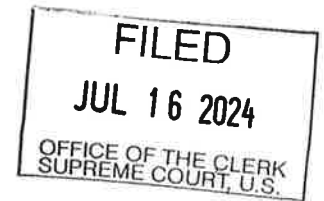


No.

24-5124



IN THE

SUPREME COURT OF THE UNITED STATES

REBECCA WU

— PETITIONER

(Your Name)

VS.

TWIN RIVERS UNIFIED SCHOOL DISTRICT — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THIRD COURT OF APPEAL -ORDER Non-apealable

CASE C100176

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

REBECCA WU

Constitutional
Issues

(Your Name)

PO BOX 543

(Address)

Applegate, CA 95703

(City, State, Zip Code)

916-308-2190 Rebeccadawnwu@yahoo.com
(Phone Number)

Respondent Attorney Peter R. Rittling, Gregory Dannis,
Erin Dervin, William Tunick, Dannis Woliver Kelley law Firm
200 California Street, Suite 400
San Francisco, CA 94111-4310

QUESTION(S) PRESENTED

Questions 1 - Can a Motion for New Trial or for Damages, or change of Judgement after Remittitur case be denied review by Superior Court for a case ruled in Court of Appeal with no Remand for Damages to each their own costs but also ruled legal entitlement to a probationary status for a public employee and claimed non-appealable by the Court of Appeal and is that a violation of ones right to Due Process, and equal protection of the laws under the 14th Amendment based on the New Evidence for the ruled Misclassification?

QUESTION 2 - Would a ruling by a Court of Appeal Decision on a Misclassification of a public employee of Probationary status be considered New Evidence and thus be under a Motion for Review and would that trump the Ruling that fails to have a Remand or Remetiter to the Superior Court

QUESTION 3 - Would the Court of Appeals original Decision that did not address damages but did address Misclassification as a Probationary Teacher not a Substitute prevent a Motion on Damages or new evidence from being heard? Can the Sueprior Court refuse to hear a Motion because no damages were mentioned in the Decision but only each party pays its own costs?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** 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 is as follows:

RELATED CASES

This case stems out of a case that is also the same case but now a different Court of Appeal Ruling.

That case was also this case.

**Rebecca Wu vs Twin Rivers Unified School District
2015-80002234 Superior Court Case Writ of Mandate
Third Court of Appeal**

Wu v. Twin Rivers Unified Sch. Dist., No. C088570 (Cal. Ct. App. Mar. 2, 2023)

US Supreme Court Case No. 23-5367 Rebecca Wu vs Twin Rivers Unified School District

Docket for 23-5242 US SUPREME COURT CASE

Title: Rebecca Wu, Petitioner v. Public Employment Relations Board, et al.

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

To: Clerk, Supreme Court of the United States, One First Street, NE, Washington, D. C. 20543 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.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix _A_ to the petition and is [x] reported as __Denial of the Appeal on the Motion as Non Appealable.

This was January 26 th 2024 by the THIRD COURT OF APPEAL case C100176 -Appendix A

The date of the **Denied Petition for Review** was on **4/17/2024** in the State Supreme Court.

The copy of this Disposition in the Dockets is at Appendix B.

Superior Court 34-2015-80002234 Ruled the Motion for new trial or damages was

Not appealable on May 30 2023 and is **Appendix C**

The Remittitur was issued on May 26th 2023 (see the button date of paper)
Appendix D

The court of appeal Decision or Order in Wu vs TRUSD in CO88570 and Sacramento Superior court 34201580002234 that Wu was misclassified is attached in **Appendix D**

The Notice of Motion ... By Wu is filed on June 26th is Appendix D

LISTING OF ALL PROCEEDINGS

The opinion of the highest state court to review the merits appears at Appendix _A_ to the petition and is [x] reported as __Denial of the Appeal on the Motion as Non Appealable.

This was January 26 th 2024 by the THIRD COURT OF APPEAL case C100176 -Appendix A

The date of the **Denied Petition for Review** was on **4/17/2024** in the State Supreme Court.

The copy of this Disposition in the Dockets is at Appendix B.

Superior Court 34-2015-80002234 Ruled the Motion for new trial or damages was

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The court of appeal Decision or Order in Wu vs TRUSD in CO88570 and Sacramento Superior court 34201580002234 that Wu was misclassified is attached in **Appendix D**

The Notice of Motion ... By Wu is filed on June 26th is Appendix D

JURISDICTION OF UNITED STATES SUPREME COURT

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

FILED WITHIN 90 DAYS AFTER THE PETITION FOR REVIEW WAS DENIED 7-16-2024

The date of the **Denied Petition for Review** was on **4/17/2024** in the State Supreme Court.

The copy of this Disposition in the Dockets is at **Appendix B.**

STATUTORY PROVISIONS FOR THE US SUPREME COURT TO REVIEW

Under Due PROCESS rights under the **United States Constitution 14th**

Amendment Equal Protection of The Laws . Supremacy Clause. *The Superior*

court, Appeals Court and Supreme Court cannot deny Wu the right to have a

Motion for Damages based on new evidence, or not withstanding the judgment,

Due to New evidence of the Court of Appeal Ruled Wu was misclassified on

3-24-2023[new evidence] and Wu filed a Motion on 6-20-2023 after remitter was

filed in the Superior court on 5-26-23.

Cal Rules of Court 8.278 Subdivision (a). The subdivision (a)(1) exception to the general

rule of awarding costs to the prevailing party for statutes that require further analysis or

findings reflects the holding of Pollock v. Tri-Modal Distribution Services, Inc. (2021) 11

Cal.5th 918 (regarding costs on appeal in an action under the California Fair Employment

and Housing Act) and the constitutional mandate that rules of court "shall not be inconsistent with statute" (Cal. Const., art. VI, § 6(d)).

IN The Alternative or irrespective of the above, Right to challenge a Judgment Remittitur within 30 days under 2024 California Rules of Court Rule

CRules of Court 8.278. Costs on appeal (a) Award of costs (5) In the interests of justice, the Court of Appeal may also award or deny costs as it deems proper.(b) Judgment for costs (2) If the clerk/executive officer fails to enter judgment for costs, the court may recall the remittitur for correction on its own motion, or on a party's motion made not later than 30 days after the remittitur issues.

Sections 473 and 576 of the California Code of Civil Procedure.....p.5

CCP 269, 472, 662, 918b, 908, 660, 664.5

STATEMENT OF THE CASE

Wu was denied a Motion for Damages or New Trial based on new evidence or revising the Judgment based on new evidence. This was declared a non renewable order by both the Superior Court and Court of Appeal in California. Wu claims this is a due process violation of her 14th Constitutional Amendment and when such a grievous Loss comes with the new evidence of Probationary Status for at least three years prior to the filing of the case then they must be given as they are also Constitutional property, income, years of service and

should be based on a the Collective Bargaining AGreement that Wu always brought up.

Review should be granted because a denial of a motion based on New evidence of a Court of Appeal Ruling that a person is Misclassified in their Employment as a Public Employee an Probationary not a Substitute is not only in good public policy for preventing the tenure track But but when a Ruling shows damages would be received based on a regular Teacher status Then it is essential to have due process rights. Wu was Declared Misclassified and not a Substitute But a RRegular PProbationary Teacher in this under case but not tenure is a huge large loss of Property, Rights and Due PProcesses. Government Code 3545 b1 Which Wu brings up in Briefs and Is thus a teacher as a probationary status and had rights to a Collective Bargaining Agreement With a Salary Schedule and Days that represent Hours of Teaching that Wu must receive in Her Damages.

Just Because there was a ruling does not prevent a person from asking For new ruling or a Motion for damages based on new evidence.

Wu v. Twin Rivers Unified Sch. Dist., No. C088570 (Cal. Ct. App. Mar. 2, 2023)

REASONS FOR GRANTING A REVIEW

This raises the question of Just and Proper and constitutional issues of the right to appeal or motion for damages based on new evidence even if not claimed to properly raise the damages issues as a public employee and the right to corrected retirement, wages and recognized years of service based on what would be her public employment similarly situated Collective Bargaining

Agreement. Motion for new trial based on new facts is allowed in a case and there are new facts that Wu was misclassified as per the ruling in Wu vs Twin Rivers Unified School District and she should obtain her damages from that based on a new trial with new facts. Her motion was not allowed and that does not seem to be justice nor proper under Just and Proper and unconstitutional with no right to a hearing and her due process rights.

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." **-14th amendment**

THERE WAS NEW EVIDENCE OF A RULING IN THE THIRD COURT THAT WU WAS MISCLASSIFIED NOT A SUBSTITUTE BUT A PROBATIONARY TEACHER FROM THE DECISION ___ AND WHEN IT CAME BACK TO THE SUPERIOR COURT WU FILED A MOTION AND THEREFORE HAS A RIGHT TO REVIEW FOR DAMAGES EVEN THOUGH THE COURT FAILED TO REQUEST A REMAND. THIS AFFECTS MY CONSTITUTIONAL RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAWS UNDER THE 14TH AMENDMENT.

My case is a writ of mandate for specific damages of employment losses not any other type of punitive or other damages.

"In fact, English courts granted such new trials only in cases in which the damages were calculable, such as contract cases, not where damages were uncertain, such as tort cases. " p. 734

Re-Examining the Constitutionality of Remittitur Under the Seventh Amendment
SUJA A. THOMAS. OHIO STATE LA WJOURNAL

<https://kb.osu.edu/server/api/core/bitstreams/81ca643a-fd88-5687-9d26-a0f12705ee89/content>

When there is a clear new ruling or evidence that is presented then it would be proper to have a new trial or motion allowed for new evidence. This is the case in Wu vs TRUSD because the Court Ruled that Wu was misclassified as a probationary employee.

This is publicly important for many reasons including public employees' right to have a review in a Motion for damages when a court rules that one is or has a lost right that was denied to them. Probationary comes with Constitutional rights of due process and thus can also be property.

In this case Property or Due process and right to a Probationary status is something that was ruled Wu had. Wu did argue many of the same arguments and it could have been an honest mistake of the court but in this case it is New evidence or New revelations that would warrant opening the case. Wu did ask for it to be put on hold or recommended it could be done due to the case still heading to the US Supreme Court.

WU HAD AN APPEAL IN THE US SUPREME COURT WHILE WU ASKED FOR A NEW TRIAL OR VACATE THE JUDGMENT FOR DAMAGES BASED ON A PROBATIONARY CLASSIFICATION RULING but REGARDLESS THE TIMELINESS OF THIS MOTION IS JUSTIFIED AND VALID AND WITHOUT THE SUPERIOR COURT AND APPEAL COURT HEARING THE MOTION IS A VIOLATION OF THE CONSTITUTIONAL RIGHT TO DUE PROCESS

- The Third Court Ruling that Wu was Misclassified is New Evidence outside of the Remittitur. OUTside or as additional evidence

- It was challenged because it was appealed to the US Supreme Court so the Ruling was still being Challenged and enough to stall the SOL if there were any
- After the Petition for Review in the California Supreme Court was denied review and the Remitter was sent Back to Superior court Wu timely filed within 30 days of JURISDICTION coming back to the Superior court. Thus timely, Even though a continued appeal to the US Supreme Court was properly filed and later after this Motion was ruled as petition denied in US supreme court.

DAMAGES TO THE PROBATIONARY CLASSIFICATION ARE VERY SIGNIFICANT AND THUS A MOTION IS JUSTIFIED FOR DAMAGES BASED ON THE JUDGMENT OF THE THIRD COURT

When there is significant injustice a Motion can be granted for review. This can be done in other courts around the country and California Cannot deny a Motion.

WU LOSS OF DAMAGES WERE NOT COVERED BY THE APPEAL COURT THOUGHT IT RECOGNIZED THE MISCLASSIFICATION OR RIGHT TO THE CLASSIFICATION ENTITLEMENT AND THUS MEANT FOR WU TO HAVE A DAMAGES UNDER JUST AND PROPER [decision/order 3rd court of appeal p. 4-6]

The appeal court can mean to have a just and proper review of damages based on its findings. IT is well established and Wu cited many cases in her original case that damages for a substitute, like in Vital and others would get damages if they are

probationary and not substitutes which are on different pay scales and other Constitutional rights under California for retirement under CTA vs Governing Board.
Motion for Damages CCP 269, 472, 662,918b, 908,660,664.5

It is possible to have a new trial, Independent Action, Mistake, IMPLIED MEANING or based on new evidence IN Superior Court when an order has been sent back with no damages stated in an order where it clearly had damages based on the ruling

AS STATED ON PAGE 3 in the MOTION –

When the APPELLATE court opinion clearly establishes contrary intent. An appellate court may expressly permit the trial court to entertain proceedings short of or different from full retrial. {Rincon Ev Realty LLC vs CP III Rincon Towers, Inc. (2019) 43 Ca 5" 988, 1001, 257, CR 3 114, 126-127- full retail of factual issues decided against plaintiffs in equitable phase was not required where earlier opinion expressly Authorized the trial court proceedings on remand that could narrow or eliminate the issues to be tried.

[decision/order 3rd court of appeal p. 4-6]

"The classification shall be made at the time of employment and thereafter in the month of July of each school year. At the time of initial employment during each academic year, each new certificated employee of the school district shall receive a

Governing boards of school districts shall classify as probationary employees, those persons employed in positions requiring certification qualifications for the school year, who have not been classified as permanent employees or as substitute employees." (§ 44915.) "Probationary teachers have limited protections against dismissal. School districts may dismiss a probationary employee during the school year only for cause or unsatisfactory performance. (§ 44948.3.) However, a school district can terminate a probationary teacher's employment effective the end of the teacher's yearly contract without cause." (Vasquez, supra, 159 Cal.App.4th at p. 974.)

With limited exceptions not applicable here, "governing boards of school districts shall classify as substitute employees those persons employed in positions requiring certification qualifications, to fill positions of regularly employed persons absent from service." (§ 44917.) Temporary employees are those persons who require certification qualifications, other than substitute employees, and who are employed for a limited duration of the school year for various reasons. (§ 44919.)

Section 44918 extends probationary status to "[a]ny employee classified as a

substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, . . . if employed as a probationary employee for the following school year.”

Section 44929.21 extends tenured status to “[e]very employee of a school district

WU REQUESTED IN HER WRIT OF MANDATE FOR DAMAGES FOR MISCLASSIFICATION INCLUDING PROBATIONARY UNDER JUST AND PROPER AND IN THE WRIT

SIMILAR ISSUES FOR A NEW TRIAL EXIST IN CRIMINAL CASES AND THUS A NEW TRIAL OR MOTION FOR DAMAGES CAN BE DONE

California Code, Penal Code - PEN § 1181 allows for a new trial when it is clear that the ruling did not follow procedure or proper.

WU WAS INARTFUL IN HER MOTION PLEADING THAT WAS DENIED REVIEW IN THE SUPERIOR COURT BUT IT CAN BE AT BEST BE INTERPRETED THAT SHE WANTED A NEW TRIAL FOR DAMAGES, THAT THE DECISION OF THE THIRD COURT WAS MEANT FOR A REMAINDER FOR DAMAGES AND THEY MADE A MISTAKE, OR OTHER REQUEST SO SHE CAN HAVE HER JUST AND PROPER DAMAGES TAKEN CARE OF

Wu Requested the following taken from her MOTION in Exhibit D.

FRONT PAGE OF MOTION

“NOTICE OF MOTION AND MOTION TO OPEN CASE FOR DAMAGES OR MOTION FOR DAMAGES, OR NEW TRIAL FOR DAMAGES BASED ON NEW EVIDENCE/RULING IN THE APPEAL COURT C088570, Remitter on 5/19/2023 THAT WU WAS MISCLASSIFIED AND A PROBATIONARY TEACHER NOT A SUBSTITUTE. WU SUSTAINED EXTENSIVE DAMAGES AS A MISCLASSIFIED SUBSTITUTES, MEMORANDUM OF POINTS AND AUTHORITIES, AND DECLARATION OF REBECCA WU [SEPARATE STATEMENT]”

As stated in the Superior court- “ This motion is made pursuant to Sections 473 and 576 of the California Code of Civil Procedure. The motion is brought on the

grounds that the amendment furthers the interests of justice without prejudicing Defendant. " [Superior Court Motion p. 2-3, Cal Supreme court p. 6]

Taken from the page 3 of the Motion:

"Jurisdiction judgment notwithstanding the verdict.

Motion for Damages CCP 269, 472, 662.918b, 908,660,664.5

When the APPELLATE court opinion clearly establishes contrary intent. An appellate court may expressly permit the trial court to entertain proceedings short of or different from full retrial.

{Rincon Ev Realty LLC vs CP III Rincon Towers, Inc. (2019) 43 Ca 5" 988, 1001, 257, CR 3 114, 126-127- full retail of factual issues decided against plaintiffs in equitable phase was not required where earlier " [Wu Motion on 6/20/24 p. 3]

WU states in her Motion p. 3

It is reasonable that the trial court does damages when it is clearly stated that Wu was misclassified. It is proper to have damages in the judgment for Wu won for Misclassification as asked for in Just and Proper.

WU WAS INARTFUL BUT MENT ONE POSSIBLE MOTION FOR NEW TRIAL UNDER CCP 657 or Motion for Damages CCP 269, 472, 662.918b, 908,660,664.5

New Trials [656 - 663.2] (Article 2 enacted 1872.)

CCP CODE OF CIVIL PROCEDURE 657. The verdict may be vacated and any other decision may be modified or vacated, in whole or in part, and a new or further trial granted on all or part of the issues, on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such party:

- 1. Irregularity in the proceedings of the court, jury or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial.***
- 2. Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors.***
- 3. Accident or surprise, which ordinary prudence could not have guarded against.***
- 4. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.***
- 5. Excessive or **inadequate damages.*****

6. *Insufficiency of the evidence to justify the verdict or other decision, or the verdict or other decision is against law.*

7. *Error in law, occurring at the trial and expected by the party making the application.*

When a new trial is granted, on all or part of the issues, the court shall specify the ground or grounds upon which it is granted and the court's reason or reasons for granting the new trial upon each ground stated.

A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decision, nor upon the ground of excessive or inadequate damages, unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision.

The order passing upon and determining the motion must be made and entered as provided in Section 660 and if the motion is granted must state the ground or grounds relied upon by the court, and may contain the specification of reasons. If an order granting such motion does not contain such specification of reasons, the court must, within 10 days after filing such order, prepare, sign and file such specification of reasons in writing with the clerk. The court shall not direct the attorney for a party to prepare either or both said order and said specification of reasons.

On appeal from an order granting a new trial the order shall be affirmed if it should have been granted upon any ground stated in the motion, whether or not specified in the order or specification of reasons, except that (a) the order shall not be affirmed upon the ground of the insufficiency of the evidence to justify the verdict or other decision, or upon the ground of excessive or inadequate damages, unless such ground is stated in the order granting the motion and (b) on appeal from an order granting a new trial upon the ground of the insufficiency of the evidence to justify the verdict or other decision, or upon the ground of excessive or inadequate damages, it shall be conclusively presumed that said order as to such ground was made only for the reasons specified in said order or said specification of reasons, and such order shall be reversed as to such ground only if there is no substantial basis in the record for any of such reasons.

(Amended by Stats. 1967, Ch. 72.)

Jurisdiction judgment notwithstanding the verdict. Motion for Damages CCP 269, 472, 662 ,918b, 908, 660, 664.5 When the APPELLATE court opinion clearly establishes contrary intent. An appellate court may expressly permit the trial

court to entertain proceedings short of or different from full retrial. {Rincon Ev Realty LLC vs CP III Rincon Towers, Inc. (2019) 43 Ca 5" 988, 1001, 257, CR 3 114, 126-127- full retail of factual issues decided against plaintiffs in equitable phase was not required where earlier an opinion expressly Authorized the trial court proceedings on remand that could narrow or eliminate the issues to be tried.

Wu was misclassified as a substitute teacher instead of as a regular teacher or employee. The Court of Appeals in case C088570 declared "WU WAS MISCLASSIFIED." And "WU WAS A PROBATIONARY" TEACHER. This case is not published.

THE COURT OF APPEAL HAS RIGHT TO REVIEW THIS ORDER

It is well established Orders after Judgment are appealable. This is an Order after Judgment not allowing a motion or anything to be filed. The Court of Appeal should review for the right to have Due Process and to do what is Just and Proper. "[Any] court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment . . . and may remand the cause . . . as may be just under the circumstances." 28 U.S.C. § 2106. 28 U.S.C. § 2106, Federal RULE 60(b), [a] Rule 59(e) motion is discretionary and need not be granted unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or

prevent manifest injustice.” Firestone v. Firestone, 76 F.3d 1205, 1208 (D.C. Cir. 1996). [Wu State Supreme court Petition for Review p. 5-7]

THERE CAN BE ALLOWED IN CALIFORNIA A MINOR CHANGE IN THE ORDER OR JUST AN INTERPRETATION OF THE ORDER THAT DAMAGES CAN BE OBTAINED. IT CAN ALSO BE AN INDEPENDENT ACTION TO OBTAIN DAMAGES IN A CASE RULED ON.

This is a challenge to the right to have a Motion in Superior court for a motion for new trial based on new evidence or other type Motion to open the case back up. It is implied that Wu would have damages, she just did not ask for them clearly enough. Therefore it is reasonable to have such a motion. The Trial court ordered an Order that Wu cannot have such a motion without a hearing or briefs and the Court of Appeal sustained or ordered it was not appealable. Wu thinks it is appealing.

This raises the question of Just and Proper and constitutional issues of the right to appeal or motion for damages based on new evidence even if not claimed to properly raise the damages issues as a public employee and the right to corrected retirement, wages and recognized years of service based on what would be her public employment similarly situated Collective Bargaining Agreement. Motion for new trial based on new facts is allowed in a case and there are new facts that Wu was misclassified as per the ruling in Wu vs Twin Rivers Unified School District and she should obtain her damages from that

based on a new trial with new facts. Her motion was not allowed and that does not seem to be justice nor proper under Just and Proper and unconstitutional with no right to a hearing and her due process rights.

“Rule 60(b) and Rule 60(d). Under Rule 60(b), the court may relieve a party from a final judgment, order, or proceeding, if the party establishes mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or other misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or 6) any other reason that justifies relief.

“Under Rule 60(d), the court can entertain an "independent action" to relieve a party from a final judgment, order, or proceeding. In an independent action, a court may only generally reverse if allowing the judgment to stand would be a "grave miscarriage of justice." United States v. Beggerly, 524 U.S. 38, 46 (1998)”

NEW TRIAL CAN BE FOR INEFFECTIVE ATTORNEYS AND OR DENIAL OF ATTORNEY REPRESENTATION BY THE JUDGE IN MY CASES AS AND WOULD SUPPORT THE NEED FOR A NEW TRIAL. ALTHOUGH THIS WAS RAISED IN THE APPEAL PROCESS IT CAN STILL BE USED TO HELP SUPPORT A NEW TRIAL FOR DAMAGES

TIMELINESS OF THE NEW TRIAL WOULD BE THREE YEARS UNDER RULE 33 OR IN CALIFORNIA WOULD BE WHEN THE REMUTTER IS ISSUED AND WU FILED WITHIN 30 DAYS. THE APPEAL IN US SUPREME COURT WAS PENDING AND THUS STALLS THE TIME TO FILE THE MOTION.

The following are California RULES of court Motion for New Trial, Motion to Vacate Judgment, Motion for Judgment Notwithstanding the Verdict,

CRC Rule 8.108. Extending the time to appeal [motions]

(a) Extension of time

This rule operates only to extend the time to appeal otherwise prescribed in rule 8.104(a); it does not shorten the time to appeal. If the normal time to appeal stated in rule 8.104(a) is longer than the time provided in this rule, the time to appeal stated in rule 8.104(a) governs.

(Subd (a) adopted effective January 1, 2008.)

(b) Motion for new trial

If any party serves and files a valid notice of intention to move for a new trial, the following extensions of time apply:

- (1) If the motion for a new trial is denied, the time to appeal from the judgment is extended for all parties until the earliest of:
 - (A) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order;
 - (B) 30 days after denial of the motion by operation of law; or
 - (C) 180 days after entry of judgment.
- (2) If the trial court makes a finding of excessive or inadequate damages and grants the motion for a new trial subject to the condition that the motion is denied if a party consents to the additur or remittitur of damages, the time to appeal is extended as follows:
 - (A) If a party serves an acceptance of the additur or remittitur within the time for accepting the additur or remittitur, the time to appeal from the judgment is extended for all parties until 30 days after the date the party serves the acceptance.
 - (B) If a party serves a rejection of the additur or remittitur within the time for accepting the additur or remittitur or if the time for accepting the additur or remittitur expires, the time to appeal from the new trial order is extended for all parties until the earliest of 30 days after the date the party serves the rejection or 30 days after the date on which the time for accepting the additur or remittitur expired.

(Subd (b) amended effective July 1, 2012; adopted as subd (a); previously amended and relettered effective January 1, 2008; previously amended effective January 1, 2011.)

(c) Motion to vacate judgment

If, within the time prescribed by rule 8.104 to appeal from the judgment, any party serves and files a valid notice of intention to move-or a valid motion-to vacate the judgment, the time to appeal from the judgment is extended for all parties until the earliest of:

- (1) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order;
- (2) 90 days after the first notice of intention to move-or motion-is filed; or
- (3) 180 days after entry of judgment.

(Subd (c) amended effective January 1, 2011; adopted as subd (b); previously amended effective January 1, 2007; previously relettered effective January 1, 2008.)

(d) Motion for judgment notwithstanding the verdict

- (1) If any party serves and files a valid motion for judgment notwithstanding the verdict and the motion is denied, the time to appeal from the judgment is extended for all parties until the earliest of:
 - (A) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order;
 - (B) 30 days after denial of the motion by operation of law; or
 - (C) 180 days after entry of judgment.
- (2) Unless extended by (g)(2), the time to appeal from an order denying a motion for judgment notwithstanding the verdict is governed by rule 8.104.

Federal Rule 33 Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilt. If an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case.

THE ORIGINAL WRIT OF MANDATE AND ALL PLEADINGS RAISED THE ISSUE OF THE DAMAGES AND IT SHOULD HAVE BEEN REMANDED TO SUPERIOR COURT FOR DAMAGES BECAUSE WU ASKED FOR DAMAGES THAT WERE “ JUST AND PROPER” IN HER ORIGINAL WRIT OF MANDATE IN 2015 INCLUDING THAT SUBSTITUTES GET LESS THAN PROBATIONARY EMPLOYEES, LOSS OF PAY, No MEDICAL BENEFITS, AND OTHER LOSSES AND THE MOTION FOR THE DAMAGES WAS JUST AND PROPER

Wu addresses these losses in her Motion, as well as all pleadings in her past same case.

- Loss of Pay per a CBA and regular teacher salary Which under it is based on

- Loss of Years of service which the evidence showed Wu did work over the 75% of the days according to the CBA for a year of service credit to move up on the pay scale, [not for tenure which Wu lost for that] This is very significant and can be a difference of around 30 grand for each three years back for the SOL rights to lost pay.
- The loss of Years of service which is sent between district to district only in a certified form that recognizes the years externally to other districts. This is significant because ten years of additional service years recognized by another district can place a new teacher in a new district on a salary that can be 20 to 40 grand a year depending on the new district salary schedule.
- This is a significant loss, including the above, and retirement, and medical benefits for some but not all that Wu would like paid for.

ALTHOUGH THERE WAS NO CONTRACT NOR NOTIFICATION OF LOSS OF POSITION AT KEEMA HIGH SCHOOL TEACHING POSITION WU WAS IN VIOLATION OF CONSTITUTIONAL DUE PROCESS RIGHTS TO PROBATIONARY RIGHTS NONETHELESS WU STILL SUSTAINED DAMAGE TO THE PAST LOSS IN INCOME, YEARS OF SERVICE AND OTHER ASPECTS CONNECTED TO A COLLECTIVE BARGAINING AGREEMENT AND OR BASIC SALARY SCHEDULE, MEDICAL BENEFITS WHEN WU WORKED FULL TIME SET HOURS OF TEACHING

- **Wu would normally in ALL other cases of Misclassification as Probationary Teacher as spoken to in all the briefs in the original case. Regardless, This points to a Motion should be heard because it would**

be a grave misstep and injustice would occur based on the new evidence that Wu is officially misclassified.

- Vittal v. Long Beach Unified Sch. Dist, 8 Cal.App.3d 112

BASED ON MY TEACHER HOURS I WOULD BE CLASSIFIED AS FULL TIME. TEACHER TIME IS WHAT IS IN THE CBA FOR WHAT IS A DAY. It IS APPROXIMATELY 22.5 HOURS A WEEK. DETERMINING THE PROPER PERCENTAGE OF TEACHING HOURS TO MAKE UP DAYS WOULD BE IN HARMONY WITH OTHER LAWS OTHERWISE IT WOULD ALSO BE A DENIAL OF THE 14th AMENDMENT AND SUBSTANTIAL BARRIER TO THE DUE PROCESS AND TENURE. THE HOURS SHOULD BE COUNTED AND PAY WITH THE YEARS OF SERVICE IRRESPECTIVE OF TENURE OR REGARDLESS

EDC 45025 would require the same pay for the Hours served and that is based on the teaching time in the CBA. CCR 5 T5 11700 Independent studies a Day is based on the hours worked in comparison to full time teachers. For a Classified teacher they cannot work PART-TIME and then Regular hours become overtime and not be compensated properly or changed in their classification.

THIS CASE IS SIGNIFICANT BECAUSE IT REPRESENTS DUE PROCESS FOR A CASE THAT IS PUBLIC POLICY AND PUBLIC EMPLOYEES RIGHTS. WU HAS ALSO POINTED TO STATE AND LOCAL AGENCIES INTENTIONAL CORRUPTION

News Channel Abc10 “**Wild Wild West of Education.**” Nowhere to go: A lack of oversight by local and state agencies. Update: CA legislators call for audit And Profits over student success?

<https://www.abc10.com/article/news/local/abc10-originals/wild-west-of-education-an-investigation-into-highlands-community-charter-and-technical-schools/103-9cf5ca57-9441-4f0c-853a-6e3061989d46> by: Andie Judson, Mike Bunnell, Rachel Kim, Sabrina T. Sanchez, Gonzalo Magaña, Vanessa Bozzuto, Tyler Horst.

Twin Rivers in a Capital Town: Local Control and Ultimate Power by Rebecca Wu

<https://www.davisvanguard.org/2024/05/twin-rivers-in-a-capital-town-local-control-and-ultimate-power/>

CONCLUSION

Review should be granted because a denial of a motion based on New evidence of a Court of Appeal Ruling that a person is Misclassified in their Employment as a Public Employee and Probationary not a Substitute is not only in good public policy for preventing the tenure track But but when a Ruling shows damages would be received based on a regular Teacher status Then it is essential to have due process rights. Wu was Declared Misclassified and not a Substitute But a REgular PRobationary Teacher in this under case but not tenure is a huge large loss of Property, Rights and Due PRocesses. Government Code 3545 b1 Which Wu brings up in Briefs and Is thus a teacher as a probationary status and had rights to a Collective Bargaining Agreement With a Salary Schedule and Days that represent Hours of Teaching that Wu must receive in Her Damages.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on July 15, 2024

REBECCA WU



CERTIFICATE OF PAGE COUNT OR PAGE COUNT

I CERTIFY THAT THE PAGE COUNT IS 26 and LESS than 40 pages NOT INCLUDING BEFORE THE PETITION OR THE BELOW APPENDIX AND ATTACHMENTS per Rule 33. And Rule 33.2(b). The word or page limits do not include the pages containing the questions presented, the list of parties and corporate affiliates of the filing party, the table of contents, the table of

cited authorities, the listing of counsel at the end of the document, or any appendix.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on July 15, 2024.

REBECCA WU .

APPENDIX

The opinion of the highest state court to review the merits appears at Appendix _A_ to the petition and is [x] reported as __Denial of the Appeal on the Motion as Non Appealable.

This was January 26 th 2024 by the THIRD COURT OF APPEAL case C100176 -Appendix A

**The date of the Denied Petition for Review was on 4/17/2024 in the State Supreme Court.
The copy of this Disposition in the Dockets is at Appendix B.**

**Superior Court 34-2015-80002234 Ruled the Motion for new trial or damages was
Not appealable on May 30 2023 and is Appendix C**

**The Remittitur was issued on May 26th 2023 (see the button date of paper)
Appendix D**

**The court of appeal Decision or Order in Wu vs TRUSD in CO88570 and
Sacramento Superior court 34201580002234 that Wu was misclassified is attached
in Appendix D**

The Notice of Motion ... By Wu is filed on June 26th is Appendix D

PROOF OF SERVICE ...APPENDIX F last page

I declare under penalty of perjury that the foregoing is true and correct to
the best of my knowledge.

DATE: JULY 15, 2024



REBECCA WU