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6  
7 UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA  
8

9 Roy and Josie Fisher, et al.,  
10 Plaintiffs,  
11 v.  
12 United States of America,  
13 Plaintiff-Intervenor,

CV 74-90-TUC-DCB  
(Lead Case)

14 v.  
15 Anita Lohr, et al.,  
16 Defendants,  
17 and  
18 Sidney L. Sutton, et al.,  
19 Defendants-Intervenors,  
20

**FISHER PLAINTIFFS' OBJECTION  
TO SPECIAL MASTER'S REQUEST  
AND RECOMMENDATION TO THE  
FISHER REQUEST FOR REPORT  
AND RECOMMENDATION ON  
APPOINTMENT OF CRPI  
DIRECTOR**

21 Maria Mendoza, et al.,  
22 Plaintiffs,  
23 and  
24 United States of America,  
25 Plaintiff-Intervenor,  
26 v.  
27 Tucson Unified School District No. One,  
et al.,  
28 Defendants.

(ORAL ARGUMENT REQUESTED)

CV 74-204-TUC-DCB  
(Consolidated Case)

1 COMES NOW the Fisher Plaintiffs, by and through undersigned counsel, and  
2 hereby submits to this Honorable Court, the Objections to the Special Master’s Response  
3 to Fisher Request for Report and Recommendation on Appointment of CRPI Director,  
4 submitted by Special Master Hawley to this Court, filed on February 25, 2015. [*See*  
5 Exhibit A: “Special Master’s Request and Recommendation to the Fisher Request for  
6 Report and Recommendation on the Appointment of CRPI Director.” (Document 1775)]  
7 The Fisher Plaintiffs agree with certain conclusions raised in this document but do not  
8 agree with the appointment of Mr. Lorenzo Lopez. It is the belief of the Fisher Plaintiffs  
9 that Mr. Lopez is not qualified to hold the title of the position of CRPI Director, as he  
10 does not meet the qualifications for this position and, as such, the Fisher Plaintiffs  
11 recommend the selection and approval of Mr. Lorenzo Lopez as the District CRPI  
12 Director be denied by this Court forthwith.

### 13 14 **INTRODUCTION**

15 Pursuant to the Unitary Status Plan § (V)(E)(4)(c), the District is required to create  
16 the position of Director of Culturally Responsive Pedagogy and Instruction (“CRPI  
17 Director”). The USP requires the CRPI Director to perform several duties. Specifically,  
18 USP § (V)(E)(4)(c) requires the District hire a CRPI Director who:

19 “[S]hall supervise the implementation of courses of instruction that focus  
20 on the cultural and historical experiences and perspectives of African  
21 American and Latino Communities, ...[S]upervise, develop and implement  
22 a professional development plan for administrators, certificated staff, and  
23 paraprofessionals, as appropriate, on how best to deliver these courses of  
24 instruction and to engage African American and Latino Students.”

25 The USP further mandates that the CRPI Director:

26 “...(H)ave experience developing and teaching curriculum focused on the  
27 African American and/or Latino social, cultural, and historical experience  
28 at the secondary level.” [Unitary Status Plan § (V)(E)(4)(c)]

1 On October 6, 2014, the Tucson Unified School District (“District”) began a hiring  
2 and application process for the Culturally Responsive Pedagogy Instruction Director  
3 position. [See Exhibit B: TUSD’s Response #73 to the 01/04/2015 Special Master  
4 Request for Information Related to the Appointment of CRPI Director.”] In December  
5 2014, the District announced Mr. Lorenzo Lopez, Jr. as their selected and appointed  
6 candidate for CRPI Director. At this time, however, Mr. Lopez was currently acting in  
7 the position of CRPI Program Coordinator for the District, a role he was occupying since  
8 June of 2014. Fisher Plaintiffs agree with the Special Master’s belief that there are, in  
9 this case, two reasons why this appointment could be denied. These reasons are (1)  
10 Candidate Lopez did not meet minimum qualifications as set forth in the CRPI Director  
11 job description and (2) the District conducted a flawed and limited process in the  
12 advertisement, recruitment, and hiring process when attempting to attract highly qualified  
13 African American candidates to apply for this position.

14  
15 **FISHER PLAINTIFFS’ ANALYSIS OF SPECIAL MASTER’S REPORT AND**  
16 **RECOMMENDATION**

17 The Fisher Plaintiffs, after examining the Special Master’s Response to Fisher Request  
18 for Report and Recommendation on Appointment of CRPI Director, raise the following  
19 objections to the appointment of Mr. Lorenzo Lopez as Director of CRPI:

20 **I. CRPI Director Cannot Act in an Administrative Position Without Required**  
21 **Certification**

22 The Fisher Plaintiffs disagree with whom the CRPI Director is actually  
23 supervising. The Arizona Department of Education did not issue this Administrator  
24 Certificate to Mr. Lopez until February 26, 2015, **more than two months after the date**  
25 **of appointment as CRPI Director**. As such, he could not officially act in any  
26 administrative capacity over teachers or principals from the date of his hire until February  
27 26, 2015. One cannot supervise educators without possessing the required certificate, a  
28 certificate that can only be obtained by completing the process as required and set forth

1 by the Arizona Department of Education. [See Exhibit C: Ariz. Admin. Code §§ R7-2-  
2 607, R7-2-616.]

3 When Mr. Lopez was hired by the District for the CRPI Director position, he was  
4 currently acting in the capacity of the CRPI Program Coordinator position. Although he  
5 had been acting in this capacity since June 2014, he had not received his Administrator  
6 Certification. According to his résumé, Mr. Lopez indicated he had qualified for his  
7 Administrator [Principal] Certificate *except that* he was waiting for his Arizona  
8 Administrator Proficiency Assessment [AAPA] results. [See Exhibit D: Mr. Lorenzo  
9 Lopez, Jr., “Résumé.”] Without a successful AAPA score, his certification was not  
10 complete, and he would not, pursuant to the requirements of Ariz. Admin. Code §§ R7-2-  
11 616(B)(3)(f) or R7-2-616(C)(3)(e), qualify to hold either a Supervisor or Principal  
12 Administrator Certificate. [See Exhibit C.] While the CRPI Program Coordinator position  
13 was not titled CRPI “Director,” Mr. Lopez was to “supervise the implementation of CR  
14 courses and provide instructional support/resources to CR teachers to increase student  
15 achievement within the CR program.” [See Exhibit D.] Thus, the District has knowingly  
16 employed a person to work in a supervisory position while he does not possess the  
17 required Administrator Certification.

18 Fisher Plaintiffs have previously raised this issue with the Special Master. [See  
19 Exhibit B.] In his Report and Recommendation to this Court, the Special Master notes the  
20 CRPI Position is “a staff position rather than a line position. This means, among other  
21 things, that Mr. Lopez’s supervisory authority is limited.” The Special Master provides  
22 an example wherein “teachers are evaluated by and report to school principals. In  
23 general, *the administrative credential is required for administrators who have*  
24 *responsibility for teachers and students, but that this is not the case here.*” [See Exhibit  
25 A.] (Emphasis added.) Fisher Plaintiffs argue that one must hold an actual Arizona  
26 Administrative Certificate to perform any supervisory duties. The Fisher Plaintiffs  
27 position is supported by Ariz. Admin. Code § R7-2-616(B)(1),

28 “[E]xcept for individuals who hold a valid Arizona principal or

1 superintendent certificate, the supervisor certificate is required for all  
2 personnel whose primary responsibility is administering instructional  
3 programs, supervising certified personnel, or similar administrative duties.”

4 [See Exhibit C.]

5 Even where Mr. Lopez may not *directly* supervise teachers or even principals, the  
6 functional duties of the CRPI position include the administration of instructional  
7 programs and additional administrative and supervisory duties related to the  
8 implementation of courses focusing on the cultural and historical experiences and  
9 perspectives of African American and Latino communities.

10 The USP also requires the CRPI to supervise, develop, and implement a  
11 professional development plan for administrators, certificated staff, and paraprofessionals  
12 on how best to deliver these courses of instruction. Thus, even where this is not a “line  
13 position,” as the Special Master asserts, Mr. Lopez is required to possess an  
14 Administrative Certificate for the CRPI Director position. Mr. Lopez did not have this  
15 Administrative Certificate on the date Mr. Lopez began his duties acting in official  
16 capacity for the District as CRPI Director. (The Arizona Department of Education  
17 granted this certificate to Mr. Lopez on February 26, 2015.)

18 Mr. Lopez did not possess the Administrative Certificate when he began his duties  
19 acting in official capacity for the District as CRPI Director in December 2014. To the  
20 knowledge of the Fisher Plaintiffs, the Arizona Department of Education did not issue  
21 this Certificate to Mr. Lopez until February 26, 2015. The District asserts Mr. Lopez is  
22 qualified for the CRPI Director position because he had been acting the capacity of CRPI  
23 Program Coordinator since June 2014. However, pursuant to Ariz. Admin. Code § R7-2-  
24 616(F)(3):

25 The State of Arizona “administrative interim certificate entitles the holder  
26 to perform the duties [of the Supervisor Certificate]. The candidate shall be  
27 enrolled in a Board approved alternative path to certification program, or a  
28 Board authorized administrative preparation program.” [See Exhibit C.]

1 Mr. Lopez was not in possession of this interim administrative certificate during his  
2 tenure as the CRPI Program Coordinator from June 2014 until his December 2014 hire  
3 date as CRPI Director.

4 In the alternate, a person may assume the office of the CRPI Director if he or she  
5 possesses an Interim Supervisor Certificate, also subject to the general certification  
6 provisions of Ariz. Admin. Code § R7-2-607. Here, the Interim Supervisor can perform  
7 all duties of a Certificated Supervisor, a mandated condition of employment as a CRPI  
8 Director. However, to the knowledge of the Fisher Plaintiffs, as of the date of the filing of  
9 this objection, Mr. Lopez does not possess this Interim Supervisor Certificate.

10 The failure to obtain such Administrator Certification, as required by Ariz. Admin.  
11 Code §§ R7-2-607 and R7-2-616 while being employed in the position of CRPI Program  
12 Coordinator since June 2014 demonstrates Mr. Lopez's blatant disregard for Arizona  
13 Education law and policy. The District demonstrated a blatant disregard for Arizona  
14 Education law and policy – as well as a lack of concern for its students – by hiring Mr.  
15 Lopez as a CRPI Program Coordinator in June 2014, knowing full well that Mr. Lopez  
16 failed to satisfy the requirements of Ariz. Admin. Code §§ R7-2-607 and R7-2-616, *and*  
17 *additionally* selecting and approving the same candidate for the position for CRPI  
18 Director while knowing he had yet to complete the requirements for the Administrator  
19 Certificate.

## 20 **II. District Reduced Minimum Qualifications to Provide Inherent and Inside** 21 **Advantage to Preselected CRPI Director**

22 If the Special Master were to take the District at its word that Mr. Lopez met four  
23 of the seven minimum qualifications for the position of CRPI Director, then these four  
24 qualifications were based on the second announcement posted by the District. Fisher  
25 Plaintiffs contend the requirements on the second announcement were “dumbed down”  
26 so Candidate Lopez could meet these lowered minimum qualifications. Mr. Lopez, who  
27 only met four of seven criteria, is only **fifty-eight percent (58%)** qualified. Fisher  
28 Plaintiffs argue the reduction of initial qualifications and selecting Mr. Lopez – a

1 candidate with a **58%** or “**F**” score even after the lowered minimum qualifications were  
2 later distributed – gave an inherent and inside advantage to the candidate selected by the  
3 District.

### 4 **III. District Must Conduct a Long-Term, Aggressive, Nationwide Search for a** 5 **Highly-Qualified CRPI Director**

6 In his Report and Recommendation, Special Master’s states that it would be  
7 difficult to find a qualified candidate with experience in working with both African  
8 American and Latino student populations: “Few candidates would have experience in  
9 developing and teaching culturally relevant courses or CRP experience for both Latino  
10 and African students (that is apparently the case for teachers who taught culturally  
11 relevant courses in TUSD).” [See Exhibit A.] Fisher Plaintiffs are reticent to accept the  
12 Special Master’s contention. Based upon responses from TUSD to questions asked by the  
13 Special Master, it appears the District only allowed a limited, 30-day job advertisement  
14 period for possible candidates for this CRPI Director position to apply. [See Exhibit B.]

15 Fisher Plaintiffs contend that the “window for applicants to find the position,  
16 prepare and then submit the appropriate application and materials was far too short of a  
17 time period.” [See Exhibit E: “Objection to CRPI Director.”] Such a short window for  
18 allowing applicants to apply merely limited the potential applicants who may have had  
19 the opportunity to see the advertisement and consider applying to the position. In fact, the  
20 small number of applicants which applied for this position indicates the reality that the  
21 District would not have an actual “robust, diverse pool of applicants from which to  
22 choose ... Information that the Fisher Plaintiffs received from the District indicated that a  
23 total of **21** applicants applied for the CRPI Director position” – irrespective of racial or  
24 ethnic identity. [See Exhibit E.] Of these applicants, only **12** originated outside of the  
25 Tucson Unified School District. This indicated the ineffective nature of the District  
26 search protocol.

27 Further, the Fisher Plaintiffs take issue with the limited number of nationwide  
28 venues that were selected to advertise this position. The Fisher Plaintiffs believe a robust



1 and aggressive nationwide advertising campaign would have allowed for a large number  
2 of highly qualified candidates experienced with the African American student experience  
3 to apply for this position. Special Master Hawley likewise note that a larger and more  
4 diverse pool of candidates would likely result from a better search process. [See Exhibit  
5 A, page 5, lines 1-2.] A nationwide search would yield better results than merely limiting  
6 this CRPI Director position to the State of Arizona. Arizona is not a venue to recruit a  
7 large pool of highly qualified African American educators from which to interview – this  
8 is merely a reflection of the small percentage of the state’s small African American  
9 population compared to other states. The District selected the NASBE (National  
10 Association of State Board Educators) to advertise this position, a venue that did not have  
11 any particular focus toward the recruitment of minorities in education. [See Exhibit E.]  
12 As a further disadvantage for both Latino and African American applicants, the NASBE  
13 website did not have a portal whereby job applicants could post résumés and where  
14 employers could post specific job listings. If prospective job applicants and employers  
15 were to effectively post résumés and job descriptions, the Fisher Plaintiffs were unable to  
16 discover otherwise.

17 However, it is likely that in other areas of the United States, there are many highly  
18 qualified African American administrators with experience dealing with both African  
19 American and Latino student populations. Had the District conducted a more aggressive,  
20 long-term, and nationwide search, such highly qualified African American CRPI Director  
21 candidates experienced with both African American and Latino student populations  
22 would likely have seen this advertisement and likely have applied for consideration.

#### 23 **IV. Special Master Hawley Cannot Rely on Information Provided by the District**

24 Information provided by all parties in this matter is critical to the Special Master in  
25 his decision-making. It is expected that all information and supporting materials provided  
26 to the Special Master will be factually based and completely accurate in their nature.  
27 However, the Fisher Plaintiffs contend the District continues to be a fountain of  
28 misinformation. This misinformation may have had an effect on the Special Master’s



1 decision.

2 The District indicates that there were three African American individuals who  
3 applied for the position of CRPI Director and that, of these three applicants, the District  
4 indicates one accepted a position within the TUSD administration. This is a blatant lie.  
5 When this information was brought to the attention of the Fisher Plaintiffs, they checked  
6 with Sam Brown, the former desegregation director. Mr. Brown was unsure as to the  
7 source of the information that one of the applicants had been appointed to another  
8 position. Because the District has so few African American administrators, the Fisher  
9 Plaintiffs have asked all African American administrators if they knew any person who  
10 had been appointed as a result of the CRPI application process in question. All responded  
11 in the negative and the Fisher Plaintiffs are unable to find out if there were new African  
12 American administrators as the District asserts.

13 Fisher Plaintiffs are unsure as to what weight this blatant lie had on the Special  
14 Master's ability to make this Report and Recommendation as to the qualifications of the  
15 CRPI Director. However, they are deeply concerned that the District may have negatively  
16 influenced this Report and Recommendation by providing such blatant misinformation to  
17 the Special Master. Further the Special Master relied on nothing more than the District  
18 indicating they made the appropriate job announcement and selection.

19  
20 **PROPOSED RESOLUTION**

21 Should the court decide that this candidate is marginally qualified, it is clear this  
22 Court has insisted upon research-based evidence that, coupled with admissions that this  
23 applicant is deficient in certain areas, that it would be incapable of removing past vestiges  
24 of discrimination and *Green*<sup>1</sup> factors.

25 The Fisher Plaintiffs would reluctantly ask the Court to strike § (V)(E)(4)(c) of the  
26 USP as being too vague and unenforceable and order the Parties to Amend. The Fisher

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<sup>1</sup> *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968).

1 Plaintiffs propose that, pursuant to USP § (V)(E)(4)(c), the Court:

- 2 1. Set aside the appointment and selection of Mr. Lopez as CRPI  
3 Director;
- 4 2. Order the District institute a nationwide search for a new CRPI  
5 Director;
- 6 3. Order that any national search for a new CRPI Director be left open  
7 for a minimum of ninety (90) days;
- 8 4. Order that the District place advertisements for this national search  
9 to more expanded, nationwide venues in which highly qualified  
10 African American candidates will have an opportunity to view such  
11 advertisements, thereby providing an opportunity to apply for the  
12 CRPI Director position; and
- 13 5. Order the District to strengthen their local search for highly qualified  
14 African American candidates at locations including, but not limited  
15 to the Black Chamber of Commerce, Urban League, and the local  
16 chapter of the NAACP.

17  
18 **PROPOSED ALTERNATIVE RESOLUTION**

19 If the CRPI Director is not knowledgeable of culturally relevant pedagogy for  
20 African American students, one can clearly argue that these students are being short  
21 changed. The District will not be able to comply with the requirements of the Unitary  
22 Status Plan and *Dowell*<sup>2</sup> to remove the past vestiges of *de jure* segregation, which will  
23 thus hinder the District from attaining unitary status. The fact that the Fisher Class  
24 members are at the bottom of the achievement gap, as compared to Anglo students,  
25 further demonstrates the need for special assistance. Research-based programs suggest  
26 that culturally relevant pedagogy is a valuable tool in improving the academic

27  
28 <sup>2</sup> *Bd. Of Educ. of Oklahoma City Pub. Sch., Indep. Sch. Dist. No. 89 v. Dowell*,  
489 U.S. 237 (1991).

1 achievement of African American students. Based upon the Special Master's statement  
2 that it is highly unlikely that one would find a single person to meet the requirements of  
3 the Unitary Status Plan for the CRPI director, Fisher Plaintiffs' would propose the  
4 following alternative solution to the Court to correct this matter and to protect the rights  
5 of African American students:

- 6 1. In lieu of temporary experts who are knowledgeable in CRC  
7 pedagogy, the Court order the District to hire permanent CRPI co-  
8 Directors, one of whom has highly qualified specialization with the  
9 African American student experience.

10  
11 RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of March, 2015.

12  
13 /s/ Rubin Salter

14 RUBIN SALTER, JR.

15 Attorney for the Fisher Plaintiffs

16  
17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on March 3, 2015, I electronically submitted the foregoing document  
19 to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of  
20 Electronic Filing to the following CM/ECF registrants:

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