

CASE NO. B258589

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION TWO**

**BEATRIZ VERGARA, a minor, by Alicia Martinez, as her guardian
ad litem, et al.**

Plaintiffs-Appellees,

v.

STATE OF CALIFORNIA, et al.

Defendants-Appellants,

and

**CALIFORNIA TEACHERS ASSOCIATION and
CALIFORNIA FEDERATION OF TEACHERS,**

Intervenors-Appellants.

Appeal from the Superior Court of California, County of Los Angeles,
Honorable Rolf M. Treu, Judge – Case No. BC484642

**APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF ON
BEHALF OF CURRENT AND FORMER SCHOOL
SUPERINTENDENTS JOHN WHITE, HANNA SKANDERA, PAUL
PASTOREK, KEVIN S. HUFFMAN, AND CAMI ANDERSON**

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**ATTORNEYS FOR AMICI CURIAE
CURRENT AND FORMER SCHOOL SUPERINTENDENTS JOHN
WHITE, HANNA SKANDERA, PAUL PASTOREK, KEVIN S.
HUFFMAN, AND CAMI ANDERSON**

Under California Rules of Court, rule 8.200 (c), John White, Louisiana State Superintendent of Education, Hanna Skandera, New Mexico Secretary of Education, Paul Pastorek, former Louisiana State Superintendent of Education, Kevin Huffman, former Tennessee Education Commissioner, and Cami Anderson former State District Superintendent for Newark Public Schools request permission to file the attached *amici curiae* brief in support of Appellees Beatriz Vergara, et al.

The *amici* are current and former state education chiefs of school systems with some of the most diverse and economically disadvantaged student populations across the country. They have led efforts to advance the educational outcomes of public school students, and share a common goal of identifying and supporting education policies that best ensure educational achievement for students of all backgrounds. They have been architects of and advocates for innovative reforms which have helped shape the education landscape in their respective states, and which have translated into strong academic gains. The *amici* are committed to increasing access to high quality education for many more students. They submit this brief to provide the Court with additional information concerning the deleterious effects of the challenged statutes, as garnered from the *amici*'s vast experiences and from research, and to place these statutes in the context of growing practice among jurisdictions outside of California.

Mr. John White is Louisiana's State Superintendent of Education. Prior to assuming this role, Mr. White served as Superintendent of the Louisiana Recovery School District. He also served as Deputy Chancellor in the New York City Department of Education, leading that city's efforts to turn around failing schools.

Ms. Hanna Skandera is New Mexico's Secretary of Education. Prior to assuming this role, Ms. Skandera served as Florida's Deputy Commissioner of Education, as senior policy advisor and Deputy Chief of Staff at the United States Department of Education, and as Undersecretary for Education to California Governor Arnold Schwarzenegger.

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in devising on-going plans to move schools rated in the bottom 5% for performance in Tennessee to the top 25% by 2018.

Ms. Cami Anderson served as State District Superintendent for Newark, New Jersey Public Schools from 2011 through 2015. Previously, Ms. Anderson served as the Superintendent of Alternative High Schools and Programming for the New York City Department of Education and chief program officer for New Leaders, an organization dedicated to identifying and developing leaders to transform high-need, low-income public schools.

As one of the largest in the country, California's education system – and the laws that regulate that system – have great influence on the policies and practices followed in other states. The outcome of this case, therefore, can be expected to have far-reaching repercussions and shape the national conversation regarding teacher effectiveness policies, including in the states in which the education leaders submitting this brief have been most active. As individuals who have dedicated their careers to identifying and promoting those policies that best help students from all backgrounds and socio-economic groups to succeed, the *amici* have a direct interest in the outcome of this litigation. Moreover, as leaders of state education systems in several states, they have had experience with statutes and practices similar to those discussed in this case and can therefore provide perspective to aid the Court in its analysis of the issues in the case.

For the foregoing reasons, *amici* request that the Court permit the filing of the Attached *Amici Curiae* Brief in support of Appellees Beatriz Vergara, et al.

September 15, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Thompson', written over a horizontal line.

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STATEMENT OF INTEREST OF *AMICI*

The 21st Century test for America's schools will be whether they can train and prepare our nation's students for the increasingly global and continuously evolving knowledge-based economy. In this economy, education and, in turn, teachers are more important than ever. The amici – John White, Louisiana State Superintendent of Education, Hanna Skandera, New Mexico Secretary of Education, Paul Pastorek, former Louisiana State Superintendent of Education, Kevin Huffman, former Tennessee Education Commissioner, and Cami Anderson, former State District Superintendent for Newark Public Schools – are current and former state education chiefs who have been extensively involved in efforts to secure and increase access to quality education in public schools, and who share a commitment to identifying and promoting innovative methods of expanding educational opportunities for the next generation of American students. In their roles of education leaders and administrators, the *amici* have achieved strong economic gains for school systems with some of the most diverse and economically disadvantaged student populations. They are committed to helping far more children succeed nationwide.

As one of the largest in the country, California's education system has great influence and impact on these efforts. The outcome of this case can be expected to have far-reaching repercussions and shape the national conversation regarding teacher effectiveness policies, including in the states

and local communities in which the *amici* have been most active. As individuals who have dedicated their careers to identifying and promoting the policies that best help students across all backgrounds succeed, the *amici* thus have a direct interest in the outcome of this litigation. Moreover, the current and former school superintendents submitting this brief have had extensive experience with state statutes and practices similar to those under consideration here and can therefore provide information and perspective to aid the Court in its analysis of the issues in the case.

INTRODUCTION AND SUMMARY OF ARGUMENT

At its core, this case is about the singular relationship between teacher and student. Decades of research have demonstrated, and our collective experiences corroborate, that the quality of education students receive depends greatly on the quality of their teachers. As such, effective teachers are vital to an education system that facilitates student learning, and ultimately, lifetime earnings and social mobility. Further, as both a growing body of research and an increasing number of school districts across the country recognize, effective teachers can be identified. What is more, they can be fostered and retained in the classroom through laws, policies and practices that recognize and award their effectiveness and their crucial impact on students.

The laws that were invalidated by the California Superior Court are at odds with these concepts and with growing practice outside the State of

California. Many other jurisdictions and education leaders across the country have understood that practices such as the grant of tenure shortly after initial hire, quality-blind layoffs based entirely on length of service and burdensome, quasi-judicial procedures for dismissing ineffective teachers fail to prioritize student interests and to place the best teachers in the classrooms of those who most need them. And, while those challenging the invalidation of these laws would point to the impact of myriad out-of-school factors on a child's in-school achievement and lifetime outcome, there is no denying a teacher's impact and no justifiable reason not to make every effort to improve in-classroom instruction, even while challenges remain outside the classroom. There is ample room within which to achieve a better, more reasonable balance between the job protections of teachers and the educational opportunities of students than that represented by the laws in issue in this case.

ARGUMENT

I. TEACHER EFFECTIVENESS IMPACTS STUDENT ACHIEVEMENT IN AND OUT OF THE CLASSROOM

High quality education depends on high quality teaching.

Experience and an overwhelming body of research compel the conclusion that teacher effectiveness remains a determinative factor in a student's academic success irrespective of out-of-classroom influences. Consistent with the evidence presented during the trial below, study after study has

identified the paramount role of quality teaching on students' educational outcomes, their lifetime earnings and ultimately, their social mobility.

These studies, many of which rigorously control for socio-economic factors and other variables, unmistakably conclude that a teacher's classroom effectiveness has wide ramifications. Specifically, studies regularly find that a teacher's effectiveness, as measured and distributed across the classic bell curve, has a measurable and significant impact on students' yearly academic achievement. By one measure, teachers at the top of the quality distribution may obtain anywhere from five months to a whole additional year of learning from their students, when compared to teachers at the bottom of the quality distribution.¹ By another, a high-performing teacher (one in the 84th percentile of all teachers), may produce students whose levels of achievement are at least 0.2 standard deviations higher by the end of the school year than those of students of an average teacher (in the 50th percentile).² These numbers translate into significant

¹ Eric A. Hanushek, *The Trade-off between Child Quantity and Quality*, 100 *Journal of Political Economy* 84 (1992) (placing the difference in learning obtained by the respective groups of teachers at approximately one year); The New Teacher Project, *The Irreplaceables: Understanding the Real Retention Crisis in America's Urban Schools* 2, 42 (2012), http://tntp.org/assets/documents/TNTP_Irreplaceables_2012.pdf (finding that students of highly effective teachers gain five to six more months of learning than students of ineffective teachers).

² Eric A. Hanushek, *Valuing Teachers: How Much Is a Good Teacher Worth?*, 3 *Education Next* 41 (Summer 2011).

economic impact. For a high school student, an increase in the level of achievement of a standard deviation is found to yield an average increase in lifetime earnings between \$100,000 and \$230,000.³

When measuring a teacher's direct impact on a student's lifetime earnings, even a teacher whose effectiveness is only somewhat above average – *i.e.* in the 60th or 69th percentile has been found to produce an average increase in each student's lifetime earnings of \$5,300 and \$10,600, respectively.⁴ Not surprisingly, the negative effects of below-average or ineffective teachers are just as acutely felt. By way of example, a 2013 study concluded that a teacher in the 10th percentile, “compared to an average quality teacher, subtracts over half million dollars per year for each twenty students he or she teaches.”⁵

The far-reaching societal implications of the quality of teaching to which students are exposed become even more apparent when considering the present achievement gap between students of different socioeconomic backgrounds. Research evaluating these gaps concludes that moving from

³ *Id.*

⁴ *Id.*; *see also*, Eric A. Hanushek, *Boosting Teacher Effectiveness*, in WHAT LIES AHEAD FOR AMERICA'S CHILDREN AND THEIR SCHOOLS 23, 24-25 (Chester E. Finn, et al. eds., Education Next Books 2014) (using 2010 earnings to conclude that a teacher in the seventy-fifth percentile would, on average, raise a student's lifetime income in excess of \$14,300 when compared with the average teacher).

⁵ *Id.*

an average quality teacher to a teacher in the 84th percentile would close between one-quarter and one-third of the average gap in math achievement between students eligible for free and reduced-price lunches and those from families with higher incomes.⁶

Similar research findings abound and confirm our experiences and those of administrators and educators across the country. A teacher's effectiveness, or lack thereof, has widespread ramifications. For this reason, legislative policies should promote the retention of the most effective classroom instructors and, in turn, student achievement.

II. TEACHER TENURE DECISIONS SHOULD REQUIRE EVIDENCE OF TEACHER EFFECTIVENESS

A. The Time within which a Teacher Becomes Tenured Must Permit Sufficient Opportunity to Assess the Teacher's Classroom Effectiveness

Tenure is too important a decision to be made either too early or too automatically in a teacher's career. The granting of tenure effectively guarantees a teacher's presence in the classroom for a lengthy period of time.⁷ Thus, the teacher's performance in that setting should play a paramount role in deciding whether he or she should receive tenure. In

⁶ *Id.* at 24, 33 (citing Eric A. Hanushek and Steven G. Rivkin, *The Distribution of Teacher Quality and Implications for Policy*, 4 Annual Review of Economics 131-159 (2012)).

⁷ This is especially the case in states like California, which have had in place cumbersome regulations governing school districts' ability to remove underperforming teachers.

short, the decision must be based on an adequate assessment of the teacher's effectiveness.

Such an adequate assessment requires at least three, and up to five years of information about the teacher's work in the classroom.⁸ The consensus regarding this minimally necessary timeframe for evaluation is wide, and is reflected in the policies of the vast majority of jurisdictions across the country. Indeed, more and more states have moved to extend the minimum number of years required for tenure. Among the jurisdictions that have not eliminated the tenure system altogether, California is just one of *four* to award tenure in fewer than three years.⁹

There are good reasons for this. A longer time period within which to determine tenure permits school districts to accumulate a sufficient body of data about generally inexperienced educators' classroom effectiveness.

Moreover, it acknowledges that teachers tend to make the most

⁸ See, e.g., National Council on Teacher Quality, *2013 State Teacher Policy Yearbook: National Summary* 82 (January 2014), http://www.nctq.org/dmsView/2013_State_Teacher_Policy_Yearbook_National_Summary_NCTQ_Report.pdf; Educators 4 Excellence, *Meaningful and Fair: Improving Due Process and Tenure for New York Teachers and Students* 10 (February 2015), http://educators4excellence.s3.amazonaws.com/8/00/6/2589/1/E4E2015_NYTenure_FINALweb.pdf (“recommend[ing] that teachers be granted tenure after . . . a five year period”).

⁹ *Objective: Reform or Eliminate Tenure*, http://reportcard.studentsfirst.org/policy/elevate_the_teaching_profession/use_evaluations_for_personnel_decisions/reform_or_eliminate_tenure/state_by_state (last visited September 3, 2015).

improvements early in their careers¹⁰ and provides them with better opportunities to develop the skills necessary to bring their performance up to par. Lengthening the time period within which tenure decisions are made thus benefits teachers and students alike – it gives teachers more time to prove themselves worthy of receiving employment protections that effectively guarantee their presence in the classroom for decades to come and also protects students against poor instruction. Based on our experiences as administrators and educators, we agree with the expert opinions advising that teachers have a trajectory of improvement that is several years and that differences amongst teachers become more visible over time. There is no reason to risk the possibility of subjecting students to poor instruction for the length of a teacher’s career by ignoring these realities and awarding tenure too early.

B. The Interests of Students Mandate that a Teacher’s Effectiveness Become a Central Consideration in the Tenure Decision

In addition to ensuring that decisions about tenure are made after districts have had adequate time to evaluate a teacher’s performance, evidence of effectiveness should be *the* preponderant criterion in such decisions. In essence, lifetime employment should only be accorded to

¹⁰ *Meaningful and Fair: Improving Due Process and Tenure for New York Teachers and Students, supra* at 10.

teachers who have demonstrated that their instructional skills have the potential to produce good academic results for their students.

In our experience, states that have adopted both longer time periods to tenure and policies that condition the grant of tenure on evidence of classroom effectiveness have permitted administrators to make better informed decisions about which teachers should be accorded permanent employment. These decisions have translated into strong gains in the states' overall ability increase their corps of effective teachers. The State of Tennessee is one such example. In 2011 and 2012, the state made significant revisions to its education statutes by requiring that tenure decisions be made only after a teacher has served five years on the job and conditioning the receipt of tenure on meeting certain performance standards.¹¹ The state was one of only four jurisdictions receiving a grade of B+ or higher from the National Council on Teacher Quality in its latest national summary measuring states' capacity to identify classroom

¹¹ Tennessee Department of Education, *New Tenure Law: Frequently Asked Questions* (July 2014), https://tn.gov/assets/entities/education/attachments/legal_tenure_faq.pdf; Tenn. Code Ann. § 49-5-503; 49-5-504.

The state of Louisiana was also among these jurisdictions, with a grade of A –; there, tenure is granted only after a teacher receives five “highly effective” ratings within six years. *Id.*; see also *Objective: Reform or Eliminate Tenure*, http://reportcard.studentsfirst.org/policy/elevate_the_teaching_profession/use_evaluations_for_personnel_decisions/reform_or_eliminate_tenure/state_by_state (last visited September 3, 2015).

effectiveness among teachers.¹² California, where teachers have been able to attain tenure in just two consecutive school years and where effective performance has not been a prerequisite for attaining this status, received the lowest available grade in this category: D –.¹³ This is a reflection of the fact that tenure statutes of the type California has had in place limit the availability of performance data for evaluation, fail to place sufficient emphasis on such data, and result in premature decisions about the permanent employment of teachers.

III. LAST IN, FIRST OUT RULES GOVERNING REDUCTIONS IN FORCE WRONGFULLY IGNORE TEACHER EFFECTIVENESS AND STUDENT OUTCOMES, AND PERPETUATE INEQUITY

As with tenure, effectiveness should be the top criterion for districts to consider when determining which teachers to layoff during reductions in force. Basing layoff policies solely on seniority in a given district and, in the process, disregarding a teacher's impact in the classroom goes against the best interests of students. In fact, the dismissal of effective teachers in favor of longer-tenured but less competent ones unquestionably hurts students.

Consistent with the expert evidence presented at the trial below regarding layoffs in the Los Angeles Unified School District, studies that

¹² *2013 State Teacher Policy Yearbook National Summary, supra at 69.*

¹³ *2013 State Teacher Policy Yearbook National Summary, supra at 69.*

have simulated and compared the impact of seniority-based layoff systems versus performance-based systems have found little overlap between the teachers selected for dismissal. One such study, using data from the New York City public school system, places the overlap at sixteen percent; that is, only sixteen percent of teachers who, in the event of a reduction in force, would have been asked to exit under a quality-based system, would also have been selected for layoff on the basis of seniority alone.¹⁴ In essence, the more effective teacher is far more likely to be dismissed under a purely seniority-based layoff system than under a system that takes into account teacher performance. Needless to say, such a result is far from being the best interest of students and student achievement. That interest would be best served by focusing high-stakes decisions about which teachers remain in the classroom on the most important aspect of the classroom experience – instructional quality.

Moreover, a seniority-based layoff system also has a disproportionate negative impact on high-need students. That is because schools serving low-income and minority students generally have higher

¹⁴ Donald J. Boyd, et al., *Teacher Layoffs: An Empirical Illustration of Seniority vs. Measures of Effectiveness* 6, National Center for Analysis of Longitudinal Data in Education Research (CALDER) (July 2010), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/1001421-Teacher-Layoffs-An-Empirical-Illustration-of-Seniority-vs-Measures-of-Effectiveness.PDF>.

concentrations of new teachers than more affluent schools.¹⁵ By way of example, while the national average of first-year teachers per school is approximately 5.8 percent, that number is as high as 8.2 and 8 percent in high-poverty schools located in cities and small towns, respectively.¹⁶ On average, 6.6 percent of teachers in high-poverty schools located in rural areas are in their first year of employment.¹⁷ Since high-poverty schools are more likely to have first-year teachers, pure seniority-based layoffs lead to these schools experiencing higher teacher turnover and, as a result, more classroom disruption. This readily and repeatedly observable impact can be quantified. According to one study, when layoffs are based solely on seniority, the poorest schools generally see twenty-five percent more layoffs than the wealthiest schools.¹⁸

¹⁵ Sarah Almy, et al., *Not Prepared for Class: High-Poverty Schools Continue to Have Fewer In-Field Teachers* (November 2010), <http://1k9gl1yevnfp2lpq1dhrqe17.wpengine.netdna-cdn.com/wp-content/uploads/2013/10/Not-Prepared-for-Class.pdf>.

¹⁶ *Id.* at 3.

¹⁷ *Id.*

¹⁸ Christina Sepe, et al., *The Disproportionate Impact of Seniority-Based Layoffs on Poor, Minority Students* (May 20, 2010), http://www.crpe.org/sites/default/files/rr_crpe_layoffs_rr9_may10_0.pdf. See also Jennifer Rice, *The Impact of Teacher Experience: Examining the Evidence of Policy Implications*, National Center for Analysis of Longitudinal Data in Education Research (CALDER) (September 21, 2010), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/1001455-The-Impact-of-Teacher-Experience.PDF>; The New Teachers Project, *The Case Against Quality-Blind Teacher Layoffs: Why Layoff Policies that Ignore Teacher Quality Need to End Now* (2011),

The destructive, real-life effects of these statistics were amply illustrated by the round of layoffs required in the Los Angeles Unified School District during the 2008-2009 academic year. Those layoffs resulted in the dismissal of between half and three quarters of teachers at three of the district's most disadvantaged middle schools, chaotic conditions on campuses, and a lawsuit alleging denial of a legal right to education as a result.¹⁹ According to reporting by the Los Angeles Times, “[n]early one in 10 teachers in South Los Angeles schools was laid off, nearly twice the rate in other areas.”²⁰ Of the “[s]ixteen schools [that] lost at least a fourth of their teachers, all but one of them [were] in South or Central Los Angeles.”²¹ After four years of litigation, the school district announced a settlement providing \$60 million in pay increases, services, and staff at approximately thirty-seven schools, thirty-three of which were

http://tntp.org/assets/documents/TNTP_Case_Against_Quality_Blind_Layoffs_Feb2011F.pdf?files/TNTP_Case_Against_Quality_Blind_Layoffs_Feb2011F.pdf

¹⁹ American Civil Liberties Union of Southern California (ACLU), *Massive Teacher Layoffs at Three LAUSD Schools Violated State Guarantee of Equal Education for All* (February 24, 2010), <https://www.aclusocal.org/massive-teacher-layoffs-at-three-laUSD-schools-violated-state-guarantee-of-equal-education-for-all> (last visited September 9, 2015).

²⁰ Jason Felch, Jason Song and Doug Smith, *When Layoffs Come to L.A. School, Performance Doesn't Count* (December 4, 2010), <http://articles.latimes.com/2010/dec/04/local/la-me-1205-teachers-seniority-20101204> (last visited September 9, 2015).

²¹ *Id.*

made part of the settlement as a result of their disproportionately high teacher turnover.²² Unfortunately, the damaging impact that quality-blind, seniority-based layoffs have on the most disadvantaged of schools was not, and is not, unforeseen; rather, it is the norm, and entirely expected.

For these reasons, a total of thirty-nine states and the District of Columbia have moved away from these ultimately irresponsible practices and now permit teacher effectiveness to be considered in layoff decisions.²³ Approximately seventeen of these states go a step further, to require that staffing decisions take effectiveness into account, make effectiveness a significant or primary factor in those decisions, or prohibit the consideration of seniority altogether.²⁴ California's "last in, first out"

²² Howard Blume, *L.A. Unified Settles Lawsuit Over Layoff* (April 8, 2014), <http://articles.latimes.com/2014/apr/08/local/la-me-laUSD-teachers-lawsuit-20140409> (last visited on September 9, 2015); Final Settlement Agreement and Release of All Claims, <http://achieve.lausd.net/cms/lib08/CA01000043/Centricity/domain/381/reed%20v.%20lausd%20et%20al/Reed%20-%20Final%20Settlement%20and%20Release%20of%20all%20Claims.pdf>.

The Los Angeles Unified School District is comprised of approximately 900 schools and 187 public charter schools. National Assessment Governing Board, *Welcome to the Los Angeles Unified School District 3*, <https://www.nagb.org/content/nagb/assets/documents/what-we-do/quarterly-board-meeting-materials/2013-05/tab05-los-angeles-unified-school-district-may2013.pdf>.

²³ *Objective: End Seniority-Based Layoffs*, California, http://reportcard.studentsfirst.org/policy/elevate_the_teaching_profession/use_evaluations_for_personnel_decisions/end_seniority-based_layoffs/state_by_state (last visited September 3, 2015).

²⁴ *Id.*

statutory provisions, which entirely disregard teacher performance, thus represent an outdated minority approach. Their invalidation by the court below has brought the State a step closer to the majority of jurisdictions across the country, which, to various extents, have rightly considered effectiveness on the job before requiring a teacher's exit from a particular school district.

IV. PROTRACTED DISMISSAL PROCEDURES DISCOURAGE COST-SENSITIVE SCHOOL DISTRICTS FROM EXITING INEFFECTIVE TEACHERS AND RESULT IN STUDENTS' CONTINUOUS EXPOSURE TO POOR INSTRUCTION

Equally important to ensuring the attainment of the highest possible student outcomes are laws and regulations guaranteeing that poor performance among teachers is dealt with in a reasonably efficient and timely manner. Onerous and unbalanced job protections that require schools and districts to engage in lengthy and cumbersome processes in order to dismiss poor performers create incentives that have a direct negative impact on students. That is because the associated costs, in terms of both time and money, often deter schools and school districts from initiating the dismissal of underperforming teachers.²⁵ While teachers as a

²⁵ See, e.g., Daniel Weisberg, et al., *The Widget Effect: Our National Failure to Acknowledge and Act on Differences in Teacher Effectiveness* 5, 17 (2nd ed. 2009), http://tntp.org/assets/documents/TheWidgetEffect_2nd_ed.pdf (in a survey of 1,300 administrators across four states and twelve school districts, 86% percent of principals stated that they did not always pursue dismissals even where warranted, due to the onerous, cumbersome and uncertain nature of the process involved).

whole certainly deserve due process, states must, and plainly may, strike a balance between such job protections and their responsibility to provide students with quality teachers and a quality education.

A balance may be achieved by, for example, placing limits on the length of time within which dismissal decisions may be challenged and adjudicated. Many educators and organizations across the country have concluded that such limits give adequate consideration to the competing interests between ensuring that teachers are given an opportunity to be heard and guaranteeing that teacher ineffectiveness is addressed.²⁶ Even the American Federation of Teachers has endorsed a framework for a process that “would take no more than 100 days” to address the analogous scenario of teacher misconduct.²⁷

In addition, it is in the interest of all teachers to identify and remove those who are deemed to be ineffective in the classroom. Every teacher knows that the teacher before them is their greatest ally or enemy. An ineffective teacher in the system puts pressure on teachers around them to

²⁶ *See Meaningful and Fair: Improving Due Process and Tenure for New York Teachers and Students, supra* at 10 (recommending that the discipline-related process, including hearings, be completed in no longer than 100 days).

²⁷ American Federation of Teachers, *AFT Adopts Kenneth Feinberg’s Procedures for Handling Teacher Wrongdoing Allegations* (February 7, 2011), <http://www.aft.org/press-release/aft-adopts-kenneth-feinbergs-procedures-handling-teacher-wrongdoing> (announcing a new framework).

repair the damage done to students. This is not just unfair to students; it is unfair to teachers as well. And, just as importantly, every teacher certainly wishes that the gains made by students in his or her classroom continue and are built upon by the teachers who follow throughout their students' academic careers.

Lastly, educators' experiences reveal that policies that inhibit the removal of ineffective teachers from the classroom have a disproportionately detrimental effect on students in the most disadvantaged districts, who are arguably most in need of effective teachers. For example, in a recent survey of 15,000 teachers across four states, 60% of teachers in schools where 75% to 100% of students were eligible for free and reduced priced lunch answered that in their opinions, their schools employed tenured teachers who delivered poor instruction.²⁸ That opinion was shared by 56% percent of teachers in schools where 25% to 75% of students were eligible for free or reduced price lunches, and only 42% of teachers in schools where fewer than 25% percent of the student population fell in this category.²⁹

²⁸ *The Widget Effect: Our National Failure to Acknowledge and Act on Differences in Teacher Effectiveness*, *supra* at 18.

²⁹ *Id.*

CONCLUSION

Statutes like those at issue before the Court ignore the tremendous influences that teachers have on students and their futures. They limit school districts and administrators in their efforts to hire and retain the most effective educators and to ensure, particularly at times when reductions in force must be implemented, that low income students have the same opportunities as those fortunate enough to live in more affluent neighborhoods – to continue to have the benefit of receiving their instruction from those teachers who have been found to be most effective. Reforming these statutes will both improve educational outcomes for children and strengthen the teaching profession. The Court should affirm in its entirety the judgment below.

September 15, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lois D. Thompson', written over a horizontal line.

Lois D. Thompson
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CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 3,840 words, including footnotes. In making this certification, I have relied on the word count of the Microsoft Word 2010 used to prepare the brief.



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KEVIN S. HUFFMAN, AND CAMI ANDERSON

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION TWO**

**BEATRIZ VERGARA, a minor, by
Alicia Martinez, as her guardian ad
litem, et al.**

Plaintiffs-Appellees,

v.

STATE OF CALIFORNIA, et al.

Defendants-Appellants,

and

**CALIFORNIA TEACHERS
ASSOCIATION, et al.,**

Intervenors-Appellants.

CASE NO. B258589

PROOF OF SERVICE

PROOF OF SERVICE

I declare that at the time of service I was at least 18 years of age and not a party to this legal action. I am employed in the county of Los Angeles, California and my business address is 2049 Century Park East, Suite 3200, Los Angeles, CA 90067-3206.

On September 15, 2015, I served the following documents:

(1) APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF ON BEHALF OF CURRENT AND FORMER SCHOOL SUPERINTENDENTS JOHN WHITE, HANNA SKANDERA, PAUL PASTOREK, KEVIN S. HUFFMAN, AND CAMI ANDERSON

(2) AMICI CURIAE BRIEF ON BEHALF OF CURRENT AND FORMER SCHOOL SUPERINTENDENTS JOHN WHITE, HANNA SKANDERA, PAUL PASTOREK, KEVIN S. HUFFMAN, AND CAMI ANDERSON

BY OVERNIGHT MAIL. I am personally and readily familiar with the business practice for collection and processing of correspondence for overnight delivery. Under that practice, I caused documents listed herein to be deposited for delivery to a facility regularly maintained by FedEx for overnight delivery to the following addressee:

Honorable Rolf M. Treu
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BY ELECTRONIC SERVICE. By transmitting a true and correct copy of the documents listed herein via electronic filing through the Second Appellate District Court’s website.

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

Executed on September 15, 2015 at Los Angeles, California.



Olia A. Golinder