process clause of the Arizona Constitution because the
4 educational funding system denies economically disadvantaged
5 students, who are disproportionately students of color, their due
6 process rights to a high school diploma;

7 7. The due process clause of the United States Constitution because the
8 educational funding system denies economically disadvantaged
9 students, who are disproportionately students of color, their due
10 process rights to a high school diploma;

11 8. The due process clause of the Arizona Constitution because
12 Defendants have failed to adequately fund English Language Learner
13 programs and have denied current and previous English Language
14 Learner students their due process rights to a high school diploma; and

15 9. The due process clause of the United States Constitution because
16 Defendants have failed to adequately fund English Language Learner
17 programs and have denied current and previous English Language
18 Learner students their due process rights to a high school diploma.

19 C. Grant preliminary and permanent injunctions that prohibit Defendants from:

20 1. Requiring the passage of the AIMS test in order for students to
21 graduate from high school;

22 2. Requiring the passage of the AIMS test in order for economically
23 disadvantaged students to graduate high school until Defendants fund
24 a constitutionally adequate educational system;

25 3. Requiring the passage of the AIMS test in order for racial and ethnic
26 minority students to graduate high school until Defendants fund a
27 constitutionally adequate educational system; and

28 4. Requiring the passage of the AIMS test for current or previous English

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Language Learner students, until Defendants have funded English Language Learner programs pursuant to the *Flores* decision.

D. Order Defendants to develop and implement a constitutional educational funding system to bring the state into compliance with the federal law and the Arizona and United States Constitutions.

E. Enter an order authorizing Plaintiffs to monitor Defendants' compliance with any court orders.

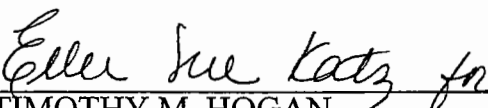
F. Award Plaintiffs their reasonable attorneys' fees and costs against Defendants pursuant to 42 U.S.C. § 1988 and the private attorney general doctrine, including any costs to monitor Defendants' compliance with any court orders.

G. Grant such other and further relief as may be just and proper.

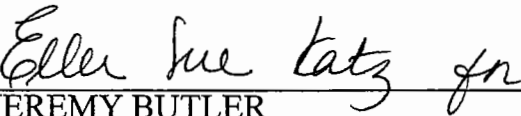
Dated this 18th day of April, 2006.



ELLEN SUE KATZ
WILLIAM E. MORRIS INSTITUTE FOR JUSTICE



TIMOTHY M. HOGAN
ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST



JEREMY BUTLER

Attorneys for Plaintiffs

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VERIFICATION

STATE OF ARIZONA }
County of Maricopa } ss.

I, Ellen Sue Katz, am an attorney for Plaintiffs.

The facts alleged in the above Complaint are true and correct to the best of my knowledge, except to those matters which are stated on information and belief, and to those matters, I believe them to be true.

Ellen Sue Katz
Ellen Sue Katz

SUBSCRIBED AND SWORN to before me this ___ day of April, 2006, by Ellen Sue Katz.

Gaynell Carpenter
Notary Public

My Commission Expires:

