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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CENTRAL DISTRICT

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

Plaintiffs,

v.

STATE OF CALIFORNIA, et al.,

Defendants,

CALIFORNIA TEACHERS ASSOCIATION, et al.,

Defendants-Intervenors,

Case No. BC484642

STATE DEFENDANTS' POST-TRIAL BRIEF

Date: April 10, 2014
Dept.: 58
Judge: Honorable Rolf Michael Treu
Trial Date: January 27, 2014

Date Filed: May 14, 2012

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INTRODUCTION

It is remarkable that after a month of testimony from twenty-two different witnesses, Plaintiffs have been unable to answer the most basic questions surrounding their theory that the Challenged Statutes cause the hiring and retention of "grossly ineffective" teachers in California's public schools. Who are the "grossly ineffective" teachers? How is that term defined?[1] How many "grossly ineffective" teachers are there? Where do they teach? Which students are being taught by them? How many such students are there? What school districts do those students reside in? Plaintiffs have not answered *any* of these questions.

Yet Plaintiffs ask this Court to strike down as unconstitutional five longstanding state statutes because these laws are purportedly causing an unknown number of unidentified students in an unknown number of unidentified school districts to be taught by an unknown number of unidentified "grossly ineffective" teachers. There is a profound disconnect here. Harvard professors and complex mathematical formulas cannot obscure the fact that Plaintiffs' entire case against these laws exists on a highly theoretical level. And Plaintiffs' theory is not made more concrete by the named Plaintiffs themselves. Not a single named Plaintiff established that he or she was assigned to a "grossly ineffective" teacher because of the Challenged Statutes. Half of the Plaintiffs never testified, and four of the five who did testify accused former teachers of being ineffective who turned out to be highly effective—and sometimes award-winning—teachers. Plaintiffs utterly failed to prove that they *personally* suffered harm because of these laws.

Contrast the abstract harm complained of in this case with the specific, detailed harm inflicted by the school financing scheme that was struck down in *Serrano v. Priest* (1971) 5 Cal.3d 584 (*Serrano I*), the case Plaintiffs most heavily rely upon. The statutory scheme there "actually widened the gap between rich and poor districts" and directly created vast disparities in per pupil spending across school districts. (*Id.* at p. 594.) The Court knew precisely what those disparities were: Baldwin Park spent $577.49; Pasadena spent $840.19; and Beverly Hills spent

[1] There is no legal definition of the phrase "grossly ineffective teacher," nor is there any commonly accepted informal definition of that term. Only school districts, pursuant to the Stull Act, define what "effective" teaching is within their own local contexts.

$1,231.72 to educate each student each year. (*Id.* at p. 594.) The Court knew exactly which students were harmed (the students in Baldwin Park) and which students were not harmed (the students in Beverly Hills). And these vast disparities were "a direct result of the financing system," (*id.* at p. 618) without any independent and intervening decision making at the school district or school site levels. None of that is true in this case. This case is not *Serrano*.

Plaintiffs have not come close to proving that each of the five Challenged Statutes, on their face or "as applied" to the Plaintiffs, violates equal protection. The State Defendants respectfully submit that—based on controlling law and the undisputed evidence at trial—the Court should enter judgment on behalf of the State Defendants on all causes of action.

SUMMARY OF ARGUMENT

There are many reasons why Plaintiffs' claims cannot prevail as a matter of law. First, Plaintiffs have failed to meet their heavy burden of invalidating the Challenged Statutes on their face because their own evidence indisputably demonstrates that most teachers in California are effective. Statutes that are neutral on their face, that are capable of constitutional application, and which result in a constitutional outcome the vast majority of the time easily survive a facial challenge under well-established Supreme Court precedent.

Second, Plaintiffs failed to demonstrate that the Challenged Statutes have been unconstitutionally *applied to them*. Half of the Plaintiffs offered no evidence of harm, and the remainder failed to prove that they were assigned to a "grossly ineffective" teacher because of the manner in which their school districts applied the provisions found in the Challenged Statutes.

Third, Plaintiffs' "suspect class" equal protection claims (causes of action 4, 5, and 6) are meritless because there is no evidence that the Challenged Statutes cause the *unequal distribution of "grossly ineffective" teachers*. Plaintiffs were unable to introduce any evidence that the Challenged Statutes force school administrators to disproportionately transfer "grossly ineffective" teachers to low-income and minority schools. In fact, Plaintiffs' witnesses—including Dr. Deasy—admitted that these laws "have nothing to do with the assignment of teachers." (Tr. at pp. 330:11-331:18 .) And the undisputed evidence proved that in well-managed school districts, ineffective teachers are *not* disproportionately aggregated in low-income and minority schools.

Fourth, Plaintiffs' "fundamental interest" equal protection claims (causes of action 1, 2, and 3) must be rejected because there is no evidence that the five Plaintiffs who testified about their prior teachers were "classified"—i.e., that they *experienced a "bad" teacher because of a shared, extraneous characteristic*. An occasional and random assignment to an allegedly "bad" teacher is not a "classification" under equal protection doctrine. The five Plaintiffs who testified also did not show that these past teachers caused "an extreme and unprecedented disparity" in their education such that their overall educational experience fell "fundamentally below prevailing statewide standards." (*Butt v. State of California* (1992) 4 Cal.4th 668, 686-88.)

Lastly, there was overwhelming evidence introduced at trial demonstrating that the Challenged Statutes are rationally related to legitimate governmental purposes, including attracting and retaining high quality teachers to the public schools, safeguarding academic freedom, protecting teachers from arbitrary or unfair actions by school boards or administrators, and providing objective, transparent, and fair standards to utilize during reductions-in-force. The Challenged Statutes easily survive constitutional challenge under rational basis review. And contrary to Plaintiffs' assertions, strict scrutiny does not apply because the Challenged Statutes do not create suspect classifications (they do not even classify students at all, much less on the basis of race or wealth), nor do they directly impact a fundamental right.

ARGUMENT

I. THE CHALLENGED STATUTES ARE FACIALLY CONSTITUTIONAL

First and foremost, Plaintiffs seek to strike down the Challenged Statutes on their face because they allegedly result in some California students being assigned to a "grossly ineffective" teacher, which purportedly violates their fundamental right to educational equality. Under controlling Supreme Court precedent, to facially invalidate state laws, Plaintiffs must do much more than simply prove that their own equal protection rights have been violated (which they did not do for the reasons discussed below). Plaintiffs' burden is to prove that the Challenged Statutes are incapable of constitutional application (the stricter test), or that they nearly always violate equal protection when applied in practice (the more lenient test). But the evidence in this case indisputably demonstrates that the Challenged Statutes are fully capable of constitutional

application, and that in practice they are—at a minimum—constitutionally applied the overwhelming majority of the time. The Court should sustain the facial validity of these statutes.

A. The Challenged Statutes are Facially Constitutional Because They can be Constitutionally Applied

Plaintiffs carry a "heavy burden" when seeking to invalidate the Challenged Statutes on their face. (*Cal. Ass'n. of PSES v. Cal. Dept. of Education* (2006) 141 Cal.App.4th 360. 372.) Indeed, a facial challenge to state laws "is the most difficult challenge to mount successfully, since the challenger must establish that *no set of circumstances exists under which the law would be valid.*" (*American Civil Rights Foundation v. Berkeley Unified School Dist.* (2009) 172 Cal.App.4th 207, 216 [emphasis added]; see also November 9, 2012 Order Overruling State Defendants' Demurrer at p. 3 [same].) Since 1995, the Supreme Court has affirmed at least half a dozen times that "the standard for a facial constitutional challenge to a statute is exacting," and that "to resolve a facial challenge, we consider only the text of the measure itself, not its application to the particular circumstances of this case." (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 218.) Under this predominant test,[2] to prevail on a facial challenge, plaintiffs "must demonstrate that the act's provisions *inevitably*[3] pose a present total and fatal conflict with applicable constitutional prohibitions." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.) In other words, the facial "validity [of the challenged laws] must be sustained unless [the challenged laws] **cannot be applied without retrenching upon constitutionally protected rights**." (*Id.* at p. 1102 [emphasis added].)

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[2] The Court of Appeal for the Second District utilizes this stricter test that *does not* look beyond the text of a statute when considering its facial validity. (See *Garcia v. Four Points Sheraton LAX* (2010) 188 Cal.App.4th 364, 381 [same]; *Sturgeon v. Bratton* (2009) 174 Cal.App.4th 1407, 1418 [same]; *Santillan v. Roman Catholic Bishop of Fresno* (2008) 163 Cal.App.4th 4, 12, fn. 10 [same]; *Action Apartment Ass'n. v. City of Santa Monica* (2008) 166 Cal.App.4th 456, 468 [same]; *Ocean Park Associates v. Santa Monica Rent Control Bd.* (2004) 114 Cal.App.4th 1050, 1062 [same].)

[3] Plaintiffs pluck the word "inevitably" from this sentence and argue that as long as an unconstitutional result *sometimes* occurs, it is "inevitable." But as *Tobe* makes clear, inevitable means that the unconstitutional result must *always* occur. (*Id.* at 1102 [laws are facially invalid only if they "*cannot be applied* without retrenching upon constitutionally protected rights"]) [emphasis added.] As a matter of common sense (not to mention the definition of "inevitable"), an outcome that only sometimes occurs *cannot* be an "inevitable" result.