

Daily Journal

FEBRUARY 18, 2015

Top Verdicts of 2014

The Largest and most significant verdicts and appellate reversals handed down in California in 2014

TOP PLAINTIFFS' VERDICTS BY IMPACT

Vergara et al. v. State of California et al.

case INFO

Civil rights

Los Angeles County

Superior Court Judge Rolf M. Treu

Plaintiffs' attorneys: Gibson, Dunn & Crutcher LLP, Theodore J. Boutrous Jr., Marcellus McRae, Theodore B. Olson, Theane Evangelis, Joshua Lipshutz, Enrique Monagas, Kyle Withers, Lindsey Greer, Brandon Stoker, Rachel Flipse, Kevin Ring-Dowell, Peter Squeri, Quynh Vu, Samuel Siegel, Lauren Escher, Joanna Powell

Defense attorneys: California attorney general's office, Kamala D. Harris, Susan M. Carson, Nimrod P. Elias, Charles Antonen, Jennifer A. Bunshoft; Altshuler Berzon LLP, James M. Finberg, Jeffrey B. Demain, Jonathan Weissglass, Eileen B. Goldsmith, Peder J. Thoreen, P. Casey Pitts; Rothner, Segall & Greenstone, Glenn Rothner



THEODORE J. BOUTROUS JR.



MARCELLUS MCRAE

A landmark court decision in June struck down California's longtime teacher tenure and seniority protections in a move that has had national repercussions.

Los Angeles County Superior Court Judge Rolf M. Treu found that five state Education Code statutes regulating public school teacher tenure, dismissal and layoffs "impose a real and appreciable impact on students' fundamental right to equality of education."

The civil rights lawsuit was filed in 2012 on behalf of nine public school students who alleged these laws lead to grossly ineffective teachers obtaining and retaining employment, particularly in schools serving low-income and minority students. *Vergara et al. v. State of California et al.*, BC484642 (L.A. Super. Ct., filed May 14, 2012).

The students' attorneys from Gibson, Dunn & Crutcher LLP, led by co-counsel Theodore J. Boutrous Jr. and Marcellus McRae, said they formulated this legal theory after examining current state law and digging through existing data that showed students were injured, harmed and held back by ineffective teachers.

"We looked at California law and the California Constitution and where the Supreme Court of California had taken the law at that point," Boutrous

said. "We thought the next logical step is an argument that says students have the right to educational equality in terms of teacher effectiveness."

Much of the legal heavy lifting was done before the nine-week trial started, McRae said. At trial, they worked to prove not only educational harm but also monetary harm, featuring witness testimony that students lose out on \$1.4 million in lifetime earnings per classroom in a single year with an ineffective teacher.

The attorneys added that their case was boosted by the testimony of defense experts, who either agreed with some of the plaintiffs' points or disagreed based on claims "unsupported by data."

"When we started to prepare for the closing argument, we realized that we could argue the case almost entirely out of admissions that we got from the other side," McRae said. "That's pretty rare."

Lawyers for the state, the California Teachers Association and the California Federation of Teachers argued the statutes help recruit and retain high-quality teachers by ensuring them fairer outcomes, which in turn benefits students.

James M. Finberg, an Altshuler Berzon LLP partner who represented the teachers' unions, said expert witnesses established there are better ways to address the country's achievement gap, including

focusing resources and supporting teachers in high-poverty schools with high percentages of minority students.

"I think the statutes are not the cause of ineffective teachers being in our classroom," Finberg said. "Striking down these statutes would not make things better in our schools. It would make things worse."

In his decision, Treu wrote that the evidence presented about ineffective teachers "shocks the conscience." Among the processes he found unconstitutional is laying off instructors based on seniority and either terminating teachers or granting them strong job security around 18 months after they start teaching.

The judge's ruling quickly grabbed the nation's attention, sparking education policy debates and eliciting praise from U.S. Education Secretary Arne Duncan. Copycat lawsuits have since followed in New York and elsewhere.

"It has and will have a significant impact far beyond California," Boutrous said. "It's a really perfect example of how litigation can be used to effect change that helps our country."

The decision is stayed pending appeals before the 2nd District Court of Appeal.

— Kylie Reynolds