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Keeping the Flames at Bay: The Interplay between Federal Oversight and State Politics in Tucson's Mexican American Studies Program

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Abstract

In the wealth of literature discussing Tucson Unified School District's (TUSD) Mexican American Studies program (MAS), the focus has remained primarily on the political events surrounding the elimination of the highly successful MAS program. The federal desegregation case still pending in Tucson is rarely mentioned and never discussed in depth. In this article, we aim to address this gap in the literature by presenting two stories. First, we look at the story of the TUSD desegregation case originally filed in 1974 and its progress toward unitary status. Next, we look at the story of political scheming and maneuvering in Tucson and Arizona aimed at eliminating MAS. Finally, we discuss the impact of federal court oversight in the face of highly oppositional political forces and how equity and equality may be protected after TUSD is granted unitary status.

Introduction

In the Juan Crow[i] environment of the city of Tucson, and the state of Arizona, the contentious political debates surrounding race have decidedly forced student achievement to the proverbial backburner (Cabrera, Milem, Jaquette, & Marx, 2014). The well-respected Mexican American Studies (MAS) program in Tucson Unified School District (TUSD), a program known to increase student achievement and positively impact students overall, was sadly lost as a result of these disputes. Certainly, discussion that interrogates the reasons why and how a highly successful academic program was eliminated for the sake of politics remains valid. However, lost too in this racio-political debate was the interplay between the MAS program and TUSD's federal desegregation order.

Many scholars have aligned the events surrounding TUSD and its MAS program with the various tenets of Critical Race Theory (CRT). For example, Terry (2013) discussed TUSD and interest convergence, or as Bell (2004) suggested, when the result of "…. an effective racial remedy [is] abrogated at the point that policymakers fear the remedial policy is threatening the superior societal status of whites" (p. 69). Martinez (2013) and Cammarota (2014) used the CRT tenet of counterstory, or oppressed individuals' personal stories, as legitimate representations of their experiences to highlight the missing MAS student voices (see Bell, 1980, for a more detailed discussion of counterstory). Further, Orozco (2011) applied the CRT tenet of whiteness as property to the events of TUSD and MAS. Through this lens, whiteness has a property value in terms of rights and privileges (Bell, 2004). According to Harris (1993), this

> property included human rights, liberties, powers, and immunities vital to human well-being, including: freedom of expression, freedom of conscience, freedom from bodily harm, and free and equal opportunities to use personal faculties… Whiteness- the right to white identity as embraced by the law-is property if by property one means all of a person's legal rights. (p. 4)

And finally, Cammarota (2014) applied the CRT tenet of liberalism, or the refusal to acknowledge race and racial differences in society, reflecting the *colorblind* philosophy embraced by MAS saboteurs, primarily Tom Horne and John Huppenthal—Arizona politicians who served in the role of state Superintendent of Public Instruction. We support these scholars and their apt analyses and clear connections of the events in TUSD to the powerful framework of CRT. However, rather than provide an additional interpretation of the disputes surrounding MAS with CRT, we approach the issue from a different lens, that of the MAS program and the federal desegregation order in TUSD. A thorough review of the literature exposed the lack of a narrative explaining the relationship between the federal desegregation order imposed on TUSD decades ago and the political battle over MAS. We address this omission here. First, we begin with a brief history of school desegregation. We then move on to an overview of the history of desegregation in TUSD. Last, we present a critical discussion of the political events in TUSD and in Arizona regarding the elimination of the highly successful MAS program, and the implementation of culturally responsive curricula in its stead. And importantly, we also include a graphic timeline of political events as they relate to desegregation, TUSD, and MAS.

A Brief Legal History of Desegregation

In its historical decision in *Brown v. Board of Education of Topeka, Kansas* (1954), the U.S. Supreme Court held that the "separate but equal" (p. 495) doctrine has no place in public education, overturning its decision in *Plessy v. Ferguson* (1896). Although the Court declared *de jure* segregation in schools to violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution (Equal Protection Clause), it was not until its follow-up decision in *Brown v. Board of Education of Topeka, Kansas* (called *Brown II*) in 1955 that the Court provided any directives as to how schools, districts, and states were to go about desegregating. In *Brown II* the Court remanded the segregation cases back to their respective district courts for supervision as districts dismantled their segregated public school systems "with all deliberate speed" (p. 301).

In principle, by issuing such a vague and an ambiguous directive for the desegregation process, the Court intended to give districts the time and flexibility to successfully integrate. However, many districts and states took advantage of this flexibility, deliberately taking years, or even decades to dismantle their segregated public school systems. This procrastination of action forced the Court to use stronger language. In *Green v. County School Board of New Kent County* (1968), the Court directed that districts "operating state-compelled dual systems [are] clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch" (pp. 437-438). As a result of *Green*, federal district court oversight of the school desegregation process continues until a district can prove that it has achieved unitary status (meaning that the district is operating a single, desegregated system of public education as opposed to a dual, segregated

system). The school district must establish that the "vestiges of past discrimination [have] been eliminated to the extent practicable" (*Board of Education of Oklahoma City Public Schools v. Dowell*, 1991, p. 238). In determining unitary status, the federal district court examines the unitary nature of several areas of school operations, including desegregation in student assignment, faculty and staff, extracurricular activities, transportation, and facilities (*Green*, 1968). A district may receive unitary status in individual areas of operation, but it must establish unitary status in all of the aforementioned areas in order to be released fully from federal district court oversight.

While many of the school desegregation cases focused on racial inequities between White and Black students, it is important to note that during the same time period courts were challenged to think beyond the Black-White binary and recognize the rights of citizens from other racial and ethnic backgrounds. For example, in *Hernandez v. State of Texas* (1954), the Supreme Court was asked to consider how the Equal Protection Clause applied to persons of Mexican descent in a criminal law case. The plaintiff, Hernandez, argued that persons of Mexican descent were excluded from jury service in his criminal trial, constituting a violation of the Equal Protection Clause. The Supreme Court agreed, noting:

> The State of Texas would have us hold that there are only two classes−white and Negro−within the contemplation of the Fourteenth Amendment. The decisions of this Court do not support that view…The Fourteenth Amendment is not directed solely against discrimination due to a 'two-class theory−that is, based upon differences between 'white' and Negro. (*Hernandez*, 1954, p. 477-78)

It is within this legal context, with regard to the Court's treatment of both segregation in public schools and of the identification and protection of racial groups, that the cases against TUSD were filed.

The Unique Legal History of Desegregation in TUSD

Historically, TUSD has been a diverse district, predominantly serving Black, Native American, and Latina/o students and families. However, as Whites continued to move to the Tucson area, these traditionally marginalized groups became increasingly isolated, and their neighborhoods became increasingly less diverse. Consequently, the public schools in Tucson became increasingly segregated. This trend continued well into the 1970s.

In May 1974, Black elementary and high school students (called the Fisher plaintiffs) filed a school segregation cause of action against TUSD, arguing that the segregated school system constituted a violation of the Equal Protection Clause. Several months later, a similar but separate action was filed on behalf of the Mexican-American students (called the Mendoza plaintiffs, although other plaintiffs in the original group were named Sanchez and Trujillo). The Fisher and Mendoza plaintiffs were both certified as representatives for their respective classes and the two class action cases were consolidated for hearing and disposition in the district court (*Mendoza v. Tucson Unified School District No. 1*, 1980). The Complaints alleged seven specific causes of action[ii], including: (1) TUSD maintained a "tri-ethnic segregated school system" (*Mendoza*, 1980, p. 1341); (2) discriminatory tracking practices; (3) inferior curricula

and facilities for Black and Mexican-American students; (4) discrimination in the hot lunch programs; (5) failure to serve students' linguistic needs; (6) discrimination against students with special needs; and (7) lack of bilingual notices (*Mendoza*, 1980).

The consolidated trial was held in January 1977. On June 5, 1978, the federal district court issued its decision, finding that the state had violated the Equal Protection Clause and that TUSD was operating a segregated, dual school system for Blacks and non-Blacks but that no such dual system existed for Mexican-American students, nor was there evidence of intentional, system-wide discrimination against Mexican-American students. In support of its findings, the Court ordered that the TUSD create a desegregation plan for nine particular schools (*Mendoza*, 1980).

The parties filed post-trial motions to amend the case findings and conclusions, including a motion to reconsider the *Mendoza* claims. Before the court issued its ruling on these motions, TUSD notified the court that the parties were engaged in settlement discussions. The court delayed ruling on the motions but required TUSD to submit its proposed desegregation plan by July 17, 1978 for an August 8th hearing (*Mendoza*, 1980). In addition to agreeing on the terms of a settlement plan, the parties (TUSD, the Fisher plaintiffs, the Mendoza plaintiffs, and the United States Department of Justice) also were able to come to a consensus regarding the remaining issues in the case. As part of this settlement, TUSD agreed to include three additional schools in the desegregation efforts; to work with parents on policies regarding student assignments to several other elementary, middle, and high schools, testing, and discipline; and to make additional program improvements.

Certain members of the *Mendoza* class were not satisfied with the terms of the settlement, particularly the Sanchez plaintiffs. The court permitted the Sanchez plaintiffs to retain separate counsel and participate in the post-trial motions, hearings, and settlement discussions (*Mendoza*, 1980). Specifically, the Sanchez plaintiffs took issue with the proposed closure of three of the nine identified schools, arguing that the closures unfairly burdened Mexican-American students. On August 4, 1978, the Sanchez plaintiffs filed a motion to create a sub-class of Mexican-American students and parents in the attendance zones for the schools slated for closure. At the desegregation plan hearing on August 7th, the Sanchez plaintiffs lodged objections to the plan and presented alternatives. On August 11, 1978, the district court issued an order approving TUSD's desegregation plan and denied the Sanchez plaintiffs' motion for certification as a sub-class, determining that approval of the desegregation plan rendered the sub-class moot. The parties met on August 30 and 31, 1978, for a settlement hearing on the remaining issues. Despite the Sanchez plaintiffs' objections, the district court approved the stipulated settlement agreement (the Agreement) (*Mendoza*, 1980).

The Agreement, aimed at resolving the litigation, was designed to remedy past discrimination and determine the rights and obligations of all of the parties. Furthermore, the Agreement required the district court to ensure that TUSD did not engage in any acts or policies that interfered with students' equal protection under the law based on race or ethnicity. The Agreement established federal court oversight of the desegregation process in TUSD, a process that has been ongoing for almost four decades. Moreover, the Agreement provided that after five full school years of operation under its terms, TUSD could move the court for a dismissal of the

actions (unitary status) by meeting the conditions set forth in *Green* (discussed above). However,

> [i]t was more than 25 years…before [TUSD] did so – and then only in response to the district court's 2004 sua sponte order directing the parties to show cause why the court should not declare [TUSD] unitary and terminate its jurisdiction. (*Fisher v. Tucson Unified School District*, 2011, p. 1137)

In January 2005, TUSD filed a Petition for Unitary Status and Termination of Court Oversight, arguing that TUSD had achieved unitary status by showing a "good faith commitment and eliminate[ing] the vestiges of discrimination to the extent practicable by measure of the *Green* factors" (*Fisher v. TUSD*, 2011, p. 1138). The Mendoza plaintiffs objected, providing extensive evidence of TUSD's failure to implement the desegregation plan set out in the Agreement.

On August 21, 2007, the district court issued its preliminary findings in the unitary status case. To determine unitary status, the district court used a two-prong test, looking for good-faith compliance with the Agreement and elimination of the vestiges of *de jure* segregation in student assignment, faculty and staff, extracurricular activities, transportation, and facilities as set forth in *Green* (1968). The district court did not find that TUSD complied with the Agreement in good faith, but that it did demonstrate good faith in working with the other parties to develop a Post-Unitary Status Plan (*Fisher v. TUSD*, 2011). The district court then ordered TUSD to compile a comprehensive report of its compliance (*Fisher v. TUSD*, 2011). Similarly, the district court could not find that TUSD eliminated the vestiges of *de jure* segregation to the extent practicable but concluded that it anticipated being able to make such a finding once the district compiled its comprehensive report. Furthermore, despite finding an overall lack of evidence to support unitary status, the district court determined that "oversight and control will be more effective placed in the hands of the public with the political system at its disposal to address any future issues" (*Fisher v. TUSD*, 2011, pp. 1138-1139).

As ordered, in 2008 the TUSD filed a Student Assignment Report (the SAR) aimed at proving their entitlement to unitary status. The SAR included two expert reports outlining TUSD's effort to comply with the 1978 Settlement Agreement. The Mendoza plaintiffs filed a competing expert report. In its 2008 order, the district court found a general lack of evidence to support a good faith effort on behalf of TUSD to eliminate the vestiges of past discrimination, particularly with regard to student assignment and faculty recruitment (*Fisher v. United States*, 2008). Despite these conclusions, the district court announced its intention to grant TUSD unitary status upon the adoption of an acceptable post-unitary plan, finding that "…given the facts of this case, successful desegregation will exist when the School Board is accountable to the public for its operation of the District in compliance with the …principles of equality" (*Fisher v. US*, 2008, p. 1167). However, the parties were ordered to confer to make modifications to the post-unitary plan to "improve its transparency and accountability" (*Fisher v. US*, 2008, p. 1168).

During the following year, the TUSD's Governing Board adopted a "Post-Unitary Status Plan" with amendments drafted by a committee made up of the plaintiffs (Fisher and Mendoza), experts, and TUSD officials. This plan was submitted to the district court. The court approved the plan and declared TUSD unitary, stating that its responsibility was "to guard the public

against future injury and to restore true accountability to the public education system by returning it to the control of local authorities as soon as possible" (*Fisher v. TUSD*, 2011, p. 1141).

The plaintiffs appealed the district court's decision to the Ninth Circuit Court of Appeals. In its July 19, 2011, order, the court of appeals found that the "district court's own findings are fatal to its determination that [TUSD] has achieved unitary status" (*Fisher v. TUSD*, 2011, p. 1141). The district court determined that TUSD failed to act in good faith in enforcing the Agreement and had concerns over TUSD's sufficient elimination of the effects of past *de jure* segregation based on the *Green* factors. While the court of appeals acknowledged that district court oversight of desegregation efforts was intended to be temporary, it reiterated the requirement for districts to first "demonstrate good faith and [eliminate] the vestiges of past discrimination to the extent practicable" (*Fisher v. TUSD*, 2011, p. 1143). Furthermore, the appeal left open the possibility of partial unitary status in the areas where TUSD satisfied the good faith and elimination of past discrimination requirements, and reversed and remanded the case back to the district court for further review.

On January 6, 2012, the district court appointed a Special Master, University of Maryland professor emeritus Willis D. Hawley, to facilitate the development of a Unitary Status Plan (USP) for TUSD pursuant to its September 14, 2011, order overturning the unitary status decision (*Fisher v. Lohr*, called the *Fisher Order*, 2011). The Special Master was directed to work with all of the parties to create a plan to help TUSD earn unitary status by addressing the *Green* factors and other specific issues raised earlier in the litigation process (*Fisher v. Lohr*, Unitary Status Plan [USP], 2013). In February 2013, after months of negotiations, the parties were able to agree on a proposed USP. The USP includes strategies for eliminating the vestiges of past discrimination through student assignment (attendance boundaries, clustering schools, magnet schools and programs, and open enrollment); transportation; diversity of faculty and administrators (recruitment, hiring, assignment, promotion, pay, demotion, and dismissal practices and procedures); academic achievement of African American and Latina/o students (targeted Advanced Learning Experiences and other student services); discipline; family and community engagement; extracurricular activities; facilities and technology; and administrative accountability and transparency (including budget) (*Fisher v. Lohr*, USP, 2013). If TUSD complies with the USP and all court orders and can establish that it eliminated the vestiges of its past *de jure* segregation to the extent practicable, TUSD can move for a declaration of partial or complete unitary status for the 2016-17 academic year or any time thereafter (*Fisher v. Lohr*, USP, 2013). Figure 1 details a timeline of the events surrounding the desegregation of TUSD as well as the political events surrounding the Mexican American Studies program.

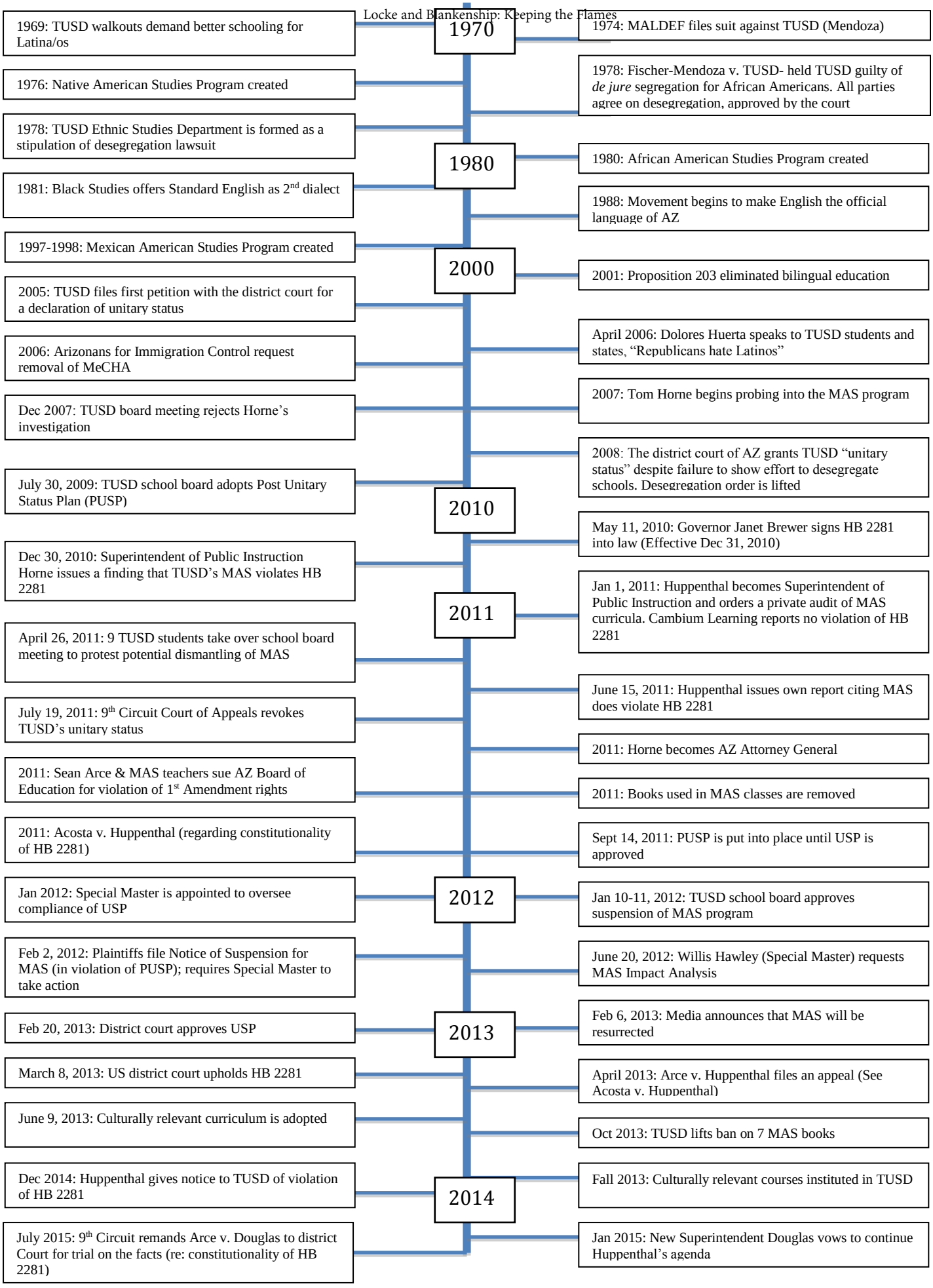

Figure 1. Political and Legal Events Impacting TUSD and MAS

The Mexican American Studies (MAS) Program

As part of the Agreement between the parties, Ethnic Studies was adopted as a remedy to segregative intent and a means to comply with the desegregation order by providing "educational redress for the decades of discrimination against people of color within [TUSD]" (Kunnie, 2010, p. 17). TUSD Ethnic Studies was created in 1978 and eventually supported specialized programs in African American Studies, Pan-Asian Studies, and Native American Studies. Lastly, through grassroots pressure from the local community to address low achievement rates and high dropout rates, the MAS program was added in 1997. Ari Palos, one of the producers of the movie *Precious Knowledge* (Palos, McGinnis, Bricca, & Amor, 2011), was interviewed by Meza (2013), and said,

> Mexicans, due to the bad publicity of immigration, [were] not, by and large, loved and respected in our national dialogues swirling with so much anti-immigrant rhetoric. Many of the students [came] into the classes feeling ashamed of their Mexican ethnicity. The …[MAS program]… helped the students embrace their ethnicity, and this became the key starting point to close the achievement gap. (n.p.)

That is, MAS counteracted the all too common mainstream and normalized deficit mindset that frames Latinas/os as failures who are uninterested in education. The MAS program started here, at the theoretical ground zero, to reconstruct students' academic identities—and it was successful.

Ironically, while TUSD was making progressive, equity-oriented moves toward educating *all* its students, the larger political environment outside of the district was becoming ever more regressive. For example, in the late 1980s, there was a movement to make English the official language of the state; Proposition 103 became a state constitutional amendment in 2006, and Proposition 203 (enacted in 2001) eliminated bilingual education. Additionally, while other states readily adopted the Martin Luther King, Jr. holiday, Arizonans were slow to embrace it. Somehow, in spite of these larger conservative, regressive, and we argue, oppressive political agendas, inside TUSD students were benefitting from the district's adherence to the federal desegregation order, and the creation of Ethnic Studies with its specialized programs.

The MAS program, as a component of Ethnic Studies, was created and installed to "align curriculum with state standards in history, humanities, and the social sciences; however the program supplement[ed] the state-required content with materials that [spoke] directly to the experiences of Mexican American students" (Cammarota, 2009, p. 121), who were then and remain the largest student demographic group in the district (TUSD, 2014b). The MAS program attended to this purpose by building on students' cultural capital through the application of critical pedagogy focused on counter-hegemonic curricula and student-teacher interactions centered on authentic caring (Acosta, 2013a). According to Palos in Meza's (2013) interview, "The students' success was a direct result of a newly found academic identity" (n.p.). Through this newfound academic identity and these various critical approaches to schooling, the MAS program was successful in increasing student achievement and reducing the dropout rate. It gained national recognition for narrowing the achievement gap, particularly for Latina/o

students. Students in MAS courses had a 90% graduation rate and 80% of those graduates moved on to college (Cammarota, 2012).

Desegregation is an aspect of education that has a long history in Tucson public schools. For decades, TUSD made efforts to provide desegregated schooling experiences and students benefitted. In fact, the MAS program had been consistently successful across seven cohorts of students (Acosta, 2013a). However, by the 2000s, it became clear that percolating beneath the surface was ever-present fear, insecurity, racism, and hatred…familiar elements that helped to establish segregation in the first place, and elements that were waiting for an opportunity to reignite.

The Spark

The spark to the reignition of these elements came in 2006, as TUSD awaited a hearing on its application for unitary status, and when renowned civil rights advocate and co-founder of the United Farm Workers, Dolores Huerta, came to TUSD to talk with the students and faculty. In her speech, Huerta revealed her belief that "Republicans hate Latinos" (cited in Sagara, 2006, para. 2). Given the state of politics in Arizona at the time and with the recent passage of legislation that uniformly and unequivocally, negatively affected Latina/o populations, Huerta's statements likely hit home for many students who undoubtedly experienced some if not many forms of state-sanctioned marginalization.

After hearing of Huerta's comments at TUSD, then state Superintendent of Public Instruction, Tom Horne[iii] who had earlier campaigned for Proposition 203, the English only education bill, retaliated by sending in then Deputy Superintendent of Public Instruction Margaret Garcia Dugan, a Republican and a Latina, to refute Huerta's comments and allegations. Dugan's efforts to dispute Huerta's comments were met with silent protest from many students (Acosta, 2013a, 2013b. It is reported that several students stood silently and then left the auditorium during Dugan's presentation). This demonstration of dissent did not go over well with Dugan or Horne.

Fanning the Flame

While the political environment was already quite hostile for Latinas/os in Arizona[iv] in 2006, shortly after the speeches of Huerta and Dugan and the student protest, Horne began looking into TUSD—particularly into MAS, embarking upon what seemed to be a personal vendetta with the program. According to Curtis Acosta (2013b), a former MAS teacher, the MAS program became Horne's "new piñata to hit" (n.p.). Horne engineered a campaign against MAS by using tactics that enflamed White fear and insecurity. For example, he falsely claimed that the curriculum in the MAS program incorporated texts and literature by "known" communists and leftists such as Che Gueverra and Paolo Freire, and included other "objectionable" material like William Shakespeare's *The Tempest*. He did not find any of the curriculum offered in the other culturally-centered TUSD programs objectionable (Acosta, 2013b; Palos et al., 2011). Furthermore, without any evidence to support his claims (Horne did not personally visit classrooms, review the curriculum, or understand the pedagogy applied in the courses), Horne advertised to his constituents that MAS promoted ethnic solidarity and anti-Americanism. He said that the teachers in the MAS program taught students ethnic chauvinism and that Mexican

Americans were an oppressed population in the U.S.; Horne argued that based on these characteristics, the program was divisive, separatist, and perhaps most ironically, racist.

Adding Fuel to the Fire

Horne's first attack on the MAS program came in 2007 through a quiet, yet unsuccessful, request to the TUSD school board to eliminate it. The board denied Horne's request—stating that they had seen no evidence to support his claims, and that if there were problems, the district could and would address them directly. Defeated, Horne stepped up his rhetoric. He wrote a guest editorial for the *Arizona Daily Star* (Horne, 2007a), and appeared on Bill O'Reilly's and Lou Dobbs's television programs (Cammarota, 2009), again proclaiming the MAS program maligned American (and we argue White) norms and values.

Following these public requests for support, Horne wrote an open letter to the citizens of Tucson, or more accurately, to the citizens of Tucson who were of "mainstream ideologies" (Horne, 2007b, para. 1). The intent of this letter was to draw these citizens' attention to curricula and pedagogy (aspects of MAS that he never actually saw in practice), which he implied were un-American and promoted ethnic solidarity, rather than treating students as individuals and teaching traditional, mainstream (i.e., White) values. As Horne was building his anti-MAS, and indeed anti-Latina/o, agenda he called on these particular citizens to help him to eliminate Ethnic Studies, specifically the MAS program, in TUSD.

During this same time period, in the larger political environment, SB 1108, a law proposed to "eliminate ethnic studies programs and ethnic-based organizations from state-funded education" (O'Leary & Romero, 2011, p. 9), was brought to the senate but was never enacted. Later, more draconian anti-immigrant (specifically, anti-Latina/o) rhetoric was brought to state lawmakers. In 2009 Senator John Paton, a friend of Horne, introduced SB 1069, which was similar to SB 1108. This senate bill was not passed. On April 23, 2010, SB 1070, commonly known as the "papers please" legislation, was signed into law in Arizona, which allowed for phenotypic, and we argue xenotypic, police profiling and detainment of individuals suspected to be undocumented. And finally SB 1611, a law that would have denied public services, including K-12 schooling, for those who could not produce a U.S. birth certificate or naturalization papers was introduced to lawmakers. SB 1611 however, was not passed (and would have directly conflicted with the Supreme Court's opinion in *Plyler v. Doe*, 1982).

Finally, in 2009, Horne was able to plant a solid blow to the MAS proverbial piñata. The federal desegregation order in place in TUSD since 1978 was lifted, which permitted Horne much more leeway to institute his anti-MAS and anti-Latina/o agenda. Without the equity-oriented federal oversight, Horne was allowed directly to impact the abilities of the MAS program to work, that is, to increase student achievement and reduce dropout rates. Predictably, with the lifting of the federal desegregation order, Horne, through his rhetoric and political allies, was successful in creating legislation that would eliminate MAS, but leave the other TUSD Ethnic Studies programs—African American Studies, Native American Studies, and Pan-Asian Studies—intact.

MAS Ablaze

In spite of significant protest by teachers, students, parents, and community members, Horne's bill, HB 2281[v], which was used to ban the highly successful MAS program, was passed by Arizona lawmakers and signed into law in May 2010. Specifically HB 2281 prohibits educational programs that: "promote the overthrow of the United States government; promote resentment toward a race or class of people; are designed primarily for pupils of a particular ethnic group; advocate ethnic solidarity instead of the treatment of pupils as individuals" (HB 2281, 2010, p. 1). If HB 2281 is violated, schools risk losing significant funding, enough to cripple their functioning. According to Kunnie (2010),

> the insidious nature of racism and its repressive effects are evident in HB 2281, which clearly employs the convoluted logic that typically issues from ideological stalwarts of white supremacy… Arizona has seen fit to pass legislation that represses and violates the rights of all students to understand the actual history of the US and by extension the Americas and the world. (p. 19)

Through partisan politics, the state treated as irrelevant the increases in student achievement attributable to participation in MAS. In doing so, HB 2281, in our opinion, clearly promotes hollow diversity rhetoric, undermines students' authentic experience, and is a policy of bald racism (Soto & Joseph, 2010).

The enactment of HB 2281 in 2010 was received by students, teachers, and community members with shock and sadness. A successful academic program had been eliminated based on ambiguous and false accusations of promoting ethnic solidarity and anti-Americanism. Again, without any evidence to justify his claims, and without ever having visited any MAS classes, in December of 2010, outgoing Superintendent Horne unsurprisingly issued an independent finding that TUSD was in violation of the new law HB 2281. The new law and the claims of violation, however, did not go without challenge. There was a student takeover of a school board meeting, and shortly thereafter a group of students, parents, and teachers filed suit challenging HB 2281 (Arce v. Huppenthal, 2013).

In the midst of this challenge, and in a surprising twist, Republican John Huppenthal[vi], who took over the post of state Superintendent of Public Instruction in 2011, ordered a private and costly audit of the MAS program by Cambium Learning[vii]. The firm found no violations of HB 2281—and in fact confirmed what many in TUSD had already argued, that MAS was helping to close achievement gaps. Yet, shortly thereafter, in a not so surprising twist, Huppenthal (2011) ignored the Cambium Learning report and issued his own report citing that MAS did indeed violate the law. As Acosta (2013a) suggested, "contradictions and absurdities abound" (p. 2) in this unusual battle over the MAS program and TUSD.

In 2012, MAS classes were formally eliminated from TUSD. In the documentary *Precious Knowledge*[viii], Curtis Acosta noted, "the message [of MAS had] been hijacked" (Palos, McGinnis, Fifer, Bricca, & Amor, 2011, n.p.). Indeed, MAS was the only program in TUSD's Ethnic Studies that was targeted and eliminated by Horne's and Huppenthal's racist agenda and HB 2281. According to Palos in the Meza (2013) interview, the classes in TUSD's Ethnic

Studies program, particularly the MAS program, "… [were] controversial simply because they [were] misunderstood. The classes [were] accused of being un-American when they, in fact, reflect[ed] a multicultural America. … Additionally, they [were] accused of promoting ethnic solidarity when they actually foster[ed] identity" (n.p.). We believe this misunderstanding continued to develop because Horne and Huppenthal did not want Tucson citizens to know the real story—in fact, they themselves purposefully ignored the real story. Horne never visited the classes (whereas Huppenthal visited only once), they never read any of the books in the curriculum, and they continued to forge their negative opinions of MAS in spite of objective reports and audits to the contrary, as well as strong student, parent, and community opposition (Palos et al., 2011). Latina/o students developing a critical consciousness of the institutionalized Juan Crowism that has certainly impacted them, their families, and their communities, was too great a threat to Horne's and Huppenthal's political agendas and power.

By mid-2012, amidst the continued protests from students, parents, teachers, and community members who demanded that the MAS program be reinstated, a MAS Impact Analysis (an assessment of student achievement as impacted by the MAS program) was ordered by William Hawley. Hawley was appointed by U.S. District Judge David Bury as the Special Master for the TUSD desegregation case, and he was tasked with the development of a Unitary Status Plan (USP). Results of the impact analysis again confirmed what students and teachers already knew – that students who participated in MAS courses experienced higher academic achievement (Cabrera, Milem, & Marx, 2012). Based on these results, the court required TUSD to reestablish programming similar to that of the ousted MAS program as part of the USP.

For Now…The Fire is Out, But Still Hot

Within the pervasive Juan Crow political climate in Arizona, a new program has taken the place of MAS. The implementation of this new program was based on Hawley's review of the MAS Impact Analysis, and approval of a USP, which required the institution of culturally responsive teaching methods and curriculum. While it is hoped to be as successful as the former MAS program was in improving achievement and graduation rates, the new culturally responsive program is vulnerable. And, just as the MAS program did, the new program continues to be scrutinized by and threatens the entrenched, colorblind fantasies of the political power structure in Arizona as evidenced by surprise visits from state officials looking to evaluate the new program (Huicochea, 2014). Indeed the teachers and leaders working with this new program walk a fine line between doing what is right for students and the state's limiting policies.

However, there may yet be hope for a return of the original MAS program. The lawsuit filed by teachers, parents, and students challenging the constitutionality of HB 2281 remains alive. The district court granted summary judgement in favor of the defendants (agents of the State of Arizona) on all but one count. However, on July 7, 2015, the Ninth Circuit Court of Appeals reversed the district court's dismissal of plaintiffs' Equal Protection and disparate impact claims (*Arce v. Douglas*, 2015). Writing for the majority, Judge Rakoff concluded that there was sufficient evidence to suggest an intent to discriminate against MAS students on the basis of their race or national origin in violation of the Equal Protection Clause and that the application of HB 2281 constituted viewpoint discrimination in violation of the First Amendment (*Arce v. Douglas*, 2015). Rakoff noted that the First Amendment protects students' right to access information; the

state cannot remove curricular material unless removal is reasonably related to legitimate pedagogical concerns (*Arce v. Douglas*, 2015; *Hazelwood School District v. Kuhlmeier*, 1988; *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 1982). The case has been remanded back to the district court for a trial on the facts; the court will hear evidence regarding the intent of Arizona lawmakers in the passage and implementation of HB 2281. If it is determined that Horne, Huppenthal, and other lawmakers targeted MAS with discriminatory intent, HB 2281 will be ruled unconstitutional.

The current USP will be in effect until 2017. U.S. District Judge Bury has indicated, "oversight and control [of the desegregation project] will be more effective placed in the hands of the public with the political system at its disposal to address any further issues" (Judge Bury as cited in Hunnicutt, 2014, para. 5). This is nearly the exact justification Judge Bury gave the first time he granted TUSD unitary status in 2008, despite TUSD's inability to show good faith compliance with the 1974 desegregation order. Given the political climate and the past behavior of Arizona's educational and political leaders, this directive raises many questions and concerns. For example, what will happen in TUSD without a federal desegregation order? Is it possible that in two short years the larger political environment of Arizona will support a resurrected MAS program without federal oversight? And, if they endure, how can we ensure that the culturally responsive courses and content will be safe? It is our opinion that we cannot. History tells us that we should not, and the old adage, "the best predictor of future behavior is past behavior," seems appropriate here. Even though the mission of TUSD suggests it is "committed to inclusion and non-discrimination" (TUSD, 2014a), the Tucson public cannot trust its state and local lawmakers to do what is best for *all* students and families of TUSD. Moreover, the curricula used in public schools is set at the state level, not at the local level. We believe Judge Bury's notion that this responsibility be turned over to the public lacks historical recognition as well as recognition of the (White) voting power bloc and the ways Juan Crowism and racist policies like HB 2281 (as well as Propositions 103 (2006), 203 (2001), and SB 1108 (2008)—policies that are byproducts of the social and political influence of the state) affect TUSD's largest student population—Latinas/os.

Implications

As we have seen by the all too recent bills and propositions, Juan Crow is alive and well in Arizona. Furthermore, absurdities surrounding MAS, Ethnic Studies, and culturally relevant courses in TUSD still abound. Before ending his final term as state Superintendent of Public Instruction, Huppenthal issued a notice of non-compliance with HB 2281 to TUSD (Huppenthal, 2015). Huppenthal took issue with song lyrics used in some of the new, culturally-relevant courses in both the Mexican American program and the African American program. Diane Douglas, Huppenthal's replacement for the position of state Superintendent of Public Instruction, took office on January 5, 2015. She has vowed to "keep the ball rolling" and follow up on her predecessor's notice" (Grow, 2015, para. 8). Indeed, history has a way of repeating itself. While Douglas has since claimed that she supports "an inclusive education experience" (Fisher, 2015, para. 11) for students, she believes the less controversial (and arguably less effective) general "culturally relevant curricula" is sufficient for TUSD students (Fisher, 2015, para. 8). If HB 2281 is ruled unconstitutional, presumably TUSD and other school districts will be free "to enact programs beyond what Douglas finds acceptable" (Fisher, 2015, para. 12). With both the

Mexican American program and the African American program under Douglas' scrutiny, perhaps the fire will reignite.

In *Brown II* schools were "to be desegregated 'with all deliberate speed' but left the task to the segregationists who provoked the humanitarian crisis in the first place" (McWhorter, June 16, 2012, para. 15). Relatedly, how could students of TUSD be best served by Judge Bury's notion that oversight of the desegregation project is better placed in the hands of the public and political system, particularly given the political atmosphere in Arizona? The public and political system are the authors and supporters of HB 2281—those who provoked the elimination of MAS in the first place. (HB 2281 was ambitiously supported by the highest office in public education—the state Superintendent of Public Instruction.) If history tells us anything, restoring power to the voting public in Tucson and in the political leaders in Arizona, or creating TUSD's own *Brown II*, would not serve well the students of TUSD.

> Palos noted in his interview with Meza (2013),
>
> Public education has failed the growing demographic of non-white students while continuing to draft education policy that punishes minoritized students with a tough-love [neoliberal, meritocratic] approach. Innovative and active programs do exist in affluent and successful schools while "problem" schools have kids pinned to desks and spoon-fed basics, a "traditional" approach that really has, over the last hundred years or so, proven to unwind inspiration and love of learning… Tucson's MAS program was a beautiful and real solution to this national crisis. (n.p.)

While serving as a beautiful and real solution, MAS was also a threat because it had the potential to disrupt the hegemonic status quo (Romero, 2010). The conservative force remains most comfortable with the customary hollow diversity rhetoric, and insincere, tokenistic, and rote celebrations of heroes and holidays, versus the development of critical consciousness. Critical pedagogy makes the conservative bloc nervous. Thus, racist policies like HB 2281 that aim to limit particular students' learning must not go unchecked and unchallenged. Clearly then, it is important that federal oversight remain intact in TUSD. The oversight of the federal court ensures that the students' stories matter—that they, as individuals, cultures, groups, students, parents, community members, and so on—are important for the understanding of ourselves as Americans. As Acosta (2013a) pointed out, "engaging in culturally responsive and critical pedagogy has never been more vital" (p. 11). However, the state of Arizona has not yet reached this conclusion, as evidenced by the state's proclivity to establish dehumanizing laws.

For Superintendent Douglas' predecessors, "…the relationship between the courses and student achievement was irrelevant… as they believed the MAS program had no place in public education" (Cabrera et al., 2014, p. 1086). As we have seen through the actions of Horne and Huppenthal, these are calculating politicos, advancing their agendas when particular opportunities (e.g., the lifting of the federal desegregation order) arise. Relatedly, Douglas surely knows that the federal provision for the USP likely will end in 2017.

As other scholars have demonstrated, the various tenets of CRT aptly frame the events in TUSD surrounding its MAS program. However, perhaps most appropriate is the tenet of racial realism.

Delgado and Stefancic (2001) stated that racial realism offers the view that "racial progress is sporadic and that people of color are doomed to experience only infrequent peaks followed by regressions" (p. 154). These peaks and regressions are evident in the history of schooling in TUSD, particularly schooling for Mexican American students (see Figure 1). Furthermore, without specifically designed programs that seek to highlight the contributions of traditionally marginalized groups and work to change the world into an inter- and multi-culturally better place, and without the oversight of federal courts, students are likely to be subjected to a colorblind, neoliberal, White-centered schooling experience that will change only when it converges with the interests of Whites. Such schooling is unlikely to positively impact their educational achievement or outcomes. For these reasons, again, we support continued federal oversight in TUSD.

Hope for a Future Free from Fires

Rather than focusing on eliminating successful programs, our attention and national conversation should be centered on how the stellar MAS program can be replicated and expanded beyond Tucson[ix]. We agree with Cabrera et al. (2014),

> Nationwide, there are constant discussions of educational inequality and the need to turn around "low performing schools" while "rewarding excellence" (U.S. Department of Education, 2010). However, critical ethnic studies is not included in the proposed solutions. If results matter, then ethnic studies needs to be considered part of "real education" and reform on a national level. (p. 1109)

Results should matter. These programs have proven successful, and serve as means to inclusive and transformative education. However, given the political battle over MAS, it forces us to trouble questions regarding why these particular results, when they stem from students who often are not expected to succeed, do not seem to matter. It seems clear then that success for Latinas/os in Arizona is a threat, specifically a "Brown threat" (Rivera, 2014, p. 44). Success for all students, regardless of politics, should be the goal. Racist nativism should have no place in schools—that is, successful Ethnic Studies programs should not serve as threats or targets for conservative politics in Arizona or any state.

According to Feagin and Cobas (2014), there are an estimated 51 million Latinas/os in the U.S., and with the exception of Whites, Latinas/os are now the largest student population in public schools nationwide (Fry & Lopez, 2012). Alarmingly, graduation rates for this group are typically below 50%, nearly 30 percentage points below their White counterparts (Fry & Lopez, 2012; Yosso, 2006). TUSD currently serves approximately 50,000 students, the majority (61%) of whom are Latina/o (TUSD, 2014b). Furthermore, "… TUSD is under a federal desegregation order, in part because of the educational disparities between Latina/o and White students" (Cabrera et al., 2014, p. 1107). We agree with Burciaga, Perez Huber, and Solórzano (2010), that "to improve educational outcomes for these students, educational institutions must learn to draw from the strength Latina/o students bring to schools, instead of focusing on false deficiencies" (p. 422). As Palos (cited in Meza, 2013) aptly suggested, "MAS… was a beautiful and real solution…" (n.p.) to this problem. We are hopeful that the culturally relevant courses will do the same, and that the federal court will continue to protect equality of educational opportunity in Tucson.

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[i] *Juan Crow* or *Juan Crowism*, similar to *Jim Crow* or *Jim Crowism*, can be defined as systemic and institutionalized racism that particularly affects Latinas/os.

[ii] Note that each cause of action represents a different way in which the plaintiffs claim TUSD was violating the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

[iii] Tom Horne, by birth a Canadian, has served in public office in Arizona since 1997. He was the Arizona state Superintendent of Public Instruction from 2003 to 2011, and championed HB 2281 (2010). Since leaving the office of the Superintendent, Horne has served as state Attorney General, in spite of accusations of federal securities law violations, campaign fraud, and serious traffic violations. Horne has supported other Juan Crow legislation such as Proposition 203 (2001) "English for the Children," Proposition 103 (2006)—English as the state official language, SB 1069 (2009)—a predecessor to HB 2281, SB 1070 (2010)—the "papers please" law, and SB 1108 (2008)—a predecessor to HB 2281. Horne does not support affirmative action.

[iv] As evidenced by repressive legislation, as well as the request by Arizonans for Immigration Control, to remove from TUSD the historic student organization MeCHA (Movimiento Estudiantil Chicano de Aztlan)—a student organization with the purpose of individual and community involvement particularly around issues of immigration, politics, economics, society, and education. MeCHA had been in existence since 1969. There are MeCHA chapters at Pueblo High School and Tucson High School in TUSD. For more information on MeCHA see http://web.calstatela.edu/orgs/mecha/mecha_questions.htm

[v] Note that HB 2281 was codified at Arizona Revised Statutes §§15-111 & 15-112. We continue to refer to the legislation as HB 2281 (2010) throughout this piece because that is how it is often discussed in the literature.

[vi] John Huppenthal, Horne's successor to the position of Arizona state Superintendent of Public Instruction, was born in the Midwest and moved to Arizona as a child. Huppenthal has served in various political roles in Arizona since 1984, including that of state senator. In winning the seat of Superintendent, Huppenthal ran on a platform of "stopping La Raza" (La Raza is a common synonym for the MAS program as well as a synonym for the Mexican-American people) through HB 2281. While this platform proved beneficial for Huppenthal in winning the seat, he did not win re-election. This loss was likely influenced heavily by Huppenthal's xenophobic rhetoric and Internet indiscretions. Huppenthal has supported other Juan Crow legislation such as Proposition 203, "English for the Children," Proposition 103, SB 1070, and SB 1108.

[vii] For a copy of the Cambium Learning report go to: http://www.tucsonweekly.com/images/blogimages/2011/06/16/1308282079-az_masd_audit_final_1_.pdf

[viii] To learn more about the documentary *Precious Knowledge* go to: http://www.preciousknowledgefilm.com/

[ix] Shortly after MAS was eliminated from TUSD, and the issue had received national media attention, similar programs were developed and implemented in other districts across the country. Some districts in California now require an ethnic studies class. Additionally, several districts in both California and Texas now offer ethnic studies classes as electives (Phippen, 2015).