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IN THE COURT OF APPEAL OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

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BEATRIZ VERGARA, et al.,  
*Plaintiffs-Respondents,*

v.

STATE OF CALIFORNIA, et al.,  
*Defendants-Appellants.*

and

CALIFORNIA TEACHERS ASSOCIATION and  
CALIFORNIA FEDERATION OF TEACHERS,  
*Intervenors-Appellants.*

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SUPERIOR COURT OF THE COUNTY OF LOS ANGELES  
HON. ROLF M. TREU, Case No. BC484642

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF  
AND *AMICUS CURIAE* BRIEF ON BEHALF OF  
DEFENDANTS AND INTERVENORS

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SEAN H. DONAHUE (264284)  
DONAHUE & GOLDBERG LLP  
1130 Connecticut Avenue, N.W.,  
Suite 950  
Washington, D.C. 20036  
Telephone: (202) 277-7085  
Facsimile: (202) 315-3582

HENRY M. WILLIS (82981)  
SCHWARTZ, STEINSAPIR,  
DOHRMANN & SOMMERS <sup>LLP</sup>  
6300 Wilshire Boulevard, Suite 2000  
Los Angeles, California 90048  
Telephone: (323) 655-4700  
Facsimile: (323) 655-4488

On Behalf of *Amici Curiae* Kevin Beiser, Joan Buchanan, Ciro C. Calderon, Rob Collins, Tom Conry, Jennifer Freemon, Matt Haney, Michael Harrelson, Richard Hoy, Sarah Kirby-Gonzalez, Bob Nunez, Erik Ortega, Cecilia Perez, Annemarie Randle-Trejo, Claudia Rossi, Ryan Anthony Ruelas, Noelani Sallings, Shamann Walton, Steve Waterman, and Steve Zimmer

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## **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

Pursuant to California Rule of Court 8.200, Kevin Beiser, Joan Buchanan, Ciro C. Calderon, Rob Collins, Tom Conry, Jennifer Freemon, Matt Haney, Michael Harrelson, Richard Hoy, Sarah Kirby-Gonzalez, Bob Nunez, Erik Ortega, Cecilia Perez, Annemarie Randle-Trejo, Claudia Rossi, Ryan Anthony Ruelas, Noelani Sallings, Shamann Walton, Steve Waterman, and Steve Zimmer respectfully request leave to file the attached *Amicus Curiae* brief herein.

### **INTEREST OF AMICI CURIAE**

The *Amici*, who are identified in Appendix A to the attached *Amicus Curiae* brief, are all present and former Trustees and administrators of California public school districts with many decades of collective experience under the Education Code provisions challenged in this case. They are familiar with the decision of the Superior Court and with the arguments advanced by both sides in this matter.

The *Amici* are also familiar with the real-world context in which those Education Code provisions operate and with the broader educational policy debates they implicate. They have all confronted the practical problems involved in recruiting, hiring and retaining good teachers. And, having dedicated significant parts of their professional careers to improving educational outcomes for all students, especially those who enter school without the advantages enjoyed by their affluent counterparts, *Amici* agree on the paramount importance of removing any obstacles to providing an excellent education to all of California's students.

*Amici* find the Superior Court's approach to these problems to be short-sighted and ill-advised in many respects. While *Amici* have distinct perspectives on the best way to deal with the practical issues

of educational policy at stake in this case, based on their differing experiences in different school districts, they all agree that these issues of educational policy need to be addressed through the democratic process, rather than litigated, and that the judgment in this case, if affirmed, will harm many of the students the plaintiffs claim to be protecting.

The *Amici* offer their insights, based on their own experience and on their own behalf as individual Board members and administrators, rather than on behalf of any school district or other entity, on what it takes to evaluate and improve teachers' performance in the classroom and remove those teachers who are not meeting the district's standards. They also address the negative consequences of dismantling California's current system for hiring, retaining, laying off and terminating classroom teachers.

**NEED FOR FURTHER BRIEFING**

As counsel for *Amici* we have reviewed the parties' briefs and have concluded that further analysis of issues that bear on the practical effect of the Court's judgment on public education in the State of California would be useful to the Court. We have attempted to supplement but not duplicate the parties' briefs.

The application is timely, as it is submitted within 14 days of the filing of appellant's reply brief. (See California Rules of Court, Rule 8.200(c)(1).)

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## CONCLUSION

For the foregoing reasons, *Amici* respectfully request that the court accept the attached brief for filing in this case.

Dated: September 16, 2015

SEAN H. DONAHUE  
DONAHUE & GOLDBERG LLP

HENRY M. WILLIS  
SCHWARTZ, STEINSAPIR,  
DOHRMANN & SOMMERS LLP

---

HENRY M. WILLIS

*Attorneys for Amici Curiae*  
Kevin Beiser, Joan Buchanan,  
Ciro C. Calderon, Rob Collins,  
Tom Conry, Jennifer Freemon,  
Matt Haney, Michael  
Harrelson, Richard Hoy, Sarah  
Kirby-Gonzalez, Bob Nunez,  
Erik Ortega, Cecilia Perez,  
Annemarie Randle-Trejo,  
Claudia Rossi, Ryan Anthony  
Ruelas, Noelani Sallings,  
Shamann Walton, Steve  
Waterman, and Steve Zimmer

**AMICUS CURIAE BRIEF**  
**PRELIMINARY STATEMENT**

The court below enjoined the enforcement of five Sections of the Education Code –

- (1) **Section 44929.21(b)**, which establishes a two-year probationary period for new teachers,
- (2) **Section 44934**, which sets out the procedures for terminating a permanent teacher for "unsatisfactory performance" and other causes,
- (3) **Section 44938(b)**, which details the type of notice that a school district must give when commencing termination proceedings against a teacher for unsatisfactory performance and the time when such notice may be given,
- (4) **Section 44944**, which lays out the hearing procedure for permanent teacher termination proceedings, and
- (5) **Section 44955**, which provides the procedures to be followed when laying off teachers

as unconstitutional on their face and as applied on the ground that they allegedly deny all California students "equal access" to a constitutionally adequate education by increasing the possibility that some students will be exposed to "grossly ineffective" teachers and disproportionately burden schools serving students from minority and/or low-income backgrounds.

As we explain herein, while most matters of educational policy are sharply contested, we do not dispute that classroom teachers have an extremely important impact on the quality of the education that students receive. Although a complex of factors account for students' academic performance, no statistics are necessary to show that competent, well-trained, high-performing

teachers can make a huge difference in whether a student succeeds. As current and former board members and administrators, we are sympathetic to those of our colleagues who testified at trial about instances when they felt their ability to take personnel actions in students' interest was complicated by legal rules governing public school teachers' employment. And we recognize the intuitive appeal of the reasoning plaintiffs persuaded the court to adopt: that (1) because teachers matter and because putting (or keeping) seriously ineffective teachers in the classroom is detrimental to academic performance (2) anything that is (or appears to be) an obstacle to removing such teachers must be dispensed with.

But the plaintiffs' approach is not a solution to those problems. By fixating on "grossly ineffective" teachers the plaintiffs not only turn a blind eye to the many other factors that contribute to the opportunity gap that too many students from poor and minority communities experience, but prescribe remedies that do more harm than good to those students' interests. This is true in the case of each of the challenged statutes.

First, by striking down the two-year probationary period, the injunction issued by the trial court effectively makes all new teachers probationary for the rest of their careers. That would only make the job of hiring and retaining teachers that much harder, particularly for the hardest-pressed districts, who would risk losing good teachers to other districts that can pay higher salaries or provide better working conditions to teachers who would have no strong incentive to stay. The benefits of stretching out the probationary period indefinitely are, on the other hand, anything but clear.

Striking down the provisions of the Code that require districts to provide teachers with notice of their shortcomings and the opportunity to correct them before firing them on that ground

would likewise provide little benefit for students and might even harm their interests. As even the plaintiffs' witnesses agreed, well-run school districts give their teachers this sort of notice and opportunity to correct their problems as part of hands-on assistance programs designed to turn poor teachers into good ones and good teachers into great ones. This turns out to be not only smart policy, but cost-effective from a strictly fiscal standpoint.

Those programs not only improve student outcomes for those teachers who might not otherwise meet their district's standards, but make it easier to remove those ineffective teachers who do not respond to additional guidance and mentoring – often without the need for formal termination proceedings. Relieving districts of the obligation to give a struggling teacher the same notice and opportunity to correct before they can fire that teacher will not, in the long run, help meet the need for good teachers.

The plaintiffs also seek to eliminate the administrative hearing system for disciplinary terminations for unsatisfactory performance, notwithstanding the changes made in those procedures by the Legislature last year. The relief that the plaintiffs seek is no cure for the problems they have identified: eliminating the administrative process will not dispose of those cases, but only send them to Superior Court, a process that is likely to be more, not less, expensive and protracted. Furthermore, as the record shows, districts that take the job of assisting teachers seriously will not need to go through formal termination proceedings in the vast majority of such cases, as the peer assistance programs that help correct many struggling teachers' performance also induce many such teachers to resign without the need for an adversary hearing.

Finally, giving school districts the right to dispense with seniority and to conduct layoffs by an ad hoc ranking system based

on evaluation of teachers' comparative merit – or whatever other consideration a school district might choose – will not help matters. On the contrary, making every teacher's job depend on whatever comparative ranking system the district devises, or subject to a Principal's judgment concerning his or her value, will undermine those collaborative teaching arrangements that have produced results in many districts, while making reductions in force even more complicated and contentious.

This points up a further, largely unseen danger that each of these changes poses. If we want to improve education, a critical starting point is to encourage skilled professionals to enter and remain in the profession. Measures that make public school teaching an attractive career choice are thus in the interest of public school *students*; those that make it less attractive are not. The plaintiffs' elimination of many basic due process protections for teachers will have just that effect, harming students in the long run.

Furthermore, these changes are likely to make many good teachers less willing to take on more challenging assignments if they thought a bad evaluation could cause them to be fired without notice or laid off based on factors outside their control. This will likely hit those school districts with the greatest needs the hardest, as good teachers are more likely to look for employment elsewhere. Far from supporting the sorts of programs we need to ensure that all students receive a quality education, these changes will stifle them.

Any benefits that the plaintiffs hope to realize appear, moreover, to be both speculative and marginal. Districts that undertake meaningful programs to evaluate and assist teachers in their first two years have identified and removed many inadequate teachers. Related programs for tenured teachers have produced similar results, helping many teachers improve and removing those

who do not without the need for formal proceedings. Finally, Section 4955 already gives school districts leeway to save important programs from layoff, making the drastic change of abolishing seniority unnecessary and imprudent.

Perhaps most seriously, sustaining the judgment below would invite a wholesale transfer of authority from elected representatives and experienced school administrators to the courts. This would not only violate principles of democratic accountability and self-government, but would entrust important issues of public policy to the branch of government that is least qualified to deal with them.

The judgment in this case illustrates that all too clearly. The Court not only struck down all or part of five important sections of the Education Code, but gave us no meaningful guidance as to what rules districts must apply, what rules we may apply and what rules we are forbidden to apply. To take one example, does the judgment merely relieve districts of the obligation to apply seniority in deciding who will be laid off in future Reductions in Force or does it impliedly hold that applying seniority, even on a voluntary basis, would violate students' constitutional rights? And if the latter, just what alternative system would meet constitutional muster – one that ranked all teachers on some system of the district's own creation, or one that only singled out teachers with poor evaluations for layoff, or some other system altogether?

The Superior Court did not answer this question because it is not competent to do so. These are issues on which there are sharp differences of opinion between different camps. Resolution of those differences will require careful attention to the costs, both immediate and long-term, intended and unintended, that any reform will impose. These issues are too important to be taken out of the hands of the Legislature and local school districts.

## ARGUMENT

### A. THE INJUNCTION PLAINTIFFS SEEK WOULD LIKELY WORSEN EXISTING TEACHER RECRUITMENT AND RETENTION PROBLEMS THAT HARM CALIFORNIA'S STUDENTS

The decision below imposes a suite of significant changes to California education law that all cut in the same direction: reducing the attractiveness of teaching in California public schools as a viable, long-term career choice. Upholding the trial court's rulings would have serious adverse effects for the quality of instruction that California students receive.

This basic failure – common to each of plaintiffs' theories and the lower court's rulings -- is especially significant because California schools are already having serious difficulties attracting adequate numbers of excellent teaching candidates. We are facing severe long-term declines in the number of students enrolling in teacher preparation programs; as the California Commission on Teacher Credentialing disclosed in its most recent *Annual Report Card on California Teacher Preparation Programs for the Academic Year 2012 -2013*,<sup>1</sup> teacher training enrollments in this State declined by 22,000, or 53 percent, between 2008-09 and 2012-13. The State faces similarly severe problems retaining those teachers we want to keep;

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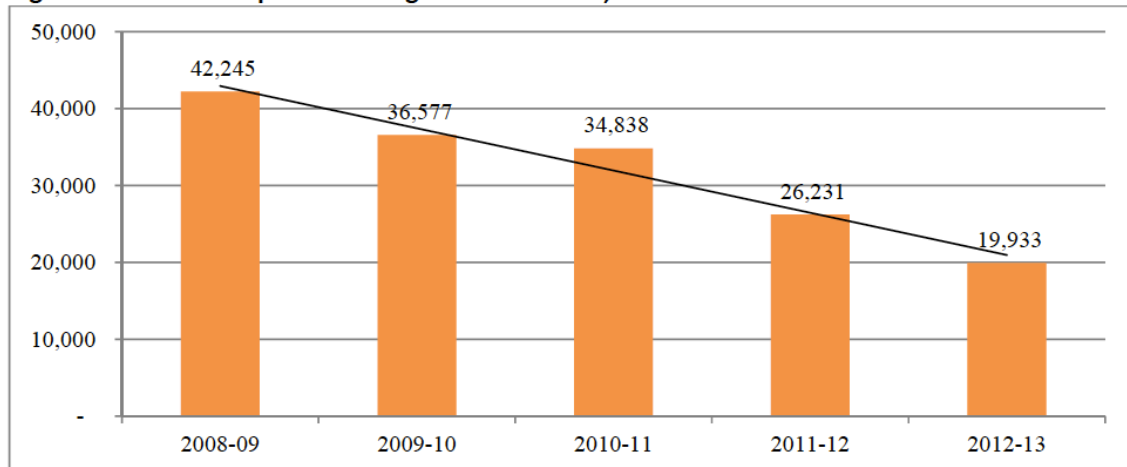
<sup>1</sup> The CTC's report may be retrieved at <http://www.ctc.ca.gov/commission/agendas/2014-10/2014-10-3D.pdf> (accessed on September 14, 2015). See also Rich, *Teacher Shortages Spur a Nationwide Hiring Scramble* (Credentials Optional) (Aug. 9, 2015) (noting that California faces "particularly acute" shortage of teachers and that "In California, the number of people entering teacher preparation programs dropped by more than 55 percent from 2008 to 2012, according to the California Commission on Teacher Credentialing." + (available at [http://www.nytimes.com/2015/08/10/us/teacher-shortages-spur-a-nationwide-hiring-scramble-credentials-optional.html?\\_r=0](http://www.nytimes.com/2015/08/10/us/teacher-shortages-spur-a-nationwide-hiring-scramble-credentials-optional.html?_r=0)).

more than 20 percent of new teachers in California leave the profession altogether within their first four years of teaching.<sup>2</sup> Making the teaching profession even less secure will only exacerbate these problems.

Teaching has unfortunately become less attractive in recent years. As Professor Rothstein testified at trial, teachers' salaries have dropped substantially in comparison to other jobs in our economy since 1940. (RT 6052: 17 – 24 [Rothstein]) The number of students entering teacher preparation programs has declined sharply in the last seven years.

The CTC report presents this very alarming trend in graphic terms:

**Figure 2. Teacher Preparation Program Enrollment, 2008-2009 to 2012-2013**



*\*Data include both Traditional and Alternative Route totals.*

*Note: In a few preliminary teaching programs the enrolled students become program completers at the end of the program year. Those program completers are not included in the enrollment for 2012-13.*

*Annual Report Card on California Teacher Preparation Programs for the Academic Year 2012 - 2013 at PSC 3D-6. As a result, there simply are not enough new credentialed teachers to fill the more than 20,000*

<sup>2</sup> Reed, Rueben, Barbour, *Retention of New Teachers in California* (2006) at 7. This report may be retrieved at [http://www.ppic.org/content/pubs/report/R\\_206DRR.pdf](http://www.ppic.org/content/pubs/report/R_206DRR.pdf) (accessed on September 14, 2015)



vacancies that the California Department of Education projects for the current school year.<sup>3</sup>

The crisis in teacher hiring does not end there, however: studies show that more than 20 percent of new public school teachers leave the teaching profession within their first four years on the job and more than 30 percent in their first seven years, forcing school districts to hire new, inexperienced teachers to fill the gaps.<sup>4</sup> For many California school districts, like Lewis Carroll's Red Queen, "it takes all the running you can do, to keep in the same place."<sup>5</sup> Some cannot do even that much<sup>6</sup> and must use teachers without credentials to fill the gaps.

This constant turnover is costly for both students and school districts: students in schools with the highest turnover rates face more inexperienced teachers, while districts must divert resources that could be spent on improving the educational environment to recruiting and training the replacements for these departed teachers. This level of turnover can also have a self-perpetuating effect: replacing experienced teachers with new ones weakens the "collective knowledge" of a school, which makes it harder for new teachers to get the mentoring and collegial support they need to

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<sup>3</sup> The CDE's projections can be accessed at <http://dq.cde.ca.gov/dataquest/TchHires1.asp?RptYear=2015-16&TheRpt=TchHires&Submit=1> (accessed on September 14, 2015).

<sup>4</sup> Reed et al., *Retention of new teachers in California* at vi, 7.

<sup>5</sup> Carroll, *Through the Looking-Glass and What Alice Found There*, Chapter 2.

<sup>6</sup> Oakland Unified School District has lost as many as 70% percent of its teaching staff in their first five years with the District. (RT 7271:28 – 7272:5 [Olson-Jones])

achieve success and satisfaction in their new jobs, which leads to further turnover.<sup>7</sup>

Keeping teachers in lengthy or indefinite probationary status – and depriving teachers with seniority of job security – will only worsen those problems. As Professor Rothstein recounted in his testimony, the teaching profession has long offered job security for those who have acquired tenure to make up for modest and (in relative terms) declining salaries public schools pay. (RT 6052:17-24 [Rothstein]) Taking away that certainty will not only discourage more prospective teachers from entering the profession but can only increase the already high percentage of teachers who choose to leave the profession in their first few years.<sup>8</sup>

This is likely to have an even harsher impact on those schools that are already struggling to keep experienced teachers. If teachers who formerly would have earned some measure of job security now remain at will three or five years into their teaching career, with no prospect for job security on the horizon, then they have less reason to stay in a district with more challenging working conditions.

All of this works to the disadvantage of both California public schools and California public school students. Measures that make teaching less attractive will drive more current and prospective teachers away from the profession. That will mean in turn that

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<sup>7</sup> Loeb, Darling-Hammond, Luczak, *How Teaching Conditions Predict Teacher Turnover* (2005) at 49.

<sup>8</sup> In fact, research suggests that lengthening the probationary period would have a significant adverse impact both because it reduces the security of taking a teaching position and especially because a termination in a third or fourth year is likely to do more damage to that teacher's career prospects than being fired in the first or second year. (See RT 5919:16-24; 5953:1-14 [Rothstein] (noting that "the cost of being displaced is higher...the more you've invested in a current career"))

school districts have to get by with a less experienced team of teachers when they need experience and continuity the most. As unsettling as that is for teachers and districts, it is even worse for the students involved. (RT 5918:6-11 [Rothstein])

At a bare minimum, assessing the impact of far-reaching structural changes to the policies governing public instruction requires a careful balancing of ostensible benefits against their impact on attracting and maintaining the talented, motivated teachers that all agree are vital to good education. This is the sort of balancing that legislatures and school administrators are best positioned to conduct.

School districts can adjust to whatever rules the Legislature sets. We would have a much harder time knowing what we can and cannot do, on the other hand, if every academic administrative decision were made into a constitutional issue, to be decided by the courts, after years of costly litigation. This is particularly true for litigation that treats all districts as if they were the same and that leaves no settled rules in place of those it has swept away. The judgment in this case will make things worse, not better.

**B. CALIFORNIA'S TWO-YEAR PROBATIONARY PERIOD IS NOT UNCONSTITUTIONAL**

The plaintiffs claim that Section 44929.21(b) of the Education Code, which allows school districts two years to either grant new teachers tenure or release them, is unconstitutional because (1) it does not allow a school district enough time to determine which teachers will meet its performance standards and which will not, (2) resulting in the retention of unqualified teachers, (3) who are more likely to be assigned to teach predominantly low-income and minority students. While *Amici* have different views as to what would be an optimal probationary period, we agree that eliminating

the existing two year period by judicial fiat is both bad policy and bad policy-making.

**1. The Existing Two-Year Probationary Period Is Not Unconstitutional on Its Face or As Applied**

Educators can disagree whether a two year probationary period is optimal or whether a longer one would be better. The Legislature has decided that a two year period is adequate.

Probationary employees once worked under a longer, three-year period, but with greater due process rights than current probationary employees enjoy. The Legislature decided in 1983 to reduce the probationary period from three to two years, while at the same time providing that school districts no longer had to make any showing of cause to terminate or "non-reelect" them at the end of the school year. (*Grimsley v. Board of Trustees* (1987) 189 Cal.App.3d 1440, 1444) This legislatively created right of school districts to fire probationary employees without cause is so absolute that it not only preempts any provisions of a collective bargaining agreement in conflict with it, but overrides California's otherwise strong policy of deference to arbitration awards. (*Board of Education v. Round Valley Teachers Assn.* (1996) 13 Cal.4th 269)

*Amici* do not believe that this statute, which represents the balancing of competing goals, could possibly constitute a "facial" violation of the Constitution's guarantee of access to a basic equal education, *i.e.*, "inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084) In addition, they dispute the premise for plaintiffs' argument: that the two year statute inevitably causes school districts to do a halfhearted job of evaluating teachers in their first two years, leading them to retain teachers they would not have retained if they had more information with which to work. The

record evidence and the structure of the Education Code shows that this premise simply is not tenable.

First of all, Section 44929.21(b) says nothing about how school districts should go about evaluating teachers' performance in their first two years. That is, instead, covered by the Stull Act, Education Code § 44660 *et seq.*, which requires districts to evaluate certificated employees' performance at least every two years.

Some districts choose to do more than the minimum. Jeff Seymour, retired Superintendent of the El Monte Unified School District, described El Monte's approach, in which the District not only provides probationary teachers with two formal evaluations every year, supported by two formal classroom observations apiece, but also directs its principals and other site administrators to undertake informal observations of each probationary teacher's classroom at least once a week. (RT 7117:1-23 [Seymour]). Section 44929.21(b) does not bar El Monte from adopting this policy.

Other districts have approached the decision differently. The Los Angeles Unified School District has recently switched, under former Superintendent John Deasy's direction, from a "passive" to an "affirmative" tenure system that allows probationary employees to attain tenure only on the recommendation of their Principal. (RT 771:6 – 772:5 [Deasy]) This was also accomplished under the two-year tenure statute. (RT 772:19-27 [Deasy]).

Section 44929.21(b) likewise does not dictate what standards a school district must apply when deciding whether to non-reelect or retain a probationary employee. That decision is left to each district, based on the conditions it faces and the policies it sets.

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## 2. A Longer Probationary Period Would Not Necessarily Benefit Students

Plaintiffs insist, however, that more accurate decisions can be made after a teacher's third year. Even if that were true, that would not make the statute unconstitutional.

There is, for one thing, evidence that a third or fourth year is not all that meaningful for purposes of evaluation. School districts have not, in fact, needed even two years to identify and terminate ineffective teachers in the great majority of cases. (RT 6835:20-6838:4 [Mills] [72 percent of non-reelections occur during teachers' first probationary year]) And extending probation for a third year and beyond produces only modest and incremental benefits. (RT 2671:18-2673:3)

But even if a third year might make a meaningful difference to some extent (and reasonable educators differ on precisely where the balance should be struck), extending the deadline to decide whether to retain or non-reelect a teacher nonetheless comes at a cost. An extended probationary period would very likely result in more ineffective teachers remaining in the classroom for three years rather than two. That would harm, not help, students.

Plaintiffs insist, however, that it is impossible to make sound decisions in year two because there will not be enough data from student test results to use to measure teacher performance. Their conviction on this point may be sincere, but it is misplaced.

First, as the testimony at trial attests, whether (and, if so, how) to rely on student test scores to measure *teacher* performance is a matter of intense disagreement among educators. Many successful districts do not consider student test results as a reliable or even helpful indicator of teacher competence, and many experts and the test-designers themselves have cautioned that such measures

"should not serve as the sole or principal basis for making consequential decisions about teachers," highlighting "the many pitfalls to making causal attributions of teacher effectiveness on the basis of the kinds of data available from typical school districts." (Braun, *Using Student Progress to Evaluate Teachers: A Primer on Value-Added Models* (Princeton, NJ: ETS, 2005), p. 17; accord McCaffrey, Koretz, Lockwood, Hamilton, *Evaluating Value-Added Models for Teacher Accountability* (Santa Monica: RAND Corporation 2005) ("[t]he research base is currently insufficient to support the use of VAM for high-stakes decisions about individual teachers or schools."); American Education Research Association and National Academy of Education, *Getting Teacher Evaluation Right: A Brief for Policymakers* (citing research finding "value added models are highly unstable"))).

As Dr. Robert Fraisse, a Professor in California Lutheran University's Graduate School of Education, who has had extensive experience as Superintendent and Assistant Superintendent in the Hueneme, Laguna Beach, Las Virgenes and Conejo Valley school districts, explained, he is concerned that linking teacher evaluation to standardized test scores would lead to "a narrowing of the curriculum," and a retreat from "the full breadth of offerings in music and the arts," citing his experience that, in school districts, "what gets measured gets done." (RT 5665:4 – 5666:3, 5667:6-9 [Fraisse])

In his view attributing student performance to individual teachers would work "in the exact opposite direction of where we've been moving," which is to emphasize shared responsibility and "collaboration among grade-level team members, collaboration among department members." (RT 5665:4 – 5666:3, 5667:6-9 [Fraisse]) Fraisse expressed the concern that doing so "would make

it harder to attract teachers to the schools that needed those teachers the most." (RT 5667:6-9)

But even those who take a much more positive view of the power these metrics to assess teacher performance would concede that they are rarely needed to identify those teachers who the plaintiffs deem to be "grossly ineffective." There was abundant evidence at trial that, consistent with what our own experience tells us, there is much that can be known about teachers' effectiveness within the two-year period, and that districts that take a proactive approach find they have ample basis for making sound predictive judgments. A district can amass a good deal of information to work with if it makes the effort.

First and foremost are in-class observations, which require the investment of supervisors' time and attention, but pay off much more than other methods of evaluating teachers' performance. In-class observations give districts the ability to gauge teachers' basic skills: communicating with students, engaging them in learning, responding to students' individual needs, dealing with interruptions, disruptions and other events that interfere with teaching, and all the other skills that go into teaching.<sup>9</sup>

While every school district has latitude to decide just how, and how often, to conduct this sort of in-class observation, frequent in-class observations are the cornerstone for a number of successful

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<sup>9</sup> One of the plaintiffs' witnesses underscored the importance of active evaluation of teachers' classroom performance based on his own experience. Kareem Weaver, formerly principal of a high-poverty and largely minority school in Oakland Unified School District, saw students' Academic Performance Index scores improve by 74 points during his years there. (RT 2928:4-8 [Weaver]) As Weaver emphasized, he made a priority of evaluating teachers when he was principal, observing teachers close to two hours a day. (RT 2923:13-21 [Weaver])



programs, as illustrated by El Monte's programs that Seymour described. These constant observations, formal and informal, give site administrators a wealth of information from which they can determine which teachers are performing up to their district's standards and which ones need help. (RT 7140:14-18)

There are a number of ways that districts can assist new teachers, from BTSA Induction<sup>10</sup> to recruiting retired teachers to mentor teachers who need assistance and offering professional development support to principals at schools with the highest percentages of students in poverty. Under Seymour's leadership, El Monte has also required that principals and other site administrators coach probationary teachers as an essential part of their job. (RT 7119:23-7120:1 [Seymour]) Other school districts have given principals leadership responsibilities over the BTSA coordinators working under them.<sup>11</sup>

It is in the school district's interest to work closely with probationary employees in their first few years, not only to assess their skills, but to enhance them as well. Teaching is a difficult job under the best of circumstances; we rely on highly educated individuals who depend on the psychic rewards that come with

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<sup>10</sup> BTSA stands for "Beginning Teacher Support and Assessment," an induction program that new teachers are required to complete in order to maintain their credentials and their employment. (RT 7427:8 – 7428:11 [S Brown]). California introduced the system in 1992. (Tushnet, *Final Report of the Independent Evaluation of the Beginning Teacher Support and Assessment Program* (2004) at 13)

<sup>11</sup> See [http://www.lbschools.net/Main\\_Offices/Curriculum/Professional\\_Development/more\\_about\\_btsa.cfm](http://www.lbschools.net/Main_Offices/Curriculum/Professional_Development/more_about_btsa.cfm) (accessed on September 14, 2015).

teaching as well as the salaries they receive. This means making sure that they are not left on their own to sink or swim.<sup>12</sup>

This sort of one-on-one mentorship, whether by a senior teacher or by the school principal, is not only critical to the success of those teachers who improve their performance under those programs, but also invaluable in identifying those who are not likely to do so. As Seymour testified,

If a site administrator is in classrooms and at least weekly is working with their teachers in their professional learning communities and doing their compelling conversations, they have a good idea if the teacher needs help. If that help is given on various levels and not working, by the end of that first year, generally, they have a good indication that that teacher is going to be successful or not.

7140:14-22. While some school districts may not have placed the same priority on evaluation and support for new teachers, there is nothing in Section 44929.21(b) that prevents them from doing so.<sup>13</sup>

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<sup>12</sup> These assistance programs are often part of a broader program that features collaboration as a regular part of the academic environment, rather than just as an emergency response to a teacher with problems. Richard Barrera, Member of the Board of Trustees of San Diego Unified School District, Susan Mills, Assistant Superintendent for Personnel, Leadership and Development at Riverside Unified School District, Dr. Fraisse and Mr. Seymour each described the programs in their districts that bring together new and more experienced teachers work together as teams to share insights about what works to improve student performance and deal with particular students' needs. (RT 5626:8-23, 5630:13-5634:26 [Fraisse]; 6816:2-6817:20 [Mills]; 6550:17-6553:13, 6556:1-26 [Barrera]; 7114-1-15 [Seymour])

<sup>13</sup> Nor is expecting school districts to take an active role in monitoring their new teachers' job performance impractical or unaffordable, as some witnesses suggested. As a 2004 study of California schools has found, well-run induction programs produce \$1.66 in savings for every dollar invested, while providing a better educational experience for students. (Villar, *Measuring the Benefits*

As the California Supreme Court has made clear, any finding that "basic educational equality" has been denied, based on a "real and appreciable" disadvantage to students, depends on whether the "actual quality of the district's program, *viewed as a whole*, falls fundamentally below prevailing statewide standards." (*Butt v. State of California* (1992) 4 Cal. 4th 668, 686-87 (emphasis added)) That requires that we consider the costs, both short- and long-term, that this change would impose on school districts and their students.

First, as record testimony established, administrators have legitimate concerns that longer probationary periods where decisions are pegged to student test results will deter highly qualified teachers from taking assignments to schools where needs are greatest. That represents a real cost to students that must be weighed against any perceived benefits. The court below never attempted to engage in such an analysis, which is central to the goal of delivering high-quality instruction to every California student.

Indeed, the evidence further showed great variation among districts in how they go about gathering performance information and how they respond to it (just as there is – and would be under any probationary period – substantial variation as to what substantive standard they apply in deciding whether to grant tenure), and given how differently decisions are made under the two-year period the Legislature enacted in Section 44929.21(b), there is every reason to expect that were the period to be extended to three or four years: some districts would continue to take a "passive" approach and wait until the fourth year to decide not to grant tenure to a teacher with performance problems, meaning that such

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*and Costs of Mentor-Based Induction: A Value-Added Assessment of New Teacher Effectiveness Linked to Student Achievement* (2004) at 36.)

individuals would spend more time in the classroom than they currently would.

Plaintiffs profess skepticism that "procrastination" would occur. But leaving aside the label, there are many reasons to expect this mode of proceeding. Some districts would surely keep lower-performing probationary teachers on staff for the same reason that they take a "passive" approach toward tenure: because of concern for the costs associated with turnover and re-hiring – including uncertainty that a new hire chosen from a shrinking applicant pool will in fact perform better than the one he replaced and the certainty that he will require costly training and support and unlikely to be effective from the start.

Plaintiffs' claims are contrary to experience and governing law and internally inconsistent. They blur the distinction between identifying the most effective teachers and those who are grossly ineffective and ignore the four principal determinants of whether a student will be assigned to a grossly effective tenured teacher: (1) what substantive standard the district uses in offering employment and tenure; (2) what applicants seek employment as teachers in that district; (3) how long ineffective probationary teachers are in the classroom before they are removed; and (4) what policies the district uses in assigning teachers to particular schools.

Section 44929.21(b) does not address either the first or the fourth, and it works to students' direct educational benefit with respect to the second and third. Furthermore, as respondents and intervenors explain, the State Legislature has also taken measures to limit districts' discretion to permit transfers of less effective teachers to high-poverty and high-need schools. (See Education Code § 35036).

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Indeed, while plaintiffs insist that courts must look beyond the language and structure of statute to "real world" effects, they offer a highly stylized account, where districts that are overburdened and poorly managed under a two-year tenure rule will become proactive if given an extra year. The challenged law does not force school districts to give tenure to unqualified teachers or to assign any such teacher to any particular school or classroom. Nor will relieving school districts from the obligation to decide which teachers to retain and which ones to release in their first two years give those districts that have done a poor job screening probationary employees in the past any incentive to do a better job now.

**C. DISTRICTS CAN AND DO DISMISS TEACHERS WHOSE PERFORMANCE IS UNSATISFACTORY**

Plaintiffs do not claim that any provision of California law by its terms prevents school administrators from acting to terminate the employment of tenured teachers. Nor could they. Section 44932 affirmatively provides for termination in instances of "unsatisfactory performance" and numerous other circumstances.

Nor do Plaintiffs claim that the substantive standard the Legislature has adopted for dismissal of ineffective teachers violates the Constitution. The statutory authorization for termination for unsatisfactory performance is clearly broad enough to allow for termination of those teachers whom plaintiffs label "grossly ineffective."

Instead Plaintiffs complain that Section 44934, which sets out the procedures for terminating a permanent teacher, Section 44938(b), which details the type of notice that a school district must give when commencing termination proceedings against a teacher for unsatisfactory performance and the time when such notice may

be given, and Section 44944, which lays out the hearing procedure for permanent teacher termination proceedings, are unduly cumbersome. Highlighting the modest numbers of teachers who are dismissed after a final, formal determination of unsatisfactory performance and the perception that such proceedings are time-consuming and costly, plaintiffs complain that the dismissal provisions effectively force school districts to keep ineffective teachers in classrooms, thereby violating all students' constitutional rights. Here, too, plaintiffs' account overlooks central aspects of the challenged provisions and on-the-ground realities.

The Plaintiffs have, once again, drawn the wrong conclusions and offered the wrong remedies. The Education Code's procedural requirements are not as onerous as the Plaintiffs claim and do not, in any event, actually prevent districts from removing ineffective teachers.

**1. Formal Termination Proceedings Are Not Necessary in a Large Percentage of Cases**

Formal termination proceedings represent only a fraction of those cases in which school districts remove ineffective teachers from the classroom. School districts accomplish this much more frequently by obtaining the teacher's voluntary resignation.

Those districts that invest time and energy in programs for assisting teachers with performance problems, such as PAR<sup>14</sup> and similar mentorship programs, have been particularly successful in this respect. An active PAR or mentorship program can help some struggling teachers correct their problems. But in other cases, it will

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<sup>14</sup> PAR stands for "Peer Assistance and Review," a program in which expert teachers mentor and assess their peers. (RT 7435:14-22; 7436: 18-7437; 7438:22 [S. Brown]) It is typically used to assist more experienced teachers who have performance problems, as opposed to BTSA, which focuses on new teachers.

demonstrate to the teacher involved that the road to return to acceptable performance is just too hard and that he or she needs to look for a career in another field. In many cases – and, in some districts, all cases – teachers with these intractable performance issues have chosen to leave their posts voluntarily rather than fight termination proceedings. (RT 7443:20-7444:23 [S. Brown]) Los Angeles Unified School District, to take one example, had removed more than 750 ineffective teachers without the need for formal termination proceedings in the three years preceding the trial in this case.

Plaintiffs contend that such outcomes are somehow beside the point, insisting that only removals through fully litigated CPC hearings could prove that the law is functioning as intended. But that line of argument is frankly baffling. The purposes of the dismissal statutes are fully served when the parties reach a consensual resolution which results in the teacher's departure. The current statutory scheme does not prevent school districts from removing ineffective teachers.

**2. The Statute's Requirements That the District Give Teachers Notice and the Opportunity to Correct Their Shortcomings Advance Students' Interests**

The procedural requirements applicable in these formal proceedings are, moreover, far less daunting than the plaintiffs' account suggests. Section 44938(b)(2) requires that a "district must give a teacher charged with unsatisfactory performance 90 days notice of the acts on which it bases its claims of unsatisfactory performance. This special notice provision for teachers accused of unsatisfactory performance is not particularly burdensome.

Districts would be constitutionally required to give this sort of notice, in any event, even if Section 44938(b)(2) did not do so. (*Skelly*

*v. State Personnel Board* (1975) 15 Cal.3d 194; *Barber v. State Personnel Board* (1976) 18 Cal.3d 395) These notice requirements are not, moreover, strictly applied. (*Governing Board of the El Dorado Union High School District v. Commission on Professional Competence* (1985) 171 Cal.App.3d 324, 333 (defects in the notice will not bar the district from terminating the employee); *California Teachers Assn. v. Governing Board* (1983) 144 Cal.App.3d 27, 32 (same)) Any burdens imposed by the statute are light indeed.

And even if Section 44938 were enforced as strictly as the plaintiffs suggest it could be, it would nonetheless serve, not impair, students' interests by giving underperforming teachers notice of their shortcomings and the opportunity to correct them. As one of plaintiffs' witnesses, Troy Christmas, the Director of Labor Strategy for Oakland Unified School District, explained, correcting poor performance is the "ideal" outcome:

Q: And if an ineffective teacher improves his or her performance as a result of being notified that they're a risk of dismissal such that they become effective, would you—would Oakland Unified consider that a success in terms of getting an effective teacher into the classroom?

A: We would consider that ideal. We've gone through the trouble to hire this person. We've invested in this person. If they—what we want them to do is to be successful with our students. If they're successful with our students, that validates our original decision, and it supports our students. So that's the ideal case.

(RT 1965:11-22 [Christmas]) Improving teaching standards means much more, obviously, than merely removing the bottom three percent; school districts need to improve all teachers' performance. Section 44938(b)(2) helps them achieve that goal.

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### **3. Districts Are Able To Remove Teachers With Irremediable Performance Problems Without Extended Termination Proceedings**

Those cases in which districts have taken "unsatisfactory performance" cases to hearing have not, moreover, required marathon hearings. (AA 1958-4549, 4990-5045, 7027-28) While the plaintiffs have tried to obscure this point by mixing statistics drawn from "immoral conduct" cases, some of which have involved protracted hearings and Stalingrad-style discovery wars, "unsatisfactory performance" cases have been far faster and less expensive to litigate. (RT 42:23-28, 534:21-535:10, 787:13-22; 788:10-13) Here again, reality simply does not match the plaintiffs' exaggerated claims.

Districts can, of course, make it harder on themselves by ignoring performance problems (see RT 7281:3-18 [Olson-Jones]) or taking a wholly adversarial approach toward a struggling teacher. They can also duck the problem by transferring substandard teachers to other schools. (RT 2333:6-2334:8 [Kappenhagen]). But those are problems produced by poor management,<sup>15</sup> not by a statutory scheme that merely requires that the district actually prove that a teacher is not performing properly before terminating him or her on that basis.

### **4. Eliminating the CPC Would Not Benefit Students**

But even if the administrative procedure created by Section 44944 were as unwieldy and expensive as the plaintiffs claim it is, that would still not justify dismantling the administrative hearing

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<sup>15</sup> Once again, the plaintiffs' witnesses made this point: those districts, such as the Los Angeles Unified School District, that allegedly had engaged in this practice have taken steps to see that it does not occur in the future (RT 774:13 -775:15 [Deasy]), joining other districts that have never done this. (RT 7134:5-13 [Seymour])

procedure that Section 44944 has created, since the alternative – litigation of dismissal cases in Superior Court – is apt to be far more cumbersome and time-consuming.

That was, in fact, how teacher dismissal proceedings were handled before the Legislature revised the law in 1971. Under Section 5.654 of the School Code, recodified as Section 13529 of the Education Code in 1943, the school board did not hear the charges, but instead drew up a complaint against the teacher for one or more of several specified causes. The school board acted as prosecutor, not decisionmaker. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 555)

If the teacher demanded a hearing on those charges then the case moved to Superior Court:

[I]f the teacher so demands, the school board shall either rescind the charges made or "file a complaint in the superior court of the county in which the school district or the major part thereof is located, setting forth the charges against such employee and asking that the court inquire into such charges and determine whether or not such charges are true, and if true, whether or not they constitute sufficient grounds for the dismissal of such employee, under the provisions of this code, and for judgment pursuant to its findings."

(*Fresno City High School District v. De Caristo* (1939) 33 Cal.App.2d 666, 669-70 (quoting School Code § 5.654)) This Superior Court litigation was just what we would expect it to be; the Court in *Matteson v. State Board of Education* (1943) 57 Cal.App.2d 991 described it as "an elaborate system of procedure which must be adhered to in filing, hearing and determining the proceeding in the superior court, including the form of pleadings, appointment of referees, the hearing of the exceptions to the referee's report, the form of judgment, and the right of appeal." (*Id.* at 998)

We do not know how dismissal cases would be litigated if the decision striking down Section 44944 were to stand. We can,

however, be certain that creating a new system, with new judicially-created rules, for adjudicating teacher dismissal cases will generate a great deal of uncertainty, not to mention expense, as the parties litigate a raft of issues in trial courts across the State. The end result likely will be a process that is more expensive and protracted than the current system, with the costs of a wrong decision even heavier for all concerned.

Eliminating the CPC would also mean that districts would litigate these matters in front of a Superior Court judge, not a panel of teachers with experience in the field. Those panel members bring practical knowledge that few judges have. The Administrative Law Judge appointed by the Office of Administrative Hearings likewise brings hands-on experience with the intricacies of the Education Code that few Superior Court judges have.

The benefits of eliminating this expert panel are, at best, debatable. If we are to eliminate the CPC, then that job belongs to the Legislature, which would have the responsibility to provide an alternative, rather than leave us wondering where we go from here, as the Court's injunction does.

#### **5. AB 215 Has Simplified the Dismissal Process**

The Legislature acted last year to significantly streamline procedures in dismissal cases. The new law, referred to as AB 215, expedites the resolution of unsatisfactory performance cases by imposing firm deadlines for commencing and concluding hearings and limits the amount of formal discovery that either side can take, requiring instead an initial obligation to exchange documents and information. Remarkably, plaintiffs, who previously called attention to long-running and open-ended discovery, now seek to portray these *reforms* as somehow adding to districts' burden.

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**D. MAKING LAYOFFS DEPEND ON JUDGMENTS ABOUT PERCEIVED COMPETENCE RATHER THAN SENIORITY WILL MAKE THE PROCESS UNMANAGEABLE AND UNDERMINE SUCCESSFUL REFORM AND TEACHER RECRUITMENT AND RETENTION**

The plaintiffs' last claim is that Section 44955, which uses seniority as well as other criteria to determine which teachers must be laid off when budget cuts compel a district to reduce the number of teachers, is unconstitutional because it does not allow the district to substitute its own judgment concerning the value of particular teachers for the criteria set out in the statute. Once again, the plaintiffs' solution is not only unnecessary, but would cause even greater long-term problems.

**1. Using RIF Proceedings as a Way to Remove Unsatisfactory Employees Would Do More Harm than Good**

The Education Code draws a distinction between individual cause-based termination decisions, on the one hand, and layoffs, which entail allocating employment losses among blameless individuals, on the other. (See generally *Cousins v. Weaverville Elementary School Dist.* (1994) 24 Cal.App.4th 1846 [district could not use non-reelection provisions to circumvent probationary teacher's due process right to contest RIF for financial reasons]) Using RIF proceedings to single out teachers for loss of employment based on their perceived poor performance would undercut all teachers' due process rights.

That has a certain superficial appeal, but carries with it all the unintended costs that depriving teachers of their due process rights directly would. Making all teachers at will can only exacerbate the problems that districts now face in recruiting and retaining good teachers.

Plaintiffs argue, however, that using seniority to determine the order of layoff is as arbitrary and "unfair" as making layoffs depend on some objective, but irrelevant, characteristic, such as last name or height. [RB 108] Plaintiffs' argument is fatuous. Teaching is, as both sides agree, a difficult profession; teachers get better at it as they acquire skills. Using an objective criterion that has a high correlation to ability when deciding on layoff and recall is neither arbitrary nor unjust.<sup>16</sup>

Making RIFs into a competition, setting every teacher against all others in his or her field, would do grave damage to the collaborative teaching models that have produced favorable results for students. That would also, in turn, make it harder to retain the good teachers this change in RIF procedures is supposed to protect, as the change from a collegial to competitive ethos makes teaching that much less attractive.<sup>17</sup>

Ranking teachers in this fashion would also be a nightmarish assignment for administrators. A moderate sized school district will have many teachers teaching at the same or nearly the same grade level in the same subjects, but in different teaching environments, with different students and under different principals. Making a meaningful ranking of these teachers would consume endless

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<sup>16</sup> The fact that school districts in other states that have been given the discretion to disregard seniority in layoffs and make decisions by instead ranking teachers by some measure of effectiveness have instead opted to continue to rely on seniority underscores the point. (RT 4562:15-4564:15)

<sup>17</sup> Loeb, Darling-Hammond, Luczak, *How Teaching Conditions Predict Teacher Turnover* (2005) at 47 [collegial opportunities one of the most significant predictors of teachers' morale, career choice commitment, and plans to stay in teaching].

amounts of time<sup>18</sup> that could better be spent working with excellent, good and poor teachers to improve their skills and help their students.

This sort of ranking system could also discourage some employees from participating in programs, such as PAR, that are intended to help them, for fear of being officially tagged as a teacher who needed help when the next RIF came around. Once again, a measure that appears, on its face, to encourage retention of good teachers could push strongly in the opposite direction.

Indeed, what some (but not all) administrators and experts criticize about effectiveness measures applies with great force here: when teachers understand themselves to be in perpetual competition for a critically important good – the right to retain one's job during a downturn – and are asked to work alongside colleagues whose ability to survive an earlier layoff is viewed as suspect, collaboration and cooperation suffer significantly. While teachers do not enter the profession primarily to obtain job security, they cannot help but react out of self-interest when their livelihoods are threatened.

Mills described the damage that substituting individualized ranking of teachers for seniority could do to these programs:

Q. Based upon your experience and observations as an Administrator, including in your present capacity as the assistant Superintendent of

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<sup>18</sup> To illustrate the point, attempting to rank Social Science teachers at different schools against each other would force whoever was given the job of ranking teachers to control for the fact that different Principals at different schools used different yardsticks in assessing performance. Even if it were possible in comparing two teachers at different schools to control for the different yardsticks that those two different Principals used, we would then have to repeat that process for every possible combination of schools, making the task impossibly complex and needless divisive.

Personnel in Riverside Unified School District, do you have an opinion about what effect there might be on the operation of schools in that district if one were to devalue seniority in the layoff context as a factor and heighten the consideration of comparative effectiveness of teachers based upon those teachers' students' performance on the standardized tests?

- A. Because our district is so based on collaboration and people working together, that I believe, once you start putting a rank system of people's test scores and names together, they will not be willing to work together on best practices, and share.

I believe it will become competitive, and people and students won't have the opportunities they need. And actually, teachers won't be getting the staff development together that they get when they work collaboratively together because they won't want to share, they won't want to be working in collaboration, even across schools.

(RT 6866:18-6867:21 [Mills])

Indeed, Dr. Fraisse made a related and, in light of plaintiffs' theory, even more important observation. Although plaintiffs insist that "competence" based RIFs will somehow improve the quality of teaching in high-poverty and high-need schools, the opposite is almost certainly the case. Many experienced and highly effective teachers make the admirable decision to seek out assignments to such schools – out of a personal commitment to making a difference where it is most needed – even though resources and working conditions tend to be significantly worse than at affluent schools and factors such as overcrowding, lack of safety, high absence rates, and disruptive behavior can swamp the positive effects of their teaching. But such schools are far more likely to yield disappointing academic outcomes than strong, orderly schools with affluent student

populations. And as Dr. Fraisse explained, in an environment where teachers are presumptively "accountable" for student outcomes – and where "accountability" means losing one's job in a layoff – it would be surprising if these gifted and idealistic teachers *did not* gravitate to schools where test scores are consistently strong and the danger of paying that price is minimal. (RT 5667:6-9) The changes that the plaintiffs demanded would in fact undermine districts' efforts to put their best teachers where they are needed most.

The Superior Court was either unaware of or indifferent to this possibility. We cannot be, since we are the ones who would have to live with the consequences if the judgment in this case were affirmed.

## **2. Districts Can and Do Skip Teachers When Necessary To Preserve Innovative Programs**

Section 44955(d)(1) allows districts to "skip" less senior employees who are needed to teach a specific course or course of study. While the plaintiffs claim that school districts have not been able to use "skipping" to preserve these sorts of programs, its own witnesses contradict it: Los Angeles Unified School District, for example, has used this provision to safeguard teachers with special training and experience to work with high-need students, such as teachers who have gained experience in dual immersion bilingual programs, and to preserve the District's International Baccalaureate program. LAUSD has also used Section 44955(d)(1) to provide for the recall from layoff of (1) teachers with physical education credentials who have experience teaching dance, (2) music teachers who specialize in band and instrumental music, (3) English teachers who have experience teaching in the fields of drama and theater, (4) art teachers who specialize in media art, (5) Gifted and Talented Education-certified teachers, (6) counselors with certificates from the



Master Program Institute, and (7) teachers who are authorized by the College Board to teach Advance Placement classes. (Board of Education Report 204/10-11 at 1-2). Other districts have used this Section to avoid layoffs of those teachers who have gained unique experience in community day schools and similar programs. (RT 1841:20-1843:5 [Christmas]; see, *Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127)

The Legislature has already given school districts a significant measure of flexibility through Section 44955(d)(1), which a number of districts have used creatively to protect innovative programs. We do not need or want to have a new, yet to be defined system thrust upon us by the courts, particularly not one that leaves so many questions unresolved. If reforms in this area are to be made they should be made by the Legislature, based on a careful approach that is mindful to the long-term as well as short-term consequences of any changes in this area.

The Superior Court's judgment does not meet this standard; on the contrary, it is largely heedless of the damage that it would wreak by a wholesale change in the Education Code provisions that school districts have worked under for years. The Superior Court's judgment should be reversed.

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## CONCLUSION

For the foregoing reasons, *Amici* urge that the judgment of the Superior Court be reversed.

Dated: September 16, 2015

SEAN H. DONAHUE  
DONAHUE & GOLDBERG LLP

HENRY M. WILLIS  
SCHWARTZ, STEINSAPIR,  
DOHRMANN & SOMMERS LLP

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HENRY M. WILLIS

*Attorneys for Amici Curiae*  
Kevin Beiser, Joan Buchanan,  
Ciro C. Calderon, Rob Collins,  
Tom Conry, Jennifer Freemon,  
Matt Haney, Michael  
Harrelson, Richard Hoy, Sarah  
Kirby-Gonzalez, Bob Nunez,  
Erik Ortega, Cecilia Perez,  
Annemarie Randle-Trejo,  
Claudia Rossi, Ryan Anthony  
Ruelas, Noelani Sallings,  
Shamann Walton, Steve  
Waterman, and Steve Zimmer

## APPENDIX A TO AMICUS CURIAE BRIEF

Kevin Beiser is a member of the Board of Trustees of the San Diego Unified School District and a math teacher at Castle Park Middle School in the Sweetwater Union High School District in Chula Vista, a high poverty school that is rich in racial and ethnic diversity. He acquired his Masters Degree in Education and teaching credentials after a successful career in management in the private sector. He helped turn around Granger Junior High School, an underperforming school in National City, and was named the "San Diego Math Teacher of the Year" in 2009. He has also received the "Distinguished Service Award" for his work with students and strong support for the Gifted and Talented Education Program (GATE). He is now applying his private sector knowledge and results-oriented teaching experience to the challenges faced by the second largest school district in California, with more than 130,000 students and 6,500 teachers, by fostering collaborative teaching environments and working to close the opportunity gap that many low-income and minority students face.

Joan Buchanan served for eighteen years as a Trustee of the San Ramon Valley Unified School District, including four terms as President of the Board. She has also served in the State Assembly, where she chaired the Education Committee and authored AB 215, the 2014 bill that streamlines the hearing process for termination proceedings against public school teachers. She has championed the Smarter Balanced Assessment approach to measuring student progress and has worked to support other innovative programs to improve public education.

Ciro C. Calderon is an Elementary Counselor at Sea View Elementary School in Salton City and a member of the Board of Trustees of the Calexico Unified School District. As a member of the Board, he has been actively engaged in working to improve the educational experience for students by focusing on assuring students' access to fully credentialed teachers, appropriate instructional materials and safe facilities; implementing California's academic standards; engaging students, parents and the community in their schools; and improving student achievement and outcomes along a number of measures, including test scores, English proficiency, and college and career preparedness.

Rob Collins is a member of the Board of Education of the Simi Valley Unified School District, where he worked as a teacher and an administrator for more than 30 years before taking office in 2001 as a member of the Ventura County School Board. He has been a member of the Delegate Assembly of the California School Boards Association, Director of the Read Across America program in Simi Valley, Teacher of the Year within Simi Valley Unified School District, and an adjunct professor of Political Science at College of the Canyons. As Board member he has worked to strengthen the partnership between the Board, students, parents, and teachers to work together to improve the quality of education

and to make the best possible decisions on issues such as spending priorities, curricula, standards, and discipline.

Tom Conry was first elected to the Board of the Paradise Unified School District in 2008 and now serves as its president. He was a public school teacher for 34 years before retiring in 2008. As a teacher, Mr. Conry served in many leadership roles in the Vista Teachers Association. The last nine years of his career was spent on the California Teachers Association Board of Directors. During his working years, Mr. Conry was also appointed to the State Board of Education Advisory Commission on Charter Schools. Mr. Conry believes that in order for students to receive a quality education, it is vital that they have a stable and loyal teaching staff. Because PUSD is a small rural district in Northern California, it is not able to provide its teachers with as much compensation as they might receive elsewhere. What PUSD can provide its teachers is the protections that are in the Education Code, and the support of those protections in PUSD's policies and the collective bargaining agreement. These protections provide a road map for administrators to follow when it comes to evaluation and layoffs.

Jennifer Freemon is a member of the Board of Education of the Glendale Unified School District, where she was a teacher and an athletic coach. In addition to teaching and coaching students, she also mentored new teachers as part of the Beginning Teacher Support and Assessment induction program. With her three young children currently attending school in GUSD's Spanish Dual Immersion program, she has a vested interest in seeing the public school system excel, both now and into the future. She has devoted her life to advocating for students and public education goals, including fighting to keep schools safe, adequately funded, and focused on excellence in education. As a member of the GUSD Board, she supports programs to help teachers and parents connect to create a nurturing and challenging learning environment, and strives to ensure that every child has a right to a quality education, regardless of the child's status or profile.

Matt Haney is a Commissioner on the Board of Education for San Francisco Unified School District. He has served as the Chair of the Rules, Policy and Legislation Committee, Chair of the Committee on Personnel and Labor, and Chair of the Curriculum Committee. In his role as a School Board Member, Mr. Haney has been a national leader in working to end the "school to prison pipeline," including authoring a landmark policy to transform San Francisco's school discipline system and address racial disproportionality, and recently authored a policy to expand computer science and coding education to all students and all schools in SF schools. Mr. Haney is a former Education Fellow and Adjunct Faculty Member at the Stanford Design School, where he used design thinking and human centered design to incubate new ideas in education relating to student voice and student engagement. He also served as Adjunct Faculty at Palo Alto University and JFK University Law School, former Executive

Director of the UC Student Association, and former Legislative Aide for State Senator Joe Simitian. Mr. Haney has a BA from UC Berkeley, an MA from Stanford University School of Education, a JD from Stanford Law School with a focus on education law, and an LLM in Human Rights from the National University of Ireland where he was a Senator George Mitchell Scholar. He believes in a student centered school system where every child can fulfill their potential and pursue their dreams.

Michael Harrelson is a former member of the Governing Board of the Grossmont Union High School District, where he served for eight years. He was raised and educated in San Diego's East County where he graduated from Santana High School. For 32 years, he served as a Speech Therapist for the Ramona Unified School District, providing intervention services to K-12 students in an isolated and underserved part of the County. Mr. Harrelson has dedicated his life to advocating for students and strengthening the public education system. He played an integral role in the Ramona Teachers Association, serving in various leadership roles for almost three decades. He also served in various positions for the California Teachers Association, including twice being elected as a member of the CTA political action committee (CTA Association for Better Citizenship), serving as a liaison to both the Fair Political Practices Commission and the California State Teachers Retirement System, and participating as a trained member of the California Commission on Professional Competence Hearing Panel. While on the CPC Hearing Panel he had hands-on experience with teacher dismissals, including a complex case in which, after weeks of testimony, the Panel voted unanimously to uphold the District actions against the certificated employee. He has continued to live out his personal philosophy of service to community and service to the underrepresented by being elected Vice President of the San Diego County Master Gardeners Association, a volunteer organization affiliated with the University of California. As a Master Gardener, he initiated a Science Through Gardening program for incarcerated youth and organized events to engage San Diego's urban immigrant populations.

Richard Hoy served as a member of the Governing Board of the Grossmont Union High School District for eight years. As a lifelong East County resident and proud graduate of its public schools, Mr. Hoy taught for 34 years—three years at Lemon Grove Junior High and the final 31 years at Santana High School. He has won many awards and honors, including Santee Teacher of the Year, the Golden Apple for outstanding teachers, a Golden G for exemplary service to the District, and a Golden Oak award for PTA service. As a Board member, Hoy pushed hard for vocational educational career training programs as well as college preparatory programs, supported sound fiscal policies with focus on educational achievement and accountability, and advocated for programs to ensure school safety. Since retirement, he has served as a coordinator for the Grossmont District's Academic League and Decathlon program, a support provider for new teachers, and a board member of the California

Retired Teachers Association. Mr. Hoy believes our public schools are essential and that every child, whether they are going to college or not, deserves equal opportunities.

Sarah Kirby-Gonzalez is a member of the Board of Trustees of the Washington Unified School District, located in West Sacramento and a fifth-grade teacher in the Folsom Cordova Unified School District, where she has been named Teacher of the Year. She also serves as a Teacher Consultant for the Area 3 Writing Project at University California, Davis.

Bob Nuñez currently serves as a Governing Board Member of the Milpitas Unified School District in Santa Clara County. He has served in public education for 40 years. He began his career in education as a custodian, then a teacher, administrator and finally retiring as Superintendent at East Side Union High School District, the largest high school district in Northern California. His agenda has always been to improve student achievement, increase the number of college-bound students, and reduce the dropout rate of students of color. Mr. Nuñez has served on a number of local and State committees including the City of San Jose's Mayor's Gang Task Force; Urban Education Committee for ACSA (Association of California School Administrators); Council of Urban Boards of Education (National School Boards Association); and Large Urban School Districts Superintendents Council. Mr. Nuñez continues in his commitment to education, serving as the Vice-Chair of the Santa Clara County Social Services Advisory Commission; the Vice-Chair of the Santa Clara County Behavioral Health Board; a member of the City of Milpitas Economic Development Commission; and a past member the Santa Clara County Juvenile Justice Commission and the Alum Rock Counseling Center Board. Mr. Nuñez believes that the findings in the Vergara case will exacerbate the shortage of qualified teachers in California. Based on his decades of educational personnel experience, he believes that there were sufficient laws and regulations to dismiss teachers, especially after the passage of AB 215, which simplified the dismissal process. Youth is often synonymous with energy, but only experience allows for honed teaching skills and effective methods for managing behavior. Mr. Nuñez believes that the issue in Vergara should never have been about teacher experience and seniority. Instead, it should have been about the responsibility for providing appropriate funding in order for all children to thrive.

Erik Ortega is a member of the Board of Trustees of the Calexico Unified School District. He has devoted his time on the Board to working to ensure smaller class sizes, while hiring and retaining the best teachers, fostering a collaborative educational atmosphere, developing courses that will lead to good careers for Calexico USD students, and maintaining safe and clean schools.

Cecilia Perez is a member of the Board of Trustees of the Whittier City School District, where her children were students, which led her to become involved in parent organizations within the District and then seek

a role on the Board. She has worked, as a member of the Board, to sustain high student achievement and improve test scores, increase parent involvement and community participation, and ensure fiscal responsibility and transparency.

Annemarie Randle-Trejo is a member of the Board of Trustees of the Anaheim Union High School District, where she is now a Behavioral Interventionist Instructional Aide. She has dedicated her life to volunteering for education-related causes and advocating for students. In addition to serving on the PTA unit and council executive boards, her involvement in the community includes being co-chair of the Measure Z Committee; a member of several School Site Councils, the Bond Oversight Committee, the District Advisory Council, the District Website Subcommittee, the Student Incentive Task Force, the Kennedy Center for the Performing Arts Foundation, and the Buena Park Youth Theater Commission Board; and a band, choir, and athletic booster club member. As a member of the Board of Trustees, she strives to provide all students with a high quality, well-rounded education in a safe and nurturing learning environment, and continues to support programs that build inclusiveness for both students and their parents.

Claudia Rossi was elected to the Santa Clara County Board of Education in 2014. Informed by her experiences as a Registered Nurse, mother of two school-aged children, former English Learner, elected Trustee of four years in the Morgan Hill Unified School District, and aided by her bilingualism and bi-literacy, she has a multi-layered perspective and commitment to thoughtfully and responsibly serve. Ms. Rossi has volunteered her time both in and out of the classroom. She is staunch supporter of Special Education as well as of students and families who face socio-economic and language adversity. She supports investing in evidence-based professional development of educators and is committed to systematically reaching out to the parent community, with the goal of working together to close the achievement gap. Ms. Rossi started a nonprofit organization to help students from disadvantaged backgrounds that aspire to go to college, started a sports mentoring program to serve at-risk youth, and has been actively involved in organizing workshops for parents of English Language Learners.

Ryan Anthony Ruelas serves as Trustee to the Anaheim City School District (ACSD). He is also a teacher at Anaheim High School, where he has worked the last twelve years teaching in the Social Sciences. Mr. Ruelas is a proud product of public education, having attended schools in both ACSD, the district he now represents as a Trustee, and the Anaheim Union High School District (AUHSD), the district he has proudly worked in for his entire educational career. As an educator and school board member, Mr. Ruelas is very concerned about the accountability system used in the State of California to assess student achievement. He believes that standardized testing does not truly capture a student's academic ability, and the API ranking system that is used is terrible for educators,

schools, and most importantly students. In his experience, Mr. Ruelas feels that the accountability system currently used does not take into account other factors that impact a child's education and should not be seen as a credible measure of student success.

Noelani Sallings is a member of the Board of Trustees of the Santa Clara Unified School District and was the first Filipina American to be elected to the Board. She is a proud product of the South Bay public education system. Her oldest daughter is a proud graduate of Santa Clara Unified schools, and her youngest daughter is a current student in the District. Ms. Sallings has been actively engaged in many cultural communities for over fifteen years. Her leadership experience includes volunteer work with the Santa Clara Unified School District, public service on various boards and committees, and professional work with various government officials and Bay Area non-profit organizations, most recently as the Director of Business Development for San José Jazz. Her commitment to public education is fueled by a belief in the fundamental right to equality for all. As a Board member, she strives to ensure that schools teach to each child's ability, create a realistic model for parent involvement, understand the 21st Century child, and provide a support system for teachers. Ms. Sallings understands the positive impact that a well-rounded education can have on a community, and she is steadfast in her efforts everyday to ensure that local students receive the education they need and deserve.

Shamann Walton currently serves as a Commissioner for the San Francisco Board of Education. He has dedicated his career to working on behalf of children, youth, families, and communities. Mr. Walton has implemented programming in SFUSD schools that range from school readiness and kindergarten transition programs to academic enhancement and job training. As the Executive Director of Young Community Developers, he holds a unique perspective on how education relates to the workforce. Mr. Walton is committed to developing career opportunities and pathways for students. Having taught in the classroom for two years, he has a deep appreciation for the dedication teachers possess. As a community builder, he holds collaboration, innovation, and asset building as guiding principles for success. Mr. Walton has the ability and experience required to coordinate unified partnerships between students, teachers, parents, administrators, city officials, and other stakeholders. His vision is to instill a culture within the education system that values and emphasizes a comprehensive approach to education from pre-school to high school and beyond; one that teaches students how their learning today relates to their future success.

Steve Waterman has spent most of his adult life working on improving public education. He has worked as Superintendent in Bayshore Elementary School District and Brisbane School District in Daly City and, before that as Assistant Superintendent in the Ravenswood City School District in East Palo Alto. He has more recently served as a fiscal advisor



to the La Honda-Pescadero Unified School District and worked as an Education Consultant to both the San Mateo County Office of Education and the Silicon Valley Community Foundation. He has dedicated himself to providing children, especially those from lower-income families and neighborhoods, with a high-quality, academically rigorous public education.

Since 2009, Steve Zimmer has been a member of the Board of Education of the Los Angeles Unified School District, where he taught for seventeen years as a teacher and counselor at Marshall High School. He began his career as part of Teach for America, and access and equity for all students has remained his guiding principle. He created Marshall's Public Service Program to make public service intrinsic to the student experience, and also founded its Multilingual Teacher Career Academy, which served as an early model for LAUSD's Career Ladder Teacher Academy. He is a passionate advocate for at-risk youth and played a pivotal role in establishing school-community initiatives to support and stabilize families. As a member of the LAUSD Board of Education, he champions policies that protect the most at-risk schools, and continues to advocate for vulnerable students by authorizing resolutions, such as those supporting undocumented students, addressing hunger and food insecurity, and eliminating willful defiance.

**CERTIFICATE OF COMPLIANCE WITH**  
**CALIFORNIA RULES OF COURT, RULE 14(c)(1)**

I, HENRY M. WILLIS, declare that:

I am a partner in the law firm of Schwartz, Steinsapir, Dohrmann & Sommers LLP, counsel of record for *Amici Curiae* Kevin Beiser, Joan Buchanan, Ciro C. Calderon, Rob Collins, Tom Conry, Jennifer Freemon, Matt Haney, Michael Harrelson, Richard Hoy, Sarah Kirby-Gonzalez, Bob Nunez, Erik Ortega, Cecilia Perez, Annemarie Randle-Trejo, Claudia Rossi, Ryan Anthony Ruelas, Noelani Sallings, Shamann Walton, Steve Waterman, and Steve Zimmer in the above-captioned case.

I certify that the foregoing reply brief contains 7950 words, not including tables and this certificate, as counted by the Word program used to generate this brief.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on September 16, 2015 at Los Angeles, California.

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HENRY M. WILLIS