

No. 1 Civil A094890

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

STATE OF CALIFORNIA, DELAINE EASTIN, as State
Superintendent of Public Instruction,
STATE DEPARTMENT OF EDUCATION, and STATE
BOARD OF EDUCATION,

Petitioners,

vs.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA FOR THE
CITY AND COUNTY OF SAN FRANCISCO,

Respondent

GINO BUCHIGNANI, JASON KEHRLI, and DREW SMITH,

Real Parties in Interest

Hon. Peter J. Busch, Judge
Civil Case No. BC 312236

NOTICE OF RESPONDENT COURT'S ORDER REGARDING ALTERNATIVE WRIT

BILL LOCKYER,
Attorney General
THOMAS R. YANGER (SB 84342)
Deputy Att'y General
1300 I Street, Suite 125
Sacramento CA 94244
(916) 324-2500

Attorneys for Petitioners
Delaine Eastin, et al.

JOHN F. DAUM (SB 52313)
PETER L. CHOATE (SB 204443)
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, California 90071
(213) 430-6000

Attorneys for Petitioner
State of California

TO ALL PARTIES AND COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that on June 25, 2001, the respondent court issued its Order Regarding Alternative Writ, a true and correct copy of which is attached hereto at Exhibit A.

DATED: June 25, 2001.

Respectfully submitted,

O'MELVENY & MYERS LLP
JOHN F. DAUM
PETER L. CHOATE

Attorneys for Petitioner
State of California

By


Peter L. Choate

Exhibit A

1
2
3
4
5
6
7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10

11 ELIEZER WILLIAMS, et al.,

12 Plaintiffs,

13 vs.

14 STATE OF CALIFORNIA, et al.,

15 Defendants.
16

) Case No.: 312 236
)
)
)

) ORDER RE ALTERNATIVE WRIT
)
)
)
)
)
)
)
)

17 This Court has reviewed the Alternative Writ of Mandate issued June 5, 2001, as well as
18 the parties' respective letter briefs of June 15, 2001 advising the Court of their views concerning
19 the appropriate course of action. The issue presented in the pending writ proceeding is whether
20 summary judgment lies against a particular plaintiff where that plaintiff joins with other
21 plaintiffs in seeking general relief on a common theory and seeks no relief specific to itself or
22 separate from the common relief. Put slightly differently, even if summary judgment were
23 granted against the particular plaintiff, the case would proceed on exactly the same alleged
24 wrongdoing by Defendants and with Plaintiffs seeking exactly the same remedies, albeit with a
25 smaller group of Plaintiffs making fewer factual allegations in support of their claims. Thus, this

1 issue is not necessarily answered by the general rule that summary judgment may be granted in
2 appropriate circumstances against fewer than all plaintiffs in a case. Nor is this specific issue
3 answered directly by the language of Code of Civil Procedure Section 437c, by cases interpreting
4 that section, or by cases applying the one final judgment rule. Plaintiffs, the real parties in
5 interest in the writ proceeding, have requested an opportunity to respond to the writ petition by
6 filing a return to the alternative writ and having an opportunity for a hearing before the appellate
7 court. The issue presented in the writ proceeding is important not only to future proceedings in
8 this case, but to interpretation of Section 437c generally. This Court and others will benefit from
9 the Court of Appeal's final opinion. Accordingly, this Court will not now set aside its April 25,
10 2001 order and will await an order either denying the writ petition or issuing a peremptory writ.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DATED: June 25, 2001



JUDGE OF THE SUPERIOR COURT

PETER J. BUSCH