



MALDEF

Mexican American Legal Defense and Educational Fund

May 6, 2010

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The Honorable Jan Brewer
Governor of Arizona
1700 West Washington
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Re: HB 2281 – Veto

Chicago

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Dear Governor Brewer:

On behalf of the Mexican American Legal Defense & Educational Fund (MALDEF), I write concerning HB 2281, a bill that would have a chilling effect on important academic freedoms in Arizona schools. Given the broad scope of HB 2281 and its potentially detrimental effects on ethnic studies programs, the Bill, if signed into law, would invite violations of academic freedom, discrimination, and potential legal action. For these reasons, MALDEF strongly urges you to protect the academic integrity of Arizona schools and veto HB 2281.

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Although on its face HB 2281 would not ban any of the existing ethnic studies programs in Arizona with which we are familiar, the clear target of the legislation is the ethnic studies program in the Tucson Unified School District (“TUSD”). As you know, until late last year, the TUSD operated under a long-standing desegregation decree as a result of historical intentional discrimination that has, sadly, carried forward to the present day. As part of its efforts to comply with the spirit of the decree, TUSD established a multicultural education program.

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In December 2009, the federal court terminated the decree, but in doing so Judge Bury clearly recognized the importance of a well-staffed and well-funded ethnic studies program in improving academic success. Moreover, in his order, Judge Bury documented that such programs serve “the entire student body”, and provided the percentages of students from the various races and ethnicities who were participating in such programs.

MALDEF has filed an appeal of Judge Bury’s decision to end court oversight of the TUSD desegregation decree. If we prevail in the Ninth Circuit Court of Appeals, the case could come back to Judge Bury, and TUSD could continue to be subject to the decree and attendant obligations to operate ethnic studies programs.

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As a tool to promote equality, the ethnic studies programs at TUSD are open to all students, regardless of race or ethnicity, and provide valuable educational opportunities, such as mentoring and academic and career counseling, that strengthen the quality of education for all participating students. Indeed, as a general matter, ethnic studies courses provide students of all backgrounds with the opportunity to learn about the diverse cultures and traditions of the people of the State of Arizona and of the United States as a whole.

Multiculturalism is at the heart of the American experience - we are a diverse country, rich with the beliefs, traditions, customs, art, history and folklore of the many cultures that make up our nation. Ethnic studies courses offer a more complete picture of our nation's rich and varied cultural heritage, and all Arizona students should have the opportunity to gain this knowledge as part of their educational experience.

Multicultural education does not limit students and certainly does not "divide kids by race" as Superintendent Tom Horne has charged. See KVOA.com, *Bill Passed that Would Ban Ethnic Studies for TUSD* ¶ 5 (2010), <http://www.kvoa.com/news/bill-passed-that-would-ban-ethnic-studies-for-tusd/>. Rather than a factious program that separates students, ethnic studies courses are electives open to all students, providing an opportunity to learn about classmates' racial and ethnic backgrounds and the contributions different groups have made to our collective American history. Moreover, ethnic studies classes provide specific academic benefits. Indeed, studies show that students who learn about their race, ethnicity, and culture have lower drop-out rates than students who do not.

Superintendent Horne is short-sighted when he says that ethnic studies programs promote "ethnic chauvinism." See Arizona Daily Star, Huicochea, Alexis, *TUSD: Bill won't alter ethnic studies*, ¶ 7(2010), http://azstarnet.com/news/local/education/article_8d522665-3753-5221-9b64-45c72b426777.html. To the contrary, knowledge of other cultures as well as one's own fosters positive inter-group attitudes and reduces prejudice. As native Arizonan Cesar Chavez once eloquently stated, "preservation of one's culture doesn't mean contempt for others'."

HB 2281 vests authority in the state superintendent to impose financial sanctions on schools which have programs that "promote resentment toward a race or class of people" "are designed primarily for pupils of a particular ethnic group" or "advocate ethnic solidarity instead of the treatment of pupils as individuals." Although the ethnic studies programs with which we are familiar do not fit any of those categories, given the statements made by Superintendent Horne, it is clear that he intends to implement the law pursuant to his subjective beliefs that "the district's ethnic studies program teaches Latino students that they are oppressed by white people and promotes racial hatred." The Washington Post, The Answer Sheet, "Arizona strikes again: Now it is ethnic studies," <http://voices.washingtonpost.com/answer-sheet/history/arizona-strikes-again-now-it-i.html>.


Thus, it is all but certain that Superintendent Horne will misapply the law to achieve his long-standing efforts to ban ethnic studies programs, such as those in the TUSD that federal courts have clearly condoned. In fact, Superintendent Horne has explicitly stated his intentions: "I think it's over due, The Department of Education will now have the authority to put a stop to extremely dysfunctional practices in Tucson Unified School District," KVOA.com, "Bill Passed that Would Ban Ethnic Studies for TUSD," April 30, 2010, <http://www.kvoa.com/news/bill-passed-that-would-ban-ethnic-studies-for-tusd/>. See also, Arizona Daily Star, "TUSD: Bill won't alter ethnic studies," May 4, 2010, http://azstarnet.com/news/local/education/article_8d522665-3753-5221-9b64-45c72b426777.html

The legislative history makes clear that the HB 2281's sponsor, Steve Montenegro, shares Superintendent Horne's views and target. Montenegro charges that the textbooks used in ethnic studies courses teach the students "victimology" because they are of a certain race or ethnicity. See Arizona House of Representatives Forty-ninth Legislature - Second Regular Session Active Calendar Committee of The Whole #2, Thursday, March 18, 2010, http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=7138.

Pursuant to Section "E" of the bill, there are exceptions for "grouping of pupils according to academic performance, including capability in English language that may result in disparate impact by ethnicity" and for "courses that include the history of any ethnic group that are open to all students and only provide historical information." The second exception ostensibly authorizes ethnic studies programs like those in the TUSD, but Superintendent Horne has made clear that, in his determination, the TUSD programs do not fall into the categorical exceptions. Thus, there can be no doubt that he would exercise his discretion to impose the financial penalties prescribed in the bill on TUSD, among other school districts that operate lawful and educationally sound ethnic studies programs.

In closing, MALDEF urges you to veto HB 2281 because of the chilling effect on lawful programs; the invitation to mischief by an overzealous superintendent who has demonstrated divisive tendencies; violations of important academic freedoms; and discrimination that could subject the state to costly legal action.

Regards,



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Director of Litigation