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12 Attorneys for Defendants Arizona State Board of Education,
13 including members named in their Official Capacity.

14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 CURTIS ACOSTA, SEAN ARCE, MAYA
17 ARCE, MARIA FEDERICO BRUMMER,
18 DOLORES CARRION, ALEXANDRO
19 ESCAMILLA, JOSE GONZALEZ, NORMA
20 GONZALEZ, LORENZO LOPEZ, JR.,
21 KORINA ELIZA LOPEZ, RENE F.
22 MARTINEZ, SALLY RUSK, and
23 YOLANDA SOTELO,

24 Plaintiffs,

25 vs.

26 JOHN HUPPENTHAL, Superintendent of
27 Public Instruction and Executive Director of
the Arizona State Board of Education, in his
Official Capacity, the ARIZONA STATE
BOARD OF EDUCATION, including all
members in their Official Capacity; VICKI
BALANTINE, JACOB MOORE, JOHN
HAEGER, JAIME MOLERA, AMY
HAMILTON, EILEEN KLEIN, GREGORY
MILLER, JAMES HORTON, DIANNE
ORTIZ-PARSONS, and THOMAS TYREE,

Defendants.

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

**EXPEDITED STIPULATED
MOTION REQUESTING ORDER
DESIGNATING DEFENDANTS
ARIZONA STATE BOARD OF
EDUCATION AND ITS
INDIVIDUAL MEMBERS AS
NOMINAL PARTIES**

1 It is the intent of Defendants State Board of Education and its individual members
2 sued in their official capacities (collectively “the Board Defendants”) that they be deemed
3 nominal or passive parties for purposes of this matter. Counsel for the Board Defendants
4 consulted with Plaintiffs’ counsel and Plaintiffs have agreed to stipulate to such a request.
5 Additionally, the Board Defendants have also consulted with Defendant John Huppenthal’s
6 counsel, who has also consented to stipulate to such a request.

7 Further, the Board Defendants are requesting expedited consideration of this
8 stipulated motion since a ruling on the instant motion will impact whether and to what extent
9 the Board Defendants are required to respond to impending deadlines, including deadlines to
10 respond to Plaintiffs’ motion for summary judgment and to file a responsive pleading to
11 Plaintiffs’ Complaint. Again, the Board Defendants consulted with both Plaintiffs’ Counsel
12 and the Superintendent’s counsel and have received consent to request expedited
13 consideration.

14 Plaintiffs sued the Arizona State Superintendent of Public Instruction John
15 Huppenthal (“the Superintendent”) and the Board Defendants in their official capacities
16 alleging that A.R.S. §§ 15-111 and -112 are unconstitutional. While the right to take action
17 under this statute vests with either the Superintendent or the Board Defendants, in this case
18 that right has been exercised by the Superintendent only. The Board Defendants have
19 expressed a desire to defer actions on this matter to the Superintendent and as such are
20 seeking the designation as nominal or passive parties for purposes of this litigation. *See*
21 *Native Am. Church of Navajo-Land, Inc. v. Ariz. Corp. Comm’n*, 405 U.S. 901, 92 S.Ct. 934,
22 937 (1972) (stating that a state officer whose action is not the effective means of the
23 enforcement or execution of the challenged statute is a nominal party defendant for purposes
24 of 28 U.S.C. § 2281). Accordingly, the Superintendent will maintain the primary burden of
25 defending the State, the real party in interest. *See Will v. Michigan Dep’t of State Police*,
26 491 U.S. 58, 71, 109 S.Ct. 2304, 2312 (1989) (stating that a suit against a state official in his
27 or her official capacity is not a suit against the official but rather is a suit against the

1 official's office; and, as such, it is no different from a suit against the State itself). Further,
2 pursuant to Federal Rule of Civil Procedure 65(d)(2), any injunction issued against the
3 Superintendent will also bind the Board Defendants as parties, provided that they receive
4 actual notice of such an injunction order.

5 By this designation, it is the Board Defendants' intent that: 1) they will not be
6 required to file responsive or affirmative pleadings in this matter; 2) they will abide by any
7 court order issued in this matter; 3) they waive their right to formally appear and be heard at
8 all future hearings, oral arguments, conferences and trials; 4) they will not be liable for
9 attorneys fees and costs in this matter, provided that the Board Defendants remain nominal
10 parties; and 5) they will continue to receive copies of all pleadings, motions, notices, minute
11 entries and orders in this matter.

12 In the alternative, should the Court deny the instant stipulated motion, the Board
13 Defendants request an extension of the deadline to file a responsive pleading to 30 days from
14 the date of the order denying the motion.

15 Dated this 2nd day of June, 2011.

16 THOMAS C. HORNE
17 Attorney General

18 s/ Kevin Ray
19 Kevin Ray
20 Assistant Attorney General
21 Attorney for Defendants Arizona State Board of
22 Education, including members named in their
23 Official Capacity

24 s/ Melissa Iyer
25 Melissa Iyer
26 Attorney for Defendant Superintendent of Public
27 Instruction John Huppenthal

1 s/ Richard Martinez

2 Richard Martinez

3 Attorney for Plaintiffs

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5 **COPY** of the foregoing filed via ECF this 2nd
6 day of June, 2011 to all ECF registrants in the
instant matter.

7 I certify that I electronically
8 transmitted the attached document
9 to the Clerk's Office using the
10 CM/ECF System for filing and
transmittal of a Notice of Electronic
11 Filing to the following, if CM/ECF
registrants, and mailed a copy of
12 same to any non-registrants, this
this 2nd day of June, 2011 to:

13 s/ Phil Londen

14 #1889027_v3