

NOT FOR PUBLICATION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*

* 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

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.”¹ 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

¹ 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.