VINCE RABAGO, Esq. (Bar No. 015522)
STACY SCHEFF, Esq. (Bar No. 028364)
VINCE RABAGO LAW OFFICE PLC
500 N. Tucson Blvd., Ste. 100, Tucson AZ 85716
www.VinceRabagoLaw.com
Telephone: (520) 955-9038
Facsimile: (888) 371-4011
Email: vince.rabago@azbar.org
Attorneys for the National Association for Chicana and Chicano Studies et al.

IN THE UNITED STATES DISTRICT
FOR THE DISTRICT OF ARIZONA

ACOSTA et al.,

Plaintiffs,

vs.

JOHN HUPPENTHAL, Superintendent of Public Instruction in his Official Capacity, et. al.,

Defendants

Margarita Elena Dominguez, and Nicholas A. Dominguez,

Plaintiffs-Intervenors,

vs.

JOHN HUPPENTHAL, Superintendent of Public Instruction in his Official Capacity,

Defendant.

Case No. CV-10-623-TUC-AWT

PROPOSED *AMICI CURIAE* BRIEF OF THE NATIONAL ASSOCIATION OF CHICANA & CHICANO STUDIES, ET AL.

Honorable A. Wallace Tashima

Amici Curiae: National Association of Chicana and Chicano Studies; Association for Asian American Studies (AAAS); Hispanic Association of Colleges and Universities (HACU); the National Latino/a Education Research and Policy Project; Mexican American Studies Department of San Jose State University; Chicano Studies Department of California State University-Northridge; League of United Latin American Citizens (LULAC), a national 501(c)(3) organization; Association of Raza Educators (ARE); Aztlan Libre Press; California Faculty Association (CFA); Coalición México-Americana (MXAC); Esperanza Peace and Justice Center (EPJC); For Chicana/Chicano Studies Foundation (FCCSF); Georgia Latino Alliance for Human Rights (GLAHR); Indigenous Women's Network/Alma de Mujer Center for Social Change; Latino Education and Advocacy Days (LEAD Organization); Mujeres Activas en Letras y Cambio Social (MALCS); Mujeres Activas en Letras y Cambio Social – Tejas (MALCS-Tejas); American Studies Association (ASA); Society for Applied Anthropology (SfAA), South Central Farmers (SCF); SouthWest Organizing Project (SWOP); Texas Association of Chicanos in Higher Education (TACHE); Texas League of United Latin American Citizens (Texas LULAC); the Acequia Institute (TAI); and Unitarian Universalist Association – Pacific Southwest District.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

REGULATIONS

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

INTEREST OF *AMICI CURIAE*

The National Association for Chicana and Chicano Studies (NACCS) is a nonprofit, nonpartisan educational and research organization with more than 700 members dedicated to promoting the study of Mexican-origin populations and communities in the United States. Established in 1972, NACCS is the nation's oldest and most prominent academic and scholarly organization dedicated to Chicana and Chicano Studies, also referred to as Mexican-American Studies, an important subfield in the broader interdisciplinary domain known as Ethnic Studies. NACCS is the principal organization of academic scholars and teachers of Chicana/o Studies and includes members from research centers, universities, four-year colleges, community colleges, and secondary public schools from across the United States, including Arizona. NACCS includes members who teach in Chicana and Chicano programs in other countries as well, including Mexico, Spain, England, and elsewhere.

The NACCS is joined in filing this brief by 26 organizations representing thousands of members across the country that share our commitment to the promotion of rigorous social scientific and humanities research, scholarship, and teaching of Mexican-American or Chicana/o Studies and Ethnic Studies in our nation's colleges, universities, and secondary public schools. Amici include the: American Studies Association (ASA); Association for Asian American Studies (AAAS); Hispanic Association of Colleges and Universities (HACU); the National Latino/a Education Research and Policy Project; the League of United Latin American Citizens (LULAC), a national 501(c)(3) organization; Association of Raza Educators (ARE); the Mexican American Studies Department of San Jose State University; Chicano Studies Department of California State University-Northridge; Aztlan Libre Press; California Faculty Association (CFA); Coalición México-Americana (MXAC); Esperanza Peace and Justice Center (EPJC); For Chicana/Chicano Studies Foundation (FCCSF); Georgia Latino Alliance for Human Rights (GLAHR); Indigenous Women's Network/Alma de Mujer Center for Social Change; Latino Education and Advocacy Days (LEAD Organization); Mujeres Activas en Letras y Cambio Social (MALCS); Mujeres Activas en Letras y Cambio Social – Tejas (MALCS-Tejas); American Studies Association (ASA); Society for Applied Anthropology (SfAA), South Central Farmers (SCF); SouthWest Organizing Project (SWOP); Texas Association of Chicanos in Higher Education (TACHE); Texas League of United Latin American Citizens (Texas LULAC); The Acequia Institute (TAI); and Unitarian Universalist Association – Pacific Southwest District. The various *Amici* are collectively referred to as NACCS, NACCS *Amici,* and *Amici*.

INTRODUCTION AND SUMMARY

This case is a tragic story of discrimination in education against Mexican-Americans (also referred to throughout as "Chicanos") and any ethnic group in the Tucson Unified School District (TUSD) and Arizona through the use of impermissibly vague and racially-based and view-point specific statutory restrictions on protected speech in an academic context. Arizona's unusual state law ban on Mexican American Studies ("ethnic" studies as defined in the law) was politically aimed at the termination of an acclaimed and successful local "Mexican-American Studies" (hereinafter "MAS") program in Tucson, Arizona, which is a program designed to achieve equity for Mexican-Americans in order to remedy a past history of discrimination in TUSD. The Arizona law (HB2281) provides for racially-based viewpoint censorship of educational content for or about Mexican-Americans and other ethnic groups, and has resulted in efforts to terminate the successful academic program.

Significantly, the Mexican-American Studies program under attack by HB2281, arose in a school district that has been enmeshed in a federal court-ordered desegregation case since 1978, and was part of the Tucson Unified School District's compliance effort to remedy discrimination against Mexican-American students and other racial groups in TUSD, due to the federal desegregation order requiring remedial efforts.[1] Strict scrutiny is required here because the State has interjected itself directly into a zone of equal protection already in place to provide constitutional oversight of TUSD and its educational programs for Mexican-Americans and African-Americans. The required strict scrutiny of the Arizona statute compels the conclusion that Arizona unconstitutionally seeks to roll back the clock on a permissibly racially-conscious remedial program in violation of the Equal Protection Clause, much like "state's rights" efforts of the past where southern states fought efforts to achieve educational equality. Our Constitution simply does not permit Arizona to discriminate using racially based classifications and vague prohibitions that allow the standard-less and discretionary prohibition of ideas inextricably tied to constitutionally protected classes such as Mexican Americans.

In support of their Motion for Summary Judgment, the Plaintiffs have presented indisputable evidence demonstrating that the new Arizona law, A.R.S. §§15-111 - 15-115 (HB2281), restricts the First Amendment freedoms of students to learn and teachers to teach[2], in a way that improperly targets

[1] This Court may take judicial notice of the desegregation case *Fisher v. TUSD*, Case 4:74-cv-00090-DCB. Plaintiffs in *Fisher* requested the Special Master to immediately reinstate the MAS program, but the court refused. Although that court also makes a brief conclusion about Equal Protection (Doc. 1360, at p. 3, ll. 22-24), the parties there have not briefed these issues, so that court has not had the benefit of any briefing. However the court has allowed for further briefing in a Motion for Reconsideration. Undersigned counsel have been in contact with Plaintiffs' counsel in *Fisher*, who indicate they intend to brief Equal Protection issues there.

[2] To the extent this Court has ruled that the Plaintiff Teacher's First Amendment arguments were foreclosed by *Johnson v. Poway Unified School District*, 658 F.3d 954, 961-62 (9th Cir. 2011), which embraced the test for public employee speech laid out

a group protected by the Equal Protection Clause of the Fourteenth Amendment. None of the statute's four subsections contain the requisite specificity and clarity demanded for due process and equal protection when a statute involves First Amendment freedoms and/or suspect classifications, as undeniably exist here, particularly when exercised with viewpoint specific restrictions designed to silence the free exchange of ideas. In fact, the exceptions provided by A.R.S. §15-112(E)(3), (4), and (F) increase the ambiguity of the enforcing subsections at A.R.S. §15-112(A) and the statute as a whole, making it even more difficult to determine what speech is prohibited. The statute is unconstitutional on the basis of the "void for vagueness" standard. Finally, the recent enforcement of the law and the resulting tailored censorship of books such as "Chicano! The History of the Mexican Civil Rights Movement,"[3] have revealed the inchoate insidiousness of the vague yet racially-categorized viewpoint discrimination that was promulgated by this law.

For historical context and to correct any inaccurate or incomplete understanding of Mexican-American or Chicana/o studies, *NACCS Amici*'s brief also provides a detailed analysis of the history and development of Chicana/o or Mexican American Studies in the United States and other countries, and the compelling state interest underscoring the basis for such educational programs. The statute promulgated by HB2281 -- insofar as it was created for, and has been aimed at, the Mexican-American Studies Program in this case -- paints a highly unrealistic, inaccurate, and distorted picture of what is in fact a long-established and respectable field of academic research, scholarship, teaching, and study both nationally and internationally. Defendants and others would have the Court believe that Mexican-American Studies is some sort of lunatic fringe element filled with anti-American, cultish ideologues calling for the overthrow of the government and preaching racial resentment and racial exclusivity. Such allegations are patently false. None of the allegations are based in fact. On the contrary, Mexican-American or Chicana/o Studies is a highly respected and influential field of academic study, scholarly research and teaching with both national and global recognition.

---

in *Pickering v. Board of Education*, 391 U.S. 563 (1968), as modified by *Garcetti v. Ceballos*, 547 U.S. 410, 425 (2006), *Amici* emphasize that the First Amendment discussion presented herein is not inconsistent with this Court's reasoning. This Court's Order of January 10, 2012, concluded that the teachers here do not have standing to complain of a First Amendment injury because the curriculum is the State Government's speech, not theirs. However, as this Court acknowledged, the students may have First Amendment rights to receive the MAS materials, and in order to receive it, there must be a "willing speaker" (Docket No. 138, p. 16, fn. 15) to teach the materials. *Amici* support this "corollary" First Amendment right of the teachers in this case.

Even in the context of *Poway*, however, *Amici* respectfully suggest for consideration their view that teaching a program developed in the context of a federal consent decree based on past equal protection violations is a matter of public concern, and that content was the motivating factor for the new law and its enforcement, that the State did not have justification for silencing this program and chilling viewpoints and ideas with compelled orthodoxy, and that the State's action would not have been taken but for the protected viewpoint of Mexican Americans. Although this is not "private speech" as it is part of official duties, *Amici* submit that the fact teachers may not have a right to determine their speech in curriculum does not mean the State has – or should have – the right to violate the Constitution in this manner.

[3] Arturo Rosales, Chicano! The History of the Mexican Civil Rights Movement, Arte Público Press, Houston, 1996.

ARGUMENT

I. Arizona Has Unconstitutionally Targeted Mexican-American Studies Students And Teachers Through An Impermissibly Vague Law That Violates Both Fourteenth And First Amendment Constitutional Protections For Students And Teachers, Resulting In Discriminatory Treatment And Improper Viewpoint Censorship Based On Suspect Classifications

At the outset, it must be noted that Mexican-Americans, also referred to here as "Chicanos", and other groups based on race or national origin, are protected classes under the Equal Protection Clause of the Fourteenth Amendment, which subjects laws that target suspect classifications to strict scrutiny. Mexican Americans have suffered discrimination and mistreatment over the course of American history. *Tijerina v. Henry*, 398 U.S. 922, 924, 90 S.Ct. 1718, 26 L.Ed.2d 86 (1970); *Castaneda v. Partida*, 430 US 482, 495, 97 S.Ct. 1272, 51 L.Ed.2d 498 (1977) ("it is no longer open to dispute that Mexican-Americans are a clearly identifiable class. *See, e. g., Hernandez v. Texas*, [347 U. S. 475, 74 S.Ct. 667, 98 L.Ed. 866 (1954)]; Cf. *White v. Regester*, 412 U. S. 755, 767, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973).") The United States Supreme Court in *Keyes v. School Dist. No. 1, Denver*, 413 US 189, 197-98, 93 S.Ct. 2686, 37 L.Ed.2d 548 (1973), cited the Commission on Civil Rights's conclusion that "Hispanos [Mexican Americans] suffer from the same educational inequities as Negroes and American Indians.[footnote omitted.] In fact, the District Court [in the *Keyes* case] itself recognized that "[o]ne of the things which the Hispano has in common with [African Americans] is economic and cultural deprivation and discrimination." *Id.*

Significantly, the Mexican-American Studies program that is under attack here – with the conception and enactment of HB2281 – arose from a court-ordered effort to remedy discrimination against Mexican-American students and others in the Tucson Unified School District, as part of a federal desegregation case and several orders requiring the district to remedy segregation and inequity. The Mexican American Studies program at issue is a vital component of a current court-ordered desegregation plan. The Arizona law violates the Constitution by impermissibly terminating a program approved pursuant to a pre-existing federal desegregation order. This context cannot be overlooked.

Indeed, not only do we have the record of past discrimination and inequity in TUSD, the State of Arizona itself has a "general history of discrimination against Latinos . . . ," as well as a specific history of discrimination violating other civil rights of Hispanics and Blacks.[4]

[4] *See Gonzalez v. Arizona*, 624 F. 3d 1162, 1194 (2010) (citing to record including the "**evidence of Arizona's general history of discrimination against Latinos** and the existence of racially polarized voting.") (bold emphasis added). "**Because Arizona has a history of discrimination, it is required to submit redistricting plans for preclearance** to the DOJ or the District Court … under § 5 of the Voting Rights Act. *See Arizona v. Reno*, 887 F.Supp. 318, 319-20

Ironically, it is exactly this effort to teach about discrimination, in a Mexican-American Studies program designed to evoke critical analysis and engender academic success and empowerment for Mexican-American students and others, that has been targeted by Arizona's discriminatory law, designed to force assimilation to the point of negating history from any ethnic viewpoint.

Arizona's law, A.R.S. §§ 15-111 and 112, provide, in pertinent part:

> 111. The legislature finds and declares that public school pupils should be taught to treat and value each other as individuals and not be taught to resent or hate other other races or classes of people.
> 112. A. A school district...shall not include in its program of instruction any courses or classes that include any of the following:
>
> 1. Promote the overthrow of the United States government.
> 2. Promote resentment toward a race or class of people.
> 3. Are designed primarily for pupils of a particular ethnic group.
> 4. Advocate ethnic solidarity instead of the treatment of pupils as individuals.
>
> B. If …. the superintendent … determines that the … district … has failed to comply … the superintendent … may … withhold up to ten per cent … of… state aid ….
> E. This section shall not be construed to restrict or prohibit:
>
> 1. Courses or classes for Native American pupils that are required to comply with federal law.
> 2. The grouping of pupils according to academic performance, including capability in the English language, that may result in a disparate impact by ethnicity.
> 3. Courses or classes that include the history of any ethnic group and that are open to all students, unless the course or class violates subsection A.
> 4. Courses or classes that include the discussion of controversial aspects of history.
>
> F. Nothing in this section shall be construed to restrict or prohibit the instruction of the holocaust, any other instance of genocide, or the historical oppression of a particular group of people based on ethnicity, race, or class.

Arizona's law constitutes an impermissible vague and ethnically-based view-point specific restriction on students and teachers, resulting in the termination of an acclaimed and successful Mexican-American Studies program, and the subsequent censorship of educational content from the perspective of, and about, Mexican-Americans' ethnic struggles or similar ethnic perspectives. The sole legislative impetus for the Arizona law was the TUSD Mexican American Studies program, not any other district or program in the state. See generally, Cutting Class: Why Arizona's Ethnic Studies

(D.D.C.1995); 42 U.S.C. § 1973c; see also 28 C.F.R. § 51.10." *Arizona Minority Coalition v. Ariz. Redistricting Commission*, 366 F. Supp. 2D 887, fn. 3 (D. Ariz. 2005) (Bold emphasis added); *Gonzales v. Sheely*, 96 F. Supp. 1004 (D. Ariz. 1951) (**education discrimination against Mexican Americans** in Tolleson District in Maricopa County).

Ban Won't Ban Ethnic Studies, Nicholas Lundholm, 53 Ariz. Law Rev. 1041, 1043, fn. 4 (2011).

Thereafter, Arizona's law in practice has been strategically and deliberately employed against the ideas, history and struggles of one ethnic group alone—Mexican-Americans or "Chicanos"—in the context of secondary education, and those wanting to learn and benefit from such studies.

As explained below, the Constitution does not permit Arizona to discriminate using vague racially based classifications and prohibitions that allow the standard-less and discretionary prohibition of ideas inextricably tied to a constitutionally protected class of people such as Mexican Americans.

A. Arizona Is Required To Close The Achievement Gap To Provide Equality For Mexican-American Students In Tucson Unified School District (TUSD) Due To Historic Discrimination That Resulted In a Binding Desegregation Order; Because TUSD's Mexican-American Studies Program Is A Permissible, Race-Conscious, Remedial Program Created To Comply With This Order, Strict Scrutiny Applies Here And Compels The Conclusion That A.R.S. 15-112 Unconstitutionally Infringes On This Federal Mandate By Creating An Impermissible Obstacle To Fulfilling The Mandates Of *Brown V. Bd. Of Education I & II*; Under These Facts, The Interests Of The State Must Yield To The Rights Of The Students Under The Fourteenth Amendment.

In this case, the State has asserted a defense aptly summarized as a "state's rights" defense, in the sense that State Attorney General Horne claims that the curriculum of TUSD is government speech, and that the state therefore has the "right" to restrict the teaching of certain viewpoints so long as the restriction is "reasonably related" to a legitimate pedagogical concern. In this way, the state presumes that the appropriate level of scrutiny for the statutes in question is "rational basis review".

But there is no dispute that the Mexican-American Studies program in TUSD was created while TUSD was under the protection of an existing desegregation order based on historic discrimination and inequity, and the MAS program was used as one of various efforts undertaken to remedy the violations. As such, the State ignores the dispositive and preexisting legal waters into which it waded when it passed and enforced HB2281 in TUSD in this case – a legal zone that already provides for strict scrutiny for equal protection purposes. Here, we have the State's unusual action to pass a law to eradicate an existing Mexican American Studies program that a local school board previously found provided a legitimate pedagogical resource in a district already subject to equal protection oversight. Moreover, the State ignores the entire history of civil rights jurisprudence which produced the levels of such scrutiny in the first place. Ultimately, the State's intentional efforts to deny TUSD the ability to continue a successful and permissible, race-conscious Mexican-American Studies program, born under the protection of a desegregation order, automatically falls under the watchful eye of strict scrutiny.

Simply put, the State's enactment of a law to kill a race-conscious remedial program established in a school district under the protection of the federal courts – designed as the result of a federal order to help Mexican-Americans achieve equality – is an unconstitutional effort to roll back the clock, and also a blatant political attack targeting Mexican Americans with forced assimilation of ideas, while narrowing the curriculum to squash any ideas or perspective of a protected class – Mexican Americans.

The State's inflammatory false dilemma questioning whether a state could prohibit a school from adopting a "Klu Klux Klan curriculum", does not apply. Instead, the question is whether the State may seek to deprive students from learning – and teachers from teaching – ideas from the perspective of Mexican Americans in historical context, a far cry from adopting a "Ku Klux Klan curriculum." The history of the Supreme Court grappling with the conflict between deep racial tensions on one hand, and the Constitution's apparent absolute prohibition on censorship of ideas on the other, is long and complex, and cannot be divorced from the social and political history of each case.

This section summarizes that history because it is significant to the unique context of the case pending before the Court. *Amici* then show that the appropriate level of scrutiny is "strict scrutiny" and that the constitutional protection arises from the Fourteenth Amendment as well as the First.

Not since the passage of the Fourteenth Amendment have states had unfettered power to legislate in their own interests. It is no coincidence that it was in the context of slavery and the worst forms of racial discrimination that the Fourteenth Amendment was born, nor that the State is now using the language of equal protection as a shield to claim the majority needs protection from Mexican-American or ethnic minorities while re-establishing discriminatory conditions for students in TUSD.

In 1974, Tucson Unified School District was found to have segregation and past discrimination based on race against African-American and Mexican-American students. In 1978, TUSD entered into a consent decree under the protective supervision of the United States District Court for the District of Arizona. The Mexican American Studies program was implemented as part of TUSD's obligations pursuant to the Post-Unitary Plan, adopted as part of a long-running desegregation action.[5]

[5] See *Fisher v. United States*, 549 F. Supp. 2D 1132, 1161 (D. Ariz. 2008); see also Plaintiff's Statement of Facts Exhibit A, Declaration of Martin Sean Arce. See Post-Unitary Plan, attached to Plaintiff's Motion for Summary Judgment as Ex. B, pp. 31-33. The TUSD Governing Board implemented the Mexican American Studies curriculum in fulfillment of its obligations under the Post-Unitary Status Plan ordered by the District Court in *Fisher v. TUSD*, D.C. No. 4:74-cv-00090-DCB. In 2011, the Ninth Circuit remanded the desegregation case, *Fisher v. TUSD,* LEXIS 14688 (9th Cir. 2011), to the district court with instructions to maintain jurisdiction until TUSD has demonstrated it is in good faith compliance with the Post-Unitary Plan over a reasonable period of time. This was because the Ninth Circuit found that "TUSD has failed to make the most basic inquiries necessary to assess the ongoing effectiveness of its student assignment plans, policies, and programs, which include: race and ethnic sensitive school boundaries; magnet programs, open enrollment,

Nearly 25 years earlier, *Brown v. Bd. of Education* held:

> In approaching this problem, we cannot turn the clock back to 1868 when the [Fourteenth] Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.
>
> Today, **education is perhaps the most important function of state and local governments**. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. **Today it is a principal instrument in awakening the child to cultural values**, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms...
>
> **A sense of inferiority affects the motivation of a child to learn.**

347 U.S. 483, 492-4, 74 S.Ct. 686, 98 L.Ed. 873 (1954) (emphasis added).

After *Brown I,* where the Supreme Court found that segregated schools violated the Fourteenth Amendment Equal Protection clause, the Court ordered further argument as to the remedies for the various violations. In *Brown II*, the case was remanded to each District Court where violations had been found, to design a desegregation plan for each school district in compliance with *Brown I,* with specific direction to the district courts to fashion and effectuate decrees guided by equitable principles characterized by a practical flexibility in shaping remedies and by a facility for adjusting and reconciling public and private needs. *Brown II*, 349 U.S. 294, 300, 75 S.Ct. 753, 99 L.Ed. 1083 (1955) (such cases call for the exercise of these traditional attributes of equity power).

Many Southern states resisted complying, including the infamous case of *Cooper v. Aaron*, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d 5, 3 L.Ed.2d 19 (1958), when President Eisenhower had to deploy armed federal troops to escort black students into white schools past obstructive administrators. Some schools went so far as to close down to avoid desegregating, but the Court said that was not an acceptable solution. *Griffin v. County School Bd.*, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 256 (1964).

---

and providing an equal education to all students including those attending minority-identifiable schools." *Fisher*, at 1149. Various federal actions were part of the desegregation case: see *Underwood v. TUSD,* Case No. 4:87-cv-00949-ACM (D. Ariz. 1992); *Alvarez v. TUSD & Jasso v. TUSD*, Case No. 4:86-cv-00469-ACM, (D. Ariz. 1994).

In *Green v. County School Board*, a rural Virginia school designed a plan where students could choose which school to attend. Three years later, schools were again segregated. The Court stated:

> The obligation of the district courts, as it always has been, is to assess the **effectiveness** of a proposed plan in achieving desegregation. There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. **It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness.** Where the court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system 'at the earliest practicable date,' then the plan may be said to provide effective relief. Of course, the availability to the board of other more promising courses of action may indicate a lack of good faith; and **at the least it places a heavy burden upon the board to explain its preference for an apparently less effective method.** Moreover, whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed.

Green v. New Kent County School Board , 391 U.S. 430, 439, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968).

At first, remedies focused on eliminating "segregation", but in *Board of Education of Oklahoma City Public Schools v. Dowell*, the language shifted to "discrimination", and the Supreme Court explained that a school might still discriminate illegally even though it has been desegregated:

> The lower courts have been inconsistent in their use of the term "unitary." Some have used it to identify a school district that has completely remedied all vestiges of past discrimination... Under that interpretation of the word, a unitary school district is one that has met the mandate of *Brown v. Board of Education,* [II], and *Green v. New Kent County School Board,...* Other courts, however, have used "unitary" to describe any school district that has currently desegregated student assignments, whether or not that status is solely the result of a court-imposed desegregation plan. **In other words, such a school district could be called unitary and nevertheless still contain vestiges of past discrimination.**

Dowell, 498 U.S. 237, 245, 111 S.Ct. 630, 112 L.Ed.2d 715(1991) (internal citations omitted) (emphasis added).

In 1978, the Supreme Court began deciding cases where the complaint was filed by white plaintiffs challenging a racial classification designed to benefit minorities rather than burden them, otherwise known as "affirmative action". In *California v. Bakke*, 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978), the Court found that an outright set-aside of places at the university for minority

students was invalid because it placed an unconstitutional burden on white students who were displaced, and thus began the discussion about what level of scrutiny is appropriate for racial classifications intended to benefit minorities. The more liberal justices argued for a lower standard of scrutiny because they believed states should be allowed to remedy past discrimination by using racial classifications, and strict scrutiny is usually fatal to any such law. Also, the liberal justices argued that, because the motivations were benign, there was no longer the need to demand such high levels of justification.

Ideologically conservative justices, on the other hand, argued for strict scrutiny because they claimed that any racial classification harms minorities even if it is not intended to do so. Justice Thomas wrote:

> Frederick Douglass, speaking to a group of abolitionists almost 140 years ago, delivered a message lost on today's majority:
>
> > "[I]n regard to the colored people, there is always more that is benevolent, I perceive, than just, manifested towards us. What I ask for the negro is not benevolence, not pity, not sympathy, but simply *justice.* The American people have always been anxious to know what they shall do with us .... I have had but one answer from the beginning. Do nothing with us! Your doing with us has already played the mischief with us. Do nothing with us! If the apples will not remain on the tree of their own strength, if they are worm-eaten at the core, if they are early ripe and disposed to fall, let them fall! ... And if the negro cannot stand on his own legs, let him fall also. All I ask is, give him a chance to stand on his own legs! Let him alone! ... [Y]our interference is doing him positive injury."...
>
> Like Douglass, I believe blacks can achieve in every avenue of American life without the meddling of university administrators. Because I wish to see all students succeed whatever their color, I share, in some respect, the sympathies of those who sponsor the type of discrimination advanced by the University of Michigan Law School (Law School). **The Constitution does not, however, tolerate institutional devotion to the status quo in admissions policies when such devotion ripens into racial discrimination.**

Grutter v. Bollinger et al., 539 u.s. 306, 349-50, 123 S. Ct. 2325, 156 L. Ed. 2d 304 (2003) (Thomas, J., concurring in part and dissenting in part) (bold emphasis added).

Consequently, strict scrutiny became the applicable standard, which means that for an ethnic or racial classification to be upheld, the state must show a compelling interest in the outcome, and that the remedy chosen is narrowly tailored to achieve the desired outcome. Strict scrutiny has its origins in the

Japanese internment case of *Korematsu v. United States*, 323 U. S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944). The *Korematsu* Court held that the government's interest in national security constituted a "pressing public necessity" justifying classification by national origin, essentially suspending Fourth & Fifth Amendment rights and incarcerating all Japanese nationals in the United States without reasonable suspicion, probable cause, or due process. Because the consequences of racial classification are so dire, a classification must also be narrowly tailored so as to achieve the ends desired, and not use the scheme beyond what is necessary. In *Brown I*, the Court found that education was a similarly compelling governmental interest because education underpins the successful functioning of society.

Justice Scalia also supported strict scrutiny in the context of affirmative action programs, and outlined his view of how such a law might pass:

> In my view there is only one circumstance in which the States may act *by race* to "undo the effects of past discrimination": **where that is necessary to eliminate their own maintenance of a system of unlawful racial classification.** …. **This distinction explains our school desegregation cases, in which we have made plain that States and localities sometimes have an obligation to adopt race-conscious remedies.** While there is no doubt that those cases have taken into account the continuing "effects" of previously mandated racial school assignment, we have held those effects to justify a race-conscious remedy only because we have concluded, in that context, that they perpetuate a "dual school system." **We have stressed each school district's constitutional "duty to *dismantle* its dual system," and have found that "[e]ach instance of a failure or refusal to fulfill this affirmative duty *continues the violation* of the Fourteenth Amendment." Concluding in this context that race-neutral efforts at "dismantling the state-imposed dual system" were so ineffective that they might "indicate a lack of good faith,", we have permitted,** as part of the local authorities' "affirmative duty to disestablish the dual school system[s]," such voluntary (that is, noncourt-ordered) measures as attendance zones drawn to achieve greater racial balance, and out-of-zone assignment by race for the same purpose. While thus permitting **the use of race to *de* classify racially classified students, teachers, and educational resources**, however, we have also made it clear that the remedial power extends no further than the scope of the continuing constitutional violation. And it is implicit in our cases that after the dual school system has been completely disestablished, the States may no longer assign students by race.
>
> Our analysis in *Bazemore v. Friday, supra,* [478 U.S. 385, (1986)] reflected our unwillingness to conclude, outside the context of school assignment, that the continuing effects of prior discrimination can be equated with state maintenance of a discriminatory system.

City of Richmond v. Croson Company , 488 U.S. 469, 524-5, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989) (Scalia, J., concurring) (bold emphasis added, italics in original) (citation added).

In *Grutter*, the majority found that the school's interest in having a diverse student body met the

"compelling interest" requirement, therefore the university could use race-conscious measures to remedy past discrimination. Justice Thomas, in a lengthy concurrence/dissent, points out that none of the evidence presented shows that the interest of "diversity" asserted by the school will remedy the gap in achievement between black and white students, and also that the line between classifications that benefit, and those that burden, a protected class is not as clear as the majority would like to believe:

> "[D]iversity," for all of its devotees, is more a fashionable catchphrase than it is a useful term, especially when something as serious as racial discrimination is at issue. Because the Equal Protection Clause renders the color of one's skin constitutionally irrelevant to the Law School's mission, I refer to the Law School's interest as an "aesthetic." That is, the Law School wants to have a certain appearance, from the shape of the desks and tables in its classrooms to the color of the students sitting at them.
>
> I also use the term "aesthetic" because I believe it underlines the ineffectiveness of racially discriminatory admissions in actually helping those who are truly underprivileged. Cf. *Orr v. Orr*, 440 U. S. 268, 283 [99 S.Ct. 1102, 59 L.Ed.2d 306 (1979)] (1979) (noting that **suspect classifications are especially impermissible when "the choice made by the State appears to redound ... to the benefit of those without need for special solicitude"**). It must be remembered that the Law School's racial discrimination does nothing for those too poor or uneducated to participate in elite higher education and therefore presents only an illusory solution to the challenges facing our Nation.

Grutter, 539 U.S. at 354 (Thomas, J. concurring in part and dissenting in part, fn. 3) (emphasis added).

Here, the State Defendants are under a similar obligation to remedy past discrimination in TUSD, and also to do so without displacing white students: to achieve effective, and not just aesthetic equality under the law. The Mexican-American Studies program, as part of the Post-Unitary Plan for TUSD, effectively satisfied the mandate of *Brown I* and *II*, as well as *Grutter* with respect to Mexican-American students in TUSD, and was a permissible race-conscious remedial program. No white students have been displaced, but rather, Mexican-American students have been advanced and the achievment gap closed via a curriculum which is an "instrument in awakening the child to cultural values", *Brown I,* 347 U.S. at 493. Therefore the new Arizona law which dismantles such an effective program – a remedial effort that arose due to a history of equal protection violations in TUSD – undoubtedly violates the Equal Protection clause of the Fourteenth Amendment just as surely as the Virginia laws closing schools in *Griffin*, and the permitting of voluntary segregation in *Green*.

Indeed, forcing a colorblind educational perspective is akin to Southern states' unconstitutional efforts to impose “colorblind” assignment policies after *Brown I* – these policies were unconstitutional. As Justice Stevens explained in *United States v. Paradise*, 480 U.S. 149, 107 S.Ct. 1053, 94 L.Ed.2d

203 (1987) (concurring):

> A unanimous Court held in *North Carolina State Board of Education v. Swann* , 402 U. S. 43 (1971), a case decided on the same day as *Swann v. Charlotte-Mecklenburg Board of Education*, that **the State's Anti-Busing Law, which prohibited assignment of any student on account of race** or for the purpose of creating a racial balance in the schools, conflicted with the State's duty to remedy constitutional violations. **We observed:"[T]he statute exploits an apparently neutral form to control school assignment plans by directing that they be `color blind'; that requirement, against the background of segregation, would render illusory the promise of Brown v. Board of Education, 347 U. S . 483 (1954)**. **Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid, at this stage, all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation** to eliminate existing dual school systems. "**Similarly, the flat prohibition** against assignment of students for the purpose of creating a racial balance **must inevitably conflict with the duty of school authorities** to disestablish dual school systems. As we have held in Swann, the Constitution does not compel any particular degree of racial balance or mixing, but when past and continuing constitutional violations are found, some ratios are likely to be useful starting points in shaping a remedy." 402 U. S., at 45-46.

Particularly offensive to this longstanding history of Equal Protection jurisprudence, is the State's use of the language of discrimination in a statute which in effect, "appears to redound... to the benefit of those without need for special solicitude". *Orr v. Orr*, 440 U.S. 268, 283, 99 S.Ct. 1102, 59 L.Ed.2d 306 (1979) (quoted by Thomas, J. in *Grutter, supra*). Just as Justice Thomas described, the motivations - whether benevolent, malign, or neutral - behind a statute which classifies according to race, may not always be clear or pure. The State itself admits that there are other laws which prohibit the teaching of the overthrow of the United States government, therefore the improper motivations behind this Arizona law, which is not only unnecessary, but also violates the Constitution, are suspect at the very least.

The State's claim of needing the force of law to protect the majority from the hatred and resentment of minority Mexican-Americans has no basis in fact or law, whereas Mexican-Americans' need for the protection of the Federal government from discrimination of the State not only has a basis in fact and history, but also in United States Supreme Court precedent. The State of Arizona's protestations of victimhood from an alleged problem of teaching of “ethnic solidarity” that has resulted in purported “ethnic resentment” are too recent, and too conveniently timed in the history of racial discrimination in Arizona, to be given any merit by this Court.

Our history is replete with examples of discrimination in education ranging from outright

prohibition to strict controls and segregation, as discussed above. *E.g., Knight v. State of Ala.*, 787 F.Supp. 1030, 1046, 1067 (N.D. Ala., 1991) (discussing Antebellum prohibitions in most Southern states against teaching all Black people, slaves and freemen, as well as the subsequent post-Civil War Black Codes, noting: "**One of the forms of subordination was the rigid control by whites of black education. Most whites wanted blacks educated, if at all, only to the minimum level necessary** to provide semi-skilled labor." (emphasis added)

The Arizona law was enacted out of fear that the program was empowering collective ethnic solidarity while promoting ethnic resentment, in the context of fear of alleged overthrow of the Government. See Nicholas B. Lundholm, *Cutting Class: Why Arizona's Ethnic Studies Ban Won't Ban Ethnic Studies*, 53 Ariz. Law Rev. 1041 (2011). The State demands that students must view themselves only as individuals and not as part of an oppressed ethnic group with any ethnic solidarity, and that the state has the right to compel this ideological conformity and assimilation in the classroom -- even in the face of historic unconstitutional and inequitable educational treatment of Mexican Americans and Blacks, and past racial discrimination in TUSD and in Arizona.

The Arizona law is based on unfounded irrational fear of insurrection by Mexican-Americans and is a form of educational discrimination that should be struck down on its face or as applied.[6]

Laws which are otherwise neutral on their face, but which are really aimed at the unjust oppression of a particular class of people cannot withstand Constitutional muster. In *Plyler v. Doe*, 457 US 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982), the Supreme Court rejected imposing restrictions on educating "alien children" even though this group was not a suspect classification that would automatically mandate strict scrutiny. The Court nonetheless struck down a Texas law prohibiting the education of alien (Mexican) children present without documentation, finding that it unconstitutionally targeted an innocent class of people with the unconscionable and irrational result of creating an permanent illiterate underclass.

In *William Truax v. Mike Raich*, 239 U.S. 33, 41-43, 36 S.Ct. 7, 60 L.Ed. 131 (1915), the Supreme Court struck down an Arizona law restricting hiring based on alienage – statutorily requiring

[6] The language in the Arizona law does not fall neatly into any traditional "facial" classification analysis, but there is no doubt from *Amici's* perspective that the ban on "ethnicity" vis-a-vis the majority population is evident from the sole legislative focus on the Mexican American Studies program for enacting the law, and the prohibition of courses promoting "ethnic solidarity" or courses designed for a particular "ethnic" group, and the statute's exemption for assignment based on performance specifically including "English language [capability]" that "may result in a disparate impact by ethnicity," and exemption for courses for "Native Americans" required by federal law. See A.R.S. § 15-112.

hiring 80 percent "native born citizens" or "qualified electors" – as violating equal protection, noting that if the ability to work "could be refused based on race and nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words." Not only was the application of that law struck down and the lower court's injunction against enforcement upheld – though the worker had not yet been fired – the Court also declared the law unconstitutional by rejecting the classification and its premise that the state had unlimited power to restrict aliens from work, holding that "the discrimination is against aliens... and in our opinion clearly falls under the condemnation of the fundamental law." *Truax*, 239 U.S. at 43. In other cases, the Supreme Court has struck down laws where the language was purportedly neutral. *Oyama v. California*, 332 U.S. 633, 648, 68 S.Ct. 269, 92 L.Ed. 249 (1948) (Black, J., concurring) (noting that California's Alien Land Law, was held to be unconstitutional on basis of national origin, because it "in actual effect singles out aliens of Japanese ancestry …. although the statute [did] not name the Japanese as such" and its terms also applied to "a comparatively small number of aliens from other countries").

Even *Plessy v. Ferguson*, 163 US 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896), which mistakenly held that the 14th Amendment did not bar separate but equal treatment of blacks, correctly recognized that there are still limits to state power to regulate for the public order in that such laws must be enacted in "good faith for the promotion for the public good, and not for the annoyance or oppression of a particular class." Thus, laws which are otherwise neutral on their face, but which are really aimed at the unjust oppression of a particular class of people, cannot pass Constitutional muster:

> every exercise of the police power must be reasonable, and extend only to such laws as are enacted in good faith for the promotion for the public good, and not for the annoyance or oppression of a particular class. Thus in *Yick Wo [v. Hopkins,* 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886)], it was held by this court that a municipal ordinance of the city of San Francisco, to regulate the carrying on of public laundries within the limits of the municipality, violated the provisions of the Constitution of the United States, if it conferred upon the municipal authorities arbitrary power, at their own will, and without regard to discretion, in the legal sense of the term, to give or withhold consent as to persons or places, without regard to the competency of the persons applying, or the propriety of the places selected for the carrying on of the business. It was held to be a covert attempt on the part of the municipality to make an arbitrary and unjust discrimination against the Chinese race.

Plessy, at 550.

Strict scrutiny applies, whether as the result of the existing embrace of the Equal Protection scrutiny in TUSD from the desegregation order and prior discrimination and inequality findings, or as

the result of Arizona's vague and intolerable law improperly discriminating against Mexican Americans by prohibiting ideas and perspectives. Even if the analysis were something less than strict scrutiny, the law still fails for these reasons.

B. Arizona Has Unconstitutionally Targeted Mexican-American Studies, Students And Teachers Through An Impermissibly Vague And Standardless Law That Violates Both Equal Protection And First Amendment Protections For Public School Students And Teachers, Using Discriminatory And Improper Government Viewpoint Censorship Of Ethnicity And Related Ideas That Are Based On Racial And National Origin Classifications.

As explained above, Mexican-Americans are a protected class under the Equal Protection Clause, as are other ethnic groups based on race or national origin. Even without the protection afforded by *Brown I & II* and it's successors, the state still may not prohibit a viewpoint with which it disagrees, especially when it openly discriminates against ethnic groups like Mexican Americans from having their their viewpoints or ideas on solidarity expressed. Here, the viewpoint is that of Mexican Americans through the study of and the perspective and ideas of Mexican-Americans. Arizona's law constitutes not only unconstitutional violation of Equal Protection, but also the First Amendment, through the use of impermissibly vague and racially-based view-point specific restrictions.

In *Yick Wo v. Hopkins,* 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886), the government purported to pass a neutral law addressing only ordinary municipal issues which would normally fall fully within its discretion -- building ordinances – but in reality, the government's law was actually an effort to target the Chinese community to prevent them from operating laundry businesses. Just as the government in *Yick Wo* was really targeting a class of people with a law, that in all other situations would be fully within their purview, and subject only to rational basis scrutiny, the government here similarly purports to have full authority to express "government speech" via the school curriculum – an area normally within their full discretion – but the reality is that Arizona's law is actually targeting a class of people – here, Mexican-Americans.

Significantly, the State commissioned its own "independent audit" of the Mexican American Studies program by the Cambium Group which ultimately praised the program and found no evidence that the program violated the new law, yet the State still found the program in violation.[7] The States' treatment of the Audit casts the light of truth onto the State's discriminatory purpose. When the results

[7]See Cambium Learning Group, Inc. Audit Report, at pp. 42, 50, 66-67. The Report is hereafter referred to as "Cambium Report" or "Audit." The entire 120-page Cambium Report is filed in four sections at Ct. Doc. Nos. 84-1, 85, 86 and 87.

were not what was desired by the State, the State Superintendent of Schools first misled the public by implying that the Audit supported finding the program in violation, and then later asserted that his independent Audit was somehow a "whitewash."[8] Further evidence of discriminatory purpose is the unusual law passed here, given that Arizona statutorily leaves curriculum discretion with local school boards. See A.R.S § 15-341(A)(5) (2011) ("[School district] governing board shall . . . [p]rescribe the curricula.") and § 15-701(C)(1). The State's discretion to regulate curriculum is in practice being used to oppress a class of people and suppress their perspective and ideas– here, Mexican Americans.

1. Under the First Amendment, states may not ban teaching consideration of ethnicity as a group or silence related viewpoints, or target a protected class in this manner while establishing a pall of orthodoxy in a curriculum. Here, the MAS program has been dismantled based on regulation of speech that refers not only to content, but impacts a protected class under the Fourteenth Amendment.

The State's asserted right to control curriculum does not permit the State to impose a pall of orthodoxy in curriculum which directly and sharply implicates the rights of ethnic and racial groups in a manner that devalues ethnicity and which seeks to whitewash any ethnicity from the curriculum. The State cannot use its discretion to enact curriculum as a First Amendment shield to irrationally suppress viewpoints based on perspectives of Mexican Americans and national origin in simultaneous violation of the Equal Protection clause and First Amendment.

The First Amendment provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment I.

Scholars agree that the Free Speech clause of the First Amendment had its origins as a reaction

[8] The largest newspaper in Arizona criticized the Arizona State Superintendent of Public Instruction in an editorial for misleading the public about the results of the Cambium Audit by presenting it during his press conference releasing his findings that the program violated the law, when the State's own Audit actually "lavishly" praised the program and found no evidence of resentment or a violation but instead a program focused on peace. Arizona Republic, Editorial Opinion, Feb. 23, 2012, available at http://www.azcentral.com/arizonarepublic/opinions/articles/2011/06/17/20110617tucson-ethics-studies-john-huppenthal-editorial.html; see "John Huppenthal's Whopper on Ethnic Studies: Cambium Report Doesn't Back Hup's Declaration that Tucson's MASD Program Violates State Law," June 16, 2011, Steven Lemons, Phoenix New Times; http://blogs.phoenixnewtimes.com/bastard/2011/06/john_huppenthals_big_lie_on_et.php.) Later, this state official claimed on public television during a nationally televised CNN interview that "It was obvious to us that the audit was a whitewash, didn't truly represent what was going on in the classes." (CNN News, aired on September 14, 2011, transcript available online at CNN Archives http://archives.cnn.com/TRANSCRIPTS/1109/14/cnr.07.html.)

to the oppressive laws in England, where it was a crime to criticize the King or the government:

> If people should not be called to account for possessing the people with an ill opinion of the government, no government can subsist. For it is very necessary for all governments that the people should have a good opinion of it.

14 Thomas Howell, *A Collection of State Trials* 1095, 1128 (1704).

Despite this prominent and simple prohibition, the colonies and even the eventual Federal government have found the urge to silence critical speech overwhelming. Various means of discouraging and prosecuting unpopular expressions have resurfaced throughout the history of Free Speech jurisprudence.[9] There is no singular Free Speech analysis for all settings.

Generally speaking, the principles underlying Free Speech & Expression analyses are that: 1) Free speech allows for a "marketplace of ideas" in which expressions can be tested in competition and debate, allowing for truth to emerge, 2) Freedom of speech is crucial for informing voters, 3) Free expression is crucial to self-definition and personal autonomy, and 4) Public acknowledgment of the value of speech encourages tolerance of unpopular ideas, and debate as a response, instead of violence.

In *Sullivan*, Justice Brennan discussed some of these theories:

> The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' *Roth v. United States*, 354 U.S. 476, 484, 77 S.Ct. 1304, 1308, 1 L.Ed.2d 1498. 'The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.' *Stromberg v. California*, 283 U.S. 359, 369, 51 S.Ct. 532, 536, 75 L.Ed. 1117. '(I)t is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions,' *Bridges v. California*, 314 U.S. 252, 270, 62 S.Ct. 190, 197, 86 L.Ed. 192, and this opportunity is to be afforded for 'vigorous advocacy' no less than 'abstract discussion.' *N.A.A.C.P. v. Button*, 371 U.S. 415, 429, 83 S.Ct. 328, 9 L.Ed.2d 405.

Sullivan, 376 U.S. at 269.

---

[9]For example, the Alien & Sedition Acts of 1798 prohibited: "false, scandalous, and malicious writing or writings against the government of the United States... with intent to defame... or to bring them... into contempt or disrepute; or to excite against them... hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein...". Although never overturned, as noted by Justice Brennan in the landmark First Amendment case, *New York Times v. Sullivan,* the Sedition Act was widely attacked at the time as: "a power which, more than any other, ought to produce universal alarm, because it is leveled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right." *New York Times Company v. Sullivan*, 376 U.S. 254, 274, 11 L. Ed. 2d 686, 84 S. Ct. 710 (1964) (citing the General Assembly of Virginia, 4 Elliot's Debates on the Federal Constitution (1876) pp. 553—554).

Despite the mandate of the First Amendment, both the individual and the government right of Free Speech are not unlimited. Indeed, the United States Supreme Court has made it clear that States *may* make laws "abridging the freedom of speech", so long as they are reasonable restrictions as to time, place, and manner of speech, and the restrictions are not based on the content of the speech.

Although government has the right to speak via legislative reports and publications, as well as through state-directed school curricula and compulsory school attendance, that right is limited by the imperatives of the First Amendment, as well as the Fourteenth:

> We can accept it as settled, therefore, that, however strong the State's interest in universal compulsory education, it is by no means absolute to the exclusion or subordination of all other interests.

Wisconsin v. Yoder, 406 U.S. 205, 215, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) (First Amendment exercise of religion protection for Amish parents seeking to educate children without attending public school).

Contrary to the State's reliance on their discretion in establishing curricula to argue that the State has unlimited rights to say what they want, government speech is not unlimited, even in the context of school curriculum, and, more importantly in this case, the State may not institute or defend a violation of the Fourteenth Amendment by reference to the First. When that authority is used for such an oppressive, discriminatory purpose, the law cannot stand under our Constitution, particularly when government speech is used to stomp out a particular viewpoint, while replacing that view with an orthodoxy of individualism – to the exclusion of any consideration of ethnicity, or ideas of ethnicity, out of fear of resentment or insurrection.

Although it is recognized that state and local school boards generally have broad discretion in matters of education, there are indeed limits to this discretion: it must be exercised in a manner that comports with the transcendent imperatives of the First Amendment and other constitutional provisions. See *Edwards v. Aguillard*, 482 U.S. 578, 107 S.Ct. 2573, 96 L.Ed.2d 510 (1982), citing *Board of Education, Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U. S. 853, 864 (1982) (school board could not remove books from a school library if it did so "in a narrowly partisan or political manner.").

Moreover, in *West Virginia State Board of Education v. Barnette*, the Court announced the principle that, "**If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.**" 319 U.S. 624, 642, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943) (emphasis added). In that case, the State passed a law

making refusal to salute the flag a criminal offense, punishable in the same way as insubordination in the military. The Court analyzed the intersection of the First and Fourteenth Amendment, with specific reference to the ability of a state to require certain classroom orthodoxy:

> **The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted.** These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. **That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.** Such Boards are numerous and their territorial jurisdiction often small. But small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity may be less vigilant in calling it to account.... There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond reach of the Constitution....
>
> [I]t is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. **But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect.**

Barnette, 319 U.S. at 637-9, (emphasis added).

In the First Amendment context, constitutional limits on state action in education matters have been found in cases ranging from striking down the compulsion of specific ideas or speech to striking down laws encouraging establishment of religion. *E.g. Barnette*, *supra,* (compelling students to salute flag violates First Amendment) and *Epperson v. Arkansas*, 393 U.S. 97, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968) (striking down state law prohibiting teaching of evolution); *See generally, Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969) (students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate").

Moreover, the Supreme Court has embraced the principles of academic freedom, flexibility, and the compelling interest in having comprehensive education in elementary and secondary schools. *Edwards v. Aguillard*, 482 U.S. 578, 107 S.Ct. 2573, 96 L.Ed.2d 510 (1982) is relevant on this point.

In *Aguillard*, after recognizing the general rule that state and local school boards have discretion in educational matters, the Court struck down a law requiring the teaching of creationism. As relevant here, the Supreme Court in *Aguillard* noted that the purpose of the law was seeking to "narrow a science curriculum." Despite the general rule that deference is given to state and local authorities to determine curriculum, the Court concluded that the purported claim that the law was for a non-secular purpose, had to be sincere and not a sham, concluding that the legislative history in that case showed that the sponsor had wanted to ban the entire subject of evolution or creationism.[10] But the Supreme Court supported the idea of comprehensive education and spoke out against banning teaching ideas, explaining: "Such a ban on teaching does not promote — indeed, it undermines — the provision of a comprehensive scientific education." *Aguillard,* 482 U.S. at 587. The Court further explained that the law did not expand the flexibility that teachers already possessed under the law, and nothing in existing law prohibited the teaching of any scientific theory. As such, the Court concluded that it was equally clear that requiring creationism to be taught alongside evolution did "not advance academic freedom." *Id.*

Here, although this is not a religious establishment or free exercise case, *Amici* contend that the principles of the First Amendment and the Equal Protection clause of the Fourteenth Amendment should demand a non-discriminatory purpose from Arizona under these circumstances, since the law classifies with prohibitions based on ethnicity. *Amici* can find no non-discriminatory purpose of the new Arizona law that was not already fully served with pre-existing Arizona or federal law. Under state and federal law, it was already unconstitutional for a public school to discriminate or teach a racist doctrine, as that would violate state civil rights laws, the Fourteenth Amendment of the Constitution, and federal civil rights laws. Likewise, it is also already illegal to promote the overthrow of the government under federal law. The State cannot proffer a valid, non-discriminatory purpose that can be adequately stated in support of their effort to white-wash from the curriculum any teaching for or about ethnic groups that the current Superintendent of Education dislikes, or the viewpoint and perspective of protected classes.

Similar to the law in *Aguillard* seeking to narrow a science curriculum, the State here seeks to "narrow a … curriculum" by banning teaching Mexican American studies, and "such a ban on teaching

[10]**Because *Aguillard* involved religious establishment issues, the Court's doctrine there required the finding of a secular state purpose that was not fully served by the existing law before the new law, and that the law was sincere and not a sham against secular teaching and in favor of religion.** Even if *Amici's* analogy to the sincere purpose/sham test is not extended here in the context of legally requiring a non-discriminatory purpose, this Court can and should still consider improper discriminatory purpose just as was done in *Yick Wo* and other cases, as well as the as-applied classification.

does not promote – indeed, it undermines the provision of a comprehensive … education" about society and history which "does not advance academic freedom." *Aguillard*, at 587.

Indeed, if the State claims the purpose is to discourage ethnic resentment and that this is promoted because the MAS program does not fairly depict the majority in its depiction of history, *Aguillard* again provides a parallel. The Court in *Aguillard* noted that "the goal of basic 'fairness' is hardly furthered by the Act's discriminatory preference for the teaching of creation science and against the teaching of evolution."

Here, the prevention of ethnic studies like Mexican American Studies evidences a preference in favor of individualism and against ethnicity and ethnic groups, thereby singling out ethnic groups for disparate treatment. The Mexican American Studies program has already been determined by the TUSD to have legitimate educational value, and to assist in complying with the equal protection mandates of the desegregation order, but the State passed a law and found a violation of that law – under politically racially charged circumstances – to end the program on the basis of viewpoint and content. Under the State's threat of a multi-million dollar fine, the MAS program and books used as reading materials have been removed from classrooms mid-semester.

In *Pratt*, the Eighth Circuit held that when a school board identifies information that it believes to be a useful part of a student's education, that student has the right to receive the information. *Pratt* "held that a school board's removal of material from the classroom curriculum solely on the basis of its message has a powerful symbolic effect on a student or teacher's First Amendment rights — despite the material's availability in the library — and is, therefore, unconstitutional." *Monteiro*, 158 F.3d 1022 at 1028 citing *Pratt v. Independent Sch. Dist. No. 831, Forest Lake, Minn.*, 670 F.2d 771, 773 (8th Cir.1982) (removal of a film, Shirley Jackson's The Lottery, unconstitutional when premised on assumption that scenes offensive to the majority of the board and some parents had no place in the school system). The Court in *Pratt* explained that the flow of information to students through the curriculum is far more direct than through the placing of materials in a library and that accordingly the First Amendment harms stemming from curriculum censorship are by far the more serious injury.

Thus, in *Pratt*, the Court concluded that despite the power and discretion accorded them, school boards do not have an absolute right to remove materials from the curriculum.

> At the very least, the First Amendment precludes local authorities from imposing a "pall of orthodoxy" on classroom instruction which implicates the state in the propagation of a particular religious or ideological viewpoint." *Keyishian v. Board of Regents*, 385 U.S. 589, 603, 87 S.Ct. 675, 683, 17 L.Ed.2d 629 (1967); *Zykan v. Warsaw Community*

> *School Corp., supra*, 631 F.2d at 1306. Thus, the students here had a right to be free from official conduct that was intended to suppress the ideas expressed in these films. See *Pico v. Board of Education, Island Trees Union Free School District, supra*, 638 F.2d at 433 (opinion of Newman, J.).

Pratt, at 779.

Citing *Pico* and other cases, *Pratt* held that "courts have generally concluded that a cognizable First Amendment claim exists if the book was excluded to suppress an ideological or religious viewpoint with which the local authorities disagreed." *Pratt*, at 776 (citations omitted). Pratt held that the record in that case established that films previously permitted in the curriculum were prohibited because a review board had "objected to the ideas expressed in them." *Pratt* at 777. Thus, the state had to provide a substantial and reasonable reason for interfering with the students' right to receive information (and necessarily, the the teaching of that information). Here, the TUSD had previously found the MAS program to provide legitimate and valuable pedagogical resources. But the State of Arizona concluded otherwise, despite this finding, and despite the finding of its own commissioned audit by the Cambium Group that the program was successful and not in violation of HB2281.

Indeed, the Court's holding in *Pratt* is analogous and the MAS program could readily be inserted into the analysis and reasoning stated in *Pratt*:

> The board — not this Court — has the authority to determine that a literary or artistic work's violent content makes it inappropriate for the District's curriculum. But after carefully reviewing the record, we must agree with the district court that the board eliminated the [Mexican American Studies program] not because they... [promote ethnic hatred or resentment], but rather it so acted because the [State of Arizona] agreed with those citizens who considered the [curriculum's] ideological … themes to be offensive.

Pratt at 778. In *Pratt*, the Court held that :

> The board has used its official power to perform an act clearly indicating that the ideas contained in the films are unacceptable and should not be discussed or considered. This message is not lost on students and teachers, and its chilling effect is obvious. *Pico v. Board of Education, Island Trees Union Free School District, supra*, 638 F.2d at 436 (opinion of Newman, J.).

Pratt at 780.

Similarly, Arizona has now used its official power to override a prior school district decision finding MAS a legitimate and valuable program, and to indicate that the ideas in the Mexican American Studies program are unacceptable and should not be discussed or considered.

In *Pratt*, the court explained that "while we are mindful that our role in reviewing the decisions

of local school authorities is limited, we also have an obligation to uphold the Constitution to protect the fundamental rights of all citizens," citing *Epperson v. Arkansas*, *supra*, 393 U.S. at 104, 89 S.Ct. at 270, for the view that courts will enforce "the First Amendment's mandate in our educational system where essential to safeguard the fundamental values of freedom of speech and inquiry and of belief." *Pratt* at 779.

Even assuming that the State were correct in suggesting that there was a legitimate need to prevent subversion of the curriculum for racist ends, and that Mexican American Studies promoted such, even a substantial government interest cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly tailored. The Supreme Court in *De Jonge* held that in contexts where purported subversion is alleged,

> the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion …. [so] that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.

De Jonge v. Oregon, 299 U. S. 353, 365, 57 S.Ct. 255, 81 L.Ed. 278 (1937).

Pratt concluded with additional guidance from the Supreme Court, relevant here, that:

> Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton v. Tucker*, supra, at 487. The classroom is peculiarly the "marketplace of ideas." The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multitude of tongues, [rather] than through any kind of authoritative selection."
>
> To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Pratt, quoting *Sweezy v. New Hampshire*, 354 U. S. 234, 250, 77 S.Ct. 1203, 1 L.Ed.2d 1311 (1957) (some citations omitted).

In *Monteiro v. Tempe Union High School District,* 158 F.3d 1022 (C.A.9 (Ariz.), 1998), students

filed suit because the curriculum included works which they believed, "created and contributed to a racially hostile educational environment". *Id* at 1024. In that case, it was students who were seeking to place restrictions on the school board's decisions with regard to curriculum, and the 9th Circuit considered the question,

> may courts ban books or other literary works from school curricula on the basis of their content? We answer that question in the negative, even when the works are accused of being racist in whole or in part...

In this way, *Monteiro* presents a slightly different question than the one presented here. Rather than the judicial branch banning books, it is the legislative branch, however the analysis of whether a First Amendment violation has occurred in the context of both government and individual speech in a modern high-school setting, is informative:

> We approach this question in light of a number of considerations. The first is the threat to First Amendment freedoms posed by efforts to prevent school boards from assigning the reading of literary works on the ground that individuals or groups may find the contents injurious or offensive. The second is the broad discretion afforded school boards to establish curricula they believe to be appropriate to the educational needs of their students. The third is the awareness that words can hurt, particularly in the case of children, and that words of a racist nature can hurt especially severely. The fourth is the knowledge that the historic prejudice against African-Americans that has existed in this nation since its inception has not yet been eradicated--by any means. The fifth is the requirement that young African-Americans, like all students, be afforded a public education free from racially discriminatory conduct on the part of educational authorities....
>
> To begin with, Monteiro's amended complaint--and other lawsuits threatening to attach civil liability on the basis of the assignment of a book--would severely restrict a student's right to receive material that his school board or other educational authority determines to be of legitimate educational value. The amended complaint requests, under the threat of civil liability, that the school remove the literary works from the classroom. **Certainly when a school board identifies information that it believes to be a useful part of a student's education, that student has the right to receive the information. Indeed, the Eighth Circuit has concluded that a school board's removal of material from the classroom curriculum solely on the basis of its message has a powerful symbolic effect on a student or teacher's First Amendment rights--despite the material's availability in the library--and is, therefore, unconstitutional. See *Pratt* [citations omitted].**

Id. at 1026-7 (emphasis added).

In *Monteiro*, the Ninth Circuit agreed with the logic and reasoning in *Pratt,* and is instructive here because it involved claims of racially offensive curriculum material. In *Monteiro*, the Court concluded:

> We have no hesitation in concluding, however, that a student's First Amendment rights are infringed when books that have been determined by the school district to have legitimate educational value are removed from a mandatory reading list because of threats of damages, lawsuits, or other forms of retaliation.

Monteiro at 1029. As noted, the State here forced the District to remove a program approved by the District, by threatening a multi-million dollar revocation of funds.

Despite these clear precedents, the Arizona law authoritatively selects and imposes a classroom orthodoxy compelling the idea that any focus on ethnicity or any teaching that can promote resentment is bad, and therefore prohibited, while studies must focus on individualism (without regard to the individual characteristics of ethnicity).

The problem resonating throughout *Pratt* and *Monteiro* – and other cases restricting speech based on content and message – involves the squelching of viewpoints and ideas. But ideas are also based on historical facts. How can one teach history without addressing relevant facts which may be thought to promote solidarity or resentment as part of a critical evaluation of past or present racial discrimination? There is always controversy in history. Some races have been oppressed, and others were oppressors, sometimes depending on perspective. In sum, there is no shortage of material that could be viewed as leading to possible ethnic solidarity or ethnic resentment, depending on who feels empowered, aggrieved or offended.

Significantly, the Ninth Circuit in *Monteiro* presciently addressed some of these exact concerns:

> There is, of course, an extremely wide — if not unlimited — range of literary products that might be considered injurious or offensive, particularly when one considers that high school students frequently take Advanced Placement courses that are equivalent to college-level courses. White plaintiffs could seek to remove books by Toni Morrison, Maya Angelou, and other prominent Black authors on the ground that they portray Caucasians in a derogatory fashion; Jews might try to impose civil liability for the teachings of Shakespeare and of more modern English poets where writings exhibit a similar anti-Semitic strain. Female students could attempt to make a case for damages for the assignment of some of the works of Tennessee Williams, Hemingway, or Freud, and male students for the writings of Andrea Dworkin or Margaret Atwood. The number of potential lawsuits that could arise from the highly varied educational curricula throughout the nation might well be unlimited and unpredictable. Many school districts would undoubtedly prefer to "steer far" from any controversial book and instead substitute "safe" ones in order to reduce the possibility of civil liability and the expensive and time-consuming burdens of a lawsuit — even one having but a slight chance of success.
>
> [A]ny school board attempting to remove books from its curriculum on the ground that the works might offend would likely be vulnerable to First Amendment actions brought by students desiring to study those books, and possibly teachers, as well.

Monteiro at 1030 (footnotes omitted).

The *Monteiro* court continued:

> It cannot be disputed that a necessary component of any education is learning to think critically about offensive ideas — without that ability one can do little to respond to them. Second, it is important for young people to learn about the past — and to discover both the good and the bad in our history. Third, if all books with messages that might be deemed harmful were removed, the number of "acceptable" works might be highly limited. Because sexism and racism, and other forms of inequality, exist in almost every culture — and because our values tend to change and are not immutable — and because the dispute over what ideas are proper or improper will always be a matter of intense controversy — it would be folly to think that there is a certain "safe" set of books written by particular authors that all will find acceptable.

Monteiro at 1031 (footnote omitted).

The *Monteiro* Court further explained that:

> The difficulty of finding educational material that is not offensive to a given group has also been recognized in the context of Free Exercise challenges:
>
> > Authorities list 256 separate and substantial religious bodies to exist ... in the United States.... If we are to eliminate everything that is objectionable to any of these warring sects or inconsistent with any of their doctrines, we will leave public education in shreds. Nothing but educational confusion and a discrediting of the public school system can result....”
>
> .

Monteiro at Fn. 10 (citing *People of Illinois ex rel. McCollum v. Board of Educ. of Sch. Dist. No. 71, Champaign County, Illinois*, 333 U.S. 203, 205, 68 S.Ct. 461, 92 L.Ed. 649 (1948) (Jackson, J., concurring).

In addition, the *Monteiro* Court explained that,

> Although the complaint does not refer to the involvement of teachers in the teaching of the [disputed] literary works at issue or in the formation of the [disputed] curriculum, it is likely that claims such as these, and their outcomes, could have significant effect on the First Amendment rights of teachers. See *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years."); *Keyishian v. Board of Regents of Univ. of State of New York*, 385 U.S. 589, 603, 87 S.Ct. 675, 683, 17 L.Ed.2d 629 (1967) (finding that freedom of expression of teachers was a "special concern of the First Amendment"); see also *Boring v. Buncombe County Bd. of Educ.*, 136 F.3d 364, 379 (4th Cir.1998) (Motz, J., dissenting) (noting that teachers enjoy limited First Amendment protections in the classroom).

Monteiro at fn. 13.

Moreover, none of the arguments made by defendants or articulated as direct *mis*statements of "findings" in the language and substance of HB2281 meets Constitutional standards since there is no evidence available to suggest that the MAS program, the principal target of this assault, is associated with any substantial disruption of the education of children in the public school system. On the contrary, ethnic studies in general, and the facts related to the specific program in question show that it promotes interracial and inter-cultural understanding, encourages academic learning, and improves performance of all students engaged with the program, which, *Amici* note, is a voluntary option for meeting core graduation requirements.[11] Instead, any disruption (to classrooms and communities) has been induced by legislators and state officials who trumped-up baseless allegations against an academic program they appear to oppose for ideological and political reasons.

In *Healy v. James,* 408 U.S. 169, 92 S.Ct. 2338, 33 L.Ed.2d 266 (1972), the President of Central Connecticut State College denied an application to form a student chapter of the prominent anti-Vietnam War activists, Students for a Democratic Society. In denying the application, the President, "concluded that approval should not be granted to any group that "openly repudiates" the College's dedication to academic freedom." *Id.* at 175-6. The Court found that the denial violated the students' Free Speech rights because it made reference to the viewpoints of the group,

> The mere disagreement of the President with the group's philosophy affords no reason to deny it recognition. As repugnant as these views may have been, especially to one with President James' responsibility, the mere expression of them would not justify the denial of First Amendment rights. Whether petitioners did in fact advocate a philosophy of "destruction" thus becomes immaterial. The College, acting here as the instrumentality of the State, may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent. As Mr. Justice Black put it most simply and clearly:
>
> > "I do not believe that it can be too often repeated that the freedoms of speech, press, petition and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish." *Communist Party* v. *SACB,* 367 U. S. 1, 137 (dissenting opinion) (1961).

Id. at 187-8.

The viewpoints and perspectives of oppressed cultures and racial groups are in and of

[11] See the curriculum audit of the TUSD Mexican American Studies Department in Cambium Learning, Inc, and National Academic Educational Partnership, CURRICULUM AUDIT OF THE MEXICAN AMERICAN STUDIES DEPARTMENT, TUCSON UNIFIED SCHOOL DISTRICT, TUCSON, ARIZONA. Miami Lakes: Cambium Learning, Inc., 2011. This third party evaluation completely contradicts the "legislative findings" that preface the original statute and the conclusions in the audit done by the State Superintendent of Education, Mr. John Huppenthal.

themselves valid, but the Arizona law seeks to cleanse any such viewpoints from education. This educational discrimination cannot pass constitutional muster.

2. Even without the special protections afforded by the Fourteenth Amendment, ARS 15-112 must still be found unconstitutionally vague and overbroad. None of the statute's four subsections contain the requisite specificity and clarity demanded for due process when a statute restricts First Amendment freedoms.

A law is unconstitutionally vague if a reasonable person would not be able to distinguish, based on reading the law, between actions or speech that violate the law and those that do not. *Connally v. General Construction Co.,* 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926). A law is overbroad if it regulates substantially more speech than is allowed under the Constitution. *Gooding v. Wilson* 405 U.S. 518, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972).

In the 1960's, Arizona had a similar law requiring all teachers to sign a loyalty oath which forbade "Advocat[ing] the overthrow by force or violence of the government of this state..." That law was found to be unconstitutionally vague by the United States Supreme Court in 1964:

> The vice of vagueness here is that the scientist cannot know whether membership in the organization will result in prosecution... or in honors from his university for the encyclopedic knowledge acquired in his field in part through his membership.'... We recognized in *Scales v. United States* that 'quasi-political parties or other groups * * * may embrace both legal and illegal aims.' We noted that a 'blanket prohibition of association with a group having both legal and illegal aims' would pose 'a real danger that legitimate political expression or association would be impaired.'

Elfbrandt v. Russell, 384 U.S. 11, 15, 86 S.Ct. 1238, 16 L.Ed.2d 321 (1966) (citing *Scales v. United States*, 367 U.S. 203, 81 S.Ct. 1469, 6 L.Ed.2d 782 (1961).

Similarly here, teachers have been afraid to teach any materials that may be found to promote hatred or resentment towards the white majority, even though they may be protected First Amendment expressions. Indeed, Shakespeare's *The Tempest* has been removed from use by Mexican American Studies' teachers (through direct admonition or voluntarily)[12] because its theme is the discovery and

[12] As explained below in Footnote 15, TUSD notes that Shakespeare's Tempest was not removed from classrooms – like other books were – but at least one Mexican American Studies teacher was advised to stay away from such literature. As noted in a published interview, teacher Carlos Acosta stated the following about meeting with TUSD supervisors:

"I recorded the meeting with permission of all in the room, and listened to it again last night. What is very clear is that The Tempest is problematic for our administrators due to the content of the play and the pedagogical choices I have made. In other words, Shakespeare wrote a play that is clearly about colonization of "the new world" and there are strong themes of race, colonization, oppression, class and power that permeate the play, along with themes of love and redemption. We study this work by Shakespeare using the work of renowned historian Ronald Takaki and the chapter "The Tempest in the Wilderness" from his a book A Different Mirror where he uses the play to explore the early English

colonization of the New World, occurring at the time the play was written, and includes statements by Caliban, the slave of the shipwrecked European, Prospero, where he rails against his unfair treatment:

> CALIBAN:
> This island's mine, by Sycorax my mother,
> Which thou tak'st from me. When thou cam'st first,
> Thou strok'st me and made much of me, wouldst give me
> Water and berries in't, and teach me how
> To name the bigger light, and how the less,
> That burn by day and night; and then I loved thee,
> And showed thee all the qualities o'th‘ isle,
> The fresh springs, brine-pits, barren place and fertile—
> Cursed be I that did so! All the charms
> Of Sycorax, toads, beetles, bats, light on you!
> For I am all the subjects that you have,
> Which first was mine own king, and here you sty me
> In this hard rock, whiles you do keep from me
> The rest o‘th’ island.

The Tempest, Act I, Scene II[13].

The State here objects to statements made by Augustine Romero about the purpose of the MAS program which make note of the same social issues as are raised in *The Tempest*:

> The Motion for Summary Judgment claims that this course promotes an “exchange of ideas” (Doc. 97 at 14), “open minds” (*id.* at 15), and “robust exchange of ideas” (*id.*). If that were true, no one would object to the course, as the above quote in the Findings of the hearing officer made clear. But, as the hearing officer found, and substantiated, the materials are presented in a biased, political, and “emotionally charged” one-sided

---

settlements on this continent and English imperialism. From there, we immerse ourselves in the play and discuss the beauty of the language, Shakespeare's multiple perspectives on colonization, and the brilliant and courageous attention he gives to such important issues.

"However, TUSD is basing our compliance upon their appeal and Mr. Kowall's ruling. **Thus, I believe our administrators advised me properly when they said to avoid texts, units, or lessons with race and oppression as a central focus. If we are asked to follow a bad law than absurdities such as advising I stay away from teaching The Tempest not only seems prudent, but intelligent.** We also have not received confirmation that the ideas, dialogue, and class work of our students will be protected. In clearer words, if I avoid discussing such themes in class, yet the students see the themes and decide to write, discuss or ask questions in class, we may also be found to be in violation. The stakes are far too high since a violation of the law could cost the district millions, our employment, and personal penalties from the state for breaking the law.

"**At the end of the meeting it became clear to all of us that I need to avoid such literature and it was directly stated.** Due to the madness of this situation and our fragile positions as instructors who will be frequently observed for compliance, and be asked to produce examples of student work as proof of our compliance, I cannot disagree with their advice. Now we are in the position of having to rule out The Adventures of Huckleberry Finn, The Great Gatsby, etc. for the exact same reasons." (See Jeff Biggers, *Breaking: The "Madness" of the Tucson Book Ban: Interview With Mexican American Studies Teacher Curtis Acosta on The Tempest*, published Jan. 17, 2012, Huffington Post Internet Newspaper; http://www.huffingtonpost.com/jeff-biggers/tucson-ethnic-studies-_b_1210393.html.) (Emphasis added).

[13] Open Source Shakespeare edition: http://www.opensourceshakespeare.org/views/plays/play_view.php?WorkID=tempest&Act=1&Scene=2&Scope=scene. (accessed 2/23/2012)

manner. For example:

> In a section of materials called "Conquest and Colonización", the students are taught "We will see how half of Mexico was ripped off by trickery and violence. We will see how Chicanos became a colonized people. In the process of being colonized, we were robbed of land and other resources."

(Findings p.9). That is not an "exchange of ideas" promoting critical thinking, "open minds," or "robust exchange of ideas."

State's Response to Plaintiff's Motion for Summary Judgment, p.5.

State Attorney General Horne attempts to make the distinction between expressions that violate the law and those that do not seem like a bright line, but it is not. A teacher in the classroom trying to teach the history of European colonization, slavery, American expansion, the doctrine of "Manifest Destiny," the Mexican-American War, or more recent topics such as desegregation and the Civil Rights struggles of the past century, would find the line much more illusive. Even in the context of teaching about historical oppression, a teacher in this situation would tend to err on the side of caution, resulting in the silencing of protected speech and ideas. Such teaching could likely never present the perspective of those oppressed, as that could be viewed as promoting ethnic solidarity or resentment.

Tragically, the Arizona law and its application has now resulted in local authorities' ending the teaching of Mexican American Studies program as constituted[14] and the related state removal and apparent selective classroom prohibition of books such as "Chicano! The History of the Mexican Civil Rights Movement by Arturo Rosales," and others, reflecting the vagueness, overbreadth and pernicious result of the Arizona law.[15]

As publicly acknowledged by TUSD, certain books used in the MAS program were removed from classrooms, some during class. (See http://tusd1.org/contents/distinfo/superletter/011812.asp and http://tusd1.org/contents/news/press1112/01-17-12.html.) The unprecedented action by school authorities during class upset students and teachers, according to televised news reports. (See http://www.kgun9.com/news/local/137335838.html.) Although TUSD claims the books are not banned

[14] On January 10, 2012, TUSD ordered "all Mexican American Studies courses and teaching activities, regardless of the budget line from which they are funded, shall be suspended immediately." http://tusd1.org/contents/govboard/Documents/ResolutionMAS011012.pdf.

[15] TUSD removed several books from classrooms and placed these books in storage, including: Richard Delgado & Jean Stefancic, Critical Race Theory: An Introduction, New York University Press, New York, 2001; Richard Delgado & Jean Stefancic, Critical Race Theory: The Cutting Edge, Temple University Press, Philadelphia, 2000; Elizabeth Martinez, 500 Years of Chicano History in Pictures, SouthWest Organizing Project, Albuquerque NM, 1991; Rodolfo Gonzales, Message to Aztlán: selected writings of Rodolfo "Corky" Gonzales, Arte Público Press, Houston, 2001; Arturo Rosales, Chicano! The History of the Mexican Civil Rights Movement, Arte Público Press, Houston, 1996; Rodolfo Acuna, Occupied America: A History of Chicanos, Longman, New York, 2000; Paulo Freire, Pedagogy of the Oppressed, Continuum, New York, 1993; and Bill Bigelow, Rethinking Columbus: The Next 500 Years, Rethinking Schools, Limited, Milwaukee Wisconsin, 1998. (See http://tusd1.org/contents/news/press1112/01-17-12.html.)

(noting they can be found in the library), the removed books are banned from educational instruction. TUSD authorities also denied reports that Shakespeare's "Tempest" was banned, claiming that materials "in" the classroom could be used but "as appropriate for the curriculum." (*Id.*) Despite this, published news stories and interviews of Mexican American Studies teachers contradict this, as teachers were directly advised by school authorities to stay away from the ideas and themes in the Tempest. (See Jeff Biggers, *Breaking: The "Madness" of the Tucson Book Ban: Interview With Mexican American Studies Teacher Curtis Acosta on The Tempest*, published Jan. 17, 2012, Huffington Post Internet Newspaper; http://www.huffingtonpost.com/jeff-biggers/tucson-ethnic-studies-_b_1210393.html.) The social and scholarly outcry regarding the suppression of such ideas and written works and the suppression of the Mexican-American Studies program has echoed from coast to coast, if not globally.[16]

Amici respectfully urge this Court to overturn the State of Arizona's discriminatory efforts to end a valid, academically successful racially-conscious program that was needed in TUSD to remedy the results of past discrimination. Arizona's unwarranted assault on academic freedom, the critical exchange of ideas and perspectives, and the discriminatory singling out of Mexican Americans, both students and teachers alike, in the quest to selectively "cleanse" or whitewash the Arizona school curriculum under the guise of imposing a dogmatic orthodoxy of "individualism" to the exclusion of ethnicity does not pass constitutional muster. The law must be overturned.

II. Chicana/O (Mexican American) Studies Is An Integral Part Of American Education And The Field Has Established Global Academic Importance And Respectability.

Historical Overview. In 1972, at the annual meeting of the Southwestern Social Science Association held in San Antonio, Texas, Chicano faculty and students active in the American Sociological Association, American Anthropological Association and the American Political Science Association met to discuss the need for a national association of advocates for Chicana/o studies, which resulted in a proposal to establish the National Caucus of Chicano Social Scientists (NCCSS).

The individuals proposing the establishment of the NCCSS held their first meeting in New

[16] Nationally, numerous organizations, scholars and individuals have decried what is going on in Arizona and TUSD with respect to Mexican American Studies and the removal of material from education. Objectors include, among others, the National Association of University Professors and the National Association Against Censorship, the National Association of Teachers of English, the American Civil Liberties Union, and numerous other groups and individuals. (See http://indiancountrytodaymedianetwork.com/ict_sbc/joint-statement-in-opposition-to-book-censorship-in-tucson-unified-school-district; see also http://news.bookweb.org/news/arizona-school-censorship-protested-abffe-and-others; http://www.ncte.org/press/news/tucson and http://ncac.org/Censorship-Arizona-Style.)

Mexico in May 1973 to discuss the proposed association's mission, organizational structure, and the nature and direction of Chicana/o social science research. A Provisional Coordinating Committee for the proposed association was likewise established.

A subsequent meeting held on November 17, 1973 at the University of California at Irvine culminated in formally naming the emerging organization the National Association of Chicano Social Scientists (NACSS). The NACSS first annual conference meeting took place in 1974 at the UC Irvine campus. The first NACSS Conference was titled "Action Research: Community Control". In 1976, participants in the 3rd NACSS Conference voted to rename the organization the National Association for Chicano Studies (NACS). The association's most recent organizational name change took place in 1995 during the NACS annual conference held in Spokane, Washington. The membership voted to rename the organization the National Association for Chicana and Chicano Studies (NACCS) in recognition of the critical contribution and role of women in society as research scholars and in promoting gender and sexuality studies in the association.

A. Chicana/o Studies has led to the establishment and significant growth of research centers and departments offering undergraduate and graduate degrees at more than 400 colleges and universities across the United States and other nations .

Since its beginnings, the interdisciplinary field of Chicana/o Studies (also referred to as Mexican American Studies) has grown into an influential and respected academic and scholarly field of study and research. There are currently more than 400 Chicana/o Studies programs at universities across the country offering undergraduate and graduate level degrees and a wide variety of major and minor options. These programs are featured at all major U.S. institutions of higher education including venerable American colleges and universities like Arizona, Arizona State, Brown, Colorado, Colorado State, Duke, Harvard, Minnesota, New Mexico, Rutgers, Stanford, UC-Berkeley, UC-Davis, UC-San Diego, UCLA, Texas, Texas A&M, Washington, and Wisconsin.[17] Every year, these programs produce dozens of Doctoral dissertations and hundreds of Masters theses.[18] The recent growth of second generation Mexican Americans in other parts of the country is also contributing to the development of

[17] Kathryn Blackmer Reyes, ed. DIRECTORY OF CHICANA/O, LATINA/O, AND LATIN AMERICAN STUDIES PROGRAM, RESEARCH AND POLICY CENTERS. San Jose, CA: National Association for Chicana and Chicano Studies (2005). Accessed at URL: http://www.naccs.org/naccs/Directory1_EN.asp?SnID=1036902071 (June 21, 2011). For another statistical overview, see Appendix 3 below.

[18] See Appendix 1 below; also Wikispace entry on Chicana/o Studies dissertations: http://forchicanachicanostudies.wikispaces.com/Chicana+Chicano+Studies.

new course offerings and minors in cities such as New York City and Kennesaw, Georgia.[19] Chicana/o Studies courses are also routinely offered as part of American Studies programs.[20] The Chicano Studies Department at California State University-Northridge offers some 166 sections per semester; over the course of its 40-year history, faculty there have taught more Mexican American students that have become doctors, lawyers, teachers and engineers than at the University of Arizona.[21]

Finally, by way of introduction, *Amici* note that the natural progression and growth of Chicana/o Studies means that the knowledge and innovation produced in the nation's universities and colleges eventually will and should become part of the primary and secondary public school systems. There is nothing intrinsically problematic with this development in terms of academics. The existence of Chicana/o Studies programs in high schools like those in the TUSD is not in any essential manner a controversial curricular innovation. There is no compelling state interest in eliminating Chicana/o Studies. This is what happens with all fields in the humanities, natural sciences, and social sciences: Witness for example the impact of the re-discovery of tectonic plate theory on the teaching of geology and geomorphology in our public schools or the influence of the Civil Rights Movement on the teaching of history. The eventual diffusion of Chicana/o Studies is thus as natural and productive as any other effort at the transmittal of our knowledge base from higher education institutions to secondary and primary educational curriculum and instruction. This has always been the case with teacher training as well: New research leads to innovation and diffusion; new approaches to research produce a net beneficial effect as well. The development of the MAS Program at TUSD must also be seen in light of this historical context of a longstanding professional peer-reviewed process for the diffusion of intellectual and scholarly knowledge, much of it rooted in the direct-lived experiences of people of Mexican-origin in the United States.

There are many high quality, award-winning academic journals that focus on publishing works

---

[19] Lehman College – CUNY has seen remarkable growth in its Mexican American student body and the subsequent rise of positive contributions to curriculum and instruction in a more diverse new form of East Coast ethnic studies, cf. Laird Bergman's report at: http://www.lehman.edu/academics/arts-humanities/latin-puerto-rican-studies/documents/MexicansinNewYorkCity1990-2005.pdf.

[20] Some of the major American Studies programs that integrate Chicana/o Studies into their core curriculum include: University of Buffalo; The State University of New York Center for the Americas; California State University-Fullerton American Studies; University of Maryland-College Park American Studies; University of Michigan-Ann Arbor Program in American Culture; University of New Mexico Department of American Studies; New York University-American Studies Program; University of Southern California Department of American Studies and Ethnicity; Saint Louis University Department of American Studies; University of Texas Department of American Studies; Washington University-St. Louis American Culture Studies Program; Yale University American Studies Program.

[21] See: http://www.csun.edu/~hfchs006/. [Accessed August 4, 2011].

in the field of Chicana/o Studies. Among the more prominent of these journals are the field's 'flagship journal,' *Aztlán: A Journal of Chicano Studies* (http://www.chicano.ucla.edu/press/journals/default.asp) and the more recent but highly interdisciplinary and international, *Latino Studies* (www.palgrave-journals.com/lst). This also includes a major path-breaking tradition in women and gender studies through journals such as *Chicana/Latina Studies*, the journal of *Mujeres Activas en Letras y Cambio Social* (MALCS), which is the nation's oldest and most prominent organization of scholars dedicated to the study of Mexican and Mexican American women in the U.S. and Mexico. Other respected academic journals regularly feature or focus on works from Chicana/o scholars addressing issues in fields as varied as American studies, anthropology, art and art history, comparative literature, demography, economics, eco-criticism, ethnic literatures, film studies, geography, history, popular culture studies, philosophy (ethics, epistemology, etc.), political science, psychology, public administration, public health, sociology, urban studies, women studies, and numerous other scholarly disciplines.

NACCS membership (past and present) includes at least four recipients of the MacArthur "Genius Award"[22] and numerous recipients of other scholarly and community service recognitions, prizes, and awards. This includes hundreds of book recognition prizes. NACCS members serve on Presidential commissions,[23] as U.S. Senate and House advisors, and in other public policy-making roles including the preparation of expert testimony and *amicus* briefs in cases of national significance.[24] All these facts indicate that Chicana/o Studies is an established and mainstream professional academic discipline.

The prestigious academic standing of Chicana/o Studies is evident in other countries as well where hundreds of humanities and social science scholars have pursued research since the 1970s. There are now several peer-reviewed journals in Germany, France, Spain, Australia, Turkey and other countries dedicated to the study of Chicana/o and Latina/o culture, history, literature, and society.[25]

[22] Among our most recent MacArthur fellows is Ramón Gutierrez of the University of California-San Diego and now at the University of Chicago.

[23] For example, currently, Professor Luis Fraga, a Chicano political scientist at the University of Washington, and Professor Garduño of the University of California-Los Sngeles both serve on the President's Advisory Commission on Educational Excellence for Hispanics.

[24] NACCS members (including Gilbert Cárdenas, Estévan Flores, and Nestor Rodríguez) played critical roles in preparing the principal social scientists' amici curiae brief for plaintiffs in the *Plyler v. Doe* case (1979-82).

[25] Among these journals are: *The European Journal of American Culture*, which includes a recent article that makes the following relevant observation: "…given the extraordinary growth of the Hispanic population in the last decades, it is not rocket science to conclude that demand for courses focusing on Chicana/o writers, border theory, and so forth, will increase dramatically in the near future. And that, in time, will have a knock-on effect for us as the object of our study, the United States, is changing in many ways"; see: Susan Castillo, "INTERESTING TIMES: A MEDITATION OF AMERICAN STUDIES IN BRITAIN, 2007." European Journal of American Culture 27:1:5-14; p. 12. Also, see the

Numerous books and edited anthologies have also developed at a steady pace, in various countries, especially since the 1990s.[26] Further evidence of this global influence and prestige is the number of doctoral dissertations produced each year. For example, there have been several doctoral dissertations prepared in Chicana/o Studies by graduate students in Germany, France, Mexico, and Spain.[27]

In view of this rich history and the highly developed and reputable intellectual status of the field across the world, it is clear that Chicana/o Studies (Mexican American Studies) is now an integral part of American culture and scholarly education and it contributes to, and represents, part of the diversity of the open society values of free inquiry and civil debate that inform, enrich, and strengthen both our citizenry and our liberal democracy. The field is an institutionalized and established part of curriculum and instruction across various primary, secondary, and post-secondary public education systems.

B. Chicana/o Studies pedagogy continues the tradition of "critical studies" developed in the natural and social sciences and related fields of human inquiry.

One of the unique – out of myriad – contributions of Chicano/a Studies stems from an interdisciplinary nature that has sought to develop knowledge by cutting across the boundaries that otherwise restrict and limit the methods and materials of study in traditional disciplines. In this regard, a critical advantage of Chicano/a Studies lies not only in the content of the path-breaking research that

journals: *Ethnographiques.org revue en ligne de sciences humaines et sociales* (France), *Identities (*Switzerland). There is a new academic journal at the University of Alcalá called *Camino Real*, whose first issue a couple of years ago focused on Chicana/o studies and regularly publishes articles on Chicana/os; Also in Mexico, the Centro de Investigaciones Sobre America del Norte (CISAN) at the UNAM has research and publications on Chicana/os as does the Seminario Permanente de Estudios Chicanos y Fronterizos at the Esculea Nacional de Antropología e Historia in Mexico City. In Australia, Paul Allatson teaches Chicano/a and Latino Studies at the University of Technology, Sydney and has published on Chicano/a-Latino/a studies; for example, see Paul Alattson, LATINO DREAMS: TRANSCULTURAL TRAFFIC AND THE U.S. NATIONAL IMAGINARY. Rodopi Bv Editions (2002). URL: http://ebookee.org/Paul-Allatson-Latino-Dreams-Transcultural-Traffic-and-the-U-S-National-Imaginary_755077.html. [eBook accessed on August 5, 2011]. There is also a *Journal of American Studies of Turkey* that frequently features articles focused on Chicana/o Studies issues.

[26] For example, see: Chela Sandoval, Gloria Anzaldúa, et al., OTRAS INAPROPIABLES: FEMINISMOS DESDE LAS FRONTERAS (Madrid, Spain 2004); Markus Heide, GRENZÜBERSCHREIBUNGEN: CHICANO-ERZÄHLLITERATUR UND DIE INSZENIERUNG VON KULTURKONTAKT. Heidelberg, Germany (2004); Heiner Bus and Ana Castillo, eds RECENT CHICANO POETRY/NEUESTE CHICANO-LYRIK. Bamberg, Germany: Bamberger Editionen, Band 8 (1994). Chicana novelist Ana Castillo did her Ph.D. in Germany and has been published there as well as has University of Arizona professor Yolanda Broyles-Gonzalez. In France, some recent contributions include Ada Savin, LES CHICANOS AUX ETATS-UNIS: ETRANGERS DANS LEUR PROPRE PAYS (1998); and the work of Emmanuelle Le Texier.

[27] Most recently, for example, see: Edda Luckas, ETHNICITY IN THE GARDEN: FIGURATIONS OF THE ECOPASTORAL IN MEXICAN AMERICAN LITERATURE. Doctoral Dissertation. Universität Berlin, Fachbereich Philosophie und Gesitewiseenschaften, John F. Kennedy Institut für Nordamerikastudien (2011); and Mexican scholar Maria Isabel Belausteguigoitia Rius, SCENARIOS OF CONSTRUCTION OF THE SUBJECT AT THE LIMIT: ZAPATISTAS AND CHICANAS. Doctoral Dissertation. UC-Berkeley (2004).

such scholars produce, but in the dynamic and creative approaches to both research and teaching that facilitate new methods of inquiry and effective learning strategies for students who have historically benefitted from less attentive instruction in K-12 schooling (see the discussions in Argument III(A) and (D) below). Numerous studies have unequivocally demonstrated the effectiveness of Chicana/o Studies curriculum and pedagogy in raising the overall academic achievements of Chicana/o and non-Chicana/o students alike in a wide range of subject areas, including in mathematics in the Tucson schools.[28] Diverse approaches to pedagogy have expanded the traditional models of learning, widening the breadth and scope of students' knowledge bases. Chicana/o Studies scholars have accordingly been acknowledged with hundreds of teaching awards at their respective institutions.

The history of the development of Chicana/o Studies is not just the history of a "content field" which succeeded in filling our scholarly books and journals with previously "missing" content; it is also the story of the emergence of a unique set of pedagogical methods applied to the social sciences and humanities: Pedagogy involves serious study of the ways and methods of teaching and learning and of critically questioning what knowledge is. What gets counted as knowledge? Who gets to make that call? What happens when other bodies of knowledge are excluded from participation in the "free market" of ideas? These questions are important to researchers, teachers, and students in all areas of the natural and social sciences and the humanities – not just those who study Chicana/o Studies.[29] It is noteworthy that most California universities have added a requirement of critical theory for graduation as part of their general studies requirement. Critical theory in this context is not about being "radical" or proposing "to overthrow the government" or anything extreme and uncivil; it is instead focused on

[28] A March 11, 2011 District report concludes that TUSD's Mexican American Studies program gives students a measurable advantage over non-MAS students in passing standardized AIMS (Arizona Instrument to Measure Standards) reading and writing tests and MAS students graduate at higher levels than their non-MAS counterparts. The analysis was conducted by David Scott, Tucson Unified School District Director of Accountability and Research, reporting to TUSD superintendent Dr. John Pedicone. Scott writes:

- "I find that there are positive measurable differences between MAS students and the corresponding comparative group of students."
- "Juniors taking a MAS course are more likely than their peers to pass the reading and writing AIMS subject test if they had previously failed those tests in their sophomore year."
- "Seniors taking a MAS course are more likely to persist to graduation that their peers."

See: Tucson Unified School District, Department of Accountability and Research, RE-ANALYSIS OF AIMS OUTCOMES FOR MEXICAN AMERICAN STUDIES (MAS) STUDENTS (2010). Available on-line at: http://saveethnicstudies.org/proven_results/TUSD_Numbers_03-16-2011.pdf.

[29] See, for e.g., Thandeka K. Chapman, INTERROGATING CLASSROOM RELATIONSHIPS AND EVENTS: USING PORTRAITURE AND CRITICAL RACE THEORY IN EDUCATION RESEARCH, *Educational Researcher*, 36:3:156-162 (2007); Jennifer Leeman and Lisa Rabin, READING LANGUAGE: CRITICAL PERSPECTIVES FOR THE LITERATURE CLASSROOM, *Hispania*, 90:2:304-315 (2007); Dean Braa and Peter Callero, CRITICAL PEDAGOGY AND CLASSROOM PRAXIS, *Teaching Sociology*, 34:4:357-369 (2006); Carol A. Sedlak, Margaret O. Doheny, Nancy Panthofer, and Ella Anaya, CRITICAL THINKING IN STUDENTS' SERVICE-LEARNING EXPERIENCES, *College Teaching* 51:3: 99-103 (2003).

understanding how it is that we acquire and test our knowledge in order to move beyond the limits of current knowledge.[30] At its heart, this is a "progressive" and "liberal" (meaning open and fair-minded) rather than a "seditious" or "insurrectionary" approach to the study of knowledge and truth claims.

In Chicana/o Studies the quest for an engagement with critical theory dates back to the earliest days and efforts by scholars to question the dominant paradigms of the 1960s and 1970s, which included an entrenched orthodoxy of "cultural determinism."[31] The cultural determinists at the time championed the view that Mexican American culture was a "culture of poverty" and that the impoverished condition of this national origin population was the result of an inability for the culture to adapt to a modern, competitive, and rationalistic society and economy. By the 1980s, a variety of alternative critical theories of the "Chicana/o experience" had emerged but most approaches focused on a variety of structural factors such as studies of institutionalized discrimination based on race, class, or gender or political power dynamics that created and reinforced highly segregated communities. Chicana/o Studies did not invent racism or inequality; it did not invent racial resentment or segregation; but it did provide a set of eclectic critical theories grounded in formerly 'forbidden' knowledge that challenged the existing 'blame the poor' orthodoxy and led to a richer and more nuanced understanding of American history, culture, politics, philosophy, and art and literature.[32]

A major force in the response of Chicana/o scholars to move beyond the older models took shape in what has come to be known as Critical Race Theory (CRT). Critical Race Theory, which originated in part from American legal theory and scholarship, is an intellectual and politically committed movement that studies the interrelations of race, racism and power. Though it is unclear if Critical Race Theory originated in American law schools, the critical study of the social construction of race and racial relations through the law has seen important strides as it made its way into the work of Chicana/o and Ethnic Studies scholars.[33] This context allows us to understand why the membership of

[30] See Brian Dunning, THE IMPORTANCE OF TEACHING CRITICAL THINKING. *Skeptoid Podcast.* Skeptoid Media, Inc., 16 May 2007. Web. 5 Aug 2011. <http://skeptoid.com/episodes/4045> . [Accessed August 4, 2011].

[31] The school of cultural determinism was represented by the work of Oscar Lewis and his protégés such as Ellwyn Stoddard, MEXICAN AMERICANS, New York: Random House (1973) and the researchers affiliated with the Hogg Foundation study of the Mexican Americans of South Texas; for early critiques of these orientations by Chicana/o scholars seeking to critique the dominant paradigm and initiate alternative explorations of the underlying "structural" causes of class, race, and gender inequalities, see: Octavio Romano-V., THE DISTORTION OF MEXICAN AMERICAN HISTORY. *El Grito* 2:3: 13-26 (1968) and SOCIAL SCIENCE, OBJECTIVITY, AND THE CHICANOS. *El Grito* 4:1 (1970). Américo Paredes, ON ETHNOGRAPHIC WORK AMONG MINORITY GROUPS: A FOLKLORIST'S PERSPECTIVE. In: Folklore and Culture on the Texas-Mexican Border. Austin: University of Texas Press (1995 [1977]).

[32] For e.g., see the publications of NACCS cited in footnote 30 below.

[33] For key examples of CRT in Chicana/o Studies, see Richard Delgado, ed. CRITICAL RACE THEORY: THE CUTTING EDGE. Philadelphia: Temple University Press (1995); Richard Delgado and Jean Stefancic, CRITICAL RACE THEORY: AN ANNOTATED BIBLIOGRAPHY. *Virginia Law Review*, 79:2:461–516 (1993); Richard Delgado and

NACCS views HB2281 as an attempt by ideologically-motivated political forces to reassert the old *doxa* of a 'racialized' narrative of cultural determinism constructed around the "ubiquity of whiteness" (see footnote __ above). Based on this history and professional background in the field, *Amici* ask the court to reject this act as a form of epistemological and structural violence that forcibly seeks to erase and silence diverse and legitimately American voices and experiences that were painstakingly "recovered" through our own still too brief history of free and critical inquiry.

C. Chicana/o Studies has made significant contributions to the advancement of the study of American democracy and applied research informing law and public policy.

In keeping with the best of American traditions of free and critical inquiry, Chicana/o Studies is more than just an ivory tower endeavor. Like applied contributions from the natural and social sciences, Chicana/o Studies actually provides knowledge that has proved vital in addressing issues facing our democracy, including problems related to civil rights and equality, education, economic development, immigration, urban policy, public health, and environmental protection. Chicana/o Studies researchers have contributed to the development of programs that serve inner-city youth and seek to address the lack of educational or work opportunities, or problems related to drug and substance abuse and gang violence to name a few.[34] Chicano/a scholars' contributions have helped resolve a wide range of public policy problems in education, public health and housing, immigration, labor markets,

Jean Stefancic, THE LATINO/A CONDITION: A CRITICAL READER. New York: New York University Press (1998); Richard Delgado and Jean Stefancic, CRITICAL RACE THEORY: AN INTRODUCTION. New York: New York University Press (2001); Adrienne D. Dixson and Celia K. Rousseau, eds., CRITICAL RACE THEORY IN EDUCATION: ALL GOD'S CHILDREN GOT A SONG. New York: Routledge (2006); Tara J. Yosso, CRITICAL RACE COUNTERSTORIES ALONG THE CHICANA/CHICANO EDUCATIONAL PIPELINE. New York: Routledge (2006).

[34] For example, in the area of gang and youth violence, the book by Joan W. Moore and Albert Mata, HOMEBOYS: GANGS, DRUGS AND PRISONS IN THE BARRIOS OF LOS ANGELES. Philadelphia: Temple University Press (1980) and Martin S. Jankowski, ISLANDS IN THE STREET: GANGS AND AMERICAN URBAN SOCIETY Berkeley: University of California Press (1991) provided policymakers with an influential set of research findings that contributed to the rise of a focus on police-community relations and anti-poverty programs directed at young people who were usually overlooked. In the area of immigration reform, Chicana/o studies scholars have ling produced significant research findings that have made their way into Congressional hearings and testimony. Such work has a very long history and dates back to the book by Manuel Gamio, MEXICAN IMMIGRATION TO THE UNITED STATES. New York: Arno Press (1969); for more recent works, see, for e.g.: Wayne Cornelius, Jorge Bustamante, and the Bilateral Commission on the Future of United States-Mexico Relations. Center for U.D.-Mexican Studies, University of California-San Diego (1989); Jorge Durand and Douglas S. Massey, eds. CROSSING THE BORDER: RESEARCH FROM THE MEXICAN MIGRATION PROJECT. New York: Russell Sage Foundation (2004); Denise A. Segura and Patricia Zavella, ed. WOMEN AND MIGRATION IN THE U.S.-MEXICO BORDERLANDS: A READER. Durham: Duke University Press (2007). All of these works have had an impact on immigration discourse and policy-making. The work of Anna Nieto Gomez in Los Angeles in the 1970s around employment influenced public policy-making discourses as did the work of Estevan Flores on Chicana health-related issues (breast cancer, cervical cancer), Larry Trujillo on ex-convicts and prison convicts, and Keta Miranda on women members of gangs or *cholas*.

environmental protection, and numerous other areas.[35] Over the years, many alumni of Chicano/a Studies have also gone on to productive careers in public service, including elected office, and in some cases established elected officials have sought consultation with Chicano/a Studies scholars for advice on relevant public policy matters.[36]

Chicana/o and other Ethnic Studies research scholars have made significant contributions of interest to students and researchers across a wide variety of social and natural science fields with public policy implications. These contributions both include and go well beyond the quest for academic recognition. Instead, these studies challenge conventional knowledge in a productive manner resulting in beneficial innovation of the applied knowledge base. For example, the sustainable agro-ecosystems of the *acequia* communities of the ancient Indo-Hispano communities of New Mexico and Colorado hold valuable lessons for the entire country about future conditions and prospects for an 'arid-sensible' way of life in the American Southwest. Ecologists, hydrologists, and other scientists are now coming forward to confirm research done by an earlier generation of Chicana/o studies scholars.[37] For example, the ancient gravity-driven *acequia* irrigation system is renowned as a resilient and sustainable adaptation of agriculture to high altitude and semi-arid environments. The "re-discovery" of the *acequia* institution was the result of research by scholars in Chicana/o studies and particularly those concerned with agricultural and environmental history. These contributions have influenced scholars across a wide range of disciplines including agronomy, wildlife and landscape ecology, hydrology,

[35] A quick review of publications from NACCS, consisting mostly of selected annual conference proceedings, will demonstrate the depth and breadth of the public law and policy-oriented research that our scholars contribute to the nation's social scientific tradition. See, for e.g., Mary Romero and Cordelia Candelaria, eds. COMMUNITY EMPOWERMENT AND CHICANO SCHOLARSHIP. Cheney: Eastern Washington University and NACS (1990); Teresa Cordova, et al., CHICANA VOICES: INTERSECTIONS OF CLASS, RACE, AND GENDER. Albuquerque: University of New Mexico Press, second edition (1988, second edition: 1993); Tatcho Mindiola and Emilio Zamora, eds., CHICANO DISCOURSE. Houston: Mexican American Studies Program and NACS (1992); Jaime H. Garcia, ed. BEGINNING A NEW MILLENNIUM OF CHICANA AND CHICANO SCHOLARSHIP (2006). Since 2006, NACCS publications are now available on-line through http://scholarworks.sjsu.edu/naccs/.

[36] Some Chicana/o Studies alum that went on to illustrative public service careers include Marco Firebaugh and his collaborative efforts with scholar Rudolfo Acuña in the early 2000's. Gil Cedillo, Ricardo Lara, and Luis Alejo, for example, are in the California Legislature and are all beneficiaries of Chicana/o Studies.

[37] The earlier generation of scholars of Chicana/o acequias include Jose Rivera, ACEQUIA CULTURE: LAND, WATER AND COMMUNITY IN THE SOUTHWEST. Albuquerque: University of New Mexico Press (1998); Devon G. Peña, CULTURAL LANDSCAPES AND BIODIVERSITY: THE ETHNOECOLOGY OF A WATERSHED COMMONWEALTH. In: *Ethnoecology: Situated Knowledge/Located Lives*, ed. Virginia Nazarea, Tucson: University of Arizona Press (1999) and MEXICAN AMERICANS AND THE ENVIRONMENT. Tucson: University of Arizona Press (2005); Sylvia Rodriguez, ACEQUIA: WATER, SCARCITY, AND SANCTITY. Santa Fe: School of American Research (2007). For the work of some of the natural scientists taking up the evidence to assess these earlier Chicana/o Studies claims, see Alexander Fernald and Steven J. Guldan, SURFACE WATER-GROUNDWATER INTERACTIONS BETWEEN IRRIGATION DITCHES, ALLUVIAL AQUIFERS, AND STREAMS, *Reviews in Fisheries Science* 14:79-89 (2006); Alexander Fernald, T. Baker, and S. Guldan 2007. HYDROLOGIC, RIPARIAN, AND AGROECOSYSTEM FUNCTIONS OF TRADITIONAL ACEQUIA IRRIGATION SYSTEMS. *Journal of Sustainable Agriculture* 30:2:147-71 (2007).

edaphology and pedology, and related natural resource management fields.[38] In the absence of the earlier traditions of Chicana/o studies scholarship, we may have lost knowledge of the ecosystem services that *acequia* farming systems provide to the upland communities of the Rio Grande watershed. In addition, contributions by Chicano/as from ethnoecology, ethnobiology, and studies of water law and land grants were also essential to this re-discovery. Most recently, Chicana/o Studies research on the history and law of the acequia was used as the basis for and evidence to draft a new law in Colorado, signed by Governor Ritter in April 2009, "The Colorado *Acequia* Recognition Law".[39]

D. Chicana/o Studies is a rigorous field of social scientific research and scholarship that contributes to a necessary understanding of the nation's largest racial and ethnic minority – a significant sector of the citizenry of the U.S.

The field of Chicana/o studies acknowledges the role of America's diverse racial and ethnic peoples as equal actors in the history of the United States. Rather than being merely additive, it enriches our current understanding of history and participatory citizenship, producing a more informed citizenry that will be able to adequately meet the challenges of the nation's changing demographics.

[38] To provide one example, in the 1980s, anthropologists began to acknowledge that the science of soil, edaphology (from the Greek, *edaphos*), was first developed by Mesoamerican civilizations. This occurred as early as the Classic Maya (250-900) and as recently as the Colhua Mexica at Chapultepec-Tenochtitlan-Tlatelolco (1248-1521). The Mexica (Aztecs) classified soil into 60 varieties they understood in terms of variations in the volume of organic material, depth of topsoil, recognition of strata, permeability, erosive properties, compaction ratios, and other principles that prefigure the methods of 20th century American soil conservation science. Mexica ethno-edaphology is striking because the scholar-farmers in the *calmecacs* (higher education institutions) classified soil types in a manner that anticipated by more than 400 years the science of soil conservation developed in the USA during the 1930s. On Mesoamerican soil taxonomy, see Barbara J. Williams and Carlos A. Ortíz-Solorio, MIDDLE AMERICAN FOLK SOIL TAXONOMY. *Annals of the Association of American Geographers* 71:3: 335-58 (1981); Extended discussion of "the incredible detail and knowledge of the Aztec soil classification system" is found in Benno P. Warkentin, ed. FOOTPRINTS IN THE SOIL: PEOPLE AND IDEAS IN SOIL HISTORY. Amsterdam: Elsevier Science (2006). A recent article in *National Geographic News* notes how "Two ancient codices, written from A.D. 1540 to 1544, survive from Tepetlaoztoc. They record each household and its number of members, the amount of land owned, and soil types such as stony, sandy, or "yellow earth"; see Brian Handiwerk, AZTEC MATH DECODED, REVEALS WOES OF ANCIENT TAX TIME. *National Geographic News* (April 3, 2008). Available on-line at URL: http://news.nationalgeographic.com/news/2008/04/080403-aztec-math.html [Accessed August 11, 2011]. The Tepetlaoztoc codex is one of the sources cited in recent studies of Mexica ethno-edaphology. This points to the importance and rich contributions of the methods and materials of Chicana/o Studies as a complementary source for studies and instruction in the natural sciences, math, and engineering and not just the humanities and social sciences. We note with respect and admiration that the faculty of the MAS Program at TUSD studies and teaches lessons from the very same and similar Mexica codices in some of their advanced studies of Mesoamerican culture, philosophy, and science.

[39] The bill was HB1233-09 and legal counsel for the legislator preparing the bill (Rep. Ed Vigil) consulted and cited: Gregory A. Hicks and Devon G. Peña, COMMUNITY ACEQUIAS IN COLORADO'S CULEBRA WATERSHED: A CUSTOMARY COMMONS IN THE DOMAIN OF PRIOR APPROPRIATION, *Colorado Law Review* 74:2:387-486 (2003). We are informed that the Colorado Division of Water Resources now mandates this as a required reading for all staff in this state executive agency.

For example, Latinos and other racial and ethnic groups account for 57 percent of California's population, making California the most ethnically and racially diverse state in the nation. Accordingly, the Legislature of the State of California recently passed a resolution (ACR 34—July 28, 2011) that "formally endorses the invaluable work of California's ethnic studies departments, programs, and related projects, and their faculty, staff, and students," and that also "duly recognizes the leadership provided by the beneficiaries of these programs who have contributed greatly to the academic rigor, prominence, and distinguishing qualities of California's colleges and universities and the vitality of other public and private institutions, including the California state government".[40]

As other states are also experiencing similar demographic shifts, Chicana/o Studies has become an important source of research, publication and teaching that facilitates mutual understanding and civic engagement. A broader education on diverse racial and ethnic groups, such as in Chicana/o Studies, provides a fuller and deeper understanding of United States history and regional transformations, and helps promote greater understanding among people of different backgrounds. Furthermore, it promotes constructive communication and collaborative efforts between different and diverse groups and encourages the demonstration of respect, understanding, appreciation, equality, and dignity.

III. In Our Multicultural And Multiethnic Society, It Is In Everyone's Best Interest To Reduce Racial Isolation And Improve Academic Performance By Maintaining Diverse Classrooms, Pedagogy, And School Curriculum.

A. Chicana/o Studies motivates student engagement with academic learning; this includes all students, including non-Chicana/o students who take at least more than one Chicana/o or Ethnic Studies class.

While social scientific evidence over the past two decades supports the claim that Chicana/o Studies is positively correlated with increased student engagement with academic learning, a 2011 report by the National Education Association (NEA) provides the definitive critical review of this research. The NEA study reports that, "There is considerable research evidence that well-designed and well-taught ethnic studies curricula have positive academic and social outcomes for students."[41]

This positive effect ranges across diverse racial/ethnic and national origin groups and Anglo

[40] For full text of the resolution see: http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/acr_34_bill_20110728_chaptered.pdf. Also, see Appendix 2 below.

[41] Christine E. Sleeter, THE ACADEMIC AND SOCIAL VALUE OF ETHNIC STUDIES, Washington, D.C.: National Education Association, (2011) p. viii.

students are also reported to develop more positive attitudes toward students of color. As the NEA report states: "Lessons teaching about racism and successful challenges to it improve racial attitudes among White children."[42]

B. Chicana/o Studies instruction promotes the development of new scholars and teachers.

The development of Chicana/o Studies has always been very closely linked with curricular innovation and transformation in teacher education and training. This has led to the widespread adoption of course requirements that include courses in Chicana/o Studies. For example, at the University of California-Davis, the following courses are recommended in preparation for the California Subject Examinations for Teachers – Language Other than English (LOTE): Chicano Studies 10, Chicano Studies 50, Chicano Studies 110, Chicano Studies 130, Chicano Studies 135S, Chicano Studies 150, Chicano Studies 132, and Chicano Studies 112. This pattern is repeated across the country and in Arizona current undergraduate and teacher education, training, and certification programs also reflect these values, standards, and parameters.

For example, the undergraduate general studies requirements at Arizona State University (ASU) are based on the following pedagogical orientation:

> A baccalaureate education should not only prepare students for a particular profession or advanced study, but for constructive and satisfying personal, social and civic lives as well. In addition to depth of knowledge in a particular academic or professional discipline, students should also be broadly educated and develop the general intellectual skills they need to continue learning throughout their lives. Thus, the General Studies requirement complements the undergraduate major by helping students gain mastery of critical learning skills, investigate the traditional branches of knowledge, and develop the broad perspective that frees one to appreciate diversity and change across time, culture, and national boundaries… Developing perspective requires historical, global and cross-cultural examination of knowledge of all kinds.[43]

The description of the ASU requirements is based on exposure to "five core areas" and "three awareness areas." This includes the following two area summaries, relevant to this case:

> L: Literacy and Critical Inquiry (Six Credit Hours)
> Literacy is competence in written and oral discourse. Critical inquiry is the gathering,

[42] Sleeter, *supra*, at p.16, citing J. M. Hughes, R. S. Bigler, and S. R. Levy, CONSEQUENCES OF LEARNING ABOUT HISTORICAL RACISM AMONG EUROPEAN AMERICAN AND AFRICAN AMERICAN CHILDREN, *Child Development* 78:1689-1705.

[43] This description is taken from the official course catalogue of ASU, available on-line at: http://catalog.asu.edu/ug_gsr. [Accessed August 4, 2011].

> interpretation, and evaluation of evidence. The literacy and critical inquiry requirement helps students sustain and extend their ability to reason critically and communicate clearly through language. Students must complete six credit hours from courses designated as L, at least three credit hours of which must be chosen from approved upper-division courses, preferably in their major. Students must have completed ENG 101, 105, or 107 to take an L course….[and]
>
> 1. Cultural Diversity in the United States (C) The objective of the cultural diversity (C) requirement is to promote awareness and appreciation of cultural diversity within the contemporary U.S. This is accomplished through the study of the cultural, social, or scientific contributions of women and minority groups, examination of their experiences in the U.S., or exploration of successful or unsuccessful interactions between and among cultural groups. Awareness of cultural diversity and its multiple sources can illuminate the collective past, present and future and also help students to achieve greater mutual understanding and respect.[44]

Not surprisingly, Chicana/o Studies courses, or courses with at least some partial Chicana/o Studies content, are among the lists of courses identified as appropriate for meeting these requirements. These sorts of requirements are part of diversity education and training of Arizona public school teachers at ASU and other state universities and colleges. At Arizona State University's Mary Lou Felton Teacher's College, one acclaimed program offers a "Diversity in Language and Learning" Bachelor of Arts in Education (BAE) that includes a set of required courses in Chicana/o Studies.[45]

C. Chicana/o Studies curriculum contributes to intergroup and intercultural understanding.

Research in culturally responsive curriculum (also called culturally relevant curriculum) analyzes the impact of curriculum that incorporates the social and cultural facets of students' lives in the content being taught. Researchers examining student learning outcomes from a socio-historical and psychology perspective have documented the effectiveness of culturally responsive curriculum. Reasons for student success when culturally responsive curriculum is used include: 1) students make connections between their experiences, 2) students see contributions of persons who share their background as successful, and 3) students understand that the content and skills in the curriculum has value in their lives. Numerous studies[46] provide strong evidence for the effectiveness of culturally

[44] This description is taken from the ASU on-line catalogue at: http://catalog.asu.edu/ug_gsr. [Accessed August 4, 2011].

[45] For more information go to: http://education.asu.edu/programs/diversity-language-and-learning. [Accessed August 4, 2011].

[46] J. Lipka, Hogan, M. P., Webster, J. P., Yanez, E., Adams, B., Clark, S., Lacy, D., MATH IN CULTURAL CONTEXT: TWO CASE STUDIES OF A SUCCESSFUL CULTURALLY BASED MATH PROGRAM. *Education and Anthropology Quarterly* 36:367-385 (2005). Y. J. Thao, EMPOWERING HMONG STUDENTS: HOME AND SCHOOL FACTORS. *The Urban Review* 35:25-42 (2003).

responsive curriculum. Chicana/o Studies is an example of a culturally relevant curriculum and thus contributes to improvements across all three areas outlined above.

Gonzalez, Moll, and Amanti[47] outline the concept of "funds of knowledge" that supports culturally responsive curriculum, explaining that students enter schools with funds of knowledge that include all the linguistic, cultural, and relational practices that occur within families and in communities. The authors argue that incorporating students' funds of knowledge into the curriculum assists them in being successful learners. These authors provide examples of how incorporation of students' funds of knowledge has made a positive impact in educating students of color.

In her review of the research on the value of ethnic studies in school, Christine Sleeter deconstructs the myths surrounding and explains the benefits that ethnic studies programs provide. First, they include the marginalized populations in the curriculum and often work toward building cross-group communication. Second, they are designed to improve students' academic performance and often have a focus on preparing students for postsecondary education. And third, they link academic performance with ethnic identity. Thus, ethnic studies programs provide students with a curriculum that does not marginalize them; does not work against state curriculum standards, nor isolates students. In researching ethnic studies components in school curricula, Sleeter cites overwhelming evidence that students benefit from ethnic studies programs that incorporate concepts such as "funds of knowledge" and culturally responsive materials.

Ethnic studies in schools are one way to begin to close the achievement gap. When students see persons like themselves included in the curriculum and when they see their funds of knowledge valued and utilized, they become engaged rather than marginalized.

D. Chicana/o Studies curriculum and instruction strengthens student academic achievement by promoting self-respect and self-esteem.

Researchers have been reporting for at least two decades that, "acculturative stress affects the identity formation processes of Latino youth in ways that can increase the risk of internalizing and externalizing – that is, the internalization of the host culture's negative views of Latinos or the externalization of that self-hatred in actions that are destructive to self and others. The Stress of negotiating the expectations of the host culture and the heritage of the culture of origin can delay

[47] Gonzalez, N., Moll, L.C., and Amanti, C. (2005). Funds of Knowledge: Theorizing Practices in Households and Classrooms, Lawrence Erlbaum Associates (April 30, 2005).

identity formation, or deflect the trajectories of Latino youth toward maladjustment."[48] The same research literature has also found that "…a bicultural [learning] trajectory can allow children to enjoy the scaffolding of their culture of origin, while benefiting from the resources the host culture offers."[49] Accordingly, close family relationships "or enmeshment with one's culture of origin can enhance a child's self-esteem, which has been shown to be a resilience factor for disadvantaged Latino children."[50] The resilience that Latino students find in their engagement with culturally relevant curriculum thus aids them in their overall academic success and advancement.

E. Legitimate Evaluations Undermine Any Reason for Banning Ethnic Studies.

Finally, *Amici* contend that the 'alleged' findings presented to justify the statute are not based on any empirical facts or observable behaviors in classrooms and schools and that the underlying logic of the claims actually constitute a serious breach and abuse of the public trust by the legislators since these agents are clearly motivated by ideology and political expediency. They presented an intentional misreading and distorted representation of the materials, methods, and concerns of Ethnic Studies and Chicana/o Studies as scholarly and intellectual movements.

Instead, Sleeter's comprehensive survey provides a legitimate and accurate illustration of the emphasis and orientation of Ethnic Studies. In a report prepared for the National Education Association (NEA), Sleeter provides a reasonable summary of the methods, theories, and materials of Ethnic Studies that contrasts sharply with the baseless alleged findings and precepts purportedly justifying the need for A.R.S. §15-112(A) through (D). Below, we present Sleeter's summaries and then match these to the specific language of HB2281 to reveal the statute's flawed logic and misrepresentation of the nature of Chicana/o Studies:

- Ethnic Studies courses emphasize the "explicit identification of the point of view from which knowledge emanates, and the relationship between social location and perspective". The language of the statute misconstrues this quality as a case of "courses that are designed primarily for pupils of a particular ethnic group" when instead all students benefit from the serious examination of issues of the diversity of epistemology or the philosophy of knowledge. The interrogation of the nature of knowledge is traditionally seen to begin with the Greek

[48] Scott Coltrane et al. MEXICAN AMERICAN FAMILIES AND POVERTY. In: Handbook of families and poverty, ed. D. Russell Crane and Tim B. Heaton. Thousand Oaks: Sage Publications (2008), p. 169.
[49] Sleeter, *supra*., p. 169.
[50] Sleeter, *supra*., pp. 169-70.

philosophers, but it also has roots in the rich and varied philosophies of the great antecedent Mesoamerican (and other indigenous) civilizations. That is essentially what Chicana/ Studies courses teach, and are lessons directed to and benefiting all students, regardless of "race," ethnicity, gender, sexual orientation, or socioeconomic status.

- Ethnic Studies courses emphasize "examination of U.S. colonialism historically, as well as how relations of colonialism continue to play out". The Arizona law misconstrues this legitimate academic concern based on a false assumption these are "courses or classes that promote the overthrow of the United States Government." The teaching of the history of colonialism in Chicana/o Studies is not about activist teachers calling for the "re-conquest" of the Southwestern U.S., it is about setting the record straight and learning lessons from that history to improve, strengthen, and realize the prospects of a truly multi-racial American democracy.[51]
- Ethnic Studies courses emphasize the "examination of the historical construction of race and institutional racism, how people navigate racism, and struggles for liberation." It is possible that drafters of the statute may have misinterpreted this as "courses or classes that promote resentment toward a race or class of people" by incorrectly presuming that this is the equivalent of a call for the overthrow of the U.S. government. Critical scholarly research, classroom instruction, and individual study focused on the enduring problems of racial and other forms of institutionalized and inter-personal discrimination is not the same as calls for violent insurrection. There is no equivalence here. There are plenty of belligerent ideologues across the political and ideological spectrum, but the professional scholarly research and teaching field known as Chicana/o Studies is not the source of anti-government sentiments.

[51] Evidence of a non-violent democratic ethos is evident in the NACCS "Statement on SB1070" submitted to Governor Jan Brewer last May 4, 2010; for the on-line document, go to: http://www.naccs.org/images/naccs/ltrs/SB_1070.pdf. An excerpt:

> The United States is an inspiring experiment in multiracial Democracy; Most of our society's more noble achievements emerged from multicultural public life; the country is also strongly characterized by ecumenical diversity. For the majority of Americans, including Mexican-origin Americans, this diversity is tumultuous, and at times untidy and messy, but ultimately a joyous and exhilarating affirmation of our nation's cultural and political values. For most Americans, and especially for young people in the Millennial Generation, the demographic transition to a "majority of ethnic minorities" is not a calamity or devolution into savagery. It is not the end of history; it is not the beginning of a "wetback" invasion or a fantasy "re-Conquest." It is not the end of Euro-American cultures or of protestant values; nor is it an end to English as our primary political, administrative, and scientific language. It is instead a step forward in the American Experiment through the inspiring progressive hope and creativity unleashed by the multi-hued rainbow of human energy nurtured by our society's liberal – and we hope, eventually fully-participatory – democratic traditions. This is the very reason that so many people wish to come to this nation to become part of a wondrous, ever-shifting multicultural and multiethnic mosaic with an unfathomable depth of possible just futures.

- Ethnic Studies courses emphasize "probing meanings of collective or communal identities that people hold; and studying one's community's creative and intellectual products, both historic and contemporary". The statutory language reveals that the legislators seriously misinterpret this quality to make the baseless argument that these "courses…advocate ethnic solidarity instead of treatment of pupils as individuals".[52] Actually, Sleeter confirms that Ethnic (and Chicana/o) Studies provides a window to the study and understanding of individuals *and* communities. Personal biography and social history are equally important and Chicana/o Studies (like most social sciences) teaches us that one does not have to choose between individual identity and a sense of being part of something larger than self – for example, our families, neighborhoods, and voluntary religious, cultural, and occupational associations, etc. Group identities are interwoven with individual identities in complex ways and one goal of Chicana/o Studies is to understand that interlacing.

Any reasonable teacher or student in Ethnic Studies courses would recognize the methods and material of the field as outlined in Sleeter's insightful summary. They would be puzzled by the "findings" invoked by the drafters of HB2281 and then used as a rationale to justify the statute under review. Indeed, the Cambium audit commissioned by the State agrees with the Sleeter summary and arrived at the conclusion that the focus, materials, and methods of the Mexican American Studies program in the TUSD constitute a legitimate, effective, and non-disruptive academic endeavor.

Given these curricular and pedagogical principles, the Arizona state's actions are not based on any empirical research or the findings made by the state's own audit, and indeed pose the opposite results: It is the prohibition of Ethnic Studies that will create or exacerbate existing racial resentments, attenuate the often hostile or "chilling" environment in many of the District's other classrooms, and encourage the ideological opponents of diversity to typecast teachers, students, and their intellectual work as objects to be treated as the stereotyped anti-American characters and qualities erroneously imagined and projected by the legislators. It is the prohibition of Ethnic Studies that advocates the conformity to the dominant American Anglo identity.[53] Stereotyping and resentment will result from

[52] All bullet point quotes taken from Christine E. Sleeter, THE ACADEMIC AND SOCIAL VALUE OF ETHNIC STUDIES: A RESEARCH REVIEW. Washington, D.C.: National Education Association, (2011); p. 3.

[53] The literature on what is called the 'ubiquity of whiteness' is by now quite vast and is a significant contribution that draws inspiration from more traditional studies of ethnicity and race in America. E.g., Richard Dyer, THE MATTER OF WHITENESS in *Privilege: A Reader*, ed. Michael S. Kimmel, Abby L. Ferber. Boulder: Westview (2003), pp. 21-32; Dyer makes the following relevant observation: "This cultural process [of exclusion] justifies the emphasis, in work on the representation of white people, on the role of images of non-white people. Yet this emphasis has also worried me, writing from a white position. If I continue to see whiteness only in texts in which there are also non-white people, am I not reproducing the relegation of non-white people to the function of enabling me to understand myself?...[We] risk…

enforcement of this statute, denying students an opportunity to learn and appreciate, indeed celebrate, our amazing cultural and ethnic differences that deeply and profoundly define the multiracial American mosaic of identity. Given these concerns, it remains difficult to establish how teachers and students would be able to recognize the "bright line" separating constitutionally-protected free speech from that which the statute seeks to prohibit. This will result in an unenforceable milieu and will dampen free and critical inquiry, the very values that are the basis of our democracy and educational system.

Indeed, further proof that the findings and prohibitions outlined in the Arizona statute are flawed and dangerous is evident from an exploration of one of the bedrock epistemological principles of Ethnic and Chicana/o Studies: From the vantage point of human biology, there is no such thing as "race." There is only one race: the Human Race. This is one of the first scientific principles we teach in Chicana/o Studies courses and was reiterated in the 2010 NACCS Statement on SB1070 referenced earlier. However, we do teach an additional critical point: While there are no biologically distinct races – and we share 99.8 percent of our DNA and there is more genetic diversity within so-called racial subtypes than across the categories – the social and political construction of race has long been, and continues to be a serious problem and feature of American social life and intergroup relations.[54] This is the fundamental contradiction underlying the statute: It assumes that Ethnic Studies teaches racial resentment, when indeed that conclusion is itself a by-product of racial resentment toward exposure to the diversity of epistemology represented by Chicana/o Studies. Racism comes in this twisted mirroring form because powerful individuals are able to use their privilege to misrepresent others' knowledge, foreclosing the possibilities of freedom of thought and creative synthesis of the American identity through the emerging multicultural educational system that more accurately and openly represents the changing faces of America.[55] The only 'bright line' established by this statute is the racialized banning of Ethnic Studies through an uncivil and unconstitutional law. An 'open society' requires openness to the truth claims of others rather than the imposition of a 'one truth' regime as seen from a particular

giving the impression that whiteness is only white, or only matters, when it is explicitly set against non-white, whereas whiteness reproduces itself as whiteness in all texts all of the time." (Quote is at page 28). However, Ethnic Studies does not focus only on inter-group relationships (say between Anglo and Mexican Americans). It also focused on the artistic, creative, and intellectual work of ethnic individuals in their own right, and not necessarily with reference to a relationship to non-Chicana/o students.

[54] See Joe R. Feagin, RACIAL AND ETHNIC RELATIONS, second edition. Englewood Cliffs, NJ: Prentice-Hall (1984). On the history of the concept of race in American society and the distinction between race as "biological" construct and race as a "social" construct or political project, see Devon G. Peña, "SCIENTIFIC RACISM" in Oxford Encyclopedia of Latinos and Latinas in the United States, eds. Suzanne Oboler and Deena Gonzalez. New York: Oxford University Press (2005).

[55] See: J. M. Hughes, R. S. Bigler, and S. R. Levy, "CONSEQUENCES OF LEARNING ABOUT HISTORICAL RACISM AMONG EUROPEAN AMERICAN AND AFRICAN AMERICAN CHILDREN". *Child Development* 78:1689-1705 (2007).

social location produced by the long history of class and racial privileges.

Finally, we are compelled to remind the Court of a vital and indisputable fact addressed herein: The new Arizona state statute (A.R.S. § 15-112) overlooks, and indeed violates, the establishment of the MAS Program, which was part of a "post-unitary" plan agreed to by the Board of the TUSD under the terms of a federal court-ordered desegregation plan.[56] Thus, on its face, any effort to develop a 'bright line' standard for students and teachers under the unconstitutional mandates of HB2281 necessarily intrudes into a pre-existing zone of equal protection scrutiny, and violates the terms of the desegregation plan TUSD is currently working to comply with.

CONCLUSION

The Arizona law should be struck down for the reasons stated herein. The bedrock principles underlying comprehensive academic pursuit, Equal Protection, and the First Amendment, are at stake. Notably, teachers speak and write for a living – the core responsibility of their job is to lead class discussions and comment on student papers, including those that address controversial or political topics. Speaking and writing are "the public services" that the school performs through its teachers. When speech is the very core of the teacher's job and at the core of students' receipt and exchange of information and ideas, surely respect for First Amendment rights and Equal Protection as detailed above should be of paramount importance. Moreover, teachers have the job of lecturing and teaching on various topics, including controversial political or philosophical topics, as well as of teaching children and teenagers to think, reflect, write, and speak on all these topics. In terms of ethnicity and controversial social topics, there is an educational spectrum ranging from teachers who might state their own views to teachers who provide a context for students to develop their own individual points of view on related matters of contemporary importance. It is difficult to see who could be qualified to make a judgment as to where any given teacher might fall on this continuum and thus violate the Arizona law; and, from a First Amendment perspective, it is dangerous to require such examination or even try to decide. Based on the history of what has occurred in this case, the danger is obvious.

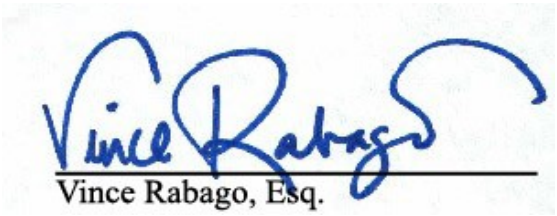
For the reasons stated, *Amici* contend that the Arizona law must be struck down, as violating the protections of the First and Fourteenth Amendments of the Constitution.

[56] For a history of the MAS Program in TUSD, see: http://www.tusd.k12.az.us/contents/distinfo/pup/Documents/pusp.pdf. [Accessed 6/3/2011). For a history of the desegregation case, see: http://www.maldef.org/education/litigation/mendoza_v_tucson_unified/. [Accessed June 3, 2011].

DATED this 7th day of March, 2012.

VINCE RABAGO LAW OFFICE PLC

Stacy Scheff, Esq.



Vince Rabago, Esq.
VINCE RABAGO LAW OFFICE PLC
Attorneys for Amici

Delivered this 7th day of March, 2012
by U.S. mail to:

The Hon. A. Wallace Tashima
U.S. District Court, Arizona
Evo A. DeConcini U.S. Courthouse
405 W. Congress Street, Suite 1500
Tucson, AZ 85701-5010

Richard M. Martinez
307 South Convent Avenue
Tucson, Arizona 85701

Kevin D. Ray
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

APPENDIX 1.

2008 DISSERTATION AND THESES ON CHICANA/O TOPICS

Below is a sample of dissertations and thesis on Chicano topics, produced in 2008. These can be accessed through Proquest at most University and College Libraries.

1. Jurado, Kathy, Ph.D., 'Alienated citizens: "Hispanophobia" and the Mexican immigrant body,' University of Michigan, 2008, 160 pages; AAT 3304999

2. Garcia-Martinez, Marc Joseph, Ph.D. "Artesano at work: The flesh and blood aesthetics of Alejandro Morales," University of California, Santa Barbara, 2008, 213 pages; AAT 3335001

3. Bandes-Becerra, Maria-Tania, Ph.D., "Becoming American: A discovery of the process of immigrant acclimatization as seen in Hispanic/Latino scripts," Wayne State University, 2008, 190 pages; AAT 3320222

4. Mantler, Gordon Keith, Ph.D., "Black, brown, and poor: Martin Luther King Jr., the Poor People's Campaign, and its legacies," Duke University, 2008, 474 pages; AAT 3297872

5. Jovel, Jennifer E., Ph.D., "Community college transfer: The role of social capital in the transfer process of Chicana/o students," Stanford University, 2008, 349 pages; AAT 3332848

6. Akey, Lisa J., Ph.D., "Community canvas: The murals of Pilsen, a Chicago neighborhood," Indiana University, 2008, 387 pages; AAT 3332471

7. Gonzales, Joseph Jason, Ph.D., "Complicated business: Chicanos, museums, and corporate sponsorship," Temple University, 2008, 456 pages; AAT 3326333

8. Escobedo, John L., Ph.D., " Dangerous crossroads: Mestizaje in the U.S. Latino/a imaginary," Rice University, 2008, 197 pages; AAT 3309864

9. Montoya, Norma, M.A., "El Ambiente" (Ambience)," California State University, Long Beach, 2008, 13 pages; AAT 1455556

10. Camacho, Gabriel Rene, M.A., "El concepto de la frontera en el "Quijote" desde el punto de vista chicano," The University of Texas at El Paso, 2008, 76 pages; AAT 1453846

11. Lodmer, Emily Joan, Ed.D., "In their own words: Factors leading to transfer as identified by ten resilient Latino community college students," University of California, Los Angeles, 2008, 219 pages; AAT 3322023

12. Guerra, Ramon J., Ph.D., "Literature as witness: Testimonial aspects of Chicano self identity narratives," The University of Nebraska - Lincoln, 2008, 240 pages; AAT 3309212

13. Hernandez, Jose Angel, Ph.D., "Lost Mexico, forgotten Mexico, and Mexico beyond: A history of Mexican American colonization, 1836—1892," The University of Chicago, 2008, 342 pages; AAT 3300435

14. Alberto, Lourdes, Ph.D., "Making racial subjects: Indigeneity and the politics of Chicano/a cultural production, Rice University, 2008, 171 pages; AAT 3309827 15.

15. Rodriguez, Lori Beth, Ph.D., "Mapping Tejana epistemologies: Contemporary (re)constructions of Tejana identity in literature, film and popular culture,' The University of Texas at San Antonio, 2008, 284 pages; AAT 3303917

16. Valdes, Patricia, Ph.D., "Mi voz, mi historia - my voice, my story: Portaitures of four Latina/Chicana undergraduate leaders from migrant farmworker backgrounds," Gonzaga University, 2008, 361 pages; AAT 3311713

17. Azcona, Stevan Cesar, Ph.D., "Movements in Chicano music: Performing culture, performing politics, 1965—1979." The University of Texas at Austin, 2008, 304 pages; AAT 3320607

18. Hamilton, Amy T., Ph.D., "Peregrinations: Walking the story, writing the path in Euro-American, Native American, and Chicano/Chicana literatures," The University of Arizona, 2008, 287 pages; AAT 3303573

19. Alvarez Dickinson, Jennifer, Ph.D., "Pocho humor: Contemporary Chicano humor and the critique of American culture," The University of New Mexico, 2008, 338 pages; AAT 3329454

20. Rodriguez, Elvia, M.A., ""Por la guerra de marinos y pachucos": The Zoot Suit Riots in the Spanish-language press," California State University, Fresno, 2008, 90 pages; AAT 1460396

21. Gauthereau-Bryson, Lorena, M.A., "Revolution on the border: Conflicted loyalties and conflicting identities in "George Washington Gomez"' Rice University, 2008, 94 pages; AAT 1455239

22. Fetta, Stephanie, Ph.D., "Shame and technologies of racialization in Chicana/o and Latina/o literatures," University of California, Irvine, 2008, 212 pages; AAT 3334591

23. Gonzales, Trinidad, Ph.D., "The world of Mexico Texanos, Mexicanos and Mexico Americanos: Transnational and national identities in the Lower Rio Grande Valley during the last phase of United States colonization, 1900 to 1930," University of Houston, 2008, 335 pages; AAT 3311735

24. Pedraza, Venetia June, Ph.D., "Third space Mestizaje as a critical approach to literature," The University of Texas at San Antonio, 2008, 176 pages; AAT 3315977

25. Jardine, Jessica Jean, M.A., "Tracing a history: An exploration of contemporary Chicano art and artists," University of Southern California, 2008, 26 pages; AAT

26. Behm, Nicholas Neiman, Ph.D., "Whiteness, white privilege, and three first-year composition guides to writing," Arizona State University, 2008, 327 pages; AAT 3300660

27. Taylor-Garcia, Daphne, Ph.D "The emergence of racial schemas in the Americas: Sexuality, sociogeny, and print capital in the sixteenth century Atlantic," University of California, Berkeley, 2008, 212 pages; AAT 3353274

APPENDIX 2.
Text of Bill Text: CA Assembly Concurrent Resolution 34 - 2011-2012 Regular Session

BILL NUMBER: ACR 34
CHAPTERED BILL TEXT
RESOLUTION CHAPTER 65
FILED WITH SECRETARY OF STATE JULY 28, 2011
APPROVED BY GOVERNOR JULY 28, 2011
ADOPTED IN SENATE JULY 14, 2011
ADOPTED IN ASSEMBLY MAY 23, 2011
AMENDED IN ASSEMBLY APRIL 5, 2011
INTRODUCED BY Assembly Members Lara and Alejo
MARCH 8, 2011

Relative to ethnic studies.

LEGISLATIVE COUNSEL'S DIGEST ACR 34, Lara. Ethnic studies programs. This measure would formally endorse the invaluable work of California's ethnic studies programs, and their faculty, staff, and students. The measure would recognize the leadership provided by the beneficiaries of those programs, and would support the continuation of ethnic studies programs in California's institutions of higher education.

WHEREAS, The genesis and salience of ethnic studies as an academic discipline encompass research, scholarship, and programs that study and teach the experiences, history, culture, and heritage of African Americans, Asian Americans, Chicanas and Chicanos, Latinas and Latinos, Native Americans, and other persons of color in the United States; and

WHEREAS, Formal ethnic studies programs and departments at California's universities are a response to a student-led movement dating back to the 1960s, including demonstrations, student protests, and hunger strikes, where students, faculty, and community members demanded university courses that were relevant to them and their communities; and

WHEREAS, The formalization of ethnic studies fostered greater demand and recognition of the need for faculty and staff from diverse communities, allowing for broader representation at California's universities; and

WHEREAS, Ethnic studies have grown into a respected academic field, complete with professional organizations, institutionalized departments and related programs across the United States, and numerous research journals and award-winning publications; and

WHEREAS, The study of ethnic populations has grown to include comparative and international approaches to the study of ethnicity and the intersections of race, class, gender, and sexuality; and

WHEREAS, Ethnic studies acknowledges the role of America's diverse racial and ethnic peoples as equal actors in the history of California and the United States; and

WHEREAS, Latinos and other racial and ethnic groups account for 57 percent of California's population, making California the most ethnically and racially diverse state in the nation; and

WHEREAS, A broader education on diverse racial and ethnic groups provides a fuller and deeper

understanding of California and United States history and helps promote greater understanding among people from different backgrounds; and

WHEREAS, Ethnic studies departments, programs, and related projects promote constructive communication and collaborative efforts between different and diverse groups and encourage the demonstration of respect, understanding, appreciation, equality, and dignity; and

WHEREAS, Long-standing attacks on ethnic studies departments, programs, and related projects, and the recent increase of attacks in particular, misrepresent the intentions and serious intellectual and scholarly commitments of the ethnic studies departments; and

WHEREAS, Support for ethnic studies departments, programs, and related projects, within our state's higher education segments, including budgetary commitments, will allow for the continued guidance and teaching of a new generation of students who will greatly impact and positively influence California policy and government; and

WHEREAS, Support for ethnic studies within our K-12 public school system will allow a new generation to greatly impact and positively influence California's relations and policy development; and

WHEREAS, Actions to ban ethnic studies in states such as Arizona distort our hallmark as a diverse nation, and mischaracterize educational curricula that affirm this diversity as reverse racism, hatred, and ethnocentrism; and

WHEREAS, The elimination of ethnic studies within any of our state' s educational segments would put our students at a disadvantage from a global perspective; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California formally endorses the invaluable work of California's ethnic studies departments, programs, and related projects, and their faculty, staff, and students; and be it further

Resolved, That the Legislature of the State of California also duly recognizes the leadership provided by the beneficiaries of these programs who have contributed greatly to the academic rigor, prominence, and distinguishing qualities of California's colleges and universities and the vitality of other public and private institutions, including the California state government; and be it further

Resolved, That the Legislature of the State of California supports the continuation of ethnic studies departments, programs, and related projects in California's institutions of higher education; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Regents of the University of California, the Board of Governors of the California State University, the Board of Trustees of California Community Colleges, and the author for appropriate distribution.

APPENDIX 3.

Excerpt from Rodolfo F. Acuña, *The Making of Chicana/o Studies: In the Trenches of Academe*. New Brunswick, NJ: Rutgers University Press (2011).

Chicana/o Studies have played a role in the dramatic transformation of the study of Mexican Americans in the United States and even Mexicans in Mexico. Before December 31, 1970, not a single dissertation was written under the category of "Chicano." To date, 870 dissertations have been recorded under this heading. Under "Mexican American," a search reveals 82 dissertations were written before 1971, and 2,824 from 1971 to 2010. The search for "Latinos" shows 6 were written before 1971, and 2,887 from 1971 to 2010. This is also the pattern in dissertations on Mexico. Before 1971, 660 were found in the Proquest data bank; from 1971 to 2010 there were 9,078.16 The number of books and journal articles on Chicanos and Latinas/os has also zoomed….

Moreover, the growth of Chicano Studies was accelerated by the presence of Mexican American students on college campuses. In 1967 an estimated seventy students of Mexican origin attended the University of California, Los Angeles—and even fewer at many state colleges. From 1968 through 1973, undergraduate enrollment at the University of California system reportedly increased from 1.8 percent to 5.0 percent.18 At the massive California State College system, the Chicana/o student population grew from 2.9 to 5.3 percent.19 At the time, Mexican Americans were reportedly 10 percent of the state's population. Texas had a much longer tradition of Chicanas/os in higher education and a larger second- and third generation Tejano student population; in 1974 approximately 1,900 Mexican American undergraduates attended the University of Texas at Austin, 4.85 percent of the university's total student population. At the time, almost 20 percent of the population of Texas was Mexican. The 1970 census suggests that barely over 20 percent of Mexican Americans, sixteen years old or older, graduated from high school. The legacy of Chicano Studies during these early years was the establishment of beachheads that gave a home to student groups and knitted faculty, staff members, students, and community organizations into a common cause.