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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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DEPARTMENT 58 HONORABLE ROLF M. TREU, JUDGE

BEATRIZ VERGARA, ET AL.,)

)

PLAINTIFFS,)

)

- VS -

)

CASE NO.: BC484642

STATE OF CALIFORNIA, ET AL.,)

)

DEFENDANTS.)

)

-----)

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

BEFORE HONORABLE ROLF M. TREU, JUDGE

DEPARTMENT 58

LOS ANGELES, CALIFORNIA

FRIDAY, DECEMBER 13, 2013

APPEARANCES:

FOR THE PLAINTIFFS: GIBSON, DUNN & CRUTCHER, LLP
BY: THEODORE J. BOUTROUS, JR.
MARCELLUS MCRAE
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FOR THE DEFENDANTS: ATTORNEY GENERAL - SAN FRANCISCO
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SAN FRANCISCO, CA 94102

FOR THE DEFENDANTS IN INTERVENER: ALTSHULER BERZON, LLP
BY: JONATHAN WEISSGLASS
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REPORTED BY: LAVENDER LINO, CSR,
PRO TEM REPORTER
CSR NO. 13046

PAGES 1 THROUGH 34, INCL.

1 CASE NUMBER: BC484642
2 CASE NAME: BEATRIZ VERGARA, ET AL.
3 VS.
4 STATE OF CALIFORNIA
5 LOS ANGELES, CALIFORNIA, FRIDAY, DECEMBER 13, 2013
6 DEPARTMENT 58 HON. ROLF M. TREU
7 APPEARANCES: (AS PREVIOUSLY NOTED.)
8
9 REPORTER: LAVENDER LINO, CSR NO. 13046
10 TIME: A.M. SESSION
11

12 -000-

13 (WHEREUPON THE FOLLOWING PROCEEDINGS WERE
14 HELD IN OPEN COURT:)

15 THE COURT: ALL RIGHT. GOOD MORNING, ALL,
16 AGAIN. IN THE MATTER OF VERGARA BC484642, THE COURT IS
17 SIGNING THE ORDER OF THE CERTIFIED SHORTHAND REPORTER.
18 FOR THOSE OF YOU WHO ARE PRESENT IN THE
19 COURTROOM WHO MAY NOT BE LAWYERS AND THEREFORE MAY NOT
20 UNDERSTAND FULLY THE SOMEWHAT PERHAPS ARCHEAN LANGUAGE
21 THAT WE USE, WELCOME.

22 THE COURT HAS POSTED A TENTATIVE RULING ON THE
23 COURT'S WEBSITE, WHICH IT MADE AVAILABLE TO COUNCIL
24 YESTERDAY. AND, SO, PRESUMABLY, ALL COUNSEL HAVE SEEN
25 THE TENTATIVE RULING, AND OTHERS, AS WELL. BUT FOR
26 THOSE OF YOU WHO MAY HAVE NOT, THE COURT HAS MADE A
27 TENTATIVE RULING, WHICH MEANS IT HAS INDICATED WHAT IT
28 FEELS WHAT THE RESULTS SHOULD BE FOR THIS HEARING; AND

1 SUBJECT TO ARGUMENT TODAY BY COUNSEL, IT MAY OR MAY NOT
2 CHANGE ITS MIND WITH RESPECT TO THAT RULING. THAT IS
3 WHY IT'S CALLED A TENTATIVE RULING.

4 BUT THE TENTATIVE RULING IS AS FOLLOWS FOR THOSE
5 OF YOU WHO MAY NOT HAVE SEEN IT:

6 IT IS, THAT THE MOTION FOR SUMMARY JUDGMENT AND
7 ADJUDICATION ARE DENIED. THE COURT MAKES NO
8 DETERMINATION, HEREIN, OF WHETHER THE CHALLENGED
9 STATUTES ARE OR ARE NOT CONSTITUTIONAL. IT MERELY FINDS
10 SUFFICIENT EVIDENCE EXISTS TO PERMIT THE PARTIES,
11 HEREIN, TO PROCEED TO TRIAL WHERE ALL ISSUES WILL BE
12 ADDRESSED.

13 ALL RIGHT. SO, THAT IS THE TENTATIVE. AND, OF
14 COURSE, WE WENT INTO MORE DETAIL AS TO THE BASIS FOR
15 THAT TENTATIVE RULING, A MULTI-PAGE TENTATIVE RULING,
16 WHICH YOU ARE ABLE TO ACCESS ON THE COURT'S WEBSITE,
17 WHICH IS WWW.LASUPERIORCOURT.ORG. LOOK UNDER TENTATIVE
18 RULINGS, AND IT WILL BE THERE IN FULL.

19 ALL RIGHT. WITH THAT, COUNSEL WOULD YOU STATE
20 YOUR APPEARANCES, PLEASE?

21 MR. BOUTROUS: GOOD MORNING, YOUR HONOR.
22 THEODORE J. BOUTROUS, JR., FOR THE PLAINTIFFS.

23 MR. MCRAE: GOOD MORNING, YOUR HONOR.
24 MARCELLUS MCRAE FOR THE PLAINTIFFS.

25 MR. ELIAS: GOOD MORNING, YOUR HONOR. DEPUTY
26 ATTORNEY GENERAL, NIMROD ELIAS REPRESENTING STATE
27 DEFENDANTS.

28 MR. WEISSGLASS: GOOD MORNING, YOUR HONOR.

1 JONATHAN WEISSGLASS FOR INTERVENORS, CALIFORNIA TEACHERS
2 ASSOCIATION AND CALIFORNIA FEDERATION OF TEACHERS.

3 THE COURT: GOOD MORNING.

4 ALL RIGHT. THE COURT HAS ISSUED ITS TENTATIVE
5 RULING, SO THE COURT WILL HEAR FROM -- WHICH OF THE
6 DEFENSE OR INTERVENER WISHES TO START?

7 MR. ELIAS: I WOULD LIKE TO START, YOUR HONOR.

8 THE COURT: PROCEED.

9 MR. ELIAS: I'D LIKE TO SPECIFICALLY ADDRESS A
10 NUMBER OF ISSUES RAISED BY THE COURT IN ITS TENTATIVE
11 RULING. I'D LIKE TO FIRST FOCUS ON CLAIMS 1, 2, AND 3,
12 AND DISCUSS THE CLASSIFICATION REQUIREMENT IN THE
13 PROTECTION DOCTRINE, SPECIFICALLY, AS IT RELATES TO
14 THOSE CLAIMS, YOUR HONOR.

15 BECAUSE THE STATE DEFENDANT STRONGLY BELIEVE
16 THAT ASIDE FROM THE SUSPECT CLASS CLAIMS, WHICH ARE
17 PREMISED ON RACE AND WEALTH, THAT THE COURT SHOULD GRANT
18 THE SUMMARY ADJUDICATION AS TO THE FUNDAMENTAL ISSUE OF
19 INTEREST CLAIM. AND THAT IS BECAUSE THOSE CLAIMS DO NOT
20 CLASSIFY, NEITHER EXPRESSLY NOR INEXPRESSLY. THOSE
21 CLAIMS ARE BASED ON ARBITRARINESS. THAT'S HOW THE
22 COMPLAINT READS. THEY ARE BASED ON THE NOTION THAT AN
23 ARBITRARY SUBSET OF DISPUTES ACROSS THE STATE OF
24 CALIFORNIA, AMONG THE SIX MILLION STUDENTS ACROSS THE
25 STATE OF CALIFORNIA, ARE BEING TAUGHT BY GROSSLY
26 INEFFECTIVE TEACHERS AND THAT ARBITRARY SUBSET, NOT
27 BASED ON ANY CLASSIFICATION, NOT BASED ON ANY -- IT'S
28 NOT A DISCERNIBLE OR IDENTIFIABLE GROUP. AND THAT IS

1 WHAT DISTINGUISHES IT FROM ALL OTHER EQUAL PROTECTION
2 CASES, WHICH HAVE A CLASSIFICATION INVOLVED. WE DON'T
3 KNOW WHO THESE STUDENTS ARE, HOW MANY SUCH STUDENTS
4 EXIST, WHAT SCHOOL DISTRICTS THEY ATTEND, OR WHO HAS
5 TAUGHT THEM. AND, RESPECTFULLY, WE WOULD SUGGEST THAT
6 IN EVERY OTHER PROTECTION CASE, BOTH IN THE EDUCATION
7 CONTEXT AND OUTSIDE OF THE EDUCATION CONTEXT, THERE HAS
8 ALWAYS BEEN A CLASSIFICATION, WHICH IS THE PREMISE THAT
9 CREATES TWO IDENTIFIABLE GROUPS, ONE OF WHICH IS TREATED
10 DIFFERENTLY BY THE LAWS AT ISSUE.

11 SO, IN SERRANO, IT WASN'T JUST THAT THERE WAS A
12 CLASSIFICATION BASED ON WEALTH. AS THE COURT EXPLAINED,
13 WE KNEW THAT THE STUDENTS BALDWIN PARK WERE BEING
14 TREATED UNEQUALLY AS COMPARED TO THE STUDENTS IN
15 BEVERLY HILLS, BECAUSE THEY RECEIVED LESS THAN HALF OF
16 THE MONEY THAT THE BEVERLY HILLS STUDENTS RECEIVED.
17 LIKEWISE, IN THE CASE OF BUTT, WE KNEW THAT THE STUDENTS
18 IN THE RICHMOND SCHOOL DISTRICT WERE BEING TREATED
19 UNEQUALLY AS COMPARED TO EVERY OTHER -- STUDENTS IN
20 EVERY OTHER DISTRICT ACROSS THE STATE OF CALIFORNIA,
21 BECAUSE THEY WERE GOING TO LOSE ALMOST A FIFTH OF THE
22 SCHOOL YEAR. AND THIS IS TRUE ALSO OF THE PROTECTION
23 CASES THAT DO NOT INVOLVE EDUCATION. IN THIS CASE, WE
24 RESPECTFULLY SUBMIT THAT THERE IS NO EQUAL PROTECTION
25 CASE THAT HAS EVER BEEN PREMISED ON THE NOTION OF
26 ARBITRARINESS.

27 AND EQUAL PROTECTION IS ABOUT THE WAY THAT YOU
28 GET TO A RESULT. SO, FOR EXAMPLE, IF THERE WERE TWO

1 FIFTH GRADE TEACHERS IN A SCHOOL, ONE OF WHOM IS SUPERB,
2 AND ONE OF WHOM IS MEDIOCRE. AND THE SCHOOL
3 ADMINISTRATION ARBITRARILY SENDS HALF TO THE SUPERB
4 TEACHER AND HALF TO THE MEDIOCRE TEACHER. WE WOULD
5 SUBMIT THAT THERE IS NO SUPPORT FOR THE NOTION THAT THE
6 STUDENTS ARE ARBITRARILY ASSIGNED TO THE MEDIOCRE
7 TEACHER WOULD HAVE AN EQUAL PROTECTION CLAIM, BECAUSE
8 THEY HAVE NOT BEEN TREATED DIFFERENTLY BASED ON ANY
9 SHARED TRAIT OR SHARED CHARACTERISTIC. HOWEVER, IF THE
10 PRINCIPAL OF THAT SCHOOL SENDS ALL OF THE LOW INCOME, OR
11 THE POOR CHILDREN, TO THE MEDIOCRE TEACHER, AND THE
12 OTHER CHILDREN TO THE SUPERB TEACHER, THE RESULT IS THE
13 SAME, BUT THERE WOULD BE AN EQUAL PROTECTION CLAIM IN
14 THAT CASE, BECAUSE THEY'VE BEEN CLASSIFIED, THEY'VE BEEN
15 TREATED DIFFERENTLY, BASED ON A SHARED CHARACTERISTIC.
16 AND WE BELIEVE THIS IS FUNDAMENTALLY TRUE IN EVERY CASE
17 INVOLVING THE EQUAL PROTECTION DOCTRINE.

18 NOW, THE STUDENTS ASSIGNED TO THE MEDIOCRE
19 TEACHER, THAT'S NOT TO SAY THAT THEY WOULD NOT HAVE SOME
20 LEGAL REMEDY. IF THE TEACHER WAS, IN FACT, SO BAD THAT
21 THEIR FUNDAMENTAL RIGHTS AND EDUCATION WAS BEING
22 VIOLATED, THEY MAY WELL HAVE A DIRECT CLAIM UNDER
23 ARTICLE 9, SECTIONS 1 AND 5 OF THE CONSTITUTION. THEY
24 MIGHT HAVE A SUBSTANTIVE DUE PROCESS CLAIM. BUT WHAT
25 THEY WOULD NOT HAVE IS AN EQUAL PROTECTION CLAIM.
26 BECAUSE EQUAL PROTECTION REQUIRES A CLASSIFICATION WHERE
27 THE COURT CAN SEE THE TWO IDENTIFIABLE -- SIMILARLY
28 SITUATED GROUPS, ONE OF WHICH WE CAN IDENTIFY AND WE

1 KNOW IS BEING TREATED DIFFERENTLY FROM THE OTHER
2 IDENTIFIABLE GROUP, AS WELL. SIMILARLY, IS ANOTHER
3 EXAMPLE FROM THE EDUCATION CONTEXT: IN CALIFORNIA
4 CHARTER SCHOOLS, SOME CHARTER SCHOOLS ARE VERY POPULAR
5 AND MANY MORE APPLICANTS APPLY THAN CAN GET IN. AND
6 THOSE CHARTER SCHOOLS ARE REQUIRED TO HAVE A LOTTERY.
7 AND THE LOTTERY -- FOR A STUDENT WHO APPLIES TO THE
8 CHARTER SCHOOL AND IS NOT CHOSEN IN THE LOTTERY AND HAS
9 TO GO TO THE TRADITIONAL PUBLIC SCHOOL, WOULD THAT CHILD
10 HAVE AN EQUAL PROTECTION VIOLATION? WE WOULD SUBMIT
11 THAT THERE IS NO SUPPORT THAT HE OR SHE WOULD, BECAUSE
12 HE WAS NOT TREATED DIFFERENTLY BASED ON A
13 CLASSIFICATION. BECAUSE THERE WAS NO CLASSIFICATION.
14 BY DEFINITION, AN ARBITRARY OR A RANDOM ASSIGNMENT IS
15 THE ANTONYM OF A CLASSIFICATION. IT IS ENTIRELY
16 ARBITRARY.

17 AND, SO, WE BELIEVE THAT THE CASE LAW STRONGLY
18 SUPPORTS SUMMARY ADJUDICATE ON THE FUNDAMENTAL INTEREST
19 CLAIMS, BECAUSE PLAINTIFFS HAVE NOT PLED A
20 CLASSIFICATION. EXPRESSED, INEXPRESSED, THERE IS NO
21 DIFFERENTIATION. IT IS ENTIRELY ARBITRARY BY THEIR OWN
22 PLEADING. AND THE FIRST-AMENDED COMPLAINT IS THE
23 OPERATIVE DOCUMENT THAT DEFINES THE ISSUES IN A SUMMARY
24 JUDGMENT MOTION.

25 NOW, I WOULD LIKE TO ALSO ADDRESS -- MY
26 CO-DEFENDANT'S COUNSEL IS GOING TO PREDOMINANTLY ADDRESS
27 THE CLASS CLAIMS, BUT I WOULD LIKE TO ADDRESS THE
28 STANDARDS FOR FACIALLY CHALLENGING THE STATUTE, AND THE

1 COURT'S RULING IN THAT RESPECT.

2 THERE ARE -- THE PRIMARY TEST FOR INVALIDATING A
3 STATUTE ON ITS FACE IS THAT THE STATUTE TEXT, THE ACTUAL
4 LANGUAGE OF THE STATUTE, MUST INEVITABLY POSE A TOTAL
5 AND FATAL CONFLICT WITH WHATEVER CONSTITUTIONAL
6 PRINCIPLES IS BEING RAISED -- IN THIS CASE, EQUAL
7 PROTECTION. THAT IS FOR TWO DECADES, NOW, HAVE BEEN
8 THROUGH THE CLEAR BLACK LINE -- A BLACK LETTER RULE OF
9 LAW LAID OUT BY THE SUPREME COURT. THERE IS A MINORITY
10 LINE OF CASES, WHICH I APPLIED A SLIGHTLY LESS ONEROUS
11 TEST. BUT THOSE CASES -- NUMBER 1, THE TEST IS THAT IN
12 THE VAST MAJORITY OF THE APPLICATIONS OF THE STATUTE, IT
13 WOULD APPLIED UNCONSTITUTIONALLY. NOT JUST IN SOME
14 CASES, BUT IN VAST MAJORITY OF CASES. AND AS WE ARGUED
15 IN OUR PAPERS, ALL OF THOSE CASES ARE CASES -- ARE CASES
16 IN WHICH THERE IS A PARTICULAR CONCERN ABOUT THE
17 CHILLING EFFECT ON A CORE PROTECTED CONSTITUTIONAL
18 ACTIVITY. SO, IN GENERAL, ALL OF THOSE CASE ARE FIRST
19 AMENDMENT, ABORTION AND CRIMINAL -- CASES, WHICH CONCERN
20 PARTICULAR CONSTITUTIONALLY VOCATION, WHICH ARE NOT
21 PRESENT HERE. BUT AT THE END OF THE DAY, IT ACTUALLY
22 DOESN'T MATTER WHICH TEST APPLIES IN THIS CASE. SO, WE
23 WOULD RESPECTFULLY SUGGEST THE PSES CASE, WHICH THE
24 COURT RELIED UPON IN ITS TENTATIVE. IF READ CAREFULLY,
25 ACTUALLY, THE COURT DID NOT -- IT REFUSED TO GO BEYOND
26 THE LANGUAGE IN THE STATUTE. AND WHAT THE COURT WAS
27 SAYING IN THAT CASE, WAS THAT WE WILL NOT IGNORE THE
28 ACTUAL PROCEDURAL STANDARDS IN THE STATUTE. MEANING, WE

1 WILL NOT IGNORE WHAT THE STATUTE ACTUALLY SAYS IF THE
2 TEXT, ITSELF, IS UNCONSTITUTIONAL IF AND IF -- AND WE
3 WILL NOT REFUSE TO STRIKE IT DOWN ON ITS FACE IF THE
4 TEXT ITSELF IS PROBLEMATIC, SIMPLY BECAUSE WE CAN
5 HYPOTHETICALLY CONCEIVE OF THE MANNER IN WHICH THAT
6 STATUTE COULD BE APPLIED. AND THAT'S WHAT'S REMARKABLE
7 ABOUT THE FACIAL CHALLENGES IN THE CASE, YOUR HONOR,
8 THAT NO ONE IS ARGUING THAT THERE IS ANYTHING
9 PROBLEMATIC ABOUT THE TEXT FOR THE STATUTE THEMSELVES.
10 ALL OF THE ARGUMENTS HAVE BEEN ABOUT THE RESULTS OF THE
11 STATUTE. AND THE LAW IS THAT TO STRIKE DOWN A STATUTE
12 ON ITS FACE, EITHER THE TEXT HAS TO BE FUNDAMENTALLY
13 INCOMPATIBLE WITH THE CONSTITUTION, OR THE VAST MAJORITY
14 OF APPLICATION OF THE TEXT OF THE STATUTE HAVE TO
15 VIOLATE THE CONSTITUTION. AND WHAT THAT WOULD MEAN IN
16 THE CONTEXT OF THIS CASE, IS THAT THE VAST MAJORITY OF
17 TEACHERS IN CALIFORNIA WOULD HAVE TO BE GROSSLY
18 INEFFECTIVE ON ACCOUNT OF THESE STATUTES.

19 AND THAT IS NOT EVEN WHAT PLAINTIFFS ARE
20 ARGUING. PLAINTIFFS HAVE CONCEDED IN PARAGRAPH 9, OF
21 THEIR COMPLAINT, THAT THE MAJORITY OF TEACHERS IN
22 CALIFORNIA ARE PROVIDING A QUALITY EDUCATION TO THEIR
23 STUDENTS. SO, AT MOST, WE'RE TALKING ABOUT FIVE, MAYBE,
24 10 PERCENT OF THE TEACHER'S IN THE STATE OF CALIFORNIA,
25 EVEN UNDER PLAINTIFFS' ALLEGATIONS ARE
26 UNCONSTITUTIONALLY VIOLATING THE RIGHTS OF THEIR
27 STUDENTS ON ACCOUNT OF THESE LAWS.

28 AND EVEN UNDER THE MOST LENIENT TEST, THE TEST

1 LAID OUT IN LUNDGREN (PHONETIC) AND ACKNOWLEDGED BY
2 SUPREME COURT IN THE FRESH START CASE THAT WAS ISSUED
3 THIS YEAR, THAT DOESN'T COME CLOSE TO SUCH A SHOWING.
4 THERE IS NO MATERIAL FACTS IN DISPUTE THAT WOULD SUGGEST
5 THAT THE VAST MAJORITY OF TEACHERS IN CALIFORNIA ARE
6 GROSSLY INEFFECTIVE ON ACCOUNT OF THESE LAWS. AT MOST,
7 IT IS A SMALL NUMBER, WHICH COULD NOT FACIALLY INVALID
8 THE LAWS AT ISSUE IN THIS CASE.

9 AND WHAT WE WOULD ALSO LIKE TO SUGGEST ON THAT
10 PARTICULAR POINT IS THAT IF WE HONE IN ON WHAT IS
11 CAUSING THE ALLEGED EQUAL PROTECTION VIOLATION IN THIS
12 CASE. ALLEGED EQUAL PROTECTION VIOLATION IS OCCURRING
13 BASED ON THE WAY WHICH TEACHERS ARE ASSIGNED TO
14 STUDENTS. SO, EVEN IF -- PLAINTIFFS' CASE AT ITS
15 BOTTOM, IS THAT THESE STATUTES ARE LOWERING THE QUALITY
16 OF TEACHERS IN CALIFORNIA PUBLIC SCHOOLS. AND IF THEY
17 DID NOT EXIST, THE QUALITY OF THE TEACHERS IN THE PUBLIC
18 SCHOOLS WOULD BE MARGINALLY HIGHER. AND WE CAN TEST
19 THAT FACT TO ASSERTION AND WE WILL DEMONSTRATE OTHERWISE
20 IF THIS CASE GOES TO TRIAL, BUT WHAT I WOULD LIKE TO
21 EMPHASIZE IS THAT EVEN IF THAT WERE TRUE, THERE WOULD
22 NOT BE AN EQUAL PROTECTION VIOLATION.

23 AND THAT IS BECAUSE, EVEN IF THE QUALITY IS
24 LOWER, THE EQUAL PROTECTION VIOLATION OCCURS DOWN THE
25 ROAD. IT OCCURS IN THE MANNER IN WHICH TEACHERS ARE
26 ASSIGNED TO STUDENTS. BECAUSE IF THOSE LOW QUALITY
27 TEACHERS ARE RANDOMLY AND EQUITABLY DISTRIBUTED ACROSS
28 THE STATE OF CALIFORNIA, NO ONE IS BEING SINGLED OUT AS

1 GETTING WORSE TEACHERS THAN ANYBODY ELSE. IT IS JUST
2 THAT THE OVERALL QUALITY, THE OVERALL CALIBER OF THAT
3 POOL OF TEACHERS IS SOMEWHAT DIMINISHED. AND THERE IS
4 NO CONTEXT -- AND THE COURT ACKNOWLEDGE THIS IN ITS
5 TENTATIVE OPINION -- THERE IS NOT A SINGLE FACT IN
6 EVIDENCE THAT CAN SUGGEST THAT THE LOCAL SCHOOL DISTRICT
7 ADMINISTRATORS ARE DISPROPORTIONALLY ASSIGNING GROSS AND
8 INEFFECTIVE TEACHERS TO POOR MINORITY SCHOOLS. NO ONE
9 ALLEGES THAT, AND NO ONE CAN CLAIM THAT. AND THAT IS,
10 OBVIOUSLY, BECAUSE THESE STATUTES HAVE NO RELATIONSHIP,
11 WHATSOEVER, TO THE MANNER IN WHICH SCHOOL DISTRICTS
12 ASSIGN TEACHERS TO STUDENTS. AND THAT'S THE GENESIS.
13 THAT IS THE MOMENT IN WHICH THE EQUAL RIGHTS PROTECTION
14 VIOLATION OCCURS, NOT WHEN ALLEGEDLY A marginally
15 GREATER NUMBER OF GROSSLY INEFFECTIVE TEACHERS CANNOT BE
16 FIRED, BUT WHEN THOSE TEACHERS ARE DISPROPORTIONALLY
17 SITUATED IN POOR MINORITY SCHOOLS. AND THAT IS NOT ONLY
18 NOT ALLEGEDLY OCCURRING, BUT IT'S CERTAINLY NOT TETHERED
19 IN ANY WAY, SHAPE, OR FORM TO THE STATUTES AT ISSUE IN
20 THIS CASE. AND AS WE'VE STRONGLY EMPHASIZED THROUGHOUT
21 OUR PAPERS, EVEN IF IT'S TRUE THAT LOCAL DISTRICTS --
22 AND ALL OF THE DISTRICT DEFENDANTS HAVE ADAMANTLY DENIED
23 IN THIS CASE -- BUT EVEN IF IT WERE TRUE THAT SOME LOCAL
24 DISTRICTS IN THE CALIFORNIA ARE CHOOSING TO SEND --
25 WHICH WOULD BE HORRENDOUS IF TRUE -- BUT ARE CHOOSING TO
26 SEND THE WORST TEACHERS TO POOR MINORITY SCHOOLS, THEY
27 ARE DOING SO FOR REASONS COMPLETELY UNTETHERED TO THE
28 STATUTES AT ISSUE. THESE STATUTES DON'T HAVE ANYTHING

1 TO DO -- THEY DON'T TALK ABOUT THE STUDENTS. THEY DON'T
2 TALK ABOUT THE ASSIGNMENTS OF TEACHERS TO STUDENTS.
3 THERE IS SIMPLY NO CONTACT THAT THEY BEAR NO
4 RELATIONSHIP ON THAT DECISION, AND THAT IS THE DECISION
5 THAT CAUSES THE EQUAL PROTECTION VIOLATION AS PLAINTIFFS
6 HAVE ALLEGED IN THIS CASE.

7 SO, JUST TO REVERSE COURSE FOR A MOMENT, YOUR
8 HONOR, I ALSO WANTED TO EMPHASIZE THAT IN TERMS OF WHICH
9 STANDARD APPLIES FOR FACIALLY INVALIDATING THE STATUTE,
10 THE SECOND DISTRICT -- WE WITH CITED SEVEN CASES FROM
11 THE SECOND DISTRICT, ALL OF WHICH APPLY THE STRICT TEXT
12 ONLY TEST FOR INVALIDATING THE STATUTE. AND AS FAR AS
13 MY RESEARCH CAN TELL, I DID NOT COME ACROSS A SINGLE
14 SECOND DISTRICT CASE THAT APPLIED THE LESS ONEROUS TEST,
15 WHICH EVEN STILL, AS WE NOTED, WOULD HAVE TO RESULT IN
16 THE VAST MAJORITY OF THE APPLICATIONS OF THE STATUTE
17 CAUSING A CONSTITUTIONAL VIOLATION, WHICH IS NOT EVEN
18 WHAT'S ALLEGED IN THIS CASE.

19 I'M GOING LET MY CO-COUNSEL DISCUSS THE SUSPECT
20 CLASS CLAIMS IN GREATER DEPTH. BUT I WOULD ALSO LIKE TO
21 EMPHASIZE ONCE MORE, THAT EVEN IF THIS CASE GOES TO
22 TRIAL, THE STATE DEFENDANTS WOULD URGE THE COURT TO
23 DISMISS THE CASE AGAINST GOVERNOR BROWN. AND THAT IS
24 BECAUSE THE PREMISE THAT ANY CHALLENGE TO A STATE LAW
25 CAN -- THAT THE GOVERNOR CAN BE A PROPER PARTY DEFENDANT
26 IN ANY CHALLENGE AGAINST A STATE LAW IS NOT SUPPORTABLE
27 BY ANY CASE LAW OUT THERE AS FAR AS I CAN TELL. IN
28 SERRANO II, WHICH IS THE KEY CASE, THE COURT

1 SPECIFICALLY SAID, QUOTE, IN A GREAT MAJORITY OF CASES
2 BROUGHT AGAINST STATE ADMINISTRATIVE OFFICIALS TO
3 CHALLENGE THE CONSTITUTIONALITY OF A STATUTE, THE
4 GOVERNOR LACKS THE APPROPRIATE INTEREST TO BE A PART
5 DEFENDANT. AND WE WOULD RESPECTFULLY SUBMIT THAT IT
6 IS -- EVERY CASE RELIED UPON BY THE PLAINTIFFS, THERE
7 WAS NO INDICATION THAT THE GOVERNOR CHALLENGED HIS
8 STATUS, AND IN NEARLY ALL OF THE GOVERNOR'S EXPLICIT
9 ACTIONS OR INACTIONS WERE AT ISSUE.

10 IN THIS CASE, NOT ONLY IS THERE NO DISPUTE THAT
11 THE STATE DEFENDANTS DO NOT ADMINISTER THESE STATUTES,
12 WHO IS THE STATUTES REFERRING EXCLUSIVELY TO THE LOCAL
13 GOVERNING BOARD, A SCHOOL DISTRICT. THE GOVERNOR IS
14 EVEN ONE LEVEL FURTHER REMOVED FROM THE STATES
15 DEFENDANTS, WHO CLAIM HE'S ALWAYS ADMINISTERED THESE
16 STATUTES. AND, THEREFORE, THE GOVERNOR DOES NOT HAVE
17 THE REQUISITE INTEREST TO BE DRAGGED INTO THE CASE
18 SOLELY BY VIRTUE OF THE OFFICE THAT HE HOLDS. SO, WE
19 WOULD ASK THE COURT TO ALSO RECONSIDER ITS RULING AS TO
20 THE GOVERNOR'S CONTINUED STATUS IN THIS CASE.

21 AND, IN CONCLUSION, BEFORE I TURN IT OVER TO MY
22 CO-COUNSEL, I WOULD JUST LIKE TO NOTE THAT THE ULTIMATE
23 QUESTION THAT'S BEING DEPOSITED IN THE THIS CASE, IS THE
24 QUALITY OF TEACHERS IN CALIFORNIA SCHOOLS BETTER BECAUSE
25 THESE STATUTES HELP RECRUIT AND RETAIN GOOD TEACHERS, OR
26 WORSE BECAUSE ITS TOO HARD TO FIRE BAD TEACHERS? THAT
27 ULTIMATE QUESTION IS A POLICY QUESTION. THAT IS A
28 QUESTION THE LEGISLATURE MAY OR MAY NOT HAVE STUCK THE

1 APPROPRIATE BALANCE BETWEEN RIGHTS FOR TEACHERS AND
2 RIGHTS FOR STUDENTS. BUT THAT PENULTIMATE QUESTION AS
3 TO THE EFFECT ON THE QUALITY OF TEACHERS IN CALIFORNIA
4 PUBLIC SCHOOLS IS ONE THAT WE WOULD RESPECTFULLY SUBMIT
5 CAN ONLY BE MADE BY DEMOCRATICALLY ELECTED LEGISLATURE,
6 WHICH SETS THE PUBLIC POLICY FOR THE STATE. THESE LAWS,
7 WHETHER GOOD POLICY OR BAD POLICY, ARE NOT
8 UNCONSTITUTIONAL, EITHER ON THEIR FACE OR AS THEY'VE
9 BEEN APPLIED TO THE PLAINTIFFS IN THIS CASE.

10 THE COURT: ARE YOU SUGGESTING THAT THE
11 CONSTITUTION BE IGNORED WHEN CONSIDERING THE POLICY?

12 MR. ELIAS: NO. IT IS THE FUNCTION OF THE
13 COURTS TO CONSIDER THE CONSTITUTIONALITY OF EVERY SINGLE
14 LAW. THAT IS WITHOUT QUESTION IN THE CASE. WHAT I'M
15 SIMPLY SAYING, YOUR HONOR, IS THIS: PLAINTIFFS CANNOT
16 MEET THE ELEMENTS OF AN EQUAL PROTECTION CLAIM EVEN IF
17 WE ASSUME -- AND WE DON'T CONCEDE -- BUT EVEN IF WE
18 ASSUME THAT THEY MAKE A COMPELLING PUBLIC POLICY
19 ARGUMENT. FOR THE REASONS THAT I'VE OUTLINED, THEIR
20 ARGUMENTS IS REALLY ABOUT THE OVERALL AFFECT ON THE
21 QUALITY OF TEACHING IN CALIFORNIA AS OPPOSED TO BEING
22 ABLE TO SHOW THAT ANY PARTICULAR GROUP OF STUDENTS IS
23 BEING TREATED DIFFERENTLY THAN ANOTHER GROUP OF STUDENTS
24 BECAUSE OF THESE LAWS.

25 THE COURT: THANK YOU.

26 MR. ELIAS: THANK YOU, YOUR HONOR.

27 THE COURT: PLAINTIFFS WISH TO RESPOND?

28 MR. BOUTROUS: YES, YOUR HONOR. THANK YOU VERY

1 MUCH.

2 PLAINTIFFS AGREE WITH THE COURT'S TENTATIVE
3 RULING AND REQUEST THAT THE COURT ISSUE IT AS A FINAL
4 RULING.

5 THE FIVE STATUTES IN THE CALIFORNIA EDUCATION
6 CODE THAT WE ARE CHALLENGING CREATES SUBSTANTIAL AND
7 UNCONSTITUTIONAL DISPARITIES IN THE SYSTEM. ALL
8 STUDENTS ARE MEMBERS OF THE GROUP WHO ARE AFFECTED BY
9 THESE STATUTES. AS -- I DIDN'T -- COUNSEL DIDN'T TALK
10 MUCH ABOUT THE EVIDENCE. THIS IS A SUMMARY JUDGMENT
11 MOTION. THEIR OBLIGATION IS TO COME FORWARD WITH
12 EVIDENCE THAT CREATES MATERIAL FACTUAL DISPUTES. DURING
13 THE DISCOVERY PROCESS SINCE WE WERE LAST BEFORE THE
14 COURT ON DEMURRER, THE PLAINTIFFS HAVE MAPPED A MOUNTAIN
15 OF EVIDENCE THAT SUPPORT ALL OUR CLAIMS, INCLUDING
16 TESTIMONY FROM NINE SUPERINTENDENTS OF SCHOOLS
17 THROUGHOUT THE STATES, ARE PLAINTIFFS, PARENTS, EXPERT
18 WITNESSES -- FIVE EXPERTS, AND WE'LL HAVE MORE AT
19 TRIAL -- AND WE'VE OBTAINED ADDITIONS FROM THE
20 DEFENDANTS IN THE CASE. SUPERINTENDENT JOHN DEASY FROM
21 LOS ANGELES TESTIFIED IN HIS DEPOSITION THAT THESE FIVE
22 STATUTES ARE, QUOTE, A CATASTROPHE FOR KIDS' LIVES.
23 TONY SMITH, THE FORMER SUPERINTENDENT IN OAKLAND, WAS
24 TALKING ABOUT THE LIFO, THE LAST IN FIRST OUT STATUTE
25 THAT THE COURT IS INTIMATELY FAMILIAR WITH. AND HE
26 TESTIFIED, I THINK, REALLY IN GRAPHIC TERMS ABOUT THAT
27 PROVISION THAT REQUIRES TERRIFIC TEACHERS TO BE LAID
28 OFF, WHILE GROSSLY INEFFECTIVE TEACHERS MUST BE RETAINED

1 SOLELY BASED ON SENIORITY AND HAS A DIRECT RESULT OF
2 THESE STATUTES. AND HE SAID, I QUOTE [READING]:

3 YOU HAVE PARENTS AND FAMILY MEMBERS CRYING
4 AND PLEADING AND BEGGING, 'PLEASE, PLEASE,
5 PLEASE KEEP THIS TEACHER. YOU DON'T
6 UNDERSTAND WHAT THIS YEAR HAS BEEN LIKE
7 FOR MY CHILD. THIS IS ONE OF THE MOST
8 EXTRAORDINARY EDUCATORS I'VE EVER SEEN IN
9 MY LIFE.' AND THEY ARE BEGGING, AND I
10 CAN'T HONOR THEIR REQUEST.

11 AND THAT'S GOING TO THIS ASSIGNMENT POINT THAT
12 COUNSEL MADE. IT'S NOT THE ADMINISTRATOR'S DECISIONS
13 THAT WE'RE CHALLENGING. IT'S THE SYSTEM, IT'S THE
14 SCHEME THAT HANDCUFFS THEM FROM MAKING DECISIONS THAT
15 WOULD BE IN THE BEST INTEREST OF STUDENTS.

16 AND THAT TAKES ME BACK TO THE QUESTION OF THE
17 FACIAL CHALLENGE. THIS IS A CLASSIC FACIAL CHALLENGE.
18 AND THE COURT GOT IT EXACTLY RIGHT. WE ARE CHALLENGING
19 THE SYSTEM. THE COURT USED THE LANGUAGE, I THINK, IN
20 THE TENTATIVE AT ONE POINT ABOUT THE PROCEDURAL SCHEME.
21 THAT'S WHAT WE'RE CHALLENGING. OUR CHALLENGE IS TO A
22 SYSTEM, THESE FIVE STATUTES. AND THERE IS AMPLE
23 EVIDENCE THAT THESE STATUTES ARE DIRECTLY RELATED AND
24 HAVE A REAL AND APPRECIABLE IMPACT ON THE INEQUALITY IN
25 THE SYSTEM. BUT WHAT WE'RE CHALLENGING IS THE OVERALL
26 SCHEME, NOT THE APPLICATION OF THE STATUTES TO OUR
27 PARTICULAR PLAINTIFFS AS WE DO HAVE AS AN APPLIED
28 CHALLENGE -- OR A FACIAL CHALLENGE GOES TO THE SYSTEM,

1 AND THE FACT THAT ALL STUDENTS ARE AT RISK TO HAVE A
2 GROSSLY INEFFECTIVE TEACHER BECAUSE OF THESE STATUTES.

3 AND TO HEAR THE STATES DEFEND ARBITRARINESS, THE
4 NOTION THAT DEFENSE SAYS, "WELL, THE ONLY PROBLEM IS
5 THAT IT'S ARBITRARY, THAT TWO CHILDREN OF THE SAME AGE
6 AND THE SAME GRADE, ONE MIGHT BE PUT IN A CLASSROOM WITH
7 A GROSSLY INEFFECTIVE TEACHER -- AND AS THE COURT KNOWS
8 FROM THE RECORD, WE PUT IN EVIDENCE OF EXAMPLES FROM
9 EIGHT OF OUR PLAINTIFFS, WHO HAVE EXPERIENCED THIS
10 FIRSTHAND -- AND THE OTHER STUDENT WILL GO INTO A
11 CLASSROOM WITH A TERRIFIC TEACHER." THAT'S ARBITRARY,
12 BUT IT'S ALSO UNEQUAL, AND IT VIOLATES THE FUNDAMENTAL
13 RIGHT TO EQUAL EDUCATION THAT'S IN OUR CONSTITUTION.

14 THE SEVEN CASES THAT COUNSEL NOTED ALL FLOW FROM
15 THE TOBE CASE FROM THE SUPREME COURT. AND THIS COURT
16 GOT IT EXACTLY RIGHT IN ITS TENTATIVE, THAT THE TEST,
17 AND IT'S A BASIC TEST, IT' A FACIAL CHALLENGE TO THE
18 CONSTITUTIONAL VALIDITY OF A STATUTE OR ORDINANCE TO THE
19 TEXT TO THE MEASURE ITSELF -- ONLY TO THE TEXT TO THE
20 MEASURE ITSELF, NOT ITS APPLICATION TO PARTICULAR
21 CIRCUMSTANCES OF AN INDIVIDUAL. WE ARE CHALLENGING THE
22 TEXT OF THESE STUDENTS: THE PERMANENT EMPLOYMENT
23 STATUTE THAT CREATES THIS SUPER FAST TENURE; THE
24 DISMISSAL STATUTES THAT CREATE, ERECT MULTIPLE
25 INSURMOUNTABLE BARRIERS. AND WE PUT IN EVIDENCE, NOW,
26 FROM THE SUPERINTENDENTS, FROM THE DEFENDANTS,
27 THEMSELVES, ABOUT HOW VIRTUALLY IMPOSSIBLE, COSTLY,
28 DIFFICULT IT IS TO GET THE WORST TEACHERS IN THE SYSTEM

1 OUT OF THE SYSTEM SO ALL THE REST OF TEACHERS, AND THE
2 WONDERFUL TEACHERS CAN THRIVE AND TEACH CHILDREN. SO,
3 WE'RE CHALLENGING THE TEXT OF THE STATUTE, NUMBER 1.

4 THE OTHER PROBLEM, THOUGH, THAT THE DEFENDANTS
5 HAVE IS THAT SERRANO, AND ALL THE OTHER THE CASES, SAY,
6 WE LOOK AT THE STATUTE AND THE STATUTORY SCHEME, AND
7 THEN THE IMPACT, THE EFFECT OF THE STATUTES. IN FACT,
8 THE BUTT CASE FROM THE CALIFORNIA SUPREME COURT, THE
9 OTHER CASES TALK ABOUT THE NEED -- THE TEST BEING
10 WHETHER THE STATUTES HAVE A REAL AND APPRECIABLE IMPACT
11 ON A FUNDAMENTAL RIGHT. THAT IS THE CORE TEST. AND AS
12 THE COURT POINTS OUT, HERE, THAT'S A FACTUAL DISPUTE AT
13 BEST. WE THINK WE'VE GOT ENORMOUS AMOUNTS OF EVIDENCE
14 TO SHOW THAT THE EVIDENCE IS -- THAT IT'S A PROOF OF
15 IMPACT, BUT THAT'S A FACTUAL DISPUTE. AND MANY OF THE
16 THINGS THAT COUNSEL JUST SAID FIT THAT SAME PARADIGM.

17 ON THIS QUESTION OF WHETHER DISCRIMINATION OR
18 CLASSIFICATION NEEDS TO BE IN THE STATUTE, ITSELF,
19 THAT'S SIMPLY INCORRECT. IF WE LOOK AT SERRANO, SERRANO
20 DID NOT MAKE ANY DISTINCTIONS BETWEEN SCHOOL DISTRICTS.
21 IN FACT, THERE WAS A PROVISION THAT PAY SPECIAL
22 TREATMENT FOR SCHOOL DISTRICTS THAT HAD LOWER INCOME
23 RESIDENCY STUDENTS. SO, IT WASN'T DISCRIMINATING ON ITS
24 FACE IN THAT RESPECT. IT WAS THAT IT CREATED A REGIME
25 THAT HAD A DISCRIMINATORY EFFECT ON STUDENTS WHO WERE IN
26 LOWER INCOME AND LOWER TAX PRODUCING DISTRICTS. SO,
27 IT'S THE COMBINATION OF THINGS, THE STATUTE, AND THEN
28 THE IMPACT OF THAT STATUTE ON A FUNDAMENTAL RIGHT.

1 THE COURT, I THINK, HIT THE NAIL ON THE HEAD
2 WITH THE BLOODGOOD CASE, WHICH IS ONE OF THE CASES THAT
3 THE DEFENDANTS HAVE RELIED ON. AND TWO THINGS ABOUT
4 THAT CASE. AS THE COURT POINTS OUT, THE TEST WASN'T
5 STATED AS, THE LANGUAGE MUST CREATE A CLASSIFICATION.
6 THE BLOODGOOD CASE, ITSELF, SAID, THE QUESTION IS
7 WHETHER THE LEGISLATION UNDER HECK (PHONETIC) SOMEHOW
8 DISCRIMINATES AGAINST IDENTIFIABLE CLASS OF PERSONS.
9 AND OUR ARGUMENT IS THAT IT DISCRIMINATES AGAINST A
10 IDENTIFIABLE CLASS OF PERSONS, STUDENTS, AND STUDENTS
11 WHO HAVE GROSSLY INEFFECTIVE TEACHERS, AND A MINORITY
12 AND LOW INCOME STUDENTS BY THE COMBINATION OF THE EFFECT
13 THAT WE HAVE OUTLINED AND WE'VE BACKED UP WITH EVIDENCE.

14 THE COURT ALSO WENT RIGHT TO THE HEART OF THE
15 BLOODGOOD CASE BY POINTING OUT THAT DECISION SAID IF THE
16 ISSUE HAD BEEN EDUCATION IN THAT CASE, THEN PERHAPS
17 THERE WOULD'VE BEEN AN EQUAL PROTECTION CLAIM, EVEN
18 WHERE THE PLAINTIFFS, THERE, WERE A GROUP OF VOTERS, WHO
19 WERE UNIDENTIFIABLE. SO, THAT CASE SUPPORTS OUR
20 ARGUMENTS. AND WE BELIEVE THAT THE COURT'S TENTATIVE
21 REALLY LAYS THAT OUT IN EXACTLY -- CORRECTLY.

22 THE OTHER POINTS THAT COUNSEL MENTIONED -- LET
23 ME JUST QUICKLY GO THROUGH THEM -- THIS NOTION THAT THIS
24 IS A POLICY DISPUTE. WELL, YES, TO A CERTAIN EXTENT
25 IT'S A POLICY DISPUTE. BUT AS THE COURT POINTED OUT,
26 THE EQUAL PROTECTION CLAUSE OF THE CALIFORNIA
27 CONSTITUTION, THE FUNDAMENTAL RIGHT TO EDUCATION IS
28 THERE TO PROTECT CITIZENS. AND, HERE, WE'RE TALKING

1 ABOUT CHILDREN AND STUDENTS FROM POLICY DECISIONS THAT
2 TRAMPLE ON THEIR FUNDAMENTAL RIGHTS. AND, SO, THIS IS A
3 POLICY DECISION THAT'S UNCONSTITUTIONAL, AND THAT'S
4 EXACTLY WHAT THE COURTS AND WHAT THE CONSTITUTION ARE
5 MEANT TO PROTECT CITIZENS FROM WHEN THE POLICY MAKERS
6 VIOLATE THE CONSTITUTION.

7 AS TO THE IDENTIFIABLE GROUP, I THINK I TOUCHED
8 ON THIS. BUT, HERE, EVERY STUDENT IS A MEMBER OF -- IS
9 A POTENTIAL MEMBER OF THE GROUP WHOSE RIGHTS ARE BEING
10 VIOLATED. AND AS THE COURT POINT OUT, IT'S A PRETTY
11 SIMPLE TEST. WE HAVE STUDENTS WHO ARE NOT BEING TAUGHT
12 BY GROSSLY INEFFECTIVE TEACHERS AND STUDENTS WHO ARE.
13 THE CASES DO NOT REQUIRE THE GROUP TO BE IDENTIFIED BY
14 NAME OR BY SPECIFICS. THE GOULD CASE, THE BULLUP CASE
15 (PHONETIC), THAT WE CITED IN THE VOTER CONTEXT, THE
16 BLOODGOOD CASE, ITSELF, SUGGESTS THAT YOU JUST NEED TO
17 IDENTIFY SOME GROUP THAT IS NOT EPHEMERAL, THAT WILL NOT
18 BE, PEOPLE MOVING IN AND OUT OF IT, LIKE THE TAX VOTERS
19 IN BLOODGOOD CASE. AND, HERE, WE HAVE A VERY CONCRETE,
20 DISCRETE GROUP OF STUDENTS WHO ARE BEING VICTIMIZED BY
21 THESE LAWS.

22 I THINK, YOUR HONOR, I TOUCHED ON ALL THE --
23 WELL, LET ME JUST -- I JUST WANTED TO POINT -- THIS
24 NOTION THAT, AND I THINK COUNSEL WAS SAYING THAT THERE
25 IS NO EVIDENCE, AND NO EVIDENCE AT ALL, THAT THE
26 ASSIGNMENT DECISIONS ARE BEING MADE BY THE
27 ADMINISTRATORS TO PUT GROSSLY INEFFECTIVE TEACHERS
28 DISPROPORTIONALLY INTO LOW INCOME AND MINORITY SCHOOLS.

1 BUT THAT'S NOT THE QUESTION. THE EVIDENCE THAT WE'VE
2 PUT FORWARD FROM OUR EXPERT WITNESSES AND
3 SUPERINTENDENTS AND OTHERS SHOWS THAT THE STATUTES
4 TOGETHER ARE CREATING A SITUATION WHERE THERE IS A
5 DISPROPORTIONATE NUMBER OF GROSSLY INEFFECTIVE TEACHERS
6 IN THOSE SCHOOL DISTRICTS. THE EVIDENCE IS OVERWHELMING
7 ON THAT POINT. AND THAT'S OUR ARGUMENT, THAT IT'S THE
8 STATUTES, NOT THE ADMINISTRATORS ACTING WITH
9 DISCRIMINATORY INTENT THAT IS CAUSING THIS
10 CONSTITUTIONAL VIOLATION.

11 AND, THAT, WE BELIEVE THE EVIDENCE IS
12 OVERWHELMINGLY ON OUR SIDE, AND AT BEST A FACTUAL
13 DISPUTE. AND THIS IS A SUMMARY JUDGMENT HEARING, WE
14 BELIEVE THE COURT SHOULD -- IS CORRECT IN ITS TENTATIVE
15 AND SHOULD MAKE THAT A FINAL ORDER THAT THESE ISSUES
16 SHOULD GO TO TRIAL.

17 THE COURT: DO YOU WISH TO ADDRESS COUNSEL'S
18 ARGUMENT ABOUT THE GOVERNOR?

19 MR. BOUTROUS: YES, YOUR HONOR. CERTAINLY.

20 TWO THINGS. THIS ISN'T ANYTHING PERSONAL
21 AGAINST GOVERNOR BROWN, OBVIOUSLY. BUT AS THE CHIEF
22 EXECUTIVE OFFICER IN THIS STATE, WHO'S CHARGED WITH
23 EXECUTING THE LAWS, HE'S A CLASSIC DEFENDANT IN A CASE
24 CHALLENGING THE CONSTITUTIONALITY OF THE LAWS. THE
25 SERRANO CASE FOUND THAT THE GOVERNOR WASN'T AN
26 INDISPENSABLE PARTY IN THAT CASE, BUT DID NOT SAY THE
27 GOVERNOR WASN'T THE PROPER PARTY. AND, SO, WE BELIEVE
28 IT'S A STATEWIDE ISSUE, THE GOVERNOR IS RESPONSIBLE FOR

1 ENFORCING THESE LAWS. IF THE GOVERNOR WERE TO ANNOUNCE
2 TOMORROW THAT IN THAT POSITION, HE WAS NOT GOING TO
3 ENFORCE THESE LAWS, THEN WE MIGHT HAVE A DIFFERENT
4 SITUATION. BUT THE LAWS ARE BEING ENFORCED, AND THE
5 GOVERNOR IS IN CHARGE OF THAT, SO WE BELIEVE HE'S A
6 PROPER PARTY. THANK YOU.

7 THE COURT: ALL RIGHT. ANY RESPONSE?

8 MR. ELIAS: BRIEFLY. YES, YOUR HONOR.

9 THE COURT: BRIEFLY. GO AHEAD.

10 MR. ELIAS: I'D JUST LIKE TO TOUCH ON A FEW
11 POINTS THAT MY OPPOSING COUNSEL MADE. I THINK MOST
12 TELLINGLY, TWICE, MY OPPOSING COUNSEL SAID, "ALL
13 STUDENTS ARE MEMBERS OF THIS GROUP, AND EVERY STUDENT IS
14 A POTENTIAL MEMBER OF THIS GROUP." AND THAT IS EXACTLY
15 THE PROBLEM WITH AN EQUAL PROTECTION CASE. IT CAN'T BE
16 THAT EVERYBODY IS A MEMBER OF THIS GROUP. THERE HAS TO
17 BE TWO DISTINCT GROUPS, THE HAVES AND HAVE NOTS. IT
18 SIMPLY CAN'T BE THAT EVERY MEMBER FLOWS IN AND OUT OF
19 THE GROUP, SUCH THAT WE HAVE PRECISELY WHAT MY OPPOSING
20 COUNSEL JUST SAID, AN EPHEMERAL GROUP MOVING IN AND OUT.
21 TEACHERS ARE REASSIGNED EVERY SINGLE YEAR. THEY GET NEW
22 STUDENTS EVERY YEAR. TO THE EXTENT THAT THERE IS AN
23 ARBITRARY SUBSET OF STUDENTS BEING ASSIGNED TO GROSSLY
24 INEFFECTIVE TEACHERS, THAT IS CHANGING ON A DAILY AND
25 WEEKLY, AND PROBABLY -- CERTAINLY YEARLY BASIS. BUT,
26 FUNDAMENTALLY, EVERY STUDENT ALSO -- IT CANNOT BE AN
27 EQUAL PROTECTION CASE IF THAT IS TRUE, BECAUSE THERE HAS
28 TO BE TWO DISTINCT GROUPS THAT ARE TREATED DIFFERENTLY

1 BY THE LAW. AND THAT IS SIMPLY NOT THE CASE, AS ALLEGED
2 HERE.

3 AND PLAINTIFFS WANT TO SAY THAT IN TERMS OF THE
4 DISPROPORTION IMPACT, ACCORDING TO THEIR COMPLAINT -- I
5 MEAN, THEY CAN'T RUN AWAY FROM PLEADINGS THAT ARE IN
6 THEIR COMPLAINT -- THEIR COMPLAINT SAYS THAT AN EQUAL
7 PROTECTION VIOLATION OCCURS BECAUSE A DISPROPORTIONATE
8 NUMBER OF GROSSLY INEFFECTIVE TEACHERS ARE ASSIGNED TO
9 POOR AND MINORITY STUDENTS. THAT IS WHAT THEY ALLEGED,
10 AND THEY ARE BOUND BY THAT. AND THEY CAN'T WALK THAT
11 BACK AND SAY, "WELL, THAT'S NOT REALLY TRUE, BUT OVERALL
12 SOMEHOW, SOMEWAY, WORST TEACHERS ARE ENDING UP IN THE
13 POOR SCHOOLS, AND, THEREFORE, WE HAVE THE EQUAL
14 PROTECTION CASE." THEY HAVE TO TETHER IT, NOT ONLY TO
15 THEIR PLEADINGS -- AND THAT IS HOW THEY PLED IT -- BUT
16 THEY HAVE TO TETHER IT TO THE STATUTES. AND THEY
17 CERTAINLY CANNOT DO THAT, BUT FOR IN THE MOST INDIRECT
18 AND ROUNDABOUT SETS.

19 AND IN TERMS OF PROCEDURAL SCHEME, I DO WANT TO
20 JUST REITERATE ONCE MORE, PROCEDURAL SCHEME WAS USED TO
21 MEAN THE LANGUAGE FOUND IN THE STATUTES, THE TEXT OF THE
22 STATUTES. IT WAS NOT USED IN PSES OR IN CALIFORNIA
23 TEACHERS ASSOCIATION, THE 1999 SUPREME COURT CASE IN
24 WHICH THAT QUOTE COMES FROM. IT WAS NOT USED TO MEAN,
25 HOW ARE THESE LAWS CARRIED OUT. IT ONLY MEANT THE TEXT.
26 AND I WOULD STRONGLY URGE THE COURT TO LOOK AT THAT ONCE
27 MORE.

28 AND, LASTLY, JUST ABOUT SERRANO. SERRANO

1 PREDATES THE RISE OF FACIAL STANDARDS. THE SUPREME
2 COURT HAD NOT EXPLICITLY DELINEATED WHAT YOU HAVE TO
3 PROVE TO STRIKE DOWN A LAW ON ITS FACE BACK IN THE EARLY
4 1970'S. THAT HAS ALL COME ABOUT MOSTLY SINCE THE EARLY
5 1990'S. BUT, HERE, IN 2013, IT IS WELL-ESTABLISHED. IT
6 IS WELL-ESTABLISHED, AND THE SUPREME COURT HAS MADE
7 CLEAR IN MANY CASES, IT FLOWS FROM SEPARATION OF POWERS,
8 AS I SUGGESTED EARLIER, THAT IT'S A SEVERE AND SERIOUS
9 REMEDY TO HOLD A STATUTE VALIDLY ENACTED BY THE
10 LEGISLATURE. AND TO DO SO, YOU MUST SHOW THAT THE TEXT
11 OF A STATUTE, THE TEXT, CREATES A TOTAL AND -- FOR STATE
12 PROTECTION, OR, AT A MINIMUM, IN THE VAST MAJORITY OF
13 ITS APPLICATIONS. AND NEITHER ARE PLAINLY AT ISSUE IN
14 THIS CASE. THANK YOU.

15 THE COURT: THANK YOU.

16 ANYTHING ELSE?

17 MR. WEISSGLASS: THANK YOU, YOUR HONOR. AS
18 MR. ELIAS SAID, I'M GOING TO ADDRESS THE OTHER HALF OF
19 THE CASE. HE ADDRESSED THE FUNDAMENTAL INTEREST CLAIMS.
20 I'M GOING TO ADDRESS THE SUSPECT CLASS CLAIMS. BUT
21 BEFORE I DO THAT, I WANT TO TURN TO THE THRESHOLD ISSUE
22 OF STANDING, WHICH THE COURT ADDRESSED IN ITS TENTATIVE.

23 AND I'LL START BY SAYING THAT, YOU KNOW, WE
24 DISAGREE WITH MOST OF WHAT THE COURT SAID IN ITS
25 STANDING SECTION OF THE TENTATIVE RULING, BUT I'M NOT
26 GOING TO ARGUE THAT. LET'S ASSUME FOR TODAY'S PURPOSES
27 THAT EVERYTHING THE COURT SAID IN THE STANDING SECTION
28 IS CORRECT, PLAINTIFFS STILL DO NOT HAVE STANDING. AND

1 THE REASON FOR THAT IS APPARENT FROM THE SAN DIEGO NORML
2 CASE, WHICH THE COURT CITES. AND THE COURT CITES IT FOR
3 THE PROPOSITION THAT PLAINTIFFS MUST HAVE INJURY FOR
4 STANDING, AND THAT'S TRUE. BUT THAT'S NOT ALL THE CASE
5 STANDS FOR. PLAINTIFFS HAVE TO SHOW THAT THE STATUTES
6 THAT THEY ARE CHALLENGING CAUSED THE INJURY. AND THAT'S
7 EXPLICIT IN THE SAN DIEGO NORML CASE ON PAGE 814. I'LL
8 READ ONE SENTENCE FROM THAT CASE. IT SAYS, "IT IS
9 INCUMBENT ON THE PARTY TO AN ACTION OR PROCEEDING WHO
10 ASSAILS A LAW INVOKED IN THE COURSE THEREOF TO SHOW THAT
11 THE PROVISIONS OF THE STATUTE THUS ASSAILED ARE
12 APPLICABLE TO HIM, AND THAT HE IS INJURIOUSLY AFFECTED
13 THEREBY." THERE IS NO EVIDENCE IN THIS CASE THAT ANY
14 PLAINTIFF WAS ASSIGNED OR IS LIKELY TO BE ASSIGNED TO A
15 GROSSLY INEFFECTIVE TEACHER DUE TO THE STATUTES.
16 EVERYONE AGREES THE SCHOOL DISTRICTS MAKE THE
17 ASSIGNMENTS.

18 PLAINTIFFS SPECULATE ABOUT THE CONSTRAINTS OF
19 THE STATUTES ON SCHOOL ADMINISTRATORS' DISCRETION. BUT
20 THAT'S SPECULATION, AND IT'S CONTRADICTED BY THE
21 EVIDENCE. LET ME GIVE AN EXAMPLE FROM THE TWO-YEAR
22 PROBATIONARY STATUTE THAT'S AT ISSUE HERE. THERE IS NO
23 EVIDENCE THAT SCHOOL DISTRICTS CANNOT IDENTIFY THE SMALL
24 PERCENTAGE OF GROSSLY INEFFECTIVE TEACHERS IN TWO YEARS.
25 THE EVIDENCE IS TO THE CONTRARY. PLAINTIFFS' SEPARATE
26 STATEMENT NUMBER 9, THEY SAY, "GROSSLY INEFFECTIVE
27 TEACHERS ARE WIDELY KNOWN." WELL, IF THOSE TEACHERS ARE
28 WIDELY KNOWN, THERE IS NO REASON THEY CAN'T BE

1 IDENTIFIED IN TWO YEARS. AND THE SCHOOL DISTRICTS DON'T
2 EVEN HAVE TO GIVE A REASON DURING THE TWO-YEAR
3 PROBATIONARY PERIOD. THEY CAN GET RID OF A TEACHER FOR
4 ANY REASON, FOR NO REASON.

5 LET ME, NOW, TAKE A LOOK AT THE DISMISSAL
6 STATUTES, ANOTHER EXAMPLE. THE EVIDENCE SHOWS THAT THE
7 NUMBER OF DISMISSALS IN THE SCHOOL DISTRICT DOES NOT AT
8 ALL DEPEND ON THE STATUTES. LOS ANGELES WENT FROM TEN
9 DISMISSALS TO 99 DISMISSALS IN THE COURSE OF TWO YEARS.
10 THE STATUTES ARE EXACTLY THE SAME OVER THAT PERIOD.
11 IT'S NOT THE STATUTES THAT ARE CONSTRAINING DISMISSALS,
12 IT'S OTHER FACTORS. AND THE LAY-OFF STATUTE, OF COURSE,
13 DOES NOTHING TO PRECLUDE TEACHERS FROM BEING DISMISSED
14 PURSUANT TO THE DISMISSAL STATUTES.

15 BUT EVEN IF IT COULD BE TRUE IN SOME CASES THAT
16 THE STATUTES DO PLACE SOME CONSTRAINTS ON ADMINISTRATIVE
17 DISCRETION, THERE IS STILL NO EVIDENCE THAT THAT MEANS
18 THE STATUTES ARE CAUSING THESE PLAINTIFFS ANY INJURY.
19 THERE IS NO EVIDENCE THAT ANY OF THE TEACHERS -- SMALL
20 NUMBER OF TEACHERS, BY THE WAY, THAT THE PLAINTIFFS HAVE
21 IDENTIFIED AS PURPORTEDLY GROSSLY INEFFECTIVE -- THERE
22 IS NO EVIDENCE THAT ANY OF THEM HAVE BEEN OR WILL IN THE
23 FUTURE BE ASSIGNED TO THE PLAINTIFFS BECAUSE OF THESE
24 STATUTES, AS OPPOSED TO A HOST OF OTHER FACTORS THAT
25 GOES INTO THE SCHOOL DISTRICT ASSIGNMENTS OF TEACHERS.

26 FOR STANDING PURPOSES, IT IS NOT ENOUGH TO CLAIM
27 THAT THE STATUTES MUST INJURE SOMEONE IN THE STATE OF
28 CALIFORNIA. IT MUST BE THESE PLAINTIFFS. AND THERE IS

1 NO EVIDENCE THAT THESE STATUTES HAVE INJURED ANY
2 PLAINTIFF. AND ON STANDING GROUNDS ALONE, THIS CASE
3 SHOULD BE DISMISSED.

4 I NOW WANT TO TURN TO THE -- TO WHAT I CALL THE
5 SECOND HALF OF THE CASE ON THE MERITS, THE SUSPECT CLASS
6 CLAIMS. AND ON THIS, I WANT TO MAKE SURE THAT THE COURT
7 UNDERSTANDS OUR CONTENTIONS, BECAUSE THE TENTATIVE
8 FOCUSES ON ONE ISSUE, WHICH IS WHY THE COURT BELIEVES
9 THAT INTENT IS NOT REQUIRED IN A SUSPECT CLASS CLAIM
10 THAT'S ALLEGED HERE. AND THE COURT RELIES ON SERRANO.
11 BUT THE TENTATIVE REALLY EXTENDS SERRANO PASSED THE
12 BREAKING POINT. BECAUSE SERRANO INVOLVED TAX STATUTES
13 THAT FUNCTIONED AS A WEALTH-BASED CLASSIFICATION. AND
14 EVEN IF SERRANO MEANS THAT YOU DON'T NEED INTENT IN
15 EVERY CASE, IN EVERY SUSPECT CLASS CASE, AT LEAST UNDER
16 SERRANO, THERE HAS TO BE A CLASSIFICATION. AND HERE
17 THERE IS NO CLASSIFICATION. I MEAN, MR. BOUTROUS MADE
18 THE POINT VERY WELL IN SUGGESTING THAT ALL STUDENTS ARE
19 IN THE CLASS. BUT THEN THERE IS NO CLASS AT ALL, THERE
20 IS NO EQUAL PROTECTION CLAIM. THE STATUTES HERE ARE
21 COMPLETELY NEUTRAL. THEY ARE UNIFORM STATEWIDE RULES
22 THAT APPLY TO EVERY SCHOOL DISTRICT, TO EVERY TEACHER.
23 AS WITH THE FUNDAMENTAL INTEREST CLAIMS, THE STATE HAS
24 NOT ADOPTED ANY CLASSIFICATION. AND WITHOUT EITHER A
25 CLASSIFICATION OR INTENT, THERE IS NO CASE THAT SAYS
26 THAT A DISPART IMPACT ALONE IS ENOUGH FOR THE EQUAL
27 PROTECTION CLAIM.

28 AND THERE IS A SEPARATE REASON WHY THE SUSPECT

1 CLASS CLAIMS FALL. BECAUSE EVEN IF THERE WAS AN EQUAL
2 PROTECTION CLAIM, THEY WOULD STILL HAVE TO SHOW THAT THE
3 STATUTES, THEMSELVES, CAUSED THE ALLEGED DISPART IMPACT.
4 THE TENTATIVE RULING SUGGESTS THAT THE MERE EXISTENCE OF
5 GROSSLY INEFFECTIVE TEACHERS IS ENOUGH TO SHOW CAUSATION
6 BETWEEN THE STATUTES AND THE ASSIGNMENT OF THOSE GROSSLY
7 INEFFECTIVE TEACHERS TO STUDENTS, PERHAPS BECAUSE OF
8 LIMITED RESOURCES. BUT THAT'S NOT ENOUGH TO SHOW THAT
9 THE STATUTES, THEMSELVES, CAUSE A DISPART IMPACT. IF
10 THE PROBLEM IS LACK OF RESOURCES, THEN THE PLAINTIFFS
11 HAVE TO BRING A FUNDING CHALLENGE. BUT THEY ARE NOT
12 BRINGING A FUNDING CHALLENGE, HERE. THEY ARE BRINGING A
13 CHALLENGE TO THESE STATUTES. AND THERE IS NO EVIDENCE
14 THAT THESE STATUTES CAUSED THE DISPART IMPACT, OF WHICH
15 PLAINTIFFS CAN CLAIM. WITHOUT ANY EVIDENCE ON THAT, THE
16 CLAIMS CAN'T SURVIVE SUMMARY JUDGMENT.

17 THANK YOU.

18 THE COURT: OKAY. PLAINTIFF?

19 MR. BOUTROUS: YES, THANK YOU, YOUR HONOR.

20 FIRST, LET ME START WITH THE SUSPECT CLASS
21 POINT. THAT THE COURT IN ITS TENTATIVE IS CORRECT,
22 THAT, HERE WE HAVE, NOT JUST THE SUSPECT CLASSES,
23 DISCRIMINATION IS OCCURRING, AND THERE IS AMPLE EVIDENCE
24 IN THE RECORD THAT THERE IS A DISPROPORTIONATE EFFECT
25 LINKED TO THESE STATUTES THAT IS CAUSING A REAL AND
26 APPRECIABLE IMPACT AND IN CREATING THIS
27 DISPROPORTIONATE. BUT IT'S A DOUBLE WHAMMY, BECAUSE WE
28 HAVE SUSPECT CLASSES, PLUS WE HAVE THE IMPACT ON A

1 FUNDAMENTAL CONSTITUTIONAL RIGHT UNDER CALIFORNIA LAW.
2 AND THAT IS REALLY THE DISTINCTION IN TERMS OF INTENT
3 AND NO INTENT. AND IN THE EDUCATION CONTEXT, IT'S NOT
4 JUST SERRANO THAT TELLS US, OTHER CALIFORNIA SUPREME
5 COURT DECISIONS HAVE FOCUSED ON THE FUNDAMENTAL RIGHT
6 AND THE DISPART IMPACT THEORY. SO, I THINK THE COURT
7 HAS IT EXACTLY RIGHT ON THAT POINT.

8 AND COUNSEL IS TALKING ABOUT CAUSATION AND THE
9 QUESTION OF WHETHER THE STATUTES ARE HAVING AN IMPACT.
10 THAT'S A FACTUAL DISPUTE. THE PLAINTIFFS PUT FORTH ALL
11 THIS EVIDENCE ON LINKING EXPERTS THROUGH TESTIMONY FROM
12 THE SUPERINTENDENTS THROUGH OUR OWN CLIENTS. AND THE
13 DEFENDANTS IN INTERVENERS HAVEN'T COME FORTH WITH
14 ANYTHING ELSE, IT'S JUST ARGUMENT. BUT, AT MOST, IT'S A
15 FACTUAL DISPUTE.

16 I DID SAY THAT I FELT THAT ALL STUDENTS ARE AT
17 RISK OF HAVING THEIR CONSTITUTIONAL RIGHTS VIOLATED, BUT
18 I DID THAT IN THE CONTEXT OF BASICALLY WHAT SERRANO
19 SAID. IN SERRANO, THE PLAINTIFFS WERE ALL STUDENTS IN
20 EVERY DISTRICT, OTHER THAN THE SINGLE DISTRICT,
21 PRESENTLY UNKNOWN, THAT WAS THE BEST FUNDED. AND, SO,
22 IT WAS THE FACT THAT ALL STUDENTS WERE AT RISK. BUT
23 THERE IS DEFINITELY, TO USE COUNSEL'S LANGUAGE, ARE
24 THERE HAVES AND HAVE NOTS? YOU BET THEY ARE. WE HAVE
25 STUDENTS RIGHT NOW, RIGHT THIS MINUTE, WHO ARE BEING
26 TAUGHT BY GROSSLY INEFFECTIVE TEACHERS,
27 DISPROPORTIONALLY SO, IN DISADVANTAGED SCHOOL DISTRICTS.
28 AND WE KNOW THAT THAT'S HAPPENING RIGHT NOW. SO, THIS

1 ISN'T SOME MORPHEUS ABSTRACT POINT, AT ALL. THERE IS A
2 GROUP. AND ONCE THEY ARE IN THAT GROUP, THEY ARE IN THE
3 GROUP FOR GOOD. BECAUSE THE EVIDENCE SHOWS THAT WHEN
4 CHILDREN ARE TAUGHT BY THESE GROSSLY INEFFECTIVE
5 TEACHERS, IT STAYS WITH THEM FOR THEIR LIVES. AND IF IT
6 HAPPENS TWICE IN A ROW, THEY CAN NEVER CATCH UP. THIS
7 GOES TO WHAT THE COURT SAID IN SERRANO IN TERMS OF
8 AFFECTING CHILDREN'S ABILITY TO SUCCEED, TO THRIVE IN
9 OUR ECONOMY AND OUR DEMOCRACY.

10 I'LL JUST MAKE TWO MORE POINTS AND WRAP UP, YOUR
11 HONOR. ON THIS QUESTION OF THE STANDARD ON FACIAL
12 CHALLENGES THAT COUNSEL MADE AT THE END OF HIS ARGUMENT:
13 NUMBER 1, THE LAW, THIS COURT GOT IT RIGHT IN TERMS OF
14 WHAT A FACIAL CHALLENGE IS. AND TO THE EXTENT COUNSEL
15 IS SAYING THERE IS SOME NEW, CLEAR RULE THAT THIS COURT
16 MUST FOLLOW, THE TODAY'S FRESH START DECISION FROM THE
17 CALIFORNIA SUPREME COURT NOTED THAT THE STANDARDS ARE
18 NOT WELL ESTABLISHED. THIS COURT GOT IT RIGHT IN ITS
19 ANALYSIS OF THOSE STANDARDS.

20 AND, FINALLY, IT IS THE TEXT OF THE STATUTES
21 THAT CREATE THE EQUAL PROTECTION IN VIOLATION OF
22 FUNDAMENTAL RIGHTS. IT'S THE PERMANENT EMPLOYMENT
23 RAPIDLY OCCURRING WITHOUT PROPER EVALUATION. IT'S THE
24 IMPOSSIBILITY OF DISMISSAL -- AND IT'S RIGHT IN THE
25 STATUTE, THE STEPS THAT NEED TO BE TAKEN. AND IT'S THE
26 LAST IN FIRST OUT. AND I'LL END WITH THIS: COUNSEL
27 SAID, "WHERE IS THE EVIDENCE THAT IT'S THE STATUTES?"
28 TAKE A LOOK AT THE TESTIMONY AND THE DECLARATIONS FROM

1 THE SCHOOL ADMINISTRATORS. MR. RAYMOND, THE SCHOOL
2 ADMINISTRATOR FROM SACRAMENTO, FOR EXAMPLE, HE TALKS
3 ABOUT HOW IT'S THE STATUTES. AND I READ THE COURT
4 SOMETHING FROM MR. SMITH AND SUPERINTENDENT DEASY
5 SAYING, "THESE STATUTES ARE A CATASTROPHE, AND THEY ARE
6 HANDCUFFING THE ADMINISTRATORS FROM DOING WHAT'S BEST
7 FOR CHILDREN."

8 AND FOR ALL THOSE REASONS, WE'D ASK THE COURT TO
9 ENTER ITS ORDER AS A FINAL ORDER AND DENY SUMMARY
10 JUDGEMENT. THANK YOU.

11 THE COURT: BRIEF REBUTTAL?

12 MR. WEISSGLASS: BRIEF.

13 MR. BOUTROUS IGNORES THE CRITICAL POINTS. HE
14 HAS NO RESPONSE AT ALL ON STANDING AND HOW THE
15 PLAINTIFFS ARE INJURED FROM THESE STATUTES.

16 AND ON THE SUSPECT CLASS CLAIMS, HE IGNORES
17 SERRANO'S CLEAR STATEMENT THAT THERE WAS A
18 CLASSIFICATION BASED ON WEALTH. HERE, THERE IS NO
19 CLASSIFICATION. THAT'S A CRITICAL DISTINCTION IN THE
20 CASES. SO, HE CAN ARGUE ABOUT ALL THE DETAILS AND, YOU
21 KNOW, WE CAN HAVE A FINE DISPUTE AT TRIAL ABOUT DETAILS,
22 BUT ON THE CRITICAL QUESTIONS, THERE REALLY IS NO
23 DISPUTE. THEY ARE PURELY OVER MATTERS, AND THIS CASE
24 SHOULD NOT GO TO TRIAL AND SHOULD BE DECIDED AT SUMMARY
25 JUDGMENT.

26 MR. BOUTROUS: YOUR HONOR, MAY I -- A STANDING
27 POINT, I JUST FORGOT. IF I MAY ADDRESS IT, BECAUSE
28 THAT'S PARTICULARLY OUTRAGEOUS. OUR CLIENTS, EIGHT OF

1 OUR STUDENTS HAVE FIRSHAND EXPERIENCE -- THIS IN THE
2 RECORD -- WITH GROSSLY INEFFECTIVE TEACHERS. A LEAST,
3 WE HAVE MULTIPLE WHO WERE ECONOMICALLY AT A
4 DISADVANTAGE, SIX ARE HISPANIC OR AFRICAN-AMERICAN. AND
5 WE HAVE PUT FORTH EVIDENCE THEY HAVE DIRECTLY IMPACTED,
6 AND ARE AT RISK FOR HAVING THIS HAPPEN AGAIN. AS THE
7 COURT POINTED OUT, THAT FUTURE THREAT OF INJURY IS MORE
8 THAN SUFFICIENT TO GET STANDING.

9 AND TRIALS ARE WHERE WE HASH OUT THE DETAILS.
10 AND AS COUNSEL POINTED OUT, WE CAN ARGUE ABOUT THOSE
11 ISSUES AT TRIAL. SO, WE ASK THE COURT TO DENY SUMMARY
12 JUDGMENT. THANK YOU.

13 THE COURT: BRIEFLY RESPOND TO THE --

14 MR. WEISSGLASS: SURE. AGAIN, ASSUMING
15 EVERYTHING HE SAID IS TRUE, JUST LIKE I'M ASSUMING
16 EVERYTHING IS CORRECT ABOUT YOUR STANDING TENTATIVE,
17 THERE IS STILL NO EVIDENCE THAT THE STATUTES CAUSED THE
18 INJURY TO THE PLAINTIFFS.

19 THE COURT: THANK YOU.

20 MATTER SUBMITTED ALL SIDES?

21 MR. BOUTROUS: YES, YOUR HONOR.

22 MR. ELIAS: YES, YOUR HONOR.

23 THE COURT: THANK YOU. SO, FOR THOSE OF YOU WHO
24 ARE NOT LAWYERS, YOU CAN SEE THAT SOME VERY FINE
25 ARGUMENTS HAVE BEEN MADE ON ALL SIDES, HERE, WHICH
26 POINTS OUT THE FACT THAT A TRIAL IS NECESSARY IN THIS
27 CASE.

28 THE COURT HAS HEARD NOTHING THIS MORNING TO

1 INDICATE THAT IT SHOULD DEVIATE FROM ITS TENTATIVE
2 RULING AS CLEARLY ARTICULATED IN THE TENTATIVE. AND THE
3 COURT WISHES TO MAKE PERFECTLY CLEAR, NO DECISION IS
4 BEING MADE ON THESE ISSUES TODAY. IT IS SIMPLY A
5 DECISION RELATIVE TO THE MOTION BEFORE THE COURT, WHICH
6 IS A SUMMARY JUDGMENT OR SUMMARY ADJUDICATION. AND ON
7 THE BASIS OF THE LAW, THE COURT IS DENYING THOSE
8 MOTIONS, AND LEAVES ALL ISSUES OPEN TO THE TIME OF TRIAL
9 WHEN EVIDENCE WILL BE PRESENTED ON BOTH SIDES. AND THE
10 COURT WILL MAKE A DETERMINATION AT THAT TIME ON THE
11 CLAIMS OF PLAINTIFF. BUT NOTHING IS TO BE -- NOTHING IS
12 TO BE CONSTRUED FROM THE COURT'S RULING TODAY THAT THE
13 COURT IS GOING TO MAKE A DECISION ONE WAY OR THE OTHER
14 AT TRIAL. TRIAL IS WHERE IT'S GOING TO BE AT. THANK
15 YOU.

16 THE TENTATIVE IS THE ORDER OF THE COURT, AND IS
17 NOTICE WAIVED?

18 MR. BOUTROUS: YES, YOUR HONOR.

19 MR. ELIAS: MAY I JUST ASK, YOUR HONOR --
20 OBVIOUSLY, WE JUST GOT THE TENTATIVE YESTERDAY, AND THE
21 STATE IS CONSIDERING A WRIT AND WANTED TO ASK THE
22 QUESTIONS AS TO WHETHER OR NOT THE COURT WOULD CONSIDER
23 A SHORT DELAY IN TRIAL TO PURSUE THAT?

24 THE COURT: WELL, IF THE WRIT -- TRIAL ISN'T
25 UNTIL JANUARY 27TH, SO WHAT IS THE DELAY -- WHAT
26 FURTHER -- I MEAN, HOW LONG DO YOU NEED TO GET THE WRIT
27 ON FILE.

28 MR. ELIAS: WELL, IT'S A COMBINATION OF,

1 OBVIOUSLY, THE WORK TO PUT INTO THE WRIT WITH THE
2 REMAINING, BOTH FACTS DISCOVERY AND EXPERT WITNESS
3 DISCOVERY TEED UP OVER THE NEXT SEVERAL WEEKS. THERE
4 ARE EIGHT FACT DEPOSITIONS NEXT WEEK, 12 EXPERT
5 WITNESSES DESIGNATED BY THE PARTIES SLATED FOR
6 DEPOSITION IN TWO WEEKS, INCLUDING DOUBLE TRACKING IN
7 EARLY JANUARY. AND, SO, WE DID WANT TO -- AND, OF
8 COURSE, THE HOLIDAYS -- SO WE DID WANT TO OPEN THAT UP
9 AND ASK IF THAT WOULD BE SOMETHING THE COURT MIGHT
10 CONSIDER.

11 THE COURT: PLAINTIFFS' POSITION?

12 MR. BOUTROUS: YOUR HONOR, WE WOULD OBJECT TO
13 THAT. THIS COURT PUT THE TRIAL ON CALENDAR BACK IN
14 NOVEMBER. WE'VE ALL BEEN WORKING HARD. EVERYONE HAS
15 KNOWN WHEN THE TRIAL DATE WAS AND WHEN SUMMARY JUDGEMENT
16 ARGUMENTS WERE GOING TO OCCUR. IRREPARABLE HARM IS
17 HAPPENING EVERY DAY TO STUDENTS IN CLASSROOMS, SO, WE'LL
18 BE READY TO GO ON JANUARY 27.

19 THE COURT: SUBMITTED?

20 MR. ELIAS: SUBMITTED.

21 MR. BOUTROUS: SUBMIT. THANK YOU.

22 THE COURT: THE COURT FINDS THAT THERE IS
23 SUFFICIENT TIME BETWEEN NOW AND THE TIME OF TRIAL FOR
24 THE -- FOR ANY GRIEVED PARTY BY TODAY'S RULINGS TO TAKE
25 A WRIT WITH THE COURT OF APPEALS, AND, SO, IT DENIES ANY
26 REQUEST FOR A CONTINUANCE OF TRIAL ON THAT GROUND.

27 ALL RIGHT. THANK YOU, ALL.

28 MR. BOUTROUS: THANK YOU, YOUR HONOR.

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MR. ELIAS: THANK YOU, YOUR HONOR.
(WHEREUPON THE PROCEEDINGS WERE ADJOURNED.)

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