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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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' MOTION FOR JUDGMENT [C.C.P. 631.8]

Date: February 20, 2014
Dept: 58
Judge: Honorable Rolf Michael Treu
Trial Date: January 27, 2014

Date Filed: May 14, 2012

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INTRODUCTION

After nearly four weeks of testimony from superintendents, principals, teachers, experts, and some (but not all) of the plaintiffs in this case, it is apparent that there are serious and insurmountable gaps in plaintiffs' case.

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 (because they do not classify based on race, wealth, or on any other impermissible criteria) and which result in a constitutional outcome the vast majority of the time easily survive a facial challenge under well-established California Supreme Court precedent.

Second, plaintiffs have failed to demonstrate that the Challenged Statutes have been unconstitutionally *applied to them*. Although five plaintiffs[1] offered their personal opinion about the effectiveness of one or more of their prior teachers, there was no evidence that plaintiffs' school districts gave those teachers poor evaluations or otherwise agreed with plaintiffs' individual views about the efficacy of those teachers. There was no evidence that those allegedly ineffective teachers were "permanent" employees of plaintiffs' school districts. There was no evidence that—if the probationary period was longer—these *particular* teachers would have been denied tenure by their school districts. There was no evidence that plaintiffs' school districts ever *identified* these specific teachers as being ineffective and unsuccessfully sought to dismiss them pursuant to the Dismissal Statutes (or at least decided not to pursue dismissal because of the requirements found in the Dismissal Statutes). And there was no evidence that any plaintiff was actually taught by a grossly ineffective teacher who would have been laid off during a past reduction-in-force if teacher effectiveness could have been considered. The five plaintiffs who testified before the Court did not demonstrate that their individual experiences with a small

[1] Plaintiffs Clara Grace Campbell, Kate Elliott, Herschel Liss, and Daniella Martinez have not testified or submitted any evidence that they were taught by a grossly ineffective teacher. The Court should therefore enter judgment against them.

number of allegedly ineffective teachers resulted from the manner in which their school districts hired and retained *those teachers* pursuant to the Challenged Statutes.

Third, plaintiffs' "suspect class" equal protection claims (causes of action 4, 5, and 6) fail because there is no evidence that the Challenged Statutes cause the *unequal distribution of grossly ineffective teachers*. That is the gravamen of this equal protection theory, and there is no evidence that the Challenged Statutes force school administrators to disproportionately transfer grossly ineffective teachers to schools serving predominantly low income and minority children.

Fourth, plaintiffs' "fundamental interest" equal protection claims (causes of action 1, 2, and 3) fail because there is no evidence that the five plaintiffs who testified about their experiences with allegedly bad teachers were "classified"—i.e., that they *collectively experienced a bad teacher because of a shared, extraneous characteristic*. These plaintiffs' occasional and random assignment to teachers that they considered to be "bad" does not constitute a "classification" under equal protection doctrine.

Because plaintiffs cannot meet the prima facie elements of any of their legal claims, this Court should enter judgment for the State Defendants on all causes of action. In the alternative, the Court should enter judgment for the State Defendants on plaintiffs' facial challenges. That would significantly streamline the remainder of the trial and allow the State Defendants to focus exclusively on rebutting plaintiffs' evidence that the Challenged Statutes have been unconstitutionally applied to them under either their "fundamental interest" or "suspect class" equal protection theories.

STANDARD GOVERNING MOTION FOR JUDGMENT

Pursuant to Code of Civil Procedure section 631.8, subdivision (a), "[a]fter a party has completed his presentation of evidence in a trial by the court, the other party, without waiving his right to offer evidence in support of his defense or in rebuttal in the event the motion is not granted, may move for a judgment. The court as trier of the facts shall weigh the evidence and may render a judgment in favor of the moving party." Further, "the court may refuse to believe witnesses and draw conclusions at odds with expert opinion." (*Jordan v. City of Santa Barbara*

(1996) 46 Cal. App. 4th 1245, 1255.) The court is also empowered to grant judgment "as to some but not all the issues involved in the action." (Code Civ. Proc., § 631.8, subd. (b).)

ARGUMENT

The Court should enter judgment on behalf of the State Defendants because plaintiffs failed to meet their burden of proving by a preponderance of the evidence every element of their legal claims. Plaintiffs have not shown that the Challenged Statutes are unconstitutional on their face, nor that these laws have been unconstitutionally applied to them. Plaintiffs have also failed to introduce facts to support all of the elements of their "suspect class" and "fundamental interest" equal protection claims. Accordingly, the Court should grant this Motion for Judgment.

I. PLAINTIFFS HAVE NOT PROVEN THAT THE CHALLENGED STATUTES ARE FACIALLY UNCONSTITUTIONAL

Setting aside the question of whether any plaintiff has established that his or her equal protection rights have been violated (and they have not for the reasons discussed below), plaintiffs have failed to carry their much heavier burden of demonstrating that the Challenged Statutes are *facially* unconstitutional. It is critical to distinguish between the standards for establishing an equal protection violation—which can (and typically does) occur to only a small minority of citizens—and the far greater burden of invalidating a statute on its face.

The Supreme Court recently reiterated 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.) The Court of Appeal for the Second District appears to utilize the stricter test that *does not* look beyond the text of a statute when considering its facial validity. (See *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, ___, 2013 WL 58115509, at *22; see also *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]; *Harrahill v. City of Monrovia* (2002) 104 Cal.App.4th 761, 764 [same].) And it is undisputed that under this stricter standard for facially invalidating a statute, each of the five Challenged Statutes is constitutional because their texts do not draw any distinctions based on race, wealth, or on any other impermissible criteria..

The Supreme Court has further explained that under the "least onerous phrasings of the test" for a facial constitutional challenge, plaintiffs must still show that the Challenged Statutes violate equal protection "in at least the generality" or in the "vast majority" of cases.[2] (*Today's Fresh Start, supra,* 57 Cal.4th at p. 218.) But plaintiffs have not shown that the Challenged Statutes are unconstitutional even under this test. Because the Challenged Statutes govern the hiring, firing, and laying off of teachers in California, even under this "least onerous" test, these textually neutral laws are facially unconstitutional only if they result in the vast majority of California's 275,000 "permanent" teachers being ineffective. And plaintiffs' admissions and evidence conclusively established precisely the opposite—that the vast majority of teachers in California are effective—and that therefore the Challenged Statutes are facially valid.

In their opening statement, plaintiffs acknowledged that "everyone agrees that *most teachers in California* are hardworking, talented, *and effective*." (January 27, 2014 Transcript at 11:13-15 [emphasis added].) Superintendent testimony confirmed this admission. The only Superintendent to provide specific numbers regarding the grossly ineffective teachers in his district was Assistant Superintendent of Fullerton School District Mark Douglas, who testified that **less than 2%** of the teachers in his school district were grossly ineffective. (Feb. 5, 2014 Transcript Trial Transcript at 1090:9-11 and 1093:22-26.) Assistant Superintendent Douglas claimed that "around 10" out of 564 teachers in the entire school district are grossly ineffective, which amounts to 0.0177% of the teacher workforce. (*Ibid.*) And plaintiffs' school administrator witnesses represented just five of California's 1,052 school districts. There is no evidence that

[2] The more lenient test for facially invalidating a statute is typically applied only in First Amendment, abortion, or criminal void-for-vagueness cases where the courts have been concerned about a statute's chilling effect on core protected constitutional activity. (See, e.g., *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 679.)

the remaining 1,047 school districts have hired and/or retained grossly ineffective teachers at all—much less on account of these laws.

In short, plaintiffs' evidence indisputably demonstrates that the Challenged Statutes are valid on their face because in every instance where a school district hires and retains an effective teacher pursuant to these laws—which by plaintiffs' own admission is most of the time—there is no equal protection violation. Even if plaintiffs could show that some small percentage of California's teachers are grossly ineffective because of the Challenged Statutes (and that has not been proven because *no witness testified to the overall number or percentage of grossly ineffective teachers in California*), that result is simply inadequate to invalidate these laws on their face. Textually neutral statutes that result in a constitutional outcome the vast majority of the time easily survive a facial challenge.

Therefore, to the extent that the Court is not inclined to enter judgment against the plaintiffs on the entire case, it should at least enter judgment for the State Defendants on plaintiffs' facial challenges. That would significantly streamline the remainder of the trial and allow the State Defendants to focus exclusively on rebutting plaintiffs' evidence that the Challenged Statutes have been unconstitutionally applied to them under either their "fundamental interest" or "suspect class" equal protection theories.

II. PLAINTIFFS HAVE NOT PROVEN THAT THE CHALLENGED STATUTES HAVE BEEN UNCONSTITUTIONALLY APPLIED TO THEM

Plaintiffs also contend that the Challenged Statutes have been unconstitutionally applied to them. At the outset, however, plaintiffs Clara Grace Campbell, Kate Elliott, Herschel Liss, and Daniella Martinez have not testified or submitted any evidence that they were taught by a grossly ineffective teacher. So their as applied claims plainly fail. Further, as shown below, the remaining five plaintiffs have not met their burden of showing that the Challenged Statutes have been unconstitutionally applied to them.

A. As Applied Challenges Provide Relief from Specific, Unconstitutional Applications of a Facially Valid Statute

In contrast to facial challenges, "[a]n as applied challenge may seek (1) relief from a specific application of a facially valid statute or ordinance to an individual or class of individuals who are under allegedly impermissible present restraint or disability *as a result of the manner or circumstances in which the statute or ordinance has been applied*, or (2) an injunction against future application of the statute or ordinance *in the allegedly impermissible manner it is shown to have been applied in the past*. (*Tobe v. City of Santa Ana* (1995) 9 Cal. 4th 1069, 1084 [emphases added].) An "as applied" challenge "contemplates analysis of the facts of a particular case or cases to determine the circumstances in which the statute or ordinance has been applied and to consider whether in those particular circumstances the application deprived the individual to whom it was applied of a protected right." (*Ibid.*)

The five plaintiffs who testified before the Court did not demonstrate that their individual experiences with allegedly ineffective teachers resulted from the manner in which their school districts hired and retained those teachers pursuant to the Challenged Statutes.

B. Plaintiffs Failed to Prove that the Challenged Statutes Have Been Unconstitutionally Applied to Them

The five remaining plaintiffs must prove by a preponderance of the evidence that the Challenged Statutes have been unconstitutionally *applied to them*. Specifically, given the provisions of the Permanent Employment and Dismissal Statutes, plaintiffs must prove that: (1) they were taught by grossly ineffective teachers; (2) those grossly ineffective teachers were "permanent" employees of the plaintiffs' school districts pursuant to the Permanent Employment Statute; and (3) those permanently employed teachers were known to their school districts as grossly ineffective yet they were not dismissed by their school districts because of the Dismissal Statutes' procedural requirements. Under the Reduction-in-Force statute, plaintiffs must show that they were actually taught by a grossly ineffective teacher who would have been laid off during a past reduction-in-force if teacher effectiveness could have been considered.

Plaintiffs' testimony falls far short of such an evidentiary showing. At most—if their testimony is given full credence by the Court—plaintiffs demonstrated that they were taught by one or more teachers whom they personally considered to be "bad" or "ineffective" teachers. But plaintiffs' personal views about these teachers were entirely uncorroborated. There was no evidence that plaintiffs' school districts gave these teachers poor evaluations or otherwise agreed with plaintiffs' individual views about the efficacy of these teachers. There was no evidence that these allegedly ineffective teachers were "permanent" employees of plaintiffs' school districts. There was no evidence that—if the probationary period was longer—these *particular* teachers would have been denied tenure by their school districts. There was no evidence that plaintiffs' school districts ever *identified* these specific teachers as being ineffective and unsuccessfully sought to dismiss them pursuant to the Dismissal Statutes (or at least decided not to pursue dismissal because of the requirements found in the Dismissal Statutes). And there was no evidence that any plaintiff was *actually taught* by a grossly ineffective teacher who would have been laid off during a past reduction-in-force if teacher effectiveness could have been considered.

At bottom, there is simply no evidence linking the plaintiffs' individual experiences with specific teachers to the manner in which their school districts applied the provisions found in the Challenged Statutes. Given the complete lack of any nexus establishing how the operation of the Challenged Statutes impacted the hiring and retention of the *specific teachers* whom plaintiffs' claim were "bad," their as applied challenges fail even without considering whether they can meet the legal elements of their equal protection claims. The basic requirement of an "as applied" claim is demonstrating that a "statute or ordinance has been *applied*" in an "impermissible manner." (*Tobe, supra,* 9 Cal. 4th at p. 1084.) And plaintiffs have not introduced evidence regarding how the Challenged Statutes were actually applied to them, resulting in their being taught by an ineffective teacher.

Should the Court nevertheless proceed to consider the merits of plaintiffs' "as applied" claims under their two separate equal protection theories (and it should not), plaintiffs' evidence fails to establish one or more required elements of both their "suspect class" and "fundamental interest" causes of action.

C. Plaintiffs Have Not Proven the Elements of Their Suspect Class Claims

Plaintiffs "suspect class" causes of action (claims 4, 5, and 6) are based solely on the theory that "the Challenged Statutes have a disparate impact on minority and economically disadvantaged students" (FAC, ¶ 78) because "the Challenged Statutes cause school administrators to transfer those [grossly ineffective teachers] to other schools within the district" which "serve high concentrations of economically disadvantaged students, students of color, and English learners." (FAC, ¶ 71.) Critically, this equal protection claim is not premised on the existence of grossly ineffective teachers; it is premised on the *unequal distribution of grossly ineffective teachers*. Plaintiffs therefore must prove by a preponderance of the evidence that the Challenged Statutes cause the unequal distribution of grossly ineffective teachers by forcing school administrators to disproportionately transfer grossly ineffective teachers to schools serving predominantly low income and minority children. Plaintiffs submitted no evidence that the Challenged Statutes: (1) were motivated by discriminatory intent (a required element) or (2) require grossly ineffective teachers to be unequally and disproportionately distributed to low income and minority students.

1. There is no evidence of discriminatory intent

As a preliminary matter, plaintiffs' "suspect class" causes of action fail because they have not introduced any evidence establishing that the Challenged Statutes were motivated in part by discriminatory intent. The California Supreme Court's *recent* precedents hold that the "ordinary equal protection standards" found in California's Constitution require a showing of "discriminatory purpose." (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 568; see also *Baluyut v. Superior Court* (1996) 12 Cal.4th 826, 832 [requiring "intentional or purposeful discrimination"]; *In re Marriage Cases* (2008) 43 Cal.4th 757, 839-841 [rejecting defendants' attempt to characterize Prop. 8 as involving a mere "disparate impact," instead finding discriminatory intent and implying that such intent is required for an equal protection claim]; *id.* at p. 874 (conc. & dis. opn. of Baxter, J.) [under *Baluyut*, equal protection violation requires discriminatory purpose, not mere disparate impact].) For the past two decades, *every case* to address this issue has held—without qualification—that discriminatory intent is a required

element of an equal protection claim. (See, e.g., *Sanchez*, *supra*, 179 Cal.App.4th at p. 487; *People v. Superior Court (Perez)* (2d Dist. 1999) 75 Cal.App.4th 394, 403-404; *Kim v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 1357, 1361-1362.)

Because plaintiffs have proffered no evidence of discriminatory intent behind the enactment of the Challenged Statutes, their "suspect class" claims fail at the outset.

2. There is no evidence that the Challenged Statutes cause the unequal distribution of grossly ineffective teachers

Plaintiffs' "suspect class" claims also fail because they have not introduced any evidence—much less proven by a preponderance of the evidence—that the Challenged Statutes "*cause school administrators to transfer*" grossly ineffective teachers to schools within their districts serving large concentrations of minority and economically disadvantaged students. (FAC, ¶ 71.) Even if grossly ineffective teachers exist somewhere within the California public school system, plaintiffs must prove that the Challenged Statutes cause those teachers to be disproportionately assigned/transferred to low-income and minority students. In other words, the Challenged Statutes must *cause the unequal distribution of grossly ineffective teachers*.

Plaintiffs failed to introduce any evidence showing that the Challenged Statutes require the uneven distribution of ineffective teachers. On the contrary, plaintiffs' own witnesses testified that the Challenged Statutes *do not require* them to transfer any particular teacher to any particular school or classroom. (See January 28, 2014 transcript at 330:11-331:18 (Deasy) [the tenure and dismissal statutes have "nothing to do with the assignment of teachers" to schools or classrooms] February 5, 2014 transcript at p. 1199:2-10 (Douglas) [acknowledging that nothing in the Dismissal Statutes requires Fullerton to transfer any particular teacher to any particular school or classroom].) Plaintiffs school district administrator witnesses acknowledged that their districts maintain discretion to assign the teachers within their school district as they see fit. (*Ibid.*).

Plaintiffs will likely emphasize the testimony of their expert witnesses that—using Value Added Methodology (VAM)—economically disadvantaged and minority students are assigned to less effective teachers. But even if the Court gave full credence to that testimony and believed that VAM evaluations—based solely on growth in students' standardized test scores in math and

English between grades 4-8—reliably measured teacher effectiveness, that would still fall short as a matter of law because it would not prove that the Challenged Statutes *caused* that phenomenon. It is not sufficient to show that economically disadvantaged and minority children have less effective teachers (which plaintiffs have not shown anyhow)[3]—plaintiffs must prove that the Challenged Statutes actually caused those student populations to be taught by less effective teachers. And plaintiffs' own witnesses acknowledged the many challenges in keeping effective teachers in high poverty schools—challenges which are entirely unrelated to the provisions found in the Challenged Statutes. (See, e.g., February 4, 2014 transcript at 940:1-20 (Raymond) [discussing the reasons why it was difficult to staff high poverty schools with effective teachers]; February 13, 2014 transcript at 1854:18-26 (Goldhaber) [acknowledging voluntary movement of teachers from lower socio-economic schools to higher socio-economic schools].)

Plaintiffs may also contend that the Reduction-in-Force statute impacts the assignment of teachers to low-income and minority students because those students have a larger number of novice teachers, lose a disproportionate number of their teachers during a RIF, and then must be assigned different teachers to replace the ones that they lost. But this argument fails for two reasons.

First, there is no evidence that the Reduction-in-Force statute *causes* newer teachers to concentrate in lower-income or predominantly minority schools. Plaintiffs' own witnesses described how those schools tend to have newer teachers because of the difficult working conditions within those schools. (See, e.g., February 4, 2014 transcript at 938:21-26 (Raymond) [high poverty, high minority schools "would be staffed with less senior teachers. These are very challenging and difficult schools to work in, often in very challenging neighborhoods. They are often the last positions filled, so they are taken by the least-senior teachers."].) No witness has suggested that the phenomenon of newer teachers being concentrated in schools with low income

[3] These VAM studies reviewed only a single school district in California (LAUSD) which accounts for only 11% of the K-12 student population in this State. Moreover, these studies measured teacher effectiveness exclusively based on growth in students' standardized test scores in just two subjects covering less than half of the grade levels in the K-12 public school system.

and minority students is in any way related to the provisions found in the Reduction-in-Force statute.

Second, even if some schools with these student populations are disproportionately impacted when reductions-in-force occur, there is no evidence that the Reduction-in-Force statute requires school districts to replace the laid off teachers in those schools with ineffective or grossly ineffective teachers. School districts can—and should—transfer their most effective teachers to their neediest schools after a reduction-in-force occurs. But regardless of the manner in which individual school districts choose to re-assign or transfer teachers to fill vacancies in high poverty schools after a reduction-in-force, the quality of those replacement teachers is in no way determined by the requirements of the Reduction-in-Force statute. There is no dispute that the Reduction-in-Force statute only governs the manner in which school districts decide *which* teachers to lay off—it says nothing about how school districts decide to re-assign or transfer teachers who are *not* laid off in a RIF.

In sum, the Court should enter judgment on behalf of the State Defendants on plaintiffs' "suspect class" equal protection claims (causes of action 4, 5, and 6) because plaintiffs have failed to introduce any evidence that the Challenged Statutes require school district administrators to disproportionately assign or transfer grossly ineffective teachers to low income and minority students. The *unequal distribution* of grossly ineffective teachers is the gravamen of plaintiffs "suspect class" equal protection claims, and there is absolutely no evidence tying the Challenged Statutes to the manner in which grossly ineffective teachers are distributed within any particular school district. There can be no doubt that these laws do not cause school districts to disproportionately send their grossly ineffective teachers to schools with low income and minority children. Because plaintiffs cannot meet their burden of proof on their suspect class claims, the Court should enter judgment in favor of the State Defendants on claims 4, 5, and 6.

Plaintiffs have also failed to meet the elements of their "fundamental interest" (claims 1, 2, and 3) equal protection claims.

D. Plaintiffs Have Not Met the Elements of Their "Fundamental Interest" Equal Protection Claims

To prove their "fundamental interest" equal protection claims (causes of action 1, 2, and 3), each plaintiff must prove that: (1) the Challenged Statutes classified him or her; and (2) that this classification created a "real and appreciable impact" on his or her fundamental interest in basic educational equality. Plaintiffs have not established these elements.

Plaintiffs have not shown that they were classified by the Challenged Statutes. "The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner." (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.) "In equal protection analysis, the threshold question is whether the legislation under attack somehow discriminates against an *identifiable* class of persons. Only then do the courts ask the further question of whether this identifiable group is a suspect class or is being denied some fundamental interest, thus requiring the discrimination to be subjected to close scrutiny."[4] (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 258 (*Guardino*) [emphasis added].)

While some (but not all) of the plaintiffs testified that their school district assigned them to a "bad" or "ineffective" teacher; that alone does not mean that they have been *classified*. The *sine qua non* of a statutory "classification" is that the challenged statute must discriminate against a discrete group based upon some *shared characteristic*—i.e., the discrimination must occur "*because of some extraneous condition*, such as race, wealth, tax status, or military status." (*Gordon v. Lance* (1971) 403 U.S. 1, 5 [citations omitted; emphasis added]; see also *ibid.* [rejecting an equal protection claim because the challenged provision "singles out no 'discrete and insular minority' for special treatment"]; *Guardino, supra,* 11 Cal.4th at p. 258 [rejecting an equal protection challenge to a supermajority voting requirement for tax increases because "the electors who vote on a tax measure do not constitute an 'identifiable class' under *Gordon*"].)

[4] Because plaintiffs have not shown that they have been classified, the Court need not—and should not—reach the issue of what level of scrutiny to apply. (*Ibid.*) Plaintiffs must first prove the elements of their equal protection claims, and they have not done so.

In this case, there is no evidence that the five plaintiffs who testified about their experiences with allegedly bad teachers *collectively experienced a bad teacher because of a shared, extraneous characteristic*. On the contrary, plaintiffs' occasional assignment to teachers that they considered to be "bad" was apparently random. And it is axiomatic that different outcomes based on a random draw is the *antithesis* of a discriminatory "classification." Plaintiffs' "classification" theory—that the random assignment of a student to a grossly ineffective teacher is a classification—is unsupported in the case law and would drastically alter the fundamental character of an equal protection claim. If any random difference in the provision of a government service or benefit could be deemed a *ex post* discriminatory "classification," a vast new class of claims would be permissible and equal protection law would be completely unbounded. But that is not the law. (See *Cooley, supra,* 29 Cal.4th at p. 253; see also *People v. Brown* (2012) 54 Cal.4th 314, 328 [same]; *Manduley v. Superior Court* (2002) 27 Cal.4th 537, 568 [same]; *In re Eric J.* (1979) 25 Cal.3d 522, 530 [same].)

Because plaintiffs have not shown that they were "classified" by the Challenged Statutes, they have not met the first element of their "fundamental interest" equal protection claims, and therefore these claims fail as a matter of law.

CONCLUSION

For the foregoing reasons, the Court grant should this Motion for Judgment in its entirety or, in the alternative, enter partial judgment on plaintiffs' facial challenges and with respect to plaintiffs' as applied "suspect class" equal protection claims (causes of action 4, 5, and 6).

Dated: February 20, 2014

Respectfully Submitted,

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