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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 v.

15 MARICOPA COUNTY COMMUNITY
16 COLLEGE DISTRICT BOARD,

17 Defendant

Case No. CV2013-009093

Arizona's Supplemental Brief
Regarding Attorney General's
Authority

Assigned to the Honorable Arthur
Anderson

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19 Arizona provides this supplemental brief clarifying its position regarding
20 defendant MCCCCD's Motion for Judgment on the Pleadings. Contrary to MCCCCD's
21 representation in its reply, Arizona has not conceded that the Attorney General lacks
22 authority to bring this action, which will require MCCCCD to follow the voter-approved
23 law that prevents it from granting in-state tuition to illegal aliens. *See* Defendant's
24 Reply in Support of Motion for Judgment on the Pleadings (Reply), at 1. Rather, as
25 Arizona clearly stated, the question of the Attorney General's authority need not be
26 determined, because the Governor has directed this action be instituted. *See* Arizona's
27 Response to MCCCCD's Motion for Judgment on the Pleadings (Response), at 2:6-7,
28 2:14-18.

1 However, it is clear that the Attorney General has the authority to require
2 MCCCCD to comply with A.R.S. §§ 15-1803 and -1825, both enacted as a result of voter
3 initiative. Arizona Revised Statutes § 41-193(A)(2) gives the Attorney General the
4 authority, when he “deem[s] necessary [to] prosecute and defend any proceeding in a
5 state court . . . in which the state or an officer thereof is a party or has an interest.”
6 Here, the Attorney General has declared his interest, and that of the State, in ensuring
7 that MCCCCD, a political subdivision and thus a part of the State, follows a valid state
8 law that is particularly a product, and expression, of the will of the people—enacted
9 through the power of initiative.

10 Arizona clarifies that *Ariz. Land Dept. v. McFate*, 87 Ariz. 139, 348 P.2d 912
11 (1960) does not prevent the Attorney General from commencing this action requiring
12 MCCCCD to conform its conduct to the law. *McFate* differs from this matter. There, the
13 Attorney General served as the legal advisor to the agency in question, the Land
14 Department, which was itself a part of the executive branch. The Attorney General
15 took a position contrary to its client agency, in a judicial proceeding, although it was not
16 clear at that time that the Attorney General could do so. The Attorney General also
17 interfered with the Governor’s authority over an executive agency. The Court’s opinion
18 dwells on the nature of the Attorney General’s role as the legal advisor to agencies such
19 as the Land Department, as well as the inability of state agencies to authorize the
20 expenditure of state funds for legal services. *Id.*, 87 Ariz. at 143-145, 348 P.2d at 915-
21 916. *McFate* concluded that the Attorney General could appear in opposition to a state
22 agency, even though the Attorney General’s “basic role” is “as ‘legal advisor of the
23 departments of the state’ who shall ‘render such legal services as the departments
24 require.’” *Id.*, 87 Ariz. at 144-45, 348 P.2d at 915-16.

25 *McFate* also involved another important question regarding the Attorney
26 General’s authority—the question of his ability to attack the constitutionality of a state
27 statute. At that time, it was not clear that the Attorney General could do so. In fact, it
28 was not until *Fund Manager, Pub. Safety Pers. Ret. Sys. v. Corbin*, 161 Ariz. 348, 355,

1 778 P.2d 1244, 1250 (App. 1988) that the Court held that the Attorney General had the
2 authority to attack the constitutionality of an Arizona statute.

3 In this matter, on the other hand, the Attorney General seeks to require a political
4 subdivision of the State to follow a validly-enacted state law. A political subdivision,
5 such as MCCCDC, is part of the state, organized for the purpose of exercising a specified
6 governmental function. *See Sorensen v. Superior Court*, 31 Ariz. 421, 424-25, 254 P.
7 230, 231 (1927) (political subdivisions “exercise authority given by the state;” they are
8 parts of the state). While a political subdivision is a part of the state, it is not an
9 executive agency, and is thus unlike the Land Department; consequently, the concerns in
10 *McFate* that are related to the Attorney General’s ability to take a position directly
11 adverse to his client do not arise. However, as a part of the state, political subdivisions
12 such as MCCCDC are bound by state law. When political subdivision declines to follow
13 the law, the Attorney General, acting under the authority of A.R.S. §41-193(A)(2), has
14 the authority to bring an action requiring it to conform its conduct to the dictates of
15 statute.

16 Neither *Woods v. Block* nor *Yes on Proposition 200 v. Napolitano* is to the
17 contrary. First, neither involved the Attorney General’s enforcement of a state statute
18 against a political subdivision. In *Woods v. Block*, the court declined to address the
19 question of the Attorney General’s authority under A.R.S. § 41-193, although Justice
20 Martone, in a concurring and dissenting opinion, concluded that he did. *Woods v. Block*,
21 189 Ariz. 269, 275, 280, 942 P.2d 428, 434, 438 (1997). *Yes on Proposition 200*
22 addressed an effort by the proponents of Proposition 200 to require, among other things,
23 that the Attorney General change his interpretation of Proposition 200. In declining to
24 allow a mandamus action, the Court addressed the power of the Attorney General to
25 compel executive agencies to act, and noted, consistent with *McFate*, that such authority
26 was reserved to the Governor. *Yes on Proposition 200 v. Napolitano*, 215 Ariz. 458,
27 469, ¶ 32, 160 P.3d 1216, 1227 (App. 2007).

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1 Respectfully submitted this 14th day of April, 2014.

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