

United States Court of Appeals,  
Ninth Circuit.  
Miriam FLORES, Plaintiff-Appellee,  
v.  
Rosa RZESLAWSKI, individually, and as a parent of  
Mario Rzeslawski, a minor child, Plaintiff-Appellee,  
Thomas C. Horne, Superintendent of Public  
Instruction, State of Arizona, Defendant-Appellant,  
and  
State of Arizona; C. Diane Bishop; Eugene Hughes;  
David Silva; Claudine Bates Arthur; John Hosner;  
Ken Bennett; Ray Kellis; Jim Allman; Morrison  
Warren, members of the State Board of Education,  
Defendants,  
American Council of Engineering Companies of  
Arizona; Associated General Contractors of America,  
Arizona Chapter, Defendant-Intervenors.  
Evangelina Miranda, individually and as a parent of  
Mariela and George Dorame, minor children,  
Plaintiff-Appellee,  
v.  
Thomas C. Horne, in his official capacity as  
Superintendent of Public Instruction, State of  
Arizona; The Arizona Board of Education, and its  
individual members in their official capacities,  
Defendants,  
American Council of Engineering Companies of  
Arizona; Associated General Contractors of America,  
Arizona Chapter, Defendant-Intervenors,  
and  
State of Arizona, Defendant-Appellee,  
The Speaker of the Arizona House of Representatives  
and President of the Arizona Senate, Defendant-  
intervenor-Appellant.  
Evangelina Miranda, individually and as a parent of  
Mariela and George Dorame, minor children,  
Plaintiff-Appellee,  
v.  
Thomas C. Horne, in his official capacity as  
Superintendent of Public Instruction, State of  
Arizona, Defendant-Appellant,  
State of Arizona, Defendant-Appellee,  
and  
The Arizona Board of Education, and its individual  
members in their official capacities, Defendant,  
American Council of Engineering Companies of  
Arizona; Associated General Contractors of America,  
Arizona Chapter; The Speaker of the Arizona House  
of Representatives and President of the Arizona  
Senate, Defendant-Intervenors.  
Miriam Flores; Rosa Rzeslawski, individually, and as  
a parent of Mario Rzeslawski, a minor child,

Plaintiffs-Appellees,  
v.  
State of Arizona, Defendant-Appellee,  
The Speaker of the Arizona House of Representatives  
and President of the Arizona Senate, Defendant-  
intervenor-Appellant,  
and  
Thomas C. Horne, Superintendent of Public  
Instruction, State of Arizona; C. Diane Bishop;  
Eugene Hughes; David Silva; Claudine Bates Arthur;  
John Hosner; Ken Bennett; Ray Kellis; Jim Allman;  
Morrison Warren, members of the State Board of  
Education, Defendants,  
American Council of Engineering Companies of  
Arizona; Associated General Contractors of America,  
Arizona Chapter, Defendant-Intervenors.  
Miriam Flores; Rosa Rzeslawski, individually, and as  
a parent of Mario Rzeslawski, a minor child,  
Plaintiffs-Appellees,  
v.  
State of Arizona, Defendant-Appellee,  
Thomas C. Horne, Superintendent of Public  
Instruction, State of Arizona, Defendant-Appellant,  
and  
C. Diane Bishop; Eugene Hughes; David Silva;  
Claudine Bates Arthur; John Hosner; Ken Bennett;  
Ray Kellis; Jim Allman; Morrison Warren, members  
of the State Board of Education, Defendants,  
American Council of Engineering Companies of  
Arizona; Associated General Contractors of America,  
Arizona Chapter; The Speaker of the Arizona House  
of Representatives and President of the Arizona  
Senate, Defendant-Intervenors.  
**Nos. 06-15378, 06-15556, 06-15558, 06-15951, 06-  
15952.**

Argued and Submitted July 25, 2006.  
Filed Aug. 23, 2006.

**Background:** Limited English proficient (LEP) children and their parents sued State of Arizona and other defendants, seeking relief under [§ 1983](#) for alleged violations of Equal Educational Opportunities Act (EEOA). Following bench trial, the District Court, Marquez, Senior District Judge, [172 F.Supp.2d 1225](#), entered judgment for claimants in part, ruling that state's funding of its English Language Learner (ELL) programs was arbitrary and capricious in violation of EEOA. Subsequently, [160 F.Supp.2d 1043](#), the District Court granted claimants' motion for post-judgment relief, ordering state to

prepare cost study to establish proper appropriation. The District Court, [Raner C. Collins, J.](#), [405 F.Supp.2d 1112](#), granted claimants' moved for imposition of civil contempt sanction against state, based on continued failure to comply with court orders. Appeals were taken.

**Holding:** The Court of Appeals held that district court should have held an evidentiary hearing and made findings of fact regarding whether changed circumstances required modification of original court order or otherwise had a bearing on the appropriate remedy.

Vacated and remanded.

\*582 [William Eric Morris](#), Arizona Justice Institute, Tucson, AZ, [Timothy M. Hogan](#), Esq., Phoenix, AZ, for Plaintiff-Appellee.

Jose Cardenas, Esq., Lewis & Roca, LLP, Phoenix, AZ, [Eric J. Bistrow](#), Esq., Burch & Cracchiolo PA, Phoenix, AZ, for Defendant-Appellant.

Jeanne Galvin, Office of the Arizona Attorney General, [Lynne C. Adams](#), Esq., Lewis & Roca, LLP, Phoenix, AZ, for Defendants.

[James J. Sienicki](#), Esq., Snell & Wilmer, LLP, [Keith F. Overholt](#), Esq., Jennings Strouss & Salmon, PLC, Phoenix, AZ, for Defendant-Intervenors.

Appeal from the United States District Court for the District of Arizona, [Raner C. Collins](#), District Judge, Presiding. D.C. No. CV-92-00596-RCC.

Before: [HUG](#), [KLEINFELD](#), and [PAEZ](#), Circuit Judges.

MEMORANDUM <sup>FN\*</sup>

<sup>FN\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\*1 This case deals with the consolidated appeals of several district court orders. The first several orders found the State of Arizona in civil contempt of the district court's previous order to reform the State's English Language Learner (ELL) program, enjoined

administration of the AIMS test to ELL students as a requirement for graduation until the program had been reformed, and provided for the distribution of the fines collected to school districts to fund ELL programs. The second order rejected House Bill 2064, determining it failed to comply with the court's original order.

In the interim, the landscape of educational funding has changed significantly. We have held that, because “the scope of federal relief against an agency of state government must always be narrowly tailored to enforce federal constitutional and statutory law only ... federal courts must be sensitive to the need for modification [of permanent injunctive relief] when circumstances change.” <sup>FN1</sup> In light of the changes in education programs and funding since the original 2000 court order, the district court should have held an evidentiary hearing and made findings of fact regarding whether changed circumstances required modification of the original court order or otherwise had a bearing on the appropriate remedy. The orders of the court holding the defendants in contempt and rejecting House Bill 2064 are therefore vacated and the case is remanded to the district court. Because we hold that the district court should have held an evidentiary hearing on changed circumstances, we need not, and do not, reach any of the other issues in the case.

<sup>FN1</sup>. [Clark v. Cove](#), 60 F.3d 600, 604 (9th Cir.1995).

**VACATED AND REMANDED.**

C.A.9 (Ariz.),2006.  
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204 Fed.Appx. 580, 2006 WL 2460741 (C.A.9 (Ariz.)), 216 Ed. Law Rep. 94

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