

## Gibson Dunn Throws California Teacher Tenure in Doubt

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Plaintiffs in a sweeping lawsuit taking aim at teacher tenure in California scored their first major state court victory after a judge ruled Friday that the suit could go forward virtually intact. The lawsuit, *Vergara v. State of California*, filed by nine public school students in the state, is grounded in California's unusual constitution, which enshrines a child's right to "equality of education."

At a hearing Friday, Los Angeles Superior Court Judge Rolf Treu ruled on a summary judgment motion that the case, known colloquially as the "Bad Teacher" lawsuit, go to trial Jan. 27.

The suit harkens back to a case filed by a group of California public school children and their parents 40 years ago, *Serrano v. Priest*. In that case, plaintiffs sought, ultimately successfully, to strike down statutes related to school financing that they argued created harmful inequities in California's public schools. After a 60-day trial, the judge in *Serrano* ruled that the statutes were unconstitutional, a decision that was ultimately upheld on appeal.

The current lawsuit, filed in May 2012 with the backing of David Welch, a Silicon Valley entrepreneur and founder of the education reform litigation group Students Matter, targets five teacher employment protections that plaintiffs allege have resulted in unequal education. Disputed statutes include a tenure rule that guarantees teachers permanent status after only 18 months on the job; dismissal rules that create almost insurmountable barriers to schools attempting to fire abysmal teachers; and a "last-in, first-out" rule that compels districts to assign teacher layoffs on a pure seniority basis.

Plaintiffs, represented by Gibson, Dunn & Crutcher's trial court heavyweights **Theodore Boutros Jr.** and **Theodore Olson**, argue that the five laws have led to gross disparities in public school education, because the end result has been that the state's poorest-performing teachers are concentrated in schools serving the most vulnerable children. "When you take the statutes together, what it all adds up to is an extraordinarily damaging system that is hurting students," says Boutros, reached before Friday's hearing. Gibson Dunn lawyers, partnering with Students Matter on a reduced fee basis, provided a taste in a 69-page November opposition brief of the evidence they will be presenting in January.

Defendants include the state, the governor, the state's two largest teachers unions, the California Department of Education, the State Superintendent of Public Instruction, and the State Board of

Education. Representing the state is supervising deputy attorney general Susan Carson and deputy attorney general Nimrod Elias. The teachers unions have tapped Altshuler Berzon's James Finberg and Jeffrey Demain, who did not respond to email and phone inquiries at press time. Carson could also not be reached by email.

In their summary judgment motion, defendants argued that plaintiffs didn't have an equal protection claim because even if there were disparate effects on children, the outcome was never motivated by any intent to harm a protected group. But Treu dismissed the state's challenges, concluding that the students had standing, and had met the evidentiary and legal requirements for a trial. "Plaintiffs' evidence can support the finding that the Challenged Statutes permits the employment of grossly ineffective teachers, which results in an equal protection violation in every instance that a student is assigned such a teacher," Treu wrote.

While national discussion has been mostly focused on issues like the Common Core state standards, this case taking aim at teacher tenure laws, if successful, may be felt beyond the state's 6 million public school students. According to Boutrous, other groups across the country are examining the case as a potential template for similar court challenges in other states.