

No. B258589

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

BEATRIZ VERGARA, ET AL.

Plaintiffs and Respondents.

v.

STATE OF CALIFORNIA, ET AL.

Defendants and Appellants,

and

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

Intervenors and Appellants

Appeal From the Los Angeles County Superior Court
Case No. BC484642, Hon. Rolf M. Treu, Presiding

**APPLICATION FOR LEAVE TO FILE AN AMICUS CURIAE
BRIEF AND BRIEF OF THE
ASSOCIATION OF CALIFORNIA SCHOOL ADMINISTRATORS**

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ASSOCIATION OF CALIFORNIA SCHOOL ADMINISTRATORS

APPLICATION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF

TO THE PRESIDING JUSTICE OF THE SECOND APPELLATE DISTRICT,
DIVISION TWO:

The Association of California School Administrators (ACSA)—a voluntary professional membership association of over 17,000 public school administrators in the State of California—respectfully requests leave to file the attached *amicus curiae* brief in the above-captioned matter, pursuant to Rule 8.200(c) of the California Rules of Court. Rule 8.200(c) provides that "[w]ithin 14 days after the last appellant's reply brief is filed or could have been filed under rule 8.212, whichever is earlier, any person or entity may serve and file an application for permission of the presiding justice to file an *amicus curiae* brief." Appellants filed their respective reply briefs on September 2, 2015, requiring this application and proposed brief to be filed not later than September 16, 2015.

ACSA's 17,000 members represent the majority of California's public school administrators working in the public schools and school districts throughout this State. ACSA's members, most of whom are former classroom teachers, work directly in the schools that serve over six million children. ACSA seeks to provide a voice for the administrators who work closest with the five Education Code statutes held unconstitutional by the trial court (collectively referred to in the litigation as the Challenged Statutes), including administrators who work in personnel, student services, budget, and directly with teachers and students.

The Challenged Statutes directly govern the work of ACSA members and ACSA seeks to share its experience with California's statutory procedures for (1) certificated permanent employment, (2) certificated dismissal, and (3) certificated layoff. ACSA believes the experiences of its members will assist the Court in resolving the critical issues before the Court on this appeal.

Through this *amicus curiae* brief, ACSA seeks to provide the Court with an objective perspective of the "real world" impact the Challenged Statutes create on administrators and California's public school students. Specifically, this brief describes the impediments caused by the Challenged Statutes from the perspective of current and former school site and district administrators, as well as reference to trial testimony in an effort to assist the Court in addressing the issues presented by the appeal. What will become evident to the Court from this *amicus curiae* brief is that the Challenged Statutes, as written and as implemented, collectively and individually, fail to advance the interests of California's public school students.

As California's largest voluntary association of school administrators, ACSA submits this *amicus curiae* on its own behalf. ACSA has not been compensated nor has it received any contribution from any party or counsel for any party for the submission of this brief. ACSA believes the discussion, citations, and points made in the attached *amicus curiae* brief will not be presented by the parties in the case before the Court and

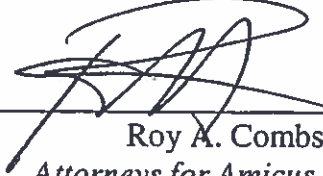
that this brief will assist this Court. This brief has been served on all parties and the proof of service is attached below.

DATED: September 15, 2015

Respectfully submitted,

FAGEN FRIEDMAN & FULFROST, LLP

By: _____



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ASSOCIATION OF CALIFORNIA SCHOOL ADMINISTRATORS

INTRODUCTION

The Association of California School Administrators (ACSA) represents most of the school and district administrators who are directly responsible for providing high quality education to the more than six million children attending public schools in California. The constitutional issues at stake in this litigation are of great importance, and have been fully briefed by the parties and numerous *amici* submissions. In this *amicus curiae* brief, ACSA seeks to provide further clarity regarding the practical impacts of the Challenged Statutes¹ and the manner in which these statutes restrict and impede the ability of school administrators to make employment-related decisions that prioritize the educational interests of school children over the job security interests of employees.

ACSA believes that teachers are the most critical component of the educational experience for our students, and that most California teachers are dedicated, hard-working and effective. But recognizing the value of our teachers in no way provides a defense for the harm caused by the Challenged Statutes. In the very first sentence of their Reply Brief, the Intervenors-Appellants (the two major California teachers unions) make the bold and entirely unsubstantiated claim that “[t]he California Legislature enacted the five statutes challenged in this lawsuit to enable local school districts to attract and retain

¹ For ease of reference, ACSA adopts the nomenclature used by the parties to describe Education Code section 44929.21 as the “Permanent Employment Statute”, Education Code sections 44934, 44938(b) and 44944 as the “Dismissal Statutes”, and Education Code section 44955 as the “Last-In First-Out” (also called “LIFO”) statute. Collectively these are referred to as the “Challenged Statutes.” All statutory references are to the California Education Code unless stated otherwise.

the best possible teachers for the State's schoolchildren."² (Reply Brief of Intervenors-Appellants (I-A Reply) at p. 1.) To the contrary, this brief will demonstrate that the Challenged Statutes grant teachers "permanent status" before they have had an opportunity to demonstrate effectiveness and a long-term dedication to teaching students, and that once granted permanent status it is extremely difficult, if not impossible, to dismiss a teacher for unsatisfactory performance. As a result, although school administrators can often identify a teacher as ineffective and not meeting the needs of students, in most cases that teacher will remain in the classroom or will leave only if persuaded to do so voluntarily through a monetary settlement.

The primary contention of Respondents is that the Challenged Statutes cause direct harm to students, and disproportionate harm to poor and minority students, in violation of the California Constitution. (Respondent's Brief (RB) at pp. 44-50, 99-102.) State-Appellants and Intervenors-Appellants argue instead that any harm to students is not caused by the Challenged Statutes, but by the independent and discretionary actions of school administrators.³ This brief will demonstrate that attempting to place the blame

² There is no dispute that the California Legislature enacted the Challenged Statutes, but Intervenors have no special access to the motivations or intentions that led to the enactment of these statutes over many decades.

³ The State argues "[i]t is possible that, within the neutral framework established by the challenged statutes, local administrators in a particular school or district might make tenure, dismissal, or layoff decisions in some manner that systematically and improperly disadvantaged some class of students." (State Appellants Opening Brief (SAB) at p. 13; see also State Appellant's Reply Brief (S-A Reply) at pp. 19-20.) Intervenors-Appellants CTA and CFT agree, stating the "the impact of the challenged statutes on any student is at most indirect and attenuated because school district administrators, not the challenged statutes, make the teacher assignment and personnel decisions about which Plaintiffs

on the discretionary actions of school administrators is not only misleading, it is flatly wrong. The Challenged Statutes confine and restrict the ability of school administrators to ensure that every California student is taught by a motivated and effective teacher. The manner in which the Challenged Statutes have been interpreted and implemented by courts and state agencies have only compounded this problem.

Numerous school officials testified at the two-month trial before Superior Court Judge Rolf M. Treu, including superintendents, principals, and human resource directors, and each of the administrators cited in this brief are current or former members of ACSA. Their testimony at trial is consistent with the experiences of ACSA members throughout the state. Taken as a whole, the evidence from these school administrators clearly demonstrates that:

- The Permanent Employment Statute denies school administrators sufficient time to evaluate new teachers based on their performance in the classroom and their potential for growth, and forces administrators to decide which teachers will become permanent employees before they have sufficient confidence those teachers can effectively meet the educational needs of students.
- Once teachers become permanent employees, it is nearly impossible for them to be dismissed based on classroom performance—the length of time to complete the process, exorbitant cost, extraordinary procedural requirements, and high

complain.” (Intervenors-Appellants Opening Brief (I-AB) at pp. 45-49 and I-A Reply at pp. 18-21, 29-31.)

evidentiary burdens created by the Dismissal Statutes, that are disconnected from the employment interest at stake, create powerful disincentives to pursuing dismissals based on unsatisfactory performance.

- The flexibility allegedly provided by the LIFO Statute is illusory—the statute does not provide the authority for school administrators to manage layoffs in a manner that allows the retention of highly promising new teachers, nor does it provide a process to prevent significant educational disruption in schools with large numbers of newer teachers when layoffs occur.

The Challenged Statutes collectively have an adverse impact on California students because they do not prioritize effective teaching and learning with respect to the critical decisions to retain or dismiss teachers. ACSA members throughout the state share the frustration voiced by Jonathan Raymond, former Superintendent of Sacramento City USD: “We have to spend considerable energy working around, over and through [the Challenged Statutes] as opposed to simply saying, you know what, our energy should be focused on teaching and improving the lives of children.” (RT 2153:28-2154:4.) If we truly value education as a fundamental right, the interests of our students must take priority over employment disputes among adults.