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Superior Court of California
County of Los Angeles

MAY 13 2010

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SHARAIL REED, a minor, by Victoria Wiggins,
guardian ad litem; AYANA REYNOLDS, a
minor, by Shanita Rogers, guardian ad litem;
KENYATTA JONES, a minor, by Shanita
Rogers, guardian ad litem; CESAR LOGRONO,
by Jorge Arnulfo Logrono Arias, guardian ad
litem; VICTOR SANCHEZ, by Teresa Martinez,
guardian ad litem; CONCEPCIONA MANUEL-
FLORES, a minor, by Natividad Flores, guardian
ad litem; LILIANE RODRIGUEZ, a minor, by
Gabriela Garcia, guardian ad litem; YAMILETT
RIVAS, a minor, by Amparo Hernandez,
guardian ad litem,

Plaintiffs,

v.

STATE OF CALIFORNIA; JACK
O'CONNELL, State Superintendent of Public
Instruction; STATE BOARD OF EDUCATION;
STATE DEPARTMENT OF EDUCATION;
JOHN CHIANG, State Controller; LOS
ANGELES UNIFIED SCHOOL DISTRICT,

Defendants.

Case No. BC 432420

[CLASS ACTION]

~~PRELIMINARY~~ FINDINGS AND
ORDER ON PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION

Date: May 12, 2010

Time: 1:30 p.m.

Dept.: 307

Complaint Filed: February 24, 2010

The Honorable William F. Highberger
Judge Presiding

revised

~~PRELIMINARY~~ FINDINGS AND ORDER ON PLAINTIFFS' MOT. FOR PRELIM. INJUNCTION

1 Plaintiffs, students at three Los Angeles Unified School District ("LAUSD") middle schools,
2 seek a preliminary injunction to prevent an alleged violation of their constitutional rights to equal
3 educational opportunity. Plaintiffs allege that their right to educational equality was impaired by a
4 Reduction in Force (RIF) implemented in 2009 that devastated the teaching corps (and thus the
5 delivery of education) at Plaintiffs' schools but left other LAUSD schools relatively untouched.
6 Plaintiffs now seek to enjoin further teacher layoffs at their schools pursuant to a RIF implemented in
7 2010, which Plaintiffs allege will again have a disproportionate impact on Plaintiffs' schools. Both
8 RIFs were precipitated by the State's budget crisis.

9 **I. The Constitutional Right to Equal Educational Opportunity**

10 The California Constitution guarantees to all California public school students a fundamental
11 right to "basic equality of educational opportunity." (*Butt v. State* (1992) 4 Cal.4th 668, 685.) Under
12 the State Equal Protection guarantees, strict scrutiny "applies to State-maintained discrimination
13 whenever the disfavored class is suspect *or* the disparate treatment has a real and appreciable impact
14 on a fundamental right or interest." (*Id.* at p. 685-86.) Thus, although Plaintiffs' motion is not based
15 on discrimination against a suspect class, if the evidence shows an impairment of the Plaintiffs'
16 fundamental interest in education, the challenged conduct can only be justified if necessary to further
17 a compelling state interest. (*Id.* at p. 688; *Serrano v. Priest* (1971) 5 Cal.3d 584, 597 [*"Serrano I"*].)

18 In cases finding a violation of the right to equal educational opportunity, the California
19 Supreme Court and the Court of Appeal have relied on evidence regarding the impact of disparate
20 treatment on the delivery of education in the classroom. In *Butt v. State* (1992) 4 Cal.4th 668, the
21 Supreme Court upheld a finding that closing schools in one district six weeks earlier than schools in
22 other districts would likely deprive students of basic educational equality. (*Id.* at p. 673.) Although
23 the Court recognized that a reduction in the "overall term length might be compensated by other
24 means, such as extended daily hours, more intensive lesson plans, summer sessions, volunteer
25 programs, and the like" (*id.* at p. 686), the Court affirmed the trial court's finding of a likely
26 constitutional violation based on the declarations of "[s]everal District teachers" who "outlined in
27 detail how the proposed early closure would prevent them from completing instruction and grading
28 essential for academic promotion, high school graduation, and college entrance." (*Id.* at p. 687.)

1 Those declarations focused on the effects of the closure in the classrooms: the closure would prevent
2 high school seniors from receiving “intended lessons covering the State’s executive and judicial
3 branches”; “Algebra I students would miss essential instruction in quadratic equations”; first graders
4 would miss instruction in “phonics, reading comprehension, creative writing, handwriting skills,” etc.
5 (*Id.* at p. 687 n.16.)

6 In *Serrano v. Priest* (1976) 18 Cal.3d 728 (“*Serrano II*”), the Supreme Court found a denial of
7 equal educational opportunity based on evidence that substantial disparities in available resources
8 “cause and perpetuate substantial disparities in the quality and extent of availability of educational
9 opportunities.” (*Id.* at p. 747.) Specifically, the Court relied on evidence that disparate expenditures
10 gave some districts a “substantial advantage in obtaining higher quality staff, program expansion and
11 variety, beneficial teacher-pupil ratios and class sizes, modern equipment and materials, and high-
12 quality buildings.” (*Id.* at p. 748.) These disparities mattered because “[t]here is a distinct
13 relationship between cost and the quality of educational opportunities afforded.” (*Ibid.*)

14 In *O’Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, the plaintiffs alleged an equal
15 protection violation because some of the State’s students “have not been provided with the
16 educational resources necessary to enable them to pass” a State mandated test for high school
17 graduation. (*Id.* at 1464.) Based on evidence that “students in economically challenged
18 communities have not had an equal opportunity to learn the materials tested” on the graduation test,
19 the Court of Appeal affirmed a finding that the “plaintiffs established a likelihood of success on the
20 merits as to the denial of their fundamental right to equal educational opportunity.” (*Id.* at 1465.)

21 Although the factual circumstances in this case are not identical to those presented in *Butt*,
22 *Serrano II*, or *O’Connell*, the evidence shows that the impact on Plaintiffs’ right to equal education is
23 similar to the impacts in those cases.

24 **II. Plaintiffs Have Shown a Likely Denial of Equal Educational Opportunity**

25 The undisputed evidence shows that Plaintiffs’ schools were already struggling prior to the
26 RIFs. According to LAUSD data, each of Plaintiffs’ schools (Gompers, Markham, and Liechty) was
27 ranked in the bottom 10% of schools statewide in terms of academic performance. (Declaration of
28 Sean Gates (“Gates Decl.”) Ex. I, J, H [listing API scores].) Moreover, a comparison of California

1 Standardized Test scores shows that Plaintiffs' schools fell far below both LAUSD and statewide
2 averages. For example, the average percentage of students' scores at the Proficient or Advanced
3 level in English-Language Arts in 2008-09 in LAUSD was 38% and statewide 50%. (*Id.*) At
4 Gompers, the number was 16%, at Markham 12%, and at Liechty 25%. (*Id.*) In Mathematics, the
5 LAUSD average was 37% and the statewide average was 46%. (*Id.*) At Gompers, the number was
6 13%, at Markham 8%, and at Liechty 31%. (*Id.*)

7 Despite the demonstrated need for greater assistance and support, the LAUSD RIFs have had
8 and will have a disparate negative impact on Plaintiffs' schools. According to LAUSD's data, it sent
9 RIF notices to 60% (47 of 78) of the teachers at Liechty, 48% (38 of 79) at Gompers, and 46% (33 of
10 72) at Markham. (Declaration of Joel Jordan ("Jordan Decl.") Ex. A.) On a district-wide basis,
11 however, LAUSD sent notices to only 17.9% of its teachers. (*See id.*) Plaintiffs' schools were the
12 hardest hit LAUSD middle schools in 2009; a large number of other LAUSD middle schools had less
13 than 15% of their teachers laid off (e.g., Columbus, Frost, Hale, Henry, Holmes, Mulholland, Reed,
14 Mark Twain, Portola, Revere, Woodland Hills Academy, Dana, etc.). (Jordan Decl. Ex. A.) The
15 2009 RIF resulted in a large number of teacher vacancies at Plaintiffs' schools. Even after some laid-
16 off teachers agreed to return as long-term substitutes, Markham had 18 vacancies as a direct result of
17 the layoffs (23% of its teaching corps), Liechty had 26 (33%), and Gompers had 16 (22%). (Gates
18 Decl. Ex. A ¶ 18, Ex. B ¶ 12, Ex. W ¶ 14.) Many of the laid-off teachers were department heads and
19 committee chairs. (*Id.* Ex. A ¶ 20, Ex. V ¶ 14, Ex. W ¶ 19.) When Markham tried to fill its RIF-
20 created vacancies for the 2009-10 school year, 9 of 12 replacement teachers quit within only three
21 days, leaving the school to find other bodies to fill those classes. (*Id.* Ex. A ¶ 23.) Other LAUSD
22 middle schools with no or fewer vacancies to fill were not in a position to risk such extreme and
23 disruptive turnover caused by the RIF.

24 In 2010, Plaintiffs' schools were again the hardest hit middle schools. The estimated district-
25 wide RIF rate in LAUSD is less than 6.6%. (Gates Decl. ¶ 34.) At Markham, 30% of its teachers
26 will be laid off, at Gompers 21%, and at Liechty 49%. (Avila Decl. Ex. 1.) Because of the RIF, only
27 11 teachers who currently teach core academic subjects at Liechty are likely to be able to return next
28

1 year as permanent teachers. (Gates Decl. Ex. T ¶ 9.) At the same time, over 30 of the 69 LAUSD
2 middle schools will lose less than 10% of their teachers. (Avila Decl. Ex. 1.)¹

3 The disparities matter because the evidence shows there is a distinct relationship between high
4 teacher turnover and the quality of educational opportunities afforded: High teacher turnover
5 devastates educational opportunity. The current State Superintendent of Public Instruction has
6 admitted to the debilitating effects of high teacher turnover, for which “students pay dearly.”² (Gates
7 Decl. Exs. C at 1, D.) Plaintiffs’ expert, Dr. Linda Darling-Hammond, testified that high teacher
8 turnover creates “serious problems that negatively affect educational opportunity,” including that
9 “little learning goes on in classrooms with substitute teachers” and “the very fabric of the educational
10 institution and learning environment” is undermined. (Darling-Hammond Decl. ¶¶ 12-17).
11 Plaintiffs’ other expert, Dr. Michelle Fine, explained that high teacher turnover “is a significant cause
12 of educational disruption for students.” (Fine Decl. ¶ 18.) Defendants do not dispute this evidence.

13 The 2009 RIF caused total teacher misassignments (TMA) – teachers assigned to courses in
14 which they do not have the requisite certification or training – and misassignments for English
15 Learners (ELMA) to skyrocket at Plaintiffs’ schools while dropping at other LAUSD middle schools:

School	2008 TMA	2009 TMA	2008 ELMA	2009 ELMA
Liechty MS	283	317	35	56
Markham MS	112	216	50	99
Gompers MS	100	152	47	63
Lawrence MS	77	38	23	4
Madison MS	70	60	33	3
Nobel MS	66	51	24	9
Burroughs MS	106	101	44	28
Palms MS	52	44	17	9
Revere MS	118	55	56	10

22
23 ¹ Even after LAUSD managed to reduce the overall size of the 2010 RIF through furloughs,
24 its tentative estimate still shows dramatic discrimination: Liechty will still lose 41% of its teachers,
25 Markham 27%, and Gompers 12%. (Avila Decl. Ex. 2 at 1, 2.) Over 30 of the 69 other middle
26 schools will lose less than 5% of their teachers. (Avila Decl. Ex. 2.)

27 ² See also *Cleveland Bd. of Educ. v. LaFleur* (1974) 414 U.S. 632, 654 (important “to avoid
28 teacher turnover in the middle of a semester, since continuity in teaching approach, as well as
teacher-pupil relationships, is otherwise impaired”); *U.S. v. Missouri* (E.D. Mo. 1973) 363 F. Supp.
739, 744 (“stability of the faculty ... [has] a significant effect on the quality of the educational
program that can be offered.”); *Santa Barbara Fed’n of Teachers v. Santa Barbara High Sch. Dist.*
(1977) 76 Cal.App.3d 223, 232-33 (when “school districts ... resort to filling temporary vacancies on
a day-to-day basis with various substitute teachers; such practice would be harmful to ... students”).

1 (Gates Decl. Exs. H-J, DD; Pls.' RJN Exs. O-Q.) The overall proportion of correctly assigned
2 teachers is "the most significant predictor of state-level average student achievement in mathematics
3 and reading." (Darling-Hammond Decl. Ex. A at 33.)

4 These statistics show a severe disparity in the educational resources provided to Plaintiffs
5 compared to students at other LAUSD schools. The disparities in *Serrano II* allowed some districts
6 to obtain higher quality teacher staff and better facilities. (*Serrano v. Priest, supra*, 18 Cal.3d at p.
7 748.) Here, Plaintiffs were denied a much more – a stable, consistent teacher corps – which was
8 afforded other students in LAUSD and the State.

9 Beyond the statistics, the undisputed evidence shows that the disparities have severely
10 affected the delivery of education at Plaintiffs' schools. In fact, the impact, though similar in nature
11 to that in *Butt* and *O'Connell*, is more severe. The evidence shows that in many of Plaintiffs' classes,
12 little to no instruction took place. In numerous core classes, Plaintiffs were forced to endure rotating
13 short-term substitutes, up to ten short-term substitutes in a single semester. (Gates Decl. Ex. A at ¶
14 22; Ex. N ¶ 6; Ex. P ¶ 4; Ex. Q ¶ 5; Ex. R ¶ 3; Ex. S ¶ 4.) Even as of March 2010, four classes at
15 Liechty were still staffed by a series of short-term substitutes. (*Id.* Ex. T ¶ 9.) The rotation of
16 substitute teachers made maintenance of coherent lesson plans and student records impossible. Some
17 substitute teachers did not follow the pacing guides and repeated the same material day after day. (*Id.*
18 Ex. P ¶ 8; Ex. S ¶ 5.) Others simply provided no lesson at all, telling students to read the materials
19 themselves. (*Id.* Ex. P ¶ 5; Ex. S ¶ 5.) Some failed to test the students. (*Id.* Ex. S ¶ 7.) Others tested
20 material that had not been covered. (*Id.* Ex. Q ¶ 10; Ex. P ¶ 12.) Some gave tests but never graded
21 them. (*Id.* Ex. Y ¶ 3.) Some substitutes did not return graded homework. (*Id.* Ex. P ¶ 10; Ex. S ¶ 5.)
22 Others showed movies during class but did not explain the significance or relevance of the movies.
23 (*Id.* Ex. P ¶ 14.) Some replacement permanent teachers failed as well. (*Id.* Ex. B ¶ 27; Ex. N ¶ 13;
24 Ex. O ¶ 16; Ex. Q ¶ 7; Ex. W ¶ 20; Ex. X ¶¶ 18-20; Ex. V ¶ 17.)

25 The RIF-induced teacher turnover resulted in students missing instruction on key topics in
26 core academic subjects. For example, in a U.S. History class, students did not learn about the
27 Articles of Confederation until December, by which time the pacing guide recommends the class
28 should be covering events in the following century. (*Id.* Ex. Q ¶ 14; Ex. V ¶ 22.) Another teacher, in

1 order to catch up, had to skip roughly sixty years of U.S. history. (*Id.* Ex. V ¶ 22.) In some science
2 classes, the teachers skipped lab experiments, a key component to learning these subjects. (*Id.* Ex. U
3 ¶ 15.) In a sixth grade math class taught by substitutes, the students were learning materials far
4 behind a math class taught by a permanent teacher. (*Id.* Ex. O ¶ 13.) Students were left to guess
5 answers on standardized tests, which covered materials they had never been taught. (*Id.* Ex. P ¶ 12.)

6 Based on his first hand observations and over 20 years of experience as an educator, Tim
7 Sullivan, Markham's principal, testified, "There is no way that the rigorous educational standards that
8 California requires can be taught in such environments." (*Id.* Ex. A ¶ 22.) Similarly, Sonia Miller,
9 Gompers' principal (who has 25 years of experience as an educator), testified how the 2009 RIF
10 "makes it impossible to properly educate all of our children." (*Id.* Ex. B ¶¶ 8, 12, 16, 28-32.) This
11 testimony was corroborated by that of LAUSD teachers and administrators at Plaintiffs' schools. (*Id.*
12 Ex. K ¶¶ 25-27; L ¶¶ 10-11, 17; Ex. O ¶¶ 12, 16; Ex. T ¶ 7; Ex. U ¶ 15; Ex. V ¶ 17; Ex. W ¶ 20; Decl.
13 of Sean Gates in Support of Reply Ex. A ¶ 9; *see also id.* Ex. B ¶¶ 36-45.)

14 Plaintiffs' experts corroborate this evidence. Dr. Fine concluded that "the RIF undermines
15 teaching the required content in much of the Plaintiffs' schools, resulting in severe academic
16 disruption" and that the students "require compensatory education to catch them up as far as
17 possible." (Fine Decl. ¶¶ 74-75.) Dr. Darling-Hammond concluded that the RIF created a situation
18 in which "it simply is not possible that the teachers are effectively delivering to their students the
19 knowledge and skills required by State-mandated content standards." (Darling-Hammond Decl. ¶
20 57.) In addition, Plaintiffs' experts testified of evidence that the RIF-induced teacher turnover is
21 having adverse social and psychological impact on the students. (Fine Decl. ¶¶ 24-28.)

22 LAUSD does not contend that the conditions at Plaintiffs' schools are typical for LAUSD
23 schools. In fact, LAUSD submitted no evidence rebutting Plaintiffs' showing of the horrible
24 experiences of certain students at Plaintiffs' schools in recent months. The declarations from
25 principals, teachers, administrators, and students at Plaintiffs' schools present the very same type of
26 evidence relied on by the Court in *Butt* – evidence that students have missed and will miss critical
27 instruction in core academic subjects. The evidence is sufficient to show a real and appreciable
28

1 impact on Plaintiffs' fundamental right to equal educational opportunity and a reasonable likelihood
2 that Plaintiffs will prevail on the merits.

3 **III. There is No Compelling Interest Justifying Defendants' Conduct**

4 LAUSD argues that the teacher layoffs are justified by a compelling state interest because the
5 layoffs followed the seniority system put in place by state law and LAUSD's collective bargaining
6 agreement with United Teachers Los Angeles. LAUSD points out that permanent teachers have a
7 "property interest" in their jobs and a vested interest in the seniority system. (*See Bledsoe v. Biggs*
8 (2008) 170 Cal.App.4th 127.)

9 The Court is cognizant of the fact that if LAUSD were not allowed to layoff teachers at
10 Plaintiffs' schools (some of whom are non-permanent), LAUSD will layoff other LAUSD teachers
11 (who may be permanent teachers). The Court is also mindful of the Legislature's policy choice of
12 adopting a seniority based layoff system. But the Education Code expressly qualifies these seniority
13 rights, allowing deviations for pedagogical needs and constitutional interests. (*See, e.g., Cal. Educ.*
14 *Code* §§ 44955(d)(1), 35036.) Most important for this case, the Education Code expressly allows a
15 school district to "deviate from terminating a certificated employee in order of seniority for ...
16 purposes of maintaining or achieving compliance with constitutional requirements related to equal
17 protection of the laws." *Id.* § 44955(d)(2). The plain language of this statute clearly applies to a
18 situation in which layoffs would result in a violation of students' equal protection rights.

19 While LAUSD argues that deviating from the seniority provisions is discretionary, that is
20 irrelevant to the issue of whether protecting seniority rights is a compelling state interest justifying a
21 violation of students' right to equal educational opportunity. The Legislature clearly qualified
22 teachers' interests in seniority-based layoffs to accommodate constitutional equal protection interests.
23 This principle is implicitly incorporated in the CBA; LAUSD could not bargain away students'
24 constitutional rights. In other words, teachers do not have a vested interest in the application of
25 seniority in a layoff that will result in an equal protection violation and a school district does not have
26 discretion to violate students' fundamental right to equal educational opportunity.

IV. Remedy and Balance of Harms

Having found that Plaintiffs are likely to succeed on the merits and that there is no compelling state interest justifying the equal protection violation, the Court must turn to the difficult issue of remedy. Plaintiffs seek a preliminary injunction precluding layoffs of teachers (permanent, probationary, and long-term substitutes) at their schools. As the Court noted above, it is mindful that this remedy may force LAUSD to layoff teachers at other schools. Moreover, the Court is mindful of the fact that it cannot simply order Defendants to produce additional funds to prevent further layoffs. (*Butt v. State*, *supra*, 4 Cal.4th at p. 674.) The Court has thus proposed alternative remedies to the parties and invited comments. After hearing argument from the parties, the Court concludes that by enjoining further layoffs at Plaintiffs' schools, the remedy is tailored to address the cause of the constitutional harm – disparate layoffs resulting in high teacher turnover at Plaintiffs' schools. Moreover, although this may result in layoffs of other LAUSD teachers, those teachers' seniority rights are qualified, as the Legislature expressly contemplated, by the need to "skip" teachers to prevent an equal protection violation. Cal. Educ. Code § 44955(d)(2). In any event, the Court has the power to override both statutory and contractual seniority rights to remedy the violation of Plaintiffs' constitutional rights. (See *Arthur v. Nyquist* (2d Cir. 1983) 712 F.2d 816, 822-23 [affirming injunction overriding statutory seniority layoff rights to protect students' constitutional rights]; *Oliver v. Kalamazoo Bd. of Educ.* (6th Cir. 1983) 706 F.2d 757, 763-64 [court may hold statutory seniority rights unenforceable to vindicate students' constitutional rights]; *Morgan v. O'Bryant* (1st Cir. 1982) 671 F.2d 23, 27-29 [affirming injunction to protect students' constitutional rights by precluding use of seniority-based layoff system in collective bargaining agreement]; *Bolin v. San Bernardino City Unified Sch. Dist.* (1984) 155 Cal.App.3d 759, 767 ["The expectation of being assigned to a particular school on the basis of seniority is not a protected right. Seniority is merely an economic right which can be bargained away."].)

The balance of harms thus tilts in Plaintiffs' favor – Plaintiffs cannot get a "do over" of lost educational opportunity. LAUSD, on the other hand, must (at most) reallocate its layoffs; it is only a matter of where to make cuts. The Court is entirely cognizant that these potential layoffs will fall on other teachers, but that is precisely the result contemplated by the Legislature in Education Code

1 section 44955(d)(2) and compelled by the California Constitution. Notably, the Governor and the
2 State Board of Education agree the injunction should issue.

3 Accordingly, the Court will order as follows:

- 4 1. Notwithstanding any contractual or statutory seniority-based layoff
5 provisions, including California Education Code Section 44956, Defendant
6 Los Angeles Unified School District is hereby restrained and enjoined,
7 during the pendency of this action and pending further order of the Court,
8 from implementing any budget-based layoffs of classroom teachers at Samuel UPA
9 Gompers Middle School, John H. Liechty Middle School, and Edwin
10 Markham Middle School;
11 classroom The teachers (permanent, probationary, and long-term substitutes) currently UPA
12 assigned at the three schools, and only the teachers at these schools, must UPA
13 be skipped in the current layoff proceeding as permitted by California
14 Education Code Section 44955(d)(2), which the Court specifically finds is
15 applicable to these skips, and shall not be subject to bumping by more
16 senior employees pursuant to Education Code Section 44955(b), nor be
17 subject to displacement by more senior employees exercising their rights to
18 substitute assignments pursuant to Education Code Section 44956;
- 19 3. Nothing in this Order shall have the effect of changing the status of any
20 teacher at the three schools from long term substitute to permanent or
21 probationary;
- 22 4. Notwithstanding Paragraph 3, long-term classroom teacher substitutes at the schools who are
23 skipped shall be retained for the 2010-11 school year;
- 24 5. Nothing in this Order shall preclude the District from rescinding the layoff
25 notices previously served on any permanent or probationary teacher at the
26 schools if the District is able to do so;

penalized for receipt of funds pursuant to OEIA, nor be construed to
negatively affect LAUSD's ability to apply for or qualify for OEIA funds.

6. This Order shall not be construed to prohibit the termination of any individual teacher's employment, provided that such termination is for cause or other reasons, and not a district wide budget-based layoff.
7. Nothing in this Order shall be construed to affect the right of LAUSD to proceed with the layoff of teachers at other schools in LAUSD in accordance with Education Code Section 44955(b), pursuant to the resolution adopted by the Board of Education.
8. Plaintiffs shall post a bond with this Court in the amount of \$1,000.00 by

4:00 p.m. on May 13, 2010.

9. *This order supercedes both the "Order Granting Preliminary Injunction," filed May 12, 2010, and the "Findings And Order On Plaintiffs' Motion For Preliminary Injunction," filed May 12, 2010.*

IT IS SO ORDERED.

Date: 5/13/10

W.F. Highberger
The Honorable William F. Highberger
Judge of the Superior Court