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6 SUPERIOR COURT OF ARIZONA  
7 MARICOPA COUNTY

8 RAE ANN RUMERY, JOHN SKARHUS  
9 and CARTWRIGHT ELEMENTARY  
10 SCHOOL DISTRICT,

11 Plaintiffs,

12 vs.

13 DEAN MARTIN, in his capacity as State  
14 Treasurer and MARIA BAIER, in her  
15 capacity as Arizona State Land  
16 Commissioner,

17 Defendants.

Case No.

**COMPLAINT**

(Declaratory Judgment, Mandamus and  
Injunctive Relief)

18 Plaintiffs for their complaint against Defendants allege as follows:

19 **NATURE OF THE ACTION**

20 1. This case involves various provisions of the New Mexico-Arizona  
21 Enabling Act enacted by Congress in 1910 and provisions of the Arizona Constitution  
22 which mandate that proceeds from state trust lands be dedicated to the benefit of the  
23 denominated beneficiaries of those trust lands including Arizona's public schools. The  
24 Plaintiffs allege that the state has violated provisions of the Enabling Act and the  
25 Arizona Constitution by diverting proceeds from state trust lands and appropriating  
26 them to the Arizona State Land Department. The Plaintiffs seek repayment of the  
27 amounts unlawfully diverted and an injunction prohibiting the Defendants from  
28 implementing the unlawful legislation.

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**PARTIES**

2. Plaintiffs Rae Ann Rumery and John Skarhus are taxpayers and public school teachers. Plaintiff Cartwright Elementary School District is a school district organized under the laws of Arizona.

3. Defendant Dean Martin is the Arizona State Treasurer and is sued in his official capacity. Maria Baier is the Arizona State Land Commissioner and is sued in her official capacity.

**JURISDICTION**

4. This action is filed pursuant to A.R.S. § 35-213 to enjoin the illegal payment of funds and to recover the amounts already paid. The Court has jurisdiction of this action pursuant to A.R.S. §§ 12-1801, 12-1831 and 12-2021.

**ALLEGATIONS COMMON TO ALL CLAIMS**

**The New Mexico-Arizona Enabling Act of 1910**

5. The United States Congress authorized Arizona’s admission to the Union in 1912 with the enactment of the New Mexico-Arizona Enabling Act of 1910, 36 Stat. 557 (“Enabling Act”). The United States granted to Arizona over 10 million acres of land to be held in trust for the support of common schools and for other designated purposes. In all, there are thirteen beneficiaries of the state trust lands.

6. The Enabling Act provides that the lands granted to the state were to be held in trust and disposed of only “for the several objects specified in the respective granting and confirmatory provisions...” Enabling Act, § 28.

**The Arizona Constitution – State Land and School Provisions**

7. The Arizona Constitution establishes a framework for administration of the trust and establishes a separate permanent fund for each of the several objects corresponding to the grants that were made and confirmed by the Enabling Act. Ariz. Const., Art. 10, § 7(A).

8. The Arizona Constitution specifies that whenever any monies are derived from any of the granted lands, those monies are to be deposited by the state treasurer in

1 the permanent fund corresponding to the grant under which the particular land  
2 producing such monies was, by the Enabling Act, conveyed.

3 9. The Arizona Constitution also provides that no monies shall ever be taken  
4 from a permanent fund “for any object other than that for which the land producing the  
5 same was granted or confirmed.” Ariz. Const., Art. 10, § 7(B).

6 10. The Arizona Constitution provides that “a permanent state school fund for  
7 the use of the common schools shall be derived from the sale of public school lands or  
8 other public lands specified in the Enabling Act...” Article 11, § 8. The same Section  
9 prescribes that the rental derived from school lands for such other funds as may be  
10 provided by law “shall be apportioned only for common and high school education in  
11 Arizona, and in such manner as may be prescribed by law.”

### 12 **Arizona Statutes**

13 11. Pursuant to these constitutional provisions, permanent funds were  
14 established for the various purposes prescribed by the Enabling Act and the Arizona  
15 Constitution. The first of these provisions describes the contours of the Permanent State  
16 School Fund. A.R.S. § 37-521. The Fund consists of proceeds from the lands granted  
17 by the United States for the support of common schools and proceeds from the sale of  
18 natural products from these lands.

19 12. Arizona law requires that any expendable earnings from the Permanent  
20 State School Fund that exceed the fiscal year 2000-2001 expendable earnings are  
21 required to be deposited into the Classroom Site Fund established by A.R.S. § 15-977.  
22 The Classroom Site Fund provides funding directly for classroom purposes including  
23 teacher salaries and maintenance and operation purposes such as class size reduction  
24 and dropout prevention programs.

25 13. The provisions of A.R.S. § 37-521 that provide for excess expendable  
26 earnings to be deposited into the Classroom Site Fund were first enacted by the  
27 legislature in 2000. However, in order to ensure that future legislatures could not  
28 simply use state trust land revenues to offset the state’s responsibilities to schools, the

1 matter was also referred to the voters who approved the provisions of A.R.S. § 37-521  
2 as Proposition 300 at the general election on November 5, 2002.

### 3 **House Bill 2014**

4 14. In 2009, the legislature enacted House Bill 2014 which made significant  
5 changes to the state trust land funding system established by the Enabling Act, Arizona  
6 Constitution and Proposition 300 approved by voters in 2002. Ariz. Sess. Laws Ch. 5  
7 (2009, 3<sup>rd</sup> Spec. Sess.).

8 15. HB 2014 establishes the Trust Land Management Fund. The Fund  
9 consists of up to 10% of the annual proceeds of 1) each beneficiary's trust lands and 2)  
10 all sales of timber, mineral, gravel or other natural products or property from each  
11 beneficiary's trust lands. HB 2014, § 9 adding § 37-527(A). The Arizona State Land  
12 Commissioner determines the percentages of trust land "proceeds" to be deposited in  
13 the Fund each year. *Id.* at 37-527(B). The monies in the Fund are subject to legislative  
14 appropriation and "shall be used exclusively to manage trust lands as prescribed by  
15 law." *Id.* at § 37-527(C)(2).

16 16. As a result of HB 2014, the respective permanent funds for the  
17 beneficiaries are reduced by any appropriation made pursuant to A.R.S. § 37-527. HB  
18 2014, §§ 4, 5, 6, 7, 8. HB 2014 appropriated \$9,773,500.00 in fiscal year 2009-2010  
19 from the Trust Land Management Fund to the State Land Department for the purpose of  
20 managing the state trust lands. HB 2014, § 18.

### 21 **FIRST CLAIM FOR RELIEF**

#### 22 **Violation of Enabling Act**

23 17. HB 2014 violates the Enabling Act because it diverts proceeds from the  
24 sale of state trust lands that would otherwise be deposited into the permanent fund and  
25 allows them to be expended by the State Land Department for purposes other than those  
26 specifically authorized by the trust.

27 18. In 1999, the Enabling Act was amended by Congress to provide that the  
28 trust funds "shall be prudently invested on a total rate of return basis." The same

1 amendment further specified that “distributions from the trust funds shall be made as  
2 provided in Art. 10, § 7 of the Constitution of the state of Arizona.” That section of the  
3 Arizona Constitution provides that “whenever any monies shall be in any manner  
4 derived from any of said lands, the same shall be deposited by the State Treasurer in the  
5 permanent fund...”

6 19. HB 2014 therefore violates the Enabling Act in two ways. It appropriates  
7 for expenditure by the State Land Department funds that the Enabling Act expressly  
8 provides must be invested. It also appropriates funds that the Enabling Act directs must  
9 be used for the “support” of Arizona’s common schools to the Arizona State Land  
10 Department for management purposes.

11 **SECOND CLAIM FOR RELIEF**

12 **Violation of Arizona Constitution – State Land Provision**

13 20. The Arizona Constitution requires that all proceeds be deposited into the  
14 permanent fund. HB 2014 violates that provision by diverting up to 15% of the  
15 proceeds to be used by the State Land Department for management purposes.

16 **THIRD CLAIM FOR RELIEF**

17 **Violation of Arizona Constitution – Voter Protection Act**

18 21. HB 2014 violates A.R.S. § 37-521 by preventing a portion of the  
19 permanent funds for each of the state trust land beneficiaries from becoming part of the  
20 Permanent State School Fund. It is the Permanent State School Fund (and rental  
21 income) that provides the guaranteed level of educational support specified in A.R.S. §  
22 37-521.

23 22. Because A.R.S. § 37-521 was approved by Arizona voters, it cannot be  
24 amended by the legislature without a 3/4ths vote of each house in the legislature. Ariz.  
25 Const., Art. 4, Part 1, § 1(6)(C). The Constitution specifically prohibits the legislature  
26 from appropriating or diverting funds created or allocated to a specific purpose by a  
27 referendum measure decided by Arizona voters unless the appropriation or diversion  
28

1 furthers the purposes of the referendum measure and at least 3/4ths of the member of  
2 each house votes to divert the funds. Ariz. Const., Art. 4, Part 1, § 1(6)(D).

3 23. HB 2014 was enacted only by a simple majority of each house and diverts  
4 funds that would otherwise be deposited into the permanent fund pursuant to the  
5 provisions of A.R.S. § 37-521 adopted by voters in 2002.

6 WHEREFORE, Plaintiffs request that the Court:

7 1. Declare the transfer of trust proceeds in HB 2014 unlawful and enjoin the  
8 Arizona State Land Commissioner from designating any amount of state trust land  
9 proceeds for deposit into the State Trust Land Management Fund established by HB  
10 2014;

11 2. Order the State Treasurer to perform his constitutionally required duty and  
12 deposit state trust land proceeds into the appropriate permanent funds established for the  
13 beneficiaries pursuant to Art. 10, § 7(A) of the Arizona Constitution;

14 3. Order that the amount appropriated in HB 2014 for the Trust Land  
15 Management Fund be returned and deposited into the separate permanent funds  
16 established for the state trust land beneficiaries under the Ariz. Const., Art. 10, § 7(A);

17 4. Award Plaintiffs their costs and attorneys fees pursuant to A.R.S. §§ 35-  
18 213(C), A.R.S. § 12-2030 and the private attorney general doctrine.

19 DATED 27<sup>th</sup> day of April, 2010.

20 ARIZONA CENTER FOR LAW IN THE  
21 PUBLIC INTEREST

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