

González v. Douglas

History

- In 2010, the Arizona legislature passed HB 2281, codified as A.R.S. § 15-111 and 15-112.
- A.R.S. § 15-112 prohibits a school district from teaching and courses or classes that:
 - (1) Promote the overthrow of the U.S. government,
 - (2) Promote resentment toward a race or class of people,
 - (3) Are designed primarily for pupils of a particular ethnic group, or
 - (4) Advocate ethnic solidarity instead of the treatment of pupils as individuals.

The Plaintiffs' Legal Challenge

In October 2010, about 10 weeks before the statute became effective, ten teachers and the director of TUSD's MAS program filed a suit against then Superintendent of Public Instruction Tom Horne, ***Acosta v. Horne***, which eventually became ***Arce v. Douglas*** and then ***González v. Douglas***.

The Plaintiffs' Allegations

The Plaintiffs alleged that A.R.S. § 15-112:

1. Violates the plaintiffs 14th Amendment right to equal protection under the law;
2. Violates the 1st Amendment because it is overbroad and is viewpoint discrimination;
3. Violates the 14th Amendment because it is void for vagueness.

TUSD's MAS Program Found in Violation

- As his last act as Superintendent, Horne found that TUSD's Mexican American Studies program and classes violated A.R.S. § 15-112, before the statute was effective (December 30, 2010).
- Superintendent Huppenthal assumed office, reaffirmed Horne's decision, hired an auditor and conducted an investigation before also reaching the conclusion that the MAS program violated sections (2), (3) and (4) of the statute.

The Administrative Decision

- TUSD appealed Horne's finding and a trial was held at the Office of Administrative Hearings.
- The Administrative Law Judge upheld Huppenthal's determination.
- Upon threat of losing 10% of its funding, TUSD terminated the MAS program on January 10, 2012.

The Trial Court's First Decision

- In March 2013, the trial court found that that section (A)(3) (the “designed primarily for pupils of a particular ethnic group” prong) was unconstitutional on its face because it was overbroad. Therefore, that section was invalidated.
- The Trial Court ruled that the remainder of the statute was not unconstitutional.
- Both parties appealed.

Arce v. Douglas

793 F.3d 968 (2015)

- The Ninth Circuit
 - agreed that subsection (3) was overbroad,
 - agreed that the remainder of the statute was not unconstitutional “on its face,”
 - ruled that a question of fact had been presented as to whether the enactment and/or enforcement of the statute was motivated by discriminatory intent, and
 - remanded the case for further proceedings.

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Findings of Fact

- After a bench trial, the Court found as facts that:
 - The MAS classes were voluntary, college-prep classes that served primarily Latino students and that improved the academic achievement of enrolled students.
 - Then Superintendent Horne promoted bills that eventually became A.R.S. § 15-112 specifically to target TUSD's MAS classes.

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Findings of Fact

- Horne and Huppenthal publicly and private used racist rhetoric in promoting the bill that eventually became law.
- Horne ignored information about other schools and programs that used the same texts or had similar aims and targeted only the TUSD MAS program.
- Horne found TUSD in violation of the statute based on anonymous, sometimes second-hand comments and the use of certain textbooks.

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Findings of Fact

- The Cambium Learning audit commissioned by Superintendent Huppenthal found the classes did not violate the statute.
- Huppenthal rejected the Cambium result before conducting any further investigation.
- Huppenthal's own investigation relied solely on written materials without ascertaining how they were used in context.
- Huppenthal and Cambium did note the absence of a defined and consistent curriculum.

Conclusions of Law: Enactment was Motivated by Discrimination

- Based on these findings of fact, the Court concluded the enactment of the statute was done with racial animus based on comments by Horne and Huppenthal, a disparate impact on Latino students, the stated purpose of targeting TUSD's MAS program, the fact that existing statutes could have addressed concerns about curriculum and textbooks, and statements indicating racial animus in the legislative history.

Conclusions of Law: Enforcement was Motivated by Discrimination

- The Court also concluded enforcement of the statute was motivated by racial animus, as evidenced by Huppenthal's blog comments, evidence that the MAS program was specifically targeted for enforcement, the disparate impact on Latino students, public comments by Horne and Huppenthal, irregularities in enforcement, and other factors.

Irregularities in Enforcement

- Horne's premature finding based on limited information
- The rejection of the Cambrium audit based without a good basis
- Huppenthal's own investigation based on curricular materials considered out of context and unsupported assumptions

Conclusions of Law

- Enactment and enforcement violated Mexican American students' right to equal protect.
- Enactment and enforcement violated the students' First Amendment right to receive information and ideas.
 - The stated policy of reducing racism is a legitimate pedagogical interest of the state.
 - The Court found the true motivation was racial animus and partisanship.

Final Order as to Liability

- The Court entered judgment in favor of Plaintiffs on their First and Fourteenth Amendment Claims.
- The parties were ordered to submit briefs as to an appropriate remedy for the Court to consider.

Remedy Briefs of the Parties

September 11, 2017

- Plaintiffs seek:
 - Declarations that § 15-112 is invalid and past enforcement violated Plaintiffs' rights
 - A declaration that continued enforcement, including present monitoring of the Culturally Relevant Courses, violates Plaintiffs' rights
 - A permanent injunction prohibiting enforcement of § 15-112
 - An award of attorneys' fees

Remedy Briefs of the Parties

September 11, 2017

- Defendants seek:
 - A declaration that § 15-111 and 112 were enacted and § 15-112 was enforced with a discriminatory purpose in violation of the 14th Amendment.
 - A declaration that § 15-111 and 112 were enacted and § 15-112 was enforced not for legitimate pedagogical reasons but to advance partisan political interests in violation of the 1st Amendment.
 - No injunctive relief because there is no evidence the current or future Superintendents will attempt to enforce the statute.

What Next?

- The Court indicated it will set oral argument to address the appropriate remedy.
- A final determination on that issue will likely be issued in the fairly near future.
- Another appeal is possible but this decision was guided by the Ninth Circuit's prior decision.

What Impact Does the Decision Have on TUSD?

- There is not yet any final decision as to the remedy the Court will impose.
- The decision does not have a *direct* impact on TUSD because TUSD is not a party to the decision. TUSD will not be ordered to take any action.

What Impact Does the Decision Have on TUSD?

- TUSD discontinued the MAS program because of Huppenthal's enforcement of the statute, which has now been found unconstitutional.
- In place of the MAS program, TUSD has developed Culturally Relevant Courses through a framework set forth in the Unitary Status Plan and with the approval of ADE.
- Many elements of the MAS program have been incorporated into the Culturally Relevant Courses

What Impact Does the Decision Have on TUSD?

- The Superintendent of Public Instruction and ADE will not have the authority monitor the Culturally Relevant Courses for compliance with A.R.S. § 15-112.
- The District must still approve courses of study, textbooks and curricular materials in accordance with A.R.S. § 15-721 and 722 (as it has done with the CRC).