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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 **PATRICIA PELLETT,**

11 **Plaintiff,**

12 **vs.**

13 **CREIGHTON ELEMENTARY SCHOOL**
14 **DISTRICT; DEFENDANT**
15 **SUPERINTENDENT OF CREIGHTON**
16 **ELEMENTARY SCHOOL DISTRICT**
17 **JAY MANN; CREIGHTON**
18 **ELEMENTARY SCHOOL DISTRICT**
19 **BOARD MEMBERS SOPHIA**
20 **CARRILLO, HEATHER AYRES, KATIE**
21 **GIPSON MCLEAN, LINDSEY**
22 **MCCALEB, AMY MCSHEFFREY; ABC**
23 **ENTITIES 1-10; DOE INDIVIDUALS 1-10,**

24 **Defendants.**

Case No.: _____

COMPLAINT

(STATUTORY VIOLATION OF A.R.S. §
15-751 ET SEQ. AND INJUNCTION)

(TIER II)

25 For Plaintiff's Complaint against Defendants Creighton Elementary School District;
26 Defendant Superintendent of Creighton Elementary School District Jay Mann; Creighton
27 Elementary School District Board Members Sophia Carrillo, Heather Ayres, Katie Gipson
28 McLean, Lindsey McCaleb, Amy McSheffrey; and other ABC Entities 1-10, and Doe
Individuals 1-10, Plaintiff hereby alleges as follows:

1 **PARTIES, JURISDICTION, AND VENUE**

2 1. Plaintiff is a citizen of Arizona, who has a son who is a student currently studying
3 at Scottsdale High School. Jurisdiction and venue are proper in Maricopa County, Arizona.

4 **FACTUAL ALLEGATIONS**

5 2. In the year 2000, by margin of over 60%, Arizona voters passed an English for the
6 children structured English immersion initiative, known as proposition 203 codified in the
7 statutes as A.R.S. §15-751 at seq. It provides that English language Learning shall be taught in
8 English and that they placed in English language classrooms.

9 3. The purpose of Proposition 203 was that children should no longer be taught in
10 bilingual or dual language classes, where they are taught part of the day in Spanish. Instead, the
11 purpose of Proposition 203 was that children should be taught the entire school day in English,
12 so that they would quickly become proficient in English. *See* Declaration of Margaret Garcia
13 Dugan, attached as **Exhibit “1,”** which is incorporated in this Complaint by reference. Her
14 Declaration reads as follows:

15 [i] The purpose of this declaration is to give background information of
16 which I have personal knowledge, supporting the already clear language
17 of the English for the Children initiative that passed with 63% of the
18 vote. The purpose of the initiative is that English Language Learners be
19 taught English through English immersion, and in classes conducted in
20 English, throughout the school day. They cannot be taught in a program
21 conducted in any other language during the school day. To the extent
22 the legislation passed by the Arizona legislature in 2019, A.R.S. §
23 756.01, is viewed as authorizing dual language models, it does not
24 further the purpose of the initiative, and is therefore invalid pursuant to
25 Proposition 105, the Voter Protection Act.

26 [ii] I am a former national principal of the year and was Arizona Chief
27 Deputy Superintendent of Schools in the administration of
28 Superintendent of Public Instruction Tom Horne, from 2004 to 2011,
and again in Superintendent Horne’s third term, which began this year.

[iii] As co-chair of English for The Children, I participated in writing the
initiative. The other two who participated in writing the initiative were
Co-Chair Hector Ayala and Chair Maria Mendoza. They are submitting

1 declarations in support of the contents of this declaration. All three
2 declarations are attached to the Complaint as **Exhibits 1, 2 and 3,**
3 **respectively.**

4 [iv] The purpose of the initiative is clearly stated in the first sentence of
5 A.R.S. §15-752. It states, in part, that “all children in Arizona public
6 schools shall be taught English by being taught in English, and all
7 children shall be placed in English language classrooms.” (Emphasis
8 added.) This is the purpose of the initiative: that children should no
9 longer be taught in bilingual or dual language classes, where they are
10 taught part of the day in Spanish, but should be taught the entire school
11 day in English, so that they would quickly become proficient in English.

12 [v] As Chief Deputy Superintendent, I participated in the models that
13 implemented this requirement. The first model was for four hours of
14 structured English immersion: one hour each of reading, writing,
15 speaking, and listening, with the teaching of grammar -- an important
16 part of these models. For the remainder of the school day, the students
17 would be in regular classes with English-speaking students where the
18 teaching is in English, such as physical education, mathematics, etc.

19 [vi] Additional models, for as little as two hours, were established for
20 students with some knowledge of English. Still, the rest of the school
21 day was to be in the regular classrooms with English-speaking students
22 - - taught in English. Either way, the students were to be learning
23 English throughout the school day, so they could quickly master
24 English, and then succeed academically.

25 [vii] If the school day was partly taught in another language, this would delay
26 their mastery of English. This is consistent with the immersion models
27 used by adults who wish to learn another language. It is also consistent
28 with the doctrine of “time on task”, where the more times students
29 spend learning something the more they will learn. If only half the
30 school day is spent in class is taught in Spanish, the students will
31 certainly learn English more slowly. That is why the purpose of the
32 initiative was that students be taught in English throughout the school
33 day, either in structured English immersion instruction, or in the regular
34 classroom. (See language of initiative quoted above.)

35 [viii] Attached as **Exhibit 4** to the Complaint is an opinion from legislative
36 council that the dual language classrooms likely violate the Voter
37 Protection Act.

1 [ix] Some have interpreted legislation passed by the legislature in 2019 as
2 authorizing dual language classrooms. If that is true, the legislation is
3 invalid as a violation of the Voter Protection Act, proposition 105, the
4 voter-protected initiative. That is because it does not further the purpose
5 of the initiative, which was to make sure that students are taught in
6 English through the school day so that they can learn English quickly
7 and then go on to academic success.

8 [x] When students become proficient in English, they can certainly be
9 encouraged to learn other languages. But the first priority must be to
10 further the purpose of the initiative to have students learn English
11 throughout the school day to speed up their proficiency in English so
12 they can succeed academically.

13 [xi] Although the language of the initiative, quoted above, clearly articulates
14 its purpose, there is additional evidence in the initiative supporting that
15 purpose. For example, a student could be in a dual language classroom,
16 if they obtained a waiver, signed by their parents, but only if they meet
17 one of three alternatives. One example of an alternative condition would
18 be if the student was proficient in oral English, but not in the other
19 categories. If that student's parents or guardian sign a waiver, he can be
20 in dual language. Had the intended purpose of the initiative been to
21 allow students to be taught in a language other than English throughout
22 the school day, then there would have been no need for the waiver
23 provision.

24 [xii] If the 2019 legislature intended to authorize dual language, the proper
25 way to do so would have been through an initiative or referendum
26 where the voters would have a chance to decide if they wanted to
27 contradict their prior vote in favor of Proposition 203. But passing a law
28 that does not further the purpose of the English for the Children
initiative is invalid as it violates the Voter Protection Act.

4. In 2006, the state legislature enacted A.R.S. § 15-756.01, which provided that
“[t]he state board of education shall either use research based models of structured English
immersion programs that were previously developed and adopted by the English language
learners task force or develop and adopt new research based models of structured English
immersion programs for use by school districts and charter schools.” A.R.S. § 15-756.01 (2006).

5. In 2019, the Arizona legislature amended A.R.S. § 15-756.01 to state that “[t]he
state board of education shall adopt and approve research based models of structured English

1 immersion for school districts and charter schools to use.” Neither bilingual nor dual language
2 was mentioned.

3 6. The State Board of Education, on the recommendation of a prior Superintendent,
4 adopted (on the “consent agenda,” without discussion) a model known as “50-50 Dual Language
5 Immersion.” The dual language model makes no reference to whether or not a statutory waiver
6 must first be obtained. A statutory waiver allows a student to be in dual language if the student
7 is partially proficient in English and the parents sign a waiver.

8 7. When asked by the press, the Executive Director of the State Board indicated that
9 the Department of Education requiring waivers was not contrary to the dual language model
10 adopted by the State Board. The model did not specify one way or another about waivers. The
11 Director indicated that requiring waivers was an executive function for the Department of
12 Education and did not contradict the model adopted by the State Board. If the requirement of
13 waivers is included, then a dual language model is legal. However, as explained below, the
14 defendant Attorney General erroneously ruled that waivers are not required.

15 8. The dual language model is contrary to Proposition 203, because it involves
16 teaching the students in a language other than English for half the day every day. The voter-
17 protected initiative specifically requires that English-language learners be taught English by
18 being taught in English, and that they be placed in English-language classrooms. Dual language
19 classrooms, in the absence of a statutory waiver, are therefore prohibited by the voter-protected
20 initiative.

21 9. Advocates of the dual language model argue that the legislature passed A.R.S. §
22 15-756.01 with the intent of allowing dual language instruction, though there is no language in
23 the statute to that effect.

24 10. To the extent A.R.S. § 15-756.01 allows dual language, it is unconstitutional
25 because it does not further the purpose of the voter protected initiative. Ariz. Const. art. 4, part
26 1, § 1 (6)(C) (“the legislature shall not have the power to amend an initiative measure approved
27
28

1 by a majority of the votes cast thereon...unless the amending legislation furthers the purposes of
2 such measure....”).

3 11. The authorization by the State Board of dual language models is void because the
4 State Board cannot overrule a voter-protected initiative.

5 12. Certain legislators asked Defendant Attorney General Kris Mayes for an opinion
6 on the subject of dual language. The Attorney General Opinion (non-binding in Court cases) is
7 attached hereto as **Exhibit “5”** to this Complaint. In the Opinion, the Attorney General
8 expressly refuses to comment on whether the dual language model is contrary to the voter-
9 protected initiative. However, the decision erroneously states that schools could rely on the State
10 Board model, without waivers, because it is the State Board, not the State Superintendent, that
11 enforces the law in this area. The Superintendent always understood that the statutory corrective
12 measure of withholding funds requires him to make a proposal to the State Board, and it is the
13 State Board that withholds funds; so, this portion of the opinion added nothing new.

14 13. The Defendant Attorney General’s opinion erroneously stated that waivers are not
15 required for the dual language models and that schools could rely on the State Board action
16 authorizing dual language.

17 14. The part of the opinion that states schools can rely on the State Board model is
18 erroneous, because no governmental body can override a voter-protected initiative. The voter-
19 protected initiative specifically requires that instruction be in English until the student tests as
20 proficient in English, or a parental waiver is obtained after the student has become partially
21 proficient. The Attorney General is therefore advising school districts that they could proceed
22 with dual language without a waiver, even though this is contrary to the voter-protected
23 initiative which cannot be overruled by the State Board of the Attorney General. Also, as noted,
24 the State Board model did not say one way or another as to whether waivers would be required.

25 15. Defendant Creighton Elementary School District, among others, is permitting dual
26 language instruction for English language learners and not obtaining parental waivers.
27 Creighton’s rate of English language learners becoming proficient in English last year was -
28

1 5.1%. By contrast, the following districts implemented structured English immersion, and had
2 the following rates of students becoming proficient in English last year: Catalina 33.03%,
3 Liberty Charter 32.86%, American Leadership Charter 25.4%, Scottsdale 23.87%.

4 16. Plaintiff is entitled to a judgment against Creighton Unified School District,
5 declaring it to be in violation of the above referred to initiative and statutes, and enjoining it
6 from further violation.

7 17. A.R.S. §15 –754 provides as follows:

8 The parent or legal guardian of any Arizona school child shall have legal
9 standing to sue for enforcement of the provisions of this statute, and if
10 successful shall be awarded normal and customary attorney's fees and actual
11 and compensatory damages, but not punitive or consequential damages. Any
12 school board member or other elected official or administrator who willfully
13 and repeatedly refuses to implement the terms of this statute may be held
14 personally liable for fees and actual and compensatory damages by the child's
15 parents or legal guardian, and cannot be subsequently indemnified for such
16 assessed damages by any public or private third party. Any individual found so
17 liable shall be immediately removed from office, and shall be barred from
18 holding any position of authority anywhere within the Arizona public school
19 system for an additional period of five years.

20 18. The violation by Defendants superintendent and school board members were
21 willful and repeated, because they were informed by the Department of Education that they were
22 in violation of the initiative and statutes, and did not take further action. In addition, they were
23 named in a lawsuit on the subject, but by the Department of Education. The judge in that case
24 ruled that the Department of Education did not have standing to bring an action (unlike the
25 parent, who is the Plaintiff in this case, who has a child in a public school and was given this
26 right of action specifically in the initiative and statutes referred to above.)

27 The Court in that case did not comment on the merits of whether the dual language
28 program was in violation of the initiative or the associated statutes. That is left for this Court to
determine. In that lawsuit, the Defendant school district, with other Defendants, argued that they
should not be required to follow the initiative and associated statutes.

1 **REQUEST FOR RELIEF**

2 **THEREFORE**, Plaintiff prays for judgment in her favor and against Defendants and
3 each of them under the specifications of the statute quote above (including loss of office by
4 individual defendants and an inability to run against for 5 years, for an injunction requiring that
5 English language learners be in English immersion classroom and not in dual language, and for
6 an award of attorneys' fees.

7 **RESPECTFULLY SUBMITTED** on March 19, 2024.

8 **CARMEN CHENAL HORNE LAW FIRM PLLC**

9 */s/ Carmen Chenal Horne*

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14 **ELECTRONICALLY** filed on
15 March 19, 2024, via AZTurboCourt.com

16 */s/ Carmen Chenal Horne*

VERIFICATION
(Rule 80(i), Ariz.R.Civ.P.)

I, Patricia Pellett, declare under penalty of perjury that I believe the facts set forth in this Complaint to be correct, based on the information supplied to me. '

EXECUTED on: 3/15/24

Patricia Pellett
By: Patricia Pellett