



LUBIN OLSON & NIEWIADOMSKI LLP

THE TRANSAMERICA PYRAMID

600 MONTGOMERY STREET, 14TH FLOOR SAN FRANCISCO, CALIFORNIA 94111

TEL 415 981 0550 FAX 415 981 4343 WEB lubinolson.com

June 13, 2016

KYLE A. WITHERS

Direct Dial: (415) 955-5047

E-mail: kwithers@lubinolson.com

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

Amici Curiae 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 Rule 8.500(g) of the California Rules of Court, Betheny Gross, Jane Hannaway, Michael Hansen, Cory Koedel, Daniel Player, Steven Rivkin, Jonah Rockoff, and Patrick Wolf (collectively, "Amici") respectfully submit this letter urging the Court to grant review in the above-entitled case.

If permitted to stand, the Court of Appeal's decision will perpetuate the gross inequities and substantial harm suffered by California's students as a result of irrational state laws that prioritize adult interest and jeopardize our future.

Research by Amici and others has consistently shown that the quality of the teacher in the classroom is the most important in-school factor affecting student achievement. Given the importance of teacher quality, state laws and policies should be aimed at ensuring that we have the best and most effective teachers possible in the classroom. California fails this test. Instead, California law ensures that some students will be assigned to a classroom with an ineffective teacher. Specifically, the Permanent Employment Statute forces school districts to grant tenure without adequate time to make such lifetime decisions, which can lead to districts granting tenure to ineffective teachers; the Dismissal Statutes prevent school districts from terminating their least effective tenured teachers by mandating an unreasonable and irrational procedure that takes years and costs hundreds of thousands of dollars; and the LIFO Statute requires school districts to lay off their effective, junior teachers and to retain their ineffective, senior teachers based solely on the fact that the former have less seniority in the district than the latter. The laws individually and collectively harm California students needlessly each year.

After hearing testimony over two months from several of the most prominent experts in our field, as well as superintendents, principals, teachers, and students across California, the trial court proclaimed that the evidence “shocks the conscience,” and thus the trial court rightfully struck down these laws as unconstitutional. We respectfully request that the Court grant review in the above-entitled case and reaffirm California’s commitment to provide equal educational opportunity to all of its students.

Statement Of Interest

Betheny Gross is a Senior Research Analyst and Research Director at the Center on Reinventing Public Education (“CPRE”) whose research is focused on policy analysis in the areas of organizational improvement and learning, human resources, and accountability. Jane Hannaway is Professor at the McCourt School of Public Policy at Georgetown University whose work as an organizational sociologist focuses on the effects of education reforms on student outcomes as well as on school policies and practices. Michael Hansen is Senior Fellow and Deputy Director of the Brown Center on Education Policy at the Brookings Institution whose research has primarily focused on teacher quality, evaluation, and mobility. Cory Koedel is an Associate Professor of Economics and Public Policy at the University of Missouri-Columbia whose research focuses on the measurement of outcome-based teacher quality and teacher compensation. Daniel Player is an Assistant Professor of Public Policy at the University of Virginia whose research focuses on U.S. education policy and teacher effectiveness. Steven Rivkin is Professor and Head of the Department of Economics at the University of Illinois at Chicago whose research has focused on the estimation and measurement of teacher and principal effectiveness, teacher and principal labor markets, charter schools, school desegregation and peer effects. Jonah Rockoff is an Associate Professor of Finance and Economics at Columbia Business School whose research has focused on the statistical measurement of teacher value-added, the properties of subjective and objective measures of teacher quality, the importance of credentials and personal characteristics in predicting new teacher performance, and how primary school teachers affect students’ outcomes in early adulthood. Patrick Wolf is a Distinguished Professor of Education and Policy at the 21st Century Endowed Chair in School Choice at the University of Arkansas in Fayetteville whose research is focused on school choice programs and funding equity in education.

Reasons Why Review Should Be Granted

California law has long recognized that education is the cornerstone of our democratic society and essential to the well-being of our children. The Court has declared that the vital importance of education compels its treatment as a “fundamental interest,” and thus the Court has declared laws and policies that have a real and appreciable impact on students’ fundamental right to equal educational opportunity to be unconstitutional. There is no reasonable dispute that the Permanent Employment Statute, the Dismissal Statutes, and the LIFO Statute, individually and collectively, have a real and appreciable impact on this fundamental interest.

The Permanent Employment Statute harms students because it forces school districts to grant or deny tenure to teachers after an evaluation period of only sixteen months—before new teachers complete their beginner teacher induction program and before administrators are able to assess whether a teacher will be effective in the long term. As a result of the short probationary period mandated by the Permanent Employment Statute, school districts likely grant tenure to ineffective teachers for whom tenure would not be warranted based on additional time to observe and evaluate the teachers. The harm to students would be less concerning if it were easy to dismiss an ineffective tenured teacher. However, as explained below, it is nearly impossible for school districts to do so. As such, the Permanent Employment Statute harms students continuously during each year of a grossly ineffective teacher’s career.

The Dismissal Statutes harm students because they effectively prohibit school districts from terminating all of their grossly ineffective teachers who are unable or unwilling to achieve student learning. The trial court found “the current system required by the Dismissal Statutes to be so complex, time consuming and expensive as to make an effective, efficient yet fair dismissal of a grossly ineffective teacher illusory.” Indeed, the process for dismissing a single teacher for poor performance involves more than a dozen steps, requires years of documentation, costs hundreds of thousands of dollars and still, rarely ever works. This is simply unacceptable given the importance of teacher quality to student achievement. In sum, the Dismissal Statutes are unconstitutional because they violate California students’ fundamental right to basic equality in public education by effectively prohibiting school districts from dismissing all of their grossly ineffective teachers who are unable or unwilling to achieve student learning.

The LIFO Statute harms students because it forces school districts to lay off effective teachers and retain ineffective teachers based solely on their seniority within the district. The trial court found: “No matter how gifted the junior teacher, and no matter how grossly ineffective the senior teacher, the junior gifted one, who all parties agree is creating a positive atmosphere for his/her students, is separated from them and a senior grossly ineffective one, who all parties agree is harming the students entrusted to her/him, is left in place. The result is a classroom disruption on two fronts, a lose-lose situation.” And the effect of this irrational policy is staggering. Based upon his groundbreaking study, Dr. Raj Chetty testified that students would gain \$2.1 million in lifetime earnings per teacher laid off if California used effectiveness-based layoffs instead of seniority-based layoffs. Given the importance of teacher quality on student achievement, state laws and policies should ensure that the most effective teachers possible are in the classroom. The LIFO Statute fails this fundamental test.

The Challenged Statutes collectively harm students by ensuring that grossly ineffective teachers are teaching in school districts across California. If the Permanent Employment Statute provided more time for school districts to identify grossly ineffective teachers, or if the Dismissal Statutes made it easier and more cost-effective to dismiss a grossly ineffective teacher, or if the LIFO Statute allowed school districts to lay off their grossly ineffective teachers and retain their effective teachers (regardless of seniority) during economic downturns, then students’ interests would be better protected. However, the Challenged Statutes do none of these things. Instead, the Challenged Statutes guarantee that some California students

will suffer significant short-term and long-term harm as a result of their assignment to a grossly ineffective teacher. In other words, the Challenged Statutes tie school districts' hands and force them to try to make the best out of a bad situation.

The Court of Appeal ignores the substantial evidence supporting the horrifying effect of the Challenged Statutes on the quality of the pool of teachers in a school district. Instead, the Court of Appeal contends that the school district is responsible for any harm suffered from grossly ineffective teachers because the school district is responsible for assigning such teachers to the students. However, the major fallacy of this position is that a school district does not operate in a vacuum freed from the constraints of state law in which it can assign their students to only the most effective teachers. Instead, the pool of teachers to whom school districts can assign their students is dependent on state law—particularly, the Challenged Statutes. As such, the Challenged Statutes harm California students.

Conclusion

Because the Court of Appeal's decision poses a serious threat to the well-being of California students, Amici urge the Court to grant the pending Petition for Review.

Sincerely,



Kyle A. Withers
Lubin Olson & Niewiadomski LLP
Counsel for Betheny Gross, Jane Hannaway,
Michael Hansen, Cory Koedel, Daniel Player,
Steven Rivkin, Jonah Rockoff, and Patrick Wolf

cc: See attached proof of service

PROOF OF SERVICE

I am employed in the County of San Francisco, State of California; I am over the age of eighteen years and am not a party to this action; my business address is Lubin Olson & Niewiadomski, LLP, 600 Montgomery Street, 14th Floor, San Francisco, California 94111, in said county and state. On June 13, 2016, I served the foregoing document described as:

**LETTER TO THE HONORABLE TANI CANTIL-SAKAUYE
FROM KYLE A. WITHERS, DATED JUNE 13, 2016**

to each of the persons named below at the address(es) shown, in the manner described below:

Plaintiffs-Respondents

Theodore J. Boutrous, Jr.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071

Defendants-Appellants

Susan M. Carson
Office of the Attorney General
455 Golden Gate Ave., 11th Floor
San Francisco, CA 94102

Intervenors-Appellants

Eileen B. Goldsmith
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108

- BY MAIL:** I placed a true copy in a sealed envelope, addressed as indicated above for collection and mailing at my business location, on the date mentioned above, following our ordinary business practices. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 13, 2016, at San Francisco, California.



Mey Saephan