

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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IN THE MATTER OF THE APPLICATION OF

SHERI G. LEDERMAN, Ed.D.

Petitioner,

Index No. 5443-14

REPLY
AFFIRMATION IN
SUPPORT OF
ARTICLE 78
PETITION

For a Judgment Pursuant to Article 78 of the CPLR,

-against-

JOHN B. KING, JR., Commissioner,
New York State Education Department,
CANDACE H. SHYER, Assistant Commissioner,
Office Of State Assessment of the
New York State Education Department

Respondents,

TO DECLARE PETITIONER’S GROWTH SCORE
AND RATING FOR THE 2013-2014 SCHOOL YEAR
(RATING PETITIONER AS “INEFFECTIVE”) TO BE
ARBITRARY AND CAPRICIOUS AND AN
ABUSE OF DISCRETION.

-----X

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

JESSE ROTHSTEIN, being duly sworn, deposes and says:

1. I am a professor at the Goldman School of Public Policy and the Department of Economics and the Director of the Institute for Research on Labor and Employment at the University of California, Berkeley. A copy of my CV is attached. I have studied and written extensively about teacher evaluations and value added modeling (VAM), and have been active in the national debate concerning these matters. I was one of twelve top education researchers

invited to participate in a discussion of what has been learned from recent research on the measurement of teacher effectiveness convened by the Institute for Education Sciences at the U.S. Department of Education in 2012. Earlier this year, I was one of participants on a panel organized by the New York State Board of Regents to advise them about teacher evaluations.

2. I have been provided with copies of the original petition as well as the answering affidavits of Ira Schwartz and Daniel Sherman, and exhibits thereto. I make this reply affidavit to advise the Court of my response to issues they raise about studies that support the use of growth models and value added models.

3. I have also reviewed affidavits prepared by Professors Linda Darling-Hammond of Stanford University, Audrey Amrein-Beardsley of Arizona State University, Aaron Pallas of Columbia University, and Sean Patrick Corcoran of New York University. I will not burden the Court with repeating points they have made. The Court should understand that this is a group of some of the very top scholars in the Country who think and write about issues of teacher evaluations and education policy. I join in the conclusion of these other experts that the Growth Score of 1 out of 20 points awarded to Sheri Lederman is unquestionably irrational on the facts of this case.

4. I was particularly struck by the answering affidavits' total failure to defend the application of the New York State VAM, developed and implemented for the state by the American Institutes for Research (AIR), to teachers with students whose scores in the prior year are at the top of the test score range. This is a major problem in value added modeling, as it can be difficult to accurately measure academic progress for very high or very low achieving students. But while it is always a challenge, there are ways of addressing this challenge. Dr. Sherman's affidavit makes clear that the New York VAM does not adequately address this

problem, and produces unreliable and uninformative measures of the contributions of teachers whose students' prior scores are at the very top or very bottom of the prior score distribution. The New York / AIR VAM relies on a linear regression model to compute expected scores for students, but the evidence presented in the materials that I have reviewed makes clear that this model does not generate reasonable predictions for very high or very low achieving students. Because teachers' VAM scores are computed based on their students' performance relative to those predictions (described as "expected scores"), the results for teachers with high or low achieving students are not valid measures of those teachers' actual performance.

5. This problem is specific to the New York VAM – other models, including many models that I have studied and that are used in other districts, do a better job of addressing the "ceiling" and "floor" problems in test score scales. These models are still subject to many other problems with the VAM enterprise more generally, as detailed in the affidavits submitted by Professors Darling-Hammond, Amrein-Beardsley, Pallas, and Corcoran. There is an active debate among experts – in which I have been personally involved – about whether VAMs can be a valid or reliable measure of teacher effectiveness. But this debate generally concerns ideal VAMs; the issue discussed above is an additional problem that is specific to the New York model (and perhaps to models in other states that rely on AIR for their VAM calculations) and that makes the results particularly invalid for teachers with high or low scoring students.


6. As noted above, I have personally been involved in the national debate over the reliability and validity of VAM type testing (such as Respondents' Growth Model). As an expert and participant in this debate, I wish to make clear to the Court that statement in paragraph 50 of the affidavit of Respondents' Assistant Commissioner of Accountability Ira Schwartz that "there

are numerous studies and articles that support the use of student growth models” is misleading as it pertains to use for high stakes decision making in relation to individual teachers.

7. I have extensively reviewed the published academic studies that discuss the use of Value-Added Model (“VAM”), including the studies listed in footnote 8 of the Schwartz Affidavit. The published studies all pertain to the use of VAMs in low stakes settings. The proposition that these VAMs can be useful for high-stakes decision making for individual teachers remains speculative, unfounded in evidence that such uses have been successful.

8. Moreover, the studies cited in footnote 8 of the Schwartz affidavit, and others in the literature, concern VAMs that average a teacher’s outcomes over several years to construct a summary measure that is less affected by determinants of student outcomes in any particular year. But New York’s model does not do this. In New York, a teacher’s mean growth percentile and the resulting ratings are based on a single year of data. None of the studies cited – and no published study that I can identify – establishes that scores from a single year for individual teacher evaluations are accurate.

9. I conclude by pointing out nothing in the answering affidavits of Ira Schwartz or Daniel Sherman in any way explains why it is rational to rate Sheri Lederman as an ineffective educator based upon a growth score of 1 out of 20 points. There are many flaws in the Respondents’ Growth Model, as shown in the affidavits by prestigious professors from Stanford, Columbia, Arizona State University and New York University. I urge the Court to grant the requested relief.



Jesse Rothstein


Sworn to before me this
__ day of August, 2015

Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness accuracy, or validity of that document.

State of California, County of Alameda
Subscribed and sworn to (or affirmed) before me on
this 5th day of AUGUST, 2002015
by JESSE ROTHSTEIN
proved to me on the basis of satisfactory evidence
to be the person who appeared before me.



HERE
 JEFFREY C. LEE
COMM. # 1964925
NOTARY PUBLIC - CALIFORNIA
ALAMEDA COUNTY
My Comm. Exp. Dec. 23, 2015
HERE

JESSE ROTHSTEIN

CURRICULUM VITAE

PERSONAL INFORMATION

Address: Institute for Research on Labor and Employment
University of California, Berkeley
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EDUCATION

1998 - 2003 Ph.D., Economics, University of California, Berkeley
1998 - 2003 M.P.P., University of California, Berkeley
1991 - 1995 A.B., Mathematics, *magna cum laude*, Harvard University

EMPLOYMENT

2009 - University of California, Berkeley:
Current:
Professor of Public Policy and Economics (2015-)
Director, Institute for Research on Labor and Employment (2015-)
Past:
Associate Professor of Public Policy (2009-2015) and Economics (2010-2015)
Associate Director (2014-5) and Acting Director (2013), Institute for Research
on Labor and Employment

2010 U.S. Department of Labor: Chief Economist
2009 - 2010 Council of Economic Advisers: Senior Economist
2003 - 2009 Princeton University: Assistant Professor of Economics and Public Affairs
1997 - 1998 Economic Policy Institute: Researcher

AFFILIATIONS

2004 - National Bureau of Economic Research: Faculty Research Fellow (2004-2009);
Research Associate (2010-)
2013 - National Education Policy Center, University of Colorado: Fellow
2014 - CESifo Research Network: Fellow
2014 - Forschungsinstitut zur Zukunft der Arbeit GmbH (IZA): Research Fellow

SCHOLARLY PUBLICATIONS

- “The Effect of Extended Unemployment Insurance Benefits: Evidence from the 2012-2014 Phase-Out” (with Henry S. Farber and Robert G. Valletta). *American Economic Review: Papers & Proceedings* 105(5), May 2015.
- “Teacher Quality Policy When Supply Matters.” *American Economic Review* 105(1), January 2015: 100-130.
- “Unemployment Insurance and Disability Insurance in the Great Recession” (with Andreas Mueller and Till von Wachter). August 2014. Forthcoming, *Journal of Labor Economics*.
- “Permanent Income and the Black-White Test Score Gap” (with Nathan Wozny). *Journal of Human Resources* 48(3), Summer 2013: 510-544.
- “The Labor Market Four Years Into the Crisis: Assessing Structural Explanations.” *Industrial and Labor Relations Review* 65(3), June 2012: 467-500.
- “Unemployment Insurance and Job Search in the Great Recession.” *Brookings Papers on Economic Activity*, Fall 2011: 143-210.
- “Constrained After College: Student Loans and Early Career Occupational Choices” (with Cecilia Rouse). *Journal of Public Economics* 95(1-2), February 2011: 149-163.
- “Are Mixed Neighborhoods Always Unstable? Two-Sided and One-Sided Tipping” (with David Card and Alexandre Mas). In Harriet Newburger, Eugenie Birch, and Susan Wachter, editors, Neighborhood and Life Chances: How Place Matters in Modern America. 2011. Philadelphia: University of Pennsylvania Press.
- “Is the EITC as Good as an NIT? Conditional Cash Transfers and Tax Incidence.” *American Economic Journal: Economic Policy* 2(1), February 2010: 177-208.
- “Teacher Quality in Educational Production: Tracking, Decay, and Student Achievement.” *Quarterly Journal of Economics* 125(1), February 2010: 175-214.
- “The Value of School Facilities: Evidence from a Dynamic Regression Discontinuity Design” (with Stephanie Cellini and Fernando Ferreira). *Quarterly Journal of Economics* 125(1), February 2010: 215-261.
- Republished: *The Economics of Evaluation in Public Programs* (Albert N. Link and John T. Scott, editors, 2011). International Library of Critical Writings in Economics, 258. Cheltenham: Edward Elgar.
- “Student Sorting and Bias in Value Added Estimation: Selection on Observables and Unobservables.” *Education Finance and Policy* 4(4), Fall 2009: 537-571.
- “Selection Bias in College Admissions Test Scores” (with Melissa Clark and Diane Whitmore Schanzenbach). *Economics of Education Review* 28(3), June 2009: 295-307.
- “Affirmative Action in Law School Admissions: What Do Racial Preferences Do?” (with Albert Yoon). *University of Chicago Law Review* 75(2), Spring 2008: 649-714.
- “Tipping and the Dynamics of Segregation” (with David Card and Alexandre Mas). *Quarterly Journal of Economics* 123(1), February 2008: 177-218.

- “Does Competition Among Public Schools Benefit Students and Taxpayers? A Comment on Hoxby (2000).” *American Economic Review* 97(5), December 2007: 2026-2037.
- “Racial Segregation and the Black-White Test Score Gap” (with David Card). *Journal of Public Economics* 91(11-12), December 2007: 2158-2184.
- “Good Principals or Good Peers? Parental Valuations of School Characteristics, Tiebout Equilibrium, and the Incentive Effects of Competition among Jurisdictions.” *American Economic Review* 96(4), September 2006: 1333-1350.
- “Was Justice O’Connor Right? Race and Highly Selective College Admissions in 25 Years” (with Alan Krueger and Sarah Turner). In Michael McPherson and Morton Schapiro, editors, *College Access: Opportunity or Privilege*. 2006. New York: The College Board.
- “Race, Income, and College in 25 Years” (with Alan Krueger and Sarah Turner). *American Law and Economics Review* 8(2), Summer 2006: 282-311.
- “College Performance Predictions and the SAT.” *Journal of Econometrics* 121(1-2), July-August 2004: 297-317.

WORKING PAPERS

- “The Earned Income Tax Credit” (with Austin Nichols). March 2015.
- “Revisiting the Impact of Teachers.” October 2014.
- “The Great Recession and its Aftermath: What Role for Structural Changes?” June 2014.
- “Scraping By: Income and Program Participation After the Loss of Extended Unemployment Benefits” (with Robert G. Valletta). February 2014.
- “The Unintended Consequences of Encouraging Work: Tax Incidence and the EITC.” May 2008.
- “Mismatch in Law School” (with Albert Yoon). August 2008.

OTHER WRITING

- “Taking on Teacher Tenure Backfires.” Op-cd, *The New York Times*, June 13, 2014.
- “Extended Unemployment Insurance Remains Critical.” Issue Brief, Washington Center for Equitable Growth, May 25, 2014.
- “Effects of Value-Added Policies.” *Focus* (University of Wisconsin Institute for Research on Poverty) 29(2), Fall/Winter 2012-13, 23-24.
- “Review of Two Culminating Reports from the MET Project” (with William J. Mathis). Published online in Think Tank Review, National Education Policy Center, Boulder Colorado, <http://nepc.colorado.edu/thinktank/review-MET-final-2013>, January 31, 2013.
- “Evaluating Teacher Evaluation” (with Linda Darling-Hammond, Audrey Beardsley, and Edward Haertel). *Phi Delta Kappan* 93(6), March 2012: 8-15.
- “Let’s Not Rush into Value-Added Evaluations.” In *Room for Debate* feature, <http://www.nytimes.com>, January 16, 2012.

“Using Housing Markets to Estimate the Value of School Infrastructure Investments” (with Stephanie Riegg Cellini and Fernando Ferreira). *Wharton Real Estate Review* 15 (2), Fall 2011.

“Review of ‘Learning About Teaching: Initial Findings from the Measures of Effective Teaching Project.’” Published online in Think Tank Review, National Education Policy Center, Boulder Colorado, <http://nepc.colorado.edu/thinktank/review-learning-about-teaching>, January 13, 2011.

“Assessing a Teacher’s Value: More Harm Than Good.” In *Room for Debate* feature, <http://www.nytimes.com>, Sept. 6, 2010.

“Conversation: Merit, Testing, and Opportunity” (with Richard Rothstein). *The American Prospect* 11 (21), Sept. 25-Oct. 9, 2000, pp. 19-20.

“Taxes and the Internet: Updating Tax Structures for a Wired World” (with Traci Gleason Wright). *State Tax Notes* 17 (9), August 23, 1999.

HONORS AND FELLOWSHIPS

- 2011 John T. Dunlop Outstanding Scholar, Labor and Employment Relations Association
- 2006 - 2007 Nicholas Fellow, Center for Economic Policy Studies, Princeton University
- 2006 - 2009 Jacob Viner University Preceptorship, Princeton University
- 2003 Public Policy Research Prize, Department of Economics, UC Berkeley
- 2000 - 2003 Graduate Research Fellowship, National Science Foundation
- 2002 - 2003 Graduate Fellowship, Fisher Center for Real Estate and Urban Economics, UC Berkeley
- 1998 - 1999 Departmental Fellowship, Goldman School of Public Policy, UC Berkeley

PROFESSIONAL ACTIVITIES

- 2014 Expert witness, *Vergara v. California* (California Superior Court).
- 2012 - Executive Committee, UC Berkeley / UC San Francisco Robert Wood Johnson Foundation (RWJF) Scholars in Health Policy Research Program.
- 2011 - Board of Editors, *American Economic Review*
- 2012 - Associate Editor, *Industrial Relations*
- 2012 - Technical Review Committee, National Longitudinal Surveys (Bureau of Labor Statistics)
- 2011- Expert Panel, Interagency Working Group on Expanded Measures of Enrollment and Attainment (National Center for Education Statistics)
- 2010 - Advisory Council, Tipping Point Foundation
- 2010 - Review Panel, College & Beyond (Mellon Foundation)
- 2010 - 2013 Technical Review Panel, High School Longitudinal Study of 2009 (National Center for Education Statistics)
- 2009 - 2011 External Advisory Council, Chicago Public Education Fund

CONFERENCE ORGANIZATION

- 2016 Program Committee, Labor and Employment Relations Association (LERA) Annual Meetings, San Francisco
- 2014 Co-Organizer, All-California Labor Economics Conference, Berkeley
- 2013 Program Committee, Society of Labor Economists Annual Meetings, Boston
- 2012 Program Committee, Society of Labor Economists Annual Meetings, Chicago
- 2011 Program Committee, All-California Labor Economics Conference, Santa Monica

EXTERNAL GRANTS

- 2014 - 2016 Washington Center for Equitable Growth, “School Finance Reform and Educational Equity” (with Diane Schanzenbach)
- 2014 - 2016 Spencer Foundation, “School Finance Reform and the Distribution of Student Achievement” (with Diane Schanzenbach)
- 2012 - 2013 Russell Sage Foundation, “The Labor Market in the Great Recession: What Role for the Supply Side?”
- 2008 - 2011 Institute for Education Sciences, “Value Added Models and the Measurement of Teacher Quality” (R305A080560)
- 2005 - 2007 Mellon Foundation, “Affirmative Action and Law School Admissions: The Mismatch Hypothesis and Minority Student Performance” (with Albert Yoon)
- 2004 - 2005 UCLA Center on Education Policy and Evaluation, “Race, Income and College in 25 Years” (with Alan Krueger and Sarah Turner).

TEACHING

University of California, Berkeley:

- Quantitative Methods for Public Policy (masters level): 2014.
- Economics of Education Policy (doctoral & masters level): 2013, 2014.
- Statistics for Program Evaluation (masters level): 2011, 2012, 2014.
- Introduction to Policy Analysis (masters level): 2011, 2012, 2013, 2014.

Princeton University:

- Econometrics and Public Policy: Advanced (masters level): 2004, 2005, 2007, 2008, 2009.
- Public Economics (Ph.D. level). 2004, 2005, 2008, 2009.
- Senior thesis advising: 6 in 2003-4; 6 in 2004-5; 3 in 2007-8; 1 in 2008-9.
- Nominated for Princeton University Graduate Mentoring Award, 2004-05 and 2008-09.

Other:

- Short course in Labor Economics (with Lowell Taylor). Delivered at:
 - American Economic Association continuing education program, January 2013.
 - Canadian Labour Market and Skills Research Network summer school, June 2013.

PROFESSIONAL ASSOCIATIONS

American Economic Association, Association for Education Finance and Policy, Association for Public Policy Analysis and Management, Econometric Society, Labor and Employment Relations Association, Society of Labor Economists.