

ENDORSED
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San Francisco County Superior Court

MAY 22 2003

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14 LOS ANGELES UNIFIED SCHOOL DISTRICT

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 CITY AND COUNTY OF SAN FRANCISCO

17

18

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

21 Plaintiff,

22 vs.

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

26 Defendant.
27

No. 312236

NOTICE OF MOTION AND MOTION
TO BIFURCATE AND ORDER
PROCEEDINGS

Dept.: 20, Hall of Justice
Judge: Hon. Peter J. Busch
Trial Date: August 30, 2004

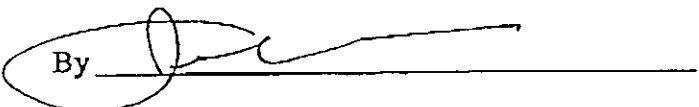
1 TO PLAINTIFFS, DEFENDANTS, INTERVENORS AND THEIR ATTORNEYS
2 OF RECORD:

3 NOTICE IS HEREBY GIVEN that intervenor Los Angeles Unified School District
4 will and hereby do move this Court for an order to bifurcate and order the trial pursuant to
5 California Code of Civil Procedure section 1048.

6 This motion is based upon this notice of motion and motion, the pleadings and
7 records on file herein, and further arguments and evidence presented at oral argument and
8 in reply.

9 Dated: May 22, 2003.

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20 individually and on behalf of all others)
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21 Plaintiff,)

22 vs.)

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

26 Defendant,)
27 _____)
28

No. 312236

**INTERVENOR LOS ANGELES
UNIFIED SCHOOL DISTRICT'S
MOTION TO BIFURCATE AND
ORDER PROCEEDINGS CCP § 1048**

Dept.: 20, Hall of Justice
Judge: Hon. Peter J. Busch
Trial Date: August 30, 2004

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LOS ANGELES UNIFIED SCHOOL
DISTRICT, SAN FRANCISCO UNIFIED
SCHOOL DISTRICT, LONG BEACH
UNIFIED SCHOOL DISTRICT, et al.,

Intervenors.

1 I. INTRODUCTION.

2 In its November 14, 2000 Order, the Court identified the issues for trial:

3 this case will deal with the oversight and management systems the State has
4 in place to determine if they are legally adequate and whether they are being
properly implemented.

5 November 14, 2000, Order at 2:22-2:24. The Court also identified what is not at issue:

6 this case is not about correcting the specific deficiencies suffered by these
7 students at their specific schools in their specific school districts.

8 *Id.* at 2:5-2:7.

9 Since entry of the Court's order, this case has mushroomed and is now consuming
10 the parties' resources at an alarming rate, especially given the State's current fiscal crisis
11 and its effect upon education. *See infra* Part II E. at 6. Intervenor Los Angeles Unified
12 School District ("LAUSD"), with more than 745,000 students, is the largest school district
13 in the State and a party for whom the outcome of this litigation could have momentous
14 consequences. Put simply, LAUSD has no choice but to participate in this litigation. That
15 participation comes at a significant cost— e.g., LAUSD is presently responding to 16 sets
16 of document requests— money that would otherwise be spent to educate students. To
17 avoid the unnecessary expenditure of any party's resources and to focus all of the parties on
18 the issues that the Court will try, LAUSD seeks the Court's interpretation of *Butt v. State of*
19 *California*, 4 Cal. 4th 668 (1992)—the controlling California Supreme Court authority—as
20 it applies to this case and an order to trifurcate the issues for trial.

21 A review of the pleadings reveals a fundamental difference between plaintiffs' and
22 the State's view of *Butt*. Plaintiffs contend that *Butt* requires the State to intervene
23 whenever students' constitutional rights are violated, regardless whether the district may be
24 capable of remedying the deprivation.¹ In their view, the State, as principal, is liable if its
25 agent, the district, failed to fulfill the educational obligation. Pls.' Opp. To Bathroom Mot.

26 _____
27 ¹ Pls.' Opp. To Def. State of California's Mot. for Summary Adjudication of No Duty To
28 Police or Monitor Bathroom Maintenance ("Pls.' Opp. T o Bathroom Mot.") at 6:21-7:03.

1 at 5:10-5:14. In contrast, the State argues that *Butt* requires the State to intervene “when
2 students are deprived of constitutional rights and when the district lacks the ability to fix the
3 problem.”² They submit that the State has no duty to intercede until the plaintiffs show that
4 there is a constitutional violation, and that the districts are incapable of addressing it.
5 Resolution of this legal issue would inform the ongoing extensive and expensive discovery,
6 organize the case for trial and possibly expedite its resolution.

7 To decide whether the State’s oversight and management systems are legally
8 adequate, and whether they are being properly implemented, the Court must determine
9 whether the State is acting when required to do so under the California Constitution.
10 Plaintiffs and the State agree that *Butt* provides the analytical framework for this decision.

11 The purpose of this motion is to seek the Court’s interpretation of *Butt* as it applies
12 to this case, followed by the identification and separate trial of issues. LAUSD submits that
13 *Butt* requires plaintiffs to show that there are “extreme circumstances” such that the local
14 districts’ resource problems would deny students basic educational equality, unless the
15 State intervenes. *See Butt*, 4 Cal. 4th at 688, 692. Only then does the burden shift to the
16 State to demonstrate a compelling reason for failing to act. *Id.* at 692. Consistent with this
17 interpretation, the trial should be sequenced in three phases: (1) Does plaintiffs’ evidence
18 establish that there are extreme circumstances such that the local districts’ resource
19 problems require the State to take action it has not taken? (2) If so, does the State have a
20 compelling interest for having failed to take such action? (3) If not, what is the appropriate
21 remedy? If plaintiffs fail to prevail at the first or second stage, then the trial need not go
22 any further, and the time and money that would be unnecessarily expended if the trial were
23 not sequenced would be saved.

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26 ² Defs.’ Mem. of P&A in Supp. of Mot. For Summary Adjudication of No Duty to Police
27 or Monitor Bathroom Maintenance (“Defs.’ P&A in Supp. of Bathroom Mot.”) at 17:16-
17:19.

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1 For all of the reasons detailed below, LAUSD requests that this motion to sequence
2 the trial be granted.

3 II. PROCEDURAL HISTORY.

4 A. The Complaint and Demurrer.

5 Plaintiffs initiated this case by filing their complaint on May 17, 2000. Plaintiffs
6 filed their First Amended Complaint ("FAC"), on August 14, 2000, alleging causes of
7 action for violations of the Equal Protection Clause of the California Constitution (Article I,
8 section 7 and Article IV, section 16), the Due Process Clause of the California Constitution
9 (Article I, sections 7 and 15), Article IX §§ 1, 5 of the California Constitution, and sought
10 Declaratory Relief.³

11 The State demurred to the FAC on September 25, 2000 on the grounds that the
12 complaint was uncertain and did not state a cause of action because plaintiffs failed to
13 allege that they had exhausted their administrative remedies under the Uniform Complaint
14 Procedure ("UCP"). Dem. of Def. State of California To Pls.' FAC at 2:1-2:20. Plaintiffs
15 responded that the FAC was not uncertain because it alleged that defendants were not
16 complying with their constitutional duties and because they failed to "(1) establish[]
17 adequate minimal standards regarding educational personnel, materials, and school
18 facilities; (2) take[] steps . . . to determine whether conditions violating those standards
19 exist in California schools; and (3) take[] steps to prevent violations from occurring and,
20 when occurring, to ensure that conditions violating those standards are corrected or
21 remedied." Pls.' Opp. To Dem. at 17:6-17:14 (quoting Pls.' FAC at ¶ 294). Plaintiffs
22 argued that they were not obliged to exhaust administrative remedies because those only
23 apply to "local agency" violations, not to State and State agency violations. Pls.' Opp. To

24

25 ³ The First Amended Complaint also alleged causes of action under Education Code 51004
26 and Code of Civil Procedure § 526a. However, the Court granted the State's motion for
27 judgment on the pleadings with regard to those claims on February 8, 2001. Plaintiffs
also initially alleged a violation of Title VI and its implementing regulations. Plaintiffs'
unopposed motion to dismiss that claim was granted on March 5, 2003.

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1 Dem. at 26:5-26:7. At the demurrer hearing, plaintiffs asserted that “this case is exclusively
2 about the State’s system of oversight and that system’s alleged inadequacies and failures.”
3 November 14, 2000, Order at 2:8-2:10, 2:22-2:24. “Based on this understanding of the
4 scope of the case, the Court [did] not require Plaintiffs to exhaust the existing district-level
5 administrative remedies pointed to by the State.” *Id.* at 2:17-2:18. The Court noted,
6 “Plaintiffs’ representation, to which the Court will hold Plaintiffs, has and will have
7 ramifications to all stages of the case, including pleading, class certification, motion
8 practice, trial, and remedies.” *Id.* at 2:14-2:16. “Fleshing out [plaintiffs’] contentions
9 [would] be a task for discovery” *Id.* at 3:18-3:19.

10 B. The Cross-Complaint and Intervention.

11 On December 11, 2000, the State of California filed a cross-complaint against
12 various school districts alleging that, if the State were found liable for various violations, it
13 was a result of those districts not fulfilling their statutory obligations. On February 28,
14 2001, a number of school districts named as cross-defendants moved to “sever and stay” the
15 cross-complaint under Code of Civil Procedure section 1048(b). The majority of the cross-
16 defendants joined that motion. In anticipation of the severance and stay of the cross-
17 complaint, cross-defendant LAUSD moved to intervene on March 16, 2001. Plaintiffs filed
18 their own motion to sever and stay on March 21, 2001. The Court granted LAUSD’s
19 motion to intervene on May 29, 2001, and both motions to sever and stay on June 1, 2001.

20 C. Class Certification.

21 Plaintiffs filed a motion for class certification on March 23, 2001. Plaintiffs argued
22 that the common, predominating legal question was “whether Defendants, by failing to
23 implement an effective system of oversight and management, have violated equal
24 protection guarantees, [and] the California Constitution’s guarantee of a free and common
25 education.” Pls.’ Mem. of P&A in Supp. of Class Certification at 20:3-20:6. They argued
26 that the common, predominating factual questions were “*whether* the State has an existing
27 system of oversight and management for its public schools” and how that system works to

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1 detect, prevent and correct plaintiffs' alleged deprivations. Pls.' Mem. of P&A in Supp. of
2 Class Certification at 21:16-21:20. The State opposed the motion on the grounds that there
3 could be no equal protection claim in a class that contains virtually all California
4 schoolchildren; that no class would be necessary for plaintiffs' theory that a lack of efficient
5 oversight violates the Constitution; and that there would not be substantial benefits from a
6 class action. State's Mem. of P&A in Opp. To Mot. for Class Certification at 8:11-8:27,
7 11:8-11:22, 14:8-15:8. This Court granted plaintiffs' motion for class certification, noting
8 that "[t]he liability issue is whether there is a failure on a state-wide level, not whether any
9 particular individual has suffered, and individual remedies are not sought." October 1,
10 2001, Order at 2:6-2:7.

11 D. The Liability Disclosure Statement.

12 Shortly after the Court ruled on the demurrer that discovery would cure any
13 lingering uncertainty in the FAC, defendants propounded special interrogatories to the
14 plaintiffs asking what the State had failed to do and what it was obligated to do. Defs.'
15 Mem. of P&A in Supp. of Mot. To Compel Further Answers To First Set of Special
16 Interrogatories at 1:4-1:15. Plaintiffs responded to the interrogatories in March 2001. *Id.* at
17 1:15-1:22. In response to a motion to compel (one of a series relating to these requests), the
18 Court ordered plaintiffs to supplement by detailing "the actions which they contend: (1) the
19 State of California should have taken in the past but did not take in order to have a
20 constitutionally adequate public school system; and/or (2) the State of California must take
21 in order to render the public school system constitutionally adequate." October 24, 2001,
22 Pretrial Scheduling Order at 2:8-2:12. Pursuant to that order, plaintiffs served their 364-
23 page Liability Disclosure Statement on October 3, 2002.⁴

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26 ⁴ Plaintiffs' Liability Disclosure Statement spends approximately 300 pages on what the
27 State knew about educational inequality and how it has perpetuated that inequality,
28 approximately 40 pages discussing the remedies plaintiffs seek and only 9 pages setting
forth plaintiffs' legal theories of liability. See Pls.' Liab. Discl. Stmt. at 26-35.

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1 In its November 21, 2002, Pretrial Scheduling Order, the Court declared that it
2 would hold plaintiffs to the theories advanced in their Liability Disclosure Statement, and
3 would “not permit plaintiffs to vary the theory of liability stated therein without good
4 cause.” Pretrial Scheduling Order at ¶ 3.

5 E. Discovery To Date.

6 By the end of May, this case will have seen more than 1,000,000 produced
7 documents, 16 plaintiffs’ experts, 13 defendants’ experts, 80 days of expert depositions,
8 152 completed fact depositions, 327 witnesses offering declarations of fact, and countless
9 other discovery procedures to be completed. LAUSD alone has received 15 simultaneous
10 sets of document requests for individual schools, responded to two sets of document
11 requests for district offices, produced more than 50,000 documents and had over 30
12 students, parents, teachers and principals deposed, with more to come.

13 Although discovery is frequently an expensive and time consuming process, here
14 fact collection has been an especially conflict-riddled affair. Plaintiffs and defendants have
15 clashed over their respective failures to comply with the Pretrial Scheduling Order, and fell
16 so far behind the schedule in that Order that an entirely new schedule is now in place. *See*
17 *Pls.’ Notice of Mot. and Mot. To Preclude Defs.’ Expert Testimony*. The declarations
18 submitted in connection with plaintiffs’ motion provide some insight into the breadth of the
19 discovery undertaking and the expense being incurred by all parties.

20

21 III. LEGAL BACKGROUND.

22 A. *Butt* is the California Supreme Court Authority that Controls this Case.

23 Plaintiffs and defendants have both recognized that *Butt* controls this litigation. *See*
24 *Pls.’ Liab. Discl. Stmt.* at ¶ 56; *State’s Mem. in Opp. To Mot. For Leave To File*
25 *Amendment To FAC* at 4:04-4:10. Accordingly, *Butt* will define the issues for trial. *Butt*
26 arose when the Richmond Unified School District (“RUSD”) announced that it would close
27 all of its schools six weeks prior to the end of the 1990-91 school year due to its financial

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1 collapse. *See Butt*, 4 Cal. 4th 673-75. Concerned parents sought injunctive relief to force
2 the RUSD's Board of Education and the State to keep schools in the district open. *Id.* at
3 674. The parents alleged that closure would deny their children their fundamental right to a
4 public education under the California Constitution. *Id.* They urged that early closure of the
5 school constituted an unjustified discrimination against RUSD students compared to other
6 California students and therefore violated equal protection guarantees under the United
7 States and California Constitutions. *Id.* The trial court found that the equal protection
8 guarantees of the California Constitution require "state intervention to ensure that fiscal
9 problems do not deprive a local district's students of basic educational equality. The trial
10 court also accepted plaintiffs' preliminary showing that the effect of the District's crisis on
11 students' educational rights was serious enough to trigger the State's constitutional duty."
12 *Id.* at 678-79.

13 In its decision, the California Supreme Court recognized that education is a
14 fundamental right under the California Constitution, and that the State has assumed the
15 obligation to provide that right by adoption of the Constitution. *Id.* at 685; 680-81. The
16 Court acknowledged that in California, education is administered through a local-district
17 system that is recognized by the Constitution and deeply rooted in tradition. *Id.* The Court
18 found, however, that the State has the ultimate responsibility for public education, which
19 cannot be delegated, and the responsibility to ensure basic educational equality under the
20 California Constitution. *Id.* at 681. According to the Supreme Court, this obligation

21 extends beyond the detached role of fair funder or fair legislator. In extreme
22 circumstances, at least, the State "has a duty to intervene to prevent
unconstitutional discrimination" at the local level.

23 *Id.* at 688.

24 At the same time, however, the Court also recognized that,

25 Of course, the Constitution does not prohibit all disparities in educational quality
26 and service. . . . the experience offered by our vast and diverse public school system
27 undoubtedly differs to a considerable degree among districts, schools and individual
28 students. These distinctions arise from inevitable variances in local programs,
philosophies, and conditions. "[A] requirement that [the State] provide [strictly]

1 'equal' educational opportunities would thus seem to present an entirely unworkable
2 standard requiring impossible measurements and comparisons. . .'

3 *Id.* at 686.

4 The Court added that "principles of equal protection have never required the State to
5 remedy all ills or eliminate all variances in service." *Id.* Recognizing that flexibility would
6 be key, the Court acknowledged that "mounting fiscal pressures" on districts would likely
7 result in different approaches in different districts "to gain maximum educational benefit
8 from limited resources." *Id.* In light of this, the Court recognized that "an individual
9 district's efforts in this regard are entitled to considerable deference." *Id.*

10 Because, in *Butt*, absent State intervention, RUSD would have been unable to
11 complete the final six weeks of its scheduled school term, the Court found that the State did
12 have an obligation to intervene. In doing so, the Court articulated a test for when the State
13 must act:

14 The State is the entity with ultimate responsibility for equal operation of the
15 common school system. Accordingly, the State is obliged to intervene when a local
16 district's fiscal problems would otherwise deny its students basic educational
equality, unless the State can demonstrate a compelling reason for failing to do so.

17 *Id.* at 692.

18 Thus, the Court upheld the lower court's examination of the RUSD and its finding
19 that the circumstances of the closure were sufficient to trigger State action. "Faced with
20 evidence of such extensive educational disruption, the trial court did not abuse its discretion
21 by concluding that the proposed closure would have a real and appreciable impact on the
22 affected students' fundamental California right to basic educational equality." *Id.* at 687-
23 88. The Court rejected the State's assertion that, in this case, local control of schools is a
24 compelling state interest sufficient to "justify State tolerance of the extreme local
25 educational deprivation at issue here." *Id.*

26 As we show below, *infra* Part IV at 12-15, the Court should frame and sequence the
27 trial of this case consistent with the analysis required by *Butt* to streamline this litigation

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1 and to ensure that precious resources are not squandered because of any party's mistaken
2 view of how *Butt* applies to this case.

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4 B. The Court Has Discretion to Order That Any Issue Be Tried Before Any Other
5 Issue.

6 It is well within the discretion of this Court to sequence this trial. The trial court has
7 "broad discretion to determine the order of proof in the interests of judicial economy."
8 *Grappo v. Coventry Financial Corp.*, 235 Cal. App. 3d 496, 504 (1991); *see also McLellan*
9 *v. McLellan*, 23 Cal. App. 3d 343, 353 (1972). A trial court may order bifurcation of issues
10 for trial "when the convenience of the witnesses, the ends of justice, or the economy and
11 efficiency of handling the litigation would be promoted thereby" or "in furtherance of
12 convenience or to avoid prejudice, or when separate trials will be conducive to expedition
13 and economy[.]" Code Civ. Proc. §§ 598, 1048. Where liability is heard before other
14 issues, and results in a verdict "in favor of any party on whom liability is sought to be
15 imposed, judgment in favor of such party shall thereupon be entered, and no trial of other
16 issues in the action as against such party shall be had." *Id.* The statutory provisions for
17 severance and separate trials, are not limited to separate trials of causes of action, but also
18 separate trials of any issue. *Walton v. Walton*, 31 Cal. App. 4th 277 (1995); *see also Am.*
19 *Motorists Inc. v. Super. Ct.*, 68 Cal. App. 4th 864 (1998).

20 Trials are bifurcated to avoid wasting time and money. *Trickey v. Super. Ct.*, 252
21 Cal. App. 2d 650, 653 (1967); *accord Plaza Tulare v. Tradewell Stores, Inc.*, 207 Cal. App.
22 3d 522, 524 (1991). "The procedure is not limited to separate trials of liability and
23 damages; nor is it limited to dividing a case into only two parts. Indeed, 'trifurcation or
24 multifurcation' can be ordered." 3 Brown & Weil, Cal. Practice Guide: Civil Procedure
25 Before Trial, §§ 12:406-12:430. "The authority to sever issues for trial under Section 1048
26 may duplicate similar authority given under other statutes dealing with particular issues,
27 e.g.,...[California Civil Procedure section] 598 (separate trial of issue of liability before
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1 trial of other issues). These sections have been retained, however, because they include
2 useful procedural details which continue to apply.” Code Civ. Proc. § 1048 legislative
3 committee comment (Deering 1996).

4 Bifurcation’s main objective is “to expedite and simplify the presentation of
5 evidence.” *Foreman & Clark Corp. v. Fallon*, 3 Cal. 3d 875, 888 (1971). Bifurcation is
6 therefore a useful and necessary tool for ordering and organizing the complex issues
7 currently before the Court. These purposes may be served even where a trial court finds
8 that some portion of the evidence relating to the later-decided issues would be necessary on
9 the preliminary issue. *Kaiser Steel Corp. v. Westinghouse Elec. Corp.*, 55 Cal. App. 3d
10 737, 746 (1976). The mere fact that a trial is bifurcated does not preclude consideration in
11 one phase of trial of evidence introduced during another phase. *Foreman & Clark Corp.*, 3
12 Cal. 3d at 889.

13 While the discovery taken to date represents a massive undertaking, the end of
14 discovery in this case remains distant. Given the breadth of the factual record plaintiffs
15 intend to present, there is a significant benefit to clarifying the Court’s interpretation of *Butt*
16 and sequencing the trial. This approach will organize the issues and evidence to be
17 presented at trial thereby expediting the trial, simplifying the presentation of evidence,
18 streamlining the discovery process, and potentially saving the time associated with the
19 presentation of evidence at trial that is either overbroad or unnecessary. For example, if
20 LAUSD’s reading of *Butt* is accepted by the Court, plaintiffs should be able to conduct
21 discovery largely at the district level without doing as much discovery of individual
22 schools.

23
24 IV. THE TRIAL SHOULD BE ORDERED IN THREE PHASES.

25 A. The Court Should Organize And Focus The Trial in Light of *Butt*.

26 This motion is brought now because “[a] party seeking separate trials should seek
27 such relief as soon as the need becomes apparent.” 3 Brown & Weil, Cal. Practice Guide:

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1 Civil Procedure Before Trial (The Rutter Group 2002), § 12:420. Although motions to
2 sequence a trial are often brought on the eve of trial, the benefits of expediency and
3 simplification can be even greater if the decision to sequence the litigation is made at a
4 much earlier stage. The mounting costs of this litigation, the obvious difference between
5 the parties' interpretation of *Butt*, the recent conflicts over the Pretrial Scheduling Order
6 and the current state of expert depositions have made the need for a Court-ordered roadmap
7 apparent.

8 As noted above, to determine the appropriate sequence and to streamline this
9 litigation, the Court should interpret *Butt* as it applies to the case. LAUSD reads *Butt* to
10 require plaintiffs to show that there are "extreme circumstances" such that the local
11 districts' resource problems would deny students basic educational equality, unless the
12 State intervenes. *Butt*, 4 Cal. 4th at 688, 692.⁵ Unlike plaintiffs' interpretation, this reading
13 is consistent with the Supreme Court's deference to local districts, except when "extreme
14 circumstances" compel relief.⁶

15 Simply put, plaintiffs' view of *Butt* is an effort to supplant the Legislature and to
16 override the local district system. *Butt* does not allow a revolutionary restructuring of the
17 California's education system. Instead, *Butt* recognizes that the State has *ultimate*, not
18 primary, responsibility for delivery of an education that satisfied the California
19 Constitution. The front-line provider of that education is the local district, and the Court's
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21 ⁵ We use the word "resources" instead of "fiscal" because here plaintiffs are alleging a lack
22 of resources that extends beyond just an immediate fiscal shortfall to a lack of such
resources as adequate numbers of credentialed teachers.

23 ⁶ LAUSD's reading of *Butt* is consistent with other seminal California cases. For example,
24 in *Serrano v. Priest*, 5 Cal. 3d 584, 603 (1971), which found the school finance system
unconstitutional, the Court recognized that as a matter of law, the districts could not alter
25 that system, and as a practical matter, they could not tax themselves into financial
equality. *Id.* at 599-600. Similarly, in *Tinsley v. Palo Alto Unified School District*, 91
26 Cal. App. 3d 871, 893-894 (1979), the plaintiffs sought a State-level remedy to
interdistrict racial segregation. The court in that case noted that the State draws those
27 district boundaries, and therefore a State-level remedy for the segregation was necessary.
Id. at 905. Neither case suggested that the State would be liable if local districts had the
ability to remedy the violation at issue.

1 *Butt* analysis should recognize the local district's central role in satisfying the constitutional
2 rights of its students, when available resources allow it to do so.

3 If LAUSD's view of *Butt* is adopted, the trial can be sequenced in the three phases:
4 (1) Does plaintiffs' evidence establish that there are extreme circumstances such that the
5 local districts' resource problems require the State to act? (2) If so, does the State have a
6 compelling interest for having failed to take such action? (3) If not, what is the appropriate
7 remedy?

8 Under such a sequence, if plaintiffs fail to prevail at the first or second phase, the
9 case ends, and there is no need to expend resources on subsequent phases. In contrast, if
10 these issues are not decided in advance and the case is not sequenced, all parties will
11 introduce evidence on all issues, creating a potential free-for-all, unguided by the applicable
12 legal standard.

13 B. Phase One: Does plaintiffs' evidence establish that there are extreme circumstances
14 such that the local districts' resource problems require the State to act?

15 The Court has defined the issues for trial: whether the State's "oversight and
16 management systems" are "legally adequate and whether they are being properly
17 implemented." November 14, 2000, Order at 2:22-2:24. Under the California Constitution
18 and the Education Code, the State discharges its obligation to provide education through
19 local districts. Under *Butt*, to determine whether to impose upon the State an obligation to
20 act, the Court must analyze the local districts' programs to decide whether circumstances
21 require State intervention. *See Butt*, 4 Cal. 4th at 686-87. *Butt* recognizes that, in its
22 evaluation of the districts' educational programs, the Court need not find uniformity to
23 decide that the districts are able to satisfy the students' constitutional rights. To the
24 contrary, the *Butt* Court, which was considering the number of required school days,
25 expressed the need for great flexibility in evaluating whether a district is satisfying the
26 California Constitution:

27 Even unplanned truncation of the intended school term will not necessarily
28 constitute a denial of "basic" educational equality. A finding of

1 constitutional disparity depends on the individual facts. Unless the actual
2 quality of the district's program, viewed as a whole, falls fundamentally
below prevailing statewide standards, no constitutional violation occurs.

3 *Id.* (emphasis added).

4 For purposes of analyzing plaintiffs' claims in this lawsuit, it would not be
5 sufficient, nor consistent with the *Butt* court's analysis, to examine in isolation the class
6 representatives' individualized experience with respect to the particular resources at issue.⁷
7 Rather, the Court must evaluate the educational program as a whole for each of the districts
8 in which class representatives attend school. This is the approach that the Court adopted in
9 *Butt*, where the Court expressly rejected plaintiffs' claim that the mere failure of the RUSD
10 to provide 175 days of education was sufficient to require State intervention. The Court
11 allowed for the possibility that districts could develop a system to address their particular
12 circumstances:

13 [T]he California Constitution does not guarantee uniformity of term length for its
14 own sake. While the current statutory scheme for allocating State educational funds
15 strongly encourages a term of at least 175 days, that system is not constitutionally
16 based and is subject to change. In an uncertain future, local districts, faced with
17 mounting fiscal pressures, may be forced to seek creative ways to gain maximum
18 educational benefit from limited resources. In such circumstances, a planned
reduction of overall term length might be compensated by other means, such as
19 extended daily hours, more intensive lesson plans, summer sessions, volunteer
programs, and the like. An individual district's efforts in this regard are entitled to
20 considerable deference.

21 *Id.* at 686 (internal references omitted).

22 Allowing for this type of flexibility in evaluating each district's programs is essential to
proper application of *Butt* to plaintiffs' claims.

23 ⁷ It is crucial to recognize, as the Court did in its November 2000 order, that plaintiffs here
24 are not pursuing their individual claims and seeking redress for those. Instead, the
25 question is whether there is a systemic failure. As the Court noted in its November 2000
26 order, if individual claims were at issue, "many of the kinds of problems alleged might
27 well be amenable to resolution through existing administrative procedures." The Uniform
Complaint Procedure provides for complaints about district violations to be addressed by
the district, with appeal to the Superintendent of Public Instruction Cal. Code Regs. title
5 § 4631, § 4652. In some circumstances, complaints may be made directly to the
Superintendent of Public Instruction. *Id.* at § 4650.

1 Thus, in this phase of the trial, to decide whether plaintiffs' evidence establishes that
2 there are extreme circumstances such that the local districts' resource problems require the
3 State to act, the Court would examine both "the actual quality of the district's program
4 viewed as a whole" and the district's ability to provide the prevailing statewide equal
5 education required by the Court, as to each of the districts in which class members attend
6 school. *Id.* at 686-87, 692.

7 If plaintiffs cannot show systemic failure at the district level to satisfy the
8 constitutional rights of the students and inability by the districts to address that failure with
9 available resources, their case should fail.

10 C. Phase Two: Does the State have a compelling interest for having failed to take such
11 action?

12 If plaintiffs prevail on the first phase, the next phase should employ strict scrutiny
13 analysis to determine whether there is a compelling state interest that would support the
14 State's decision not to act—the inquiry conducted by the *Butt* Court. *See Butt*, 4 Cal. 4th at
15 686-688 (first upholding lower court finding that the State is obliged to intervene, *then*
16 applying strict scrutiny test to determine if "the State can demonstrate a compelling reason
17 for failing to do so."). This phase would allow the State to articulate any arguments in
18 support of a compelling interest not to intervene to prevent the constitutional violation.

19 D. Phase Three: What is the appropriate remedy?

20 If plaintiffs succeed in the first two phases, the Court should address the appropriate
21 remedy—which could range from staying the proceeding in order to allow the Legislature
22 to formulate a remedy, to adoption of plaintiffs' remedies, to adoption of a remedial scheme
23 advanced by another party, or some variation. The *Butt* Court concluded that the plaintiffs
24 had established State liability, and upheld the preliminary injunction, but reversed the
25 remedial order insofar as it distributed money earmarked by the legislature. *See Butt*, 4 Cal.
26 4th at 692-693, 701-703.

27

28

1 Trying the remedies last would be consistent with California Code of Civil
2 Procedure Section 598, which is commonly used to try liability issues separate from
3 damages. *See* Code Civ. Proc. § 598; *see also Foreman & Clark Corp. v. Fallon*, 3 Cal. 3d
4 at 843 (“Code of Civil Procedure section 598 empowers the Court, in a jury trial, try the
5 issue of liability before the issue of damages”).

6 Ordering the remedy issue to be tried last would save the Court and the parties
7 immeasurable time and expense. The issue of remedies presents the most contentious,
8 complex, time-consuming and expensive issue to be faced by this Court: plaintiffs’ demand
9 for a virtual reordering of the legislatively established system of education in California.

10

11 V. CONCLUSION.

12 For the foregoing reasons, the motion to sequence the trial should be granted.

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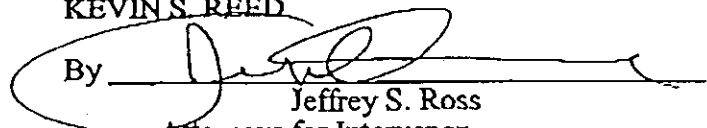
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