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Gonzalez v. Douglas Trial Transcript of Proceedings, Day 3

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

NOAH GONZÁLEZ; JESÚS)	Case No. 4:10-cv-00623-AWT
GONZÁLEZ, his father and)	
next friend, et al.,)	
)	
Plaintiffs,)	
)	Tucson, Arizona
vs.)	July 28, 2017
)	9:06 a.m.
DIANE DOUGLAS,)	
Superintendent of Public)	
Instruction, in her)	
Official Capacity; et)	
al.,)	
)	
Defendants.)	

Before the Honorable A. Wallace Tashima

Transcript of Proceedings

Bench Trial Day 3

Proceedings reported and transcript prepared by:

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Proceedings reported by stenographic machine shorthand;
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1 P R O C E E D I N G S

2 (Proceedings commenced at 9:06 a.m., as follows:)

3 THE COURT: Good morning. Let's be seated. The first
4 thing we have is to inquire into, finalize our scheduling for
5 the rest of the week.6 Let me ask either side, I don't care who wants to go
7 first, any new developments?8 MS. COOPER: We can have one of the defendants'
9 witnesses here on Friday, Your Honor.10 THE COURT: All right. And what would it be, like a
11 half a day's worth or something like that?12 MS. COOPER: Yes, that's my best guess at this moment.
13 And I believe the plaintiffs' counsel agrees, Your Honor.

14 MR. REISS: Yes, Your Honor.

15 THE COURT: All right. Then that will do it?

16 MR. REISS: That's fine.

17 MS. COOPER: For this week, Your Honor.

18 THE COURT: In other words, we'll stick with our
19 schedule, and if we need to, we'll call this witness you have
20 in mind on Friday?

21 MS. COOPER: Correct.

22 THE COURT: And then we'll adjourn more or less at the
23 half-day point. All right? Good. Thank you very much.24 Now, then we have a -- is it a defense witness? We
25 have another witness today before we get back to

1 Mr. Huppenthal.

2 MR. QUINN: Your Honor, it's a plaintiffs' witness
3 that we're calling as an adverse witness.

4 THE COURT: That's fine. Go ahead. Call your witness
5 then.

6 MR. QUINN: Very well. We do have one issue very
7 briefly that Mr. Fitzmaurice is going to deal with.

8 THE COURT: Go ahead.

9 MR. QUINN: I think it may make your life easier.

10 THE COURT: Go ahead.

11 MR. FITZMAURICE: Yes, Your Honor. Your Honor, you'll
12 recall from yesterday that you asked for, you know, a
13 memorandum to help with the issue of the replication
14 application, which was the request for judicial notice --

15 THE COURT: Yes.

16 MR. FITZMAURICE: -- that was contested. Your Honor,
17 the parties have been talking, and plaintiffs now have another
18 website from the Arizona Department of Education itself, and we
19 respectfully request the Court to take judicial notice of the
20 contents of that website. And I'll add that the defendants do
21 not oppose this request.

22 Specifically, Your Honor, this new Arizona Department
23 of Education website has the demographic information about the
24 Paulo Freire School for the year 2010-2011, and the year 2011
25 to 2012. I am happy to read in the information to the record,

1 or I am happy to provide the Court --

2 THE COURT: Well, if you have -- is that a stipulation
3 as to, one, the contents of the website, and it's admissible?
4 Right? Is that right?

5 MS. COOPER: We don't concede that it's admissible or
6 relevant, but we do not dispute that the website provides the
7 requested demographic information.

8 THE COURT: That the website -- well --

9 MS. COOPER: It's judicially noticed --

10 THE COURT: What do you agree to about the -- I'll
11 call it the sponsorship of the website? It's a
12 department-sponsored website?

13 MS. COOPER: Yes, it is an Arizona Department of
14 Education website, and it contains the information, and it is
15 susceptible of judicial notice, but we do not believe that it
16 is admissible or relevant. But of course plaintiffs have that
17 opportunity to --

18 THE COURT: All right. You understand that to be the
19 stipulation, right?

20 MR. FITZMAURICE: I understand that to be the
21 stipulation, Your Honor. I understand you to have already
22 ruled on the relevance of this information in your motion in
23 limine.

24 THE COURT: Well, I am not going to rule right now on
25 the admissibility of whatever is in the website. You can raise

1 that again. I don't know whether it would be another witness
2 you'd want to talk to about it, you want to talk to.

3 Let me ask then, do the plaintiffs then -- let's see.
4 We're going to have Mr. Huppenthal back, right?

5 MR. FITZMAURICE: We are, Your Honor.

6 THE COURT: So plaintiffs intend to question
7 Mr. Huppenthal about these figures, right? Am I correct?

8 MR. FITZMAURICE: We may very well, Your Honor, yes.

9 THE COURT: All right. Then I'll take it up when we
10 get to the questioning of Mr. Huppenthal. All right?

11 MR. FITZMAURICE: Thank you, Your Honor.

12 THE COURT: But I accept the stipulation. The
13 stipulation is that, one, whatever the, you know -- I don't
14 know what the URL is, but that the Arizona Department of
15 Education maintains a website or sponsors a website and that
16 the figures that you want to use are taken from the website.

17 MR. FITZMAURICE: Yes, Your Honor.

18 THE COURT: So that's the extent of the stipulation.
19 That's fine, thank you.

20 MR. FITZMAURICE: Thank you, Your Honor.

21 THE COURT: Let's get to our next witness.

22 MR. QUINN: Very well, Your Honor. We call, as an
23 adverse witness, Mark Anderson.

24 THE COURT: All right, sir. Step forward right here
25 and be sworn.

1 **MARK ANDERSON, WITNESS, SWORN**

2 **DIRECT EXAMINATION**

3 **BY MR. QUINN:**

4 Q. Good morning, Mr. Anderson.

5 A. Good morning.

6 Q. I am plaintiff lawyer, Jim Quinn, and I am going to be
7 asking you some questions this morning.

8 A. Very good.

9 Q. Now, Mr. Anderson, you worked for the Arizona Department of
10 Education from 2009 to 2010, is that right?

11 A. Yes.

12 Q. And that was during Mr. Horne's term as the superintendent
13 of public education?

14 A. Yes.

15 Q. Correct?

16 A. Correct.

17 Q. And before that, you were a member of the Arizona State
18 Legislature, correct?

19 A. That's true.

20 Q. And that was for about 14 years?

21 A. Yes.

22 Q. And in the last four years of your tenure in the
23 legislature, 2004 to 2008, you were chair of the House
24 Education Committee, correct?

25 A. Correct.

1 Q. And you are a Republican, correct?

2 A. Yes.

3 Q. It's fair to say that based on all of that, your 14 years
4 in the legislature, that you're pretty familiar with the
5 legislative process in Arizona?

6 A. I hope so.

7 Q. Now, when you were at the Arizona Department of Education,
8 the ADE, one of your roles was from time to time to act as a
9 liaison or a lobbyist for the ADE, correct?

10 A. Yes.

11 Q. In particular, Mr. Horne asked you to lobby for bills that
12 he was particularly interested in, correct?

13 A. Yes.

14 Q. But your formal role was actually as the Director of Rules
15 and Procedures, right?

16 A. Yes.

17 Q. And that was to interface with the state board of education
18 with regard to rules and procedures, right?

19 A. Correct.

20 Q. Notwithstanding that, from time to time you would lobby
21 bills that as we indicated Mr. Horne was particularly
22 interested in, right?

23 A. Yes.

24 Q. And you knew Mr. Horne when you were a legislator, right?

25 A. Correct.

1 Q. And you had a good relationship with Mr. Horne, I take it?

2 A. Yes, mmm-hmm.

3 Q. Now, in 2010, you lobbied to pass legislation that was
4 aimed at eliminating the MAS program in Tucson, correct?

5 A. I think that would have been one of the effects of the
6 legislation, yes.

7 Q. One of the effects of the legislation would be to eliminate
8 the MAS program in Tucson, correct?

9 A. Let me clarify. I don't think it would necessarily have
10 eliminated it. It would have given the district an opportunity
11 to alter the program a bit, adjust it, so that it didn't
12 violate the statutes. So it wouldn't have necessarily
13 eliminated it.

14 Q. Well, wasn't it Mr. Horne's objective to get rid of the
15 program?

16 A. I think his objective was to come up with a policy that
17 would prevent the kind of violations that that particular
18 program seemed to be bringing to the education of the Tucson
19 district.

20 Q. Let's take a look at PX033 in evidence. 033. Although 03
21 looked interesting.

22 I want you to focus on the e-mail dated February 3, 2010.
23 That was during the period of time that you were lobbying for
24 the passage of the bill HB2281 that eventually became 15-112,
25 right?

1 A. Yes.

2 Q. Who is Mr. Bayne?

3 A. Todd Bayne is one of the attorneys who works for
4 legislative counsel.

5 Q. Was he one of the folks on the team that was lobbying to
6 get HB2281 passed?

7 A. No.

8 Q. You were working with him as an attorney?

9 A. He's just -- he's a bill drafter. He works for both
10 Republicans and Democrats. He works in the basement over there
11 drafting legislation and helping legislators of either party,
12 any legislator, to draft legislation that's appropriate.

13 Q. By the way, you were aware that HB2281, the language of
14 that bill was actually drafted by Mr. Horne, wasn't it?

15 A. I -- usually bills --

16 Q. It's just a yes or no. Are you aware that he drafted the
17 bill?

18 A. I would imagine that he provided the information to leg
19 council, and leg council usually drafts the actual language.

20 Q. If he were to have testified under oath that in fact he
21 drafted the bill, you have no reason to disagree with that,
22 would you?

23 A. No, I wouldn't.

24 Q. Now, with regard to this e-mail dated February 3rd, 2010,
25 it reads: Todd, I am working with Representative Crandall and

1 Superintendent Horne on HB2281.

2 Representative Crandall at that time was the chairman of
3 the House Education Committee?

4 A. I believe so.

5 Q. And, in fact, he replaced you as the chairman of the House
6 Education Committee, right?

7 A. Yes.

8 Q. And you indicate that there is -- we'll get to this in a
9 minute, but you indicate -- you say here that: We are trying
10 to come up with an amendment to A.R.S. 15-112(A), number one,
11 this one sentence is a sticking point.

12 Then you say: We need to satisfy Tom Horne who wants to be
13 able to get rid of the La Raza program in Tucson.

14 Do you see that?

15 MR. ELLMAN: Objection. Foundation. The witness
16 hasn't acknowledged that he even recalls this e-mail.

17 THE COURT: The objection is overruled.

18 BY MR. QUINN:

19 Q. Do you see that?

20 A. I do.

21 Q. That's what you wrote, right?

22 A. I believe so.

23 Q. And you wrote that based on your understanding of what Tom
24 Horne's position was with regard to the La Raza program in
25 Tucson, correct?

1 A. I believe that that --

2 Q. Yes-or-no answer.

3 A. Yes, that's what it says.

4 Q. And that's what you believed was Mr. Horne's position
5 because that's what you wrote his position was. Isn't that
6 right?

7 A. Yeah. I believe he did want to affect that program because
8 it was violating what he viewed was proper education.

9 Q. Stay with me, Mr. Anderson. He didn't say affect the
10 program. You didn't say affect the program, you said get rid
11 of the program. Isn't that right?

12 MR. ELLMAN: I'm going to object as argumentative.

13 THE COURT: Sustained.

14 BY MR. QUINN:

15 Q. You go on to say that Representative Crandall, who thinks
16 the sentence is too broad. Do you see that?

17 A. I do.

18 Q. Do you recall that when the bill was first introduced, in
19 fact, Representative Crandall gave you some pushback with
20 regard to the bill. Isn't that right?

21 A. I believe so.

22 Q. He said, he told you that he thought that the bill was
23 overreaching by Mr. Horne. Isn't that right?

24 A. That, I don't recall. I don't recall any specific
25 conversation with Representative Crandall.

1 Q. Then let's take a look at -- we'll see if we can refresh
2 your recollection. Let's take a look at PX31. This is a memo,
3 or an e-mail, rather, from Michael Vargas to Art Harding.

4 Who are Mr. Vargas and Mr. Harding?

5 A. Art Harding was the primary lobbyist for the department of
6 education, and Michael Vargas was, I would say, maybe an
7 assistant to Art Harding.

8 Q. So Mr. Harding and Mr. Vargas were part of the two, along
9 with you, who were seeking to get HB2281 passed, right?

10 A. Yes.

11 Q. And the subject matter is you, Mark Anderson, right?

12 A. I haven't read it yet, but --

13 Q. Take a look at it.

14 A. Okay. Okay.

15 Q. Got it? You with me?

16 A. Yes.

17 Q. The e-mail says that Mark -- that would be you, correct?

18 A. I would assume so.

19 Q. -- wanted me to let you know that he spoke to
20 Representative Crandall on Friday and that Representative
21 Crandall told him that he did not plan on hearing the ethnic
22 studies bill due to Representative Crandall feeling that it was
23 overreaching on the part of the superintendent. Do you see
24 that?

25 MR. ELLMAN: Objection. Foundation, and the exhibit

1 speaks for itself.

2 THE COURT: I sustained the objection because you said
3 you wanted to show that to him to refresh his recollection, not
4 what you're talking about. It's a different matter.

5 MR. QUINN: I'm sorry, Your Honor.

6 THE COURT: So the objection is sustained.

7 BY MR. QUINN:

8 Q. Does that refresh your recollection --

9 THE COURT: No. The objection is sustained. You've
10 got to ask a different question now, a new question.

11 MR. QUINN: With respect, Your Honor, I didn't --

12 THE COURT: I don't care about how much respect you
13 have, you can't ask the same question over again.

14 MR. QUINN: Okay.

15 BY MR. QUINN:

16 Q. Looking at this e-mail, do you have any reason to believe
17 that Representative Crandall did not push back with regard to
18 this bill because he thought it was overreaching on the part of
19 the superintendent?

20 MR. ELLMAN: Objection. Speculative.

21 THE COURT: Sustained.

22 MR. QUINN: Your Honor, I'll just offer -- this one
23 was objected to, and I'm going to offer it into evidence.

24 THE COURT: It was or wasn't?

25 MR. QUINN: It was objected to.

1 THE COURT: All right.

2 MR. ELLMAN: And I will object for lack of foundation.

3 THE COURT: Sustained.

4 BY MR. QUINN:

5 Q. There came a time that you did, in fact, meet with

6 Representative Crandall, correct?

7 A. I assume I did. I'm sure I would have.

8 Q. And you met with him because you knew that Representative
9 Crandall was pushing back on the bill and he didn't want to
10 actually have a hearing on it. Isn't that right?

11 A. I believe that's true.

12 Q. And you met with him in order to persuade him to have a
13 hearing on it, didn't you?

14 A. Well, my job was to explain the legislation to legislators
15 and, hopefully, if they understood it, they would be
16 supportive. So I guess you could say that.

17 Q. There came a time that you decided that -- strike that.

18 It's true, is it not, that at one point you and others
19 decided that you would pull the bill from the House Education
20 Committee and look for another committee to get a hearing.
21 Isn't that right?

22 A. I don't recall that.

23 Q. Do you recall that at one point you went to the House
24 Government Committee in order to see whether you could get a
25 hearing from that committee?

1 A. I don't recall that specifically. Yeah, I don't know.

2 Q. Let's take a look at another document. Actually, can we go
3 back to PX33 for a second. We might as well go through this.
4 This is the document we just looked at.

5 Could you move up to the -- in response -- you can just
6 follow along, if you can, Mr. Anderson. In response to your
7 e-mail, that same day Todd Bayne writes to you that -- he says
8 that: The only thing I can think of would be to remove the
9 word "primarily" and replace "ethnic group" with either "race
10 or national origin." I think that tightens the language up a
11 bit, but I don't know if the revised language would be
12 acceptable, compromise to either or both parties.

13 Then he goes on to say: I suppose another option would be
14 to strike paragraph 1 completely. Then he says: I think the
15 language in paragraph 2 would still capture the La Raza
16 program.

17 Do you see that?

18 A. Yes.

19 Q. So it's fair to say that in this conversation you were
20 focused on the La Raza program, correct?

21 A. Yes.

22 Q. And you were trying to find language, were you not, that
23 would be acceptable to Representative Crandall so that he would
24 hear the bill, correct?

25 A. I assume so.

1 Q. Now, going up to the next e-mail, this one a few minutes
2 later, from you to -- this time to Mr. Horne. You attach --
3 I'm assuming you attach what -- the e-mails from Mr. Bayne, and
4 you say: Tom, here's what I got from legislative council --
5 that's Mr. Bayne -- on the ethnic studies bill. What do you
6 think?

7 Do you see that?

8 A. Mmm-hmm, yes.

9 Q. And you were sending that to Mr. Horne to get his approval
10 on changes in language, right?

11 A. Yes.

12 Q. And let's look at the one up on top. This is from Horne to
13 you, again, 15 minutes later. And he says: His first
14 paragraph is acceptable. After removing "primarily," I would
15 add at the end of the sentence "even if students of other races
16 are permitted to attend." Do you see that?

17 A. Yes.

18 Q. And it's fair to say that Mr. Horne was very closely
19 overseeing this process, wasn't he?

20 A. Yes.

21 Q. He was very interested in getting this bill passed, wasn't
22 he?

23 A. Yes.

24 Q. And he added the "even if students of other races are
25 permitted to attend" because he knew that, in fact, it was open

1 enrollment with regard to MAS classes, right?

2 MR. ELLMAN: Objection. Speculative.

3 THE COURT: Sustained.

4 BY MR. QUINN:

5 Q. Did you have an understanding as to why Mr. Horne added
6 that particular phrase?

7 A. No.

8 Q. Okay.

9 A. I don't remember exactly what his reasoning would have
10 been, if I even knew what his reasoning was at the time he
11 wrote that. I understand what it says. I just don't know why
12 or what --

13 Q. Fair enough. Fair enough.

14 Now, you were aware that Mr. Horne had first targeted the
15 MAS program after there was a speech by Dolores Huerta back in
16 2006 at the Tucson High School?

17 A. I recall something about that name of person and giving --
18 and that she gave a speech. But I don't know the timing of
19 when that happened or what it had to do with this bill.

20 Q. But you do recall that Mr. Horne had mentioned to you that
21 there was a speech and that that was one of the reasons he was
22 focused on the MAS program, correct?

23 A. That could be true, but I don't have any specific memory
24 of --

25 Q. Do you remember him talking about a statement by Ms. Huerta

1 that "Republicans hate Latinos"? Do you remember that?

2 A. I remember that statement being part of the controversy at
3 the time, but I don't recall specifically hearing from Tom on
4 that.

5 Q. Do you recall that Tom sent one of his deputies down to
6 Tucson a month or so later to respond to Ms. Huerta's speech?

7 A. No. I don't recall that.

8 Q. Do you know who Margaret Dugan is?

9 A. Yes.

10 Q. Were you aware that there was a speech by Ms. Dugan where
11 students silently protested with regard to her speech?

12 A. No.

13 Q. Did Mr. Horne tell you that he was upset about the fact
14 that there had been a protest by students that he thought was
15 rude?

16 A. Not that I recall.

17 Q. Do you recall that at one point Mr. Horne wrote an open
18 letter to the citizens of Tucson asking to eliminate the MAS
19 program?

20 A. Yes.

21 Q. And you were aware of that open letter at the time that you
22 were in fact seeking to get HB2281 passed, correct?

23 MR. ELLMAN: Objection. Misstates the evidence and
24 the timing.

25 THE COURT: It's overruled. You can answer.

1 A. I do recall that there was a letter. It was called the
2 open letter from Tom Horne. I don't know when that
3 specifically was sent or published in relation to the bill.
4 But I do know it was around the same time obviously.

5 Q. Now, you supported HB2281, didn't you?

6 A. Yes.

7 Q. And you thought it was, I think -- you thought it was a bad
8 program, is that right?

9 A. Yes.

10 Q. Now, you didn't really know very much about the program,
11 did you?

12 A. At the time we had information that was provided by, I
13 believe, teachers and people involved with the program, and we
14 had materials that had excerpts of things that were being
15 taught. And my analysis of it is that it was a bad thing.

16 Now, I don't want to expand, but I don't disagree with
17 ethnic studies programs in general, I think they're fine, but I
18 did disagree with the way this one was being taught, and it
19 seemed to be a bad thing, it needed to be addressed.

20 Q. Now, you said you disagree with the way the program was
21 being taught. You didn't go to any classrooms, did you?

22 A. No.

23 Q. And you didn't talk to any teachers down there, did you?

24 A. Only people that came up to Phoenix to talk to us about it.

25 Q. Did you go down to --

1 A. I didn't go down there.

2 Q. Did you go down to Tucson to talk to any students?

3 A. No.

4 Q. You didn't do that, did you? And you didn't talk to any
5 administrators of the MAS program?

6 A. I may have if they had come up to Phoenix to the capital to
7 talk to us.

8 Q. You didn't talk to any of the Tucson Unified School
9 District administrators, did you?

10 A. I don't recall. I would have, had they come up to talk to
11 me, if that was a part of my job at the time.

12 Q. Well, sitting here today, you don't recall that they
13 actually did come up and talk to you, do you?

14 A. I don't recall.

15 Q. So it's fair to say that based on your own personal
16 knowledge, you have no idea what the students were actually
17 being taught in the MAS program, isn't that true?

18 A. Right. The information would only be what I had at the
19 time.

20 Q. And you never bothered to actually look into or investigate
21 the MAS program yourself, did you?

22 A. Well --

23 Q. It's a yes or no.

24 A. -- when you say, "investigate," you're implying going down
25 to Tucson, talking to students and so forth. My role as -- in

1 the legislature and even in the department was to evaluate
2 information, what are the sources, what does the information
3 say, is it valid, and meet with people that are concerned on
4 either side of the legislation. So that would be a kind of
5 investigation. I don't know that -- it didn't require me to
6 travel down to Tucson to do that.

7 Q. Do you remember having your deposition taken --

8 A. Yes.

9 Q. -- in this case? Would you call up the 2/29 deposition,
10 Lines 27-3 through 27-7.

11 You were asked at that deposition: "Do you recall doing
12 anything specific to look into what is the Mexican-American
13 Studies Program at the Tucson Unified School District?" And
14 you answered: "I don't -- I don't have any specific memories
15 of looking into it. I didn't go to Tucson." True?

16 A. Right.

17 Q. Accurate testimony?

18 A. Yes.

19 Q. When you were chair of the House Education Committee, you
20 never had any of your members or your staff research the MAS
21 program, did you?

22 A. Not that I recall.

23 Q. I think you were getting to this before, but you agree that
24 teaching students about their history and culture and language
25 is important, right?

1 A. Yes.

2 Q. And you thought that having a program or a course of study
3 for Mexican-American students that taught them their heritage
4 is a good thing, right?

5 A. Yes.

6 Q. And you thought particularly teaching them about their own
7 history was relevant, right?

8 A. Yes.

9 Q. Now, were you aware that prior to your efforts with regard
10 to the lobbying that you were doing in 2010, that there were
11 two prior attempts to pass bills banning the MAS program?

12 MR. ELLMAN: Objection. Foundation.

13 THE COURT: No, he asked him if he's aware. He may be
14 able to say there were no attempts. I don't know what he's
15 going to say.

16 A. I don't recall that. I wouldn't be surprised if there
17 were, but I don't recall it specifically now. I don't remember
18 a memory.

19 BY MR. QUINN:

20 Q. Let me show you what is in evidence as Defendants' Exhibit
21 509. Take a look at the -- that's obviously -- well, with
22 regard to the cover page, it indicates that HB2281 was
23 introduced by various representatives, including
24 Mr. Montenegro. Do you see that?

25 A. Yes.

1 Q. And that's Steve Montenegro?

2 A. Yes.

3 Q. And you can go to the next page. This is the initial bill
4 that was proposed in the first quarter of 2010, right?

5 A. I believe so.

6 Q. And in this iteration of the bill, it only has two
7 sections: one, it prohibited courses designed primarily for
8 pupils of a particular ethnic group; and the second, it
9 prohibited courses or classes that advocate ethnic solidarity
10 instead of the treatment of the pupils as individuals. Do you
11 see that?

12 A. I do.

13 Q. That was the original version that Horne wanted you to get
14 passed, isn't that right?

15 A. I believe so.

16 Q. And that was the version as to which -- in addition to
17 that -- go down a little bit, if you would, Jorge.

18 And this bill, this version of the bill gave sole
19 responsibility to the superintendent of public instruction to
20 enforce the bill, right?

21 A. Yes.

22 Q. This was the bill that you got pushed back from
23 Representative Crandall, right, this version?

24 A. I assume so.

25 Q. And I think you testified before that you had -- you did

1 meet with Representative Crandall with regard to this bill.

2 It's true that you discussed with him several options in order
3 to get this bill passed, right?

4 A. I don't have a specific memory of that conversation, but
5 apparently from what you've shown me earlier, there was a
6 negotiation back and forth as to what the language would be.

7 Q. By the way, Representative Crandall and Mr. Horne didn't
8 get along all that well, did they? It wasn't a marriage made
9 in heaven?

10 A. I think there was some friction, as I recall.

11 Q. Now, looking again -- it's fair to say that during the
12 course of your discussions with the legislators, the focus was
13 on the MAS program, correct, or what was called the La Raza
14 program --

15 A. Yes.

16 Q. -- by you and others? There was no mention of any of the
17 other ethnic programs down in Tucson, were there?

18 A. That was the only one that we got complaints from people
19 about and that became sort of a controversial program. I don't
20 recall any others that had that same quality.

21 Q. There was no mention of the African-American ethnic program
22 or the Asian American ethnic program or the Native American
23 ethnic program, correct?

24 A. Not that I am aware of.

25 Q. Let's take a look at PX36. This, again, is a series of

1 e-mails in evidence as PX36. And we start with an e-mail from
2 Mr. Harding to you dated February 17, 2010. This is about a
3 week after your e-mail about Mr. Horne wanting to get rid of
4 the program.

5 Mr. Harding says to you: Okay. Looks good. Got your
6 message. Withdrawing from GOV. That's fine. Guess we have to
7 stay on Montenegro to make sure he does it.

8 Do you see that?

9 A. Mmm-hmm, yes.

10 Q. And that's a reference, is it not, to the fact that -- oh,
11 and on the subject it says: Ethnic studies amendment HGOV.

12 Do you see that?

13 A. Yes.

14 Q. HGOV was a reference to the House Government Committee,
15 right?

16 A. Yes.

17 Q. Does this now refresh your recollection that at one point
18 you did consider going to the House Government Committee to get
19 this passed and then decided to withdraw it and go back to the
20 House Education Committee?

21 A. It does indicate that the plan at this point was to
22 withdraw it from the Government Committee. It doesn't say
23 anything about where to go from there, but --

24 Q. Well, Mr. Montenegro was on the House Education Committee,
25 was he not?

1 A. I don't recall.

2 Q. You were working with Mr. Montenegro to get the HB2281
3 passed, were you not?

4 A. I don't recall which specific legislators we were working
5 with. I don't recall exactly who was on which committee at
6 that time.

7 Q. Isn't it true that it was Mr. Montenegro, as what we saw
8 before, who introduced HB2281?

9 A. It looked like he was the prime sponsor based on the
10 bill -- the cover page of the bill.

11 Q. And if Representative Montenegro were to seek to have the
12 bill amended, he would do that in the context of his role as a
13 member of the Education Committee, would he not?

14 MR. ELLMAN: Objection. Speculative.

15 THE COURT: It's overruled. You may answer if you
16 know.

17 A. Well, generally, in the legislative process the prime
18 sponsor is the one who kind of manages the process of the bill
19 going through committees and having people testify, et cetera,
20 so if he wanted it to go into a different committee, he would
21 be the one who would ask the chairman, ask the speaker, however
22 the process required to get the bill assigned to a different
23 committee. Generally it's the prime sponsor who does that.

24 BY MR. QUINN:

25 Q. Now, there came a time that Representative Crandall

1 actually amended the bill that was originally proposed by you
2 and by Mr. Horne, correct?

3 A. I assume so. I don't recall.

4 Q. Let me see if I can help you with that. This is
5 Defendants' Exhibit 512, and this is in evidence. Now, this
6 version of the bill, 2281, no longer includes the two
7 provisions that you had originally proposed, does it?

8 A. When you say "you" --

9 Q. On behalf of Mr. Horne?

10 A. So it apparently looks different. Those two points look
11 different from the other two.

12 Q. In fact, didn't Representative Crandall introduce this as a
13 strike-everything amendment?

14 A. I don't recall.

15 Q. Looking at this bill, this version of the bill, it has two
16 different provisions.

17 A. Yes.

18 Q. It says that prohibiting courses and classes that, one,
19 promote the overthrow of the United States Government, and,
20 two, promote resentment towards a race or class of people.

21 Do you see that?

22 A. Yes.

23 Q. In fact, this was the version of the bill that
24 Representative Crandall was seeking to have passed, isn't that
25 right?

1 A. I assume so. I have no reason to disagree with that.

2 Q. You have no reason to disagree with that, right? But you
3 and Mr. Horne determined that this bill would not -- would not
4 in fact reach the La Raza program, isn't that right?

5 A. I don't recall. I certainly didn't determine that. If he
6 did, I don't know.

7 Q. Let's go to PX37, in evidence. Again, this is a few days
8 later, February 25th, 2010, and it's an e-mail from you to
9 Michelle Reagan. The subject matter is the Montenegro floor
10 amendment. Do you see that?

11 A. Yes.

12 Q. It reads that, Representative Reagan, greetings, you would
13 like to receive the information on the Montenegro floor
14 amendment HB2281 ethnic studies bill, and it goes on to ask for
15 the -- Representative Reagan's support. And you explain that
16 the amendment is needed because the bill was watered down in
17 committee to the point that it passed 8-0. In other words, as
18 it currently stands, the bill will not effectively reach the La
19 Raza program at TUSD. And it goes on to say: I've attached
20 the amendment and the fact sheet on the bill.

21 Does that refresh your recollection, sir, that there was a
22 strike-everything amendment that took out the provisions that
23 you had proposed on behalf of Mr. Horne and instead put in the
24 provisions we just read, and that was a concern to you because
25 it would not effectively reach the La Raza program, correct?

1 MR. ELLMAN: Objection. Multiple.

2 THE COURT: Sustained.

3 BY MR. QUINN:

4 Q. You were concerned that the way the bill had been amended
5 would not reach the La Raza program at TUSD, isn't that true?

6 A. Yes.

7 Q. And, therefore, you were proposing that Representative
8 Montenegro seek a floor amendment to the bill to add back the
9 sections that you and Mr. Horne had originally proposed,
10 correct?

11 A. I assume if the decision was made to do a floor amendment,
12 I would have been supporting that. I don't know that I made
13 that decision to do a floor amendment.

14 Q. Fair enough. I'm not asking you whether or not you made
15 the decision. I am simply asking you to confirm that in fact
16 you sought to have an amendment introduced by Representative
17 Montenegro that would add back the two provisions that had been
18 taken out, correct?

19 A. I believe so.

20 Q. And you say, with regard to those two provisions in your
21 e-mail: "These two criteria are aimed at courses and classes
22 that specifically are geared for a particular racial or ethnic
23 group." Do you see that?

24 A. Yes.

25 Q. So it's fair to say that you were pretty focused at this

1 point on making sure that however the ultimate bill was
2 drafted, it would reach the La Raza program. Correct?

3 A. Yes.

4 Q. Not any other ethnic program, just the La Raza program. I
5 got that right?

6 A. Well, I think it would apply to all ethnic studies
7 programs, because the bill is brought -- it just says, here's
8 what you shouldn't do. If you're going to have a program,
9 don't do this, don't create resentment, don't give biased
10 propaganda. Instead, give an accurate historical
11 understanding.

12 That's fine. So it wouldn't just affect the La Raza
13 program. It would affect any program in the state, as long
14 as -- and any program would be fine, as long as they followed
15 the criteria. And even the La Raza program, all they have to
16 do is follow the criteria and they wouldn't necessarily be
17 eliminated.

18 I think the issue was how do we get rid of the bad parts of
19 the program.

20 Q. Perhaps you misheard my question.

21 A. Okay. What I've asked you very simply was, it's true, is
22 it not, that, with regard to these e-mails, your focus was not
23 on other programs around the state or anywhere else, it was
24 solely with regard to the La Raza program.

25 MR. ELLMAN: Objection.

1 BY MR. QUINN:

2 Q. Isn't that true?

3 MR. ELLMAN: Objection. Asked and answered.

4 THE COURT: Maybe so, but I'll overrule it at this
5 time just so you can be sure of the answer.

6 BY MR. QUINN:

7 Q. It's a yes or no, sir. And if you want to read it back,
8 that would be great. Yes or no answer.

9 MR. ELLMAN: Object, Your Honor. I think the witness
10 needs an opportunity to give a fulsome answer, if that's
11 necessary, in order to provide sufficient context to answer
12 truthfully.

13 THE COURT: The objection is sustained in part. You
14 can answer yes or no, and then if you want to explain, you can
15 go ahead and explain.

16 THE WITNESS: Can you state the question again?

17 MR. QUINN: Sure. Absolutely.

18 Could you read it back, please.

19 (Reporter read back the previous question.)

20 A. Yes, that would be true. At the same time, the reason it's
21 true is because it was the only program we were aware of that
22 was violating these basic educational standards. If there had
23 been other programs in other cities doing similar things, we
24 would have been very concerned about them as well.

25 BY MR. QUINN:

1 Q. In fact, you did ask Representative Montenegro to put a
2 floor amendment onto the then current bill that would add back
3 the two provisions that you had originally proposed, correct?

4 A. I'm not sure. I asked him to, but he could have decided on
5 his own or Tom could have asked him. I don't recall.

6 Q. But it happened?

7 A. It happened, yes.

8 Q. Let me just put up Defendants' Exhibit 513, which is the
9 Montenegro floor amendment. Do you see that?

10 A. Yes.

11 Q. And this is the amendment that added -- that sought to add
12 back the two provisions that had originally been in HB2281,
13 correct?

14 A. Yes.

15 MR. QUINN: And could you go down a little further,
16 Jorge? Thank you. Go down.

17 BY MR. QUINN:

18 Q. This was dated -- I think you have it on your screen. This
19 was dated February 19th, 2010?

20 A. Yes.

21 Q. And this was all part of the back-and-forth that was going
22 on to ensure that at least the sections that you wanted would
23 be part of the bill, correct?

24 A. Correct.

25 Q. In fact, they -- the amendment was accepted, and the bill,

1 the HB2281 bill, was approved with these two provisions.

2 Correct?

3 A. I have no reason to disagree with that.

4 Q. So after successfully getting this thing through the House,
5 then the next step was to get it through the Senate, correct?

6 A. Yes. Yes.

7 Q. And you were part of that process as well?

8 A. I assume so.

9 Q. Indeed, you met from time to time with different senators
10 in order to get their approval of the bill, correct?

11 A. Yes.

12 Q. And you met with senators -- most of the senators you met
13 with, I take it, were Republicans, weren't they?

14 A. Probably.

15 Q. You met, for example, with Senator Linda Gray and Senator
16 About about HB2281, correct?

17 A. Yes. Well, I should say I don't know for sure if I met --
18 I assume I did because that was -- my job was to talk to people
19 about the bill. So I would have no reason not to meet with
20 them.

21 Q. The idea, I take it, was to run essentially the same drill
22 that you ran in the House through the Senate, correct, to get
23 the bill passed?

24 A. The process is very similar. The bill has to go to a
25 committee, get approved, go to caucus, go to the floor, go for

1 committee to hold, then it goes for a final pass. That process
2 doesn't change for the bill, any bill.

3 Q. You're running the same drill?

4 A. Yes.

5 Q. Take a look at -- let's take a look at PX50, which is in
6 evidence. This is a memo that you wrote to Art Harding, who
7 you were working with in getting the bill passed, entitled:
8 "Report." Do you see that?

9 A. Yes.

10 Q. We're now into April. So a few weeks have gone by since we
11 got the bill passed in the House, and now we're trying to get
12 the bill passed in the Senate, right?

13 A. Yes.

14 Q. And you say that you met with Senator Linda Gray and that
15 she was on top of the La Raza issue.

16 A. Yes.

17 Q. Do you see that?

18 A. Yes.

19 Q. And that meant that she was in favor of the bill, correct?

20 A. It implies that she understands the issue.

21 Q. And that she was going to vote for the bill, correct?

22 A. Yes.

23 Q. You also mentioned Senator Aboud, and it says that she was
24 not supportive of HB2281, and then you put in, perhaps
25 facetiously, the word "surprise."

1 A. Correct.

2 Q. Correct? And the reason you put in, facetiously,
3 "surprise" was, in fact, you did not expect her to support the
4 bill, did you?

5 A. Correct.

6 Q. And that was because she was actually -- her district was
7 down here in Tucson, right?

8 A. There's probably a number of different reasons why I would
9 not expect her to support the bill.

10 Q. But that was one of them, right?

11 A. Not just because she's from Tucson. I don't think that was
12 the --

13 Q. Was it also because she was a Democrat?

14 A. Most of the Democrats that we talked to were not supportive
15 of the bill.

16 Q. She would be one of them, right?

17 A. Yes, correct.

18 Q. At this time Senator Huppenthal was the chairman of the
19 Senate Education Committee, was he not?

20 A. I believe so.

21 Q. And Senator Huppenthal proposed some amendments to the bill
22 that had been submitted and passed in the house, didn't he?

23 A. I don't recall.

24 Q. Do you recall that he proposed an amendment that would --
25 let me go back. It's true, is it not, that the draft bill that

1 Representative Crandall had put forth that eliminated the two
2 provisions also eliminated the notion that the superintendent
3 would have authority to enforce the bill, and he changed it to
4 the Board of Education, right?

5 A. I believe so, yeah.

6 Q. Isn't it true that in the Senate version of the bill,
7 Senator Huppenthal sought an amendment to put back the
8 provision that would allow the superintendent to enforce the
9 bill? Do you recall that?

10 A. I do, now that you mention it.

11 Q. Didn't he also change the date of the enforcement of the
12 bill? He actually extended it to January 1, 2011? Do you
13 recall that?

14 A. That, I don't recall.

15 Q. You were aware, were you not, during this period of time,
16 that Senator Huppenthal was actually politically campaigning
17 for Tom Horne's job, correct?

18 A. I think so.

19 Q. And so it would be fair to say that if he was elected and
20 the bill was going to go into effect on January 1, 2011, he
21 would be the one to enforce it, right?

22 A. I believe so.

23 Q. Now, you also got some pushback from some of the folks in
24 the Senate with regard to the bill, correct?

25 A. I don't recall.

1 Q. Let's take a look at -- do you know who Senator Lopez is?

2 A. Sure.

3 Q. Tell us who Senator Lopez is. Was. Hopefully, still
4 alive, and he still is.

5 A. He's a senator from Tucson. I forgot his first name. Nice
6 guy. I don't know what you want me to tell you about him.

7 Q. He's a senator from Tucson.

8 A. Yes.

9 Q. Do you recall that Senator Lopez offered an amendment to
10 the bill during the course of this -- of your lobbying the
11 Senate to get the bill passed?

12 A. I'm not surprised. If you say he did, I don't recall any
13 specific amendment.

14 Q. Well, let's take a look at PX55, in evidence. This is an
15 e-mail -- we're now into May 2010 -- from you, again, to Art
16 Harding, and you say: Art, I just read the section F of
17 HB2281. This was the Lopez amendment. In my opinion, this
18 guts the bill. TUSD, Tucson Unified School District, will be
19 able to say that the La Raza program is about, quote, "the
20 historical oppression of the Latino people," closed quote,
21 which is continuing today with the passage of SB1070.

22 Do you see that?

23 A. I do.

24 Q. Then you go on to say that the La Raza program will not be
25 shut down after all. And that was because you were concerned

1 that the Lopez amendment would, as you say, gut the bill,
2 right?

3 A. Apparently that's what I said at the time, yes.

4 Q. And by "gutting the bill," you meant that it would not
5 reach the La Raza program. Isn't that right?

6 A. Correct.

7 Q. And that the reference you make to the historical
8 oppression of the Latino people, which is continuing today with
9 the passage of SB1070, is a reference to a bill that was also
10 before the legislature at the same time that related to what we
11 could call stop-and-check, but basically a bill that would
12 allow policemen to ask for the immigration status of people
13 that they stopped for traffic violations or whatever. Correct?

14 A. Yes.

15 Q. You're familiar with that bill, aren't you?

16 A. Yes, somewhat.

17 Q. It was a very controversial bill, wasn't it?

18 A. Yes, it was.

19 Q. And, in fact, it was -- eventually wended its way through
20 the courts and was struck down by the Supreme Court. Most of
21 it was struck down by the Supreme Court as unconstitutional,
22 right?

23 A. I'm not sure about "most," but, yes, some of it was, for
24 sure.

25 Q. And then the rest of it was struck down later, wasn't it?

1 A. I didn't follow it totally. I believe some parts were
2 struck down and some parts were not. But that's just -- I
3 don't know for sure.

4 Q. So you were very concerned at this point, were you not,
5 that if the Lopez amendment passed, the entire bill would be
6 gutted, right? The entire purpose of the bill would be gutted,
7 right?

8 A. Yes.

9 Q. So you and others, including Mr. Horne, did everything
10 possible to get rid of the Lopez amendment, didn't you?

11 A. Generally, if there's an unfriendly amendment, the sponsors
12 oppose it.

13 Q. And you were successful in overcoming the Lopez amendment,
14 weren't you?

15 A. I would assume so.

16 Q. And, in fact, the -- let's look at DX524. This is the
17 House bill as it was ultimately passed, correct? We can go to
18 the next page.

19 A. Yes.

20 Q. The first page won't help that much. These are the
21 provisions that were ultimately included in the final bill that
22 was passed by both the House and the Senate, correct?

23 A. I believe so.

24 Q. And in addition to adding back the two provisions that you
25 had originally -- you and Mr. Horne had originally proposed, in

1 addition to that, the ability to enforce it by the
2 superintendent was also added to the bill, wasn't it?

3 A. I believe so. I wouldn't --

4 Q. And it was also -- it was made effective January 1, 2011,
5 isn't that right?

6 MR. ELLMAN: Objection. Misstates the evidence.

7 THE COURT: Overruled.

8 MR. QUINN: I think he already answered.

9 THE WITNESS: I said I wouldn't disagree with that.

10 He was asking about the date.

11 BY MR. QUINN:

12 Q. So, in fact, you and Mr. Horne were successful in getting a
13 bill passed that would, in your words, get rid of the La Raza
14 program, correct?

15 A. It would if they didn't change the program.

16 MR. QUINN: I have nothing further, Your Honor.

17 THE COURT: All right. Let me ask, Mr. Ellman, give
18 me an estimate of your -- of the time of your cross.

19 MR. ELLMAN: I would say about half an hour, Your
20 Honor.

21 THE COURT: All right. In that case, I think we
22 should take a recess at this time before we get on with it.
23 It's about 10 after. So we'll take our morning recess at this
24 time. We told Mr. Huppenthal to be back here at around 10:15.
25 I think somebody should let him know what's going on, all

1 right, when we think we'll get through with this witness.

2 MS. COOPER: We will do that, Your Honor.

3 THE COURT: All right. Good. Then we'll stand at
4 recess.

5 (A recess was taken from 10:05 a.m. to 10:25 a.m.)

6 THE COURT: Okay. Let's all be seated, please. We
7 are through with the direct, so let's go with the cross.
8 Mr. Ellman.

9 MR. ELLMAN: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. ELLMAN:

12 Q. Good morning, Mr. Anderson.

13 A. Good morning.

14 Q. How long have you known Tom Horne?

15 A. Well, I came in the legislature in '94, he came in a few
16 years later. 20-some years.

17 Q. Have you ever heard him express any racial or ethnic
18 prejudice against any group?

19 A. Absolutely not.

20 Q. Do you have any reason to think that he harbors any racial
21 or ethnic bias?

22 A. Not at all.

23 MR. QUINN: Objection.

24 THE COURT: Objection's overruled. The answer was
25 "not at all."

1 BY MR. ELLMAN:

2 Q. And you were a legislator for approximately 14 years?

3 A. Yes.

4 Q. Okay. So you are very familiar with the legislative
5 process, I assume?

6 A. Yes.

7 Q. All right. Would you describe Arizona's legislative
8 process as an open process? Is that a fair statement?

9 A. Yes.

10 Q. So in order for a bill to become law in Arizona, it has to
11 go through committees, right?

12 A. It does.

13 Q. And it has to -- it's subjected to hearings, correct?

14 A. Yes.

15 Q. And those are public hearings?

16 A. Yes, they are.

17 Q. And people who oppose and support bills both commonly
18 testify, correct?

19 A. Yes, they do.

20 Q. And legislators express their opposition or support and the
21 reasons for it, correct?

22 A. Yes.

23 Q. And this happens on the House side and on the Senate side,
24 correct?

25 A. Correct.

1 Q. Is there some hidden process that we're not aware of for
2 enacting law in Arizona?

3 A. Every bill has to go through the same process, and it has
4 to be a public vote. There's no votes taken behind closed
5 doors. No, there's nothing like that.

6 Q. All right. And HB2281 went through the typical process for
7 passing a bill?

8 A. Yes.

9 Q. Let's shift to the lobbying process for that bill, as you
10 were involved in it. Was that also typical?

11 A. Yes.

12 Q. Okay. So the e-mails you looked at, for example -- and
13 just to be clear for the record, e-mails such as those embodied
14 in Plaintiffs' Exhibit 33, Plaintiffs' Exhibit 37, Plaintiffs'
15 Exhibit 55, are those fairly typical communications in the
16 course of lobbying?

17 A. I would say so.

18 Q. Do you remember anything unusual about the lobbying process
19 for HB2281?

20 A. No.

21 Q. You're familiar with the strike-everything amendment?

22 A. Yes.

23 Q. Can you explain to the Court what that is?

24 A. Yes. It's a commonly used legislative tool whereby if a
25 particular piece of legislation runs into opposition, then, if

1 that sponsor is able to, they can offer an amendment on a
2 different bill. But, again, it's just like any other
3 amendment, it has to be voted on, it has to be approved by
4 everybody.

5 So it's a tool that helps bills that maybe there's one
6 chairman who's holding a bill because he doesn't like it. But
7 actually the majority of legislators would like to see that
8 bill move forward, so the opportunity is there for it to go
9 around a different pathway. But ultimately at the end of the
10 day, all those amendments, strike everything or not, have to be
11 voted on and approved by everybody.

12 Q. And the strike-everything amendment is used after the
13 period when new bills cannot be introduced, is that correct?

14 A. Yes, primarily. Yes. Usually in the middle of the session
15 or as things are going, yes.

16 Q. What were Tom Horne's concerns in drafting and supporting
17 HB2281, as you understood them?

18 A. Okay. Yeah, of course, I can't speak for him or know
19 what's going on in his mind, but it became -- it came to our
20 awareness that there was a particular program that was not what
21 you would consider a valid educational program, in the sense
22 that it was more of a indoctrination. It was trying to
23 influence young impressionable students to have certain
24 political views and to actually foster kind of a resentment.
25 And I know Tom felt strongly that was inappropriate, and I

1 agreed with him at the time.

2 Q. Was that based in part on statements from teachers from the
3 Tucson Unified School District?

4 A. As I recall, there were communications that we got. And
5 there was one gentleman in particular who came up, and I
6 believe he was a teacher who had actually taught in that
7 program, I'm not totally sure. And there were excerpts from
8 the materials that were being used in the class that we were
9 able to see, and I don't recall them specifically, but that was
10 what formed the basis for our concern about the program.

11 Q. And that was before the bill was introduced, correct?

12 A. Yes.

13 Q. And then do you recall whether during legislative hearings
14 those materials were discussed?

15 A. Oh, yes.

16 Q. And the people with knowledge of what was happening in the
17 Mexican-American Studies classes, did they testify at those
18 hearings?

19 A. I believe so, yes.

20 Q. As far as you know, is that primarily, if not exclusively,
21 what motivated the votes by legislators?

22 MR. QUINN: Objection. How could he know that?

23 THE COURT: The objection is overruled.

24 A. I don't -- I couldn't speak for any other legislators, and
25 I don't -- I can't read their minds, but I can tell you that in

1 my conversations with the ledges, as I remember them, which is
2 a little weak, but nobody expressed to me any kind of racial
3 animosity or anything to that effect. I think everybody's
4 concern was really how is our education system doing a good job
5 and how can we help it do a good job.

6 Q. Let me cover a point about traveling. You were asked
7 during your direct testimony whether you traveled to Tucson and
8 observed any of the Mexican-American Studies classes. Do you
9 remember that?

10 A. I remember being asked that, yes.

11 Q. That's what I mean. Was it typical for you to travel to
12 any school district for any purpose during the time you worked
13 at the Arizona Department of Education?

14 A. No. I don't recall going to any school districts in my
15 role there. As a legislator, I did some traveling, but not in
16 the Department.

17 Q. What was your role at the Department?

18 A. I was the Director of Rules and Procedures, and my main job
19 was being a liaison between the Board of Education and the
20 Department of Education and helping the rules that were passed
21 by the Board of Education get transferred into the
22 administrative code. That was my main job.

23 Q. And yet you were tasked to be the lobbyist for HB2281?

24 A. Yes.

25 Q. Is that something you were willing to do or --

1 A. Yes.

2 Q. Thank you.

3 I am going to put Exhibit 33 up for display. Mr. Anderson,
4 do you remember being asked about this document earlier?

5 A. Yes.

6 Q. Let me direct your attention to this language right here
7 that says: I think the language in paragraph 2 would still
8 capture the La Raza program.

9 Why was it important to capture the La Raza program?

10 A. Well, the concern that those of us who were supporting this
11 legislation had was that we had young people being
12 indoctrinated in certain political views that were not in their
13 best interest in terms of their future and that that's not the
14 purpose of education.

15 The purpose is to, you know, share information that they
16 can use, and then in the future they can make their own
17 decisions on politics and how they want to view things.

18 So since the -- since that was what was the concern, the
19 legislation was addressed to deal with that concern. But, as
20 everyone knows, legislation doesn't just affect one program, it
21 would apply across the board over the whole state.

22 Q. So is it fair to say then that the concern was what you and
23 Tom Horne considered to be indoctrination occurring in the
24 Mexican-American Studies program?

25 MR. QUINN: Objection. Asked and answered, and

1 counsel is testifying.

2 THE COURT: I can't hear the objection.

3 MR. QUINN: I'm sorry. Asked and answered, and
4 counsel is testifying.

5 THE COURT: Overruled. You may answer. Do you
6 remember the question?

7 THE WITNESS: I think so. Could you repeat it just in
8 case?

9 MR. ELLMAN: I'll ask that it be read back, please.

10 THE REPORTER: "So is it fair to say then that the
11 concern was what you and Tom Horne considered to be
12 discrimination (sic) occurring in the Mexican-American Studies
13 program?"

14 THE WITNESS: Did you say "discrimination"?

15 THE REPORTER: Sorry. "So is it fair to say then that
16 the concern was what you and Tom Horne considered to be
17 indoctrination occurring in the Mexican-American Studies
18 program?"

19 A. Yes.

20 BY MR. ELLMAN:

21 Q. Would that answer also apply with respect to the statement
22 that you were concerned the bill would not effectively reach
23 the La Raza program at TUSD in Exhibit 37?

24 A. Yes.

25 Q. Are you aware of any hidden agenda, something you haven't

1 talked about already in your testimony today, behind the
2 drafting or enactment of HB2281?

3 A. No.

4 Q. If there had been some agenda other than what has been
5 discussed in this courtroom, do you believe, as the prime
6 lobbyist for the bill, you would have been aware of something
7 like that?

8 A. Yes, I'm sure I would have.

9 Q. Did Tom Horne ever indicate that he wanted this bill to
10 pass, HB2281, so that a superintendent could impose his or her
11 own narrowly partisan or political beliefs upon a school
12 district?

13 A. No.

14 Q. Do you remember receiving complaints about any other ethnic
15 studies programs in Arizona along these lines?

16 A. No.

17 Q. You were asked about amendments to the bill concerning
18 whether a superintendent or the Board of Education would have
19 enforcement authority. Do you recall those questions?

20 A. Yes.

21 Q. Is enforcement typically done in Arizona agencies by an
22 executive officer or by a board?

23 A. Executive officer.

24 Q. In this case, that would be the superintendent of public
25 instruction, correct?

1 A. Correct.

2 Q. Are you aware of the finding that Tom Horne issued to the
3 effect that the Tucson Unified School District was in violation
4 of A.R.S. Section 15-112B, which is the statute that resulted
5 from the passage of HB2281?

6 A. Yes.

7 Q. Do you remember at some point reading those findings?

8 A. No.

9 Q. I'm still going to put an exhibit up for display. This is
10 Exhibit 525, which is in evidence. I want to direct your
11 attention to Page 4, the top highlighted portion of the page.
12 There's a reference here, and this concerns a former TUSD
13 teacher named John Ward. And this attributes to that teacher
14 the following statement:

15 But the whole inference and tone was anger. They taught
16 students that the United States was, and still is, a
17 fundamentally racist country to those of Mexican-American kids.
18 Individuals in this ethnic studies department are vehemently
19 anti-western culture. They are vehemently opposed to the
20 United States and its power. They are telling students they
21 are victims and that they should be angry and rise up.

22 Mr. Anderson, is this the sort of statement that came to
23 your attention and generated the concern that led to HB2281?

24 A. Yes.

25 Q. Further down on the page, there's another quotation I'll

1 draw your attention to. It's highlighted right here:

2 Teachers and counselors are being called before their
3 school principals and even the district school board and
4 accused of being racists. And with a cadre of
5 self-acknowledged, quote, "progressive," end quote, political
6 activists in the ethnic studies department on the hunt, the
7 race transgressors are multiplying.

8 Is this also the sort of statement that generated HB2281?

9 A. Yes.

10 Q. Then on Page 5 of the same document, again, this is the
11 teacher named Ward being described. This is from an article,
12 according to the document itself, by a journalist for the
13 Arizona Republic named Doug MacEachern. He writes, according
14 to Mr. Ward:

15 Condition: TUSD uses taxpayer-funded programs to
16 indoctrinate students, based primarily on ethnic divisions in
17 the belief that there is a war against Latino culture
18 perpetrated by a white racist capitalist system.

19 Is that also the kind of information that led to HB2281?

20 A. Yes.

21 Q. And did you believe, in fact, that this was happening at
22 that time?

23 A. Yes.

24 Q. On the same page, I want to direct your attention to the
25 bottom paragraph. This is a statement attributed to a

1 different teacher. It says: I heard him, an ethnic studies
2 teacher, tell his students that the U of A is a racist
3 organization because only 12 percent of students are Latino and
4 they do not support the Latin students there. I heard him tell
5 students that they need to go to college so they can gain the
6 power to take back the stolen land and give it back to Mexico.
7 He personally told me that he teaches his students that
8 Republicans hate Latinos and he has the legislation to prove
9 it.

10 Is this also the sort of information that led to HB2281?

11 A. Yes.

12 Q. Same page, Page 6, a statement attributed to another
13 teacher. It states: I have during the last two years been
14 attacked repeatedly here at Tucson High by members of the
15 ethnic studies department because I question the substance and
16 veracity of their American history and social justice
17 government classes. I have been called racist by fellow Tucson
18 High teachers, members of the ethnic studies department, and
19 students enrolled in the department's classes. These charges
20 come simply because I ask the department to provide the primary
21 source material for the perspective they preach.

22 Was this the sort of information you were receiving at the
23 time?

24 A. Yes.

25 Q. And was this, as far as you know, the type of information

1 that led to the drafting and enactment of HB2281?

2 A. Yes.

3 Q. And did you believe this sort of information to be true at
4 that time?

5 A. Yes.

6 Q. As far as you know, was that also Tom Horne's belief?

7 A. Yes.

8 Q. Same page, information attributable to a fourth teacher, it
9 says: I clearly have been accused by Hispanic students of,
10 quote, "not liking Mexicans," end quote. That is a quote.

11 I have had Hispanic students tell me that this is not the
12 United States of America, it is occupied Mexico.

13 I ask you again, is this the type of information that led
14 to the drafting and enactment of HB2281?

15 A. Yes.

16 Q. And do you believe this information at that time to be
17 truthful?

18 A. Yes.

19 Q. And as far as you know, Tom Horne had the same belief?

20 A. As far as I know.

21 Q. Finally, the last paragraph, on Page 6 of the document:

22 Hector Ayala was born in Mexico and is an excellent English
23 teacher at Cholla High School in TUSD. He reports that the
24 director of Raza studies accused him of being a white man's
25 agent and that, when this director was a teacher, he taught a

1 separatist political agenda, and his students told Hector that
2 they were taught in Raza studies to, quote, "not fall for the
3 white man's traps," end quote.

4 Again, is this the sort of information that led to the
5 drafting and enactment of HB2281?

6 A. Yes.

7 Q. And did you believe that information to be true at the
8 time?

9 A. Yes.

10 Q. And as far as you know, did Tom Horne believe the
11 information to be true at that time?

12 A. As far as I know.

13 Q. I want to direct your attention now to Page 8 of that same
14 document, the highlighted paragraph that states -- and now it
15 is quoting text from an essay called: "Aztlán, The Lost Land:
16 The Chicano Homeland," by John R. Chavez:

17 But to Chicanos the Southwest is more than just their place
18 of residence, it is their homeland, their lost homeland, to be
19 precise, the conquered northern half of the Mexican nation. In
20 the mind of the Chicanos, this immense territory remains their
21 patrimony. Mexicans are indigenous to and disposed of the
22 region. Chicanos view Southwest as an extension of Mexico and
23 Latin America, a Mexican region spreading beyond what is
24 regarded as an artificial boundary.

25 Again, is this the sort of information that led to the

1 drafting and passage of HB2281?

2 A. Yes.

3 Q. And as far as you know, that information did appear in
4 texts that were used in the Mexican-American Studies classes in
5 TUSD at that time?

6 A. Yes.

7 Q. And as far as you know, Tom Horne had the same awareness of
8 that that you had?

9 A. Yes.

10 Q. And as far as you know, he believed these representations
11 to be truthful?

12 A. Yes.

13 Q. Do you have any reason to believe that Tom Horne supported
14 HB2281 out of a racial or ethnic bias against Latino or
15 Hispanic students?

16 A. No.

17 MR. ELLMAN: I have nothing further, Your Honor.

18 THE COURT: Any redirect?

19 MR. QUINN: Yes, Your Honor, just briefly.

20 REDIRECT EXAMINATION

21 BY MR. QUINN:

22 Q. Mr. Anderson, you repeatedly testified about your belief
23 that, based on materials that you had seen, you thought that
24 students were being indoctrinated into some kind of
25 anti-American political hullabaloo, whatever, right?

1 A. Correct.

2 Q. Is that your belief of indoctrination? And that was based
3 on review of materials that you saw, is that right?

4 A. Yes.

5 Q. It wasn't based on any personal observations, isn't that
6 right?

7 A. Not personal observations.

8 Q. Sir, that's all I asked. No personal observations, right?

9 A. Correct.

10 Q. And you were aware, were you not, that, as you were the
11 chairman of the House Education Committee, that there was
12 already a statute on the books, 15-341, that would allow the
13 superintendent to remove or eliminate materials of a partisan
14 political nature from the classroom. You're aware that that
15 was a book -- that was a statute already on the books. Right?

16 MR. ELLMAN: Objection. Calls for a legal conclusion
17 and misstates the content to the statute to which he was
18 referring.

19 THE COURT: The objection is overruled. You may
20 answer.

21 A. I was not aware of that.

22 BY MR. QUINN:

23 Q. You were not aware that there was a such a statute on the
24 books, right?

25 A. Right. I had never heard that.

1 Q. Now, counsel went through with you excerpts from
2 Mr. Horne's findings. Do you remember being asked about those?

3 A. Yes, mmm-hmm.

4 Q. He didn't ask you that the section where Mr. Horne found
5 that the African-American and Asian-American programs were also
6 in violation of the statute, did he?

7 MR. ELLMAN: Objection. This is beyond the scope of
8 the cross-examination.

9 THE COURT: Overruled. You can answer.

10 A. I don't -- I didn't hear a question about that.

11 BY MR. QUINN:

12 Q. You were aware that one of the findings that he made was
13 that, in fact, the African-American and Asian-American programs
14 also violated the statute that you were involved in getting
15 passed? You're aware of that, aren't you?

16 A. No.

17 Q. You mentioned a couple of times, I believe, a man by the
18 name of John Ward, who was a major source of a lot of
19 information that you relied on in the context of passing the
20 bill. Is that right?

21 A. I didn't mention him, I don't think. It was in the article
22 that we just went over.

23 Q. Was Mr. Ward one of the people that you spoke to or came up
24 to give you information in the context of passage of the bill?

25 A. I believe so, yes.

1 Q. You were aware, weren't you, that Mr. Ward had actually
2 retired from the school district in 2002, that would be eight
3 years before the bill was passed? Were you aware of that?

4 A. No.

5 Q. Are you aware that Mr. Ward actually sued members of the
6 MAS department for defamation and had a lawsuit pending against
7 them? Were you aware of that?

8 A. No.

9 Q. You weren't aware of that at the time he gave you the
10 information that Mr. Horne apparently relied on in finding a
11 violation? You're unaware of all that?

12 MR. ELLMAN: Objection. Relevance.

13 THE COURT: Sustained. So the question and answer is
14 stricken.

15 MR. QUINN: I have nothing further, Your Honor.

16 THE COURT: Anything further, Mr. Ellman?

17 MR. ELLMAN: Yes, Your Honor, please.

18 RE-CROSS EXAMINATION

19 BY MR. ELLMAN:

20 Q. Mr. Anderson, do you know why the Department of Education
21 did not investigate the African-American Studies Program or
22 other ethnic studies programs in the Tucson Unified School
23 District?

24 MR. QUINN: Objection.

25 A. I don't know why they did or did not.

1 MR. QUINN: I withdraw my objection. Once you hear
2 the answer.

3 BY MR. ELLMAN:

4 Q. Were you aware of any complaints filed with the Arizona
5 Department of Education that had to do with the
6 African-American or other ethnic studies programs in the Tucson
7 Unified School District?

8 A. No, I did not -- I don't recall any complaints, no.

9 MR. ELLMAN: Thank you, Your Honor.

10 MR. QUINN: Nothing further, Your Honor.

11 THE COURT: All right. Mr. Anderson, thank you very
12 much, sir. You may step down and you are excused.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Is Mr. Huppenthal here? Can we get him
15 into the courtroom? Where are we? Are we back on the
16 redirect?

17 MR. REISS: Redirect.

18 THE COURT: I am not going to hold you strictly to any
19 limit of what you say, but give me an estimate of how long you
20 think it will be.

21 MR. REISS: I think, Your Honor, 30 to 45 minutes.

22 THE COURT: All right. I assume there will be more --
23 wait a minute. Maybe I'll ask Ms. Cooper. And then give me an
24 estimate of how much I'll call it recross you'll have?

25 MS. COOPER: Well, I --

1 THE COURT: If he's got 30 or 40 minutes.

2 MS. COOPER: It's going to be less than that, Your
3 Honor, and possibly --

4 THE COURT: What I am going to try to do then -- it's
5 almost 11:00, right?

6 MS. COOPER: Yes.

7 THE COURT: If we even go past noon, I am going to try
8 and finish up with Mr. Huppenthal before we take a lunch break.

9 MS. COOPER: I think that would be a courtesy.

10 THE COURT: All right. Good. Let's get him in here.

11 MS. COOPER: He's on his way up, Your Honor. I
12 believe he went down to the café.

13 (Pause in the proceedings.)

14 THE COURT: Mr. Huppenthal, step forward, please, and
15 just resume the stand.

16 THE WITNESS: I need to check my phone real quick just
17 to make sure it is off.

18 THE COURT: Yeah. We're on redirect now.

19 MR. REISS: Redirect, Your Honor, but as a hostile
20 witness.

21 THE COURT: Right.

22 MR. REISS: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. REISS:

25 Q. Good morning, Mr. Huppenthal. I'm sorry you had to make

1 the trip back, but --

2 A. Good morning.

3 Q. Mr. Huppenthal, yesterday you testified about your visit to
4 Curtis Acosta's class, right?

5 A. Yes.

6 Q. That was the only MAS class you ever visited, right?

7 A. Yes.

8 Q. You said about Mr. Acosta's class that he had a very
9 positive relationship with the students, right?

10 A. That was my judgment and observation.

11 Q. And you said that he was an almost perfect figure for a
12 teacher, right?

13 A. Yeah. He was impeccably dressed, tie, long-sleeved white
14 shirt. I thought it was admirable.

15 Q. And you had a very positive opinion of Mr. Acosta, right?

16 A. Yes.

17 Q. And his class that you visited was ethnically diverse,
18 right?

19 A. Yes.

20 Q. And you also believed that Mr. Acosta had the ability to
21 get students to work hard, right?

22 A. That's my sense. You never -- you never quite know, in the
23 back of your mind, any time you go out on a visit when you're
24 an official, you know you're seeing the absolute -- most of the
25 time you're seeing the absolute best that -- wherever you're

1 visiting, the best they have to offer. So you always take
2 everything with a grain of salt.

3 Q. But he had the respect of his students, right?

4 A. Yes.

5 Q. Clearly. None of these positive things about Mr. Acosta or
6 the class you visited were mentioned by you at all when you
7 talked about Mr. Acosta's class in the Senate, right?

8 A. The --

9 Q. Right?

10 A. I would have to go back and look at the transcript.
11 There's been a number of times when I've talked positively
12 about Mr. Acosta. I don't believe -- you know, not him in the
13 class --

14 Q. In the Senate, right?

15 A. Yeah, but the concerns that I have voiced about MAS classes
16 had to do with the things that needed to be fixed. There
17 obviously were a lot of positives that we felt could be built
18 on to create an ethnic studies class that passed muster on
19 state law and would be a great curriculum and be a great
20 learning experience for students.

21 Q. But when you talked about Mr. Acosta's class in the Senate,
22 what you brought up was the Che Guevara poster on the wall and
23 a comment made by another person, not even Mr. Acosta, about
24 Ben Franklin, right? Those were the only two things you
25 focused on, right?

1 A. Yes, the comment by Mr. Romero, who was heavily involved in
2 the MAS classes, and --

3 Q. And the Senators never heard about all those really
4 positive things that you believed were present in Mr. Acosta's
5 class, right? Right?

6 A. Yes.

7 Q. Now --

8 A. Well, again, as I mentioned the first time, I would have to
9 go back and look at the transcript to see the total
10 description. I just -- I don't -- at this point I can't recall
11 everything that I mentioned about the class. I'd have to look
12 at the transcript to see what the balance of the discussion
13 was.

14 Q. Well, I'm sure if you said anything positive about
15 Mr. Acosta in the Senate in that class, I'm sure the State's
16 counsel will ask you about it.

17 Now, Mr. Huppenthal, your primary concern was with what
18 you've called the oppressed/oppressor framework, right?

19 A. Yes.

20 Q. In fact, you testified yesterday that you thought that was
21 very toxic, right?

22 A. Yes, I feel that that oppressed/oppressor framework when
23 it's applied to racial relationships and you get students,
24 Hispanic students to view them as an oppressed group and get --
25 and you have them view Caucasians as an oppressor group, I

1 believe -- I feel it's very toxic.

2 Q. You say that was your main focus, right?

3 A. I think it was the primary concern I had about MAS classes.

4 Q. Okay. Now, you know, do you not -- by the way, before I
5 even do that, you also referred, I believe, to a student. This
6 was in the Senate hearing. I recall you said that a student
7 who appeared at that hearing testified that she didn't know
8 that she was oppressed before taking an MAS course. Do you
9 recall that?

10 A. Yes. And I -- you know, now, recollecting back, I don't
11 know if that was one of the students who were sitting around me
12 in that class who made that statement in the class or if it was
13 the student who came up to testify. I'd have to go back over
14 the transcripts and the video.

15 But at some point, one of the students made the comment, "I
16 didn't know that I was oppressed until I took this class."

17 Q. That wasn't all she said though, was it?

18 A. No.

19 Q. In fact, she was very favorable about the MAS classes,
20 right?

21 A. Yes.

22 Q. Now, you know, do you not, Mr. Huppenthal, that the
23 oppressed/oppressor, that's not the focus of 15- -- I'm sorry,
24 15-112, is it?

25 A. When you look at the provisions of 15-112, the racial

1 resentments clause, that is part of the -- part of the whole
2 mix.

3 Q. But you admit, do you not, Mr. Huppenthal, that 15-112 does
4 not prevent the teaching about oppression, right?

5 A. It doesn't teach -- prevent the teaching about oppression.
6 We should all know about the history of injustice so we can do
7 better in the future. What it does prohibit is indoctrinating
8 students into a framework in which they have racial resentment,
9 and that's been an abiding issue of people who had concern
10 about what was going on inside the ethnic studies classes.

11 Q. Well, you assumed that was what was going on, right?

12 A. No, I didn't assume. I think there was an abundance of
13 evidence that those kind of activities were going on.

14 Q. And you assumed or you believed that the students were
15 being radicalized, right?

16 A. I believed that there were -- that there were -- some of
17 the intent behind the program was to radicalize students. Do I
18 believe that it was going on in every class every day, no. But
19 I thought that it was -- I thought that there were persistent
20 activities along those lines taking place in those classes.

21 Q. In fact, you believed that some of those classes were
22 training the students to be revolutionaries, right?

23 A. I didn't have any knowledge of that at all. So, no, I
24 didn't believe -- I don't believe that -- I don't have -- I
25 didn't -- that wasn't my focus.

1 My philosophical concern was I want these students to get
2 ahead in life, I don't want them to feel that they're a victim
3 of anybody.

4 You know, I know all about what it's like to come from the
5 poor side of town. When I went to my high school, the first
6 girlfriend I had said, "I can't date you because you're from
7 the south side of the tracks."

8 MR. REISS: Your Honor, I'm going to --

9 A. So I know what it's like to experience those experiences.
10 You just can't let them get you down.

11 MR. REISS: Your Honor, I was incredibly patient with
12 Mr. Huppenthal. I am going to ask the Court to direct
13 Mr. Huppenthal to answer my questions.

14 THE COURT: I think he has to the best of his ability.
15 Ask your next question.

16 MR. REISS: Okay.

17 THE COURT: Or do you want him to go on further?

18 MR. REISS: That's a good question, Your Honor. But
19 I'll withdraw that question.

20 BY MR. REISS:

21 Q. So when you talked yesterday about these classes and saying
22 if they were training revolutionaries they were doing a poor
23 job, that was just a tongue-in-cheek remark?

24 A. Well, when you go out and you look extensively at
25 Mexican-American Studies seminars and where these teachers go

1 when they go to get trained to be in these classes, this kind
2 of revolutionary language is rife through these kind of --
3 these kind of trainings, and so racial resentments are just
4 vivid in it. And so you --

5 Q. Did you believe the classes were training the students to
6 be revolutionaries?

7 A. No. I didn't have any evidence that they were or that they
8 weren't. I didn't -- that wasn't a main concern of mine.

9 Q. Now, you were very concerned about student achievement,
10 right, Mr. Huppenthal?

11 A. It's an absolute abiding concern of mine when it comes to
12 poor students and minority students.

13 Q. And your goal was to help all students, including
14 Mexican-American students, achieve, right?

15 A. Yes.

16 Q. And it was -- in fact, you said your goal was to close the
17 achievement gap, right?

18 A. Not just to close it, to reverse it.

19 Q. To reverse the achievement gap.

20 And in terms of achievement, student achievement in public
21 schools, in public high schools, passing the AIMS test is one
22 objective criteria that shows student achievement, right?

23 A. Yes.

24 Q. So if a program significantly increases the passing rate of
25 Mexican-American students on AIMS tests, that's positive,

1 right?

2 A. Yes.

3 Q. That's good, right?

4 A. Yes, mmm-hmm.

5 Q. And if a program significantly increases the graduation
6 rates of Mexican-American students in Tucson public high
7 schools, that's a good thing, right?

8 A. Yes.

9 Q. And that's a successful program if the program both
10 increases the passing rates on AIMS tests of Mexican-American
11 students and increases the graduation rate of Mexican-American
12 students. That's a successful program, right?

13 A. Not necessarily. The philosophical issues can't be set
14 aside just based on the academic associations. Those are still
15 a part of the mix, because around -- any day there's a
16 distribution, and you have the concern for the overall
17 population and what's happening, so it's not just the
18 academics, but the academics is crucial.

19 Q. And passing AIMS tests is crucial, right?

20 A. Yes.

21 Q. And graduating is even more crucial, right?

22 A. Yes.

23 Q. Now, I know we've talked a bit about the delay in the
24 effective date of 15-112, and you've admitted, Mr. Huppenthal,
25 that you authored the amendment that delayed the effective date

1 until January 1st, 2011, right?

2 A. Yes.

3 Q. And you said you did that to move the effective date until
4 after the election. The election was presumably in November,
5 right?

6 A. Yes.

7 Q. And you wanted to do that in order, according to your
8 testimony, to take politics out of the decision.

9 A. Yes.

10 Q. But at the very time you were offering this amendment to
11 delay the effective date, you were running or knew you would
12 run for superintendent of education, right?

13 A. Yes.

14 Q. And, in fact, you were very confident about that election,
15 you were very confident you would get the nomination of your
16 party, right? You said yesterday you were 11 and 0 in
17 elections.

18 A. Yeah.

19 Q. You were feeling pretty good about it.

20 A. Yeah, I felt my odds were good.

21 Q. And you campaigned on a platform to "stop La Raza," right?
22 You admitted that?

23 A. That was one element.

24 Q. That was one element. And, in fact, it was an important
25 element. You admitted that as well, right?

1 A. Yes.

2 Q. And, in fact, that "stop La Raza" element, in your words,
3 spread across the state like wildfire, right?

4 A. No, not from -- you're confusing cause and effect. I just
5 noticed that everywhere I went that there was an intense focus
6 on that issue. There was intense concern across the state
7 about what was happening in the Tucson Unified School District,
8 what was going on in these classes. So it wasn't my efforts
9 that caused it to spread. It was -- that concern was out
10 there. People were getting tons of e-mails. They
11 were getting -- it was on -- they were hearing about it on
12 newscasts. So it was just out there. It wasn't my efforts
13 that spread it out.

14 Q. Well, your campaign stoked it, right? You had radio
15 commercials "stop La Raza," right?

16 A. Well, the amount of money you get for a superintendent, I
17 don't think the word "stoke" is appropriate. You don't get --
18 there's not much money involved in a superintendent raise.

19 Q. But the primary message of your radio commercials was "Stop
20 La Raza," right?

21 A. No. The primary message that I came out with in that
22 campaign was -- right on my billboards was the message, and it
23 was high standards, accountability, and reading by third grade.
24 So my primary message was right on my billboard, and my
25 speeches centered around that focus on improving academic

1 outcomes for students.

2 Q. The radio commercials, "Stop La Raza," right?

3 A. There was a radio commercial, but it was a relatively small
4 part of an overall campaign.

5 Q. Now, with respect to Mr. Horne's finding, which was made on
6 December 30th and issued on New Year's Day, Saturday, New
7 Year's Day, January 1st, 2011, you subsequently learned -- or
8 maybe it wasn't subsequent -- you learned what you've called
9 technical issues with his finding. Right?

10 A. Yes.

11 Q. And the technical issues you mentioned yesterday were that
12 the classes weren't in session at the time he made his finding,
13 which would, of course, have been the Christmas recess, right?

14 A. I believe that was the nexus of the issues that caused me
15 to set aside his finding.

16 Q. Wasn't there a much more basic problem with Mr. Horne's
17 finding, in that he was enforcing a statute that had not even
18 gone into effect and was not retroactive?

19 MS. COOPER: Objection, Your Honor. Argumentative.

20 THE COURT: Well, I think Mr. Huppenthal understands
21 the gist of the question. You can answer the question.

22 A. My understanding is that he waited till the morning of --
23 he waited till the morning of the date that it went into effect
24 to make his pronouncement and that the statute had gone into
25 effect. So I guess the answer would be no.

1 Q. As of the day he made his finding, there were no classes
2 being taught and no courses being offered that were subject to
3 the provisions of the statute, correct?

4 A. I believe that's -- that -- when I got that advice from
5 Stacey Morley, that's what led us to set aside the Horne
6 finding and announce our own investigation.

7 Q. Right. And you publicly announced on January 4th, your
8 first full day in office, you publicly announced that you
9 accepted and adopted Mr. Horne's finding, right?

10 A. Yes.

11 Q. And you said you withdrew the finding. Did you ever issue
12 a public statement saying that you were withdrawing that
13 finding?

14 A. We issued a statement. I viewed it as setting aside his;
15 but, as I review it now, it gave them -- it gave Tucson Unified
16 School District an extended period of time to come into
17 compliance, which I was comfortable with, because that took
18 them out through the spring semester. And then it seemed to me
19 that would give them all the spring semester, plus the summer,
20 to get their game together and to present a curriculum and
21 lesson plans that would be in compliance with the state law, so
22 there would be sort of a smooth transition to a better outcome.

23 Q. But you never publicly said clearly, in words of one
24 syllable: "I'm withdrawing the finding I made on January 4th
25 because the statute was not in effect at the time Mr. Horne

1 made his finding." You never said that, did you?

2 A. Well, I wouldn't because I didn't view that I was making a
3 finding. I was simply -- at that point, it was just simply
4 public information expressing support for his finding.

5 Q. And you never formally withdrew your January 4th, 2011,
6 statement, right?

7 A. No.

8 Q. Let's talk a little bit about Paulo Freire. I know we've
9 talked a bunch about it before. And I believe yesterday --
10 now, Mr. Horne (sic), if Paulo Freire, his pedagogy, Freedom of
11 the Oppressed, if that was being taught at any school, that
12 would have raised concerns for you, right?

13 A. No. I just don't think that there's any, really, hardly
14 any book out there that would raise concerns for me. It's
15 always about how the material is being used. We've put in
16 place Bible standards, which is as controversial of a book as
17 you can get into in education, but we've set forth standards
18 for teaching the Bible as literature, and we moved those
19 standards forward when I was superintendent. So I don't -- I'm
20 not opposed to any kind of literature being in the classroom.
21 Just, some literature you have to be -- teachers have to be
22 ready to be extremely careful in how they present it.

23 Q. Do you recall being asked this question and giving this
24 answer at your deposition?

25 Question: Do you have a problem or did you have a problem

1 with teaching of Paulo Freire's philosophy to a Caucasian
2 student body? Answer: I think it would raise -- I think it
3 would be the same issue.

4 It would be the same issue. Do you recall being asked that
5 question and giving that answer in your deposition under oath?

6 MS. COOPER: May I please see the portion of the
7 deposition?

8 A. I don't recall, but that's not inconsistent with what I am
9 saying now. Any -- any kind of controversial book, if you're
10 teaching Karl Marx's theories, it's one thing to teach about
11 him as an historical figure and the nature of his theories;
12 it's another thing to indoctrinate students into his framework.
13 So the issues come up on teaching -- teaching about any
14 controversial author.

15 BY MR. REISS:

16 Q. And you said yesterday you did extensive research with
17 respect to Paulo Freire schools, right? You looked at the --

18 MS. COOPER: Objection. Misstates prior testimony.

19 THE COURT: Sustained.

20 BY MR. REISS:

21 Q. You did research with respect to the Paulo Freire schools,
22 right?

23 A. What I said yesterday was I went out to see if there was
24 controversy associated with the Paulo Freire schools of any of
25 the nature -- the controversy that we were seeing surrounding

1 the Tucson Unified School District programs. And I could find
2 no evidence that there was any controversy surrounding those
3 charter schools whatsoever. I hadn't received any
4 communications, and I couldn't find any sphere in which there
5 were complaints. Perhaps there were. I just couldn't find
6 them.

7 Q. So that would indicate to you, would it not,
8 Mr. Huppenthal, that Paulo Freire and Pedagogy of the Oppressed
9 were totally acceptable academic philosophies and ways of
10 teaching, right?

11 A. The -- I just -- I wouldn't -- I wouldn't endorse that
12 phrase. You would have to see what's going on in a situation
13 and how it's being accepted by the populations that are -- so I
14 wouldn't -- I wouldn't say yes to that question.

15 Q. Mr. Huppenthal, did you read Paulo Freire's Pedagogy of the
16 Oppressed?

17 A. I read at least two of his books, and I don't recall if
18 there were additional ones past that, but I recall reading two
19 of the books.

20 Q. Well, from your recollection, isn't it true that Pedagogy
21 of the Oppressed does not teach students that they are
22 oppressed?

23 A. Well, it's hard to get beyond the title. I mean, it starts
24 out with the assumption that they're oppressed. It's "Pedagogy
25 of the Oppressed."

1 Q. But it doesn't teach them that they're oppressed, does it?

2 MS. COOPER: Objection. Argumentative.

3 THE COURT: Sustained.

4 BY MR. REISS:

5 Q. Now, Mr. Huppenthal, you're aware --

6 MR. REISS: And, Your Honor, I believe -- just to, on
7 an evidentiary matter, be clear about the Court's position. I
8 believed under the stipulation reached this morning, the -- the
9 demographic information that is contained on the official
10 Arizona Department of Education website is judicially
11 noticeable, so we don't have any hearsay objections to that.

12 THE COURT: Well, "judicially noticeable" doesn't mean
13 there's no hearsay objection. "Judicially noticeable," to the
14 extent that, yes, it came from the website, period.

15 MR. REISS: Right.

16 THE COURT: It doesn't go to the reliability or
17 authenticity of the information stated.

18 MR. REISS: Okay. I can ask him about that, Your
19 Honor. Because Your Honor has ruled on the previous in limine
20 motions that the demographics would be relevant if they're
21 admissible.

22 THE COURT: I think so.

23 MR. REISS: Okay.

24 THE COURT: But, you know, I haven't heard the
25 objection yet to your use of the -- to your use. So when you

1 start using it, I assume there will be an objection.

2 MS. COOPER: I was going to let Mr. Reiss get his
3 question out, Your Honor.

4 MR. REISS: I guess, you know, I always found that
5 anticipating the sting is always better. But, in any event,
6 Your Honor.

7 BY MR. REISS:

8 Q. Mr. Huppenthal, you're aware, because you were
9 superintendent of education, that the Department of Education
10 maintains a website, right?

11 A. Yes.

12 Q. And on that website, among the things on that website are
13 demographic information about every public school in Arizona,
14 right?

15 A. I presume so.

16 Q. And it's fair to assume, is it not, that the information
17 about the demographics that's published on the official Arizona
18 State Department of Education of website is accurate, right?

19 MS. COOPER: Objection. There is no showing of how
20 the information is reported to the department and where it
21 comes from.

22 THE COURT: I didn't understand quite the details of
23 the objection. But, you know, what you can assume and not
24 assume is not the question. So that's an irrelevant question.
25 I sustained the objection.

1 BY MR. REISS:

2 Q. Mr. Huppenthal, are you aware that every public school in
3 Arizona has to report its demographics to the Department of
4 Education?

5 A. Yes.

6 Q. And, to your knowledge, those reports from the individual
7 public schools are accurate, are they not?

8 A. Excuse me?

9 Q. To your knowledge, those reports from the public schools to
10 the Department of Education are accurate, right?

11 A. Yes.

12 Q. And those reports are what are published on the Department
13 of Education website, right, when they talk about the
14 demographics? They just put that information on their website,
15 right?

16 A. I believe so. Now, I don't know what was published in 2008
17 to 2010 as compared to what's on the website now. So I have --
18 but I did not go out and search for the demographics. I don't
19 have any recollection of searching for demographic information.

20 MR. REISS: Your Honor, I would move -- the
21 demographics I will represent to the Court that we will put
22 into evidence are only demographics that were in effect during
23 Mr. Huppenthal's tenure as the superintendent. They're not
24 current. They go back to the relevant time period. I would
25 move those into evidence.

1 THE COURT: There might be an objection because I see
2 Ms. Cooper standing.

3 MS. COOPER: Yes, there is an objection. It's not
4 shown to be relevant. Mr. Huppenthal just said that he --

5 THE COURT: Get up to a microphone, would you, please?

6 MS. COOPER: I'm so sorry.

7 THE COURT: Either there or at the stand. Either
8 place is fine.

9 MS. COOPER: Defendants object to the admission of
10 this evidence because Mr. Huppenthal has testified that he was
11 not aware of the particular demographics of the school at
12 issue. It's, therefore, not relevant, because he had no
13 knowledge of it. That's a big spreadsheet with information,
14 over 3,000 lines of information in it, that's been reported by
15 schools to the department and then published.

16 THE COURT: All right. Well, if relevancy is the only
17 objection, the objection is overruled. The motion to admit --
18 you can mark those exhibits -- it is granted. I think there is
19 a sufficient basis of authenticity and reliability to make them
20 admissible. So I grant the motion to admit them.

21 As to relevancy, I think they're relevant. You know,
22 I don't know how relevant they are, but I think it's more
23 appropriate for examination and cross-examination than to rule
24 now that they can't come in at all. So the motion is granted.
25 The objection is overruled.

1 MR. REISS: Thank you, Your Honor. And just for ease
2 of reading, because these lines are quite small, we'll try to
3 make it user friendly to the Court.

4 THE COURT: That's fine.

5 MR. REISS: Which exhibit is this?

6 MS. BARRINGTON: 230.

7 MR. QUINN: Two three zero.

8 MR. REISS: It's Plaintiffs' Exhibit 230, Your Honor.

9 BY MR. REISS:

10 Q. Now, I know we've spent a lot of time, Mr. Huppenthal, in
11 the Cambium audit, but I've got a couple of questions about
12 that as well in response to Ms. Cooper's examination. Now, the
13 goal of the Cambium audit was to get a disinterested party to
14 collect the materials, right?

15 A. I think the goal of the Cambium audit was to get an
16 accurate portrayal of what was going on in the MAS classes
17 within TUSD.

18 Q. And you wanted that done by a disinterested party, right?

19 A. You know -- I had turned this over to staff and staff came
20 up with the idea of hiring Cambium, and I would assume that
21 that would have been one of their objectives.

22 Q. Yesterday you were asked by Ms. Cooper: Did you understand
23 that the purpose, the goal with an auditor was to find a
24 disinterested party to collect information? Answer: Yes.
25 Right?

1 A. Yeah.

2 Q. And in fact, you're aware from the Cambium report that it
3 was very important to Cambium that their evaluation gather
4 sources from disinterested parties, not from anyone with a
5 political ax to grind, right?

6 A. I would disagree with that just based on the outcome of the
7 Cambium audit itself. There was a lot of evidence within the
8 Cambium audit that there were a lot of people that they were
9 going to be investigating that had political axes to grind,
10 so --

11 Q. In gathering materials, did the Cambium auditors make it
12 clear that they needed to gather the materials in a, your
13 phrase, disinterested way? They didn't want any political
14 faction feeding them one material or another, right?

15 A. I think that's correct.

16 Q. Now, you talked a little bit about the demographics of the
17 State of Arizona's student population, Tucson School District
18 demographics. At the time, in 2010, 2011, there were 1300
19 students in the Mexican-American Studies program, right, in
20 Tucson? 1300?

21 A. Somewhere in the neighborhood of 1100 to 1400, somewhere in
22 there.

23 Q. And in fact, every one of the students in an MAS class or
24 MAS course wanted to be in that class or course, right?

25 A. That would be an impossible statement to make.

1 Q. Weren't they elective courses?

2 A. That doesn't necessarily mean that students want to be in
3 them. I'm quibbling here a little bit, but it's -- I just
4 simply don't -- I don't know.

5 Q. You don't know of any instance where a student who was in
6 an MAS class didn't want to be in that class, but was, for some
7 reason or another, forced to take the class. You don't know of
8 any instance of that?

9 A. I don't know of any instances of that.

10 Q. And in fact, the MAS classes and courses were filled to
11 capacity, weren't they?

12 MS. COOPER: Objection. Foundation.

13 A. I just --

14 THE COURT: Sustained. You don't have to answer that.

15 THE WITNESS: Okay.

16 BY MR. REISS:

17 Q. Do you know whether the MAS classes or courses were filled
18 to capacity?

19 A. I have no knowledge one way or the other.

20 Q. Do you know whether students, for example, who wanted to
21 take Mr. Acosta's class couldn't get in?

22 A. I don't -- I don't know.

23 Q. Now, a large focus of your evaluation and your staff's
24 evaluation of the MAS program had to do with the gathering and
25 evaluation of materials, right?

1 A. I think that's a fair enough representation.

2 Q. And if you look at the materials, just look at the
3 materials, you can't tell what's being taught, right?

4 A. No, that's not a correct statement.

5 Q. Yesterday you were asked by Ms. Cooper: If you look at the
6 materials, can you tell what's being taught, or when?

7 Answer: No? That was your testimony, right?

8 A. I don't know the context of that question yesterday. But
9 from the materials, it depends on what you're looking at. If
10 you're looking at direct interactions between a student and the
11 teacher, you can get a certain perspective on what's going on
12 in that classroom. You at least know some of the activities.
13 If you look at just simply books, you would have no idea if
14 students are actually reading those books or not. So if you
15 just simply look at those materials, the books, you would not
16 really have a clue. But if you look at activity worksheets the
17 students are doing and you look at assignments that teachers
18 are giving, it's a different perspective. So I don't know the
19 complete context of that question yesterday.

20 Q. So, just looking at the books doesn't tell you how they're
21 being taught, right, if they're being taught?

22 A. Depends on what materials you're looking at.

23 Q. Let me break it up. Can you tell just from looking at
24 materials even if they're being taught?

25 A. The materials can represent actual direct activities of

1 students in a classroom, and so it gives you -- you can -- it
2 allows you -- it's a partial sample of the activities going on
3 in a classroom. So I think to a degree, it can.

4 Q. But without knowing what's going on in the classroom, you
5 can't be sure, can you?

6 A. If you have hundreds or thousands of pages of activity
7 sheets like that, I think you can -- you can -- it's a pretty
8 large sample -- it can become a pretty large sample of the
9 activities going on in the classroom, and you can start to make
10 inferences -- you can start to make inferences from that.

11 Q. But you didn't have hundreds of thousands of pages of
12 activity sheets with respect to the MAS courses, did you?

13 A. We have a large collection. I wouldn't infer right now --
14 certainly it wasn't hundreds of thousands, but it was a large
15 volume of work materials we had.

16 Q. And in fact, you had concerns about the curriculum, right,
17 MAS curriculum? That was a concern of yours?

18 A. Yes.

19 Q. But curriculum deficiencies don't violate 15-112, do they?

20 A. No.

21 Q. Now, we've talked about I think extensively yesterday your
22 staff and their activities. Subject -- I'm sorry. Withdrawn.

23 You talked about your staff's activities subsequent to
24 receiving the draft Cambium report, right?

25 A. Yes.

1 Q. And that draft report was received by your department on
2 March 2nd, 2011, right?

3 A. I think that's a fair representation. I don't have any
4 direct knowledge.

5 Q. And the Tucson Public Schools are in session until the week
6 before Memorial Day, right?

7 A. If you represent that correctly, yes.

8 Q. I will represent judicially noticeable that Memorial Day in
9 2011 was on May 30th. So the classes would have been in
10 session until May 25th or May 26th, right?

11 A. I would guess so.

12 Q. Now, did any member of your staff, while they were
13 conducting their own examination of MAS, speak to any teachers,
14 any MAS teachers?

15 A. I don't know.

16 Q. Did any members of your staff, while they were conducting
17 their own review of the MAS program, speak to any principals of
18 schools that had the MAS program?

19 A. I don't know.

20 Q. Did any of the people who were conducting the evaluation
21 for your department of the MAS program speak to any students in
22 the MAS courses or classes?

23 A. I don't know.

24 Q. Did any of the people who were working on your staff to
25 evaluate the MAS program speak to any parents or members of

1 focus groups that Cambium spoke with?

2 A. I don't know.

3 Q. It would have been quite useful to know what the principals
4 in those schools thought about the MAS program, wouldn't it?
5 Wouldn't it?

6 A. It would be more useful to get an accurate view of what was
7 going on in the classrooms.

8 Q. I agree with that. It would have also been useful to talk
9 to the teachers, right? The MAS teachers, right?

10 A. Well, that's why we hired Cambium to do -- their focus
11 groups to do the other types of activities.

12 Q. Right. And they did talk to the teachers, right? The
13 Cambium auditors did talk to the teachers, right?

14 MS. COOPER: Objection. States facts not in evidence.

15 THE COURT: It's a question. You can answer. If you
16 know.

17 A. I believe they ran focus groups within the schools.

18 BY MR. REISS:

19 Q. Now, the Cambium report found that the MAS program had a
20 positive effect on graduation rates, positive effect on passing
21 of AIMS test, right? That's what they found. It's just a
22 simple question.

23 A. I would --

24 Q. That's what the Cambium auditors found, right?

25 MS. COOPER: Objection. Misstates the Cambium report.

1 THE COURT: Objection because why?

2 MS. COOPER: It misstates the Cambium report.

3 MR. REISS: No, it doesn't.

4 THE COURT: In what way?

5 MS. COOPER: The Cambium auditors did not conduct
6 their own analysis.

7 THE COURT: The objection is overruled.

8 MR. REISS: Thank you, Your Honor.

9 THE COURT: Do you remember the question?

10 THE WITNESS: Yes.

11 THE COURT: Go ahead.

12 A. I would just disagree that that's what they found. I --
13 you know, I know what you're referring to, and I could
14 understand why you would say that, but, you know, my reading of
15 their analysis is that you couldn't -- you can't make that
16 inference.

17 BY MR. REISS:

18 Q. That wasn't my question, Mr. Huppenthal. I'll get to that.
19 My question was simply that the Cambium report found in that
20 report that the MAS program increased passing on AIMS tests and
21 increased graduation rates for students who participated in
22 MAS. That's what the Cambium report said, right?

23 A. Yes.

24 Q. But you quibble -- you did your own analysis, and you
25 didn't find that persuasive, right?

1 A. Yes. And it goes to the complexity of education culture
2 and education data. It is immensely challenging not only in
3 this domain, but in every domain to extract good, scientific --
4 scientifically solid inferences about what causes what. It
5 just is very challenging.

6 Q. So you did your own analysis and rejected the conclusions
7 of the Cambium report, right?

8 A. I didn't reject their conclusions. I just simply, in
9 analyzing their data, felt that the -- that they had done the
10 proper associations, but you just simply couldn't take the leap
11 to causality. It's no pejorative on them. They probably did
12 as good of a job analyzing the data as they possibly could have
13 in that framework. It is just the challenge in education
14 culture to overcome and get at really scientifically valid
15 conclusions.

16 Q. Did you put your own -- by the way, was this your analysis
17 or was it an analysis done by a member of your staff?

18 A. Robert Franciosi had done an analysis, and I recall looking
19 at the data in the Cambium report and just realizing that it,
20 like all education research, had the same challenges associated
21 with making conclusions.

22 Q. Did you put your analysis of what was found in the Cambium
23 report into writing at all?

24 A. No, I did not.

25 Q. Did you share it with your staff in any form?

1 A. I don't recall.

2 Q. Now, Ms. Cooper asked you a little bit about the ALJ
3 decision, and Your Honor I think was right. I've just got a
4 very few questions about this. Your Honor was correct in
5 stopping that line.

6 You read the ALJ findings, right?

7 A. I have, but it's been a while and, you know....

8 Q. I'm not going to go through them in any detail. But the
9 actual conclusion of Administrative Law Judge Kowal was that,
10 quote: At least one or more classes or courses that were in
11 violation of Arizona's 15-112(A)(2), (A)(3), or (A)(4) were
12 proven. Just at least one or more classes or courses, that's
13 all he found, right? That's all he found, right?

14 A. If you're directly reading from that, I would say yes.

15 Q. I am directly reading from it. And his order,
16 Mr. Huppenthal, his order read as follows: Superintendent
17 Huppenthal's June 15th, 2011 determination is affirmed, and on
18 the effective date of the order entered in this matter, the
19 Department shall withhold 10 percent of the monthly
20 apportionment of state aid until the district comes into
21 compliance with A.R.S. Section 15-112.

22 And he further writes: In the event of certification of
23 the administrative law judge's decision by the director of the
24 office of administrative hearings, the effective date of the
25 order, meaning this order, will be five days from the date of

1 that certification. And the date of this order is December 27,
2 2011.

3 So the administrative law judge ruled that his ruling would
4 be effective some period after December 27th or a couple --
5 maybe 10 days after, but was effective in January or so of
6 2012, right?

7 A. Yes.

8 Q. But your decision with respect to the withholding of funds
9 didn't follow that order, did it?

10 A. I don't recall.

11 Q. Your decision to withhold funds extended the withheld funds
12 back to August 15th, 2010, right?

13 A. If you're representing it correctly.

14 Q. I am. And yet the administrative law judge's order said
15 the withholding of funds would be from January, the effective
16 date of his order, 2012 forward, right? Right? You need to
17 answer.

18 A. I would assume that you're representing it correctly.

19 Q. So let me just review the timing a little bit. You issued
20 your finding on June 15th, 2011, right, finding of violation?

21 A. I believe so.

22 Q. And you then gave the Tucson School District 60 days to get
23 into compliance. That would have been until August 15th, 2011,
24 right?

25 A. Yes.

1 Q. But the Tucson School District appealed, as was their
2 right, right? They appealed to the administrative law judge,
3 right?

4 A. Yes.

5 Q. And they did that on June 22nd, I will represent, 2011.
6 Were you aware of that?

7 A. If you're representing it correctly.

8 Q. You knew they appealed, right?

9 A. Yes.

10 Q. And when you decided to make the 10 percent penalty
11 retroactive to August 15th, 2010, you were penalizing the
12 Tucson School District for appealing your order, right?

13 MS. COOPER: Objection. Beyond the scope of the prior
14 examination.

15 THE COURT: It's beyond the scope. I think it's also
16 a legal question, and I am not sure, you know, what you're
17 getting at to make any difference. If the Tucson School
18 District didn't like the effective date of the order, they had
19 the option to go to court and try to change it, but they didn't
20 do that. So I don't think it does any good to inquire into
21 this. I sustain the objection. It's beyond the scope.

22 BY MR. REISS:

23 Q. There was, as you've admitted, Mr. Huppenthal, another
24 statute on the book that was available to get any partisan
25 materials out of the classroom, right?

1 MS. COOPER: Objection. Beyond the scope.

2 THE COURT: Sustained.

3 MR. REISS: I have no further questions.

4 THE COURT: All right. Any -- what would we call
5 this? Any recross?

6 MS. COOPER: Yes. I hope what we call it is
7 reasonably short, Your Honor. I know that we're close to the
8 lunch hour, but we did discuss --

9 THE COURT: I'd like to finish with Mr. Huppenthal
10 before we take a lunch break, right?

11 THE WITNESS: Yes.

12 THE COURT: So let's get on with it.

13 RECCROSS-EXAMINATION

14 BY MS. COOPER:

15 Q. Thank you for coming back, Mr. Huppenthal.

16 A. You're welcome.

17 Q. Jump around a little bit. Let's talk about your visit to
18 Mr. Acosta's class. You felt that Mr. Acosta had a positive
19 relationship with his students?

20 A. Yes.

21 Q. And that he was a -- appeared to be a good teacher?

22 A. He appeared to me.

23 Q. And you said that on many occasions in public forums that
24 you believed that Mr. Acosta was a good teacher, correct?

25 A. Yes.

1 Q. Is your concern about the MAS classes based on any concerns
2 about Mr. Acosta personally?

3 A. No.

4 Q. You attended the Senate hearings. In fact, you chaired the
5 Senate hearing in 2010 with respect to HB2281, correct?

6 A. Yes.

7 Q. And those hearings are open, right?

8 A. Yes.

9 Q. Anyone can attend and ask to speak?

10 A. Yes.

11 Q. Mr. Acosta or any other member of the MAS program could
12 have asked to speak?

13 A. Yes.

14 Q. And, in fact, didn't Augustine Romero, a former director of
15 the MAS program, speak at a senator hearing at which you were
16 present?

17 A. Yes.

18 Q. Didn't you view Mr. Acosta's apparently effective teaching
19 as a strength of the MAS program that you would like to see
20 TUSD build upon?

21 A. Yes.

22 Q. Because you again believed that TUSD could build upon the
23 strengths of the MAS program to increase student achievement
24 for its Hispanic students, correct?

25 A. Yes. And we -- we offered -- we made a very strong

1 declaration of our willingness to be a part of that process.

2 Q. Talked a little bit about what you believed might be
3 occurring in the classroom of MAS teachers, correct?

4 A. Yes.

5 Q. Many of your conclusions in that regard based upon the
6 information that your staff, your professional staff, collected
7 as part of the investigation that you delegated to them?

8 A. Yes.

9 Q. And you had full confidence that Mr. Hibbs and Ms. Hrabluk
10 would conduct a thorough professional investigation based on
11 non-political, non-partisan educational standards?

12 A. You couldn't have for a better public servant to give a
13 task to, more qualified or more professional.

14 Q. We discussed the fact yesterday that student achievement
15 was your most important goal, correct?

16 A. Yes.

17 Q. And that reversing the achievement gap was the goal, the
18 ambitious goal that you set for yourself with respect to
19 Arizona's minority students, right?

20 A. Yes.

21 Q. Did you believe that MAS was improving student achievement?

22 A. My conclusion is that while you had -- you have examples of
23 stellar teaching taking place, I did not feel like it was very
24 well organized to be able to achieve the academic improvement
25 mission.

1 Q. Did you have any belief that MAS classes were improving
2 student achievement for Mexican-American students?

3 A. No.

4 MR. REISS: Objection. Asked and answered.

5 BY MS. COOPER:

6 Q. Did you believe that MAS classes were helping
7 Mexican-American students matriculate to college at a higher
8 rate?

9 A. No.

10 Q. But that was an important goal of your administration?

11 A. Yes.

12 Q. Let's talk about the amendment that delayed the effective
13 date. We discussed the fact that the effective date would have
14 been sometime in August right before the election, correct?

15 A. Yes.

16 Q. And do you believe that it was likely that then
17 Superintendent Horne would have issued a finding against the
18 MAS program in advance of the election if the statute had gone
19 into effect on that date?

20 A. That's my belief.

21 Q. And so did your -- did the amendment that you sponsored and
22 that was adopted by the entirety of the legislature ensure that
23 Mr. Horne could not issue that finding in August or September
24 of 2010?

25 A. Yes.

1 Q. So, therefore, MAS classes were able to be continued
2 throughout the fall of 2010.

3 A. Yes. And we took it out of the political timeframe.

4 Q. If you both opposed the La Raza program, why not just let
5 Mr. Horne issue his finding in advance of the election and
6 address the tumultuous controversial issue before you hopefully
7 take office?

8 MR. REISS: Objection. Argumentative.

9 THE COURT: The objection is overruled. You may
10 answer.

11 A. I think -- I thought the whole thing needed to be chilled
12 down quite a bit, and you're best dealing with these things
13 once the intensity of the election process has subsided.

14 BY MS. COOPER:

15 Q. Let's talk a little bit about your campaign for
16 superintendent of public instruction in 2010. Do you recall
17 how much you spent in total on that campaign?

18 A. It was somewhere in the neighborhood of \$210,000. There
19 was a primary component and a general component.

20 Q. That's a statewide -- two statewide campaigns in a state
21 with over six million people?

22 A. Yes.

23 Q. And did you spend much money on radio ads?

24 A. We probably -- now, this is just an estimate way after the
25 fact, but we probably spent about one-fifth of the total amount

1 of money on radio ads. Maybe a little bit less.

2 Q. So approximately \$40,000, if this historian's math is
3 correct?

4 A. That would be rough guessing at this point.

5 Q. All right. But it was --

6 A. We did -- we did a heavy cable -- we did heavy cable TV ads
7 that was predominant, we did heavy mailing, and we did a huge
8 amount on billboards. So billboards was a predominant expense.
9 So it's hard for me to imagine that we even made one-fifth on
10 radio ads.

11 Q. Do you recall where the radio ads that addressed -- did you
12 have more than one radio ad that addressed your concerns with
13 respect to the La Raza program?

14 A. We may have. I only recall one, but we may have. There
15 might have been another.

16 Q. Do you recall where it ran? And by that I mean in which
17 portions geographically of the State of Arizona.

18 A. It ran only in the Tucson area.

19 Q. And where are the majority of voters in Arizona?

20 A. They're -- 60 percent of them are in Maricopa County, and
21 so that's where the majority of the voters are, right in
22 Maricopa County.

23 Q. 60, six-zero, percent?

24 A. Roughly 60 percent, somewhere between 60 and -- somewhere
25 around the 60 number, 55 to 65.

1 Q. Do you recall whether you ran those La Raza ads in the
2 primary and the general or only the primary?

3 A. I don't recall.

4 Q. Now, let's talk --

5 A. I would imagine, now that I think about it, I would imagine
6 almost certainly they only ran in the primary.

7 Q. They ran in the primary, which was against Superintendent
8 Horne's chief of staff, Margaret Garcia Dugan?

9 A. Yes.

10 Q. Let's talk about the finding that Tom Horne issued --

11 A. Mmm-hmm.

12 Q. -- on January 1st and sent to TUSD on January 23rd. Did
13 you enforce that finding?

14 A. No.

15 Q. Did you withhold any funding as a result of that finding?

16 A. No.

17 Q. Did you set aside that finding?

18 A. That was my observation of what I did, is I analyzed it.
19 Now, looking in retrospect, we essentially set it aside, but
20 the net effect was to give them more time to extend it out to
21 the end of the spring semester, effectively giving them the
22 spring and the summer period to heal themselves and get their
23 game together.

24 Q. Did you set aside Tom Horne's finding because you were
25 concerned about its validity, because you wanted to grabbed

1 headlines for being the guy who shut down La Raza?

2 A. I was concerned about its validity.

3 Q. Let's talk about the press release that was issued on
4 January 4th. It's been referred to as a "finding."

5 Are you aware of any legal authority that permits the
6 superintendent of public instruction to make a finding against
7 a program in a press release?

8 A. No.

9 Q. Is a press release a public document of legal effect?

10 A. I don't believe so.

11 Q. Do you think TUSD could have appealed a finding that was
12 issued in a press release?

13 MR. REISS: Objection. Calls for a legal conclusion.

14 THE COURT: Overruled. You can answer.

15 A. I would imagine.

16 BY MS. COOPER:

17 Q. Let's talk briefly about Paulo Freire Freedom School. You
18 said you looked at their website to see if there was
19 controversy about the program, right?

20 A. Yes. I tried to get a sense of the school to see if there
21 were any complaints arising from what kind of activities might
22 be going on in the school.

23 Q. Did you look for any information about the curriculum or
24 pedagogy of that school?

25 A. No, I did not.

1 Q. Did you look at any information about the ethnographics of
2 that school?

3 A. I don't recall doing any search for their demographics.

4 Q. Would you ever look at the demographic information of a
5 school in connection with deciding whether to initiate an
6 investigation against it?

7 A. No. And the -- I didn't view myself as somebody who would
8 initiate investigations. I would -- you know, if somebody had
9 a specific complaint, I would pass that on to staff for them to
10 take a look at it from a professional standpoint.

11 Q. Would you ask your staff to look at the ethnographic
12 information as part of the decision about whether to initiate
13 an investigation?

14 A. No.

15 Q. Now, you mentioned that you read at least two of Paulo
16 Freire's works, including Pedagogy of the Oppressed.

17 A. Yes.

18 Q. Is it a high school textbook?

19 A. I don't know.

20 Q. In your experience, is it a suitable book for high school
21 students in terms of age appropriateness with respect to the
22 level at which it is written? So not the content, but the way
23 in which it communicates the information is appropriate for
24 high school students, or is it an adult level book?

25 A. I -- my sense of it is that I would have no problem for a

1 skilled high school teacher to bring it into their class and to
2 make it a part of the general discussion. But again, the
3 challenge you have is, you know, there are thousands years'
4 debate on philosophy, and people don't understand how
5 critically important philosophy is to society working well.

6 And that's part of what all this turmoil is about, is a lot
7 of people understand how important philosophy is and why some
8 civilizations work and others don't.

9 So again, I think that we want to send the signal how
10 critically important it is for teachers, how they -- how they
11 conduct their classes, so that students have the best possible
12 chance for their future, but they also help build a society
13 that works well.

14 Q. Because good teachers can have a power impact on their
15 students, right?

16 A. Oh, extremely powerful.

17 Q. You discussed with Mr. Reiss a few minutes ago whether it
18 was Cambium's charge to only gather information from
19 disinterested parties. Do you recall that?

20 A. Yes.

21 Q. Now, isn't it true that Cambium was only going to gather
22 materials from disinterested parties and have almost no
23 materials at all?

24 MR. REISS: Objection. Calls for speculation.

25 THE COURT: Go ahead.

1 BY MS. COOPER:

2 Q. Well, was the MAS program a party that was interested in
3 the outcome of the Cambium audit?

4 A. Absolutely.

5 Q. Didn't Cambium need to collect materials from them?

6 A. Yes.

7 Q. And would you have directed your staff to accept relevant
8 materials about TUSD's program from anyone who presented them?

9 A. With appropriate regard for the validity of the materials.

10 No matter what kind of materials you're bringing in and
11 analyzing for public policy, you always have to be extremely
12 cautious. You have to really look hard at what you're
13 examining.

14 Q. You would direct your staff to accept and examine the
15 materials, correct?

16 A. Yes.

17 Q. You would want to know if the materials were what they
18 purported to be, for example, MAS teaching materials, right?

19 A. Yes.

20 Q. Because it would be inappropriate for your staff to pass
21 along invalid information.

22 A. Yes.

23 Q. But you wouldn't simply presume it was invalid based on the
24 source, right?

25 A. No.

1 Q. You talked about materials as well with Mr. Reiss in the
2 context of a discussion with the -- talking about evaluating
3 materials -- strike that.

4 When you evaluate classroom materials, is it important to
5 have the curriculum so you can see how those materials are
6 being used?

7 A. Yes. And the materials are really even considered part of
8 that curriculum. In looking at all of the materials, the
9 course outline, how it's organized, what kind of actives are
10 going to be taking place, that whole spectrum becomes
11 essentially a part of the curriculum.

12 Q. A curriculum can help you understand whether materials that
13 appear to be unbalanced are, in fact, being taught in an
14 entirely balanced and appropriate fashion, correct?

15 A. Yes.

16 Q. In the absence of a curriculum, it can be very difficult to
17 discern how materials that appear to be questionable,
18 age-inappropriate, teaching students, dehumanizing public
19 figures are being used, right?

20 A. Yes.

21 Q. I'm going to show you two things, please. This is a page
22 from Plaintiffs' Exhibit 29, which is Dr. Franciosi's 2009
23 report, and I believe it's admitted into evidence.

24 And this is a figure showing the results of his work. Do
25 you recall ever seeing Dr. Franciosi's report?

1 A. I don't recall specifically looking at it, but I recall the
2 analysis and seeing a summary of it and understanding how he
3 conducted it.

4 Q. And this is the figure that we looked at from the Cambium
5 report, Figure 19. Do you recall looking at that with me
6 yesterday?

7 A. Yes.

8 Q. And you expressed that the thought that perhaps this
9 Figure 19 was from Dr. Franciosi's work, right?

10 A. I -- I don't recall. I don't recall that specifically.

11 Q. Does Figure 19 look quite similar to this table from
12 Dr. Franciosi's work?

13 A. No, they're significantly different.

14 Q. When did you find that the entirety of the MAS program was
15 not in compliance with the statute?

16 A. The -- I had delegated to some highly competent public
17 servants who had expertise in this area to review the entire
18 issue, and they came back with a recommendation that I find
19 them not in compliance with the -- with state law.

20 And in addition to that, I just had the sense that going
21 through this process of finding them not in compliance would
22 allow them to rise to a higher level, to allow them to sort
23 through what was going on in the ethnic studies classrooms,
24 bring out the best of it, have a more organized curriculum
25 because they would have to take this to their school board and

1 present it, and subject to public display, I thought the entire
2 exercise would result in improvement of the TUSD School
3 District as an example of what they should be doing not only in
4 the area of ethnic studies, but they should be doing it in all
5 of their areas. They should have a well-organized curriculum
6 in which teachers conduct highly organized classes every single
7 day of the school year, and you do the best for these students.

8 So it was that process of delegating the examination to
9 competent leaders and then hopefully going through this falling
10 process, but it was not to be.

11 Q. Do you believe that your staff's concern that the entirety
12 of the program was not in compliance and the statute was based
13 on their review of MAS materials from elementary, middle, and
14 high school classes?

15 A. Yes.

16 Q. Do you believe that your staff unanimously -- was your
17 staff's recommendation unanimous, by the way?

18 A. From what I could tell, there were no dissenters on it. So
19 all of the people that were involved in the analysis came in
20 and concluded that I should issue the finding.

21 Q. In fact, you encouraged your staff to disagree if they felt
22 that that was appropriate, right?

23 A. Absolutely. And the nature of those people, for better or
24 worse, I knew when I brought them in that they -- that was
25 their nature. You had people there who in situations had quit

1 their jobs because they felt like they had to based on personal
2 integrity. So I knew that these were not people that were
3 going to sway with the wind. These were people that had long
4 public careers with very high levels of personal integrity.

5 Q. Do you believe that your staff's unanimous recommendation
6 was a result of a racist or discriminatory animus --

7 A. No.

8 Q. -- against Mexican-Americans?

9 A. No.

10 Q. Did you believe that it was fuelled by narrowly political
11 partisan or racist viewpoint discrimination?

12 A. No.

13 MS. COOPER: No further questions.

14 MR. REISS: Just a couple, Your Honor.

15 THE COURT: Yes, Mr. Reiss.

16 REDIRECT EXAMINATION

17 BY MR. REISS:

18 Q. You delayed the effective date of 15-112 because you didn't
19 trust Tom Horne to make a decision that wasn't political,
20 right?

21 A. I delayed it because I felt like any decision made should
22 be after the intensity of the campaign, not in the intensity of
23 the campaign.

24 Q. And you didn't trust that Mr. Horne wouldn't make a
25 political decision, right?

1 A. That wasn't my concern. I just felt that it would be
2 better to have it chilled out and take place after the
3 election.

4 MR. REISS: No further questions.

5 THE COURT: Anything else, Ms. Cooper?

6 MS. COOPER: No, Your Honor.

7 THE COURT: All right. Mr. Huppenthal, thank you very
8 much.

9 THE WITNESS: Thank you.

10 THE COURT: You may step down. You are excused.

11 Before we break for lunch, let me ask counsel -- well,
12 ask plaintiffs, who is your next witness?

13 MR. FITZMAURICE: Jesus González, one of the
14 plaintiffs, Your Honor.

15 THE COURT: All right. Now you have witnesses -- I
16 forgot. You have two or three other witnesses like for
17 tomorrow, right?

18 MR. REISS: We've got -- yes, Your Honor, it would be
19 Mr. González, Mr. Barcelo, two of the plaintiffs, and then
20 Mr. Arce, who we certainly anticipate will go into tomorrow.

21 THE COURT: Yeah.

22 MR. REISS: And then Mr. Cabrera, who is an expert,
23 whose testimony on direct has been submitted, as the Court
24 knows.

25 THE COURT: Cabrera is available for tomorrow?

1 MR. REISS: Yes.

2 THE COURT: Okay. Then if he's finished by then, we
3 can have, I forgot, somebody else on Thursday morning, right?

4 MS. COOPER: Well, we have someone who can be here on
5 Friday, Your Honor.

6 THE COURT: Excuse me, I mean on Friday. I meant
7 Friday.

8 MS. COOPER: Yes.

9 THE COURT: Okay. Go ahead.

10 MS. COOPER: I can't predict whether we'll go all day.

11 THE COURT: Right. But I think we're in fairly good
12 shape. That's good. Thank you very much. What time is it?
13 It's 12:20.

14 THE CLERK: Actually 12:15, it's 12:15. That clock is
15 fast.

16 THE COURT: The clerk says, by the way, that clock is
17 five minutes fast. So we'll say 1:45. All right?

18 MR. REISS: Very well, Your Honor.

19 THE COURT: Is that all right?

20 MS. COOPER: Yes.

21 THE COURT: 12:15, 1:15, 1:45. All right. We're in
22 recess.

23 (A recess was taken from 12:15 p.m. to 1:53 p.m.)

24 THE COURT: Okay. Let's be seated and get our next
25 witness up to the stand.

1 MR. FITZMAURICE: Yes, Your Honor. Plaintiffs call
2 Jesus González.

3 **JESUS GONZÁLEZ**, WITNESS, SWORN

4 DIRECT EXAMINATION

5 BY MR. FITZMAURICE:

6 Q. Good afternoon, Mr. González.

7 A. Good afternoon.

8 Q. Could you please state and spell your name for the record.

9 A. Jesus González. J-e-s-u-s, G-o-n-z-a-l-e-z.

10 Q. Thank you. Where are you from?

11 A. From Tucson, Arizona.

12 Q. And what do you do for a living?

13 A. I am a brand manager at Philly Distributing.

14 Q. What industry is that?

15 A. The beer business.

16 Q. Beer business, okay. Are you a citizen of the United
17 States?

18 A. I am.

19 Q. Where did you go to high school?

20 A. I went to Cholla High School.

21 Q. Is that here in TUSD?

22 A. Correct, it is.

23 Q. And, Mr. González, did you go to college?

24 A. I went to Arizona State University.

25 Q. What did you major in?

1 A. In history.

2 Q. Are you married?

3 A. I am.

4 Q. Do you have any children?

5 A. I have three beautiful boys.

6 Q. Are they here today?

7 A. They are.

8 Q. Mr. González, where do you live currently?

9 A. I live at 3573 South Twilight Echo, that's in Tucson,
10 Arizona.

11 Q. And that's where your family lives?

12 A. Correct.

13 Q. Is your home within the boundaries of TUSD?

14 A. It is.

15 Q. So one of your boys is Noah González, who is a plaintiff in
16 this case, correct?

17 A. That is correct.

18 Q. And you're here today testifying on behalf of Noah as his
19 father, correct?

20 A. I am.

21 Q. So where does Noah go to school?

22 A. He goes to Tucson High.

23 Q. What grade is Noah in?

24 A. He will be a sophomore in the fall.

25 Q. And how did you and Noah come to be plaintiffs in this

1 case?

2 A. I became a plaintiff in this case through my brother José
3 González, who is a teacher -- was a teacher in the MAS program,
4 and he approached me about being a plaintiff.

5 Q. So you mentioned the MAS program. What do you know about
6 the MAS program?

7 A. I know kids that were participating in the MAS program were
8 excelling in grade work, doing a very good job in class. They
9 were engaged with teachers, and from what I understand, they
10 were going on to college at a high rate.

11 Q. How did you learn this?

12 A. Just through conversations that I had with my brother.

13 Q. So you mentioned your son Noah goes to Tucson High. And
14 before the MAS classes were terminated, do you know whether
15 they were ever offered at Tucson High?

16 A. They were.

17 Q. And to what extent, if any, did you speak to Noah about
18 whether he would have taken MAS classes had they not been
19 terminated?

20 A. We talked about it quite often actually. I would have
21 loved to have him participate in a course like MAS.
22 Unfortunately, it was banned, so that opportunity never came.

23 Q. To what extent would you have encouraged Noah to take MAS
24 classes if they were still available?

25 A. To what extent?

1 Q. Yes.

2 A. I would have loved for him to have been a part of the
3 Mexican-American Studies. It's important to me as a parent
4 that he understand, him being Mexican-American, the heritage,
5 the beautiful -- the culture that is to be Mexican. I want him
6 to be proud. And it has a lot to offer. You know, the music,
7 the dance part, the poetry, all of that, from what I
8 understand, was being taught in the MAS program. So, yeah, it
9 would have been a nice thing if he would have had the
10 opportunity.

11 Q. And why do you think it's important to learn about these
12 things in high school?

13 A. It's important because they get -- they get -- they get
14 it -- for me personally -- let me rephrase that. For me
15 personally, coming out of high school, I wasn't familiar with
16 any ethnic study program. Nothing was available. It wasn't
17 'til I got into college at ASU where I majored in history,
18 taking different courses. It was different history courses, I
19 should say. I learned Mexican-American Studies, I learned
20 Latin American Studies. I studied Roman history. For me that
21 was an awakening of sorts where I was able to come to accept me
22 being Mexican-American.

23 And for Noah, specifically, at an early age it would have
24 been beneficial to him. Because it took me well into my 20s
25 what I wanted to do in life, so this course would have been

1 something special he could have been a part of.

2 MR. FITZMAURICE: Your Honor, I have no more
3 questions.

4 THE COURT: All right. Any cross?

5 MR. ELLMAN: Yes, please, Your Honor.

6 THE COURT: All right. Mr. Ellman.

7 CROSS-EXAMINATION

8 BY MR. ELLMAN:

9 Q. Good afternoon, Mr. González.

10 A. Good afternoon.

11 Q. My name is Rob Ellman. I'll be conducting your
12 cross-examination. Your brother is José González?

13 A. That's correct.

14 Q. And he recruited you to be a plaintiff in this case because
15 he told you that the State of Arizona took away the
16 Mexican-American Studies program, is that right?

17 A. No, he didn't recruit me into it. It was something that I
18 willfully said I would participate in.

19 Q. Did you do it because I think you said that the classes
20 were banned?

21 A. No. I think -- I think the Mexican-American Studies
22 Program is important, and it's important for kids, not only
23 Noah, but for any kid that's willing to learn about their
24 culture, I think it's important for them to be able to do that.
25 And, yeah, the course, it's obviously banned.

1 Q. Why do you think the state banned the Mexican-American
2 Studies Program?

3 A. Why do I think? To be honest with you, I am not quite sure
4 why it was banned. I know -- I know that Tom Horne and
5 Mr. Huppenthal were a part of that -- were two of the people
6 involved in doing away with it.

7 Q. Do you believe that the statute, HB2281, banned
8 Mexican-American Studies in Tucson?

9 A. I do not.

10 Q. Okay. Did you know that the Tucson Unified School District
11 had an opportunity to work with the Arizona Department of
12 Education in order to bring the Mexican-American Studies
13 Program into compliance?

14 A. I'm not familiar with any of that.

15 Q. All right. Did you ever read the Mexican-American Studies
16 curriculum?

17 A. I never did, but just from having conversation with José,
18 those are the type of courses that I learned when I was
19 studying at ASU. So any time a young student can learn and
20 grow as a young human being, I think that's beneficial. And
21 for me it happened later on in life. So, yes.

22 Q. Did you ever observe a Mexican-American Studies class that
23 was occurring in the Tucson Unified School District?

24 A. I did not.

25 Q. Have you read the statute, Arizona Revised Statute Section

1 15-112?

2 A. I don't know. I don't know if I have or not.

3 Q. Do you understand that's the statute that is being
4 challenged in this lawsuit?

5 A. Yes.

6 Q. I'm putting a copy of the statute itself up. Number 18.
7 Mr. González, will you please look at the screen in front of
8 you at this first section of the statute, 15-111, Declaration
9 of Policy. Do you see what I am pointing at?

10 A. I do.

11 Q. Okay. It says: The legislature finds and declares that
12 public school pupils should be taught to treat and value each
13 other as individuals and not be taught to resent or hate other
14 races or classes of people.

15 Do you agree with that?

16 A. I do.

17 Q. And if you look further, at Section 15-112, it says: The
18 school district's charter schools shall not include in their
19 programs of instruction any course or classes that would -- I'm
20 looking at Subsection 2 -- promote resentment toward a race or
21 class of people.

22 Do you agree with that, too?

23 A. Yes.

24 Q. All right. And then finally, Section 4, it prohibits a
25 program of instruction that would advocate ethnic solidarity

1 instead of the treatment of pupils as individuals. Do you
2 agree with that?

3 A. Yes.

4 Q. If you agree with all of these provisions in the statute,
5 why are you challenging the constitutionality of it?

6 A. I am challenging it because my son did not have an
7 opportunity to take part in a MAS program.

8 Q. Do you understand that that's because the Arizona
9 Department of Education found that the Mexican-American Studies
10 classes were violating this statute?

11 A. I don't have an answer for that.

12 Q. But you testified that you believed students in the
13 Mexican-American Studies Program were excelling academically.
14 Do you remember that?

15 A. Yes.

16 Q. Do you remember who told you that?

17 A. Some of the information that I have gotten is not just
18 through my brother José. I have read about it. Obviously it's
19 a big case, so just reading it in the newspaper, I can't
20 pinpoint what article I read, but I know good things were
21 coming out of the program.

22 Q. Did anyone ever tell you that there was a study conducted
23 that disagrees with that conclusion?

24 A. No.

25 MR. FITZMAURICE: Your Honor, objection.

1 THE COURT: On what ground?

2 MR. FITZMAURICE: Misstates whatever study that
3 counsel is relying on.

4 THE COURT: The objection is overruled.

5 BY MR. ELLMAN:

6 Q. If you had known that there was another study disputing the
7 claim that the Mexican-American Studies Program was promoting
8 academic achievement, would you still want your son to attend
9 those Mexican-American Studies classes?

10 A. I apologize. Can you repeat the question.

11 Q. If you had been aware of a study that disputed the claim
12 that the Mexican-American Studies program promoted academic
13 achievement, would you still have wanted your son to attend
14 those Mexican-American Studies classes?

15 A. I guess, yes.

16 Q. You referred to poetry in your direct testimony.

17 A. Yes.

18 Q. Are you aware that the Mexican-American Studies Program
19 offered a Latino literature class?

20 A. I wasn't.

21 Q. Were you in the courtroom when Dr. Curtis Acosta testified?

22 A. I was not.

23 Q. Is a Latino literature course offered as part of a
24 Mexican-American Studies Program something that you would want
25 your son to attend?

1 A. Yeah, of course.

2 Q. What if the Latino literature class included a book written
3 by a murderer, would you still want your son to attend it?

4 MR. FITZMAURICE: Objection. Objection. There's no
5 evidence that that class had any books written by murderers.

6 THE COURT: The objection is overruled.

7 BY MR. ELLMAN:

8 Q. This is a page from the Cambium audit. It's Exhibit 93.
9 It's in evidence. I am going to ask you, Mr. González, to
10 assume that the books set forth on this list were part of the
11 materials taught in the Latino literature course, and then I am
12 going to ask you this question: Have you ever heard of a book
13 called Live from Death Row by Mumia Abu-Jama?

14 A. I have not.

15 Q. Would it surprise you to learn that Mumia Abu-Jama is a
16 black man convicted of murdering a white police officer?

17 A. No.

18 Q. Knowing that now, would you still want your son to take the
19 Latino literature course?

20 A. I wouldn't have a problem with it. You know, the courses
21 that are -- what you're referring to here is a matter of
22 opinion. You can take whatever you want out of a book. It is
23 what it is. I mean, I really don't -- I really don't have a
24 problem with that.

25 Q. Do you know who Che Guevara is?

1 A. Kind of, yes. I've never read a book.

2 Q. Are you aware that the Latino literature course included a
3 speech delivered by Che Guevara in 1965, in which he advocated
4 that socialist countries overthrow the United States?

5 A. I am not aware of that.

6 Q. Okay. If I tell you that that is a correct representation,
7 would you still want your son, Noah, to attend this Latino
8 literature course?

9 A. No, I wouldn't.

10 Q. Mr. González, do you believe that teachers should be
11 respectful when they speak in front of their students about the
12 schools or the people who run the schools?

13 A. Yes.

14 Q. And would you agree that they should be respectful when
15 they speak in front of their students about the people who run
16 the education system?

17 A. Of course.

18 Q. Are you familiar with a rap poem written by a TUSD Latino
19 literature teacher which begins with: It's Q to the Quetzal.
20 I'm going to put it up on the screen and ask you if you
21 recognize it. Have seen this before, sir?

22 A. I have not.

23 Q. I'm going to represent to you that this was written by
24 Dr. Curtis Acosta, and that Dr. Curtis Acosta was a teacher of
25 the Latino literature courses at Tucson Unified High School --

1 Tucson High School, excuse me, now known as Tucson Magnet High
2 School. And I'm going to direct you to the lyrics I'm
3 indicating right now on the screen. Can you see those clearly?

4 A. Yes.

5 Q. Now, in these lines, the author of this poem is referring
6 to Dr. John Pedicone, who is the superintendent of public
7 instruction at TUSD, as a "wanksta" and a "butt kisser." Do
8 you see that?

9 A. Yes.

10 Q. Is that respectful, in your opinion?

11 A. No.

12 Q. In fact, it's highly disrespectful. Wouldn't you agree?

13 A. It's a matter of opinion, I guess.

14 Q. Would you want your sons, either one of them, to take a
15 class from a teacher who would write a poem like that and plan
16 to recite it in front of a large audience that included his own
17 students?

18 MR. FITZMAURICE: Objection, Your Honor. I'm not sure
19 that was exactly Mr. Acosta's plan when he wrote that rap song.
20 Not only did he testify that it was satirical, but it was being
21 delivered to a public audience at an event during the weekend.

22 THE COURT: I think that's more or less what the
23 question asked.

24 MR. FITZMAURICE: I'm just not sure --

25 THE COURT: The objection is overruled.

1 You can answer.

2 THE WITNESS: Could you repeat the question one more
3 time.

4 MR. ELLMAN: I'll ask the reporter to read it back to
5 you.

6 (Reporter read back the previous question.)

7 A. I would not.

8 BY MR. ELLMAN:

9 Q. Knowing what you know now, do you regret becoming a
10 plaintiff in this lawsuit?

11 A. Absolutely not.

12 MR. ELLMAN: All right. Thank you, sir.

13 THE COURT: Redirect?

14 MR. FITZMAURICE: Very briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. FITZMAURICE:

17 Q. Hello again, Mr. González. Do you think the context in
18 which books and teaching materials are used is important to
19 determine whether they're appropriate or not?

20 A. I do.

21 MR. FITZMAURICE: No further questions.

22 THE COURT: Anything else, Mr. Ellman?

23 MR. ELLMAN: Nothing further, Your Honor.

24 THE COURT: All right. Mr. González, thank you very
25 much. You may step down and you are excused.

1 The next witness, please?

2 MR. MARTINEZ: The plaintiffs will be calling Julian
3 Barcelo.

4 **JULIAN BARCELO, WITNESS, SWORN**

5 **DIRECT EXAMINATION**

6 **BY MR. MARTINEZ:**

7 Q. Good afternoon, Mr. Barcelo.

8 A. Good afternoon, Mr. Martinez.

9 Q. Would you please spell your first and last name for the
10 court reporter.

11 A. Sure. Julian, J-u-l-i-a-n, Barcelo, B-a-r-c-e-l-o.

12 Q. Thank you. Mr. Barcelo, where were you born?

13 A. I was born in Sonora, Mexico.

14 Q. So Mexico is your country of origin, is that correct?

15 A. Yes.

16 Q. Did you immigrate to the United States?

17 A. Yes.

18 Q. When?

19 A. 1990.

20 Q. Are you currently a citizen of the United States?

21 A. Yes.

22 Q. Are you married?

23 A. Yes.

24 Q. To?

25 A. Lupita Valencia.

1 Q. Do you and your spouse have children?

2 A. Yes.

3 Q. How many?

4 A. Three.

5 Q. Their gender?

6 A. Boys. They are boys.

7 Q. What are their names?

8 A. Julian, Manuel, and Carlos.

9 Q. And their ages, in that same order?

10 A. Yes. Julian, 18 years old. Manuel, 15 years old. And
11 Carlos, 13 years old.

12 Q. Is your family here today with -- I guess --

13 A. Yes.

14 Q. -- minus one?

15 A. Yes, they are.

16 Q. Who is here?

17 A. My wife, my son, Manuel, and Carlos.

18 Q. And you're here today as a plaintiff, or at least on behalf
19 of your son as a plaintiff in this lawsuit; is that correct?

20 A. Yes.

21 Q. Which son is that?

22 A. Manuel Barcelo.

23 Q. And you indicated that he's your son who's 15?

24 A. I'm sorry, Mr. Martinez?

25 Q. His age?

1 A. He's 15 years old.

2 Q. Where were your children born, Mr. Barcelo?

3 A. Here in Tucson, Arizona.

4 Q. So all of your children are citizens of the United States?

5 A. Yes.

6 Q. And where do you live? I'm not asking you for your
7 address, I'm just asking what you in what community do you
8 live.

9 A. Here in Tucson.

10 Q. Do you live in a particular side of town?

11 A. West side. West side of town.

12 Q. And where your home is located, is that within the
13 boundaries, the attendance boundaries of the Tucson Unified
14 School District?

15 A. Yes. Yeah.

16 Q. Where you live, do you have within the TUSD, Tucson Unified
17 School District, an identified home elementary school?

18 A. Yes.

19 Q. Do you know which school that would be?

20 A. Tolleson Elementary School.

21 Q. All three of your sons now have completed elementary
22 school, is that correct?

23 A. Yes.

24 Q. With respect to any one of them -- or let me ask it to you
25 this way: Did any of your sons attend Tolleson?

1 A. None.

2 Q. Where did they go?

3 A. Davis. We wanted to take advantage of the bilingual
4 program offered by the Davis bilingual school.

5 Q. So Davis, what grade levels are at Davis Elementary?

6 A. K to fifth.

7 Q. And what's the full name for Davis?

8 A. Davis Bilingual Magnet School.

9 Q. And returning for a moment to the reason, why did you
10 choose to not have your sons attend their neighborhood school
11 and attend the magnet school?

12 A. Because we want to take advantage of the bilingual program
13 offered at Davis. We want to keep them, you know, their
14 language, you know, and culture.

15 Q. And with respect to all three of your sons attending Davis,
16 was it for all of them the Davis Bilingual Magnet School?

17 A. Yes.

18 Q. During that entire period?

19 A. My other one, Julian, went to Drachman, K to 2nd, and then
20 he moved to Davis.

21 Q. To Davis?

22 A. Yes.

23 Q. So when he was at Drachman, that was first and second
24 grade?

25 A. Yes.

1 Q. Is that also one of their downtown magnet schools?

2 A. Yes.

3 Q. All three of your sons have matriculated into or passed
4 middle school, is that correct?

5 A. Yes.

6 Q. Which middle school have they attended?

7 A. Roskruge.

8 Q. Is Roskruge your neighborhood middle school?

9 A. Well, it's a continuation of Davis, because they have the
10 bilingual program.

11 Q. Backing up just for a minute, where you live, you have a
12 neighborhood middle school, do you not?

13 A. Yes.

14 Q. But that's not Roskruge?

15 A. It's not Roskruge.

16 Q. With respect to Roskruge Middle School, do any of your
17 children currently attend there?

18 A. Yes.

19 Q. Which one?

20 A. Carlos.

21 Q. Your youngest?

22 A. Yes.

23 Q. And did Manuel attend Roskruge during his middle school
24 years?

25 A. Yes.

1 Q. And what years would be middle school in Tucson, or TUSD?

2 A. I'm sorry?

3 Q. Which years are middle school?

4 A. Six to eight.

5 Q. Sixth, seventh, and eighth?

6 A. Sixth, seventh, and eighth.

7 Q. And you chose to have your sons either currently attending
8 or attend Roskruge specifically why?

9 A. Because, the continuation of the bilingual program.

10 Q. So with respect to your three sons, or at least two of
11 them, the two oldest, you and your wife had made the decision
12 that for the first nine years of their education, if we include
13 kindergarten, they were in bilingual settings.

14 A. Yes.

15 Q. And you're following the same path with your youngest son?

16 A. Yes.

17 Q. Voluntary decision? You did that on your own as parents?

18 A. I'm sorry, Mr. Martinez?

19 Q. Attending Davis and attending Roskruge --

20 A. Yes.

21 Q. -- was something that you and your wife decided on.

22 A. Yes, we decided.

23 Q. So essentially it's a school choice.

24 A. Exactly.

25 Q. And you're exercising that choice.

1 A. Yes.

2 Q. Your oldest son, what high school did he attend?

3 A. High school, Tucson High.

4 Q. I'd like to talk to you for a few minutes about the
5 Mexican-American Studies program.

6 A. Sure.

7 Q. Did you know about the Mexican-American Studies program or
8 department here in the Tucson Unified School District before
9 January of 2012?

10 A. Yes.

11 Q. How did you know about it?

12 A. I knew because I worked -- it happens that I was a teacher
13 of the Mexican-American teachers, I was the teacher of their
14 children. And then because I attended summer institute and
15 then because I heard great things about the Mexican-American
16 teachers.

17 Q. So let's take those one at a time. If I understand the
18 first one, it's that in your classroom as a teacher, you've had
19 the children of parents who were Mexican-American Studies'
20 educators?

21 A. That's correct.

22 Q. And your second reason was -- I want to clarify that -- is
23 that you have attended workshops put on by the Mexican-American
24 Studies Department in the past?

25 A. Yes.

1 Q. How many times?

2 A. I will say more than twice. Two times, three times. I
3 don't know exactly.

4 Q. And when you say -- and I'm not asking you the comments --
5 when you say you heard good things about the Mexican-American
6 Studies' teachers --

7 A. Exactly.

8 Q. -- just what kinds of people were you hearing those
9 comments from?

10 A. From different family members, nieces and nephew, that took
11 the classes with them. You know, they're referring that
12 they're great teachers.

13 Q. Let's talk for a moment about the summer institute or the
14 workshop, the Mexican-American Studies workshop that you
15 attended. Now, this would have been prior to January of 2012,
16 is that correct?

17 A. Yes.

18 Q. How is it that you attended? Were you invited?

19 A. Yeah. It was for the whole community.

20 Q. And were you there in a private citizen capacity or were
21 you there in a professional capacity?

22 A. Both. As a parent and as a teacher.

23 Q. And what do you remember about the workshops, about the
24 activities? What went on in those workshops that you attended?

25 A. Well, those workshops were designed to -- different

1 researchers presented best practices. They presented their
2 research, different researches presented. Poetry, literature.

3 Q. What did you think of the program, the Mexican-American
4 Studies program, as a result of having attended those
5 workshops?

6 A. You know, those -- those summer institutes were very, very
7 helpful. They helped me to enhance my understanding, you know,
8 on culture, diversity. It was presented by different,
9 different teachers from different backgrounds.

10 Q. In those workshops that you attended, did you understand it
11 to be in the context of training you as a teacher about things
12 you could do, pedagogy you should know as a teacher?

13 A. I'm sorry, Mr. Martinez?

14 Q. The workshops that you attended --

15 A. Yes.

16 Q. -- did you understand that you were being provided
17 information, instruction, about pedagogy with respect to you --
18 things you could do in the classroom as a teacher?

19 A. Of course.

20 Q. And curriculum?

21 A. Yes.

22 Q. Did you find that what you were being exposed to in those
23 workshops had a message of hate?

24 A. No.

25 Q. Or divisiveness?

1 A. No.

2 Q. Or of killing people?

3 MR. ELLMAN: I'm going to object to the leading, Your
4 Honor.

5 MR. MARTINEZ: It's not leading. The question
6 doesn't --

7 THE COURT: I'm going to overrule for this one because
8 I think, to be honest, it's fairly -- it's fairly innocuous.
9 Go ahead.

10 BY MR. MARTINEZ:

11 Q. You mentioned a word about the summer institute that you
12 were being exposed to. You used the words "best practices."

13 A. Yes.

14 Q. What do you mean by that, "best practices"? Can you
15 explain that a little bit?

16 A. Yes. Something that -- you know, as a teacher, as a
17 parent, to have a very understanding of the different classes
18 offered by the different -- you know, let me put it -- organize
19 my thinking.

20 You know, you, as a teacher, take the best, the best
21 experiences from different researches, different people who has
22 been from different backgrounds. You know, as a teacher, it
23 helped me to have those different perspectives.

24 Q. Do you consider yourself one of those parents who's really
25 interested in your child's education, your son's education?

1 A. Of course. I have a high --

2 Q. Do you consider, you and your wife, as a married couple,
3 who's very focused on the kind of education that your sons
4 receive?

5 A. Yes, we are.

6 Q. Do you believe that education ought to be challenging?

7 A. Sure.

8 Q. Do you believe that education ought to include
9 controversial subjects?

10 A. Of course.

11 Q. Do you believe that your children should be hidden,
12 closeted away from historical facts that represent when people
13 or a whole race of people were treated very badly?

14 MR. ELLMAN: Objection. Mischaracterizes the record.

15 MR. MARTINEZ: Excuse me. Slavery?

16 THE COURT: Hold it. Hold it. You don't have to talk
17 to him.

18 MR. MARTINEZ: Thank you, Your Honor. I apologize.

19 THE COURT: Your job at this point is to question the
20 witness. I don't think he -- he may be characterizing the
21 record or he may be characterizing history, but the objection
22 is overruled.

23 You may answer it.

24 MR. MARTINEZ: Do you need it repeated?

25 THE WITNESS: Please, Mr. Martinez.

1 BY MR. MARTINEZ:

2 Q. You come from Mexico, correct?

3 A. Yes.

4 Q. You've become a citizen of this country, correct?

5 A. Yes.

6 Q. Are you interested in the history of this country, as
7 you've been here as an immigrant?

8 A. Of course.

9 Q. There are some things in our history that we all point to
10 and are proud of, correct?

11 A. Yes.

12 Q. There's other things where we wish it would have been
13 different, is that fair?

14 A. Mmm-hmm. Yes.

15 Q. The original Constitution didn't even recognize blacks as
16 citizens of the country; it's a fact, right?

17 A. Yes.

18 Q. Most people would probably agree that maybe wasn't our best
19 moment, right?

20 A. Yes.

21 Q. Do you think that your sons should be -- have hidden from
22 them the fact that some people in this country, even today,
23 believe that blacks should be treated as less than citizens?
24 Does that bother you if that's part of the class?

25 MR. ELLMAN: I'm going to object again. This question

1 assumes facts that are simply not in evidence in this case.

2 THE COURT: Well, I am going to sustain the objection
3 because it may be characterized as saying it in too personal of
4 a manner. It's not a hypothetical question, and if it's
5 intended to be based on facts, it's not objective. So I
6 sustain the objection.

7 MR. MARTINEZ: I'll rephrase, Your Honor. Thank you.

8 BY MR. MARTINEZ:

9 Q. Again, as a Mexican immigrant, are you aware of the history
10 between the United States and Mexico between the last hundred,
11 150 years?

12 A. Yes.

13 Q. There's been some disputes along the way?

14 A. Right.

15 Q. Do you believe that it would be wrong in the classes that
16 you and your wife are so interested in, in terms of the
17 educational outcomes of your sons, that they be sheltered away
18 from knowing that history? Do you want them sheltered or do
19 you want them to know about that history, the history between
20 the United States and Mexico?

21 A. Yeah, I want to have my sons to be exposed to all those
22 perspectives and the history.

23 Q. Do you think that's important?

24 A. Of course. It is very important.

25 Q. You're an educator, right?

1 A. Yes.

2 Q. As an educator, does it bother you that you would have the
3 Arizona Department of Education come in and try and pick out a
4 line out of a book and criticize you about it and didn't even
5 see how you taught that material in your class?

6 MR. ELLMAN: Objection. Relevance.

7 THE COURT: Sustained. It's not relevant, how he
8 teaches.

9 BY MR. MARTINEZ:

10 Q. You are an educator, correct?

11 A. Yes.

12 Q. You are a plaintiff?

13 A. Yes.

14 THE COURT: Are you calling him as an expert?

15 MR. MARTINEZ: No, sir. I'm calling him as someone
16 who --

17 THE COURT: How he teaches or what --

18 MR. MARTINEZ: I'll move, Judge.

19 THE COURT: -- or education are not relevant.

20 BY MR. MARTINEZ:

21 Q. Your oldest son, you told us he's 18?

22 A. Yes.

23 Q. He's still in TUSD?

24 A. He graduated this past semester.

25 Q. So he graduated from?

1 A. Tucson High.

2 Q. How many years did he attend Tucson High?

3 A. Four.

4 Q. So he graduated this May of 2017?

5 A. Yes.

6 Q. So if I'm working my way backwards correctly, he was
7 there -- the '16-'17 year was his senior year?

8 A. Yes.

9 Q. The '15-'16 year would have been his junior year?

10 A. Yes.

11 Q. '14-'15 would have been his sophomore year?

12 A. Yes.

13 Q. And his '13-'14 year would have been his freshman year?

14 A. Correct.

15 Q. Do you know, prior to January of 2012, were there
16 Mexican-American Studies classes offered at Tucson High?

17 A. Yes.

18 Q. And you've heard the name here in the courtroom. You're a
19 plaintiff. You've been in this courtroom for three days,
20 right?

21 A. Yes, sir.

22 Q. You've heard the testimony of Dr. Curtis Acosta, have you
23 not?

24 A. Yes.

25 Q. You've heard the testimony about him being a teacher who

1 taught juniors and seniors -- what do you call it? Latino
2 Perspectives or Mexican-American Literature, whatever, you knew
3 he was teaching the MAS, English 3 and 4 at Tucson High, right?

4 A. Yes.

5 Q. Did you know that before your son ever attended Tucson High
6 School?

7 A. Yes.

8 Q. Did you want your son to be in Mr. Acosta's class?

9 A. That was my goal, yes.

10 Q. The Mexican-American Studies class.

11 A. Yes.

12 Q. Did you hear anything, whether it was a question asked by
13 the plaintiffs' attorneys or by the state, that changed your
14 mind about that, about wanting your son or sons in Mr. Acosta's
15 class? Do you still want them in that class?

16 A. Of course.

17 Q. Do you still want Mr. Acosta to teach your sons?

18 A. Of course.

19 Q. Even your youngest?

20 A. I would be very proud.

21 Q. They made reference to the fact that there was -- do you
22 remember -- a Che poster in Mr. Acosta's class. Do you
23 remember that?

24 A. Yes.

25 Q. Does that bother you, that there's a Che poster?

1 A. Not at all.

2 Q. Did it bother you that there's a poster in that class or
3 there was a poster in that classroom of Dr. Martin Luther King?

4 A. No, of course not.

5 Q. Or Bobby and John Kennedy?

6 A. No.

7 Q. Or of Cesar?

8 A. Of course not.

9 Q. Or of Dolores?

10 A. No.

11 Q. Do you think that those are all figures that -- whether you
12 want to agree or disagree as to what they stood --

13 THE COURT: Mr. Martinez, stay in front of the mic.

14 MR. MARTINEZ: I'm sorry, Your Honor.

15 BY MR. MARTINEZ:

16 Q. Do you believe, Mr. Barcelo, whether one agrees or
17 disagrees with any one of those figure on any one point, that
18 they should still be figures who are at least eligible to be
19 studied and that your sons be exposed to?

20 A. Yes, of course.

21 Q. So while your oldest son -- he's Julian V?

22 A. Yes.

23 Q. Congratulations. Did he ever get to take an MAS class at
24 Tucson High?

25 A. No.

1 Q. Why not?

2 A. Because the TUSD Mexican-American Studies were terminated
3 by the state.

4 Q. Your son, Manuel, is currently at Tucson High?

5 A. Yes.

6 Q. Not yet a junior or senior, correct?

7 A. He just finished his freshman year.

8 Q. By the time he reaches his junior year, and then
9 matriculates to his senior year just a couple of years from
10 now, is it your wife's and your desire that there would be
11 those Mexican-American Studies classes there for him?

12 A. Of course.

13 Q. And even if it was Curtis Acosta in that classroom?

14 A. We'll be very proud to have him as a teacher.

15 Q. Do you think it's important that your sons be exposed to
16 authors like Luis Alberto Urrea?

17 A. Very important.

18 Q. Do you think it's important they read books like So Far
19 From God?

20 A. Very important.

21 Q. Do you think it's important that they have an opportunity
22 to tackle and take on The Tempest, a work by Shakespeare?

23 A. Very important.

24 Q. Who do you work for?

25 A. I work for the TUSD.

1 Q. So you're an employee of the Tucson Unified School
2 District?

3 A. Right.

4 Q. How long have you worked for this school district?

5 A. For the past 19 years.

6 Q. And what position?

7 A. I am a teacher.

8 Q. At what level?

9 A. Kindergarten, first grade.

10 Q. And at what school?

11 A. At Davis Bilingual Magnet.

12 Q. Of those 19 years you told us about, how many of them did
13 you spend -- have you been at Davis?

14 A. For the past 11 years.

15 Q. So you've been there a while?

16 A. Yeah.

17 Q. At Davis, while you've been there, do you utilize material
18 that is considered -- well, let's start with -- is there
19 material offered to the students that you utilize in a
20 curriculum that's in Spanish?

21 A. Yes.

22 Q. Is there material in English?

23 A. Well, our program is immersion in Spanish.

24 Q. Let me ask a little bit simpler: It's a bilingual school?

25 A. Yes, it is.

1 Q. Two languages?

2 A. It's called a dual language program.

3 Q. And the dual languages are?

4 A. Spanish and English, or English and Spanish.

5 Q. But you teach in a bilingual school, like Davis?

6 A. Yes.

7 Q. And you're one of the teachers there. Does that mean that
8 your picking one language over the other is more important?

9 MR. ELLMAN: Objection. Relevance.

10 THE COURT: Well, the problem with this line of
11 questioning, you see, it was invited by your examination, so I
12 have to overrule the objection.

13 THE WITNESS: I'm sorry, Mr. Martinez.

14 BY MR. MARTINEZ:

15 Q. Let me ask the question a little bit differently,

16 Mr. Barcelo. Do your sons speak English?

17 A. Yes.

18 Q. Do you think that's important?

19 A. Of course.

20 Q. Do your sons speak Spanish?

21 A. Yes.

22 Q. Do you think that's important?

23 A. Very important.

24 Q. The fact that you believe that it's important that your
25 sons be bilingual in two languages, does that mean that you

1 think one is more important than the other?

2 A. Of course not.

3 Q. Do you think that being bilingual, that you have to pick,
4 you're either an English speaker or Spanish speaker, you can't
5 be both? Let me ask the question a little bit different. I
6 made it too convoluted. Do you think both languages are
7 important?

8 A. Yes.

9 Q. You and your wife, what are your goals for your sons?

10 A. Well, we have high expectations in our sons' education.

11 Q. What does that include?

12 A. To be bilingual. To keep their culture, language,
13 heritage.

14 Q. What about an education? What are your goals for them?
15 What are your aspirations, your hopes, your dreams for them?

16 A. Oh, at least finish college. At least.

17 Q. Do you want them to be integrated into the larger society?

18 A. Of course. Integrated to this beautiful society.

19 Q. Be a part of it?

20 A. Of course.

21 Q. Exhibit 140. You have Exhibit 140, sir, in front of you?
22 It's in that envelope.

23 MS. COOPER: What's the number, please?

24 MR. MARTINEZ: 140.

25 BY MR. MARTINEZ:

1 Q. On that page in a box, it's a different color. Do you see
2 it? Do you see the text there?

3 A. Yes.

4 Q. Do you recognize it?

5 A. Lak'ech.

6 MR. ELLMAN: Can we put this on the screen, please?

7 Your Honor, I can't see the document he's talking about.

8 MR. MARTINEZ: I haven't published because --

9 THE COURT: You can put it right there.

10 MR. MARTINEZ: Display 140.

11 THE COURT: Or you can put it on the computer, either
12 way.

13 MR. MARTINEZ: I was going to lay foundation and move
14 for its admission prior to being published, Judge. But however
15 you want.

16 THE COURT: All right. Now you're asking him about
17 the colored box?

18 MR. MARTINEZ: Yes, sir.

19 BY MR. MARTINEZ:

20 Q. The text in the gold. Do you see that?

21 A. Yes. "In Lak'ech."

22 Q. Do you recognize it?

23 A. Of course.

24 Q. What is it?

25 A. "In Lak'ech" is a poem.

1 Q. Is this an accurate copy of the poem?

2 A. "Tú eres mi otro yo." Yes. Yes.

3 Q. You're familiar with the poem, are you not?

4 A. Of course.

5 Q. Is this accurate?

6 A. Yes.

7 MR. MARTINEZ: Move the admission of Exhibit 140, Your
8 Honor.

9 MR. ELLMAN: We withdraw any objections we had.

10 THE COURT: All right. 140 is admitted without
11 objection.

12 BY MR. MARTINEZ:

13 Q. Poem to the left has the stanza in Spanish, is that
14 correct?

15 A. Yes.

16 Q. And then the exact same text coming right across is that
17 stanza in English.

18 A. Yes.

19 Q. So it starts out, "tú eres mi otro yo," which means -- and
20 if you are reciting the poem, you would say, "you are my other
21 me"?

22 MR. ELLMAN: I am going to object to the relevance
23 again.

24 THE COURT: Well, I don't think it's necessary to go
25 through that poem word for word, so the objection is sustained.

1 BY MR. MARTINEZ:

2 Q. You're familiar with the poem?

3 THE COURT: You already asked him that and he said
4 "yes." Didn't he say "yes" already? He already said he's
5 familiar.

6 MR. MARTINEZ: I'm going to move on.

7 THE COURT: I hope so.

8 BY MR. MARTINEZ:

9 Q. Do you use this poem in your classroom?

10 A. Yes.

11 Q. Why?

12 A. Well, this poem help us to set expectations of the day.
13 You know, this poem help our students -- help me, as a teacher,
14 you know, be responsible, be respectful. And it sets our
15 positive environment of the day. I even use it at home.

16 Q. You've been here in this courtroom, so you know this poem
17 was part of the reasons that the state, including
18 Mr. Huppenthal, cited as a reason under this law that they made
19 reference to this 15-112 as -- that this poem violates --

20 THE COURT: Just a minute. You're arguing your case
21 now. You don't have to do that -- if you have a question, ask
22 him a question. I don't want an argument at this stage. You
23 have an opportunity at the close of the case to make your
24 argument. All right?

25 MR. MARTINEZ: Thank you, Your Honor, but I won't be

1 the one doing closings.

2 THE COURT: Well, you or somebody else on your --

3 MR. MARTINEZ: Team.

4 THE COURT: -- on your big team.

5 MR. MARTINEZ: It will be one of the more learned
6 individuals, not me.

7 BY MR. MARTINEZ:

8 Q. You're here as a plaintiff on behalf of your son. You know
9 that this case challenges A.R.S. 15-112, right?

10 A. Yeah.

11 Q. The state law that was made reference to. Do you remember
12 that was projected a few minutes ago, the notion that classes
13 that promote resentment towards a race or class of people or
14 classes that advocate ethnic solidarity instead of the
15 treatment of peoples as individuals? Do you see those two
16 provisions?

17 A. Yes.

18 Q. You know that that's what this case is about, right?

19 A. Exactly.

20 Q. And you know that this law was the one -- are you aware of
21 the fact that this was the law used, as you said, by the state
22 to take away Mexican-American Studies in TUSD?

23 A. I'm sorry?

24 Q. Are you aware that this is the law --

25 A. Exactly, yes.

1 Q. -- that the State of Arizona used, as you said, for the
2 state to take away Mexican-American Studies?

3 A. Yes, I am aware of that.

4 Q. How do you feel about that?

5 A. As a parent, I don't believe this. I don't agree with
6 this.

7 Q. Excuse me?

8 A. I don't agree with this.

9 Q. Returning just for a minute to Lak'ech. Are you the only
10 teacher in your school that uses it?

11 A. No. We started our Monday assembly with "In Lak'ech."

12 Q. It's school wide?

13 A. Exactly.

14 MR. MARTINEZ: Thank you.

15 THE WITNESS: You're welcome, sir.

16 THE COURT: All right. I guess we're on cross, right?

17 MR. MARTINEZ: Yes, sir.

18 MR. ELLMAN: Yes, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. ELLMAN:

21 Q. Mr. Barcelo, you agreed to be a plaintiff in this case
22 because you were told that the State of Arizona banned
23 Mexican-American Studies, isn't that right?

24 A. Yes.

25 Q. That was the statute that Mr. Martinez just showed you.

1 You believed that that statute bans Mexican-American Studies?

2 A. Will you repeat the question, please.

3 Q. Let me put the statute back on the display. Do you believe
4 that this statute bans Mexican-American Studies?

5 A. Yeah, I mean --

6 Q. Does it actually say that?

7 A. Yes.

8 Q. Where does it say that?

9 THE WITNESS: You know, I don't have the....

10 THE COURT: He doesn't have it on his screen.

11 THE CLERK: I got it. My fault.

12 THE COURT: You've got it on there now?

13 THE CLERK: Yes.

14 THE COURT: Okay.

15 A. According to this paper, it says right there.

16 BY MR. ELLMAN:

17 Q. Can you point out to me where it says that Mexican-American
18 Studies are banned?

19 A. (Reviewing document.)

20 THE COURT: You know, we're wasting a lot of time.

21 Let me say this: I am going to cut this short. One, I don't
22 think in so many words -- I have read the law -- the statute,
23 you know, says Mexican-American Studies can be banned. But
24 some people assert, and this is why we're here, that the law
25 can be used to ban Mexican-American Studies. And that's the

1 purpose of this case. And I don't think it makes much sense or
2 gets us anywhere to ask him if he can find those written
3 statutes, does it?

4 MR. ELLMAN: Well, I am trying to develop the point,
5 Your Honor, that the statute does not by itself ban
6 Mexican-American Studies, but --

7 THE COURT: No, no, no. But the point is that it can
8 be used to ban studies if you apply it a certain way. But
9 whether one is true or one is not, I mean, what difference does
10 it make to what his understanding of that is?

11 MR. ELLMAN: The difference is that he became a
12 plaintiff in the case because he believed that the statute
13 itself banned Mexican American Studies --

14 THE COURT: Right, and by that, you know, it might be
15 his understanding that, well, the statute can be used, and this
16 statute was used to ban the MAS studies. That can be his
17 belief, but what difference does it make? Are you saying it
18 disqualifies him because he read the statute wrongly? To
19 become a plaintiff?

20 MR. ELLMAN: No, Your Honor, I was attempting to make
21 the point that the reason he became a plaintiff was in fact
22 false.

23 THE COURT: Well, what difference does it make? It
24 doesn't disqualify him. It doesn't make this case weaker, does
25 it?

1 MR. ELLMAN: I thought that the factual and legal
2 basis for the complaint were always necessarily relevant, Your
3 Honor. I may be mistaken.

4 THE COURT: Well, you have to look at the complaint.
5 You can't look at his state of mind to see what the complaint
6 says. I mean, you test the pleading at the pleading stage.
7 We're not testing it today.

8 MR. ELLMAN: No, I was relying on his testimony, Your
9 Honor. But I'll move on. I'm prepared to do that.

10 THE COURT: I'm not criticizing you alone. I think a
11 lot of Mr. Martinez's questions about, you know, do you believe
12 this and do you believe that, it doesn't make any difference
13 whether he's standing as a plaintiff, does it? In fact, you
14 object and were about to object to a lot more of Mr. Martinez's
15 questions because it's not relevant, right?

16 MR. ELLMAN: That's true.

17 THE COURT: And you're coming back with the same type
18 of questions probably because you think you have to because he
19 went on with his. In other words, all of this is not relevant
20 to the issues in the case.

21 MR. ELLMAN: All right. Your Honor --

22 THE COURT: In fact, I don't even know why he was
23 called as a witness.

24 MR. ELLMAN: All right. In light of that, Your Honor,
25 I have no more questions of this witness. Thank you.

1 MR. MARTINEZ: No further questions, sir, Mr. Barcelo,
2 Your Honor.

3 THE COURT: Mr. Barcelo, you may step down now. Thank
4 you very much. It's 3:00 o'clock. We'll take a recess. I
5 assume plaintiffs have another witness ready, right?

6 MR. REISS: We do, Your Honor.

7 THE COURT: Okay. We'll get on to the next witness
8 after the recess.

9 (A recess was taken from 2:54 p.m to 3:13 p.m.)

10 THE COURT: Okay. Let's all be seated.

11 Mr. Martinez, please call your next witness.

12 MR. MARTINEZ: Thank you, Your Honor. Sean Arce.

13 **SEAN ARCE, WITNESS, SWORN**

14 THE CLERK: Please speak directory into the
15 microphone. State your full name and the spelling of your last
16 name for the record.

17 THE WITNESS: Yes. Martin Sean Arce, M-a-r-t-i-n,
18 S-e-a-n, A-r-c-e.

19 DIRECT EXAMINATION

20 BY MR. MARTINEZ:

21 Q. Mr. Arce, for everyone's convenience, do me a favor,
22 please: Try and stay close to the microphone so everyone can
23 hear you, including defense counsel, and I'll try and do the
24 same. I tend to wander, too. If you don't hear one of my
25 questions, just let me know.

1 A. Yes.

2 Q. Good afternoon, Mr. Arce.

3 A. Good afternoon.

4 Q. Are you related to Maya Arce?

5 A. Yes.

6 Q. How?

7 A. I'm her father.

8 Q. Are you familiar with the field or the area known as ethnic
9 studies?

10 A. Yes, I am.

11 Q. How?

12 A. Through -- both educationally, my education, as well as
13 professionally.

14 Q. And with respect to your education, are you making
15 reference to your college education?

16 A. My college education, yes.

17 Q. Let's talk about that just for a moment. What part or
18 segments of your college education have addressed or included
19 ethnic studies?

20 A. Yes. I obtained -- I obtained a bachelor's in
21 Mexican-American Studies from the University of Arizona. I
22 also am completing my doctoral work from the University of
23 Arizona with an ethnic studies emphasis.

24 Q. How close are you to completing your Ph.D.?

25 A. I'm ABD, all but dissertation. I'm on the final phases of

1 the writing.

2 Q. So you're almost there?

3 A. Yes.

4 Q. In addition to your college studies, has your professional
5 work included ethnic studies?

6 A. Yes, it has.

7 Q. How? In what ways?

8 A. All of my professional career has been in ethnic studies.

9 I started as a classroom teacher in ethnic studies. I
10 progressed to a resource teacher, then to a curriculum
11 specialist, then to an assistant director, TUSD
12 Mexican-American Studies, and then finally to -- no, and then
13 to director of TUSD Mexican-American Studies, and currently as
14 a Mexican-American Studies, Chicano studies teacher in
15 California.

16 Q. Does your professional work in your ethnic studies include
17 any work, in your teaching capacity, at the college level?

18 A. Yes.

19 Q. Where?

20 A. At Prescott College. And as well as at the University of
21 Arizona.

22 Q. During the years -- you referenced being an employer
23 employed with the Tucson Unified School District. How many
24 years did you work for TUSD?

25 A. Roughly 13 years.

1 Q. And when you made reference to the classroom teacher, to
2 the resource teacher, to curriculum specialist, to assistant
3 director and then director, are those all your TUSD years?

4 A. Yes.

5 Q. Are you currently employed?

6 A. Yes, I am.

7 Q. In what capacity? What's your position?

8 A. I'm a high school teacher of Chicano Studies in the Azusa
9 Unified School District.

10 Q. And where is the Azusa Unified District located?

11 A. It's in Los Angeles County, the San Gabriel Valley, in
12 Southern California.

13 Q. And how long have you worked there?

14 A. I'm sorry? The Azusa Unified School District is located in
15 the San Gabriel Valley, and that is within Los Angeles County.

16 Q. Have your professional experiences, with respect to ethnic
17 studies, included any work as a consultant, as an educational
18 consultant?

19 A. Yes.

20 Q. What kind of work, briefly, as a consultant do you do?

21 A. I assist, provide professional development training mostly
22 for urban educators in school districts throughout the nation,
23 mainly on the West Coast, who are implementing ethnic studies
24 right now.

25 Q. So the total number of years that you have as an ethnic

1 studies educator would be what? What's that number?

2 A. 20 years.

3 Q. In the course of your college studies, were you involved in
4 any research concerning ethnic studies?

5 A. Yes.

6 Q. Tell us a little bit about that, briefly.

7 A. Yes. I was -- I obtained a position at the University of
8 Arizona Bureau of Applied Research in Anthropology conducting
9 research on undergraduate students taking ethnic studies.

10 Q. Does your professional work include any publications
11 concerning ethnic studies?

12 A. Yes.

13 Q. How many publications do you have in that regard?

14 A. I have eight publications.

15 Q. Have your works been published, actually published?

16 A. Yes.

17 Q. What does that include, those eight publications?

18 A. I've completed two chapters in books, in edited books,
19 academic books. I have three co-publications that are peer
20 reviewed, in peer-reviewed journals. I have two
21 co-publications in education journals, and then I have one
22 online publication with UCLA.

23 Q. During what time frame are we speaking of with respect to
24 those publications?

25 A. Roughly 2009 to the current year, 2017.

1 Q. So you continue to write --

2 A. Yes.

3 Q. -- on the topic of ethnic studies?

4 A. Yes.

5 Q. And you continue to seek to have your work published, is
6 that correct?

7 A. Certainly.

8 Q. You mentioned UCLA online. Is that your most recent
9 publication?

10 A. Yes, it is.

11 Q. All right. And just -- I want to know the topic. What did
12 that specific article address?

13 A. It deals with the implementation of ethnic studies,
14 particularly Mexican-American Studies, Chicano studies in high
15 schools.

16 Q. Is it fair to say that that addresses the implementation of
17 Mexican-American Studies curriculum?

18 A. Yes.

19 Q. In addition to your -- to the things you've told us about
20 your professional work, does it also include giving lectures?

21 A. Yes, it does.

22 Q. All right. And, again, what would be the time frame for
23 that?

24 A. The lectures I've given, roughly 2010 to the current year,
25 2017.

1 Q. Do you have a number for how many you've given in that
2 seven-year period?

3 MS. COOPER: Objection, Your Honor. Relevance.

4 THE COURT: Sustained.

5 MR. MARTINEZ: Let's move on.

6 BY MR. MARTINEZ:

7 Q. In addition to the professional experience you've had in
8 the 20-year period that we've been addressing for ethnic
9 studies, would that also include Mexican-American Studies?

10 A. Yes.

11 Q. And would all those same experiences that you told us about
12 with respect to ethnic studies also apply to Mexican-American
13 Studies?

14 A. Certainly.

15 Q. Let's start out on the topic of curriculum. You've told us
16 that your most recent article addresses specifically the
17 implementation of Mexican-American Studies curriculum.

18 THE COURT: Just a minute. Are you trying to qualify
19 him as an expert?

20 MR. MARTINEZ: No, sir.

21 THE COURT: What's the purpose of this questioning
22 then?

23 MR. MARTINEZ: I'll move right to the question, Your
24 Honor.

25 THE COURT: All right.

1 BY MR. MARTINEZ:

2 Q. The first question I'd like to ask you is for your
3 definition. Do you have a simple working definition for what
4 is "curriculum"?

5 MS. COOPER: Objection. Relevance.

6 THE COURT: Objection sustained.

7 I think a layperson's definition, understanding, of
8 curriculum is not relevant, and he's not giving expert
9 testimony. So the objection is sustained.

10 BY MR. MARTINEZ:

11 Q. Is there such a thing as Mexican-American Studies
12 curriculum?

13 THE COURT: That's the same area. Objection
14 sustained. You're asking about curriculum. What difference
15 does his opinion about curriculum make?

16 MR. MARTINEZ: Your Honor, you just heard at length
17 Mr. Huppenthal assert that he and his department took the
18 position --

19 THE COURT: Right.

20 MR. MARTINEZ: -- that Mexican-American Studies did
21 not have a curriculum.

22 THE COURT: Right. But he was testifying in the sense
23 as a person who was a party to the case earlier, the object of
24 the suit. And, besides, there was no objection.

25 He can't testify on curriculum.

1 MR. MARTINEZ: Just, so I am understanding this
2 correctly, we can't address the assertion by Mr. Huppenthal
3 that the Mexican-American Studies Department did not have a
4 curriculum?

5 THE COURT: You can address it through an expert. But
6 I can't testify about it, and neither can you, and neither can
7 he.

8 MR. MARTINEZ: But he was the director, Your Honor. I
9 believe he can --

10 THE COURT: No, but you haven't qualified and tendered
11 him as an expert.

12 MR. MARTINEZ: He need not be qualified as an
13 expert --

14 THE COURT: And I am not going to hear lay testimony
15 on that question. So the objection is sustained.

16 MR. MARTINEZ: Your Honor, if I understand correctly
17 your objection -- I intend to fully comply with it -- and if
18 this matters, I guess we could take up and make a record, an
19 offer of proof, as to what that testimony would have been?

20 THE COURT: You can make an offer of proof at the end
21 of the day. But there's been an objection to his testimony,
22 which I sustained. The order is he can't testify on, you know,
23 the meaning of a curriculum or what's a curriculum, what's not
24 a curriculum, what's good enough to be a curriculum, those
25 kinds of questions, you know, because he is not an expert in

1 the area. And there's no use in having, you know, lay
2 testimony.

3 BY MR. MARTINEZ:

4 Q. As director, you're a director of the Mexican-American
5 Studies Department.

6 A. Yes.

7 Q. In your department, did you develop curriculum specific to
8 the classes that were being offered --

9 THE COURT: He can testify as to his experience as a
10 director.

11 MR. MARTINEZ: Thank you, Your Honor.

12 BY MR. MARTINEZ:

13 Q. Let's focus on you as director, your role as director.
14 Okay?

15 A. Certainly.

16 Q. Prior to that -- we'll do it separately -- I believe you
17 said you were the assistant director.

18 A. Yes.

19 Q. Let's start with just you as director.

20 A. Yes.

21 Q. During what years or what time frame were you the director
22 of the Mexican-American Studies Department in the Tucson
23 Unified School District?

24 A. 2008 to 2012.

25 Q. Six years?

1 A. Four years.

2 Q. Four years. I'm sorry. 2008.

3 A. Yes.

4 Q. You said 2008. Thank you.

5 During that time frame were you familiar with all aspects
6 of the Mexican-American Studies Department?

7 A. Yes.

8 Q. Let's talk specifically about you being director. When you
9 first in 2008 became director, do you recall who was the
10 superintendent for the Tucson Unified School District?

11 A. I do.

12 Q. Who was that?

13 A. Dr. Fagan.

14 Q. And Dr. Fagan -- did Dr. Fagan also have an executive staff
15 that helped her to oversee the Tucson Unified School District?

16 A. Yes.

17 Q. Were you part of the administration during those years for
18 the Tucson Unified School District?

19 A. Yes, I was.

20 Q. What was the focus of your area of responsibility?

21 A. My focus was the administering of the Mexican-American
22 Studies Department in TUSD.

23 Q. Prior to that, becoming director for the department, had
24 you worked in the Mexican -- TUSD's Mexican-American Studies
25 Department?

1 A. Yes, I did.

2 Q. How many years total did you work in that department?

3 A. 13.

4 Q. So you started out -- is that what you told us, you started
5 out at classroom teacher?

6 A. Yes.

7 Q. Let's talk for a minute about just the topic of curriculum.
8 In your department, while you're director, did you or your
9 staff develop curriculum?

10 A. Yes, we did.

11 Q. Would curriculum that was developed include units of
12 instruction?

13 A. Yes, they did.

14 Q. What's a unit of instruction, as you used that term, while
15 director of the Mexican-American Studies Department?

16 A. Yes. A unit of instruction is comprised of anywhere from
17 five to seven curriculum units on a particular subject,
18 particular historical episode, a particular theme in
19 literature, depending upon the subject of the focus of that
20 unit.

21 It entails -- it's assessment driven, it meets the Arizona
22 state standards. In the latter years, it began to meet the
23 core requirements when those came out, the common core
24 requirements. And it had -- yeah, it had multiple assessments,
25 multiple teaching methodologies that could be implemented from

1 that curriculum unit. It also is based upon a grade level. So
2 we had developed curriculum units that were K through 5,
3 elementary school.

4 MS. COOPER: Objection. Non-responsive.

5 THE COURT: Sustained.

6 BY MR. MARTINEZ:

7 Q. Let's take it one step at a time. So again I want you to
8 focus on those curriculum units that were developed in the
9 department, those units. Were you an author?

10 MS. COOPER: Objection. Relevance. This doesn't go
11 to any of the Arlington Heights factors or to the elements of
12 the claim of viewpoint discrimination.

13 THE COURT: For now, without saying you can't object
14 later, I am going to overrule the objection. You can answer.

15 BY MR. MARTINEZ:

16 Q. Were you an author of those curriculum units?

17 A. Yes.

18 Q. Or one of the authors?

19 A. Yes, I was.

20 Q. Were there others?

21 A. Yes, there were.

22 Q. Without naming names at this point, just tell us, you know,
23 who would you utilize to help write or develop curriculum for
24 the Mexican-American Studies Department?

25 A. We'd utilize teachers on our staff that were under our

1 supervision and evaluation. We'd utilize teachers at specific
2 school sites, elementary, middle, high school sites that were
3 teaching and implementing Mexican-American Studies.

4 Q. In your department during this period of time, those four
5 years when you were a director, did your department maintain
6 those curriculum units?

7 A. Yes, we did.

8 Q. How?

9 A. We maintained electronic copies that were kept on the
10 shared drive that the department had and that the district had
11 access to and that the district maintained. We compiled
12 curriculum units on -- hard copies of curriculum units as well,
13 and we kept them in our district offices.

14 Q. With respect to those curriculum units that were written in
15 the department -- again, we're limiting ourselves to the years
16 that we identified of you being director. What was your
17 position with respect to transparency concerning those units?

18 MS. COOPER: Objection. Relevance.

19 THE COURT: Hold it. Hold it. Objection for what?

20 MS. COOPER: Relevance, Your Honor.

21 THE COURT: Sustained.

22 MR. MARTINEZ: Your Honor, they say we didn't provide
23 them, that we are hiding them, and that we didn't give them to
24 Cambium, and so they go on at length in questioning and getting
25 Mr. Huppenthal to say a number of things that are allegations

1 against us. I think we are within every right to address and
2 meet this testimony that it's not only going to come from
3 Huppenthal, it's going to come from every one of their
4 witnesses that they call. And so it goes to the core issue.

5 They accuse us of trying to hide the ball, that we had
6 something to hide. We had nothing to hide.

7 THE COURT: No, but what he did on this question is
8 not relevant. Objection continues to be sustained.

9 BY MR. MARTINEZ:

10 Q. On the M drive, in terms of it at least at its peak, how
11 many curriculum units did you have on that M drive, what would
12 be your number?

13 A. Around 200.

14 Q. Let's talk for a moment about -- I'm going to focus on high
15 schools. While you're a director, are there any MAS classes in
16 high schools?

17 A. Yes.

18 MR. MARTINEZ: Project the TUSD high school map,
19 please. This is being projected, Your Honor, for illustrative
20 purposes. I provided a copy to counsel. I don't believe
21 there's any objection to the high school one.

22 MS. COOPER: For illustrative purposes, no.

23 BY MR. MARTINEZ:

24 Q. Do you see the screen in front of you?

25 A. Yes, I do.

1 Q. All right. Does that show the boundaries of the Tucson
2 Unified School District within the Tucson community?

3 A. Yes, it does.

4 Q. Do you see the schools that are highlighted in yellow and
5 then the name of the school is there in red?

6 A. Yes.

7 Q. How many are there?

8 A. Six.

9 Q. How many high schools are highlighted?

10 A. There are six high schools.

11 Q. No, how many high schools are highlighted? Did you say
12 six?

13 A. There are six, yes.

14 Q. Okay. I need a hearing aid. What's the significance, or
15 what's showing here?

16 A. This demonstrates the high schools that had Mexican studies
17 courses in our district. This is six out of the 10 high
18 schools that Tucson Unified District has.

19 Q. Would these be the high schools where Mexican-American
20 Studies high school classes were taught while you were
21 director?

22 A. Yes.

23 Q. All right. How were these classes staffed?

24 A. These classes were staffed both by Mexican-American Studies
25 staff, that is staff who were paid and evaluated under the

1 Mexican-American Studies Department. Then we had folks,
2 teachers at those sites who were assigned to the sites, who
3 were paid through the particular sites and evaluated by the
4 site administrator, being the principal at those high school
5 sites.

6 Q. Were you familiar with, for example, what Mexican-American
7 Studies classes during your time were offered at Pueblo High
8 School?

9 A. Yes.

10 Q. Who staffed your classes, your Mexican-American Studies
11 classes, at Pueblo High School?

12 MS. COOPER: Objection. Relevance.

13 THE COURT: Sustained.

14 BY MR. MARTINEZ:

15 Q. What classes did you offer there -- Mexican-American
16 Studies classes did you offer at Pueblo High School?

17 A. We offered our American History class, American History
18 Chicano Perspectives. We offered our Latino Literature, our
19 Chicano Latino Literature, both 11th and 12th grade levels.
20 And then we offered our U.S. Government Social Justice
21 Education Project at Pueblo High School, as well as our Chicano
22 art classes at Pueblo High School.

23 Q. Was that one instructor or more than one?

24 A. I'm sorry, can you repeat?

25 Q. Was that one teacher, classroom teacher, or more than one?

1 A. That was more than one.

2 MS. COOPER: Objection. Relevance.

3 THE COURT: The answer may stand.

4 BY MR. MARTINEZ:

5 Q. Did you have Chicano art classroom teachers at other high
6 schools?

7 A. No, we did not.

8 Q. With respect to the -- this was three teachers, is that
9 correct?

10 A. Yes.

11 Q. With respect to these three teachers, were they part of the
12 Mexican-American Studies Department staff or were they Pueblo
13 High School staff?

14 A. They were Pueblo High School staff.

15 MS. COOPER: Objection. Relevance.

16 THE COURT: The objection is sustained. You don't
17 have to answer that question. It's not going to get us
18 anywhere.

19 MR. MARTINEZ: Your Honor, may I address?

20 THE COURT: No.

21 BY MR. MARTINEZ:

22 Q. Did these teachers report to you?

23 A. No.

24 Q. Did you control their choice of lesson plans?

25 A. I did not.

1 MS. COOPER: Objection. Relevance.

2 THE COURT: Just a minute. Sustained. It doesn't
3 matter.

4 MR. MARTINEZ: Your Honor.

5 THE COURT: It's sustained. It's sustained. Move on
6 to your next question or excuse the witness.

7 MR. MARTINEZ: All right.

8 BY MR. MARTINEZ:

9 Q. Were you familiar, as director, and where you have
10 classes -- let's finish going through the high schools first.
11 Cholla, is that your staff teaching it or high school staff or
12 something else?

13 A. That was a combination.

14 MS. COOPER: Objection. Relevance.

15 THE COURT: Just a minute. What?

16 MS. COOPER: He's asking about the staff at Cholla,
17 and I am objecting as to relevance again, because it appears to
18 be the same question.

19 THE COURT: It's sustained.

20 MR. MARTINEZ: It's not the same question, Your Honor.

21 THE COURT: Well, it's the same question, it's a
22 different school. Sustained. This is all very, very
23 marginally relevant.

24 MR. MARTINEZ: Well, Mr. Huppenthal addressed at
25 length that we were teaching indoctrination and other things in

1 the classroom, and I believe we have -- and that somehow that
2 that was driven by the Mexican-American Studies Department.
3 And I believe we have every right to address kind of that kind
4 of salacious labeling by the state to try and say that we're an
5 unpatriotic, un-American curriculum, as opposed to being one
6 that was addressing the most important curriculum issue of the
7 time, which is how do we close the achievement gap for
8 Mexican-American students.

9 THE COURT: All right. That's a nice speech, but the
10 question hardly goes to that. The objection is still
11 sustained.

12 BY MR. MARTINEZ:

13 Q. What was the purpose of the Mexican-American Studies
14 Department while you're director?

15 A. The purpose was to close the achievement gap.

16 Q. And what was the achievement gap, Mr. Arce?

17 A. The achievement gap has many indicators. One is academic
18 achievement, performance on standardized tests, grades, other
19 indicators such as drop-out or push-out rates, discipline
20 rates, and the like, between traditionally underserved
21 populations, such as Mexican-Americans and white students.

22 Q. Are you familiar with the student make-up of Pueblo High
23 School?

24 A. Yes.

25 Q. On race?

1 A. Yes.

2 Q. Were you familiar with the racial make-up of Pueblo High
3 School?

4 A. Yes.

5 Q. During those years, those four years we're talking about,
6 2008 to 2012, what was the percentage of Mexican-American
7 students in that student body?

8 A. Around 90 percent.

9 Q. Are you familiar with that number for Cholla?

10 A. Yes.

11 Q. What was it?

12 A. It's around 80 percent.

13 Q. What about Tucson High, are you familiar with that one,
14 that site?

15 A. Yes, I am.

16 Q. What was the number there?

17 A. About 70 percent.

18 Q. During the period of time that you worked in the
19 Mexican-American Studies Department, let's focus for a minute
20 on Pueblo High School. Was there an achievement gap problem
21 there?

22 A. Yes, there was.

23 Q. Did it include the factors such as drop-out rates?

24 A. It certainly did.

25 MS. COOPER: Objection.

1 THE COURT: Just a minute.

2 MS. COOPER: He appears to be testifying as an expert
3 again.

4 MR. MARTINEZ: How can that be an expert? Who drops
5 out is a matter of fact, Your Honor.

6 THE COURT: Who dropped out?

7 MR. MARTINEZ: The drop-out rates. This is the
8 director of the program. He's not --

9 THE COURT: Just a minute. Where do you get your
10 information on the drop-out rate, Mr. Arce?

11 THE WITNESS: I got it from our district website, and
12 I worked with our district statistician.

13 THE COURT: There you go. Objection is sustained.

14 MR. MARTINEZ: Because he worked with the
15 statistician?

16 THE COURT: Because he got it from the website.

17 MR. MARTINEZ: How would that make it --

18 THE COURT: It doesn't make him an expert if he got
19 the information from the website. Now, move on. Objection
20 sustained.

21 BY MR. MARTINEZ:

22 Q. Did you believe there was a drop-out problem at Pueblo?

23 THE COURT: That doesn't matter what he believes.

24 BY MR. MARTINEZ:

25 Q. Did you consider, with respect to the achievement gap, that

1 attendance rates for students was a factor to look at?

2 A. Yes, I did.

3 Q. Did you consider looking at the rates of failing grades
4 that students had obtained?

5 A. Yes, I did.

6 Q. What about with respect to grade advancement rates, was
7 that a factor you looked at?

8 A. Most definitely.

9 Q. What about discipline rates? Did you consider that and
10 look at that?

11 A. Yes, I did.

12 Q. Did it also include looking at graduation rates?

13 A. Certainly.

14 Q. What about matriculation rates to college?

15 A. Yes.

16 Q. When you look at those factors and seeing the numbers you
17 were seeing, what kind of picture did that paint for
18 Mexican-American student achievement at Pueblo?

19 MS. COOPER: Objection. He's not qualified as an
20 expert.

21 MR. MARTINEZ: You don't have to be an expert, Your
22 Honor, to know when we have a school that is failing its
23 student population and --

24 THE COURT: Well, you're asking for his opinion. I
25 don't think his opinion as a non-expert is of much relevance,

1 so the objection is sustained. It doesn't matter what kind of
2 picture it paints to him or --

3 MR. MARTINEZ: I think it does. He's the director,
4 Your Honor. Because I think where you're going to commit your
5 resources for a program that --

6 THE COURT: Mr. Martinez, I don't know why you keep on
7 arguing. I made a ruling. It would be more productive if you
8 moved on or called another witness.

9 BY MR. MARTINEZ:

10 Q. What's AIMS?

11 A. AIMS is the Arizona Instrument to Measure Standards. It
12 served as the graduation -- the basic skills graduation test in
13 the State of Arizona.

14 Q. And during the years you were director, was the AIMS
15 testing in place?

16 A. Yes, it was.

17 Q. So in high school, what was the -- how did that work? When
18 would you take an AIMS test and --

19 A. Students begin their freshman year, begin to take the AIMS
20 test, and there are three subject areas: reading, writing and
21 mathematics, and they would have to achieve and meet a given
22 score in order to graduate -- in order to pass that test. And
23 if they passed all three sections of the test, they would
24 graduate from high school.

25 Q. And was there a regular scheduled interval or school year

1 for a student when they would take that test, at least for the
2 first time?

3 A. Yes, there was.

4 Q. When was that?

5 A. It was in the spring.

6 Q. And generally what grade were you in when you first took
7 the test?

8 A. Ninth grade.

9 Q. In the classes that you offered as a department, was the
10 pass rate something that you took into consideration of AIMS?

11 MS. COOPER: Objection. Vague.

12 THE COURT: Do you understand the question, Mr. Arce?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Go ahead and answer.

15 A. Yes. Passing rates of students in our classes were taken
16 into consideration.

17 BY MR. MARTINEZ:

18 Q. Let me ask you the question before they were in your class.
19 As you were designing your classes, were AIMS passing rates at
20 the schools you were at something you took into consideration?

21 A. Yes.

22 Q. In what way?

23 A. We would see -- we would allocate our resources at those
24 particular sites, the sites that we see here on this exhibit,
25 given the low passing rates of the AIMS test, particularly with

1 Mexican-American students.

2 Q. And what were you specifically looking at?

3 MS. COOPER: Objection. Relevance.

4 THE COURT: Overruled.

5 A. We were looking at the passing rates. We were looking at
6 the -- and the clear disparities between Mexican-American
7 Latino youth and their peers and their white peers and their
8 Asian peers. And we would identify the disparity -- the
9 disproportionality rate, the underachievement for
10 Mexican-American students on this AIMS test.

11 Q. A simple way of saying that is that Mexican-Americans were
12 failing AIMS at greater rates than other racial groups?

13 A. Yes.

14 Q. And as you designed your classes that you were offering in
15 Mexican-American Studies, was that something that you intended
16 to address?

17 A. Yes.

18 Q. In what way?

19 A. Through the implementation of our curriculum, through the
20 implementation of our pedagogy.

21 Q. What does "pedagogy" mean?

22 A. The way --

23 MS. COOPER: Objection. He's not an expert.

24 THE COURT: You can answer. Finish your answer.

25 A. Pedagogy is the way one teaches, the methods they employ

1 when teaching.

2 BY MR. MARTINEZ:

3 Q. Let's just stick with that one item, AIMS testing. So
4 while you're a director, every year you're offering classes in
5 these six high schools, correct, Mexican-American Studies
6 classes?

7 A. Yes.

8 Q. And one of the factors you're taking into consideration is
9 the disproportionate failure rates with respect to
10 Mexican-American students?

11 A. Yes.

12 Q. Or simply put, the inability to get through that test,
13 right? Be successful in passing it?

14 A. That's correct.

15 Q. And as I understand it, you're saying that part of what
16 we're doing is designing a curriculum that's going to increase
17 their success rates or pass rates with respect to AIMS, is that
18 correct?

19 MS. COOPER: Objection. Leading.

20 THE COURT: Overruled. Finish your answer.

21 A. Yeah, that was the primary purpose of our curriculum.

22 BY MR. MARTINEZ:

23 Q. All right. So let's take for a minute one of the class
24 areas you identified. You said that one of the classes
25 Mexican-American Studies offered was English, Mexican-American

1 Perspectives or Latino Perspectives, junior year, senior year,
2 is that correct?

3 A. It was Latino -- Chicano Latino literature, English.

4 Q. There's a junior-level class and there's a senior-year
5 level class?

6 A. Yes, both 11th and 12th grade.

7 Q. Okay. And by the way, the four years we're talking about,
8 was Dr. Acosta one of your classroom teachers?

9 A. Yes, he was.

10 Q. Was he on your staff?

11 A. No, he was not.

12 Q. Whose staff was he on?

13 A. Tucson High School staff.

14 Q. All right. So with respect to that, who did he report to?
15 Did he report to you?

16 MS. COOPER: Objection. Irrelevant.

17 THE COURT: Sustained.

18 BY MR. MARTINEZ:

19 Q. As the director of the Mexican-American Studies Department,
20 could you tell Mr. Acosta, Dr. Acosta, in either class, the
21 junior class or the senior class, what curriculum units he had
22 to teach?

23 A. No, I could not.

24 MS. COOPER: Objection. Irrelevant.

25 THE COURT: Just a minute. Objection sustained. It

1 doesn't matter what he could tell Dr. Acosta.

2 MR. MARTINEZ: Well, if we're being held accountable,
3 we're being accused, Your Honor, of having taught, for example,
4 indoctrination, don't we --

5 THE COURT: We're not talking about that. You're
6 talking about whether he could hold Dr. Acosta accountable.
7 Objection sustained. That's really quite far afield. If he
8 could, it wouldn't make any difference.

9 BY MR. MARTINEZ:

10 Q. Let's talk about that topic for a moment, indoctrination.
11 Are you aware of that allegation against Mexican-American
12 Studies?

13 A. Yes, I am.

14 Q. Are you aware of that allegation from Tom Horne?

15 A. Yes, I am.

16 Q. How many times, to your knowledge, did Tom Horne ever visit
17 a Mexican-American Studies high school classroom?

18 A. He's never visited a Mexican-American Studies classroom.

19 Q. Did he visit Mr. Acosta's room?

20 A. No.

21 Q. I'm sorry. You're right about Mr. Horne. What about
22 Mr. Huppenthal?

23 A. He visited one time.

24 Q. Were you present?

25 A. Yes, I was.

1 Q. Was that a day scheduled for classroom instruction?

2 A. No, it was not.

3 Q. In your four years, these six schools, how many times did
4 you visit to observe the activities in a Mexican-American
5 Studies classroom?

6 A. I was at the school sites every day, not just these high
7 school sites, but our middle school sites. Limit it to the
8 high school?

9 Q. Yeah, just limit it to the high school.

10 A. I would be at least at one of the high schools observing
11 each day of the week.

12 Q. And in the span of those four years, what would be your
13 number? How many classes did you observe in Mexican-American
14 Studies being taught at a high school level?

15 A. In the hundreds.

16 MS. COOPER: Objection. Relevance. The number of
17 classes that Mr. Arce observed is not relevant. The program
18 was terminated. That decision is stare decisis.

19 MR. MARTINEZ: It's -- its' --

20 MS. COOPER: Please don't point at me, sir.

21 MR. MARTINEZ: It's ridiculous, Your Honor. They go
22 once and they accuse us of saying --

23 THE COURT: I don't know why counsel are arguing with
24 each other. The objection is sustained. It really doesn't
25 make any difference how many times he visited, because he is

1 not being called upon to testify about his visits. It doesn't
2 matter how many times he visited. It could be two, it could be
3 2,000.

4 BY MR. MARTINEZ:

5 Q. On any of your visits, whatever the number was, did you
6 ever see on a single occasion a teacher responsible for
7 teaching a Mexican-American Studies curriculum engaging in
8 teaching indoctrination to the students in that classroom?

9 A. Never.

10 Q. Did you ever see them, any teacher in the Mexican-American
11 Studies on a single occasion teaching students that they should
12 view themselves or consider themselves to be the victims of
13 oppression?

14 A. None whatsoever.

15 MS. COOPER: Objection. Relevance.

16 THE COURT: Objection on relevance. The objection is
17 sustained. It really doesn't matter what he observed. You
18 see, you're trying to attack, really, the integrity of the
19 underlying finding under 15-112 and the findings made by the
20 superintendent and the ALJ as to the basis for the decision.
21 That's all, you know, decided.

22 If anybody wanted to question that, you could have
23 questioned it by, you know, asking the Superior Court to review
24 the ALJ's decision, but the TUSD didn't do that.

25 The question here is not whether or not that decision

1 is correct or was wrong, was based on good evidence or was
2 twisted, the question is what was the state of mind of the
3 superintendent at the time he enforced the decision? It has
4 nothing to do with how many times he went to see the classroom
5 or not.

6 All of this is just, you know, speaking, say,
7 liberally in your favor. It's barely relevant. It has nothing
8 to do with the issues.

9 MR. MARTINEZ: Your Honor, the only reason --

10 THE COURT: I don't care what -- you know, it doesn't
11 matter to me, it's not going to affect my decision whether or
12 not the superintendent's decision is well-founded in fact or
13 not, it doesn't matter. And you're really trying to undercut
14 the basis of the superintendent's decision. I don't care
15 whether it's run by fact. That's water under the bridge.

16 MR. MARTINEZ: Your Honor, if I could just have one
17 moment, please.

18 THE COURT: I'll give you 30 seconds.

19 MR. MARTINEZ: Thank you, Your Honor. I believe that
20 this goes to pretext, Your Honor. The state alleges that they
21 had a legitimate non-discriminatory reason for acting in the
22 manner that they did and taking the adverse actions they did.

23 So whether that's on race, partisanship or political
24 basis, I believe that we have the opportunity to demonstrate to
25 the Court that the proffered reason is pretextual, and that

1 this testimony goes to the issue of pretext as to each of
2 those, Your Honor, and that's where I believe it is relevant.
3 So I believe that we should at least have some opportunity to
4 address --

5 THE COURT: You've had plenty already. Do you have a
6 response?

7 MS. COOPER: Pretext is the state of mind of
8 defendants as well, and this evidence, as you pointed out,
9 doesn't go to defendants' state of mind.

10 THE COURT: I think your pretext is, you know, maybe
11 it was pretextual to ban the program on the basis that it was.
12 But I think Ms. Cooper is correct, it doesn't go to the pretext
13 of the state of mind.

14 MR. MARTINEZ: I believe it does, Your Honor.

15 THE COURT: The state of mind doesn't matter on the
16 program banning under the ALJ decision. So the objection
17 continues to be sustained. This is just barely, barely
18 relevant. All right. And you've had plenty of opportunity to
19 go into it already anyway.

20 BY MR. MARTINEZ:

21 Q. Were you aware, Mr. Arce, as director, of the allegations
22 by the state, whether it be Mr. Horne or Mr. Huppenthal, that
23 the Mexican-American Studies Department was a curriculum that
24 was taught in a manner to create resentment?

25 A. Yes.

1 Q. Racial divide?

2 A. Yes.

3 Q. Divisiveness?

4 A. Yes.

5 Q. Discord between racial groups?

6 A. Indeed, yes.

7 Q. In fact, one of the provisions in the statute, 15-112, I
8 mean, you're aware of Mr. Horne's finding of a violation?

9 A. Yes, I am.

10 Q. You're aware of the fact that -- are you aware of the fact
11 that that finding was issued even before the statute was in
12 effect?

13 A. Yes, I am.

14 Q. I believe that the date of that is December the 30th of
15 2010.

16 A. That's correct, yes.

17 Q. In December, you're working as director in that year?

18 A. Yes, I was.

19 Q. Would December the 30th of 2010 be a period when TUSD was
20 in session?

21 A. No, it was not.

22 Q. What about the 31st?

23 A. I don't believe so, no.

24 Q. January 1, is that a holiday or workday in TUSD?

25 A. It's a holiday.

1 Q. And the 2nd of January?

2 A. I don't believe we were in session at the time.

3 Q. So even if we go all the way to the 2nd or the 3rd, are
4 there any -- from the time that that statute took effect to the
5 time that we have the Horne finding, whether it's the date he
6 puts on it or his press conference about it, is there even an
7 MAS class being taught?

8 A. No, there wasn't.

9 Q. Then we have Mr. Huppenthal's press release that says he
10 adopts and endorses the Horne finding. Were you familiar with
11 that?

12 A. Yes, I was.

13 Q. Were these actions by the state through the superintendent
14 of education matters that you were paying close attention to?

15 A. Most definitely.

16 Q. Did you either see live or the recording of the reporting
17 on Mr. Huppenthal's --

18 A. Yes, I did.

19 Q. -- press conference adopting, or his press release adopting
20 the Horne finding?

21 A. I did witness that, yes.

22 Q. One of the bases that's asserted is this issue of the
23 allegation of resentment, right?

24 A. Yes, that's correct.

25 Q. Whether we call it ethnic studies or Mexican-American

1 Studies, in this area of study, is it unusual to deal with
2 difficult or controversial topics?

3 A. Yes. We often come across that in our curriculum.

4 Q. I'm asking you is it unusual or is it pretty common that
5 you do that?

6 A. It's common.

7 Q. Understanding that you're going to be dealing with
8 difficult or controversial topics -- with high school students,
9 right?

10 A. Yes.

11 Q. Is that something you take account of, the age of the
12 student?

13 A. Most definitely.

14 MS. COOPER: Objection. Relevance.

15 THE COURT: Sustained.

16 BY MR. MARTINEZ:

17 Q. Do you teach controversial or difficult topics to high
18 school students with the intent, in the Mexican-American
19 Studies Department, of creating resentment?

20 A. No.

21 MS. COOPER: Objection. Relevance.

22 THE COURT: Overruled. The answer may stand.

23 BY MR. MARTINEZ:

24 Q. Did you, as the director who had the opportunity to observe
25 teaching of these classes, see or observe that your classes

1 were teaching or promoting resentment within students?

2 MS. COOPER: Objection. Relevance.

3 THE COURT: Sustained.

4 BY MR. MARTINEZ:

5 Q. Is there a process as an educator, steps that you utilize
6 with respect to how you teach a difficult or a controversial
7 topic?

8 A. Yes, there is.

9 MS. COOPER: Objection. Relevance.

10 THE COURT: Sustained. I am not interested in his
11 pedagogy.

12 MR. MARTINEZ: Okay

13 BY MR. MARTINEZ:

14 Q. While you were the director of Mexican-American Studies at
15 TUSD, are you part of the department or a larger department?

16 A. Can you repeat that?

17 Q. Sure. While you're the director of the Mexican-American
18 Studies program, are you part of a larger department?

19 A. Yes, we were.

20 Q. Okay. Did that department, the larger unit, include
21 similar programs, but they were aimed or designed for other
22 groups?

23 A. Yes, they did.

24 Q. So we have Mexican-American Studies program or department.
25 Who else during this time frame?

1 A. We have the African-American Studies Department. We have
2 the Native American Studies Department, and we have the
3 Pan-Asian Studies Department.

4 Q. Pan-Asian would have been -- were you familiar with all of
5 those programs?

6 A. Yes, I was.

7 Q. Let's talk about Mexican-American Studies first. What was
8 the scope of services that you were providing in your
9 department?

10 A. Yes, the primary focus of our department was direct
11 classroom instruction. That was the primary focus, but we did
12 do some student support services, we did some student advocacy,
13 we did some mediation with students. We would put on
14 professional development throughout the year to implement
15 Mexican-American Studies or culture responsive curriculum and
16 pedagogy.

17 We would put on a yearly professional development at -- in
18 which we collaborated with the University of Arizona College of
19 Education, the Institute for Transformative Education, which
20 started in 1999, and we ran it all the way until 2010. And at
21 that summer institute we would have teachers mainly from the
22 district, but teachers also throughout the country converged.

23 We'd provide professional development. We would give out
24 curriculum units, probably 10 to 15 curriculum units that we
25 would hand out to each participant that the Mexican-American

1 Studies Department and teachers who taught Mexican-American
2 Studies would develop and present their curriculum units at
3 this conference.

4 Q. So in Mexican-American Studies, you made reference to
5 like -- one of the things you said, we do advocacy on behalf,
6 if I understood correctly, students?

7 MS. COOPER: Pardon me. I didn't hear you.

8 MR. MARTINEZ: Sure. I'll be happy to repeat it.

9 BY MR. MARTINEZ:

10 Q. I understood you to say that one of the things you did in
11 the Mexican-American Studies program during the period you were
12 director is to engage in advocacy for students?

13 A. That is correct.

14 Q. Briefly explain what you mean by that.

15 A. Student advocacy would consist of, if students were having
16 trouble in the classroom, we'd try to talk to the students, we
17 would talk to the teachers. We would facilitate meetings with
18 students and teachers or students and parents and teachers or
19 students and parents and site administrators and try to address
20 the issues at hand, some of the problems that the students were
21 facing, and try to come up with solutions in a collaborative
22 fashion with the parents, the students, and the teachers.

23 Q. What you just told us about the advocacy, would that
24 include -- because you also mentioned the word "mediation."
25 Was that essentially the same thing or could be a component of

1 or something different?

2 MS. COOPER: Objection. Relevance. These services
3 are not at issue.

4 THE COURT: Mr. Martinez, what is the purpose of the
5 answer of the evidence you've elicited to this line of
6 questioning? What does it help you prove? What is it relevant
7 to?

8 MR. MARTINEZ: I believe that it goes back to the
9 issue of pretext, Your Honor. The State of Arizona didn't even
10 know what the program did --

11 THE COURT: So it shows pretext because what?

12 MR. MARTINEZ: Because --

13 THE COURT: Because they didn't know what they were
14 doing?

15 MR. MARTINEZ: That's what they say, that we didn't
16 know what we were doing.

17 THE COURT: No, no, no, no. You're saying because the
18 State of Arizona didn't know all of this was going on, so by
19 inference you're saying the State of Arizona didn't know what
20 it was doing.

21 MR. MARTINEZ: No. What I'm saying, Your Honor --

22 THE COURT: What are you trying to prove?

23 MR. MARTINEZ: Is that when you have --

24 THE COURT: How does it prove pretext?

25 MR. MARTINEZ: It shows pretext because when you have

1 the kind of color blind obsession of a John Huppenthal who says
2 I merely see the book of the Pedagogy of the Oppressed or I see
3 a Che poster, that then they get so blinded by their own biases
4 that they're unwilling to look at the full scope and depth of
5 the program or what it's addressing or the efficacy of the
6 program. And it's in that context, Your Honor, that I believe
7 it goes to pretext. Because what you have here is a man, two
8 men --

9 THE COURT: I understand your argument. Let me hear
10 if Ms. Cooper has a different understanding of relevancy here.

11 MS. COOPER: Whether or not the Department of
12 Education was aware that these kinds of services were being
13 offered by TUSD is irrelevant because the department took no
14 action with respect to them. They don't -- there's nothing
15 about these kinds of services that are addressed by the
16 statute. There was no evidence with respect to such services
17 at the administrative hearing in this matter.

18 THE COURT: You see, I don't think whether or not -- I
19 mean, the primary question at issue now is really the animus,
20 the state of mind of the department. Well, we're past
21 legislation now. We're talking about implementation of the
22 statute. So the state of mind of state officials, primarily
23 the superintendent, in their enforcing the statute.

24 By state of mind, I mean, the allegation is it was
25 done with a racial animus. That's the way the Ninth Circuit

1 saw it, and that's what the Ninth Circuit remanded for trial.

2 Now, to prove whether or not the officials acted with
3 animus I think is not the same as a pretext. I mean, you have
4 to show animus, that they had this state of mind. A pretext
5 though comes in a different play. We have usually in the type
6 of -- like the McDonnell-Douglas analysis, which I know you're
7 familiar, right?

8 MR. MARTINEZ: Yes, sir.

9 THE COURT: You show a violation, you show a defense,
10 and then you show the defense is pretextual. We're not in that
11 kind of analysis. The only question now is did the state
12 officials, the superintendent, act with racial animus. I don't
13 think the pretext comes in at all. So I think all of this is
14 irrelevant. So I'm going to cut you off on any of this
15 questioning from now on. That's my ruling. All right.

16 MR. MARTINEZ: Fine.

17 THE COURT: I'm not going to even hear argument on
18 that. No use soliciting the testimony because you can't use
19 it. I think it's just all irrelevant. You have to have
20 something that shows, directly or circumstantially, that they
21 had racial animus, I think.

22 MR. MARTINEZ: Or motivation.

23 THE COURT: Well, same thing as animus. That was the
24 reason they acted.

25 MR. MARTINEZ: We still have mixed mode analysis

1 applicable here, Your Honor. I need not show that they were
2 solely motivated by that animus.

3 THE COURT: It can be mixed motive, but it has to
4 show -- you don't want to show the other motives. You have to
5 show the racial motive.

6 MR. MARTINEZ: I --

7 THE COURT: You're not showing that. Pretext is not
8 the same as showing. You know, this is all way far afield.
9 I'm not going to permit it under 803. It's just a waste of
10 time. Are you through now?

11 MR. MARTINEZ: No, sir, I am not through.

12 THE COURT: Well, okay. Get on with your testimony,
13 but don't go off into this kind of pretext type of argument.

14 BY MR. MARTINEZ:

15 Q. So you indicated there was a Pan Asian Studies program.

16 A. Yes.

17 Q. What groups were addressed or services provided to by Pan
18 Asian? Were you familiar with that?

19 A. Yes.

20 Q. And what groups are we talking about there?

21 A. Chinese origin, Japanese origin, Southeast Asian origin
22 students that were in the district. It was mostly a language
23 emphasis, language classes that took place within the Pan Asian
24 Studies Department.

25 Q. And the African-American studies, were you familiar with

1 what they were doing?

2 A. Yes, I was.

3 Q. And the African-American studies, was this a program that
4 was designed specifically to try and address the issues faced
5 by African-American youth in TUSD?

6 A. Yes.

7 Q. And did it include the same types of services that you were
8 offering for Mexican-American students at MAS?

9 A. It did provide the same type of services. The areas of
10 emphasis were different.

11 Q. But they also had classes?

12 A. Yes, they did.

13 Q. What kind of classes?

14 A. They had African-American History, they had
15 African-American Literature. Those two, to my knowledge, at
16 the high school level.

17 Q. At the high school level?

18 A. Yes.

19 Q. You know the state shut down, on the basis of violation of
20 15-112, the Mexican-American Studies classes?

21 A. Indeed, yes.

22 Q. Are you aware of any similar actions by the state for the
23 African-American programs that -- classes that existed during
24 the very same time period?

25 A. I am not aware of any, no.

1 Q. You also mentioned that there was classes, as I understood
2 it, or services provided specifically for Native American
3 students.

4 A. That's correct, yes.

5 Q. And, again, were you familiar with the services?

6 A. I sure was.

7 Q. Or the program?

8 A. I sure was.

9 Q. Including classes?

10 A. Including classes, yes.

11 Q. All right. What kind of classes did the Native American
12 Studies offer?

13 THE COURT: Isn't there an expressed exception to the
14 statute to the Native American programs?

15 MS. COOPER: Yes, Your Honor. There are federal
16 obligations as well.

17 THE COURT: What's the purpose of inquiring into those
18 programs?

19 MR. MARTINEZ: These aren't students who are
20 reservation students, Your Honor. These are urban -- these are
21 Native Americans who live in the urban area. The federal
22 obligations don't extend to Native Americans. If I'm Tohono
23 O'odham and I live in the City of Tucson and go to TUSD,
24 there's no tribal rights to come with me or tribal sovereignty.
25 I'm the student of this district, and this district has made an

1 express --

2 THE COURT: So what you're saying is these -- whatever
3 programs you're --

4 MR. MARTINEZ: I'm saying there's not a racial group
5 that's treated differently, and certainly an Arlington Heights
6 factor.

7 THE COURT: Whatever programs you're talking about are
8 programs for off-reservation Native American. Is that right?

9 MR. MARTINEZ: Right, because TUSD didn't have any
10 schools on the reservation.

11 THE COURT: Go ahead.

12 BY MR. MARTINEZ:

13 Q. So just coming back for a minute to the Native Americans,
14 you said they provided high school classes specifically
15 designed and intended for Native American students?

16 A. Yes, they did.

17 Q. Do you know the subject matter area?

18 A. Yes. They have Native American Literature and Native
19 American History classes.

20 Q. All right. Were you familiar enough with either of those
21 classes to know whether in fact they incorporated into the
22 classes indigenous epistemologies?

23 MS. COOPER: Objection. Relevant.

24 THE COURT: Sustained.

25 MR. MARTINEZ: We are attacked for using indigenous

1 epistemologies in MAS, and yet Native Americans are allowed to
2 do it?

3 THE COURT: Sustained. The objection is sustained,
4 Mr. Martinez.

5 MR. MARTINEZ: Thank you, Your Honor.

6 BY MR. MARTINEZ:

7 Q. So you have Native American classes, you have
8 African-American class, you have Pan Asian classes?

9 A. That's correct.

10 Q. And you have Mexican-American classes?

11 A. That's correct, yes.

12 Q. But Mexican-American classes are shut down, and to your
13 knowledge, did the state ever investigate what blacks can take,
14 what Native Americans can take, or what Pan Asians can take?

15 A. To not my knowledge, no.

16 MS. COOPER: Objection. The testimony is duplicative.

17 THE COURT: Sustained. It is. I think that's already
18 on the record. There's been none of those investigations. I
19 think it's already established in the record, isn't it?

20 MR. MARTINEZ: I'll move on, Your Honor.

21 BY MR. MARTINEZ:

22 Q. January of 2012 is when the program shut down, right?

23 A. That's correct.

24 Q. Mexican-American Studies. Am I correct about that?

25 A. Can you repeat that, please.

1 Q. Sure. January 2012, what happened that month to
2 Mexican-American Studies?

3 A. TUSD eliminated the Mexican-American Studies Department.

4 MS. COOPER: Can you please move closer to the mic?
5 I'm losing you.

6 MR. MARTINEZ: I'm a wandering lawyer. I apologize.
7 Even in my old age.

8 BY MR. MARTINEZ:

9 Q. On that date, the shut-down date of Mexican-American
10 Studies, on that date and thereafter, did those other three
11 programs continue to exist in Tucson Unified School District?

12 A. Yes, they did.

13 Q. Did their classes continue to be offered to students at the
14 high schools where they were offered?

15 A. Yes, they were.

16 Q. So those students could continue to go to your black
17 studies class or African-American Studies class, in literature,
18 black literature, but the Mexicans couldn't?

19 A. Certainly, yes.

20 MS. COOPER: Objection. Duplicative. The state is
21 certainly willing to stipulate to those facts if it would move
22 things along.

23 THE COURT: I'll let the answer stand, but you should
24 move on.

25 MR. MARTINEZ: I am, Your Honor.

1 BY MR. MARTINEZ:

2 Q. Let's talk a little bit about -- there was mention made
3 yesterday about an individual by the name of Stegeman. Do you
4 know him?

5 A. Yes, I do.

6 Q. And how do you know him?

7 A. While I was employed as a director, he was a school board
8 member in various capacities.

9 Q. And school board, governing board for the Tucson Unified
10 School District consists of how many members?

11 A. There's five.

12 Q. Did you have personal knowledge about --

13 THE COURT: Try to stay close to the microphone.

14 MR. MARTINEZ: I apologize, Your Honor.

15 BY MR. MARTINEZ:

16 Q. Do you have personal knowledge about what happened at the
17 inception when Mexican-American Studies was created?

18 A. Yes, I do.

19 Q. To your knowledge, did that include an action by the
20 governing board of the Tucson Unified School District?

21 A. Yes, it did.

22 Q. And tell us the circumstance, again, briefly. What was the
23 circumstance that you were involved in that led to the creation
24 of Mexican-American Studies in TUSD?

25 A. Yeah, the creation of Mexican-American Studies was the

1 result of a federal case here, in this District Court, of Rosie
2 Lopez, et al., parents of TUSD, who sued Tucson Unified School
3 District for educational negligence; and as a result of this
4 case, TUSD settled and the creation of Mexican-American Studies
5 in TUSD is what was the result of that.

6 Q. Were you able to witness this school district's governing
7 board actually consider and then have to take a public vote as
8 to whether or not they would create this department?

9 A. Yes, I was.

10 MS. COOPER: Objection. Irrelevant.

11 THE COURT: Sustained.

12 BY MR. MARTINEZ:

13 Q. Throughout the years that you were director, did you
14 present to the governing board?

15 A. Yes, I did.

16 Q. All right. Let's kind of do a few date markers. One of
17 the date markers -- do you remember there being a Dolores
18 Huerta speech?

19 THE COURT: Try to stay by the mic, all right,
20 Mr. Martinez?

21 MR. MARTINEZ: I am. I better tie my shoes.

22 BY MR. MARTINEZ:

23 Q. Are you familiar with a speech by Dolores Huerta at Tucson
24 High School?

25 A. Yes, I am.

1 Q. Were you present?

2 A. I was present, yes.

3 Q. All right. Then after that, I believe one of the date
4 markers we have or event markers is Tom Horne's insistence on
5 him coming with Margaret Dugan to Tucson High?

6 A. Yes.

7 Q. You were present for that?

8 A. I was, yes.

9 Q. By the way, did the students protest in a respectful
10 manner?

11 A. Yes, I believe they did.

12 Q. Why do you say that?

13 A. It was a silent protest that the students organized.

14 Q. By the way, which position were you in at that time? Are
15 you the director, assistant director, or what?

16 A. I was assistant director.

17 MS. COOPER: Objection. Irrelevant.

18 MR. MARTINEZ: We're accused of organizing --

19 THE COURT: Just a minute. Just a minute. Answer the
20 question.

21 A. At the time I was assistant director.

22 BY MR. MARTINEZ:

23 Q. So did your department organize that student protest?

24 A. No.

25 MS. COOPER: Objection. Irrelevant.

1 THE COURT: Sustained.

2 MR. MARTINEZ: They accused us of it and we can't
3 address it? All right.

4 BY MR. MARTINEZ:

5 Q. So we have that marker. Then the next marker we have is
6 Tom Horne's open letter to the citizens of Tucson. Do you
7 remember that?

8 A. Yes.

9 Q. And at the time it's published and put out there in our
10 community. Because he's in Phoenix, right?

11 A. That's correct.

12 Q. Did you become aware of what he put out there as
13 superintendent of education?

14 A. The day of, yes.

15 Q. And what was he urging?

16 A. I'm sorry?

17 Q. In that letter, what's Tom Horne urging?

18 A. He's saying that we promote resentment. He was saying that
19 Mexican-American Studies was un-American, Mexican-American
20 Studies was biased, Mexican-American Studies was not a
21 legitimate course of study.

22 Q. And who was he urging the citizens of Tucson to do or the
23 governing board to do?

24 MS. COOPER: I can't hear you.

25 BY MR. MARTINEZ:

1 Q. I said, what was he urging the citizens of Tucson and the
2 governing board to do?

3 MS. COOPER: Objection --

4 A. He was asking for the elimination of the department.

5 THE COURT: Hold it. Hold it.

6 MS. COOPER: The document speaks for itself.

7 THE COURT: Objection is sustained. And I think it's
8 already in the record, right?

9 BY MR. MARTINEZ:

10 Q. After Mr. Horne's proclamation to the citizens of Tucson
11 Unified School District, did you have occasion between then and
12 that January date of 2012, did you have the opportunity to
13 address the board, the governing board of Tucson Unified School
14 District about whether or not they wanted to keep the program?

15 A. Yes, I did.

16 MS. COOPER: Objection. Irrelevant.

17 THE COURT: Just a minute. I sustained the objection
18 on relevancy. The relation between Mr. Arce and the Tucson
19 school board has no relevancy in this case. I don't care what
20 the relationship was. It doesn't make any difference, because
21 no decision of the Tucson board or Mr. Arce is an issue.

22 BY MR. MARTINEZ:

23 Q. We heard yesterday that Mr. Huppenthal attributed a source
24 of information about what's going on in the Mexican-American
25 Studies class to Mr. Stegeman. Did you have interactions with

1 Mr. Stegeman?

2 A. I certainly did, yes.

3 MS. COOPER: Objection. Relevance.

4 THE COURT: Preliminary question. I don't know where
5 it's going, but the objection is overruled right now. Go
6 ahead. Did you complete your answer?

7 THE WITNESS: Yes, Your Honor, I did.

8 THE COURT: If he did we'll ask you another one.
9 Okay. Next question.

10 MR. MARTINEZ: Yes, sir.

11 BY MR. MARTINEZ:

12 Q. Do you know if he ever visited any Mexican-American Studies
13 class?

14 A. Yes, I do.

15 Q. Whose class?

16 A. My recollection, two classes, José González and Curtis
17 Acosta.

18 Q. Did it come to your attention after those visits that
19 Mr. Stegeman had a concern?

20 A. Can you repeat that.

21 Q. Did it come to your attention after those visits that
22 Mr. Stegeman had a concern about the classes?

23 A. Yes, it did.

24 MS. COOPER: Objection. Relevance.

25 THE COURT: Overruled. The answer is "yes"?

1 THE WITNESS: Yes, Your Honor.

2 BY MR. MARTINEZ:

3 Q. Was his concern about the Mexican-American Studies class,
4 at least one of them, the fact that in Mr. Acosta's class, they
5 would recite "In Lak'ech" at the beginning of class?

6 A. Yes, that was one of his concerns.

7 Q. And was his other concern that in addition to the
8 recitation by the class, including the teacher, of "In
9 Lak'ech," the union clap?

10 A. Yes.

11 Q. And the union clap is merely the clapping of hands, right?

12 A. That's correct.

13 Q. And in fact, the union clap dates back to whom? Who is
14 that related to?

15 A. Its origins are found in the United Farm Worker Movement.

16 Q. And the United Farm Worker, is that considered something to
17 have to do with Mexicans?

18 A. Yes.

19 MS. COOPER: Objection. Relevance.

20 THE COURT: I think we're going afield here now, you
21 know. He is not testifying as an expert, and it doesn't
22 matter, you know, what the relationship is between the farm
23 workers and other --

24 MR. MARTINEZ: I'll move on.

25 THE COURT: -- segments of the Mexican-American

1 community.

2 MR. MARTINEZ: Well, I think if you have an ethnic
3 identifying activity, that that's something Mexicans do, and
4 you have people like Stegeman finding it offensive, and then
5 you have a decision --

6 THE COURT: You've already established your point,
7 Mr. Martinez.

8 MR. MARTINEZ: Okay. I'll move, Judge.

9 BY MR. MARTINEZ:

10 Q. Last question on this topic. Did it come to your attention
11 that in fact Mr. Stegeman considered these two activities to be
12 cult-like?

13 A. Yes, it did.

14 Q. And that's what you believed he went and snatched off in
15 terms of his beliefs to Mr. Huppenthal, right?

16 A. That's correct.

17 MS. COOPER: Objection. Relevance.

18 THE COURT: Overruled. The answer may stand. You
19 said "that's right"?

20 THE WITNESS: Yes, Your Honor, that is correct.

21 BY MR. MARTINEZ:

22 Q. Were you familiar with Mr. Hicks?

23 A. Yes, I was.

24 Q. The other thing I want to ask you, one question. With
25 respect to during the period that you're the director of

1 Mexican-American Studies, you've already established five
2 members on the board. Was the support from the governing board
3 unanimous or were there some dissenters?

4 A. There were some dissenters, yes.

5 Q. All right. And with respect to the dissenters, did you
6 attribute that, the dissenters, to be on a partisan basis?

7 What I mean by that, on a political partisan basis?

8 A. Most definitely, yes.

9 MS. COOPER: Objection. Relevance.

10 THE COURT: Just a minute. Objection to relevance is
11 sustained. I'm not interested in the politics of the school
12 board. It has nothing to do with this case. The school board
13 actions are not at issue here. And what their members do or
14 believe or, you know, dissent or not, doesn't matter. So the
15 objection is sustained.

16 BY MR. MARTINEZ:

17 Q. Did you believe, Mr. Arce, that as you faced that January
18 order that shuts down your program, that at least one of the
19 reasons that occurred was for the political partisan beliefs
20 behind that action?

21 MS. COOPER: Objection. Relevance. Foundation.

22 MR. MARTINEZ: It's our First Amendment claim, Your
23 Honor.

24 THE COURT: I am going to -- well, I'll tell you what,
25 I am going to overrule the objection, because at one time he

1 was the plaintiff. So I'm going to take his answer, and I
2 think there's more leniency with parties on this kind of
3 opinion. So you can answer the question, Mr. Arce.

4 MR. MARTINEZ: Do you need it repeated?

5 THE WITNESS: Please, can you repeat it. Yes.

6 MR. MARTINEZ: Would you mind reading that back,
7 please. Thank you.

8 (Reporter read back the previous question.)

9 A. Yes, I believe that wholeheartedly, because of the direct
10 communications from the school board members that they had
11 directed and communicated to me.

12 BY MR. MARTINEZ:

13 Q. Let's change subjects, okay?

14 A. Sure.

15 Q. Did you know an individual by the name of John Ward?

16 A. Yes, I did.

17 Q. Did you ever work with him at the same time in the Tucson
18 Unified School District?

19 A. Yes, I did.

20 Q. All right. Were you familiar with when John Ward worked
21 for Tucson Unified School District?

22 A. Yes, I did. Yeah, I'm aware of that.

23 Q. All right.

24 A. Time frame.

25 Q. We're still on John Ward. I want to go to something else,

1 and then I want to come back to this.

2 At one point he works for the school district, right?

3 A. Yes.

4 Q. What school?

5 A. Tucson High School.

6 Q. As?

7 A. As a teacher, social studies.

8 Q. Classroom teacher?

9 A. Classroom teacher, yes.

10 Q. We're going to come back to that. And, by the way, do you
11 remember what year that was?

12 A. I believe the last year he worked in the district was
13 2003-2004 school year.

14 Q. So December 30th, 2010, January 1 or 2, 2011, he hasn't
15 been employed by the district for six years, seven years?

16 A. That's about right, yes.

17 Q. To your knowledge, because you say you kept on top -- and
18 during that time frame you're in what position, assistant
19 director and then director?

20 A. Yes.

21 Q. So did you ever see John Ward in any of your classes?

22 A. No.

23 Q. Did you ever hear that he was in any of your classes?

24 A. No.

25 Q. Did you think he didn't like your classes?

1 A. Exactly, yes. I knew he didn't like our classes.

2 Q. All right. And whatever he had to say about the class, it
3 would have been based on something that he had seen or heard or
4 he portrayed as something that happens six, seven years before
5 the statute is ever in effect?

6 A. That's correct.

7 MS. COOPER: Objection. Mr. Ward's reliability is not
8 at issue here.

9 MR. MARTINEZ: When the State relies on that kind of
10 information and then they're asked a question: Well, did you
11 have a good faith belief that this was accurate with respect
12 to --

13 THE COURT: Are you asking a question or having a
14 conversation with counsel?

15 MR. MARTINEZ: No, no. I'm trying to say, Judge, that
16 they --

17 THE COURT: Why don't you ask a question of the
18 witness.

19 MR. MARTINEZ: I will, Your Honor.

20 THE COURT: Instead of counsel. Okay?

21 MR. MARTINEZ: Yes, sir.

22 BY MR. MARTINEZ:

23 Q. So he's not a fan. Put that aside for a moment.

24 Did this John Ward ever sue you?

25 A. Yes, he did.

1 Q. Did he sue anybody else that worked with you?

2 A. Yes, he did.

3 MS. COOPER: Objection.

4 THE COURT: The objection is sustained.

5 MS. COOPER: Any litigation between Mr. Ward,
6 Mr. Arce, and anyone else is not relevant in any way to the
7 elements of the claim that plaintiffs are required to prove in
8 this matter.

9 MR. MARTINEZ: May I have 30 seconds?

10 THE COURT: No. Mr. Ward is irrelevant. The
11 objection is sustained.

12 BY MR. MARTINEZ:

13 Q. Did Mr. Ward have any role in that litigation?

14 A. Yes.

15 Q. What role?

16 A. In the litigation against my --

17 Q. You. The Ward litigation against you.

18 A. Yeah.

19 MS. COOPER: Objection.

20 A. He raised funds for Mr. Ward's suit against myself and my
21 colleague, José González.

22 BY MR. MARTINEZ:

23 Q. Mr. González was --

24 MS. COOPER: Objection.

25 THE COURT: Just a minute. Objection on what basis?

1 MS. COOPER: Any involvement with Mr. Horne with
2 respect to irrelevant litigation is not relevant to the
3 elements of the claims the plaintiffs are required to prove
4 here.

5 THE COURT: Objection sustained. Who cares what he
6 did about the --

7 MR. MARTINEZ: Well, I think it matters. It goes to
8 the motivation, the animus, and the level of the animus, if he
9 is willing to go out and --

10 THE COURT: The motivation to bankrupt Mr. Arce or
11 what? What's the motivation there?

12 MR. MARTINEZ: The motivation is because this man and
13 others are the face of Mexican-American Studies, Your Honor,
14 and if you go after Mr. Arce and his other Mexican-American
15 educators, you are going after Mexican-American Studies --

16 THE COURT: That's way, way too attenuated to be
17 relevant under the 803. So the objection is sustained.

18 MR. MARTINEZ: Well, they're the ones who brought up
19 Mr. Ward and they're the ones who brought up Mr. Horne, not us.
20 So I think they opened that door, Your Honor.

21 THE COURT: Can you cite a section in the evidence
22 code about opening the door?

23 MR. MARTINEZ: I think they opened it as to relevance,
24 Your Honor. They made it relevant, and they elicited those
25 kinds of testimony.

1 THE COURT: The objection is sustained.

2 MR. MARTINEZ: But I'll move. I understand.

3 BY MR. MARTINEZ:

4 Q. So during this time frame, were there other John Wards,
5 people who are naysayers to the curriculum who are teachers?

6 A. Yes, there were.

7 Q. Did you have one at Cholla?

8 A. Yes, we did.

9 Q. What was his name?

10 A. Hector Ayala.

11 Q. Is it fair to say -- putting aside anything else, Mr. Ayala
12 didn't agree with having Mexican-American Studies, is that
13 fair?

14 A. That's fair.

15 Q. And Mr. Ayala was a classroom teacher at Cholla?

16 A. That's correct, yes.

17 Q. And do you recall what subject matter area he taught in?

18 A. English.

19 Q. And do you recall, if you know -- let me just first ask,
20 did it come to your attention that Mr. Ayala had concerns about
21 Mexican-American Studies classes that were being taught at
22 Cholla?

23 A. Yes, it did.

24 Q. And at the time that he raises that concern, do you know
25 which classes were being taught at Cholla?

1 A. Yes, I do.

2 Q. What were they?

3 A. The American History Chicano Perspectives course. It was
4 also the -- that was it at the time actually. Just the
5 American History Chicano Perspectives course.

6 Q. And what was Mr. Lorenzo Lopez's class or someone else?

7 A. It was someone else.

8 Q. Okay. So he's in English. This is over in the social
9 studies department?

10 A. Yes.

11 Q. And he doesn't like the class, and he makes that known.

12 A. Yes, that's correct.

13 Q. His opposition to the class, is it merely expressing
14 professionally that "I don't agree with that subject matter" or
15 is it something else?

16 MS. COOPER: Objection. Foundation.

17 MR. MARTINEZ: I'd be happy to lay more foundation.

18 THE COURT: Overruled. You can answer.

19 THE WITNESS: Please repeat the question.

20 MR. MARTINEZ: Would you mind reading it back?

21 (Reporter read back the previous question.)

22 A. I believe it extended beyond professionalism, the critique.
23 It became personalized.

24 Q. Did he, with individuals like John Ward, run to Mr. Horne
25 to try and indicate that your program was doing something

1 wrong?

2 MS. COOPER: Objection. Irrelevant.

3 MR. MARTINEZ: They're the ones -- they've
4 indicated --

5 THE COURT: I'll overrule it for now. Go ahead and
6 finish.

7 BY MR. MARTINEZ:

8 Q. Let me put it another way. Have you ever heard Mr. Horne
9 say a couple things? One is that we received complaints about
10 Mexican-American Studies?

11 A. Repeatedly, yes.

12 Q. All right. And did you also hear him say that, oh, by the
13 way, you're the -- this is the only program that we had those
14 complaints about?

15 A. Yes, repeatedly.

16 Q. Did you come to learn that at least the source of some of
17 those, quote, "complaints" was Ward?

18 A. Yes.

19 Q. And Ayala?

20 A. Yes.

21 Q. And there's another teacher at Tucson High who fit in that
22 same scenario?

23 A. Yes. Ron Silverman.

24 Q. So you had three naysayers, right?

25 A. There were more.

1 Q. Okay. I'm talking about the teachers at sites.

2 A. Yes, there were more at sites.

3 Q. Let's go back to John Ward. Did you ever share a classroom
4 with Mr. Ward?

5 A. Yes, I did.

6 Q. When you shared that classroom with Mr. Ward, were you
7 essentially in a co-teaching relationship?

8 A. We co-taught a class, yes.

9 Q. What was that class topic? What was the subject matter?

10 A. The course was American History Chicano Perspectives.

11 Q. So at that time are you -- what high school were you at?

12 A. Tucson High School.

13 Q. At that time are you Tucson High School staff or are you
14 working -- which department are you in?

15 A. I was in Mexican-American Studies.

16 Q. All right. And Mr. Ward at that time?

17 A. He was assigned at Tucson High School.

18 Q. So he's Tucson High staff?

19 A. Yes.

20 Q. And you're there, and why are you co-teaching this class?

21 A. To provide model instruction for John Ward. He expressed
22 an interest in wanting to teach Mexican-American Studies, so I
23 came in to provide -- to collaborate with him, to develop
24 curriculum with him, to implement the curriculum with him.

25 Q. Is it accurate to characterize that, one, he volunteered to

1 want to teach the class?

2 A. That's correct, yes.

3 Q. And then, to your knowledge, in the department he'd not had
4 that subject matter training?

5 A. That's correct, yes.

6 Q. And so you're there essentially as a mentor/co-teacher to
7 make him competent as a Mexican-American Studies teacher in
8 that particular subject matter area?

9 A. Yes, to collaborate with him, to assist him in his
10 teaching, his curriculum development.

11 Q. Prior to his agreeing to that, was it -- to your knowledge,
12 teachers would be given some information as to if this is
13 something I want to do, you're given some information, this is
14 what you're getting into, this is what we do in a
15 Mexican-American Studies class?

16 A. Yes.

17 Q. This is our subject matter, this is what we're teaching?

18 A. He was well aware of the agreement that was made.

19 Q. When you say, "agreement," what do you mean by that?

20 A. There was an agreement to have a co-teaching situation for
21 this class. We were working to build the capacity in the
22 district, specifically at Tucson High School, so that we could
23 offer more classes at the high school because of the immense
24 student demand for these courses.

25 And so, with that, we didn't have the capacity at the

1 district level within our department, so we -- he expressed an
2 interest, and we were looking to build capacity and offer more
3 classes for our students to build to.

4 Q. I take it he seemed like a good candidate?

5 A. Yes.

6 MS. COOPER: Objection. Relevance.

7 THE COURT: It is not relevant. But it seems like it
8 can be. Since he's already answered, I'll let the answer
9 stand.

10 BY MR. MARTINEZ.

11 Q. Did it matter to you, Mr. Arce, as his co-teacher, his
12 partisan background or any of his political beliefs?

13 A. No, it didn't matter.

14 Q. All right. So now you're teaching this class. What
15 happens?

16 A. Yeah, he had several disagreements with the content. He
17 had problems with some of the primary documents that we were
18 presenting.

19 Q. I'll stop you right there for a minute. What do you mean
20 by "primary document"?

21 A. Primary documents are historical records, whether they be
22 speeches, photographs, interviews. A primary document is --
23 the analysis of a primary document is critical in the history
24 class. It's pretty much the foundation of any history class.

25 Q. All right. So go on. So he had disagreements about

1 primary documents and what?

2 MS. COOPER: Objection. We object to this entire line
3 of questioning. It's simply not relevant, again, to the
4 elements of the claims the plaintiffs are required to prove.

5 THE COURT: What's the relevance, Mr. Martinez?

6 MR. MARTINEZ: Well, they say that they had two
7 different things going on, Your Honor. They alleged, for
8 example, with respect to Mr. Anderson, they had a reasonable
9 belief to accept what he was saying, and I think it goes in
10 part to, one, the number of years in which he had not been in
11 that classroom, so it's not reasonable.

12 And number two is that the -- that the source, if this
13 is a person whose source issue is essentially he has an ax to
14 grind, then it's incumbent on the state if they're going to act
15 on this kind of reporting to know, okay, is this a legitimate
16 concern or some ax to grind. That's would be what I would
17 offer the Court.

18 THE COURT: That's way, way remote. The objection is
19 sustained.

20 MR. MARTINEZ: I'll move forward, Your Honor.

21 BY MR. MARTINEZ:

22 Q. Were there, whether it's these individuals or others, did
23 you ever hear, for example -- let me back up.

24 Originally, what was the name of the department?

25 A. Mexican-American Raza Studies.

1 Q. "Mexican-American" we understand. Were you aware of the
2 intent of saying "Mexican-American Raza" Studies?

3 A. Yes.

4 Q. What was the intent of including the word "Raza"?

5 A. The intent was to be more inclusive.

6 Q. What do you mean by that?

7 A. Whether it's Spanish-speaking people within the Americas.

8 Q. All right. So kind of like saying Hispanic or Latino?

9 A. Similar to, yes.

10 Q. Okay. So, you know, did you hear the allegation, whether
11 it's Horne, Mr. Horne or others, as saying that "Raza" or "La
12 Raza" is a term that your department is using to somehow
13 communicate brown superiority or racial superiority?

14 A. Yes, I heard that repeatedly.

15 Q. Was that ever intended by the department's use of
16 Mexican-American Raza Studies?

17 A. Not whatsoever, no.

18 Q. Was that taught in the classrooms?

19 A. No.

20 Q. Mr. Huppenthal posted that Raza studies equals KKK in
21 brown. Did you know that?

22 A. Yes.

23 Q. The Ku Klux Klan, right?

24 A. Yes.

25 Q. Kind of the epitome of white supremacy or the gold

1 standard, I guess?

2 A. Yes.

3 Q. Was Raza Studies intended to in any way communicate a
4 message of superiority that you could say is comparable to that
5 of the KKK?

6 A. Not in any way.

7 Q. In fact, Mr. Arce, within the program, Mexican-American
8 Studies, your classes, would you ever as director had allowed
9 any such content or messaging?

10 A. Never.

11 Q. Why not?

12 A. Because it's unjust. We were there to serve all students.

13 Q. Did it matter to you, as director, what race of the student
14 who enrolled in the class?

15 A. No, it did not.

16 MS. COOPER: Objection. Relevance.

17 THE COURT: It's been asked and answered, so move on.

18 BY MR. MARTINEZ:

19 Q. With respect to enrollment in the class, let's take one
20 example. Let's say Tucson High School. Here's your director.
21 Is this a closed enrollment, meaning somebody is just assigned
22 there, or is this open enrollment where a student or a student
23 with parents chooses the class?

24 A. It was an open enrollment situation where students chose to
25 take the class.

1 Q. Were students required to take the class?

2 A. No, they were not required.

3 Q. Was that true that it was a student choice or parent choice
4 in all the high schools that we've identified?

5 A. That was consistent throughout the district.

6 Q. All right. So it's never a forced situation?

7 A. No, never a forced situation.

8 Q. If you had the scenario where the student enrolled in a
9 class and didn't like it, could they get out?

10 A. Yes.

11 Q. So it was not only voluntary in, you could volunteer exit?

12 A. That's correct, yes.

13 Q. Could you do that at any time, to your knowledge, as a
14 student?

15 A. Yes, I believe so.

16 Q. All right. I want to show you -- can you give me the
17 middle school.

18 MR. MARTINEZ: Your Honor, I'm about to go into a
19 different subject matter and I've got --

20 THE COURT: How much more time? Take a guess. How
21 much more time do you have on your direct?

22 MR. MARTINEZ: I'm going to shorten it, Your Honor,
23 but on the old outline, in light of a lot of your comments, I
24 intend to shorten it a lot, but I would certainly have at least
25 another hour.

1 THE COURT: Well, I think we should recess.

2 MR. MARTINEZ: He lives in town. He's here in town
3 and is available.

4 THE COURT: Mr. Arce, you can step down now.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Return tomorrow at 9:00 o'clock.

7 All right. Before I go into recess, do you think you
8 have another hour with him?

9 MR. MARTINEZ: Yes, sir.

10 THE COURT: In light of that, who is going to do the
11 cross?

12 MS. COOPER: I am, Your Honor.

13 THE COURT: How long do you think your cross will be?
14 Take a guess.

15 MS. COOPER: Less than an hour, Your Honor.

16 MR. MARTINEZ: Then we have Dr. Cabrera.

17 THE COURT: Well, let's see. What does that mean?

18 MR. MARTINEZ: We have another witness lined up,
19 available right after that.

20 THE COURT: Right after that?

21 MR. MARTINEZ: Yes, sir.

22 THE COURT: And who is doing the direct on that
23 witness?

24 MR. MARTINEZ: He's the expert, Your Honor, so the
25 direct's in, and then we'll start with the cross, and Mr. Reiss

1 can address that.

2 THE COURT: Go ahead. Just a minute. You have an
3 expert tomorrow?

4 MR. REISS: Yes.

5 THE COURT: What do you want to do? Do you want to
6 take the expert first?

7 MR. REISS: Well, I would finish with Mr. Arce first,
8 Your Honor.

9 THE COURT: Mr. Arce.

10 MR. REISS: I wouldn't go out of order, Your Honor, if
11 that's okay.

12 THE COURT: Then go to the expert.

13 MR. REISS: Right. Of course, the expert's direct is
14 already in, Your Honor, so we start with the cross.

15 THE COURT: Start with the cross. All right. Which
16 one is this?

17 MR. REISS: Mr. Cabrera.

18 THE COURT: Who is going to do the cross on Cabrera?

19 MS. COOPER: I am, Your Honor.

20 THE COURT: Just give me a guess on how long your
21 cross is going to be.

22 MS. COOPER: We're not going to go the whole day.
23 Two, three hours.

24 THE COURT: There will be some redirect, I'm sure.

25 MS. COOPER: Right.

1 THE COURT: So is that your last witness tomorrow?

2 MR. REISS: It is, Your Honor, and then that's our
3 last witness that's available this week. And I think the
4 anticipation was that the defendants were going to have
5 Ms. Hrabluk here on Friday.

6 THE COURT: Somebody here Friday morning, right?

7 MS. COOPER: That is correct, Your Honor.

8 THE COURT: We'll go a half day with that witness,
9 right?

10 MS. COOPER: Yes, that's correct.

11 THE COURT: Okay. Fine. Then anything else before I
12 recess?

13 MR. REISS: Not now, Your Honor. Thank you.

14 THE COURT: We'll stand at recess until 9:00 o'clock
15 tomorrow morning.

16 (Proceedings concluded in this matter at 4:57 p.m.)

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C E R T I F I C A T E

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I, A. TRACY JAMIESON, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true and accurate transcript of the proceedings contained herein, held in the above-entitled cause on the date specified therein, and that said transcript was prepared by me.

Signed in Tucson, Arizona, on the 28th day of June, 2017.

s/A. Tracy Jamieson
A. Tracy Jamieson, RDR, CRR