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11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

12 IN AND FOR THE COUNTY OF MARICOPA

13 PERLA ESPINOZA; and MAYNOR)
GOMEZ, on behalf of themselves and all)
14 others similarly situated,)

15 Plaintiffs,)

16 v.)

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

19 Defendants.)
20)
21)

No. **CV 2006-005616**

**SECOND AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

(Honorable Kenneth L. Fields)

22
23 **PRELIMINARY STATEMENT**

24 On April 18, 2006, Plaintiffs Espinoza and Gonzales filed the initial Complaint for
25 Declaratory and Injunctive Relief. On May 16, 2006, the First Amended Complaint was filed
26 adding Plaintiff Alaina Keleb and adding Counts Ten and Eleven. Since May 16, 2006,
27 Plaintiff Gonzales graduated high school and Plaintiff Keleb withdrew as a named plaintiff.

28 Plaintiff files this Second Amended Complaint to add Plaintiff Maynor Gomez as a named
Plaintiff. Plaintiff repeats all the allegations from the initial Complaint as correct and true

1 as of April 18, 2006, and from the First Amended Complaint as correct and true as of May
2 16, 2006. Plaintiff has inserted the claims of Mr. Gomez into paragraphs 8 and 9 and deleted
3 the claims of Ms. Hannah Gonzales and Ms. Alaina Keleb from those paragraphs,
4 respectively. The only other change to the complaint is that Plaintiff has modified the claims
5 in paragraph 7 concerning Plaintiff Espinoza.

6 1. This case is brought on behalf of all students in Arizona, including low income
7 or economically disadvantaged students, racial and ethnic minority students, and current and
8 previous English Language Learners in Arizona, who have satisfied or will satisfy all state
9 and local school district high school graduation requirements, and are eligible or will be
10 eligible to graduate from an Arizona high school, except that they have not passed all three
11 parts of the state high stakes exit exam, called the Arizona Instrument to Measure Standards
12 (“AIMS”). These students have attended up to thirteen years of public schooling.

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

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

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CLASS ALLEGATIONS

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

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

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

- a. The class is so numerous that joining all members is impracticable. The exact size of the class is unknown but includes at least 10,000 Arizona public high school students in the Class of 2006. The class members are geographically dispersed, have limited financial resources, and are unlikely to institute individual actions;
- b. There are issues of fact and law concerning Defendants’ policies that are common to all members of the class;
- c. The claims of the named Plaintiffs are typical of the claims of the class they represent; and
- d. Plaintiffs and their counsel will fairly and adequately protect the interests of the class.

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

Arizona’s Dismal Rankings in Education

19. In almost every measure of the state of education, Arizona ranks at or near the

1 bottom in national rankings, including spending per pupil, classroom size and the ratio of
2 students to teachers.

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

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

10 22. The Arizona Department of Education's strategic plan for FY 2007-2011
11 acknowledges that per pupil spending in Arizona has declined. From 2001 to 2004, per
12 pupil spending in constant dollars decreased by 9%. [www.ade.az.gov/administration/2006-
13 10StrategicPlan.doc](http://www.ade.az.gov/administration/2006-10StrategicPlan.doc). (page 17).

14 23. The strategic plan also acknowledges that "[t]he number of students for every
15 teacher is getting larger in Arizona and, as a result, students are getting less individual
16 attention. Arizona ranks near the bottom (46 of 50) in the number of students for each
17 teacher." (page 17).

18 24. In addition, the strategic plan acknowledges that "[e]lementary schools are too
19 large." The average size of an Arizona elementary school is 12% higher than the national
20 average. The plan also conceded that "[s]chools desperately need repairs," and parental
21 involvement is low in many schools. (page 17).

22 25. Given this state of education, the Department's own projections for the "overall
23 percentage of high school students meeting or exceeding AIMS standards" by grade and
24 subject expect no improvement in achievement from 2005 to 2007. The Department expects
25 only 34% of 12th graders to meet or exceed state academic standards on AIMS in reading;
26 41% in writing; and only 29% in math. (page 24).

27 26. In the strategic plan, under "Resource Assumptions," the Department of
28 Education assumes "lack of appropriate funding;" "schools' lack of ability to serve at risk

1 students;” “student drop out rate/juvenile crime increasing;” “shortage of certified CTE
2 teachers;” “teacher shortage/turnover (teaching out of content area);” and “inadequate
3 number of qualified teachers.” (page 57).

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

12 28. Using graduation rates before the imposition of AIMS as a graduation
13 requirement, Arizona has one of the nation’s highest rates for students dropping out of high
14 school. Although Arizona does not report dropout rates using federal dropout definitions,
15 Arizona’s dropout rate for 12th graders since 2001 was 9.6 - 10.7% each year and for 11th
16 graders was 7.1 - 8.8% each year. [www.ade.az.gov/researchpolicy/DropoutInfo2004-](http://www.ade.az.gov/researchpolicy/DropoutInfo2004-2005_DOR_report010506.pdf)
17 [2005_DOR_report010506.pdf](http://www.ade.az.gov/researchpolicy/DropoutInfo2004-2005_DOR_report010506.pdf). Table I. These high numbers do not include thousands of
18 students whose status is “unknown.” Table 2.

19 **Arizona Instrument to Measure Standards**

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

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

28 31. The State Board of Education is also required to develop and adopt competency

1 tests that incorporate the academic standards in at least the areas of reading, writing and
2 mathematics for the graduation of students from high school. A.R.S. § 15-701.01(A)(3).
3 Since at least 1995, the State Board of Education has adopted the Arizona Instrument to
4 Measure Standards (“AIMS”) prescribed by A.R.S. § 15-741 as the required competency test
5 for graduation from high school.

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

8 33. The psychometricians who build tests have always agreed that no one measure
9 should be used for such a high-stakes decision. Standard 13.7 of the Standards for
10 Educational and Psychological Testing by the American Educational Research Association,
11 American Psychological Association, and National Council on Measurement in Education
12 (1999) states that “In educational settings, a decision or characterization that will have major
13 impact on a student should not be made on the basis of a single test score. Other relevant
14 information should be taken into account to enhance the overall validity of the decision.”
15 (page 146). This standard reflects a belief that is held by nearly all test experts.

16 34. While approximately half of the states utilize high school exit exams, two-
17 thirds of the states that have an exit exam, allow for alternative paths, or alternative
18 performance assessments or measurements.

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

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

27 37. Thus, many public high school students who fail any part of AIMS will be
28 denied a high school diploma.

1 education in general, or specifically the costs to provide the services and programs needed
2 by economically disadvantaged students, who are disproportionately students of color, to
3 obtain an adequate education.

4 44. The educational finance system and its funding formula fail to provide
5 additional funds for resources and programs to address the special needs of economically
6 disadvantaged students in general, and specifically for those students who have not passed
7 the AIMS test.

8 45. The educational finance system and its funding formula fail to provide
9 additional funds for resources and programs for racial and ethnic minority students who have
10 not passed the AIMS test.

11 46. The minimum base level that the state educational finance system provides for
12 each student was not intended or designed to address the special educational needs of
13 economically disadvantaged students or the high failure rates of educationally disadvantaged
14 students and racial and ethnic minority students on the AIMS test.

15 47. Arizona's educational finance system results in Arizona having one of the
16 lowest state funding levels per student on education in the United States. Arizona's current
17 funding level per student places it next to the bottom of all states. Forty-four states spend at
18 least 20% more per pupil than Arizona. Morgan Quitno Press, "Results of the 2005 Smartest
19 State Award," page 49.

20 48. Arizona's Superintendent of Public Education spent over twelve (12) million
21 dollars in "achievement testing" in the year ending June 30, 2005. In marked contrast, the
22 state provided only approximately \$500,000 last year for "AIMS Intervention - Dropout
23 Prevention," pursuant to A.R.S. § 15-809. Information from document entitled "Financial
24 Services - State Funds - Statement of Revenues and Expenditures July 1, 2004 to June 30,
25 2005," published by the Arizona Department of Education..

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

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2 **The Right to an Education**

3 50. The right to an education is a fundamental right under the Arizona
4 Constitution.

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

7 52. In addition, because education is a fundamental right for every student in
8 Arizona, Arizona's funding of education is subject to strict scrutiny. The state must
9 determine what the costs are to meet the educational needs of students and then provide those
10 costs.

11 53. Having set educational standards, the state must provide students with
12 sufficient resources and programs for the students to achieve those standards.

13 54. The Arizona Constitution prohibits discrimination in educational opportunities.
14 Arizona Constitution, Article II, § 13.

15 55. Defendants have a constitutional obligation to establish and maintain a general
16 and uniform public school system. Arizona Constitution, Article XI, § 1.

17 56. A general and uniform educational system is one that provides adequate
18 funding to provide all students with a constitutionally adequate education, including the
19 services and programs the students need for a meaningful opportunity to achieve the state's
20 prescribed minimum academic standards and pass the AIMS test.

21 57. A constitutional funding mechanism must provide sufficient funds to educate
22 children to enable the students to master the academic standards and pass the AIMS test. To
23 be constitutional, the funding mechanism must be based on educational needs and costs.

24 58. Arizona students have a property interest in the receipt of a high school
25 graduation diploma. United States Constitution, Amendment XIV; Arizona Constitution,
26 Article II, § 4.

27 **Economically Disadvantaged Students**

28 59. One measure of the socioeconomic status of students is their participation in

1 the federal free and reduced lunch program. Students with family incomes at or below 185%
2 of the federal poverty level are eligible for the reduced-price school lunches, and families
3 with incomes at or below 130% of the federal poverty level are eligible for the free school
4 lunches. 42 U.S.C. § 1758(b).

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

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

13 62. Students from economically disadvantaged households are at substantial risk
14 of failing in public school if they are not provided with the programs and services that are
15 necessary in order for them to overcome the disadvantages that their socioeconomic status
16 creates for them.

17 63. In general, Arizona's educational finance system provides an amount to each
18 school district so that each district has approximately the same amount of funding to spend
19 on each student. Arizona's educational finance system fails to provide any specific funding
20 for programs or services necessary for economically disadvantaged students to succeed on
21 the state's academic standards.

22 64. Economically disadvantaged students generally and disproportionately fail to
23 achieve the academic standards adopted by the State Board of Education. As a result, they
24 fail to meet the competency requirements prescribed by the State Board of Education and
25 disproportionately fail to pass the AIMS test.

26 65. Plaintiffs' counsel submitted public records requests to Defendant Horne
27 requesting the passing rate on the AIMS test for economically disadvantaged students in the
28 class of 2006. Documents produced by the Arizona Department of Education show that

1 economically disadvantaged students in the Class of 2006 have passing rates throughout high
2 school far below the passing rates for non-economically disadvantaged students.

3 66. 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%

8 67. 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%

13 68. 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%

18 69. 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%

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

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

26 71. Defendants have known that economically disadvantaged students were
27 disproportionately not achieving proficient academic levels since at least 1998 and
28 disproportionately failing AIMS since at least 2002. Despite this knowledge, Defendants

1 have not taken steps to provide the additional funding and programs necessary so that
2 economically disadvantaged students can obtain a basic education. The only additional
3 resources provided to assist students to pass AIMS were a one-time stipend for 10 hours of
4 instruction per student offered in the Spring of 2005 to all students in the Classes of 2005 and
5 2006, and a recent tutorial program. These programs were too little and too late.

6 72. There are known and effective programs to assist economically disadvantaged
7 students in overcoming those barriers to success in school and achieving the state's
8 prescribed academic standards. Those programs and strategies include smaller class sizes,
9 preschool programs, full-day kindergarten, after school programs, tutoring programs and
10 parental involvement programs.

11 73. Despite the known effectiveness of such programs in overcoming the barriers
12 to academic success for economically disadvantaged students, the Arizona's educational
13 finance system does not specifically provide funding for such programs.

14 74. Without the provision of the supplemental programs that are known to be
15 effective in overcoming barriers to academic success for economically disadvantaged
16 students, those students have been denied the opportunity to acquire the basic education that
17 is necessary in order for them to meet Arizona's prescribed minimum academic standards and
18 pass the AIMS test.

19 75. Defendants have denied economically disadvantaged students a meaningful
20 opportunity to acquire the skills necessary to master the state's minimum prescribed
21 academic standards by failing to provide the programs that are necessary and appropriate in
22 order for them to do so.

23 **Racial and Ethnic Minority Students**

24 76. There are approximately 530,000 racial and ethnic minority students in
25 Arizona's public schools.

26 77. These students include African-Americans, Hispanics and Native Americans.

27 78. Title VI of the Civil Rights Act of 1964 ("Title VI") provides that "[n]o person
28 ... shall, on the grounds of race, color, or national origin ... be subjected to discrimination

1 under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d *et*
2 *seq.*

3 79. Defendants receive federal financial participation to operate Arizona’s public
4 schools.

5 80. As recipients of federal funds, Defendants are prohibited from discriminating
6 against students based on race, color or national origin.

7 81. The United States Department of Education (“USDE”) is the federal agency
8 with the authority to enforce Title VI. Pursuant to that authority, USDE promulgated 34
9 C.F.R. § 100.3(b)(2), which prohibits activity in federally-funded programs that has the effect
10 of subjecting individuals to discrimination because of their race, color or national origin.

11 That regulation provides in relevant part:

12 A recipient, ... may not ... utilize criteria or methods of
13 administration which have the effect of subjecting individuals
14 to discrimination because of their race, color, or national origin,
15 or have the effect of defeating or substantially impairing
16 accomplishment of the objectives of the program as respect
17 individuals of a particular race, color, or national origin.

18 82. For over 26 years, the federal government has relied upon a regulation to
19 determine when a test has an adverse or discriminatory impact. That regulation provides that
20 if the passing rate on a test for any racial or ethnic group is less than 80% of the rate for the
21 highest group, then the impact of the test is adverse. 29 C.F.R. § 1607.4(D).

22 83. Since its inception, racial and ethnic minority students have failed all three
23 sections of the AIMS in disproportionate numbers.

24 84. Since its inception, AIMS tests results consistently show that African-
25 American, Hispanic, and Native American students have pass rates well below the 80% pass
26 rates for comparable white students.

27 85. The Arizona Department of Education publishes the pass rates for students
28 taking the AIMS test on its website www.ade.state.az.us. The following are the reported pass
rates on the AIMS test for the Class of 2006 throughout their high school years published by
the Arizona Department of Education on its website. For Spring 2004, 10th grade students

1 in category 1 (which excludes students in category 2 whose first language is not English and
2 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>
5 White	53%	76%	73%
6 African-American	23%	49%	58%
7 Hispanic	20%	37%	47%
8 Native American	17%	31%	43%

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

11 86. 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>
14 White	32%	53%	59%
15 African-American	17%	34%	48%
16 Hispanic	15%	26%	36%
17 Native American	13%	25%	38%

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

20 87. 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>
23 White	69%	67%	67%
24 African-American	54%	50%	48%
25 Hispanic	53%	49%	48%
26 Native American	47%	46%	41%

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

1 88. 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>
4 White	54%	67%	69%
5 African-American	35%	47%	45%
6 Hispanic	37%	47%	49%
7 Native American	34%	48%	45%

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

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

14 90. Defendants have known of the disproportionate adverse impact of the AIMS
15 test on racial and ethnic minority students for at least 10 years.

16 91. Despite this knowledge, Defendants have not taken action necessary to remedy
17 the discriminatory effects of the AIMS test. Defendants have failed to provide racial and
18 ethnic minority students with additional programs and services necessary to enable these
19 students to pass the AIMS test. The only additional resources provided were a one-time
20 stipend for 10 hours of instruction offered to all students in the spring of 2005 and a recent
21 tutorial program. These programs were too little and too late.

22 ENGLISH LANGUAGE LEARNERS

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

28

1 at law.

2 **SECOND CLAIM FOR RELIEF**

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

4 100. Plaintiffs restate and incorporate by reference each of the allegations contained
5 in paragraphs 1 through 99 above.

6 101. Because education is a fundamental right in Arizona, any action that has a real
7 and appreciable impact on this right is subject to strict scrutiny. Therefore, Arizona's
8 educational funding system is subject to strict scrutiny, and the funding system must be
9 essential to serving a compelling state interest.

10 102. Arizona's educational funding system is not related to a legitimate educational
11 objective.

12 103. Arizona's drastically low per pupil funding is not related to the funding needed
13 for a constitutionally adequate education for economically disadvantaged students and
14 students of color.

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

18 105. Arizona's funding system is not related to a compelling state interest, is
19 arbitrary and capricious and results in the denial of the fundamental right to an education for
20 economically disadvantaged students, the majority of whom are students of color.

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

24 **THIRD CLAIM FOR RELIEF**

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

26 107. Plaintiffs restate and incorporate by reference each of the allegations contained
27 in paragraphs 1 through 106 above.

28 108. The Arizona Constitution, Article XI, § 1, requires the state establish and

1 maintain a general and uniform public school system.

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

5 110. The state has failed to provide the programs, services, and resources that are
6 necessary in order for economically disadvantaged students to achieve the state's prescribed
7 academic standards.

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

10 112. Economically disadvantaged students have not received a general and uniform
11 state-funded education.

12 113. As a result of Defendants' actions, Plaintiffs and the class are suffering and
13 will continue to suffer irreparable harm. Plaintiffs and the class have no adequate remedy
14 at law.

15 **FOURTH CLAIM FOR RELIEF**

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

17 114. Plaintiffs restate and incorporate by reference each of the allegations contained
18 in paragraphs 1 through 113 above.

19 115. The right to an education is a fundamental right in Arizona.

20 116. The equal protection clause requires that each student have the right to achieve
21 a sound basic education.

22 117. A constitutionally adequate educational system will provide students with the
23 programs, services, and resources necessary and appropriate to enable the students to master
24 the educational goals set by Defendants.

25 118. Economically disadvantaged students require additional programs, services,
26 and resources to meet the state's minimum academic standards and pass the AIMS test.

27 119. Defendants have not provided economically disadvantaged students with the
28 programs, services, and resources that are necessary and appropriate to provide the students

1 with a meaningful opportunity to achieve the state’s prescribed academic standards and pass
2 the AIMS test.

3 120. Because the Arizona school finance system does not provide funding based on
4 the educational need for programs and services for economically disadvantaged students, it
5 is arbitrary and capricious, unrelated to any educational objective or a compelling state
6 interest, and unconstitutional.

7 121. Economically disadvantaged students in Arizona have been denied their
8 fundamental right to the basic education that is guaranteed to them under the Arizona
9 Constitution.

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

13 **FIFTH CLAIM FOR RELIEF**

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

15 123. Plaintiffs restate and incorporate by reference each of the allegations contained
16 in paragraphs 1 through 122 above.

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

20 125. This deliberate indifference constitutes discrimination under Title VI of the
21 Civil Rights Act and is enforceable by Plaintiffs pursuant to 28 U.S.C. § 1331 and 42 U.S.C.
22 § 1983.

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

26 **SIXTH CLAIM FOR RELIEF**

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

28 127. Plaintiffs restate and incorporate by reference each of the allegations contained

1 in paragraphs 1 through 126 above.

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

4 129. Defendants' educational funding scheme is arbitrary and capricious and bears
5 no reasonable relationship to the educational needs of economically disadvantaged students,
6 who are disproportionately students of color.

7 130. Arizona's educational funding system denies economically disadvantaged
8 students their due process rights under the Arizona Constitution to a high school diploma.

9 131. 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 **SEVENTH CLAIM FOR RELIEF**

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

14 132. Plaintiffs restate and incorporate by reference each of the allegations contained
15 in paragraphs 1 through 126 above.

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

18 134. Defendants' educational funding scheme is arbitrary and capricious and bears
19 no reasonable relationship to the educational needs of economically disadvantaged students,
20 who are disproportionately students of color, and denies these students their due process
21 rights under the United States Constitution and is enforceable by Plaintiffs pursuant to 28
22 U.S.C. § 1331 and 42 U.S.C. § 1983.

23 135. Arizona's educational funding system denies economically disadvantaged
24 students their due process rights to a high school diploma.

25 136. As a result of Defendants' actions, Plaintiffs and the class are suffering and
26 will continue to suffer irreparable harm. Plaintiffs and the class have no adequate remedy
27 at law.

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1 **EIGHTH CLAIM FOR RELIEF**

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

3 137. Plaintiffs restate and incorporate by reference each of the allegations contained
4 in paragraphs 1 through 126 above.

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

7 139. Defendants' educational funding scheme is arbitrary and capricious and bears
8 no reasonable relationship to the educational needs of English Language Learners.

9 140. Arizona's educational funding system denies current and previous English
10 Language Learners their due process rights under the Arizona Constitution to a high school
11 diploma.

12 141. As a result of Defendants' actions, Plaintiffs and the class are suffering and
13 will continue to suffer irreparable harm. Plaintiffs and the class have no adequate remedy
14 at law.

15 **NINTH CLAIM FOR RELIEF**

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

17 142. Plaintiffs restate and incorporate by reference each of the allegations contained
18 in paragraphs 1 through 126 above.

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

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

25 145. Arizona's educational funding system denies current and previous English
26 Language Learners their due process rights to a high school diploma.

27 146. As a result of Defendants' actions, Plaintiffs and the class are suffering and
28 will continue to suffer irreparable harm. Plaintiffs and the class have no adequate remedy

1 at law.

2 **TENTH CLAIM FOR RELIEF**

3 **(Violation of Due Process - State Constitution)**

4 147. Plaintiffs restate and incorporate by reference each of the allegations contained
5 in paragraphs 1 through 126 above.

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

8 149. Defendants' educational funding scheme is arbitrary and capricious and bears
9 no reasonable relationship to the educational needs of students; does not allow for an
10 alternative path to graduation; and questions are raised as to the validity and reliability of the
11 AIMS test.

12 150. Arizona's educational funding system denies students their due process rights
13 under the Arizona Constitution to a high school diploma.

14 151. As a result of Defendants' actions, Plaintiffs and the class are suffering and
15 will continue to suffer irreparable harm. Plaintiffs and the class have no adequate remedy
16 at law.

17 **ELEVENTH CLAIM FOR RELIEF**

18 **(Violation of Due Process - State Constitution)**

19 152. Plaintiffs restate and incorporate by reference each of the allegations contained
20 in paragraphs 1 through 126 above.

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

23 154. Defendants' educational funding scheme is arbitrary and capricious and bears
24 no reasonable relationship to the educational needs of students; does not allow for an
25 alternative path to graduation; questions are raised as to the validity and reliability of the
26 AIMS test; and the educational system denies these students their due process rights under
27 the United States Constitution and is enforceable by Plaintiffs pursuant to 28 U.S.C. § 1331
28 and 42 U.S.C. § 1983.

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- students, who are disproportionately students of color, their due process rights to a high school diploma;
7. The due process clause of the United States Constitution because the educational funding system denies economically disadvantaged students, who are disproportionately students of color, their due process rights to a high school diploma;
 8. The due process clause of the Arizona Constitution because Defendants have failed to adequately fund English Language Learner programs and have denied current and previous English Language Learner students their due process rights to a high school diploma;
 9. The due process clause of the United States Constitution because Defendants have failed to adequately fund English Language Learner programs and have denied current and previous English Language Learner students their due process rights to a high school diploma;
 10. The due process clause of the Arizona Constitution because Defendants have arbitrarily funded education; have not allowed an alternative path to graduation; have required passage of the AIMS test to graduate, and thus have denied students their due process rights to a high school diploma; and
 11. The due process clause of the United States Constitution because Defendants have arbitrarily funded education; have not allowed an alternative path to graduation; have required passage of the AIMS test to graduate, and thus have denied students their due process rights to a high school diploma.
- C. Grant preliminary and permanent injunctions that prohibit Defendants from:
1. Requiring the passage of the AIMS test in order for students to graduate from high school;
 2. Requiring the passage of the AIMS test in order for economically

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disadvantaged students to graduate high school until Defendants fund a constitutionally adequate educational system;

- 3. Requiring the passage of the AIMS test in order for racial and ethnic minority students to graduate high school until Defendants fund a constitutionally adequate educational system; and
- 4. Requiring the passage of the AIMS test for current or previous English 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 __ day of September, 2006.

ELLEN SUE KATZ
WILLIAM E. MORRIS INSTITUTE FOR JUSTICE

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ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST

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