

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**AUG 23 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

MIRIAM FLORES,

Plaintiff - Appellee,

v.

ROSA RZESLAWSKI, individually, and  
as a parent of Mario Rzeslawski, a minor  
child,

Plaintiff - Appellee,

THOMAS C. HORNE, Superintendent of  
Public Instruction, State of Arizona,

Defendant - Appellant,

and

STATE OF ARIZONA; C. DIANE  
BISHOP; EUGENE HUGHES; DAVID  
SILVA; CLAUDINE BATES ARTHUR;  
JOHN HOSNER; KEN BENNETT; RAY  
KELLIS; JIM ALLMAN; MORRISON  
WARREN, members of the State Board of  
Education,

Defendants,

No. 06-15378

D.C. No. CV-92-00596-RCC

MEMORANDUM\*

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

AMERICAN COUNCIL OF  
ENGINEERING COMPANIES OF  
ARIZONA; ASSOCIATED GENERAL  
CONTRACTORS OF AMERICA,  
ARIZONA CHAPTER,

Defendant-Intervenors.

EVANGELINA MIRANDA, individually  
and as a parent of Mariela and George  
Dorame, minor children,

Plaintiff - Appellee,

v.

THOMAS C HORNE, in his official  
capacity as Superintendent of Public  
Instruction, State of Arizona; THE  
ARIZONA BOARD OF EDUCATION,  
and its individual members in their official  
capacities,

Defendants,

AMERICAN COUNCIL OF  
ENGINEERING COMPANIES OF  
ARIZONA; ASSOCIATED GENERAL  
CONTRACTORS OF AMERICA,  
Arizona Chapter,

Defendant-Intervenors,

and

No. 06-15556

D.C. No. CV-92-00596-RCC

STATE OF ARIZONA,

Defendant - Appellee,

THE SPEAKER OF THE ARIZONA  
HOUSE OF REPRESENTATIVES AND  
PRESIDENT OF THE ARIZONA  
SENATE,

Defendant-intervenor -  
Appellant.

EVANGELINA MIRANDA, individually  
and as a parent of Mariela and George  
Dorame, minor children,

Plaintiff - Appellee,

v.

THOMAS C HORNE, in his official  
capacity as Superintendent of Public  
Instruction, State of Arizona,

Defendant - Appellant,

STATE OF ARIZONA,

Defendant - Appellee,

and

THE ARIZONA BOARD OF  
EDUCATION, and its individual members  
in their official capacities,

No. 06-15558

D.C. No. CV-92-00596-RCC

Defendant,

AMERICAN COUNCIL OF  
ENGINEERING COMPANIES OF  
ARIZONA; ASSOCIATED GENERAL  
CONTRACTORS OF AMERICA,  
Arizona Chapter; THE SPEAKER OF  
THE ARIZONA HOUSE OF  
REPRESENTATIVES AND PRESIDENT  
OF THE ARIZONA SENATE,

Defendant-Intervenors.

MIRIAM FLORES; ROSA  
RZESLAWSKI, individually, and as a  
parent of Mario Rzeslawski, a minor child,

Plaintiffs - Appellees,

v.

STATE OF ARIZONA,

Defendant - Appellee,

THE SPEAKER OF THE ARIZONA  
HOUSE OF REPRESENTATIVES AND  
PRESIDENT OF THE ARIZONA  
SENATE,

Defendant-intervenor -  
Appellant,

and

No. 06-15951

D.C. No. CV-92-00596-RCC

THOMAS C. HORNE, Superintendent of Public Instruction, State of Arizona; C. DIANE BISHOP; EUGENE HUGHES; DAVID SILVA; CLAUDINE BATES ARTHUR; JOHN HOSNER; KEN BENNETT; RAY KELLIS; JIM ALLMAN; MORRISON WARREN, members of the State Board of Education,

Defendants,

AMERICAN COUNCIL OF ENGINEERING COMPANIES OF ARIZONA; ASSOCIATED GENERAL CONTRACTORS OF AMERICA, ARIZONA CHAPTER,

Defendant-Intervenors.

MIRIAM FLORES; ROSA RZESLAWSKI, individually, and as a parent of Mario Rzeslawski, a minor child,

Plaintiffs - Appellees,

v.

STATE OF ARIZONA,

Defendant - Appellee,

THOMAS C. HORNE, Superintendent of Public Instruction, State of Arizona,

Defendant - Appellant,

No. 06-15952

D.C. No. CV-92-00596-RCC

and

C. DIANE BISHOP; EUGENE HUGHES;  
DAVID SILVA; CLAUDINE BATES  
ARTHUR; JOHN HOSNER; KEN  
BENNETT; RAY KELLIS; JIM  
ALLMAN; MORRISON WARREN,  
members of the State Board of Education,

Defendants,

AMERICAN COUNCIL OF  
ENGINEERING COMPANIES OF  
ARIZONA; ASSOCIATED GENERAL  
CONTRACTORS OF AMERICA,  
ARIZONA CHAPTER; THE SPEAKER  
OF THE ARIZONA HOUSE OF  
REPRESENTATIVES AND PRESIDENT  
OF THE ARIZONA SENATE,

Defendant-Intervenors.

Appeal from the United States District Court  
for the District of Arizona  
Raner C. Collins, District Judge, Presiding

Argued and Submitted July 25, 2006  
San Francisco, California

Before: HUG, KLEINFELD, and PAEZ, Circuit Judges.

This case deals with the consolidated appeals of several district court orders.

The first several orders found the State of Arizona in civil contempt of the district

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court's previous order to reform the State's English Language Learner (ELL) program, enjoined administration of the AIMS test to ELL students as a requirement for graduation until the program had been reformed, and provided for the distribution of the fines collected to school districts to fund ELL programs. The second order rejected House Bill 2064, determining it failed to comply with the court's original order.

In the interim, the landscape of educational funding has changed significantly. We have held that, because “the scope of federal relief against an agency of state government must always be narrowly tailored to enforce federal constitutional and statutory law only. . . . federal courts must be sensitive to the need for modification [of permanent injunctive relief] when circumstances change.”<sup>1</sup> In light of the changes in education programs and funding since the original 2000 court order, the district court should have held an evidentiary hearing and made findings of fact regarding whether changed circumstances required modification of the original court order or otherwise had a bearing on the appropriate remedy. The orders of the court holding the defendants in contempt and rejecting House Bill 2064 are therefore vacated and the case is remanded to the

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<sup>1</sup> Clark v. Coye, 60 F.3d 600, 604 (9th Cir. 1995).

district court. Because we hold that the district court should have held an evidentiary hearing on changed circumstances, we need not, and do not, reach any of the other issues in the case.

**VACATED AND REMANDED.**