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

SHARAIL REED et al.,
Plaintiffs and Respondents,

v.

**LOS ANGELES UNIFIED SCHOOL DISTRICT, PARTNERSHIP FOR
LOS ANGELES SCHOOLS,**
Defendants and Respondents,
and
UNITED TEACHERS LOS ANGELES
Defendant and Appellant.

APPEAL FROM LOS ANGELES COUNTY SUPERIOR COURT
WILLIAM F. HIGHBERGER, JUDGE • CASE No. BC432420

**APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF; AMICI
CURIAE BRIEF OF SENATOR BOB HUFF, SENATOR GLORIA ROMERO
(RET.), DEMOCRATS FOR EDUCATION REFORM, COMMUNITIES FOR
TEACHING EXCELLENCE, FAMILIES IN SCHOOLS, LANAI ROAD
EDUCATION ACTION COMMITTEE, REVEREND ERIC P. LEE,
SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE-LOS ANGELES,
RABBI RON STERN, MEMBERS OF THE PUBLIC EDUCATION
ADVOCACY GROUP OF STEPHEN S. WISE TEMPLE, ADAM
KUPPERSMITH, KAREN SYKES-ORPE, MATTHEW J. ORIQUE, AND
LINDI WILLIAMS IN SUPPORT OF RESPONDENTS**

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Defendant and Appellant.

**APPLICATION FOR LEAVE TO FILE AMICI
CURIAE BRIEF**

Under California Rules of Court, rule 8.200(c), Senator Bob Huff, Senator Gloria Romero (Ret.), Democrats For Education Reform, Communities For Teaching Excellence, Families In Schools, Lanai Road Education Action Committee, Reverend Eric P. Lee, Southern Christian Leadership Conference-Los Angeles, Rabbi Ron Stern, Members of the Public Education Advocacy Group of Stephen S. Wise Temple, Adam Koppersmith, Karen Sykes-Orpe, Matthew J. Orique, and Lindi Williams request permission to file the attached amici curiae brief in support of respondents Sharail Reed et al.

The amici curiae comprise a diverse group of policymakers, educational organizations, community leaders, and individual teachers. Senator Huff is the Senate Republican Leader in the California State Senate and represents the 29th Senate District, which covers Los Angeles. As the author of state legislation attempting to address problems stemming from seniority-based hiring practices in California's public education system, and as the California Senate Minority Floor Leader, Senator Huff has a fundamental role and interest in this issue.

Seniority-based layoffs create a number of negative outcomes from a student's perspective including—though not limited to—an asymmetrical impact on students in low-income communities. Given schools with economically disadvantaged students often have a concentration of less experienced teachers, those schools also have large concentrations of teacher layoffs every year. Senator Huff believes that personal economic growth and transcending poverty is closely tied to a quality education. To the degree that seniority-based layoffs create barriers to a quality education for low-income students, the State is perpetuating poverty conditions in these communities. In short, a good school also means good neighborhoods, and an economically prosperous State.

Senator Huff has long been an advocate for improving the quality of schools in California and believes a critical factor for achieving excellence in education for all students is to ensure every classroom is staffed with the best teacher possible. It is

nearly, if not completely, impossible to achieve such a goal under a system of seniority-based hiring policies.

Senator Gloria Romero (Ret.) supports the *Reed* settlement both in her individual capacity and in her capacity as director of Democrats for Education Reform (DFER). In 1998, Senator Romero was first elected to the California State Assembly. In 2001, she was first elected to the California State Senate. She served in the State Senate until 2010. From 2001 to 2008, she was also the Democratic Majority Leader of the State Senate. She represented California's 24th District, which includes parts of Los Angeles County and a number of schools disproportionately impacted by seniority-based reductions in force (RIF's).

Senator Romero is now State Director of the California chapter of Democrats for Education Reform (DFER). DFER is a national organization with offices in Los Angeles dedicated to education policy that puts students first. The organization engages in community outreach, support of policy and policymakers, and political activism to improve educational opportunity for Los Angeles students. In Senator Romero's experience, education policy in California is inseparable from students' civil rights. As a legislator, Senator Romero introduced legislation to reform education policy in California and to improve access to equal education opportunity for minority and low-income students. Both Senator Romero and DFER support the *Reed* settlement because halting seniority-based RIF's in our

most vulnerable schools is crucial to beginning the process of true education equality in California.

Communities For Teaching Excellence (C4TE) is a nonprofit organization committed to closing the achievement gap for thousands of low-income students and students of color who have historically been denied a quality education. Access to an effective teacher can literally make or break a student's chance for success. C4TE's mission is to ensure effective teaching for every student, in every classroom, every year. The organization works with parents, teachers, students and other community stakeholders to help improve teaching effectiveness and to ensure all students—and low-income students and minority students in particular—have access to effective teachers.

Communities for Teaching Excellence supports the *Reed* settlement because seniority-based layoffs destroy the advances made in education equality by laying off dedicated teachers recruited to help turn around Los Angeles' most vulnerable schools. Access to an equal opportunity for an excellent education is every child's civil right. Because the vast majority of junior teachers teach in schools with students from families with the lowest incomes and the most students of color, seniority-based layoffs deprive those students of an equal educational opportunity. This entrenched pattern of inequality will do damage for generations to come if it is not modified. The *Reed* settlement is a balanced approach to supporting teachers, students, families, and their communities, consistent with the

values and mission statement of C4TE. For this reason, Communities for Teaching Excellence supports the settlement.

Families In Schools (FIS) is a Los Angeles-based non-profit whose mission is to engage parents and communities in the lifelong success of their children. Since its inception in 2000, FIS has worked towards improving the educational outcomes of children through authentic parent engagement at school and at home. FIS has developed parent engagement curricula and school staff trainings to help strengthen the partnership between families and schools in supporting student achievement. In addition, FIS supports policies and practices that ensure schools provide a quality education to all children.

Based on its work with thousands of families in Los Angeles, FIS knows that families want a quality public education system that provides their children a road to life-long success. Unfortunately, many of these communities (particularly low-income and communities of color) do not have access to a quality education in their communities. The *Reed* settlement is an important legal and accountability milestone that creates an environment that favors the protection of low-income communities when it comes to teacher layoffs. The settlement is integral in guaranteeing quality teachers for the neediest communities by limiting the high teacher turnover. The UTLA's decision to appeal the decision approving the settlement has interrupted the progress made toward ensuring that all children have access to a high-quality education, regardless of what neighborhood or school they are in.

Lanai Road Elementary School's Education Action Committee (EAC) also supports the *Reed* settlement. Lanai Road Elementary School is a public Los Angeles Unified School District (LAUSD) K-5 California Distinguished School serving 550 students this year. The EAC is an advocacy committee that formed in April 2011 to inform parents, teachers, students and community members about the issues impacting our public schools. When beloved Lanai Road Elementary teachers were threatened with layoffs, parents and teachers joined together to advocate for the school and its students. Now the EAC's focus is to move beyond the concerns of its school to establish a broader education community. Given the current economic climate, it makes sense for schools to work together and share ideas and resources. The EAC creates opportunities for collaboration, communication about shared values, and for sharing resources.

Lanai Road Elementary School is not a school covered by the *Reed* settlement. Nevertheless, Lanai Road EAC supports the settlement because its members understand first-hand the devastating impact teacher layoffs can have on a school community and its students. When teachers lose their jobs due to budget cuts, the "last-in, first-out" policy preferred by the UTLA means that the newest teachers—not the least effective teachers—are pushed out of the teaching profession. Unfortunately, schools in less affluent communities find it hardest to retain senior teachers, so year after year these schools lose the most teachers. "Teacher churn" is destabilizing to schools and detrimental to students. Disadvantaged students are

the ones who need the most support and would benefit the most from stability. The *Reed* settlement has helped raise awareness that our most vulnerable public school students should not be asked to bear the brunt of these misguided policies.

Reverend Eric P. Lee also supports the *Reed* settlement. Reverend Lee has been President and Chief Executive Officer of the Southern Christian Leadership Conference-Los Angeles (SCLC-LA) since 2009. In this capacity, he has carried out the mission of the SCLC-LA to promote the philosophy of Dr. Martin Luther King, Jr., of progressive social change. The goal of the organization is to realize the dream of freedom, justice, peace and equality for all by recognizing the inalienable dignity and worth of every human being. They accomplish this through the continued advocacy of justice for all people, regardless of social status, religious belief, gender, sexual orientation, or ethnicity.

In Reverend Lee's experience, traditional public education is failing and the results are evident. Seventy percent of all ninth graders are below proficient in mathematics and English language arts. Fifty percent of male African American and Latino students drop out of high school. Only 10 percent of high school graduates complete the courses required for application to the University of California and California State University. The African American community in California has responded by enrolling its children in public charter schools (over 36 percent in Los Angeles).

It has become absolutely clear to Reverend Lee and the SCLC-LA that receiving a high quality education is the civil

rights issue of our day. The primary hindrance to achieving equality of opportunity is the failure of traditional public schools to provide an equal quality education to all children, and particularly to children from low-income high-minority communities. Consequently, for the last three years Reverend Lee and the SCLC-LA have focused on advocating for a quality educational choice for every student in every community.

In 2008 Reverend Lee co-produced a ninety-minute documentary titled "Who Is Accountable," examining and exposing the inequitable results of the public school funding formula, which includes a huge resource disparity for many schools, an inequitable distribution of effective teachers, a lack of accountability for teacher and school performance, and the disproportionate percentage of funds to support administration rather than the school site. For Reverend Lee and the SCLC-LA, the *Reed* settlement is a step in the right direction for remedying this pattern of racial and socioeconomic inequality in access to education.

Rabbi Ron Stern is the Director of Social Justice initiatives at Stephen S. Wise Temple. He is deeply engaged in advocacy for all citizens of Los Angeles, seeking to engage the Jewish community as increasingly committed partners of all faiths and ethnicities, working to bring justice and dignity to all in our community. Among the most vital issues is the quality of our public schools and education for all children which is why he supports the *Reed* settlement.

The Public Education Advocacy Group of Stephen S. Wise Temple is a group of individuals committed to raising awareness about the inequalities that exist in our Public School Education system and seek to create the opportunity for all children in Los Angeles to receive a fair and equitable education. These individuals support the *Reed* settlement because it's a small step towards helping to solve a large issue.

Many veteran Los Angeles teachers support the *Reed* settlement as well. Adam Kuppersmith has been a teacher with LAUSD for thirteen years. Because of his seniority, he was not at risk in the LAUSD's recent RIF's. He currently teaches English at John Muir Middle School in South Los Angeles, and has spearheaded numerous efforts at education reform in LAUSD. For his entire career, Mr. Kuppersmith has taught at underprivileged and minority schools. He actively sought out teaching positions at those schools to improve the quality of education and bring it up to par with high-wealth, high-performing Los Angeles schools. He sought out his first teaching position at Henry Clay Middle School, which was one of the lowest-performing schools in the state. During Mr. Kuppersmith's twelve years at Henry Clay, he witnessed many promising young teachers at the beginning of their careers being systematically laid off as a result of their lack of seniority. In Mr. Kuppersmith's experience, this perpetuated a system that undermined the basic goal of education: to provide the best education possible for the students.

After the *Reed* settlement was approved, Mr. Koppersmith sought out a teaching position at John Muir Middle School, one of the schools targeted by the settlement, to be a part of the reform process there. Following *Reed*, the teachers at the school were hired for their enthusiasm, content knowledge, and desire to make real change in the South L.A. environment. These teachers aimed to turn the school around and bring real opportunity to the deserving students there. As a result, a vast number of teachers at John Muir are now young “crusaders” for education, devoted to putting their students first. These committed individuals are precisely what schools like John Muir needs to help its students; the settlement has had a transformative effect on the school environment and student performance. Among other improvements, Muir has already seen significant gains on its District Periodic Assessments since the settlement was implemented.

All of these improvements will be destroyed if the John Muir teaching staff cannot be retained. If the *Reed* settlement is not upheld, a huge portion of these staff will be laid off. In turn, the continuity at the school site in planning, team building, and student-teacher relationships will be undermined, and the school will once again be starting off at square one. The disruption to student life and student achievement would be catastrophic. The *Reed* settlement has enabled Mr. Koppersmith’s school to provide much-needed stability in the students’ lives and to provide them with an education that will give them a window to the future. As an educator who puts student first, Mr.

Kuppersmith supports the *Reed* settlement because he believes if his students are given the same opportunities as other students, they can be just as, or even more, successful.

Matthew J. Orique is also a teacher in LAUSD. During his five years as a teacher he has worked in two South Los Angeles schools, Fremont and John Muir middle schools. Both were Program Improvement schools and both received Title I and Quality Education Investment Act (QEIA) funding. Mr. Orique taught at those schools before the *Reed* settlement came into play, and they suffered annual decimation caused by seniority-based RIF's. As a science teacher, Mr. Orique remained unaffected by the RIF's; however, he witnessed first-hand the trauma due to the instability caused by seniority-based RIF's. The RIF's disbanded collaborative small learning communities that took years to build, caused the schools to have to make many staffing decisions at the last minute, employ long-term substitutes and displaced teachers with no connection to or interest in the school or community, and precluded newly staffed teachers from planning ahead of time in their new positions.

The schools in Mr. Orique's neighborhood grapple with teacher retention even in the best of times, but seniority-based RIF's compound the problem. When thousands of RIF notices are sent by the district each year, his colleagues, who are young, committed, and energetic, are released from the district. The school's remaining stakeholders are left to deal with the resulting chaos of losing many of their best, brightest, and most highly qualified educators. In Mr. Orique's experience, the deep, annual

RIF's in the district's highest-need schools render them unable to comply with their No Child Left Behind Act proficiency benchmarks. Each year, he witnesses the professional learning communities he and his colleagues diligently work to develop being destroyed for seniority's sake.

Karen Sykes-Orpe is an eleven-year veteran teacher at John Muir Middle School who was voted LAUSD's teacher of the year in 2010. Ms. Orpe feels her job is to provide a high-quality education for our most socio-economically challenged students. The deep desire to make a difference in a child's life through education is fraught with frustration and constant obstacles, which is why Ms. Orpe sees the need for highly motivated and committed teachers in our schools. Ms. Orpe often looks to new teachers to help create the best learning environments because they embody the spirit of innovation and relentless pursuit of excellence needed to truly make a difference in the lives of our students. However, students in South Los Angeles are disproportionately affected by layoffs, which remove new, motivated teachers from the classroom

In Ms. Orpe's experience, UTLA's policies on seniority do not protect our students' rights to an equal education. Furthermore, UTLA does not fairly represent all constituents covered by the *Reed* settlement. The *Reed* case was designed to minimize the turbulent effect of layoffs on vulnerable schools, yet UTLA continues to challenge the case's fair resolution. Ms. Orpe's school, John Muir Middle School, was reconstituted under the Public School Choice process. As a result, John Muir has a huge

number of new, motivated, and amazingly innovative teachers on staff. These teachers were selected to create a reform-minded campus: to radically improve the lives of our students, families and community members. If UTLA is successful in overturning the *Reed* settlement, Ms. Orpe's school will lose those teachers and her students will lose that opportunity for real success.

Lindi Williams is a math and science teacher at Gabriella Charter School. Ms. Williams taught in LAUSD for six years, working in South Central Los Angeles at Angeles Mesa Elementary, a PI-4 failing school. She was pink-slipped three years in a row, and finally laid off at the end of June 2011. Ms. Williams faced joblessness over that summer, and ultimately accepted a job offer at Gabriella Charter School. In August, LAUSD offered Ms. Williams another teaching job, which she declined because she had obtained a more secure position at Gabriella.

Ms. Williams supports the *Reed* settlement because she has witnessed first-hand the harmful effects on both students and teachers of the ongoing layoff and rehiring of teachers in LAUSD. LAUSD is losing its best teachers because of its seniority-based layoffs and the layoffs are harming the most vulnerable schools, such as Angeles Mesa Elementary, by forcing them to bear the burden of the majority of layoffs in the district.

As counsel for amici, we have reviewed the briefs filed in this case and believe this court will benefit from additional briefing. We have attempted to supplement, but not duplicate, the parties' briefs.

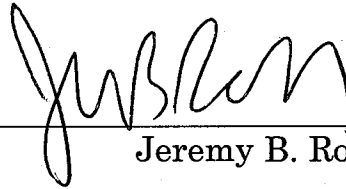
This application is timely. It is being submitted within 14 days of the February 17 filing of appellant's reply brief. (See Cal. Rules of Court, rule 8.200(c)(1).)

Accordingly, amici request that this court accept and file the attached amici curiae brief.

March 1, 2012

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AMICI CURIAE BRIEF

INTRODUCTION

This amici curiae brief highlights the voices and views of dedicated Los Angeles public school teachers, community leaders, educational organizations, and policymakers who strongly believe that the top priority in education policy must be to ensure that every child receives a quality education. That goal is much more difficult to achieve in these challenging economic and fiscal times in which the Los Angeles Unified School District, faced with severe budget cuts, has engaged in significant teacher layoffs.

Under its contract with United Teachers Los Angeles (UTLA), the school district was prepared to institute the layoffs on a pure seniority-basis. Continuing the practice of pure seniority-based layoffs in all schools causes especially severe consequences to the children who attend the poorest and already lowest-performing schools. In those schools, it is already much more difficult to retain quality teachers and, even before any layoffs, teacher turnover has long been higher than in other schools. Consequently, when seniority-based layoffs occur in those schools, a higher percentage of teachers are affected because the schools already have a disproportionate number of newer teachers due to their existing turnover. This exceedingly high level of teacher turnover causes substantial disruptions in student learning as resources are spent in training new teachers instead of focusing on student learning. The result in these most

vulnerable schools has been aggravated levels of teacher turnover, increased reliance on misassigned teachers to teach subjects in which they are not certified, and increased use of substitute teachers to babysit classes in the absence of permanent teachers.

In this appeal, UTLA seeks to overturn a settlement agreement between the Los Angeles Unified School District and a group of poor and mostly minority students attending the lowest-achieving schools in the district. Under the settlement agreement, the school district will retain qualified teachers in the identified lowest-achieving schools and will not be required to lay them off simply because they have less seniority. This settlement is designed to alleviate substantial equal protection violations suffered by these students by helping to ensure that teacher layoffs are more equitably spread across the district so that poorer and mostly minority students are no longer disproportionately and unconstitutionally harmed by district-wide layoffs.

Instead of joining with parents, students, and teachers to more equitably fashion layoffs and to protect the equal protection rights of poor and minority students, UTLA seeks to set aside this important, albeit modest, education reform. Henry Adams once said that "a teacher affects eternity; he can never tell where his influence stops." (Adams, *The Education of Henry Adams* (1907) p. 300.) The settlement in this case recognizes the vital importance of maintaining a stable group of competent teachers to provide for a rich learning environment for students.

Unfortunately, the appeal in this case by UTLA would make for the predominantly poor and minority student plaintiffs an eternity more like Dante's *Inferno* rather than Dante's *Paradiso* by depriving them of the teachers they desperately need to grow into the adults we all hope they will become.

LEGAL ARGUMENT

I. THE SUPERIOR COURT CORRECTLY CONSTRUED THE EDUCATION CODE TO BAR SENIORITY-BASED LAYOFFS THAT THREATEN THE EQUAL PROTECTION RIGHTS OF STUDENTS.

A. Education Code section 44955, subdivision (d)(2), unambiguously requires that any seniority-based layoffs yield to the equal protection rights of students.

This brief expresses the viewpoints held by the vast majority of educators and policymakers who strongly believe that “[t]he reason for the creation and support of the public schools” is “the ‘benefit of pupils and resulting benefits to their parents and to the community at large, and not the benefit of teachers[.]’” (*Stuart v. Bd. of Ed. of City & County of San Francisco* (1911) 161 Cal. 210, 213.) In other words, “the purpose of the educational system . . . is to enable each child to develop all of his or her own potential.” (Ed. Code, § 33080; see also *Payroll Guarantee Ass’n*

v. Bd. of Ed. of San Francisco Unified Sch. Dist. (1945) 27 Cal.2d 197, 203 [the primary purpose of public schools is education].)

Consistent with this vital mission to educate children, the Education Code provides that public school districts may deviate from the statutory scheme of seniority-based layoffs (RIF's) “[f]or purposes of maintaining or achieving compliance with constitutional requirements related to *equal protection* of the laws.” (Ed. Code, § 44955, subd. (d)(2), emphasis added.) As reflected by the plain language of the statute, the superior court here properly construed this provision to require a school district to deviate from seniority-based layoffs if those layoffs would deny equal protection to students—not just, as the UTLA contends, if those layoffs would deny equal protection to teachers. (23 AA 5946.)

It is well settled in California that if the text of a statute is clear and unambiguous, a court's inquiry into the meaning of the statute ceases and the plain meaning governs. (*Green v. State of California* (2007) 42 Cal.4th 254, 260 [“If the plain language of a statute is unambiguous, no court need, or should, go beyond that pure expression of legislative intent”]).) A statute is ambiguous only if it is capable of two reasonable constructions. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 776.)

In this case, the plain text of Education Code section 44955, subdivision (d)(2) (section 44955, subdivision (d)(2)), is unambiguous. It does not single out teachers or any other select group for protection, but instead uses the unqualified and all-encompassing phrase “constitutional requirements related to

equal protection of the laws.” (Ed. Code, § 44955, subd. (d)(2).) Thus, the provision is susceptible to only one reasonable construction—that a RIF seniority plan must be altered to accommodate all equal protection rights, including those of students, not just the equal protection rights of teachers. Indeed, the UTLA’s contrary construction echoes the specious adage that “all [people] are equal, but some are more equal than others.” (See, e.g., *Graham v. Long Island R.R.* (2d Cir. 2000) 230 F.3d 34, 36 [referencing Orwell, *Animal Farm* (1977) p. 134].)

UTLA points to statements by a legislative analyst (see AOB 44) and an Assembly Member (see AOB 46) that allegedly show what the Legislature had in mind when it passed section 44955, subdivision (d)(2). But the plain text of the statute, not one-off remarks of individual analysts or legislators, is the better guide to the Legislature’s intent. (*Sabi v. Sterling* (2010) 183 Cal.App.4th 916, 934 [“When a statute is unambiguous, its language cannot be expanded or contracted by the statements of individual legislators or committees during the course of the enactment process”].) The legislative analyst and single assembly member could not speak on behalf of the Legislature as a whole, and their isolated statements cannot be used to contradict the statute’s plain-text meaning.

UTLA also argues that the statute is limited to discrimination on the basis of a suspect classification. (See ARB 30.) But UTLA’s argument ignores the statute’s language. Section 44955, subdivision (d)(2), does not mention “suspect classifications,” as UTLA suggests, but instead uses the broad

phrase “constitutional requirements related to equal protection of the laws.” (Ed. Code, § 44955, subd. (d)(2).) This broad language clearly applies here and precludes any suggestion that the Legislature tacitly intended the statute to have a narrower application than that provided for by its plain text.

UTLA also argues it has a statutory “right” to seniority-based layoffs regardless of the unconstitutional effect on students. (ARB 37-38.) But the Legislature clearly disagreed when it required that any seniority-based layoffs yield to the equal protection rights of students. (Ed. Code, § 44955, subd. (d)(2).)

The plain text of the statute must govern, and it states that the seniority-based RIF scheme must yield if it would threaten the equal protection rights of any group—particularly those of students in low-income schools.

B. When enacting section 44955, subdivision (d)(2), the Legislature was acutely aware of the well-entrenched right of California public school students to equal protection in their access to education.

California courts have long held that when the Legislature enacts a statute, it is “presumed to be aware ‘ ‘of judicial decisions already in existence, and to have enacted or amended a statute in light thereof.’ ’” (*People v. Giordano* (2007) 42 Cal.4th 644, 659 (*Giordano*); see also *Hypertouch, Inc. v. ValueClick, Inc.* (2011) 192 Cal.App.4th 805, 828 [“Generally, when interpreting a

statute, courts presume that Congress is aware of the legal context in which it is legislating. [Citations.] Congress is predominantly a lawyer's body, and it is appropriate for us to assume that our elected representatives . . . know the law" (internal quotation marks omitted)].)

The fundamental right of California public school students to equal protection in their access to education was well entrenched at the time the Legislature enacted section 44955, subdivision (d)(2), in 1983. (See *Serrano v. Priest* (1971) 5 Cal.3d 584, 589 (*Serrano I*.) In *Serrano I*, the Supreme Court recognized that laws creating a disparity in access to education between high-income and low-income students violate the Equal Protection Clause of the California Constitution (Cal. Const., art. I, § 7). (*Serrano I*, at pp. 589, 596, fn. 11.) Two years later, the United States Supreme Court held that the Texas system of school financing did not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. (*San Antonio School District v. Rodriguez* (1973) 411 U.S. 1, 55 [93 S.Ct. 1278, 36 L.Ed.2d 16].) But the California Supreme Court subsequently reaffirmed its holding in *Serrano I* that under the California Constitution the right to an education in public schools is a fundamental interest that cannot be conditioned on wealth. (*Serrano v. Priest* (1976) 18 Cal.3d 728, 762-763 (*Serrano II*.)

The *Serrano* cases thus established in 1971—and reaffirmed in 1976—that the Equal Protection Clause extends to students seeking access to public school education. According to

well-established principles of statutory interpretation, the Legislature was deemed to be aware of the scope of the Equal Protection Clause in light of the *Serrano* decisions and to have legislated consistent with those decisions when, in 1983, it enacted section 44955, subdivision (d)(2), requiring seniority-based RIF's to give way to alternative methods of determining layoffs consistent with equal protection concerns. (See *Giordano, supra*, 42 Cal.4th at p. 659.)

Moreover, the Legislature was not merely constructively aware of the *Serrano* decisions—it was acutely aware of those decisions and had actively grappled with their implications. *Serrano* had a profound impact on the California public education system. The Legislature was forced to change the school funding law, ultimately passing AB 65 in 1977 to comply with the Supreme Court's holding in *Serrano*. (Fischel, *How Serrano Caused Proposition 13* (1996) 12 J.L. & Pol. 607, 627-632 [documenting the Legislature and Governor Brown's reactions to the *Serrano* decisions]; Stark & Zasloff, *Tiebout and Tax Revolts: Did Serrano Really Cause Proposition 13?* (2003) 50 UCLA L.Rev. 801, 811 [in 1977, "the state legislature responded by enacting AB 65, the measure intended to satisfy *Serrano II*'s mandate"].) After the passage of Proposition 13 in 1978, which affected the viability of AB 65 as a solution, the Legislature was actively engaged with addressing *Serrano* well into the 1970's and 1980's. (See, e.g., Fischel, *supra*, 12 J.L. & Pol. at pp. 627-634.) The Legislature was not merely aware of *Serrano*—it was consumed by it for years.

UTLA seeks to distinguish *Serrano* by arguing that the equal protection violation identified in that case “was premised upon evidence of discrimination *on the basis of a suspect classification.*” (ARB 30.) But *Serrano* in fact turned on issues remarkably similar to those here: a disparate impact based on wealth (a suspect classification) over access to education (a fundamental right). (*Serrano II, supra*, 18 Cal.3d at p. 766 [“Because the school financing system here in question has been shown . . . to involve a suspect classification (insofar as this system , like the former one, draws distinctions on the basis of district wealth), and because that classification affects the fundamental interest of the students of this state in education, . . . the school financing system before us must be examined under our state constitutional provisions with . . . strict and searching scrutiny”].) There is simply no evidence the Legislature intended to draft section 44955 in a way that would exclude from its ambit equal protection rights to education, or that the Legislature intended to circumvent the Supreme Court’s contemporaneous holdings in the *Serrano* cases.

To the contrary, this history shows that the plain text of section 44955, subdivision (d)(2), says what it means—that seniority-based RIF schemes must yield to *all* “constitutional requirements related to equal protection of the laws.” In the years immediately prior to enacting that statute, the Legislature had actively wrestled with the method for guaranteeing students equal protection in their access to educational opportunity. As a result, the legislators certainly had students’ rights at the

forefront of their minds when drafting section 44955. And in drafting that section, the Legislature used broad language not limited to the equal protection rights of any group. The only logical conclusion is that the Legislature intended—consistent with the constitutional mandate—to guarantee the equal protection rights of all groups, including students.

II. THE SENIORITY-BASED LAYOFFS HERE VIOLATED THE EQUAL PROTECTION RIGHTS OF LOW-INCOME STUDENTS.

A. The Equal Protection Clause requires that state policies impairing access to education based on district residence be subject to strict and searching judicial review.

As discussed above, section 44955, subdivision (d)(2), of the Education Code requires that the Los Angeles Unified School District (LAUSD)'s budget-induced RIF's be carried out in a manner that safeguards students' constitutional rights. But even absent that statutory provision, the RIF scheme would have to yield to the constitutional rights of students.¹

¹ Education Code section 44955, subdivision (d)(2), does not predicate action on a finding of a constitutional violation but instead more broadly allows a district to act “[f]or purposes of maintaining or achieving compliance” with equal protection rights. (Ed. Code, § 44955, subd. (d)(2).) Accordingly, the showing required to strike down a planned layoff under section (continued...)

The California Constitution guarantees to all California public school students a fundamental right to “basic equality of educational opportunity.” (*Butt v. State of California* (1992) 4 Cal.4th 668, 685 (*Butt*.) State classifications impacting this fundamental right are subject to strict and searching judicial review. “[I]n applying our state constitutional provisions guaranteeing equal protection of the laws we shall . . . apply strict and searching judicial scrutiny’ to claims of discriminatory educational classifications.” (*Id.* at p. 683, quoting *Serrano II, supra*, 18 Cal.3d at p. 767.)

“Because access to a public education is a uniquely fundamental personal interest,” a disparate impact in access to education can violate this equal protection guarantee “even when the discriminatory effect was not produced by the purposeful conduct of the State or its agents.” (*Butt, supra*, 4 Cal.4th at p. 681.) No further showing of state action is required. (See *ibid.*)

In *Serrano I*, the Supreme Court applied strict scrutiny in reviewing laws governing the financing of public schools because those laws discriminated on the basis of a suspect classification—wealth—and implicated the fundamental right to a public education. (*Serrano I, supra*, 5 Cal.3d at pp. 589, 597, 614-615.) The Supreme Court explained that its holding would “further the

(...continued)

44955, subdivision (d)(2), is less than that required to strike down state action under the Equal Protection Clause. But the superior court’s findings here would be enough to show either.

cherished idea of American education that in a democratic society free public schools shall make available to all children *equally* the abundant gifts of learning.” (*Id.* at p. 619, emphasis added.)

In *Butt*, the Supreme Court considered a plan to close a school district six weeks before the end of the official school year. (*Butt, supra*, 4 Cal.4th at pp. 673-674.) Because of the early closing, teachers would have to curtail instruction in subjects such as quadratic equations, trigonometry, foreign-languages, and creative writing. (*Id.* at p. 687 & fn. 16.) These subjects were important for advancing to the next grade, earning a high school diploma, excelling on the SAT, and qualifying for college admission. (*Ibid.*) The court applied strict scrutiny in reviewing the plan because it would have discriminated on the basis of geography and affected the fundamental right to education. (*Id.* at pp. 685-686.) Strict scrutiny review was required even though geographic location was not itself a suspect classification. “[H]eightedened scrutiny applies to State-maintained discrimination whenever the disfavored class is suspect *or* the disparate treatment has a real and appreciable impact on a fundamental right or interest.” (*Ibid*; see also *id.* at p. 692 [“[D]enials of basic educational equality on the basis of district residence are subject to strict scrutiny”]; accord, *Serrano I, supra*, 5 Cal.3d at p. 612 [“where fundamental rights . . . are at stake, a state’s general freedom to discriminate on a geographical basis will be significantly curtailed by the equal protection clause”].)

The Supreme Court made no distinction between intradistrict and interdistrict disparity. As the court has

explained, “ ‘accidents of geography and arbitrary boundary lines of local government can afford no ground for discrimination among a state’s citizens.... If a voter’s address may not determine the weight to which his ballot is entitled, surely it could not determine the quality of his child’s education.’ ” (*Butt, supra*, 4 Cal.4th at pp. 682-683, quoting *Serrano I, supra*, 5 Cal.3d at p. 613.)

Under the exacting standard of strict scrutiny, such a classification cannot survive unless it is the least restrictive alternative and is necessary to achieve a compelling state purpose. (*Serrano I, supra*, 5 Cal.3d at p. 597.)

As we explain, and as the authorities above establish, the superior court was correct to approve the parties’ settlement agreement because the seniority-based RIF’s deprived students in low-income LAUSD schools of equal access to public school education in violation of the Equal Protection guarantee of the California Constitution.

B. Pure seniority-based layoffs impair access to education by exacerbating high teacher turnover and teacher misassignments in low-income schools.

Pure seniority-based RIF’s in the LAUSD caused disparity in teacher turnover that harmed students at low-income schools. These disparate rates of turnover resulted in both the wealth inequality that was condemned in *Serrano I* and *II* and the geographic disparity that was rejected in *Butt*. For both

independent reasons, those layoffs violated the equal protection rights of students.

As the superior court correctly found, seniority-based RIF's create a disparity among schools within the LAUSD, with the poorest, most vulnerable schools bearing the brunt of the layoffs. (23 AA 5971, fn. 10, 5976-77; see also 1 AA 64; 17 AA 4117.) Teachers with seniority tend to aggregate in high-wealth schools. (23 AA 5976, 5979; see also Barrett, *On the Backs of Children: How UTLA's teacher-layoff rules are devastating inner-city L.A. schools*, L.A. Weekly (May 13, 2010) <<http://www.laweekly.com/2010-05-13/news/on-the-backs-of-children/>> [as of Feb. 24, 2012] (hereafter Barrett, *On the Backs of Children*) [inner city schools already suffer from high teacher turnover because teachers prefer to work in areas with less crime, better educated students, and nicer surroundings].) By contrast, junior teachers tend to aggregate at low-income, low-ranked schools. (23 AA 5976, 5979; see also Sepe & Roza, *The Disproportionate Impact of Seniority-Based Layoffs on Poor, Minority Students* (May 20, 2010) at pp. 2-3 (hereafter Sepe & Rosa, *Disproportionate Impact*) [nationwide statistics confirm the highest poverty schools had the highest percentage of teachers with less than four years of experience].) Because low-wealth schools had the most junior teachers, they were disproportionately impacted by seniority-based RIF's. And since students' addresses largely determined the schools they attended, seniority-based RIF's also created a geographical disparity.

Statistical evidence confirms that where pure seniority-based layoffs are used in California, high poverty schools will lose 30 percent more of their teachers than wealthier schools, and schools with the highest concentration of minority students will lose 60 percent more of their teachers than schools with the lowest concentration of minority students. (Sepe & Roza, *Disproportionate Impact*, at pp. 4-5; see also *id.* at p. 4 [in wealthier schools, 8 out of 100 teachers had fewer than 2 years of experience, while in the highest poverty schools almost 11 out of 100 teachers had fewer than 2 years of experience]; *id.* at pp. 4-5 [in schools with the fewest minority students, 8 of 100 teachers had fewer than 2 years of experience, but in the highest minority schools, 13 out of 100 had such experience].)

In Los Angeles, the effect is even more pronounced than in the rest of the state. In schools with the lowest concentration of minority students, only 8.3 percent of teachers are affected by such layoffs, whereas 16.2 percent of teachers are affected in schools with the highest concentration of minority students. (Sepe & Roza, *Disproportionate Impact*, at p. 8; see also Lake et al., *Will Seniority-Based Layoffs Undermine School Improvement Efforts in Washington State?* (March 2011) Center on Reinventing Public Education <http://www.crpe.org/cs/crpe/download/csr_files/brief_crpe_Seniority_Mar11.pdf> [as of Feb. 24, 2012].) [noting similar problems with seniority-based layoffs in Washington state disproportionately affecting poor and minority schools].)

Studies analyzing the effect of pure seniority layoffs found that such layoffs disproportionately impact poor and minority

students. (See Goldhaber & Theobald, *Assessing the Determinants and Implications of Teacher Layoffs* (Dec. 2010) Nat. Center for Analysis of Longitudinal Data in Education Research, at p. 31 (hereafter Goldhaber & Theobald, *Assessing the Determinants*); see also Hahnel & Jackson, *Learning Denied: The Case for Equitable Access to Effective Teaching in California's Largest School District* (Jan. 2012) The Education Trust—West <<http://www.edtrust.org/sites/edtrust.org/files/ETW%20Learning%20Denied%20Report.pdf>> [as of Feb. 24, 2012] (hereafter Hahnel & Jackson, *Learning Denied*.)

Moreover, even before any layoffs, the low-wealth schools in the LAUSD already suffered from higher teacher turnover rates. Indeed, 30 percent of the bottom-ranked LAUSD schools had new-teacher turnover rates of 30 percent or more. (23 AA 5964.) This figure was about *twice* the turnover rate in high-wealth, highly-ranked LAUSD schools. (23 AA 5965.) The seniority-based RIF's only exacerbated this inequality between low-wealth and high-wealth schools.

C. Students in low-income schools are negatively affected by the disparity in teacher turnover created by district-wide pure seniority-based layoffs.

The superior court found that high teacher turnover severely diminished students' access to basic educational opportunities in several fundamental ways. First, high turnover disrupted the school's infrastructure and created bureaucratic

chaos: the school's resources were spent training a new crop of teachers every year rather than on other priorities; teachers were unable to engage in ongoing collaboration; teacher-student relationships were fractured or did not form at all; and schools were not able to develop a consistent infrastructure and community. (23 AA 5965-5966; see also, e.g., 17 AA 4086-4087 [improving stability and continuity in school infrastructure improves teacher retention].)

Second, high teacher turnover led to instruction by misassigned teachers (i.e., teachers who were not certified to teach a particular subject, such as English teachers teaching Geometry). (23 AA 5966-5967; see 1 AA 62; 17 AA 4087-4088.) The problem of misassigned teachers was significant. As the superior court found, "the proportion of correctly assigned teachers is the most significant predictor of state-level average student achievement in mathematics and reading." (23 AA 5948-5949.)

The Legislature has attempted to address the problem of teacher misassignment by requiring monitoring to avoid teacher misassignment in low-ranked schools (i.e., schools with an Academic Performance Index in the lowest three tiers). (See Ed. Code, § 44258.9, subd. (c)(4)(A).) These were the same schools targeted by the settlement. (See 23 AA 5991-5993.) The Legislature has even found it necessary to authorize sanctions against schools that misassign over 5 percent of teachers. (See Ed. Code, § 44258.9, subd. (e)(4).) Yet teacher misassignments

remained a particular problem in the LAUSD schools targeted by the settlement. (See, e.g., 1 AA 64.)

Third, high teacher turnover also led to instruction by inadequately credentialed teachers; it increased the use of short-term substitute teachers who lacked training, content knowledge, and experience in effective teaching practices and classroom control; and it alienated students who were unable to form relationships with teachers because of the constant turnover. (23 AA 5966-5970; see 1 AA 62; 17 AA 4087-4088.)

Contrary to what UTLA contends, the record shows more than a debatable “*correlation*” between high teacher turnover and poor academic outcomes. (See ARB 5.) As the record reflects, seniority-based layoffs caused a dramatic increase in teacher turnover in low-income schools (1 AA 64, 17 AA 4117, 23 AA 5971, fn. 10, 5965-5967, 5976; *ante* section II-B), and impeded attempts to adequately restaff those schools (16 AA 4046-4047; 23 AA 5972-73, 5978, 5980). In turn, these effects contributed significantly to the barriers to a quality education. (E.g., 1 AA 62 [high teacher turnover precludes schools from retaining an effective and stable teaching force, which is “critical” for educational opportunity], 17 AA 4087-4099 [the instability inherent in high teacher turnover itself destroys academic opportunity], 4090-4091 [teacher misassignment and use of long-term substitutes impedes learning], see 23 AA 5965 [superior court found that “high teacher turnover devastates educational opportunity”], 5968-5969 [high teacher turnover renders schools unable to deliver quality educational content], 5971 [“budget-

based layoffs can exacerbate already suspect conditions, contributing to a constitutional violation”].) UTLA itself even admitted below that “high levels of teacher turnovers are *linked to causing* low academic achievement” (23 AA 5970 [citing UTLA’s Opp’n. to Joint Mot. For Prelim. Approval 1] [internal quotation marks omitted; emphasis added].) As the foregoing evidence demonstrates, seniority-based RIF’s are a *contributing cause* to poor academic outcomes.

Independent studies confirm that strict seniority-based layoffs compound poor academic outcomes in low-income and low-performing schools. Using data from New York City, researchers examined the effect of seniority-based layoffs on the quality of teaching. (See Boyd et al., *Teacher Layoffs: An Empirical Illustration of Seniority vs. Measures of Effectiveness* (July 2010) Nat. Center for Analysis of Longitudinal Data in Educational Research (hereafter Boyd et. al., *Teacher Layoffs*).) In that study, the authors concluded that pure seniority-based layoffs led to a reduction in teacher quality for students. (*Id.* at pp. 6-7.)

A similar study using data from Washington State found even more significant results demonstrating the harm to children from pure seniority-based layoffs. (See Goldhaber, *A Worm in the Apple? The Implications of Seniority-Based Teacher Layoffs* (Jan. 13, 2011) Nat. Research Inst., Working Paper.) The study found that 36 percent of those teachers who received layoff notices under a pure seniority-based plan were estimated to be more effective than the average teacher who did not receive a notice. (*Ibid.*) The effect for students is roughly equivalent to the

difference between having a teacher at the 16th percentile of effectiveness rather than the 50th percentile. (*Id.* at p. 17.)

Yet another recent study regarding LAUSD schools confirmed that seniority-based layoffs are harmful to students in poor, minority, and low-performing schools where seniority-based layoffs are concentrated. (Hahnel & Jackson, *Learning Denied*.) That study found that in 2009, pure seniority-based layoffs “resulted in the removal of dozens of high value-added² teachers from the highest-need schools[,]” which were already 50 to 66 percent more likely to have low-value added teachers (in English language arts and mathematics, respectively). (*Id.* at pp. 2, 9, 11-12.) “Because newer teachers are more often concentrated in high-poverty schools, this means that high-poverty schools were more likely to lose teachers to layoff. In fact, in 2010, a highest poverty quartile school was almost 60 percent more likely to lose a teacher to layoffs than a school in the bottom poverty quartile.” (*Id.* at p. 11.)

“Seniority-based layoffs result in promising, inexperienced teachers losing their positions, while their ineffective, but more senior peers continue to teach. As a result, seniority-based layoffs to meet budget shortfalls are more detrimental to students than would be a system that laid off the least effective teachers first.” (Boyd et al., *Teacher Layoffs*, at pp. 1-2.) A pure

² The study assessed whether a teacher was “high value-added” by looking to that teacher’s influence on improving student performance on statewide standardized subject-matter benchmarks as compared to each student’s scores in previous years. (*Id.* at pp. 4-5, 16-17.)

seniority-based layoff system also has the effect of increasing the total number of teachers that must be laid off because the more junior staff tend to be lower paid. (Sepe & Roza, *Disproportionate Impact*, at p. 1); see also Sawchuk, *Layoff Policies Could Diminish Teacher Reform*, Education Week (Feb. 25, 2009); Roza, *Seniority-Based Layoffs Will Exacerbate Job Loss in Public Education* (Feb. 2, 2009) at pp. 1-3 <http://www.crpe.org/cs/crpe/download/csr_files/rr_crpe_layoff_Feb09_.pdf> [as of Feb. 29, 2012]); Boyd et al., *Teacher Layoffs*, at p. 5; Hahnel & Jackson, *Learning Denied*, at p. 12.) Thus, the UTLA's position in this litigation, if it prevails, will result in a larger number of its own members losing their jobs.

The LAUSD's high turnover combined with seniority-based layoffs created tremendous disparities between low and high performing schools. For example, in one of the lowest-ranked schools benefiting from the settlement in this case, Dorsey High School, only 17 percent of students met state-mandated proficiency levels in Language Arts, and only 3 percent met the standards in Mathematics. (23 AA 5963-5964.) By contrast, at one of the highest ranked schools, the percentages of students meeting or exceeding state standards were 91 percent in Language Arts and 93 percent in Mathematics. (23 AA 5964.) This achievement gap is typical for LAUSD. (See 23 AA 5964-5965; see generally Hahnel & Jackson, *Learning Denied*.)

These disparities equal or exceed those the California Supreme Court has rejected as violating the Equal Protection Clause. Like the early school closure at issue in *Butt*, the scheme

of seniority-based layoffs here deprived students of basic educational quality by undermining the stability that was necessary for high academic achievement. (See 23 AA 5971.) Moreover, the constitutional violation here was more severe than in *Butt*, as the seniority-based RIF's made it "almost impossible" for students in the bottom-ranked LAUSD schools to make the transition to college or a career. (23 AA 5963.) Unlike the students in *Butt*, who had an adequate education except for the threatened six-week shortening of the semester, the underprivileged students in LAUSD have been denied their fundamental right of education for years, a trend which will continue without mitigation if the seniority-based layoffs continue unchanged. As a result, these students already faced severe disadvantages in their prospects of graduating from high school and entering the workforce at all, let alone being admitted to college—disadvantages that were only compounded by seniority-based RIF's.

Ample grounds thus supported the trial court's findings that high teacher turnover was a cause of the low student achievement in schools targeted by the settlement and that strict seniority-based RIF's risked depriving the students in these schools of access to educational opportunity.

D. Seniority-based layoffs compound the difficulties faced by low-income and low-ranked schools in retaining qualified teachers compared to higher-income and higher-ranked schools.

Low-income, low-ranked schools are notoriously difficult to staff. (23 AA 5971.) “For a host of reasons, from meager resources to insufficient administrative support, teachers are less likely to choose to teach at high-poverty schools. High-poverty schools typically receive fewer applications for each teaching position, and principals in those schools have less opportunity, as a result, to staff their schools with the strongest teachers. When they do go to these schools, teachers are less likely to stay.” (Hahnel & Jackson, *Learning Denied*, at p. 14 & fns. 22-23 [citing Ingersoll, *Why Do High-Poverty Schools Have Difficulty Staffing Their Classrooms with Qualified Teachers?* (2004) Center for American Progress and Institute for America’s Future; Boyd et al., *The Influence of School Administrators on Teacher Retention Decisions* (2011) vol. 48, No. 2, *Am. Ed. Research J.*, at pp. 303-333; Chait, *Ensuring Effective Teachers for All Students: Six State Strategies for Attracting and Retaining Effective Teachers in High-Poverty and High-Minority Schools* (May 2009) Center for American Progress].)

As a result, these vulnerable schools have a special need for teachers who are highly committed and good matches with the school. (23 AA 5974.) As expert witness Layla Avila explained, a critical aspect of teacher quality is the “fit between the teacher

and the school[, which] means that the teacher has the pedagogical, cultural, and personal skills necessary to identify and meet the particular needs of the students in their classrooms. A teacher that is effective in one setting may not be as effective in a different setting with different demands.” (16 AA 4041.) Teacher effectiveness increased where the teacher-school match was good. (16 AA 4042, citing Jackson, *Match Quality, Worker Productivity, and Worker Mobility: Direct Evidence from Teachers* (2010) Nat. Bureau of Economic Research.) As a result, vulnerable schools needed to “recruit[] aggressively[,]” carefully selecting junior teachers who would fit the school. (16 AA 4042; see 23 AA 5976.)

“[H]igh rates of teacher turnover are of concern . . . because they can be disruptive, in and of themselves, for the quality of school community and performance.” (Ingersoll, *Teacher Turnover and Teacher Shortages: An Organizational Analysis* (2001) vol. 38, No. 3, *American Educational Research J.* 499, 526.)

Therefore, in the “hard-to-staff schools with high turnover, it is critical to retain teachers who *want* to be at the schools”—yet the strict seniority-based layoff system made meeting this goal all but impossible. (23 AA 5972.) As the superior court found, “[l]ow performing schools rarely close the student achievement gap because they never close the teacher quality gap—they are constantly rebuilding their staff.” (23 AA 5978 [quoting findings from the 2007 Nat’l Comm’n on Teaching & America’s Future].) As expert Robert Manwaring explained, “having a highly

effective teacher for just a few years in a row is enough to close the academic achievement gap between low income students and middle class students.” (17 AA 4106.)

As the superior court found, most of the teachers laid off from vulnerable schools would have stayed at those schools but for the layoffs. (23 AA 5972.) Conversely, the replacement teachers who took the place of the laid-off junior teachers tended to be averse to teaching at those schools and, as a result, were less motivated and less effective in the classroom. (23 AA 5972-5973, 5980.) These replacement teachers often quit soon after transferring to the low-wealth schools. (23 AA 5972-5973.) In the 2009-2010 school year at Markham Middle School, 9 of the 12 replacement teachers—a staggering 75 percent—*quit within 3 days*. (23 AA 5973.) Expert witnesses explained that other low-wealth schools experienced similar difficulty finding and retaining teachers for open positions. (E.g., 16 AA 4046-4047.) Yet it was these poorly matched replacement teachers, and not the laid-off junior teachers, who were first in line to fill these positions. (23 AA 5973, fn. 11.)

E. Pure seniority-based layoffs deprive low income and minority students of equal access to educational opportunity by depriving the students of highly qualified teachers.

The combined effect of turnover and pure seniority-based layoffs in the LAUSD was increased reliance by low income

schools on substitutes to fill vacant positions and, more fundamentally, a failure to educate. (16 AA 4047.)

Markham Middle School is one example. In 1999, as the school year opened, there were 10 classes at Markham with no permanent teacher assigned. (16 AA 4047.) The students in each of those classes were taught by 7 to 10 different substitute teachers, most of whom were not appropriately credentialed, over a period of four months—nearly an entire semester. (*Ibid.*; see also 17 AA 4088 [describing a similar problem at LAUSD's Drew Middle School].)

The results were devastating. Thirteen year old plaintiff Sharail Reed, a student at Markham Middle School who has dreams of attending Spelman College and becoming a lawyer or psychiatrist, had to deal with 9 substitute teachers in a single U.S. history class. (Barrett, *On the Backs of Children*.) Reed and the other students fell hopelessly behind as the string of substitutes acted more like babysitters than teachers. (*Ibid.*; 1 AA 67) Eighth grader Liliane Rodriguez, who wants to attend UCLA and become a pediatric nurse, suffered through 10 substitute teachers in history that left her failing the class and learning nothing. (Barrett, *On the Backs of Children*; 1 AA 67) In a number of classrooms, substitutes struggled to maintain control, sometimes handing out crossword puzzles to keep students occupied. (Melvoin, *At a Watts school, layoffs take a heavy toll*, L.A. Times (Mar. 2, 2010) <<http://articles.latimes.com/2010/mar/02/opinion/la-oe-melvoin2-2010mar02>> [as of Feb. 24, 2012].)

It didn't have to be that way. Markham Middle School was taken over in 2008 by Mayor Antonio Villaraigosa's Partnership for Los Angeles Schools. At that time, it "hired mostly new, idealistic teachers." (*Markham Middle School isn't working*, L.A. Times, Editorial (Nov. 25, 2009) <<http://articles.latimes.com/2009/nov/25/opinion/la-ed-markham25-2009nov25>> [as of Feb. 24, 2012].) But the following year the school faced pure seniority-based layoffs and "the byzantine hiring process laid out in the L.A. Unified teachers contract." (*Ibid.*) The school, with its idealistic but junior faculty, lost half of its teachers. (*Ibid.*) "Under contract rules, Markham had to rehire for its vacant spots from pools of laid-off district teachers who had the most seniority. But after all the openings were filled... several teachers changed their minds." (*Ibid.*) The school went through the process again, hiring from new pools of teachers with successively less seniority, but with no better result. "[A]gain, teachers who had accepted changed their minds." (*Ibid.*) The school was left with a revolving cast of substitutes in a number of classrooms and its "already miserable score on the state's Academic Performance Index slipped another 10 points." (*Ibid.*)

As shown by the effect of pure seniority-based layoffs on Markham Middle School, low-wealth, low-achieving schools have a special need for handpicked junior teachers, and their efforts at closing the achievement gap were devastated every time LAUSD followed strict seniority-based RIF's. Because replacement teachers avoided positions in low-ranking schools when they could, and did not remain for a significant period of time when

obliged to teach at those schools, the schools had to resort to hiring a new crop of junior teachers. However, each new teaching force was decimated with each new round of layoffs. The students at these schools suffered disproportionately because this cycle of layoffs and new hires contributed to the high teacher turnover that deprived the students of their equal opportunity to learn and achieve.

“[T]eacher quality is the most important *schooling* factor influencing student achievement.” (Goldhaber & Theobald, *Assessing the Determinants*, at p. 2.) Indeed, a one standard deviation increase in teacher quality raises student achievement in math and reading by 10 to 26 percent of a standard deviation. (*Ibid.*; see also Goldhaber & Hansen, *Implicit Measurement of Teacher Quality: Using Performance on the Job to Inform Teacher Tenure Decisions* (2010) vol. 100, No. 2, *American Economic Rev.* 250, 250, fn. 2, 250-253 [noting empirical research showing that teacher quality has significant effect in improving student achievement]; Goldhaber & Hansen, *Assessing the Potential of Using Value-Added Estimates of Teacher Job Performance for Making Tenure Decisions* (Feb. 2010) Nat. Center for Analysis of Longitudinal Data in Education Research, at p. 1 (hereafter Goldhaber & Hansen, *Value-Added Estimates*) [“teacher quality... is the most important school-based factor when it comes to improving student achievement”].)

And “measures that promote retention of the most-effective teachers already in high poverty schools” are a vital part of elevating academic achievement. (Sass et al., *Value Added of*

Teachers in High-Poverty Schools and Lower-Poverty Schools (Nov. 2010) Nat. Center for Analysis of Longitudinal Data in Education Research, at p. 23; see also Goldhaber & Hansen, *Value-Added Estimates*, at pp. 15-24.)

Yet strict seniority-based layoffs undermine all of these efforts. As a recent study explained: “It has been extensively documented that in higher-poverty, higher-minority schools, teachers tend to be less experienced than their colleagues at wealthier, lower-minority schools. Where these patterns hold, minority and poor students will undoubtedly see more turnover in their teachers from seniority-based layoffs. When this happens, the district’s remaining teachers are shuffled as staff are imported from elsewhere in the district to backfill some of the disparate teacher losses in schools with more junior teachers. [¶] . . . [¶] [A] growing body of research has documented that ‘churn’ in teachers in some schools is indeed problematic, particularly to its ability to function coherently. [Fn. omitted.] When schools see more teacher turnover, established relationships are lost—such as with families and teachers, between teachers, and with principals and teachers. Teacher turnover means that process of building and sustaining working relationships starts over. Additionally, site-based professional development starts anew, and teachers reassigned may be unhappy in their new assignments. All of these factors work together to further destabilize schools with high turnover, to the detriment of students.” (Sepe & Roza, *Disproportionate Impact*, at p. 2; see also Guin, *Chronic Teacher Turnover in Urban*

Elementary Schools (2004) vol. 12, No. 42, Education Policy Analysis Archives 1, 10-12.)³

Given this considerable evidence linking high teacher turnover to strict seniority-based layoff schemes, the superior court did not abuse its discretion in finding that the threatened RIF's would have led to higher teacher turnover and significantly lower academic opportunities for students in the low-income schools targeted by the settlement. Indeed, only the UTLA refuses to recognize that students in these low-wealth, low-ranked LAUSD schools were unfairly impacted by strict seniority-based RIF's.

³ A growing number of policymakers and researchers recognize that strict seniority-based teacher layoffs are bad for students, particularly those in poor and minority communities. (See, e.g., *Obama's Remarks on Education*, Wash. Wire (Mar. 10, 2009) <<http://blogs.wsj.com/washwire/2009/03/10/obamas-remarks-on-education-2>> [as of Feb. 24, 2012]; Crowe, *Race to the Top and Teacher Preparation: Analyzing State Strategies for Ensuring Real Accountability and Fostering Program Innovation*, Center for American Progress (Mar. 1, 2011) <http://www.americanprogress.org/issues/2011/03/pdf/teacher_preparation.pdf> [as of Feb. 24, 2012]; *Obama's Remarks on Education*; see also Song & Felch, *Obama announces \$4.35-billion school-funding competition*, L.A. Times (July 25, 2009) <<http://articles.latimes.com/2009/jul/25/nation/na-obama-education25>> [as of Feb. 24, 2012]; Barnett, *LAUSD's Dance of the Lemons*, LA Weekly (Feb. 11, 2010) <<http://www.laweekly.com/2010-02-11/news/lausd-s-dance-of-the-lemons>> [as of Feb. 24, 2012]; Abowd, *Race to the Top: Unions Asked to Play Ball for Education Dollars* (Jan. 28, 2010) <<http://labornotes.org/blogs/2010/01/race-top-unions-asked-play-ball-education-dollars>> [as of Feb. 24, 2012].)

F. The seniority-based layoffs were not necessary to serve a compelling state purpose, and the settlement agreement represented a viable, less discriminatory alternative.

As discussed above, the seniority-based RIF's exacerbated the high teacher turnover and teacher misassignments in low-income schools and severely impaired the fundamental rights of students in these schools to equal educational opportunity. These RIF's were thus subject to strict scrutiny review. (See *Serrano I, supra*, 5 Cal.3d at p. 597.)

Under the strict scrutiny standard, a state classification must be necessary to achieve a compelling state purpose and must be the least restrictive alternative. (*Serrano I, supra*, 5 Cal.3d at p. 597.) Yet the UTLA does not even attempt to show that the seniority-based RIF's were necessary to achieve a compelling state purpose. The UTLA argues only that any variation from the layoff scheme disrupted the contractual or statutory rights of senior teachers to seniority-based layoffs. But, as the UTLA also admits, these interests must give way to remedy a constitutional violation. (See AOB 39.)

Moreover, seniority-based RIF's were not the least restrictive alternative. The settlement agreement reached by LAUSD and the students established that there was a less discriminatory alternative—a modest deviation from strict seniority-based layoffs in the most vulnerable schools, as laid out in the settlement agreement itself. The settlement thus

represented an alternative, less discriminatory solution that was satisfactory to the students, affected teachers, and the LAUSD.

UTLA spends much of its brief attacking the settlement entered into in this case, yet does not offer a constructive and realistic alternative that would protect the equal protection rights of the children most dramatically affected by the seniority-based layoffs. Indeed, prior to the entry of the settlement in this case, UTLA declined to constructively participate in the settlement discussions. (Reed RB pp. 6-7, LAUSD RB pp. 6-7.) Nor does the UTLA today offer a better solution to the clearly identified problems that can be implemented in this terrible fiscal and economic environment. (See *ibid.*) UTLA's attitude is also evident in its insistence that any modification of its seniority "rights" is too high a "price" to pay for a settlement between the students and LAUSD. (See ARB 15.) But the Legislature has already determined that modification of the seniority system during layoffs is appropriate to protect equal protection rights such as the right of equal access to education. It is the system of seniority-based layoffs that is contributing to the staggering levels of educational disparity in LAUSD's most vulnerable schools.

Unfortunately, UTLA's behavior in this case is consistent with its knee-jerk opposition to any efforts to reform education for the children. As Los Angeles Mayor Antonio Villaraigosa, a former teacher union organizer and supporter of the settlement in this case, has recently explained, the UTLA is a uniform obstacle to any meaningful reform to improve Los Angeles

schools: “Over the past five years, while I was partnering with students, parents and nonprofits, business groups, higher education, charter organizations, school district leadership, elected board members and teachers, there has been one, unwavering roadblock to reform: UTLA union leadership. [¶] . . . [¶] At every step of the way, when Los Angeles was coming together to effect real change in our public schools, UTLA was there to fight against the change and slow the pace of reform.” (Investor’s Business Daily, *Man Bites Union In Los Angeles* (Dec. 14, 2010) p. A10 <<http://news.investors.com/Article/556813/201012141847/Man-Bites-Union-In-Los-Angeles.htm>> [internal alterations omitted] [as of Feb. 24, 2012].)

This view does not represent views of many LAUSD teachers. UTLA’s governing board is monopolized by long term incumbents who do not represent the broad-based views of UTLA’s members. (Llanos, *Frustrated educators form NewTLA*, L.A. Daily News (Jan. 15, 2011) <http://www.dailynews.com/news.ci_17107180?source=rss> [as of Feb. 24, 2012]; see also Stryer, *Frustrated Los Angeles teachers now have a progressive voice*, *NewTLA* (Jan. 14, 2011); Thoughts on Public Education: Silicon Valley Education Foundation <<http://toped.svefoundation.org/2011/01/14/frustrated-los-angeles-teachers-now-have-a-progressive-voice-newtla>> [as of Feb. 24, 2012]. Fortunately, many teachers within the union are now openly calling for reforms to promote retention of qualified teachers and to improve education for children. (See Lopez, *Dissident L.A. teachers want more from their union*, L.A. Times (Jan. 6, 2011)

<<http://articles.latimes.com/2011/jan/16/local/la-me-0116-lopezcolumn-20110116>> [as of Feb. 24, 2012].) Yet the old guard leadership appears committed to keeping the status quo at all costs and preventing meaningful reform. (Stryer, *Frustrated Los Angeles*.)

For all of these reasons, this diverse group of *amici curiae* is speaking out in favor of the *Reed* settlement as a less discriminatory alternative to seniority-based layoffs. With this amici curiae brief, the amici give voice to teachers who disagree with the position taken by the UTLA in their name. The brief also gives voice to those educators, community organizations, and policymakers who support the solution that is in the best interest of Los Angeles students—the settlement shielding our most vulnerable schools from seniority-based RIF's.

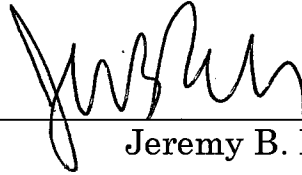
CONCLUSION

With this amici brief, dedicated and caring Los Angeles teachers, educational and community organizations, and policymakers are stepping forward to show their solidarity with the children who are most in need of all of our help. These individuals and groups wish to be a part of a constructive solution to a difficult problem and urge this court to affirm the responsible and reasonable settlement that was approved by the superior court.

March 1, 2012

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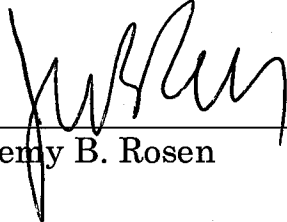
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**CERTIFICATE OF WORD COUNT
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Dated: March 1, 2012



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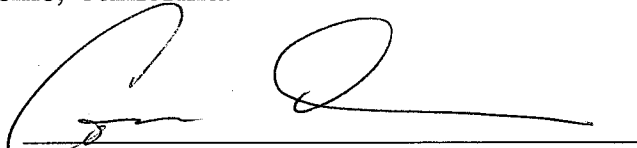
On March 1, 2012, I served true copies of the following document(s) described as **APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF; AMICI CURIAE BRIEF OF SENATOR BOB HUFF, SENATOR GLORIA ROMERO (RET.), DEMOCRATS FOR EDUCATION REFORM, COMMUNITIES FOR TEACHING EXCELLENCE, FAMILIES IN SCHOOLS, LANAI ROAD EDUCATION ACTION COMMITTEE, REVEREND ERIC P. LEE, SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE-LOS ANGELES, RABBI RON STERN, MEMBERS OF THE PUBLIC EDUCATION ADVOCACY GROUP OF STEPHEN S. WISE TEMPLE, ADAM KUPPERSMITH, KAREN SYKES-ORPE, MATTHEW J. ORIQUE, AND LINDI WILLIAMS IN SUPPORT OF RESPONDENTS** on the interested parties in this action as follows:

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Executed on March 1, 2012, at Encino, California.



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