

June 13, 2016

The Honorable Tani Cantil-Sakauye, Chief Justice
Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, California 94102

Amici Curiae Letter in Support of Petition for Review
Vergara et al. v. California, et al.
Case No. BC484642
Court of Appeal decision filed April 14, 2016

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rules of Court, rule 8.500(g), John Deasy, former Superintendent of Los Angeles Unified School District; John White, Louisiana State Superintendent of Education; Hanna Skandera, New Mexico Secretary of Education; Steve Canavero, Nevada State Superintendent of Public Instruction; Mark Murphy, former Delaware Secretary of Education; Kevin Huffman, former Tennessee Education Commissioner; Cami Anderson, former State District Superintendent of Newark Public Schools; Jean-Claude Brizard, former Chief Executive of Chicago Public Schools; and Randolph Ward, San Diego County Superintendent of Schools (collectively, “Amici”) respectfully submit this letter urging the Court to grant review in the above-entitled case.

The Court of Appeal’s decision, if permitted to stand, will hamstring the efforts of California’s education leaders and practitioners to act in the best interest of students and will perpetuate the deprivation of California’s low-income and minority students of their fundamental constitutional right to equal educational opportunity. The future of California’s education system, which educates over 12 percent of the nation’s elementary and secondary public school students, has an impact far beyond state lines.

Description of Amici

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 that have helped shape the education landscape in their respective states and that have translated into strong academic gains. The Amici are committed to increasing access to high quality education for many more students. They submit this letter to respectfully request that the Court grant review in the above-entitled case and protect the students in our country's most populous state from the dire, long-lasting, and ultimately avoidable consequences of unequal access to the foundation of a quality education: effective teachers.

Dr. John Deasy served as Superintendent of the Los Angeles Unified School District, where he championed a "youth first" agenda credited with reversing the district's school-to-prison pipeline, raising achievement and helping more students graduate ready for college and the workplace. Deasy previously served as superintendent in Prince George's County Public Schools in Maryland, Santa Monica-Malibu Unified School District in California and Coventry Public Schools in Rhode Island. Dr. Deasy was named Superintendent of the Year in 2001 by the Rhode Island School Superintendents' Association and is a former high school principal.

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.

Dr. Steve Canavero is Nevada's State Superintendent of Public Instruction. Prior to assuming this role, Mr. Canavero served as the Deputy Superintendent for Student Achievement at the Nevada Department of Education. Mr. Canavero also served as the first

Executive Director of the Nevada Public Charter School Authority, leading the state's effort to increase the number of quality charter schools across the state.

Mr. Mark Murphy served as Delaware's Secretary Education from 2012 through 2015. During his tenure, Delaware youth significantly improved their academic achievement, college going rates soared, high school drop-out rates reached the lowest level in history, and the graduation rate grew to a record high. Mr. Murphy began his career as a teacher, and then a principal and now leads a youth empowerment initiative at America Achieves.

Mr. Kevin S. Huffman served as Commissioner of the Tennessee Department of Education from 2011 through 2015. In this role, Mr. Huffman oversaw the implementation of various initiatives focused on educator performance and student achievement, and played a central role 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.

Mr. Jean-Claude Brizard served as the Chief Executive of Chicago Public Schools. Prior to his appointment in Chicago, he was Superintendent of Schools for the Rochester, NY School District. Under Mr. Brizard's leadership, both the Chicago Public Schools and the Rochester City School District saw substantial improvements in student performance. Mr. Brizard's experience also includes a 21-year career as an educator and administrator with the NYC Department of Education.

Dr. Randolph Ward is the San Diego County Superintendent of Schools. Prior to assuming this role, Dr. Ward was the state-appointed administrator of the Oakland Unified School District from 2003 to 2006 and Compton Unified School District from 1996 to 2003. Ward's education career began in 1978, as a preschool teacher in his hometown of Boston.

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.

Why Review Should Be Granted

After 10 weeks of trial, during which the trial court reviewed overwhelming evidence in support of Plaintiffs' challenge, the trial court found the combined effect of Education Code sections 44929.21, subdivision (b); 44934; 44938, subdivision (b); 44944; and 44955 is to push many highly effective teachers out of California's public schools and simultaneously to retain grossly ineffective teachers in the classrooms of students that need quality instruction the most.

In its reversal of the trial court's decision, the Court of Appeal did not dispute that low-income and minority students are more likely to be taught by grossly ineffective teachers in California's public schools. According to the testimony of expert witness Dr. Thomas Kane, in Los Angeles Unified, African American students are 43 percent more likely than white students to be taught by a teacher in the bottom 5 percent of effectiveness. Latino students are 68 percent more likely to have a teacher in the bottom 5 percent of effectiveness. (In fact, the Court of Appeal called the effect of California's teacher tenure, dismissal and layoff scheme on low-income and minority students "extremely troubling".)

The Court of Appeal, like Defendants and Intervenors, also did not dispute the vital importance of effective teachers to an education system that facilitates student learning, and ultimately, lifetime earnings and upward social mobility. The Court, like Defendants and Intervenors, left undisputed expert witness Dr. Raj Chetty's testimony that a student assigned to a grossly ineffective teacher loses \$50,000 in potential lifetime earnings compared to a student assigned to a teacher of average effectiveness; and a classroom of 28 children loses \$1.4 million in lifetime earnings.

Instead, the Court of Appeal based its reversal on no part of the actual factual findings credited by the trial court and concluded that individual administrators are the actors

fundamentally responsible for the concentration across the state of grossly ineffective teachers in schools serving low-income and minority communities.

The Amici, based both on the evidence presented at trial and on their collective decades of experience working in public education administration at both the local and state levels, strongly disagree with the Court of Appeal's characterization of the function of state-level policies in determining teachers' overall effectiveness and the distribution of effectiveness among schools.

The Court of Appeal in particular disregards the evidence presented at trial, which Amici confirm with firsthand experience, that California has a teacher tenure, dismissal and layoff scheme unlike any other state in the country.

Among the jurisdictions that have not eliminated the tenure system altogether, California is just one of only *four* to award tenure in fewer than three years. In the experience of Amici, states that have adopted both longer time periods to tenure and policies that condition the granting 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. 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 effectiveness among teachers. 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 –. This is a reflection of the fact that tenure statutes of the type California has 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.

California's singularly burdensome dismissal statutes compound the effects of the tenure statute. At trial, expert witness Dr. Thomas Kane testified that, as a result of the cumulative effects over decades of California's inability to dismiss grossly ineffective teachers, the teachers in the bottom 5 percent of effectiveness in California school districts, such as the Los Angeles Unified School District, effect almost twice the learning loss of the teachers in

the bottom 5 percent of effectiveness when compared to school districts such as Dallas, New York City and Memphis.

In addition, responding to the nearly universal acknowledgement of the devastating and disproportionate impact of seniority-based layoffs on hard-to-staff schools, almost always in low-income or minority communities, where higher teacher turnover inevitably results in the employment of higher numbers of junior teachers, a total of thirty-nine states and the District of Columbia have moved away from the irresponsible practice of basing teacher layoffs strictly on seniority and now permit teacher effectiveness to be considered in layoff decisions.

Even within California's borders, the Court can find affirmation of the powerlessness of California administrators in making teacher retention decisions in the best interest of students.

In two instances (one in Sacramento City Unified School District and one in Los Angeles Unified School District) when California public school district administrators sought to exempt a group of low-income schools from disproportionately suffering the effects of another round of seniority-based teacher layoffs, the local teachers' union challenged the exemption. The teachers' union correctly claimed that the law allows for no discretion to protect students from disproportionate harm caused by the state-mandated "last in, first out" layoff criteria; and the districts' layoff exemptions were reversed.

The same follows for California administrators seeking to dismiss chronic and egregious poor performers. As witnesses and deponents representing 22 percent of California students statewide testified to the court on behalf of Plaintiffs, administrators may pursue the prohibitively costly and lengthy dismissal process, but even if they succeed in sustaining a case through years of evidence-gathering and multiple appeals, the final adjudicator in teacher dismissal cases, the Commission on Professional Competence – comprised of two teachers and an administrative law judge – may agree with the evidence of poor performance but unilaterally decide to place the poor performer back in the classroom anyway. As a result, out of 275,000 teachers statewide, only 2.2 teachers per year, on average, are dismissed for poor performance via the dismissal statutes. Administrators must resort to negotiating settlement agreements or "counseling out" to exit chronic poor performers from schools or school districts. These teachers retain their teaching credentials and are free to move to another school.

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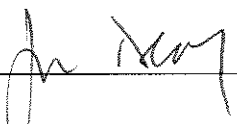
The challenged statutes serve neither the interests of students nor the interests of teachers. Teachers also suffer as a result of the retention of grossly ineffective colleagues. Not only do excellent teachers' jobs become exponentially harder when they receive students from a grossly ineffective teacher a grade below, but the presence of a chronic underperformer creates a toxic work environment that repels even the most motivated and dedicated educator after time. Every departure of a quality teacher from a hard-to-staff school creates an opening for a chronic underperformer "counseled out" or otherwise exited – but not dismissed – from another California school or school district to take their place.

Conclusion

All evidence points to the fact that it is California's uniquely quality-blind and prescriptive teacher tenure, dismissal and layoff statutes that result in the statewide retention of grossly ineffective teachers and in the cumulative concentration of those teachers in schools serving low-income and minority students. As demonstrated by the efforts of states across the country, effective teachers *can* be identified, and can be fostered and retained in the classroom through state-level laws, policies and practices that recognize and award their effectiveness and their crucial impact on students.

California's public schools educate a significant portion of the next generation of Americans. Because of the profound national implications of California continuing to deprive millions of low-income and minority students of their fair shot at a quality education and a successful future, Amici urge the Court to grant the pending petition for review.

Sincerely,



John Deasy, former Los Angeles Unified School District Superintendent

John White, Louisiana State Superintendent of Education

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