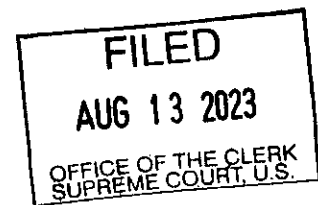


Case# \_\_\_\_\_

**23 - 5367**

**IN THE SUPREME COURT OF  
THE UNITED STATES OF AMERICA**



REBECCA WU,

PETITIONER

v.

Twin Rivers Unified School District

Respondent.

California Supreme Court

Case S279230

3rd Court of Appeals case  
C088570

No.34-2015-80002234-CU-WM-  
GDS Sacramento Superior  
Court, California

Order Denied Rehearing in Third  
Court of Appeals 3/23/2023

Request for Publication in Third  
Court of Appeals 3/23/2023

Supreme court denial of Petition  
for Review 5/17/2023

**On Petition for Writ of Certiorari to the United States Court  
of Appeals for the Third Court of Appeals, California.**

After a Decision by the Court of Appeal, California Third Appellate District, (No. )  
C092640

**PETITION FOR WRIT OF CERTIORARI**

Rebecca Wu PO BOX 543, APPLGATE CA 95703  
Rebeccadawnwu@yahoo.com

916-308-2197

## QUESTIONS FOR REVIEW

Does the United States Constitution allow for an Indefinite probationary classification in California law of a public employee or Teacher because they work less than the required days to qualify for tenure or permanent tenure classification and therefore become an arbitrary classification created by a state?

Do the two past case laws in Vital and Cox in appellate court contradict the rulings in this case in California ?

Can there be a required number of days per year to obtain tenure or permanent status or is that circumventing the purpose of tenure?

Should the Evening hours or the longer schedule of set teaching classroom hours doing the exact same thing each hour count towards the time required in the number of "regular" days be used to support a teacher/public employee becoming tenure?

Would the sinister nature or improper nature of not classify a regular teacher properly and hiding them have any weight in reclassifying them to tenure if they had been properly classified.

Can a public employee, or in this case a misclassified teacher, work the same number of set assigned regular hours or time that is required in a set number of Days but in different days because they work a different schedule then should they not be qualified as a tenure when the set time required is fulfilled?

Would a misclassified public employee who works the same number of required hours to be tenure but not days have rights to tenure due to the improper or sinister acts of misclassification that prevented tenure?

Especially would the above apply if the Appeals court does determine that a employee or in this case Wu, is misclassified?

Is it allowed for a district to release a teacher whom is misclassified, not given notice nor on any type of contract, be allowed to be non-renewed or continue in her position?

Should California Education Code 44908 that requires 75% of the days be completed by a teacher to count as a, "complete school year" combined with EDC 44929.21 that requires two complete school years of service in probationary status to be completed to obtain tenure/permanent status.? Or should such complete school year be for other advancements like pay or service years counted?

Is the interpretation by the Third Court of Appeals of EDC 44908 created by the state of California abridging the constitution and the 14th Amendment because it creates a law that prevents due process under tenure laws by circumventing it and creating a arbitrary classification of indefinite probationary status?

Should all states be subjected to the requirement that such indefinite forever after probationary status not be allowed when other states like Arizona and a few others do have this indefinite type of interpretation?

Note: Permanent status is a term school HR uses to describe both tenure and probationary status as well as the ed codes. However, it also is used regularly to describe tenure, therefore any mention to tenure in this brief will be "tenure/permanent" but that is not always the case in the briefs and rulings.

Would such factors as misclassified as a substitute, thus placed outside the union and with no union protection, no medical coverage, no lunch, no preparatory period, no breaks and working the same full time set hours of teaching in a classroom with students (who had Wu as there only public school teacher) no normal required training for teachers, over the course of almost a decade, factor into circumventing tenure when the Collective Bargaining Agreement would place Wu as tenure based on her hours over the course of two years under probationary status (that she did not have due to the misclassification as a substitute) ?

What are the due process laws under tenure? Subject to a hearing?

Was Rebecca Wu wrongly let go with her stated no known misconduct in 2016 at her Keema High School teaching job.

Would Wu have rights to damages for all years for her state constitutionally recognized retirement, state statutes that have no statute of limitations for the

correction of her years of service and contributions based on a CBA that she did not have?

Should Wu obtain damages for her losses for the claim by the Appeals court that Wu was "misclassified" as a teacher and was probationary status for the indefinite years worked and never reached?

Is it unconstitutional to have an interpretation of a statute that creates an Arbitrary classification in violation of the constitution of the 14th Amendment?

The ruling claims that Full-time employment is not required for teachers at K12 public schools but it is. Full-time work should be given to a part-time employee especially if they work the same number of hours full-time in the same position but in shorter days.

Should a part time teacher who works the same full-time hours as a regular teacher be given full time status or Full-time days if they want it?

Should a part-time employee be given full-time work?

Is it circumventing tenure rights if a part time employee or teacher is working the same set full-time classroom teaching hours as a full-time teacher be counted as working full time in terms of obtaining tenure or years of service requirements?

## LIST OF PARTIES

Rebecca Wu [ **APPELLANT** ] Pro Per

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Rebeccadawnwu@yahoo.com 916-308-2190 Cell

Twin Rivers Unified School District [ **RESPONDENT** ]

Served to Attorney of Records

Both William Tunick and Peter Rittling claim San Francisco is their official office.

Dannis Woliver Kelley Law firm DWK (representing TRUSD)

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[ x ] **All parties appear in the caption** of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition.

## RELATED CASES

**FIRST RELATED CASE:** This case is in this Court, The United States Supreme Court and was filed in July after it was denied a review in the State of California Supreme Court. **US SUPREME COURT Case Number No. 23-5242 Rebecca Wu Vs Public Employment Relations Board et..all.(Local union Twin Rivers United Educators TRUE/CTA)** California Supreme Court Case S278551. This case Wu claimed she was misclassified, and a Union has a duty of fair representation (DFR) to a misclassified member whom was denied their membership with No contract with the Collective Bargaining Agreement (CBA) as well as all substitutes should be in the CBA exclusive association union under EERA. The union agreed with Wu she was misclassified, per the president's request for reclassification of Wu and dozens of others after Wu filed a claim and then lawsuit paid for when she joined the statewide CTA and they filed This case Wu vs TRUSD. However, they wanted Wu to settle, and dropped Wu (in this case) and also claimed with a conflict of interest existed when Wu filed a Unfair Practice Complaint against TRUE and therefore they would not fund this case in a letter to Wu by Jacob Rukeyser in CTA in February 2017 and then was dropped of representation after threatening to do so for almost a year by CTA and Wu became pro per in this (Wu vs TRUSD) case in May 26, 2017.

Case C092640 Rebecca Wu vs Public Employment Relations Board  
*Rebecca Wu v. Pub. Emp't Relations Bd.*, 87 Cal.App.5th 715, 303 Cal. Rptr. 3d 693  
(Cal. Ct. App. 2022) PUBLISHED

## SECOND RELATED CASE

Rebecca Wu vs (California) State Teachers Retirement System Case # C095632

For the case in Court of Appeals of the State of California in the and for the Third Appellate District Case # C095632. Superior Court of Sacramento 34202080003303CUWMGDS.Releif and Declaratory Relief that a public agency must do the first step in the administrative review. They must follow the California Constitution for prompt delivery and not ignore an audit request or be demurred to in a Writ of Mandate on the premises that this case (Wu vs TRUSD) should run and the system does not have to review until this instant case is over. I argue that is not prompt delivery nor the intent of the legislature in STRS law that requires a review if requested. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT LAW 56 PERL Part 3 (2) **In cases where this system owes money to a member or beneficiary, the period of limitations shall not apply** As well as the right to fixed retirement with no SOL

## THIRD RELATED CASE

Rebecca Wu vs Twin Rivers Unified School District # SA-CE - 2867 E This case is where I went to the board in June 2015 to complain that we were all (40plus) misclassified and was the only one to speak of it because others did not want to even though some thought so as well. They were going to transfer in teachers and did and let go of the hourly paid misclassified teachers. I had just joined a week or two before the CTA as another member and encouraged others to do so before the last day of school. Then in fall CTA filed a claim on my behalf then filed this case I am filing now in US supreme court. Then we negotiated but they would not fix my retirement days of service, recognize my years of service, nor pay my medical bills from when I did not have insurance, and when the president of the local union who was kind and told me the attorney plays dirty It was one of the reasons I did not settle without what I wanted to be able to leave and be placed on the proper salary schedule which goes up dramatically based on years of service. We had no contract or CBA, and we did not even have applications because it was whom you knew that you got hired. I negotiated on behalf of the other teacher's unknown to my coworkers because I was told not to tell them, but they all knew I was the only one speaking out about the illegal situation. They sent a letter to my coworkers in spring that they will find out about their job status when the one case settles, they have, and they wont talk to them until then. Then in June or summer 2016 they reclassified everyone but me except two "Golden Handshake" retired teachers who could not be under contract by their special circumstances. They changed them from Hourly paid teachers using substitute timesheets with no lunch and break working no more for three days to five days and all tenure from new hire -to-tenure . (Board notes 9-13-2016). The union CTA claimed they would drop me and I filed the case with the Public Employment Relations board for a duty of fair representation by the local union TRUE. (who is run by CTA whom I think they simply do not want to be responsible for substitutes where they would likely cost more than worth and take away from their lobby money). It is now finished recently with all briefs in and many days of testimony. I had many cases to financially cover as pro per in filing it and in the whole running of the case. The case is a little different because it is not misclassification but if they related by not hiring me. I claim they hired only one person outside the district that summer whom was a non-licensed person because she told me when I went to subpoena her (She is now licensed and wonderful teacher). Then I obtained records from CCTC to prove my contentions.

Third Court of Appeals \_\_3/2/2023 A copy of that decision on Rebecca Wu vs Twin Rivers Unified School District as case C088570 In the Court of Appeal of the State of California, Third Appellate District (Sacramento) is in Appendix B.

[x ] A timely petition for rehearing and publication in the Third Court of Appeals was thereafter denied on the following date: Denied on \_\_3/14/2023 \_\_, and a copy of the order denying rehearing appears at Appendix C.

The request for publication was denied on 3/14/2023 and is in Appendix D.

Final Judgment, order and opinion in the California Superior court of Sacramento is 9/18/2018

For Rebecca Wu vs Twin Rivers Unified School District Case 34-2015-80002234 is Appendix E.

In Superior Court of California, Sacramento Petitioner's Motion to Compel depositions of Gina Carreon, Production of Documents is On March 22, 2018 in Case 2015-80002234 and in Appendix F.

In Superior Court of California, Sacramento is Rebecca Wu vs Twin Rivers Unified School District Order Granting Attorney's Motion to Relieved as Counsel-Civil with minute order of is in Appendix G. The jurisdiction of the U.S. Supreme Court is invoked under 28 U. S. C. §1257(a).

## LISTING OF ALL PROCEEDINGS

1. The date of the **Denied Petition for Review was on 5/17/2023 in the State Supreme Court.**

Denial of Petition for Review Dated **5/17/2023** (90 days after date of Denial is 8/16/2023)

Case S279230 Rebecca Wu vs Twin Rivers Unified School District . The copy of this Disposition in The Dockets is at Appendix A.

2. **The date on which the highest state court decided with an Opinion** my case with an opinion was the Third Court of Appeals \_\_3/2/2023 A copy of that decision on Rebecca Wu vs Twin Rivers Unified School District as case C088570 In the Court of Appeal of the State of California, Third Appellate District (Sacramento) is in Appendix B.

3. A timely petition for rehearing and publication in the Third Court of Appeals was thereafter denied on the following date: Denied on \_\_3/14/2023 \_\_, and a copy of the order denying rehearing appears at Appendix C

4. The request for publication was denied on 3/14/2023 and is in Appendix D.

5. Order denying covering up the sensitive school information not opposed by respondent was on

6. Final Judgment, order and opinion for Opposition to the filing of a Brief by Wu and Judgment on the Writ Mandate in the California Superior court of Sacramento is 9/18/2018 For Rebecca Wu vs Twin Rivers Unifi School District Case 34-2015-80002234 is Appendix E.

7. Request to allow a filing of newly obtained attorney Andrew Larson by Rebecca Wu in May 2018 Denied in Oral argument to allow an attorney to file a brief in August 13th 2018. **(not challenged here, Wu's pro per brief was the only one accepted for the Writ of Mandate filed on March 27, 2018)**

8. Notice of Motion for New trail 10/17/2018

9. Motion by Respondent to Strike other Opening Briefs 8-15-2018

10. Order allowing opening brief to be filed on July 23 2018 only by an attorney Wu claims she has one who Will be able to take over in Motion in Sacramento Superior court. 4-2-2018

11. In Superior Court of California, Sacramento Petitioner's pro per Motion to Compel Deposition of Gina Carreon, Production of Documents is On March 22, 2018 in Case 2015-80002234 and in Appendix F

12. Order claiming no order allowed the Reply to be filed in the Motion to compel the president of the union



Kristin Finney. Order claims no order allowed the Reply in the Exparte Motion. March 2 2018.

13. Order allowing the Reply to the Exparte Motion by Pro per Rebecca Wu for Motion to compel Witnesses. Order denying all other Exparte Motions to compel for documents and depositions by Petitioner Wu in Pro per on February 7nd, 2016. And February 16, 2018.

14. Order allowing a Protective Order on the Whistblowing emails between Wu and State Teacher Retiremer System from 2016 and on.

15. In Superior Court of California, Sacramento is Rebecca Wu vs Twin Rivers Unified School District Order Granting Attorney's Motion to Relieved as Counsel-Civil with minute order on Opposition by Wu on 5/26/2017 is in Appendix G.

16 Motion by Wu for Damages for "Misclassification." on 6/20/2023 due to not statement of Remand

17. Order of Denial of Motion to be allowed to be heard on 6/30/2023 (Wu challenges this)

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7. PROOF OF SERVICE ON ALL PARTIES.....	Last attachment

## STATUTES AND CASE AUTHORITY

*Rebecca Wu v. Pub. Emp't Relations Bd.*, 87 Cal.App.5th 715, 303 Cal. Rptr. 3d 693 (Cal. Ct. App. 2022) Published 12/28/2022

*Equal Protection Clause 14th Amendment. US Constitution*

***United States Constitution Fourteenth Amendment Section 1***

***United States Constitution First Amendment***

California Education Code 44916, 44918, 44908, 44292.21,

California Government Code 3545.

*Vaca v. Sipes*, 386 U.S. 171,190, 64 LRRM 2369, 2376 (1967)

California ED CODE--44288.9, 44288

EDC 44929.20,

EDC 44918,

EDC 44917, With a contract comes Probationary status or tenure and more due process rights p. 16-17. 362, 374, (1990). Gov't Code § 3541.3(i);

Cal. Code Regs., tit. 8, § 32602 California Ed code 45025, Service Credits in STRS 22700-03, Government Code 3547.5 Audit for fiscal sound. California Ed code 41020 Annual Audits for vacancies and misalignments. Umbrella over education code in the United States- in the interest of the students or child in education.

**Education code 44929.21** after two complete school years a teacher becomes permanent or tenure. If there is no notification after the second complete school year , as in Wu's case, then they become employed for the next school year. **EDC 44908.** 75% of the number of days of the "REGULAR" school year is deemed to have served a complete school year or 75% of the number of days of the Evening school.

**EDC 44917** Must be reported to the Commission on Teaching Credentialing if placed as a substitute for the school year and where no regular employee is available.

**EDC 44922** Teachers can become part-time after the age of 55 and other requirements to be allowed to be part-time.

EDC 44929.25 teacher of adult classes, tenure will be based on the hours. 60% of the hours to be tenure.

9.The Education Codes, Proposed Bills and statutes in

**Education code 45137** – based on 45136 Intent of the legislature.

**EDC 44921** "any such employee Shall be reemployed for the following semester or school year to fill any vacant position."

**California Code of Regulations Title 5 11700** (Independent Studies) Definition of full time.

**EDC 44259.9** Monitoring of Educator assignments

California Department of Education Uniform Complaint Procedures (Willilams Complaints)

Ccp2024.020, 2024.060

**Education Code 33126** School Accountability Report Cards

**IN THE SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.  
and rule in Wu's favor or overturn the decision of the issuing opinion of the  
Third Court of Appeals.

**OPINIONS BELOW**

Denied Petition for Review in State Supreme Court of California on **5/17/2023** Case **S279230**  
Rebecca Wu vs Twin Rivers Unified School District Appendix A.

**The opinion of the highest state court to review the merits appears at Appendix B to the petition and is [ x ] reported as Denial for the Writ of Mandate. The opinion of the        THIRD COURT OF APPEALS CALIFORNIA        court appears at Appendix B the petition and is [ x ] reported at        Not Published —Case Rebecca Wu vs Twin Rivers Unified School District Case # CO88570**

Sacramento Superior Court Case Denied the Writ of Mandate is in Appendix E. Judgement , Order and Opinion of the Superior Court 34-2015-80002234 on 9/18/2018 is in **Appendix E**

Order in Superior court on 4/22/2018 not allowing a motion to compel to follow a deposition without a stipulation that allows a Motion when a stipulation only agrees to allow the deposition to be moved outside the discovery period. **Appendix F.**

Order Superior court on 5/26/2017 denying the opposition to the Relief of Counsel. Motion to be relieved. Of counsel. Costa Kerstenzis whom was paid for by California Teachers Association. Claimed Conflict Of Interest for the Wu vs TRUE/CTA (PERB) filed in 2016. Then a second one filed in 2017 when loss Of job occurred. (Contradicting Ruling in this case Wu lost her KHS position in 2016 but was demoted To regular substitute position then lost her substitute position in 2017) **Appendix G**

**JURISDICTION OF UNITED STATES SUPREME COURT**

The jurisdiction of the U.S. Supreme Court is invoked under **28 U. S. C. §1257(a)**

The date of the **Denied Petition for Review** was on **5/17/2023** in the **State Supreme Court**.  
Denial of Petition for Review Dated **5/17/2023** (90 days after date of Denial is 8/16/2023)  
**The copy of this Disposition in the Dockets is is at Appendix A.**  
**Case S279230 Rebecca Wu vs Twin Rivers Unified School District**

[ x ] For cases from state courts:

**The date on which the highest state court decided with an Opinion my case with an opinion was the**

## STATUTORY PROVISIONS FOR THE US SUPREME COURT TO REVIEW

California Education Code 44908

EDC 44929.21 EDC 44909

***United States Constitution Fourteenth Amendment Section 1*** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

***United States Constitution First Amendment*** Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## DEFINITIONS

SCOB is the Superior Courts Opening Brief, AOB Appellant's Opening Brief. Appeals RB or Reply Brief in Appeals. SC Reply [SCRB] Superior Court Reply Brief by Wu RB Appeals Respondents Brief in Appeals RB SC Respondent's Brief In Superior Court. KHS is Keema High School. IS is Independent Study. OPINION is the Judgement/decision of the Court of appeals on 3-2-2023. The SC Judgement is the superior court Ruling. RB is Reply Brief in Appeals.

## STATEMENT OF THE CASE

Although the Third Court did Rule that Wu Was "Misclassified" and was a probationary teacher it also ruled that it was acceptable to be in this indefinite probationary position even though Wu worked the same set teaching in classroom Hours as a full-time teachers but in three days not five days thus under 75% of the days claimed needed to advance to tenure. This was claimed under the combining of California Education Code EDC 44908 (75% of the days must be worked in a "Regular" classroom to be counted as a Complete School year) and EDC 44929.21 that requires two Complete School Years to be completed to advance to tenure and continuation of employment for the third year.

Background: Wu was a misclassified Teacher for almost ten years at Twin Rivers Unified School District (TRUSD) . The local county office of Education failed to do its duties to review, and the District was using Personal Action forms that say not for use with Substitutes to pay up to 56 teachers over the years including Rebecca Wu (Wu) for years with no lunch, preparatory period, breaks, no union, no medical benefits and she was working the same full time set teaching hours as her students only teacher and there. Wu had no Contract at her school in Keema High School nor ever any contract even though in the Court of Appeals (CO088570 Wu vs TRUSD) the court claimed she was let go without reason and allowed to be based on notice in a contract. Neither the district nor Wu claimed any such contract ever existed nor any misconduct at her KHS position. Wu had joined the statewide union, CTA, but that union does not have grievance rights under EERA law or California Government Code 3540 and only Twin Rivers United Educators have that rights.

When Wu joined attorneys for the union, CTA filed a Case for misclassification in Superior court for Tenure or just and proper and claimed Wu would have been probationary for at least two years then tenure in 2015. Wu negotiated on behalf of dozens of teachers, unknown to them, and was the only one with a suit. In 2016 All teachers were reclassified unless they had some Golden Handshake and had retired, which was only two teachers that did not get that reclassification to tenure (per TRUSD public board notes seen on 9-13-2016). All teachers were reclassified but Wu when the Hourly substitute teacher position went away. Wu did not have a temporary contract and she then was demoted to substitute but continued to work. The union CTA attorney filed a claim for damages that she still had rights to due process as a misclassified teacher with right to the union Collective Bargaining Agreement by law. Wu was told in summer 2016 when teachers were reclassified, she would potentially be dropped from representation in her suit if she did not settle but with all the emails in her PERB case on retaliation she was willing to settle for a few thousand but wanted her retirement fixed and would not settle in part for that. Then in 2017 Wu was let go as a regular substitute with her email turned off where she also had some Home Hospital students through the district that she had picked up for the first time around February 2017. also at the time in February she was told she would be dropped for refusing to settle, and also in that month a letter was sent by Jacob Rukeyser that Wu's funding by CTA would be cut due to the filing of case Wu vs TRUE SA-CO-616-E which was for not doing a grievance by the local union TRUE which like this case no COMPLAINT was issued or refusal to issue a complaint or Unfair Practice Charge was done and no hearing was done. Wu was then relieved of counsel and became pro per.

### **REASONS FOR GRANTING THE PETITION (statement of case)**

Many states around the country allow for permanent status or tenure if there is a set number of years the teacher or public employee works and continues in employment. Most states in the United States do not have this indefinite probationary status, but some have indefinite temporary status. No state shall treat people unequally in the 14<sup>th</sup> amendment and when my tenure is circumvented my ability to speak up is affected. The Due process is denied as well. Such employees or teachers can utilize a set time they can accumulate or do to obtain tenure if they are out for various reasons. There are some states like California and Arizona that require a set time and California creates laws that subjugate the constitutional right to a non-arbitrary classification and creates this indefinite forever probationary period even when no negative reviews or any reason is given as was the case for Wu at KHS.

Additionally, The Third Court of Appeals court reviews two cases in appeals for the Hours or time a teacher can use to be counted for tenure to qualify for the days of service. However, one of them (Cox) that was determined to be similar to my case was vastly different because I worked in the school during set hours and it was not a regular day like Cox had except a few times she worked at home. Her days were normal. The court claims that Vittal case was different because it was at the college level but that case ruled that normal Regular days are usually five days a week and the Hourly position that Vittal was unique and yet the court of appeal claims Wu situation was unique and therefore was the reason I would not have tenure. The court rules Wu was

misclassified, but that indefinite probationary status is legal in its FIRST time interpretation of the laws in California. This can affect many public employees.

There were over 50 teachers out of 2,000 plus that were like me and this happened over a decade long. that the county office of Education looked the other way, the CDE, CCTC, Office of Controller, STRS, and other agencies refused to look into the complaints and claimed no authority to do so. We were hidden and not reported as teachers and the district board was corrupt which the LCAP law in California puts responsibility on the board and not on other agencies even though the law points to them for overview.

In California I think these effects my constitutional rights becomes when one gets tenure status then due process rights are different and the right to hearing is guaranteed. This occurs because as the court of appeals ruled in Wu case, she was misclassified, but the law permits indefinite probationary status forever after if a teacher works under a certain number of days and the hours do not count. Additional laws point to less than a certain number of hours they will never get tenure and also speak directly to a indefinite probationary status.

In Wu's case Education Code 44929.21 and 44908 are combined where one must work set days not hours and even if sinisterly placed outside the union, outside medical benefits, lunch, break and worked almost double the hours for most days. (Contrarily to the ruling except for the first few weeks of school most months Wu worked three days almost double that of the set teaching classroom hours of a "regular" school day) This cannot be combined nor is it Just and Proper. Wu asked for a just and proper ruling and



the court Ruled Wu was Misclassified but did not acknowledge all her arguments on the CBA, double hours of her set classroom hours (not outside the school like the Cox case it compares her to).

Additionally, this case would like the court to review that there is a Denial of Wu right to due process and right to a Motion to Compel because the CCP allows Motions to Compel if there is Deposition and in Wu's opinion when there is no allowed break or lunch, and material is not all received. Yet the court rules when a deposition is set outside the Discovery party (at the fault of the Respondent TRUSD accidentally double booking) and no stipulation allows for a motion to compel to follow the regular rules of allowing it then it is forbidden but That is not the law. The state cannot create laws or rulings that subjugate the constitutional rights to due process and right to petition the government for redress.

Additionally, Wu was relieved of counsel because of a conflict of interest when she filed her first case in Public Employment Relations Board against the local union controlled by California Teachers Association that had sent a letter they will stop funding because of the filing but under normal Insurance this would not be allowed if one is still a paying member. Additionally, no person should have their attorney relieved of duty because they refuse to sign a settlement that wavers their constitutional and statutory rights to retirement and other rights.

*Goldberg v. Kelly* (1970) 397 U.S. 254, 263-265 [procedural due process requires an evidentiary hearing before a government agency can terminate essential resources that have provided the basis upon which the recipient has subsisted]

*"The doctrine of fair procedure also has been applied in the context of other private professional organizations. Courts originally appealed to a basic concept of fairness in an effort to protect individuals from **arbitrary exclusion from unions** and other professional associations. (See *Otto v. Tailors P. & B. Union* (1888) 75 Cal. 308; *Von Arx v. San Francisco G. Verein* (1896) 113 Cal. 377.)"*

*Courts have created a common law doctrine of fair procedures and it includes union membership. *Cason v. Glass Bottle Blowers Assn.* (1951) 37 Cal.2d 134, 143-144; p.25*

CCR 5 T5 11700 Independent studies a Day is based on the hours worked in comparison to full time teachers.

*"In the case *Steele v. Louisville & N. R. Co.*, 323 U.S. 192 (1944*

Mathew Vs Eldridge 1976 424 US supreme court - hearing is required when deprived

of property or liberty interest. *Sniadach vs Family Corp* 395 US supreme Court 1969

Essential to livelihood is protected and gets due process (I say that is union and CBA)

laws or rulings. Cannot be irrational - *AirLine Pilots* 1991 *Williams vs State of California*

2004. Equal education and audits for Vacancies and substitutes in place of teachers.

Ed code 45025, Service Credits in STRS 22700- 03, Government Code 3547.5 Audit

for fiscal sound. Ed code 41020 Annual Audits for vacancies and misassignments.

Tenure (Rehearing p. 22-23)( p. 14 RT) Ed code 44929.21, Ed code 44918

The CBA is controlling and for ALL teachers in the district who are in the SECONDARY classificational day high schools of the unified school district shall be deemed to be maintained by a second and separate district. [ Ed code 45024.] and also cites EDC 45025 [ Opening brief CT Records Vol. VII p. 02053. Line 1-10]

20 U.S.C. Sec. 6301 et seq. American Recovery and Reinvestment Act of 2009 (Public Law 111-5) Every Student Succeeds Act - PUBLIC **LAW** 114-95

## STATEMENT OF THE CASE

This case involves review of Rebecca Wu vs Twin Rivers Unified School District [TRUSD] and if Wu was Tenure and had rights to come back as a teacher when she was misclassified as a substitute instead of as a teacher. This case involves if Wu can

have tenure if Wu did not work 75% (.75 FTE Full Time Equivalent) of the year in terms of Days under Education Code EDC 44908 and EDC 44929.21 as a misclassified teacher. Tenure should not require a percentage of days worked for the year Under 44929.21 because it is circumventing the tenure rights if there is some indefinite position of Probationary. Wu has Damages for her Misclassification as a Probationary teacher, and she has Re-employment rights because she falls within many statutes as well as falls under sinister reasons, she would be tenure or at least have the right to come back as probationary teacher.

November 12, 2015 filed a Writ of Mandate. In the granted 5-26-2017 Motion to be relieved of counsel 3-2-2018 Motion to Compel it was determined I could not file the Reply which the denied Order on 2-7-2018 were contradictory orders. denied 3-22-2017 Motion to Compel for Gina Carreon's continued deposition. On 9-7-2018 the Petition was denied, and the Expert Witness, Assistant Superintendent of Roseville, was denied.

## **ISSUES TO BE PRESENTED**

There should not be indefinite Probationary status for a public employee. If actions caused an employee not to be in the union, and the Day as defined in the union CBA is the same Hours for a full-time teacher be used for classification. Does Wu have rights to tenure, or at least probationary status and reemployment rights, and or damages and If not then does this violate her 1st, 14th Amendment Rights, and not take into account the intent of the Legislature and harmony of all laws. Because of the sinister nature in the misclassification then Wu would have rights to tenure because of the intentional

circumventing of tenure. All states must be uniform in allowing tenure based on the time and continuation of employment and cannot have constitutional violation of arbitrary classification that create unequal treatment of the people and a state that abridges the rights of the people. A petitioner in court should have due process right to a Motion to compel when a deposition occurs outside the discovery period at the fault of the other party and would not have to be inside the situation to move the deposition. Additionally, no public employee should lose their attorney when it is paid from membership in a union or in Wu case, the nonexclusive union she found out years on the job that she could join and got others to join as substitutes when the union never told us we could join. When she filed against, the exclusive association union, also under the umbrella union CTA, she lost her attorney for conflict of interest and because she refused to waive her rights. No attorney can be relieved under those circumstances. When a public employee has constitutional issues, they should get a free attorney at least at the appellate level. If *there is a De facto Continuation of employment then Wu had rights to tenure.*

## **ARGUMENTS**

**THE OPINION CLAIMED THAT OTHER TEACHERS IN THE DISTRICT OBTAIN 1.0 FULL TIME BUT BECAUSE WU'S POSITION WAS DIFFERENT THEN SHE WOULD NOT HAVE THE RIGHTS TO FULL TIME. [Op p.10 "*Wu held a position different from a typical instructional teacher*"] HOWEVER, THERE WERE A FEW TEACHERS WHO WERE CONTRACTED AND WORKED A REGULAR CBA TIME of 100% of days OF FIVE TEACHING PERIODS AND A PREP PERIOD at Wu' School for all years she was at KHS.**

**REGARDLESS. THERE WAS NO JUSTIFICATION IN THE LIMITED THREE DAYS A WEEK THAT WERE DENIED WU WHO REQUESTED THEM. Currently, BECAUSE OF THE STAFFING CHANGE THAT HAPPENED AT KHS IN 2016-2017 SCHOOL YEAR ALL TEACHERS ARE NOW CONTRACTED WITH TENURE.**

**REGARDLESS, having a PROBATIONARY TEACH LONGER DAYS WITHOUT BEING ABLE TO OBTAIN TENURE DEFEATS PURPOSE OF TENURE AND IN VIOLATION OF THE DE FACTO TENURE, 1ST and 14th AMENDMENT RIGHTS. *F there is a De facto Continuation of employment then Wu had rights to tenure.***

**Wu would be re-employed least as Probationary if not tenure because the legislature never meant to have her reemployment not to be given to her because she was misclassified and worked the same hours of a full time person over a year in the classroom. REGARDLESS, SHE HAS RECLASSIFICATION RIGHTS FOR ALL Years. Substance over form Doctrine applies and is JUST and Proper for probationary then tenure and continued reemployment per the Writ Petition. p. 10-11. NO statute of Limitations for Reclassification of Public Employees. Oakland v. Ca. Public Emp. Retirement Sys, 95 Cal.App.4th 29, 115 Cal. Rptr. 2d 151 (Cal. Ct. App. 2002)**

under EC 44918 her reemployment under "shall" would mandate she come back and even if Tenure was denied. Probationary is a lesser threshold and scrutiny does not have to be so strict. The substance over Form Doctrine would apply. , a union contract which would have defined her "day" as five Periods [ at 55 minutes]. 5 periods [4.5 hours is one DAY in the CBA.

**NO PERCENTAGE OF DAYS [PART TIME WORK] CAN BE REQUIRED TO WORK EACH YEAR TO GET TENURE BUT RATHER IT SHOULD BE IF THEY ARE HIRED FOR THE TWO FULL YEARS. WU CLAIMS ED CODE 44908 IS TRUMPED OR ABRIDGED BY THE CONSTITUTION UNDER THE 1st and 14th AMENDMENT THAT THERE CANNOT BE ARBITRARY CLASSIFICATION OF A INDEFINITE PROBATIONARY (OR TEMPORARY) EMPLOYEE, AND IN VIOLATION OF THE PURPOSE OF TENURE, WHICH SHOULD NOT BE CIRCUMVENTED . 44908 CANNOT BE COMBINED TO EC 44929.21 a-b-c AND AFTER TWO SCHOOL YEARS**

WU WOULD BE TENURE AND CANNOT BE LET GO WITHOUT CAUSE OR AT LEAST PROBATIONARY REEMPLOYMENT RIGHTS BECAUSE SHE WORKED OVER TWO YEARS MISCLASSIFIED AS PROBATIONARY. [Wu was misclassified OP.p.6] INDEFINITE PROBATIONARY OR TEMPORARY E TEACHERS IS ARBITRARY AND THEREFORE NO PERCENTAGE CANNOT BE REQUIRED TO OBTAIN TENURE. UNDER THE 1st AMENDMENT WU WOULD BE DENIED HER ACADEMIC FREEDOM DOCTRINE AND UNDER THE 14th AMENDMENT WU WOULD BE DENIED DUE PROCESS FOR HER PROPERTY AND RIGHT TO NOTICE, HEARING. [Reply Brief p. 20-21] SHE WAS TENURE BASED ON CONTINUITY OF SERVICE. WU HAD DE FACTO COMMON LAW RIGHTS TO TENURE AND CBA CONTRACT THAT WOULD ACKNOWLEDGE A DAY AS 5 Five Periods. ALL LAWS MUST BE IN HARMONY. (As WU stated in her Opening Brief Appellate Brief p. 32) [RB Reply Brief p. 13]*DUE TO CONSTITUTIONAL RIGHTS UNDER THE 14<sup>TH</sup> AMENDMENT, and 1<sup>st</sup> Amendment. Substance over form Doctrine applies.*

*"Constitutional right to the contract is a right that should have been given because Wu argues that the normal policy is to give a contract and thus property rights. [AOB P.24] "Wu claims it was a continuous violation [CT p. 02035] " [AOB P.25] ..no notice in Ed code 44929.21 (a) (b) then deemed reelected for next year (and probationary) [ ed code 44929.21] [ CT v. xvll or XIX p. 04890] public employees classification Cannot be Arbitrary . Purdy vs State 71, Cal 2nd 566 456 645 79 Cal Rptr 77 (1969). California Constitution Art I, II, 21 [REHEARING p.17,22] [Reply Brief. P16] CONSTITUTION ONLY ALLOWS CLASSIFICATIONS BY STATES FOR PUBLIC EMPLOYEES THAT ARE NOT ARBITRARY. invidious distinctions between classes of citizens. Shapiro vs Thompson 394 U.S 618 633 (9133) [Reply Brief p. 25][rehearingp.22] hearing is required when deprived of property or liberty interest. Sniadach vs Family Corp, Mathew vs Eldridge 1976*

*in Eureka Teachers Assn. v. Board of Education (1988) 202 Cal.App.3d 489, a school district openly admitted that it classified employees as "day to day" substitutes in order to deprive them of their re-employment rights but nevertheless argued that they should be allowed to do so for the purpose of controlling their faculty work force through such classifications. (Id., 473.) .) [Superior Court REPLY p. 14, 8-23-2018]*

**Wu should be a tenure teacher based on her Hours worked in the Classroom, and her**

**Evening hours per 44908** Wu was a tenure employee for all years after 2010 or at least 2012 and to present. The substance of the EC codes 44908, 44929.21, 44918 and all other umbrella laws on EC, constitution and case authority to all the purpose of the laws to be interpreted that it would be just and proper for Wu to be tenure because she worked over 75% of the Time in her Position Regardless if she was not in an Evening School defined by Ed code. She was in a Unique situation. Substance over form Doctrine applies. *Gregory v. Helvering*, 293 U.S. 465, 469-470 (1935). ED 3543.2, Wu's timesheets Exhibits G1-G7 TIMESHEETS CT 3281-3300 – volume XI [rehearing p. 14]

*"I also could have had two positions and they should have counted together." [Opening Brief Superior Court p. 10] Independent Study [Hourly paid subs] teachers were not allowed to have more than 3 days' (Dec. Wu Exhibit C, P. 7 Line 25)."*

*"In June 2016 the school ended the hourly position for everyone employed in the school who were most teachers. I was well liked and have no negative marks of any kind for all the years I taught"* [SCOB p. 12CT02040]

**WU had rights to come back at least as a Probationary Teacher because if she worked over a semester as a temporary teacher she would come back under EC 44921 and as she never was properly placed as probationary. This would be the intent of the legislature for Wu to come back now that she is finally recognized as misclassified by the Opinion. Now she should at least come back as a probationary teacher under EC 44921 under JUST and PROPER because it says if a teacher works half a year then she "shall " be rehired. [ROA Writ Pet p. 8-9, added in Motion in Appeals] *IF there is a De facto Continuation of employment then Wu had rights to tenure.***

**EDC 44921** states "shall be reemployed" the following year as a Probationary at least.

Opening Brief Superior court p. 2

[SCOB p. 15 CT02043] " ..continued in employment beyond the first semester ...(Education Code 44921) *I would be PROBATIONARY EMPLOYEE BECAUSE EACH YEAR I WORKED BEYOND THE FIRST SEMESTER.*" - [ Opening Brief 3-27-2018 superior court p.14] "EC 44921 ...Persons so employed who are continued in employment beyond the first semester shall be deemed probationary employees for the entire school year. Any such employee **shall be reemployed** for the following semester or school year to fill any vacant positions in the school district for which the employee is certified. [SCOB p. 14 CT02042] [ The Verified Writ Petition [page. 6 ROA 1] I did not get Re-employed in 2016-2017.

**THE OPINION [OP P.10] CLAIMS TEACHERS ARE NOT REQUIRED TO BE HIRED FULL-TIME in the CBA and KHS has a Different Structure. . HOWEVER, IT IS THE INTENT OF THE LEGISLATURE that all TEACHERS AND ALL PUBLIC EMPLOYEE ARE HIRED FULL-TIME FROM THE START if full time work is available.**

. ADDITIONALLY IT IS NOT RELEVANT THAT KHS HAD A DIFFERENT SET UP AS IT CHANGED TO ALL TEACHERS BEING RECLASSIFIED TO CONTRACTED AND TENURE [ BUT WU whom negotiated on their behalf] AS WELL AS THERE WERE FIVE REGULAR CONTRACTED tenure TEACHERS AT KHS FOR all YEARS PRIOR. IT IS THE RIGHT OF PUBLIC EMPLOYEES IF THEY WANT FULL-TIME WORK AND POSITIONS EXIST OR OTHER PART-TIME POSITIONS COME UP. REGARDLESS, HIRING PRACTICES AT TRUSD WAS TO USUALLY ONLY HIRE FULL TIME TEACHERS. THEREFORE, WU WAS DENIED HER RIGHTS TO BE FULL TIME AND WORK OVER 75% OF THE YEAR AND DENIED HER TENURE TRACT AND OR RIGHT TO COME BACK AT least AS A PROBATIONARY TEACHER. [AOB p. 41] MOST TEACHERS ARE HIRED FULL-TIME. Substance Over Form Doctrine would apply. [Rehearing p. 14]Wu was not allowed to work over three days a week of five days and thus not allowed to work over 75% of the days. This WAS NEVER challenged in all Wu's briefs by the district, and they agreed that was so.

[AOB p.41] Wu was not given any position at KHS in 2016-2017 school year due to the Hourly Paid Position going away" [AOB p. 19] [AOB p.18] *Substitutes are not under the CBA, but probationary teachers are.* [AOB P.24] Vasquez v. Happy Valley Union School Dist. (2008) 159 Cal.App.4th 969 [- Cal.Rptr.3d -] (3) NOTICE NEEDED FOR NON-RENEWAL .



Many EC point to the intent to have full time teachers. 44853, 449565, 44957. AB 825, NCLB.

The School Accountability Report Cards, [SARC] require reporting the number of Full time teachers. EC 41320.1(a), 44258.9, School board is to review the SARC. EC 42238.02. 42238.03.

CALPADS [state reporting] EC 60900, 490795 which has the intent of the legislature and interest of the children. EC 46000-64100. 20 USC 6301, 6303. Fiscal responsibility EC 41020

(a) ADA Independent Studies EC 51747.5

EC 44908, 44918 it aligns with EC 45317 . EC 496

in the CBA [J1-J4] 14.3.1 Years of service require over 75% to move up in the pay scale.

**Wu should have rights to re-employment as a Probationary teacher at least if not Tenure even if she did not work the 75% of the days of the school year because the illegal Sinister misclassification, denial of the union and CBA, Hours worked=full-time, circumvented tenure and or right to come back as a probationary teacher , and Wu claimed 44908 cannot have a requirement in 44929.21 because it should not apply. Wu would have Defacto rights to tenure because it exists for property. Wu argues The intent of the legislature, the constitution, and the improper use of substitutes and timesheets, whole of the laws, points to Wu would have rights to re-employment as a probationary teacher at least or tenure even if Wu did not work the 75% of the days. [EERA 3545 b.1, board policies, and other evidence provided) Substitutes are not under the CBA, but probationary teachers are. [AOB P.24]**

NO NOTICE WAS GIVEN TO CCTC ABOUT SUBSTITUTES AT KHS. (*Education Code 44917*) [SCOB p. 12 CT02040] Wu cashed out her retirement to run the case.

**arbitrary exclusion from unions and other professional associations. (See *Otto v. Tailors P. & B. Union* (1888) 75 Cal. 308; *Von Arx v. San Francisco G. Verein* (1896) 113 Cal. 377.)--[ARB p.25]**

**I was not on the same salary schedule [AOB p. 35-36] WU has *some different pay scale, Ed code 45028.*"each person shall be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience" Reply Brief p. 14 damages]**

**WU DID NOT HAVE A "REGULAR" DAY IN EC 44908 AND THUS IS LIKE CASE LAW VITTAL AND UNLIKE COX IN CONTRADICTION TO THE OPINION. [ OP.p.8-9]. WU DID WORK OVER THE REQUIRED 75% OF THE REGULAR DAYS IN TERMS OF THE SET TEACHING TIME OR CLASSROOM TIME SHE WAS SCHEDULED WEEKLY TO DO. THEREFORE, THE APPLICATION OF COX AND**

**SANTA BARBARA IN THE OPINION IS UNFOUNDED THE PROPER APPLICATION IS VITTAL.**

In the Cox case, as Wu argues in her briefs in superior court, and in appeals, she does not have a "regular" day. Cox had a regular day and then did a few hours working at home on some other project. This is so far removed from Wu situation, with the illegal misclassification, the hours that were set were assigned and not questionable. **[Rehearing p. 24]** Unlike the Cox and Santa Barbara case Wu worked set hours or regular hours but not as regular days. She worked above and beyond the normal "day" or "regular" days that is required in California Education Code 44908. *[ Reply Vol. XVIII P. 5101- 5114]* **[AOB p. 25, 26).**

In Vattel, it points to that the legislature would not have wanted the teacher to loose out on tenure because of the claim of Days when her situation was not regular as per the EDC 44908. She had a unique situation, like Wu, where she worked three days not five days and worked more than a normal day. To deny Vattel tenure would be to circumvent it and this is not the intent within these laws. That case should have been applied but the 3<sup>rd</sup> court of appeals claimed it simply applied to the College level and not at the elementary, yet Wu had a a unique situation – Independent Studies and misclassification. It is the same situation and must apply. (Although Wu still stands with that no days should be set to provide tenure if one is rehired in a part time position nor can an indefinite probationary position exists of some kind)

**[Rehearing.24]** *"Part-time employment position is the percentage which bears the ratio as the average number of hours in comparison to full time comparable position. PUBLIC LAW 95-437 [ Brief Vol. VII p.02061] [ p. 32 of Opening] Labor Code § 511 (Employer May Adopt Regularly Scheduled Alternative Workweek): Employers may adopt a four-day ten-hour regular workweek without paying daily overtime. Section 6802 of the Education Code r."* **[AOB p.30 Under 11700 WU would have two positions equaling one full time teacher with the physical presence. 5 CCR § 11700. Definitions. (INDEPENDENT STUDIES 5 CCR §**

11700) [ **CT vol.VII p.02060**] (a) "Full-time equivalent certificated employees" means any combination of full-time certificated employees and part-time certificate employee assignments that aggregate to the amount of instructional time specified in the contract of a full time certificated classroom teacher of the district or county office of Education. (j) Supervising teacher [3-27-2018 OPENING Brief p. 32 CT VOL. VII p. 02061] [AOB p.30][Rehearingp.24]

"EDUCATION CODE 46160 supports using Vittal vs Long Beach 1970 in Wu's CASE NOT COX. ... Alternative Schedule—Junior High and High School [CT 46160 - 46162] Ed code 45132alternative workweek. EDC 45025, and EDC 45024 TIME SERVED as A PERCENTAGE COMPARISON" [Superior court Opening Brief Vol.VII p. 02053] [AOB p.30] Education. Code § 44917. report me to CCTC. [AOB p.31] Ed code 45024. [ CT Records Tentative Vol. XVIII p. 05186 OR Order p. 05291] [ CT vol. XVIII p. 05186] and Wu does refer to 45024[Rehearingp.24]

Wu was claimed by the Court of Appeals that she worked five to six hours a day and by the end of the year worked 8-9 hours a day[OPINION P. 2] but actually, Wu points out in all briefs in all courts, she worked around 8 hours a day and she points to her timesheets she has filed [Superior court Declaration of Wu Exhibits G1-G7] It shows for most years, at least in 2011-2016 she was working the same set hours as required by a full time teacher whom works five periods a week for a total of about 4.5 hours or so. By the second month and by the beginning of the second month on average Wu is working the regular set hours. Some years she does schedule only 7 set hours a day or does not have an assigned student. Regardless, this is not argued differently by the Respondent, nor did the respondent ever claim there was a contract that the 3<sup>rd</sup> court of Appeal ruled there was and therefore Wu was allowed to be let go. Wu worked 8 and even 9 hours with no lunch, preparatory period, or breaks in three days. Police and firefighters can have these different schedules, but they are counted as full time (unless improper). Wu claimed she worked the same hours as full time based on the CBA she was illegally denied.

*Timesheets Wu quotes "Timesheets G1-G7" [ Reply by Wu CT RECORD VOL. XVIII P. 5104] And in the Reply "(Exhibits G1-G7.) Carrie True, Exhibit 17, p. 2" [ Reply CT Record Vol XVIII 5108] [ In the timesheets it is clear and UNCHALLENGED that Wu worked Three days into the evening, that most of the time she worked 24 or more hours a week in three days, [AOB P.23]*

**WU DID NOT NEED THE STRICT INTERPRETATION OF WHAT THE DEFINITION OF EVENING SCHOOL WAS IN THE RESPONDENT'S BRIEF IN APPELLATE COURT. WU WORKED THE EVENING HOURS OF THE "UNIQUE" SCHOOL**

*The law is well settled that tenure in a junior or community college may be attained by teaching in other than regular day-time classes: e.g., credit may be achieved by teaching in evening classes (§ 13311; Curtis v. San Mateo Junior College Dist. Balen v. Peralta Junior College Dist., supra, 11 Cal.3d 821, 826,) (Reply Brief 3<sup>rd</sup> Court of Appeals p. 47)*

**THE INTERPRETATION OF THE 3<sup>RD</sup> COURT IN THEIR OPINION THAT VITTAL CASE IS NOT APPLICABLE OVER THE COX CASE HAS NO FOUNDATION AND VIOLATES THE CONSTITUTION. IN THESE TWO CONFLICTING PREVIOUS CASES THAT THE COURT REVIEWED TO MAKE THEIR DETERMINATION. VITTAL IS THE PROPER CASE THAT CLAIMS THAT HOURS OR TIME TEACHING FOR A PROBATIONARY PERIOD REQUIREMENT FOR DAYS THAT IS LESS DAYS BUT EQUAL TO THE SAME AMOUNT OF TIME CAN SATISFY THAT REQUIREMENT BECAUSE IT BELIEVES THAT WOULD BE THE INTENT OF THE LEGISLATURE. (REPLY P. 47)**

*75 percent of the number of hours considered as a full-time assignment for permanent*

*employees having similar duties." (§ 13328.5; Vittal v. Long Beach Unified Sch. Dist. (1970)*

*supra, 8 Cal. App. 3d 112. This interpretation does not allow for the purpose of tenure, and thus*

*the due process allowed through the tenure status and a hearing with an administrative law judge if non-renewed.*

**WHEN THERE IS CONTINUATION OF EMPLOYMENT IN A CONTRACT (OR IN WU'S CASE MISCLASSIFIED WITHOUT A CONTRACT) IT IS CIRCUMVENTING TENURE AND RIGHTS TO THE DUE PROCESS**

**See arguments below**

*"The district's contention that Balen was previously dismissed, then rehired in a new category effective as of 1967, deserves little consideration. The record discloses the policy of the district to dismiss its part-time instructors annually prior to May 15, regardless of performance, and subsequently to rehire them. Such an administrative practice of routine blanket dismissals to circumvent proper classification carries with it concomitant [11 Cal. 3d 831] liability; i.e., the form letter dismissal with virtually automatic rehiring creates an expectancy of reemployment. (Perry v. Sindermann (1972) supra, 408 U.S. at pp. 601-602 [33 L.Ed.2d at pp. 579-580]; Sherman v. Board of Trustees (1935) 9 Cal. App. 2d 262 [49 P.2d 350]. Nor can the provisions of the Education Code lawfully be avoided by employing a teacher under consecutive part-time*

contracts. (*Beseman v. Remy* (1958) *supra*, 160 Cal. App. 2d 437.) As Justice White wrote in *La Rue v. Board of Trustees* (1940) 40 Cal. App. 2d 287, 293 [104 P.2d 689], *BALEN.* ) **(REPLY BREIF 3<sup>RD</sup> COURT IN Wu case p. 47)**

"No person shall..be deprived of life, liberty, or property, without due process of law. ... " U.S. CONST. amend. XIV, § 1: "[Nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. "(REPLY BREIF p. 47)

**If there is no notice in Ed code 44929.21 (a) (b) then a teacher deemed reelected for next year and after two years he or she is has tenure [ ed code 44929.21] [ CT v. xvii or XIX p. 04890] This is argument in the Verified Petitiin.**

**"CBA 4.2.8 part time members compensation based on hours of regular work for CBA J1-J4] and Ed code 45136, (line 21) and CCR 171.1 (a) (this is on Opening Brief p. 2054 line 26) (CTP. 02056 – 02057 )EDC 45132, 45025 and 45024. Five periods. [CT v. VII p. 0256 Ed code 22138.5 Ed code 45101 Extra Duty timesheets. Ed code 22155. I quote the CBA and J1-J4 with pages numbers and flex schedule, (J1-j4 4.22.2 J3 p 131 in VOL. VII p. 2058 )union is for teachers, normal assignment is five periods, (Dec Wu J1-J4 4.2.3. p. 18, J3 and J3 p. 12, and J4 p. 10). [AOB p. 45] [REHEARING p. 11]not paid overtime rate CBA 4.6p.CT03683,REQUIRED TO WORK IN CBAFULL-TIME V.XIIICT03685 4.9.2. SALARYSCHEDULE CT.03710, Years of Credit. ALTERNATIVE SCHEDULE CBA4.2.5MUST EQUAL FIVE STANDARD PERIODS and 4.2.1(WORKDAY=Teaching time 325minutes=Five Periods and one minimum day) .V.XII CT CT03678-03679, PART-TIME PAY.CT03680**

**"CBA 4.2.8 part time members compensation based on hours of regular work for CBA J1-J4] and Ed code 45136, (line 21) and CCR 171.1 (a) (this is on Opening Brief p. 2054 line 26) (CTP. 02056 – 02057) EDC 45132, 45025 and 45024. Five periods. [ v. VII p. 0256 Ed code 22138.5 Ed code 45101 Extra Duty timesheets. Ed code 22155. I quote the CBA and J1-J4 with pages numbers and flex schedule, (J1-j4 4.22.2 J3 p 131 in VOL. VII p. 2058 )union is for teachers, normal assignment is five periods, (Dec Wu J1-J4 4.2.3. p. 18, J3 and J3 p. 12, and J4 p. 10). [AOB p. 45] [REHEARING p. 11]**

**TRUE is the local union CBA Vol VII 02062. Part time is compensated on days and definition of Day." We had no benefits or union support" [vol. VII p. 0262 "Dec Wu Exhibit C p. 9 line 2) therefore, I was denied my right to know. Ed code 45023.5 compensation for equal work. Dec Wu Exhibit J1, J2,J3,J4 CBA Vol. VII 02062. FRAUD on reports [ v.VIIp. 02060 line 1-10] Vol. VII p. 2059 Evening school teacher qualifies as 100% days of school in Ed code 44908 [AOB p. 44-45] [REHEARING p. 12]**

THE INTENT OF THE LEGISLATURE WAS NOT TO CIRCUMVENT THE TENURE TRACK AND THAT IS NOT ADDRESSED IN COX OR SANTA BARBARA. " [AOB p. 27][Rehearingp.23]

*"Such unbridled power to circumvent the reemployment rights conferred by section 44918 cannot have been intended by the Legislature" --Eureka Teachers Assn. v. Board of Education (1988) 202 Cal.App.3d 489, [REPLY on CT Vol. 05111 9p.14 of Reply] .[ Reply p. 14 (within 15 or 20 pages) is CT vol 05111] — [AOB p. 29][REHEARINGp.23]*

[EERA 3545 b.1] Substance over form DOCTRINE would apply to a "regular day" like it did in the Vittal case mentioned in the Opinion.

**I MENTION in ORAL ARGUMENT IN APPEALS Vittal had a unique situation like mine and should apply. [REHEARING p. 18]**

**[ Exhibits G1-G7 TIMESHEETS CT 3281-3300] – volume XI. SHE COULD HAVE WORKED TWO CONTRACTS AND IT WAS NOT REGULAR DAYS. [Pet for Rehearing p.8]**

*. ED Code 45137----- It is the **intent of the Legislature**, in enacting this section, to insure that part-time employees are accorded fringe benefits on an appropriate prorated basis with full recognition given to the number of hours worked by the part-time... This section is to be **liberally construed** in order that the provisions of Section 45136 may not be circumvented...for a position on an overtime basis but for which premium pay is not provided nor appropriate adjustment is not made in fringe benefit entitlement"*

Fringe benefit would include appropriate adjustment on the number of Days worked based on the hours.

Education code 45137. [AOB p. 33][Rehearing p. 25]"*Intent of legislature does not allow for overtime for part time without changing their CLASSIFICATION or "appropriate adjustment is not made in fringe 45 benefits". for Ed code 45137 [ vol. VII Opening Brief p. 02054 Line 7-20] [AOB p. 45] [AOB p.33] {CT Vol. VII p. 02037 "I would have two positions.}" [AOB p. 42]][Rehearing p. 25]*

**HAVING A NEWER CASE AGAINST THE UNION IS NOT A LEGAL REASONS FOR DROPPING REPRESENTATION WHEN IT STARTED AFTER REPRESENTATION AND DUE IN PART TO THREATS OF DROPPING REPRESENTATION. [P. 3 OPINIION ON MOTIONS]{rehearing p. 19]**

Stip. To Discovery 4-20-2017 Vol.1 p. 74 Costa claiming conflict of interest. Vol. 1 p. 95. My arguments p.114 [AOB. P 45]

**JUST BECAUE WU DID NOT WORK THE EC DEFINITION OF EVENING SCHOOL OR A REGULAR DAY IN EC 44908 WU WOULD STILL QUALIFY FOR WORKING A WHOLE YEAR UNDER EC 44908 THAT ALLOWS FOR WORKING ALL DAYS IN THE EVENING HOUR WHICH WU DID [Op.p.10] , and 44929.21 UNDER THE SUBSTANCE OVER FORM DOCTRINE AND INTENT OF the LEGISLATURE. EC 45137 DOES NOT ALLOW IT. Substance over Form Doctrine would apply. REGARDLESS, even if she did not qualify for the Evening hours this would ALSO APPLY to the "REGULAR DAY" in 44908. Additionally, SHE WOULD HAVE TWO POSITIONS BASED ON HER HOURS IN THE CBA AND THAT WOULD MAKE HER WORK OVER 100% of the DAYS.**

The Opinion **[OP.p.10]** only looked at the strict interpretation of Evening hours When wu did not have a REGULAR day in EC 44908, 44929.21 but almost Double Hours per all other teachers in the district in the CBA This should be looked at for the whole of the laws as Wu's school was NOT regular or normal. Vittal would support this. **Substance over Form Doctrine would apply** (Gregory vs Helvering 293 U.S. 465 1935). EC 44918 (e) Rights to REEMPLOYMENT. UNDER EC 44908 Wu had worked all evening hours and then would have worked all 100% of the days and be tenure or right to come back **[v. XVII 05047 Reply] [Eight back-to-back hours minute to minute v. XVII P. 05047] [AOB p. 42] [P.10 OPINION DECISION] [AOB p.18] [Opening Brief March 27, CT 02048 line 9-13] [p.22 AOB] TEACHING STUDENTS IN THE EVENING THEN IT COULD FALL UNDER 44908 [P.10 OPINION DECISION] [AOB p.18] [Opening Brief March 27, CT 02048 line 9-13] [p.22 AOB][RHEARING.p25] EC 45137 .**

Salary is the same based on time Teaching EC 45028. 5 CCR 11700 Independent STudy teachers need to have their part time position based on the percentage of full time based on Time and I was not.

*Because of my hours I could have been Two positions equal to one or over 75% of the days. {CT Vol. VII p. 02037 [AOB p. 42] TRUSD hires around 99% of teachers as Full-time) " [AOB p. 41][Rehearing.25]*

**CONTRARY TO THE OPINION [OP.p.10] WU WOULD BE ENTITLED TO AN ALTERNATIVE SCHEDULE [AOB p. 34][Rehearing.20] AND TO IGNORE THIS ALTERNATIVE IS TO SUPPORT CIRCUMVENTING THE RIGHT TO TENURE. THIS TIME WOULD EQUAL ONE FULL TIME POSITION AND OR THE DAYS TO BECOME TENURE.**

Two part-time positions can equal 1.0 position. The definition of "Regular Day" is five teaching periods in the CBA. This case rests on that Wu did not work 75% of the "Regular," Day of the school year in a regular school under Ed Code 44908. Incorporating arguments in #10.

[Rehearing p. 16,18,19]

*"Currently, all teachers are on contracts as of 2016-2017". (Exhibit T p.17)" 5 full time teachers with the rest, approximately 40, being "hourly teachers." (Exhibit D, 19-24.) Mr. Mattu and others with extensive experience at other schools both inside and outside the district have never known of any other school besides Keema that used the substitute position in a similar fashion. (Exhibit D, 10:13-19.) (REPLY BRIEF SUPERIOR COURT p. 6) WU COULD HAVE HAD TWO POSITIONS EQUALING FULL TIME. In Cullen v. Board of Education (1932), 126 Cal. App. 510 [15 P.2d 227], [ Reply Brief p. 21][Rehearingp.25]*

Part Time rights based on hours EC 45137. Salary is the same based on time Teaching EC 45028. [RB p.28] [AOBp.30] Instructional time teaching determines a full-time position for Independent studies 5 CCR 11700 and this supports that a "Regular" day is based on the time for Independent Studies [OP.p.8-9]

*I would have had my DAYS recognized by the CBA and could have been placed on an ALTERNATIVE SCHEDULE and my pay would be dramatically more. [AOB p. 34][REHEARING.p16] Vol. VII p. 02053], "I WAS A FULL TIME 1.0 FTE TEACHER BASED ON THE HOURS I WORKED" and cite ed code 45025, then ed code 45024 (line 8) I would have worked the same days instead of the sinister plan to circumvent the Ed code 44908, and Ed code 44929.21. [AOB p. 32] [Rehearing.22-23]*



*Vol. VII ..P. 2062 due to credits, years of service I would be much higher pay than what was claimed in the Opposition And "Not circumvented for Ed code 45137 [ vol. VII Opening Brief p. 02054 Line 7-20] { Line 20 "CBA 4.2.8 part time members compensation based on hours of regular work for CBA J1-J4] and Ed code 45136, (line 21) and CCR 171.1 (a) (this is on Opening Brief p. 2054 line 26) (CTP. 02056 – 02057) EDC 45132, 45025 and 45024. Five periods. [ CT. VII p. 0256 Ed code 22138.5 Ed code 45101 Extra Duty timesheets. Ed code 22155. I quote the CBA and J1-J4 with pages numbers and flex schedule, (J1-J4 4.22.2 J3 p 131 in VOL. VII p. 2058) union is for teachers, normal assignment is five periods, (Dec Wu J1-J4 4.2.3. p. 18, J3 and J3 p. 12, and J4 p. 10). [AOB p. 44- 45] [rehearing.19] ---Petition for Review State Supreme Court.*

*"Days" equals five standard periods at 55 minutes each. she would have been under a CBA on page 6 of her Opening Brief filed on March 27. [Record, CT page 02034] [ AOB P. 24] [AOB p.18] Wu was NOT given a union contract with Twin Rivers United Educators which comes with a Probationary and Permanent status [AOB p.19] .. [AOB P.25] .....The court quotes EDC 44908-. [AOB p.21] [Rehearing p.19]*

**UNDER THE 14TH AMENDMENT, 1ST AMENDMENT OF THE US CONSTITUTION, AND INTENT OF TENURE FOR TEACHERS IN THE UNITED STATES AN INDEFINITE PROBATIONARY POSITION WOULD CIRCUMVENT TENURE AND TENURE PROBATIONARY MEANINGLESS, AND WOULD HARM STUDENTS AND TEACHERS. THEREFORE, EC 44908, AND SIMILAR EC CODES THAT HAVE A REQUIREMENT OF 75% OR ANY PERCENTAGE OF THE DAYS IS IN VIOLATION OF PURPOSE OF TENURE AND NO STATE MAY MAKE THOSE TYPES OF LAWS.**

IT IS ALSO NOT IN THE INTEREST OF THE CHILDREN, ED CODE, NOR PROPER TO HAVE PUBLIC EMPLOYEES AND OR TEACHERS PART TIME, LET ALONE WITH OVERTIME OR LONGER HOURS PER DAY, WHICH DENIES THEM RIGHTS.

REGARDLESS HAVING THE HOURLY TEACHERS AT KHS PART TIME WAS A WAY TO CIRCUMVENT TENURE. UNDER EC 45137 IT WAS IMPROPER TO HAVE WU WORK PART-TIME IN THREE DAYS WORKING ALMOST DOUBLE HOURS AND NOT GET THE CHANGE IN PERCENTAGES OF DAYS WORKED TO OBTAIN TENURE

[Reply Brief p. 20-21] [ Opening Brief Appellate Brief p. 32) [RB Reply Brief p.

13][rehearing.20] REQUIRING ANY PERCENTAGE TO PROBATIONARY STATUS TO OBTAIN TENURE IS AN ARBITRARY CLASSIFICATION AND ARBITRARY LAW UNDER THE 14TH AMENDMENT, 1st AMENDMENTS WHICH WU SPOKE OF IN ORAL ARGUMENT IN APPEALS AND IT DEFEATS THE PURPOSE OF TENURE- CONTINUATION OF EMPLOYMENT

*"Wu claims it was a continuous violation [CT p. 02035] " [AOB P.25] [AOB P.24] [Rehearing.p.19] A part-time teacher regardless of percentage of teaching assignment is teaching a full year because they are employed a full year. EC44929.21 [Reply Brief. P16]- Crawford vs Board of Education 20 Cal app 2nd 391 67 p. 2nd 348 (1937) [Reply Brief. P16][Rehearingp.22]*

This would pass the Lindsey test. The 14th amendment does not allow arbitrary classification which requires a percentage of days per year to get tenure, or allows for any type of indefinite probationary." (DEC. Wu EXHIBIT C8)(.Dec. Wu Williams Exhibit N.) Dec. Wu Mattu Exhibit (Ex).D,John Ennis ExHibit,T, Ex Krsitc.C,Ex, Nelson E, Exhibit F1-F6, K,Spearman Ex.J,)**MOST TEACHERS AT TRUSD ARE HIRED FULL TIME.** . (DEC. Wu Exhibit J1, J2, J3, J4) [SCOB p.30 31CT02059]

**[SCOB p. 16 CT02044]** "ED Code 45137----- It is the **intent of the Legislature**, in enacting this section, to insure that part-time employees are accorded fringe benefits on an appropriate prorated basis with full recognition given to the number of hours worked by the part-time.

Circumventing the tenure track contradicts the rulings by the U.S. Supreme court on the purpose of tenure and rights to it based on the circumstances. There cannot be a percentage worked each year to obtain tenure. There are common law, de facto tenure, and property rights. **[Rehearing p.17] I BRING UP IN ORAL ARGUMENT [2-22] THAT THIS IS UNCONSTITUTIONAL TO THE FIRST AND 14<sup>TH</sup> AMENDMENT IN COURT OF APPEALS. I MENTION THE US SUPREME COURT HAS CONSISTENTLY RULED PURPOSE OF TENURE IS THE CONTINUATION OF EMPLOYMENT, properly rights, and FREE speech. California Cannot Be an ISLAND. Misclassification denied me tenure.**

"Complete school year can be for part-time teachers. *Holbrook vs Board of Education* 37, 2nd 316.. (1951)" [REPLY BRIEF P. 14] [REHEARING p. 17]

.. *FELDER VS CASEY* 487 U.S. 131 1988. In *Perry vs Sinderman* . 408 U.S 593 600-03 (1972) the high court held that non-tenure teachers can invoke due process property rights **IF there is a De facto Continuation of employment. PART-TIME teachers have property and due process rights to their employment.** In *Board of Regents vs Roth* 408 U.S. 564, 574, 579 (1972) the 14th amendment. [REPLY BRIEF P. 14] CONTINUITY OF EMPLOYMENT IS THE MAIN PROTECTION OF TENURE/PERMANENT TRACK. IF IT IS EXPECTED THEN A TEACHER HAS A DE FACTO/ COMMON LAW PERMANENT/TENURE CLASSIFICATION. ". [REPLY BRIEF P. 15] The essence of the statutory classification system is that continuity of service restricts the power to terminate employment [REPLY BRIEF P. 15][Rehearing p. 17]

.. Validity of a statute of any state in 28 U.S.C 344. And 14th Amendment. ACADEMIC FREEDOM, THEN 44908 CANNOT BE APPLIED TO 44929.21. . [REPLY BRIEF P. 21] PROCEDURAL DUE PROCESS THAT WOULD BE INTENDED TO PROTECT ACADEMIC FREEDOM. ) [Reply Brief. P16] 1st AMENDMENT RIGHTS ARE CIRCUMVENTED WHEN ACADEMIC FREEDOM IS INFRINGED ON DUE TO DENIAL OR CIRCUMVENTING THE TENURE TRACK. 1st *Pickering vs Board of Education* 391 U.S. 563 (1968)- *Pickering vs Board of Education* 391 U.S. 574 (1968) [Reply Brief. P16] The part-time teachers [from temporary status] are not encouraged to speak their minds." and "to claim they pose in any meaningful way, First Amendment freedom of speech is to shut one's eyes to the truth." - *Board of Regents vs Roth* 408 U.S. 567 n14 Note 172 supra. Congress shall make no law ... abridging the freedom of speech .... " U.S. CONST. amend. 1) [Reply Brief. P16] Rehearingp.21]

*Keyishian vs Board of Regents* Pp. 385 U. S. 601-602, 603 .589, 605-606 (1967) [Reply Brief. P16] [REHEARING p. 17. [REPLY BRIEF P. 20][Rehearing.18,21][REPLY BRIEF Appeals court p. 10,11]Procedural process and academic freedom [Reply Brief. P16] *Pickering vs Board of Education* 391 U.S. 563 (1968)- *Pickering vs Board of Education* 391 U.S. 574 (1968) [Reply Brief. P16][Rehearingp.21] .Schools cannot22155 circumvent tenure (*Centinela Valley Secondary Teachers Assn. v. Centinela Valley Union High Sch. Dist.* (1974) 37 Cal. App. 3d 35, 38 [112 Cal. Rptr. 27], [ Rehearing p. 12]

UNDER THE SINISTER ACTIONS OF THE DISTRICT DENYING WU TENURE, ANY REEMPLOYMENT RIGHTS OR DAMAGES IS UNJUST NOR PROPER FOR A REASONABLE RULING BECAUSE SHE WAS MISCLASSIFIED AND EVEN THE PAF FORMS SAY NOT FOR USE WITH SUBSTITUTES [ Petition. p. 6-7] [sinister AOB

p.25, RB p. 33] WU HAD STATUTORY RIGHT TO DAMAGES, years of service, CORRECTED BACK PAY retirement or STRS, reemployment, benefits or medical bills for not providing insurance. If WU had been in the CBA, placed as a regular teacher, she would have been on a salary schedule and her day would be defined by the CBA which is 5 instructional hours. [defined in IS law 5 CCR 11700, [Rehearing p.12]

(AOB p. 9 ) [REHEARING p.12]. Just and Proper classification and losses -[Writ Petition; line 1-28, page 9] [ AOB p. 9 – also p.9 as petition) {Rehearing.13]

[95 Cal. App. 4th 41] There is no statute of limitations to STRS CTA vs Governing board 169 Cal app 3rd 35 (1985). [reply brief P. 55] 45025, in fact, required that they be paid on a pro rata basis to the full-time employees p. 35-36] {REHEARING p.13] WU has **some different pay scale, Ed code 45028.** "each person employed by a school district in a position requiring certification qualifications, ..shall be classified on the salary schedule on the basis **of uniform allowance for years of training and years of experience**" Reply Brief p. 14 damages][rehearing.13]

A district cannot claim laches when it has tried to hide the proper classification Bell v. Walsh (1857) 7 Cal. 84; DeGarmo v. Goldman (1942) 19 Cal.2d 755, 764-765. [ Reply BRIEF P. 27 – RESPONSE TO OPP] The purpose of Education code is to limit districts' use of temporary employees so they will not subrogate the rights of teachers in securing (tenure). Stockton Teachers Association vs Stockton USD (2012) Cal app 4th p. 446, 946, 451) [CT p. 03782,AOB p. 45]

**Damages to Wu for Probationary status and a Salary for continuous violation of classifying Wu as a substitute.** Statutory rights for all years for classification.

. Wu requested "Just and Proper" relief that would include the damages or at least classification, and losses from it "for all years" [Verified petition p.7, 8-9] The Salary Schedule in the CBA for a Probationary teacher would have Wu be much more than her total amount she earned under EC 45028. " [AOB p. 34] [Writ p.8-9]

**THE OPINION CLAIMED WU DID NOT PROVE THAT THE CBA GUARANTEED TEACHERS CAN WORK FULL TIME. HOWEVER, WU WAS ACTUALLY CLAIMING IF WU WAS UNDER THE CBA SHE WOULD HAVE worked 100% of THE DAYS BASED ON HER HOURS WU WAS ALSO CLAIMING IT IS NORMAL FOR TEACHERS IN THE DISTRICT TO WORK FULL-TIME AND HER SCHOOL DID NOT FOLLOW NORMAL POLICY. Latches for damages cannot be done to Unclean hands.**

. Courts can ORDER TENURE REGARDLESS BASED ON MANIFEST OF ABUSE " --  
--Dyer v. Workers' Comp. Appeals Bd. (1994) Case number. C011675. Third Dist. Feb  
24, 1994.] [AOB p. 37] [Rehearing p. 20]

**"CBA 4.2.8 part time members compensation based on hours of regular work for  
CBA J1-J4]** and Ed code 45136, (line 21) and CCR 171.1 (a) (this is on Opening Brief  
p. 2054 line 26) (P. 02056 – 02057 )EDC 45132, 45025 and 45024. Five periods. [ v.  
**VII p. 0256 Ed code 22138.5** Ed code 45101 Extra Duty timesheets. Ed code 22155. I  
quote the CBA and J1-J4 with pages numbers and flex schedule, (J1-j4 4.22.2 J3 p 131  
in **VOL. VII p. 2058** )union is for teachers, normal assignment is five periods, (Dec Wu  
J1-J4 4.2.3. p. 18, J3 and J3 p. 12, and J4 p. 10). **[AOB p. 45] [REHEARING P.12]**

TRUE is the local union CBA Vol VII 02062. Part time is compensated on days and  
definition of Day." We had no benefits or union support" [vol. VII p. 0262 "Dec Wu  
Exhibit C p. 9 line 2) therefore, I was denied my right to know. Ed code 45023.5  
compensation for equal work. Dec Wu Exhibit J1, J2,J3,J4 CBA Vol. VII 02062. FRAUD  
on reports [ v.VIIp. 02060 line 1-10] Vol. VII p. 2059 Evening school teacher qualifies as  
100% days of school in Ed code 44908 **[AOB p. 44-45] {REHEARING p.12}**

" I cite the CBA and have a Declaration on the J1- J4 CBA. [Records p. 03624] [4.2.1 J-  
3 normal teaching assignment is 3 periods 4.2.6 J 1-J-4 five standard periods for a flex  
schedule. 4.2.8 part time based on part time hours. Workday as a percentage of a  
regular workday. {CT. Records p. 03526] 4.3.2 of the CBA. P. 03628. And 6 th period  
prep. [ p. 03629] and [ p. 03631] CBA 4.10. Instructional Day and 4.10.2 Days. Sick  
leaves are accumulated (for STRS too and for DAYS!) p. 03534 6.1.1. and 6.1.2] The  
purpose of the Education code is to limit districts' use of temporary employees so they  
will not subrogate the rights of teachers in securing (tenure). Stockton Teachers  
Association vs Stockton USD (2012) Cal app 4th p. 446, 946, 451) **[CT p. 03782] [ AOB  
p. 45] [Rehearing p. 12]**

**"WU WAS CLAIMED TO WORK [OPINION P. 2] FIVE TO SIX HOURS A DAY AND BY  
END OF YEAR WORKED 8-9 HOURS BUT ACTUALLY WU POINTS OUT IN  
TIMESHEETS MOST OF THE YEAR SHE WORKED AROUND 8-9 HOURS A DAY  
DURING HER SET THREE DAYS A WEEK. SHE WORKED 100% OF THE DAYS  
BASED ON THE CBA, In the Timesheets Wu quotes "Timesheets G1-G7" [ Reply by  
Wu CT RECORD VOL. XVIII P. 5104] And in the Reply "(Exhibits G1-G7.) Carrie True,  
Exhibit 17, p. 2" [ Reply CT Record Vol XVIII 5108] [ In the timesheets it is clear and  
UNCHALLENGED that Wu worked Three days into the evening, that most of the time  
she worked 24 or more hours a week in three days, [AOB P.23] The intent of the  
Legislature meant for Wu to have her Days based on her hours because she would  
have been on a Probationary Contract and that would have placed her on regular Days  
of the School and would NOT have allowed over 4.5 hours a DAY or FIVE Standard**

PERIODS or count it as two days for her double hours . CT Records VXIII p. 5182 or 5287T LEAST. [ J1-J4 are the Exhibit for the CBA and come with a 14- page Declaration and Explanation in the March 27, 2018, Brief] [AOB P.23][Rehearing p.16-17]" - **Petition for Review, California State Supreme court p.**

**The 3<sup>rd</sup> court should have Oral argument be the same as all other districts especially when it is a public policy of some sort and not make it a standard half lower because it is allowed to change it up when needed as per rules.**

The right to change it up would only entitle less time if the discussion was simple and this was not. Wu should have been given the 15 extra minutes for a total of 30 minutes like all other districts in other court of appeals. Wu was only allowed 15 minutes of oral argument. The district. It does get more caseloads, which is understandable unfair, but that does not give it the right to only allow half the allowable time as a standard norm written standard when the state norm is stated as 30 minutes.

**No attorney should be allowed to be relieved of counsel or provide legal help from a union membership [paying active member] when it is claimed there is a conflict of interest that occurs during representation for filing a case against a local union or to an affiliate-umbrella organization under it.**

[p.3 opinion] [Reharingp.9] Stip. To Discovery 4-20-2017 Vol.1 p. 74 Costa claiming conflict of interest. Vol. 1 p. 95. My arguments p.114 [AOB. P 45] no case law. "[ CT Motion/Dec Vol. I p. 00096] t [CT WuOpp Vol.I p.114 - 190]. [AOB p.11]

[ CT Motion/Dec Vol. I p. 00096] that a new conflict of interest with attorney main client CTA now existed. [CT WuOpp Vol.I p.114 - 190]. [AOB p.11, P 45]

Stipulation 4-20-2017 Vol.1 p. 74 Costa claiming conflict of interest. Vol. 1 p. 95. My arguments p.114 [AOB. P 45]

Wu Motion heard on March 22, 2018 should have allowed Wu discovery. [CCP 2025.480(b).] THAT ALLOWS A MOTION TO BE FILED AFTER DISCOVERY if a stipulation allowed a deposition to occur. . WU CONTENTS IT IS GOOD FAITH AND JUST AND PROPER. [ **P. 3 OPINION**] [ **AOB p. 12-13**] CT(R) vol. VII p. 2028, **Vol V. page 1331-3**] [CT(R) Vol. I p. 501] Wu could have asked Carreon why there were five contracted tenure teachers for all years Wu worked at KHS.

[ AOB p. 11-12) *CLERKS MINUTE ORDER* by court that contradicted a previous order [CT(R) Vol. VI p. 1701 and p. 1698] [ Order CT(R) Vol. III p. 626, and CT Vol. III 627 12 shortening of time] [ Order CT(R) Vol. V. p. 1235e *Collective Bargaining Agreement* that would come with Probationary status as substitutes do not have a CBA, *Arguments Wu* Vol V [CT p. 1346 line:5-18, and *Declaration of Wu. P. 1359-1356 #15-line 16 EXHIBIT N.)* [ *Exhibit N VOLUME V PAGE 01444.* Reply p. 05482. No stip.[ CT Vol XIX 5484.][AOB. P.45] [ Vol V. page 1330] [AOB p. 39]

**SINISTER NATURE WAS A WAY OF CIRCUMVENTING TENURE. IF WU HAD BEEN PLACED PROPERLY, SHE WOULD HAVE HAD TENURE BUT BECAUSE OF THE SINISTER NATURE SHE WAS NOT. ADDITIONALLY, LATCHES CANNOT OCCURE DUE TO UNCLEAN HANDS WHICH DOES NOT ALLOW LATCHES.**

This would include not providing a Union, its protection, a CBA, using illegal paper trail in violations of reporting laws to CCTC when there is a substitute. Wu did not work a "regular" day that is spoken to in the Cox case. In *Tracy Educators Assn. v. Tracy Unified School Dist. Bell v. Walsh (1857)* [REPLY BRIEF P. 27] Wu would be full time under the CBA if she had been properly placed as a probationary teacher, then she would be tenure. [SUPERIOR COURT REPLY p.6-7 CT05103-05104 ]

There were hidden and unethical actions by TRUSD in preventing Wu from obtaining a legal normal position. [ **AOB 24[AOBp.10]** *The district cannot claim latches when it has tried to hide the proper classification Bell v. Walsh (1857) Cal. 84; DeGarmo v. Goldman (1942) 19 Cal.2d 755, 764-765.* [ Reply BRIEF P. 27 – RESPONSE TO OPP] [REHEARING p. 11] *The PAF forms for each year Wu worked stated at the top "Not for Use with Substitutes."* *The PERMANENT or Probationary teachers that did teach at KHS were under a CBA and they worked Five periods of Direct instruction* [ AOBp.18] Additionally, she would have TWO POSITIONS [AOB {CT Vol. VII p. 02037 [AOB p. 42] Time of direct instruction is used to determine Days in the (non-regular alternative) school setting of Independent Studies. [ vol VII p. 02057 Opening Brief] [AOB p. 45]

TRUSD was NOT following the CBA, normal practices in PAF form, .  
"(Dec. Wu Exhibit J4 4.2.7 p. 13)[ CBA] states that part-time members will be compensated based on hours of Part time comparable work. NOT DAYS (this

can be seen in all CBA I was under) (DEC. Wu Exhibit JI 4.1.6 p. 14, J2 4.2.8 p. 21; J3 4.2.8 p. 15; J4 4.2.7 p. 13" [SC REPLY p. 20CT05117]

Petitioner was substituting for herself. PAF forms F7-F9 (G1-G7 timesheets Exhibit, G1-G7) not reported on SARC Reports Number of students, teachers, and vacancies and misalignments (EXHIBIT FF) Numbers were high in students (Keema Fact Sheet 2014-2015. Exhibit EE) Explanation of Damages not in interest of students fluctuating numbers but it was more after October [SC REPLY p. 19-23CT05116-05117]

"We worked SIDE BY SIDE WITH [five] union contracted teachers who were probationary and permanent" and "The SARC reports state that there were 5 teachers and 700 students for most of 2007-2012 . "We had enough students to hire full time teachers (Dec. Wu Exhibit C. P. 36) (Dec. Wu Exhibit E P. 12 Line 22-23)" - SC REPLY p. 21CT05118 Notice in 1st Year Probationary Grimsley v. Board of Trustees of Murdoc Joint Unified School District (1987) 189 Cal.App.3d 1440,

**A DEPOSITION IS ALLOWED AFTER DISCOVERY THROUGH A STIPULATION TO EXTEND TIME IT MUST CONTAIN A STIPULATION TO ALLOW A MOTION TO COMPEL TO BE FILED AND EXTENDED IRRESPECTIVE OF CCP [CCP 2025.480(b).] THAT ALLOWS A MOTION TO BE FILED AFTER DISCOVERY. P. 3 OPINION] [ AOB p. 12-13) CT(R) vol. VII p. 2028, CTVol V. page 1331-3] [CT(R) Vol. I p. 501]Wu CITED[rehearingp.28].**

WU SHOULD HAVE BEEN ALLOWED TO FILE ANOTHER BRIEF ONCE SHE GOT AN ATTORNEY BECAUSE THE PUBLIC IMPORTANCE

THE COURT CLAIMED THAT WU HAD A CONTRACT THAT ENDED AND WAS LET GO AND NO REASON WAS NEEDED ACCORDING TO VASQUEZ CASE. [ Opinion p. 5]. "Wu was terminated at the end of her contract when no cause is required, and due process considerations are lowered." [ OPINION P.11] HOWEVER, THE DISTRICT DOES NOT CLAIM THERE WAS ANY CONTRACT OR NOTICE OF DISMISSAL. THERE WAS NO CONTRACT OR NOTICE WITH RIGHT TO CHALLENGE IT AS REQUIRED AND THEREFORE, WU HAS RIGHTS TO EMPLOYMENT [EC 22929.21 a-b, EC 44921] 1st, and 14th Amendment to the U.S. CONSTITUTION were violated with No Due Process. THEREFORE, WU WOULD COME BACK -AT LEAST- AS PROBATIONARY EC 44921, AND 44929.21. [Reply Brief p. 20-21] (Writ Verified Petition p. 6-7). [AOB 42, p. 45] [REPLY BRIEF p. 26], [ CT v. xvii or XIX p. 04890] [AOB p. 17] no contract. . If there is no notice [March 15] in Ed code 44929.21 (a) (b) then deemed reelected for next year (and probationary) [ ed code 44929.21] [ CT v. xvii or XIX p. 04890] Right to a Union contract only for regular teachers not substitutes Gov code 3545 b.1 (Opinion 3rd Court of Appeals published 1-19-2023 now in Supreme Court Rebecca Wu vs Public Employment Relations BOARD #C092640)



Certain public-sector employees can have a property interest in their employment, per Constitutional Due Process in **Cleveland Board of Education v. Loudermill**, 470 U.S. 532 (1985) it also requires **Loudermill Notice** of non-renewal in probationary status with opportunity to Challenge it.

**[ Respondent's Brief Appeals p. 13 ]** “ *In January 2017, Appellant submitted another claim to the District contending she “was not offered a position for the 2016/2017 school year without notice or opportunity to challenge such dismissal.” (17 CT 4900.)*

*“..denied...” (Id.; 17 CT 4921.). [p.13] “At the end of the 2015-2016 school year, the District began evaluating a different **staffing structure for Keema.** (17 CT 4973.) This led to the District deciding to discontinue the use of hourly-paid independent study teachers at Keema for the 2016- 2017 school year. (Id.) Appellant ultimately was not offered to return to Keema as an hourly-paid independent study teacher for the 2016-2017 school year.2 (Id.; 17 CT 5048-5049.)” -[RB p. 13]*

*(§§ 13404, 13443; Bekiaris v. Board of Education (1972) 6 Cal. 3d 575 [100 Cal. Rptr.*

*16, 493 P.2d 480 “... I am not given a union contract nor have any medical benefits” [ DEC*

*WU REPLY to OPPOSITION Aug 23, 2018 P. 2] Wu was not given any contract for her*

*employment in Contradiction to the Opinion in Appeals [ Opinion Ruling p. 11 ] **Wu was not***

***given any type of Notice of any type of termination or Non-renewal notice based on any***

***contract and thus still had reemployment rights. Wu Requested it.***

*“In June 2016 the school ended the hourly position for everyone employed in the school who were most teachers. “ [SCOB p. 6CT2034] “**I did not receive any contract or written agreement of any kind from TRUST** for my hourly schedule and duties. “ [SCOB p.12CT02040]*

*“Wu was not given any position at KHS in the 2016-2017 school year due to the Hourly Paid Position going away” [AOB p. 19] [AOB p.18] *Substitutes are not under the CBA, but probationary teachers are.* [AOB P.24] Vasquez v. Happy Valley Union School Dist. (2008) 159 Cal.App.4th 969 [– Cal.Rptr.3d –](3) NOTICE NEEDED FOR NON-RENEWAL .*

**WU CLAIMS SHE HAS A RIGHT TO AN ATTORNEY FOR ISSUES AFFECTING public policy and a large class of people. No attorney can be relieved because a**

client refuses to sign of their statutory or constitutional rights nor do they have the rights to end representation because one files against a local exclusive association when one is a paying due member and thus still under the insurance. Regular Insurance does not work that way.

Wu argued that Wu has a right to a "civil Gideon " and claimed Wu had a right to an attorney when an issue could affect a large class of people, especially public employees and she should get one to argue her case.

**CONCLUSION: The ruling should be reversed.**

I do not have a copy of the order/judgement for denial of the Petition for review. It is not found online.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on 8/11 /2023

REBECCA WU .

**CERTIFICATE OF WORD COUNT OR PAGE COUNT**

I CERTIFY THAT THE PAGE COUNT IS 40 PAGES OR LESS NOT INCLUDING BEFORE THE PETITION OR THE BELOW APPENDIX AND ATTACHMENTS.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 7/23/2023

REBECCA WU .

**APPENDIX**

1.The date of the **Denied Petition for Review** was on **5/17/2023 in the State Supreme Court.** Denial of Petition for Review Dated **5/17/2023** (90 days after date of Denial is 8/16/2023) Case **S279230** Rebecca Wu vs Twin Rivers Unified School District. The copy of this Disposition in the Dockets is at **Appendix A.**

2.The date on which the highest state court **decided with an Opinion** my case with an opinion was the Third Court of Appeals 3/2/2023 A copy of that decision on Rebecca Wu vs Twin Rivers Unified School District as case C088570 In the Court of Appeal of the State of California, Third Appellate