

1 THOMAS C. HORNE
Firm Bar No. 014000
2 Attorney General
3 Kevin D. Ray, 007485
Leslie Kyman Cooper, 012782
4 Jinju Park, 026023
Assistant Attorneys General
5 1275 West Washington Street
Phoenix, Arizona 85007
6 Telephone: (602) 542-8328
Facsimile: (602) 364-0700
7 E-mail: EducationHealth@azag.gov

8 *Attorneys for Plaintiff, the State of Arizona*
ex rel. Attorney General Thomas C. Horne

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10 **SUPERIOR COURT OF ARIZONA**

11 **MARICOPA COUNTY**

12 STATE OF ARIZONA ex rel. Attorney
General Thomas C. Horne,

13 Plaintiff,

14 vs.

15 MARICOPA COUNTY COMMUNITY
16 COLLEGE DISTRICT BOARD,

17 Defendant,

18 ABEL BADILLO, BIBIANA VAZQUEZ,
and BIBIANA CANALES

19 Intervenor-Defendants.
20

21 ABEL BADILLO, BIBIANA VAZQUEZ,
and BIBIANA CANALES

22 Counter-Plaintiffs,

23 vs.

24 STATE OF ARIZONA ex rel. Attorney
25 General Thomas C. Horne,

26 Counter-Defendant.
27
28

Case No. CV2013-009093

**ARIZONA'S MOTION FOR
SUMMARY JUDGMENT
ON THE STUDENT INTERVENORS'
CLAIMS**

(Oral Argument Requested)

(Assigned to the Honorable Arthur
Anderson)

1 The State of Arizona *ex rel.* Attorney General Thomas C. Horne (“State”) moves
2 for summary judgment against the Student Intervenors’ claims because the Student
3 Intervenors have not provided any evidence to supports essential elements of their due
4 process and equal protection claims. The Student Intervenors fail to even allege the
5 *existence* of any facts to support their claims in their Complaint or their Disclosure
6 Statement (much less evidence in support of these facts). *See Orme Sch. v. Reeves*, 166
7 Ariz. 301, 310, 802 P.2d 1000, 1009 (1990) (stating that a party moving for summary
8 judgment need merely point out by specific reference to the relevant discovery that no
9 evidence existed to support an essential element of the claim). Because the Student
10 Intervenors fail to state any factual bases for their due process and equal protection
11 claims, the State is entitled to summary judgment in its favor. *See Tilley v. Delci*, 220
12 Ariz. 233, 236, ¶ 7, 204 P.3d 1082, 1085 (App. 2009) (quoting Ariz. R. Civ. P. 56(c)(1)
13 which states that a “court may grant summary judgment when ‘there is no genuine issue
14 as to any material fact and the moving party is entitled to a judgment as a matter of
15 law.’”)

16 **I. The Student Intervenors Do Not Allege Any Facts to Support an**
17 **Equal Protection Claim.**

18 The Student Intervenors allege that the State violated their Equal Protection
19 rights by denying them equal protection of the laws. (Statement of Facts [“SOF”] at ¶
20 2.) The Student Intervenors discuss, at some length, the various standards for
21 scrutinizing a governmental action.¹ (*Id.* ¶ 4.) But they do not articulate any facts that
22 establish an equal protection violation. (*Id.* ¶¶ 4(a)-(b).)

23 ¹ The Student Intervenors’ claim that this enforcement action is subject to strict scrutiny
24 because Arizona is “ignoring federal eligibility requirements regarding a [sic]
25 nonDitizens’ eligibility for resident tuition” is misplaced because, as discussed in the
26 State’s response to the Student Intervenors’ Motion for Summary Judgment, federal law
27 restricts eligibility for resident tuition, rather than granting it. At best, their
28 unsubstantiated claims merit rational basis review because they are not permanent
residents like the plaintiffs in *Kurti v. Maricopa County*, 201 Ariz. 165, 167, n. 1, ¶1, 33
P.2d 499, 501 (App. 2010). (SOF ¶ 1(a).) They are recipients of deferred action (SOF ¶
1) whose presence in the United States does not grant them lawful immigration status
(SOF ¶ 1(b)).

1 It is totally unclear how the Student Intervenors have any equal protection claims
2 against the State because the State brought this action against the community college
3 district, not the students. Nevertheless, it appears that the Student Intervenors may be
4 making a selective enforcement claim against the State.

5 The Student Intervenors' selective enforcement claim must fail as a matter of law
6 because a "plaintiff must show that the law is applied in a discriminatory manner or
7 imposes different burdens on different classes of people" in order to state an equal
8 protection claim based on the allegedly selective enforcement of a law. *Freeman v. City*
9 *of Santa Ana*, 68 F.3d 1180, 1187 (9th Cir.1995) (internal quotation marks omitted). To
10 do so, plaintiff must "identify a 'similarly situated' class against which plaintiff's class
11 can be compared." *Id.* Then if the alleged selective enforcement "does not implicate a
12 fundamental right or a suspect classification, the plaintiff can establish a 'class of one'
13 equal protection claim by demonstrating that [he or she] 'has been intentionally treated
14 differently from others similarly situated and that there is no rational basis for the
15 difference in treatment.'" *See Squaw Valley Dev. Co. v. Goldberg*, 375 F.3d 936, 944
16 (9th Cir. 2004) (overruled on other grounds by *Action Apt. Ass'n v. Santa Monica Rent*
17 *Control Bd.*, 509 F.3d 1020, 1025 (9th Cir.2007)) (quoting *Village of Willowbrook v.*
18 *Olech*, 528 U.S. 562, 564, 120 S. Ct. 1073, (2000)) (recognizing that a plaintiff could
19 establish an equal protection violation where a governmental action arbitrarily and
20 irrationally targeted the individual plaintiff).

21 In *Dowling v. Arpaio*, 858 F. Supp. 2d 1063, 1081-82 (D. Ariz. 2012), the district
22 court dismissed a selective prosecution claim because claimant failed to provide
23 evidence of a similarly situated class that was treated differently. Like the plaintiff in
24 *Dowling*, the Student Intervenors here have failed to make any allegation that a similarly
25 situated class exists, much less show that a similarly situated class is being treated
26 differently. (SOF ¶ 4.) Like the court in *Dowling*, the Court here should reject the
27 Student Intervenors' selective prosecution claim because they have not identified any
28 similarly situated class and have not established that they are being treated differently

1 based on a suspect classification or have been subject to intentionally arbitrary and
2 irrational treatment as a “class of one.” (*Id.*) Their first claim for relief therefore should
3 be dismissed and summary judgment should be entered in favor of the State.

4 **II. The Student Intervenors Do Not Allege Any Facts to Support a Due**
5 **Process Claims.**

6 The Student Intervenors allege that they have a due process claim against the
7 State, (SOF ¶ 5), but fail to support it with any factual bases or evidence in either their
8 Complaint or their Disclosure Statement (*id.* ¶ 7(a)-(b).)

9 Their claims do not even meet the notice pleadings standard. Arizona Rule of
10 Civil Procedure 8(a) requires a pleading which sets forth a claim for relief to contain
11 “[a] short and plain statement of the claim showing that the pleader is entitled to relief.”
12 “[A] complaint that states only legal conclusions, without any supporting factual
13 allegations, does not satisfy Arizona's notice pleading standard under Rule 8.” *Cullen v.*
14 *Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7, 189 P.3d 344, 346 (2008).

15 The only allegation that remotely supports the Student Intervenors’ claim states
16 that “Cross-Plaintiffs have a property right to in-state tuition rates provided under
17 A.R.S. § 1-502 and the Maricopa County Community College District is allowing them
18 to pay in-state tuition rates.” (SOF ¶ 7.) This is, at best, a conclusory legal statement.
19 The Student Intervenors do not mention this due process claim in their disclosure
20 statement (*id.* ¶ 6)—much less offer any facts to explain what that property right is (*id.* ¶
21 7). They do not describe why they believe that their in-state tuition is a protectable
22 property right. (*Id.* ¶ 7(a).) And they fail to explain how their participation in this case
23 does not provide adequate opportunity for hearing. (*Id.* ¶ 7(b).) Despite having had
24 multiple opportunities to provide any basis for their due process claim in the last four
25 months, the Student Intervenors have failed to articulate any support for it. (*Id.* ¶ 7.)
26 Neither the Student Intervenors’ Complaint nor their Disclosure Statement contains any
27 facts to support this claim. (*Id.* ¶ 7(a).) The Student Intervenors do not even disclose
28 any witnesses who may have some knowledge of any facts to substantiate this claim.

1 (*Id.* ¶ 7(c).) Without any facts, a general reference to having “a property right to in-state
2 tuition rates,” (*id.* ¶ 7), is insufficient to state a claim for relief. Their second claim for
3 relief therefore should be dismissed and summary judgment should be entered in favor
4 of the State.

5 **III. Conclusion.**

6 “The purpose of the summary judgment rule is to enable trial courts to rid the
7 system of claims that are meritless and do not deserve to be tried.” *Orme Sch.*, 166
8 Ariz. at 311, 802 P.2d at 1010. There is nothing to try because the Student Intervenors
9 fail to support their claims with any factual allegations, any other bases for their claims,
10 or any potential witnesses who may have knowledge of facts that are relevant to these
11 claims. All of the Student Intervenors’ claims should be dismissed and summary
12 judgment should be entered in favor of the State in this case.

13 DATED this 21st day of August, 2014.

14
15 THOMAS C. HORNE
16 Attorney General

17 By /s/ Jinju Park

18 Kevin D. Ray
19 Leslie Kyman Cooper
20 Jinju Park
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007

21 *Attorneys for State of Arizona, ex rel.*
22 *Attorney General Thomas C. Horne*
23
24
25
26
27
28

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3 Maricopa County, this 21st day of August, 2014

4 COPY emailed this 21st day of August, 2014 to:

5 Mary O'Grady
6 Lynne Adams
7 Grace E. Rebling

8 Osborn Maledon, P.A.
9 2929 North Central Avenue, 21st Floor
10 Phoenix, Arizona 85012-2793
11 mogrady@omlaw.com
12 ladams@omlaw.com
13 grebling@omlaw.com
14 dburton@omlaw.com

15 *Attorneys for Defendants*

16 Victor Viramontes
17 Martha L. Gómez
18 Mexican American Legal Defense
19 and Educational Fund
20 634 South Spring Street, 11th Floor
21 Los Angeles, California 90014
22 VViramontes@MALDEF.org
23 MGomez@MALDEF.org

24 Daniel R. Ortega Jr.
25 Ortega Law Firm, P.C.
26 361 East Coronado Road
27 Phoenix, Arizona 85004-1525
28 Danny@ortegalaw.com

José de Jesús Rivera
Nathan J. Fidel
Haralson, Miller, Pitt,
Feldman & Mcanally, P.L.C.
2800 North Central Avenue, Suite 840
Phoenix, Arizona 85004
jrivera@hmpmlaw.com
nfidel@hmpmlaw.com
jlarsen@hmpmlaw.com

Attorneys for Intervenor-Defendants

By: /s/Guinevere Cassidy

#4112248