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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

20 ELIEZER WILLIAMS, a minor, by Sweetie
21 Williams, his guardian ad litem, *et al.*, each
individually and on behalf of all others similarly
22 situated,

Plaintiffs,

v.

23 STATE OF CALIFORNIA, DELAINE EASTIN,
24 State Superintendent of Public Instruction,
STATE DEPARTMENT OF EDUCATION,
25 STATE BOARD OF EDUCATION,

Defendants.

No. 312236

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
INTERVENOR LOS ANGELES
UNIFIED SCHOOL DISTRICT'S
MOTION TO BIFURCATE AND
ORDER PROCEEDINGS**

Hearing: June 19, 2003
Time: 3:30 p.m.
Department: 20, Hall of Justice
Judge: Hon. Peter J. Busch
Date Action Filed: May 17, 2000
Trial Date: August 30, 2004

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1 **I. INTRODUCTION**

2 The Los Angeles Unified School District (LAUSD) motion to trifurcate proceedings¹ is
3 fundamentally misconceived, inefficient, and flawed. The motion attempts to turn upside down this
4 Court’s ordering of issues in its ruling severing the State’s cross complaint from this action (Order
5 Granting Mot. to Sever & Stay Proceedings at 3). When this Court severed the State’s cross-
6 complaint against individual districts, and also when this Court ruled that “this case is exclusively
7 about the State’s system of oversight and that system’s alleged inadequacies and failures” (Order
8 Denying Dem. at 2), the Court determined that the issues at stake in this litigation concern State
9 failures and not district or local failures. LAUSD’s motion would improperly import into this case
10 issues that the Court has consistently excluded based on plaintiffs’ formulation of the case.

11 The motion also presents a flawed legal theory by arguing a proposition that the California
12 Supreme Court rejected in *Butt v. State*, 4 Cal. 4th 668 (1992): that the specific cause of fundamental
13 educational inequality needs to be established before a State duty to intervene is triggered. The *Butt*
14 Court explicitly held the contrary: The State “has a duty to intervene to prevent unconstitutional
15 discrimination’ in its schools” to protect “the rights of its blameless students to basic educational
16 equality,” even if the State is not presented with “any specific acts committed by State or local parties
17 as the cause of the interdistrict imbalance.” *Id.* at 684, 688-89 (quoting *Tinsley v. Palo Alto Unified*
18 *Sch. Dist.*, 91 Cal. App. 3d 871, 904 (1979)). An individual district’s capacity or incapacity to
19 deliver educational equality to its blameless students is therefore irrelevant to the inquiry whether the
20 State has a duty to intervene to prevent fundamental deprivations of equal educational opportunity.

21 LAUSD’s proposed trifurcation would also be inefficient because it would greatly expand
22 rather than narrow the case. Granting LAUSD’s motion would transmogrify the case into precisely
23 what this Court ordered parties not to present: complicated examinations of the fine distinctions in
24 specific choices many individual districts make about each decision related to instructional materials,
25 teachers, and facilities on school sites, in addition to later attention to whether the State has a
26 compelling interest in noninvolvement in these decisions and how the State could remedy the

27 ¹ The motion is captioned as a motion to bifurcate proceedings, but the motion actually seeks
28 to order trial in three phases. (LAUSD MPA at 10-14.)

1 fundamental educational deprivations suffered. Trifurcation would thus substantively enlarge the
2 scope of discovery and the issues to be litigated and would waylay resolution of the core issue of
3 State responsibility.

4 There is virtue in LAUSD's objective of expediting decisions on discrete legal issues without
5 bogging down in pretrial disputes. But that objective can be accomplished through plaintiffs'
6 separate motion for summary adjudication of the State's duty to operate an oversight system to ensure
7 equal access to instructional materials for all California public school students. Plaintiffs' summary
8 adjudication motion lacks the flaws of LAUSD's motion and gives the Court the opportunity to fully
9 resolve concrete and critical issues for trial. This Court should reject LAUSD's motion and, instead,
10 when the Court has had the opportunity for full briefing and a hearing on the motion, grant plaintiffs'
11 motion for summary adjudication.

12 II. PROCEDURAL BACKGROUND

13 This Court has previously addressed the principal legal questions raised by LAUSD's motion.
14 First, the State's demurrer to the First Amended Complaint made a very similar argument to the one
15 now raised by LAUSD. The State contended that the complaint should be dismissed because
16 plaintiffs had failed to exhaust district-level administrative remedies that were capable of resolving
17 the specific conditions at the plaintiffs' schools. (Mem. of P. & A. in Supp. of Dem. of Def. State of
18 Cal. to Pls.' First Am. Compl. at 18-28.) Thus, the State argued that plaintiffs could not state a case
19 for relief unless they demonstrated through exhaustion of district remedies that the districts were
20 unable to cure the conditions at plaintiffs' schools. The Court rejected this argument, finding that
21 plaintiffs' case did not, in fact, rely on a showing that particular districts were incapable of solving
22 the problems:

23 [A]s Plaintiffs represented to the Court at the hearing on the demurrer,
24 *this case is exclusively about the State's system of oversight and that*
25 *system's alleged inadequacies and failures.* The lawsuit is aimed at
26 ensuring a system that will either prevent or discover and correct such
27 deficiencies going forward. . . . Plaintiffs' representation, to which the
28 Court will hold Plaintiffs, has and will have ramifications to all stages
of the case. . . .

1 (Order Denying Dem. at 2 (emphasis added).) In that same order, the Court held that plaintiffs’
2 complaint adequately stated a claim for relief under *Butt*:

3 The State of California has taken it on itself through its Constitution,
4 statutes, and regulations to provide universal public education and to do
5 so on a basis that satisfies basic standards of equality, among other
6 legal requirements. That the State has chosen to carry out certain of its
7 obligations through local school districts does not absolve the State of
8 its ultimate responsibility. *Butt v. State*, 4 Cal. 4th 668, 685 (1992).
*Plaintiffs’ allegations, if believed, would demonstrate that, despite the
State’s legal obligations with respect to public education, these
plaintiffs do not enjoy the level of educational opportunity to which
they are entitled.*

9 (*Id.* at 1-2 (emphasis added).) Notably, the allegations in plaintiffs’ complaint contain no mention of
10 individual districts’ ability or inability to provide the level of education mandated by *Butt*. In
11 rejecting the State’s demurrer, the Court therefore rejected the State’s view that plaintiffs needed to
12 demonstrate particular districts’ inadequacies in order to state a claim for relief.

13 Similarly, when certifying the plaintiff class, the Court also emphasized the state-level relief
14 sought by plaintiffs. When finding commonality and typicality of the class—which, as the Court
15 noted, the State’s counsel conceded at oral argument—the Court wrote, “All students seek the same
16 state-level relief based on the same alleged state-level deficiencies. The liability issue is whether
17 there is a failure on a state-wide level, not whether any particular individual has suffered, and
18 individual remedies are not sought.” (Order Granting Mot. to Certify a Class at 2.) Contrary to this
19 description of the case, LAUSD’s interpretation of *Butt* would require the Court to analyze whether
20 particular individuals in particular school districts have suffered cognizable educational deprivations
21 and what each specific school district’s role in creating, exacerbating, or failing to rectify those
22 deprivations has been. As the Court has repeatedly recognized, this is not required under *Butt*, and it
23 also is not the case that plaintiffs brought.² (*Id.*; Order Denying Dem. at 2 (“[T]his case is not about
24

25 ² Plaintiffs may have claims against individual school districts, but LAUSD should not be
26 allowed to force plaintiffs to litigate those claims in this suit. As the Court noted in its class
27 certification order, “The Court will not second-guess Plaintiffs’ tactical and strategic choices, and the
28 Court need not decide what, if any, rights would survive this lawsuit. For present purposes, it is
enough that competent counsel and qualified class representatives have analyzed their options and
made a determination as to the best approach to address the alleged problems in California’s

1 correcting the specific deficiencies suffered by these students at their specific schools in their specific
2 school districts.”).

3 Finally, the Court rejected LAUSD’s current position a third time in granting motions brought
4 by plaintiffs and several school districts—including LAUSD—to sever and stay the State’s cross-
5 complaint. As the Court will recall, the State filed a cross-complaint against numerous school
6 districts, contending that if unconstitutional conditions are present at some schools, then the Court
7 must impose liability on individual school districts for failing to take action to correct the conditions
8 identified in plaintiffs’ complaint. *See, e.g.*, Cross-Compl. ¶ 29 (“If plaintiffs are correct that
9 conditions exist in Balboa High School in San Francisco as they have alleged, and if they are also
10 correct that such conditions result in depriving students at said school . . . of a basic education, or of
11 basic educational opportunities equal to those received by children in other schools, then the San
12 Francisco Unified School District has violated its duties and obligations under applicable statutes and
13 regulations . . .”).

14 The motion to sever joined by LAUSD specifically noted that inclusion of the cross-complaint
15 in the trial of plaintiffs’ case “should be avoided . . . because such inclusion will unnecessarily
16 increase the complexity of the underlying lawsuit, blur the pertinent issues, cause cross-defendants to
17 expend substantial amounts of time and resources in unnecessary discovery and pleadings, and result
18 in a procedural morass that will preclude an efficient resolution to the underlying case.” (Cross-
19 Defs.’ Mem. of P. & A. in Supp. of Mot. to Sever Cross-Compl. & Stay Proceedings at 2.) The
20 motion further observed that:

21 This lawsuit involves allegations that the State is not providing
22 sufficient textbooks or credentialed teachers and that its schools are
23 overcrowded and run-down. If these alleged conditions do in fact exist,
24 the reasons why they may occur at each school district could vary
25 widely. . . . Litigating each cross-defendant’s individual situation will
26 be complex and costly. It is better to avoid these costs by means of
27 severance if at all possible.

27 educational system by correcting what they perceive to be deficiencies in the State’s system of
28 oversight and management.” (Order Granting Mot. to Certify a Class at 2.)

1 (*Id.* at 7-8.) By joining the motion to sever, LAUSD therefore adopted the position that it was not
2 only possible, but that it was *preferable* to separate “litigating each cross-defendant’s individual
3 situation” from litigating plaintiffs’ case against the State. Thus, the motion joined by LAUSD
4 argued that the actions of individual districts, and the districts’ ability or inability to take action, are
5 irrelevant to the merits of plaintiffs’ case.

6 The Court agreed and granted the motions to sever and stay. As the Court held:

7 The Cross-Complaint raises separate and distinct issues and seeks relief
8 different in kind, quality, and scope from Plaintiffs’ First Amended
9 Complaint. To the extent there is any risk of overlap between the First
10 Amended Complaint and the Cross-Complaint of some issues for
11 discovery and trial, that risk is highly conditional. . . . [A] separate trial
12 and stay of Defendant’s Cross-Complaint will permit the Court to
13 resolve Plaintiffs’ case in an efficient and economical manner and will
14 preserve judicial resources should proceeding on the Cross-Complaint,
15 or some portion of it, become unnecessary after resolution of the
16 underlying case.

13 (Order Granting Mot. to Sever & Stay Proceedings at 2-3.) Therefore, the Court accepted the
14 arguments made by plaintiffs, and various school districts including LAUSD, that in resolving
15 plaintiffs’ claims, it need not determine the issues raised by the cross-complaint, which would include
16 whether each individual district had the ability or capacity to act. LAUSD has presented no reason
17 for the Court to reach a different conclusion now.

18 **III. LAUSD’S CURRENT INTERPRETATION OF *BUTT* CONTRADICTS ITS**
19 **EARLIER ARGUMENT TO SEVER AND STAY THE STATE’S CROSS-**
20 **COMPLAINT AND IS THEREFORE BARRED BY JUDICIAL ESTOPPEL.**

21 Because LAUSD joined the motion to sever and stay brought by Fresno Unified School
22 District and San Francisco Unified School District, it should not now be allowed to reverse its
23 position and request that the Court expand this case. “Judicial estoppel prevents a party from
24 asserting a position in a legal proceeding that is contrary to a position previously taken in the same or
25 some earlier proceeding. The doctrine serves a clear purpose: to protect the integrity of the judicial
26 process.” *Jackson v. County of Los Angeles*, 60 Cal. App. 4th 171, 181 (1997) (citation omitted).
27 Judicial estoppel applies when the following conditions are met:

28 (1) the same party has taken two positions;

- (2) the positions were taken in judicial or quasi-judicial administrative proceedings;
- (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true);
- (4) the two positions are totally inconsistent; and
- (5) the first position was not taken as a result of ignorance, fraud, or mistake.

Id. at 183 (citations omitted).

All of these factors are present here. In the instant motion, LAUSD has taken a position on *Butt* that is “totally inconsistent” with its earlier position advocating severance of the State’s cross-complaint. The Court adopted LAUSD’s (and plaintiffs’ and other cross-defendants’) earlier position, and LAUSD has not shown and cannot show that its earlier position was the “result of ignorance, fraud, or mistake.”

LAUSD should be prevented from now asserting the opposite position (which, as discussed below, is also contrary to law). The district chose to seek severance of the cross-complaint on the grounds that the cross-complaint presented legally distinct issues from plaintiffs’ case and that failing to sever would unnecessarily complicate the case. LAUSD now claims the exact opposite: that the district-level issues presented by the cross-complaint are integral to determining the State’s liability under plaintiffs’ case and that severance is therefore impossible.³ This flat reversal constitutes precisely the type of knowing misrepresentation that forms the basis for applying judicial estoppel. The “integrity of the judicial process,” *Jackson*, 60 Cal. App. 4th at 171, cannot be maintained if LAUSD is permitted to flip-flop its position, particularly a position on such a key issue in this case, whenever it chooses.

IV. BUTT DOES NOT REQUIRE PLAINTIFFS TO SHOW THAT DISTRICTS ARE INCAPABLE OF PROVIDING AN EQUAL EDUCATION.

LAUSD’s motion also fails on the merits. By arguing that plaintiffs must establish district incapacity to act if plaintiffs are to prevail on an equal protection claim against the State, LAUSD

³ LAUSD does not explicitly argue that the Court should reverse its decision to sever the cross-complaint. However, this would be the only logical result if the Court were to grant LAUSD’s motion to insert in plaintiffs’ case an analysis of individual districts’ ability or inability to correct the educational deprivations alleged.

1 attempts to import by fiat a proof element that the California Supreme Court specifically considered
2 and rejected in *Butt*. LAUSD asserts without support that the *Butt* Court articulated a State duty to
3 intervene because, “absent State intervention, RUSD [Richmond Unified School District] would have
4 been unable to complete the final six weeks of its scheduled school term.” (LAUSD MPA at 8.) But
5 the *Butt* Court expressly rejected precisely this focus on the cause of the educational inequality and
6 instead held that the State has a duty to intervene to ensure equality of educational opportunity when
7 conditions in schools fall fundamentally below prevailing statewide standards: “Despite contrary
8 federal authority, California constitutional principles require State assistance to correct basic
9 ‘interdistrict’ disparities in the system of common schools, even when the discriminatory effect was
10 not produced by the purposeful conduct of the State or its agents.” *Butt*, 4 Cal. 4th at 681; *see also id.*
11 at 684-85 (noting that in *Tinsley v. Palo Alto Unified School District*, 91 Cal. App. 3d 871 (1979),
12 “[t]he petitioners declined to allege any specific acts committed by State or local parties as the cause
13 of the interdistrict imbalance,” but the *Tinsley* court nonetheless correctly decided that the State “‘has
14 a duty to intervene to prevent unconstitutional discrimination’ in its schools,” and further noting that
15 “the *Tinsley* decision emphasize[s] the State’s ultimate responsibility for maintaining a
16 nondiscriminatory common school system”).

17 Contrary to LAUSD’s claims, the elements of plaintiffs’ proof to demonstrate a constitutional
18 violation under *Butt* are to show that particular educational deprivations “would have a real and
19 appreciable impact on the affected students’ fundamental California right to basic educational
20 equality,” triggering the State’s “‘duty to intervene to prevent unconstitutional discrimination’ in its
21 schools.” *Id.* at 684-85, 688 (quoting *Tinsley*, 91 Cal. App. 3d at 903-04). This Court has already
22 ruled that plaintiffs’ allegations, if true, satisfy this showing: “Plaintiffs’ allegations, if believed,
23 would demonstrate that, despite the State’s legal obligations with respect to public education, these
24 plaintiffs do not enjoy the level of educational opportunity to which they are entitled.” (Order
25 Denying Dem. at 2.) Thus, the Court has made clear that plaintiffs’ allegations, if proved, qualify as
26 “extreme circumstances” that “would have a real and appreciable impact” on students’ “fundamental
27 California right to basic educational equality.” *Butt*, 4 Cal. 4th at 684-85, 688.

28

1 LAUSD’s wished-for additional showing that a district is unable to provide or is incapable of
2 providing the equal education the Constitution requires would be inconsistent with the *Butt* Court’s
3 repeated focus on students’ right to an equal education. As the *Butt* Court explained, “access to a
4 public education is a uniquely fundamental personal interest in California.” *Id.* at 681. The question
5 in *Butt*, therefore, was whether “the affected students” were receiving their “fundamental California
6 right to basic educational equality,” *id.* at 688, not whether the Richmond Unified School District
7 (RUSD) was somehow capable of resolving its educational crisis itself.⁴ Importantly, the Court held
8 that “[t]he legislative decision to emphasize local administration does not end the State’s
9 constitutional responsibility for basic equality in the operation of its common school system. Nor
10 does disagreement with the fiscal practices of a local district outweigh the rights of its blameless
11 students to basic educational equality.” *Id.* at 688-89. Under *Butt*, the State’s obligation is to protect
12 students’ right to fundamentally equal educational opportunity, not to protect the individual choices
13 that a school district might make.

14 The *Butt* court also analyzed the State’s duty in a way that precludes LAUSD’s proposed
15 bifurcation of the liability issue. LAUSD contends that the State’s duty exists or does not exist
16 depending on whether the State’s agents, the districts, are capable of performing in lieu of the State,
17 their principal. To the contrary, the *Butt* court held that the State has a nondelegable duty: “the
18 State’s ultimate responsibility for public education cannot be delegated to any other entity[.]” 4 Cal.
19 4th at 681 (citation omitted). To say that a duty is nondelegable does not, of course, mean that a
20 principal cannot delegate functions to agents; it means that failures of its agents to carry out the
21 functions do not excuse the principal from its responsibility. The *Butt* court explained the State’s
22 obligation in exactly this way: “The legislative decision to emphasize local administration does not
23 end the State’s constitutional responsibility for basic equality in the operation of its common school
24

25
26 ⁴ In fact, the *Butt* Court never held that RUSD was incapable of providing such an education.
27 Instead, the court cited evidence of RUSD’s fiscal mismanagement, *Butt*, 4 Cal. 4th at 676 n.6, which
28 suggests that the district was capable of making—but failed to make—choices that would have
prevented the constitutional deficiencies found in *Butt*.

1 system.” 4 Cal. 4th at 688-89. LAUSD’s motion proceeds from the contrary premise, and is therefore
2 incorrect as a matter of law.

3 “Blameless students,” *id.* at 689, suffer whenever they lack access, for any reason, to an equal
4 education. If a district’s actions (or inactions) result in constitutionally deficient educational
5 practices, *Butt* requires the State to intervene—regardless of whether the deficiencies were caused by
6 the district’s incapacity to act, by the district’s improper choices where it had the capacity to act, or
7 by any other factor.⁵ As the Supreme Court explained in *Butt*, “The State itself bears the ultimate
8 authority and responsibility to ensure that its district-based system of common schools provides basic
9 equality of educational opportunity.” *Id.* at 685. This “ultimate authority and responsibility” is
10 nowhere limited only to those circumstances in which a district is unable to act, nor does *Butt* require
11 plaintiffs to allege and prove the cause of the deprived conditions under which they are forced to
12 attempt to learn.⁶ This Court must therefore reject LAUSD’s limiting interpretation of *Butt*.

13
14
15 ⁵ The two cases LAUSD cites to demonstrate that deference to school districts has been
16 critical to “seminal” decisions concerning equal educational opportunity (*see* LAUSD MPA at 11
17 n.6) do not further LAUSD’s position. In *Tinsley*, the critical holding was not that districts could not
18 remedy racial segregation but instead that it did not matter whether districts could do so because, as
19 the *Butt* Court recognized, “in California, the State shares responsibility with ‘the local entities it has
20 created’ to provide ‘equal educational opportunity to the youth of the state’ and ‘has a duty to
21 intervene to prevent unconstitutional discrimination’ in its schools.” *Butt*, 4 Cal. 4th at 684-85
22 (quoting *Tinsley*, 91 Cal. App. 3d at 903-04). Likewise, in *Serrano v. Priest*, 5 Cal. 3d 584, 601
23 (1971), the California Supreme Court held the then-existent school finance system unconstitutional
24 because “[t]o allot more educational dollars to the children of one district than to those of another
25 merely because of the fortuitous presence of such [commercial and industrial] property is to make the
26 quality of a child’s education dependent upon the location of private commercial and industrial
27 establishments. Surely, this is to rely on the most irrelevant of factors as the basis for educational
28 financing.” Thus, the *Serrano* Court did not rule because any particular district could not equalize
itself against other districts. Instead, like the *Butt* Court, it ruled on the basis of protecting blameless
students’ fundamental right to equal educational opportunity.

⁶ The *Butt* Court was careful to explain that “nothing in our analysis is intended to immunize
local school districts from accountability for mismanagement or to suggest that they may indulge in
fiscal responsibility without penalty. The State is constitutionally free to legislate against any
recurrence of the Richmond crisis.” *Butt*, 4 Cal. 4th at 691. The Court thereby provided that district
culpability, where present, should be reconciled—but not at students’ expense and, therefore, not as
part of the question whether the State has a duty to intervene to ensure fundamentally equal
educational opportunity.

1 **V. EVEN IF LAUSD’S INTERPRETATION OF *BUTT* WERE CORRECT,**
2 **LAUSD’S PROPOSED TRIFURCATION WOULD STILL BE**
3 **INAPPROPRIATE.**

4 Putting aside LAUSD’s attempt to relitigate *Butt*, the Court should nonetheless deny the
5 district’s motion to trifurcate the trial. Plaintiffs agree that liability and remedy should be tried
6 separately.⁷ (*See, e.g.*, Pls.’ Dec. 18, 2001 Case Mgmt. Conference Statement at 1-3.) LAUSD’s
7 proposed division of the liability phase into two separate phases, however, is inefficient and
8 inappropriate. First, LAUSD’s first two proposed phases focus exclusively on plaintiffs’ *Butt* claim
9 and fail to consider plaintiffs’ other causes of action. In addition to an equal protection claim based
10 on *Butt*, plaintiffs have also raised equal protection claims based on race and socioeconomic status; a
11 due process claim; and a claim under Article IX, sections 1 and 5, of the California Constitution.
12 LAUSD’s proposal for sequencing the trial includes only plaintiffs’ *Butt* claim and would therefore
13 result in only a partial resolution of the case.⁸ This is reason enough to reject LAUSD’s motion.

14 Second, LAUSD’s proposed first two phases cannot and should not be separated. LAUSD
15 proposes that phase one answer the question of whether the State is required to intervene under *Butt*
16 and that phase two answer the question of whether the State has a compelling interest in failing to
17 intervene. However, the question of compelling interest is legally intertwined with the question of
18 the State’s obligation to intervene. *Butt*, 4 Cal. 4th at 692 (holding that the State does not have an
19 obligation to intervene if it can “demonstrate a compelling reason for failing to do so”). Beyond
20 that, many witnesses, including all parties’ experts, State officials, district officials, principals, and
21 possibly even teachers, are likely to have knowledge relevant to both of LAUSD’s proposed first two
22 phases. It would be inefficient, to say the least, to call these witnesses to the stand once during each
23 of two separate trials, or to have two separate depositions of each witness during a bifurcated

24 ⁷ The Court has previously indicated that it would seek additional input from the parties
25 following a determination of liability before developing a final remedial plan. (Tr. of Dec. 18, 2001
26 Case Mgmt. Conference at 11:22-12:28.)

27 ⁸ Plaintiffs elsewhere oppose the State’s motion for judgment on the pleadings on plaintiffs’
28 cause of action under Article IX of the California Constitution. However, in addition to the *Butt*
 claim and the Article IX claim, plaintiffs state two additional equal protection claims and a due
 process claim.

1 discovery process. Instead, to promote efficiency and economy, each witness should provide
2 deposition and trial testimony only once; this would, of necessity, occur during the first proposed
3 phase of trial. LAUSD argues that the Court may consider evidence presented during one phase
4 when ruling on a subsequent phase (LAUSD MPA at 10), but this is beside the point. If all or
5 substantially all of the evidence is going to be gathered and presented during the first phase, then
6 there is no benefit to conducting trial in separate phases; any theoretical gains in efficiency,
7 expediency, or simplification of the issues would be lost. LAUSD has failed to articulate any benefit
8 to separating the first two of its proposed three phases of trial.

9 Finally, LAUSD fails to consider that its proposal would result in just the opposite of
10 streamlining the trial because the proposal would result in numerous mini-trials on the conditions in
11 each district and the ability of each district to remove the educational deprivations alleged. LAUSD
12 baldly argues that plaintiffs must establish “systemic failure at the district level” (LAUSD MPA at
13 14); such a showing will require review of the vagaries of each district’s fiscal and management
14 choices applying to each category of conditions this suit addresses, as well as to each of the school
15 sites at which fundamental educational inequities arise. LAUSD’s proposal would essentially result
16 not in three phases, but in twelve or more: one phase for each of the districts from which plaintiffs
17 identify trial witnesses, plus LAUSD’s proposed follow-up phases concerning the State’s interest in
18 not intervening and the appropriate remedy for the State’s failure to intervene. As LAUSD
19 acknowledged when it joined the motion to sever and stay the State’s cross-complaint, each mini-trial
20 is likely to be a huge undertaking that would consume much time and resources. *See supra* pp. 4-5.
21 Thus, far from streamlining trial and saving time, LAUSD’s proposal would result in greater
22 complexity and a longer trial. It would also result in expansion of discovery, since, in addition to
23 collecting evidence on conditions at individual schools, plaintiffs would have to collect evidence on
24 each district’s overall conditions and each district’s ability or inability to correct the alleged
25 deficiencies.⁹ For these reasons, the Court should deny LAUSD’s proposed trifurcation.

26 ⁹ Contrary to LAUSD’s assertion (LAUSD MPA at 10), LAUSD’s proposal would not
27 eliminate plaintiffs’ need to conduct discovery of individual schools. Evidence of conditions at
28 individual schools would be relevant to evaluating the overall quality of a district’s educational
program.

1 **VI. THE COURT SHOULD NARROW ISSUES FOR TRIAL THROUGH**
2 **SUMMARY ADJUDICATION MOTIONS AND ORDER TRIAL ON**
3 **LIABILITY TO PROCEED AS A SINGLE PHASE.**

4 Notwithstanding the flaws of LAUSD's motion, the Court is not bound in a judicial
5 straitjacket, forced to hear repetitive motions regarding its interpretation of key cases for trial,
6 without narrowing the scope of the litigation. For example, plaintiffs have properly presented to this
7 Court, simultaneous with the opposition to this motion, a separate motion for summary adjudication
8 of the State's duty to ensure equal access to instructional materials for all California public school
9 students. Plaintiffs' motion presents the Court with an opportunity to fully resolve the question of the
10 State's duty regarding access to instructional materials and to issue a judgment binding on the parties
11 regarding the meaning of the *Butt* decision as applied to this litigation. A ruling on plaintiffs' motion
12 will thus dramatically narrow the issues for trial and should also have the ancillary benefit of putting
13 an end to other parties' efforts to revisit and renegotiate this Court's already clear rulings and expand
14 or alter the case plaintiffs filed.

15 In addition, plaintiffs believe that the liability phase can be efficiently tried without artificially
16 dividing it into separate legal issues. Consistent with the Court's direction as to those issues that are
17 in the case and those that are not, plaintiffs anticipate that their liability evidence will be directed to
18 three concrete showings:

- 19 • First, plaintiffs will show that there are students at many California public schools
20 who suffer from conditions that deprive them of equal educational opportunity. This
21 showing will include evidence that the deplorable conditions about which plaintiffs
22 complain (including lack of instructional materials, adequately trained teachers, and
23 adequate facilities) rise to a constitutionally significant dimension. The State disputes
24 that any of these conditions are constitutionally meaningful.
- 25 • Second, plaintiffs will introduce evidence demonstrating that the State's system of
26 oversight and management is not capable of preventing or discovering and correcting
27 these conditions. The State disputes that it has any duty to monitor or correct these
28 conditions.

- 1 • Third, plaintiffs will show that there are steps the State could take to institute a system
2 of oversight and management that would remedy these conditions now and in the
3 future. This evidence will demonstrate that a range of feasible remedies exists; but it
4 will *not* necessarily define the particular remedy that ultimately should be ordered
5 here. Again, the State disputes that there is anything it could do to improve these
6 conditions.

7 After this showing, the State will of course be free to present its evidence in response.

8 A finding in plaintiffs' favor on liability would entitle plaintiffs, at a minimum, to a
9 declaration that the State has a legal duty to ensure that the conditions about which plaintiffs
10 complain be provided to California schoolchildren in a manner that is consistent with equal
11 educational opportunity. This declaration would reject the State's apparent current belief that its
12 constitutional duties are satisfied when it distributes funds to local districts in roughly equal amounts,
13 consistent with *Serrano v. Priest*, 18 Cal. 3d 728 (1976), and when it intervenes if a school district
14 reaches a financial crisis, consistent with *Butt*, 4 Cal. 4th 668. Rather, the Court's declaration would
15 confirm that the State's duties extend to the conditions experienced by children in California schools,
16 not merely the apportionment of funds to local districts. In short, the Court's declaration would give
17 specific meaning to the decision in *Butt* that "the State's responsibility for basic equality in its system
18 of common schools extends beyond the detached role of fair funder or fair legislator," *id.* at 688,
19 declaring that the State's responsibility for basic equality includes operating a system to prevent or
20 discover and correct deprivations of such fundamental learning conditions as sufficient numbers of
21 instructional materials, trained teachers, and decent facilities.

22 After a liability finding for plaintiffs, the appropriate next step would be for the Court to
23 require the State to propose a remedial plan to establish an effective system of oversight and
24 management with respect to the prevention or discovery and correction of the conditions that have, in
25 the liability phase, been established to exist in California's public schools. *See Serrano*, 18 Cal. 3d
26 at 747, 749-50 (judgment entered by the trial court "specifically provided that it was not to be
27 construed to require adoption of any particular system of school finance, but only to require that the
28 plan adopted comport with the requirements of state equal protection provisions," but the court

1 retained jurisdiction to evaluate the proposed remedy); *see also Abbott v. Burke*, 119 N.J. 287, 295
2 n.1, 387 (1990) (ordering the State to devise a remedy addressing funding, organization, and
3 management of the school system after finding that the legislature had failed to provide “a thorough
4 and efficient system of free public schools” as required under the state constitution); *Campaign for*
5 *Fiscal Equity v. State*, 719 N.Y.S.2d 475, 549 (2001) (finding that it was the State’s responsibility to
6 devise the remedial scheme). Allowing the State a first opportunity to devise a remedial plan is
7 consistent with the recognition that the State retains significant discretion in designing a
8 constitutionally adequate system of oversight and management.

9 **VII. CONCLUSION**

10 In its prior rulings, this Court has already interpreted *Butt* to mean what it says—that the State
11 has a constitutional duty to intervene when local districts fail to provide students with basic
12 educational equality, regardless of the cause of that failure—and that the deplorable school conditions
13 alleged by plaintiffs are sufficient to trigger the State’s duty under *Butt*. There is no reason for the
14 Court to reverse these rulings now and issue a re-interpretation of *Butt* that is both contrary to law
15 and totally inconsistent with LAUSD’s previous position in this case. The Court can appropriately
16 narrow the issues before trial by ruling on properly presented motions for summary adjudication.
17 Plaintiffs have also provided a logical ordering of issues for trial that would avoid the inadequacies of
18 LAUSD’s trifurcation proposal. For these reasons, plaintiffs respectfully request that the Court deny
19 LAUSD’s motion in its entirety.

20 Dated: June 9, 2003

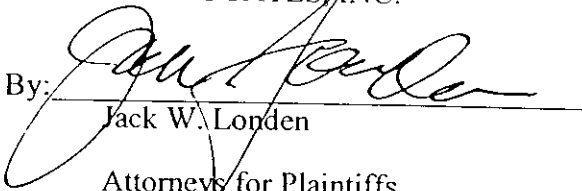
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