

No. 08-16661

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SONYA RENEE ET AL.,

Plaintiffs - Appellants,

v.

**ARNE DUNCAN, in his official capacity;
UNITED STATES DEPARTMENT OF EDUCATION,**

Defendants - Appellees

*On Appeal from the United States District Court
for the Northern District of California
Case No. 07-CV-04299-PJH*

**BRIEF OF *AMICI CURIAE* IN OPPOSITION TO APPELLEES' PETITION
FOR REHEARING AND REHEARING *EN BANC***

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CORPORATE DISCLOSURE STATEMENT

Amicus Student Equity Action Network has no parent corporations. No publicly held corporation holds shares in the Student Equity Action Network.

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INTEREST OF *AMICI CURIAE*

Amici Curiae represent a broad range of organizations whose mission is the improvement of public education, especially for low-income and minority children. While each association represents a unique group of constituencies—from disadvantaged children to community organizations—each has a significant interest in ensuring that the Panel’s decision is left standing. *Amici* represent state-wide, regional and national organizations, most of which are grassroots, whose membership comprise tens of thousands of low-income and minority students and parents – the very constituency the No Child Left Behind Act (“NCLB”) was intended to benefit.

The *Amici* joining this brief include:

- Action United: a statewide organization comprised of 42,000 mostly low to moderate-income Pennsylvanians to address issues of discrimination, affordable housing, quality education, and improved public services;
- Alliance of Californians for Community Empowerment: a state-wide community organization of 9,000 low- and moderate-income Californians working to implement change by helping ordinary citizens organize and take action in a variety of areas, including education;

- American Association of Colleges for Teacher Education: a nationwide association of 882 institutions, which seeks to ensure that all children are taught by effective educators;
- Movement Strategy Center: an organization that supports community-based collaborations nationwide in pursuing social and racial justice, offering a range of services, including strategy development and visioning, organizational development, sustainability training and coaching;
- National Council on Educating Black Children: an organization that seeks to improve the academic achievement of African-American children;
- Parent U-Turn: a parent advocacy group dedicated to improving the educational opportunities of urban students in Los Angeles school and communities;
- POWER in Education: an organization dedicated to helping parents achieve equal rights in education;
- Student Equity Action Network: a non-profit student organization based in California which is dedicated to promoting equity in public education and college readiness for all students and to closing the

achievement gap that exists with respect to youth from disadvantaged backgrounds and underserved minority groups.

Amici believe that the Panel's opinion, which held that the loophole created by the Department's regulation violated the intent and purpose of the NCLB, was correct and thus that rehearing or en banc consideration is not warranted.

Dated: November 24, 2010

/s Charles T. C. Compton
Charles T.C. Compton

INTRODUCTION

Amici submit this brief in opposition to the Petition for Rehearing and Rehearing *En Banc* filed by Defendants-Appellees. Pursuant to Federal Rule of Appellate Procedure 29, *Amici* sought and obtained consent to file this brief from both parties.

The Panel's decision is unquestionably correct: "highly qualified" teachers, as defined in NCLB include *only* those who "*have obtained* full State certification," not those who merely "*demonstrate[] satisfactory progress toward full-certification[.]*" See Opinion ("Op.") at 16333.

In rendering its decision, the Panel highlighted numerous provisions that reinforce two major goals of the education reform envisioned by NCLB: transparency and accountability. A central premise of NCLB is that by increasing transparency and accountability, the achievement gap between minority and non-minority children can begin closing. NCLB mandates collection and disclosure of information on where educational resources are allocated and how such resources impact the quality of education (transparency), and holds states, districts, and schools responsible for the quality of education they provide (accountability).

Amici believe that these two goals cannot be attained if inexperienced and partially-trained interns are added, by *ultra vires* regulation, to the statutory definition of "highly qualified." Including interns or teachers-in-training in this

definition makes it nearly impossible to detect the unequal allotment of fully-certified experienced teachers among schools and districts and, in turn, makes it extremely difficult for states, schools, parents and the public (including *Amici*) to address existing inequities in teacher distribution and the resulting wedge in educational quality.

Defendants-Appellees (“ED”) and their supporting *amici* (“the Alternative Route *Amici*”)¹ would have this Court disregard these two major NCLB principles and endorse an altered definition of “highly qualified” that conceals, rather than confronts, the inequitable distribution of intern teachers. The brief submitted by the Alternative Route *Amici* (the “TFA Brief”) understandably is mute on these foundational principles of NCLB, while assaulting the “full state certification” standard for teacher quality that was unambiguously adopted by Congress.

The TFA Brief consists largely of strident advocacy for alternative route programs in general, and TFA in particular. But neither *Amici*, the parties nor the Panel take issue with alternative routes to certification, or with TFA; indeed they

¹ The Alternative Route *Amici* include intern providers (Teach for America (“TFA”), The New Teacher Project,), intern consumers (Council of the Great City Schools, Democracy Prep Public Schools, Houston Independent School District, National Alliance for Public Charter Schools, New Leaders for New Schools), and intern supporters (Center for Education Reform, Democrats for Education Reform, National Council on Teacher Quality, National Center for Education Information, United States Conference of Mayors).

are important pipelines for developing fully-certified teachers. *Amici* do take issue with the TFA Brief's recurring misdirection, conflating the teachers at issue here—those merely enrolled in alternative route certification programs (teacher interns) — and fully-certified teachers who have completed an alternative route program.²

The Alternative Route *Amici*'s extended endorsement of TFA “and similar programs,” apart from its dubious relevance, rests on several studies, none of which, when closely viewed, suggest that those who are *merely participating* in alternative route programs are more effective than fully-certified teachers. By contrast, there is a wealth of evidence supporting Congress' determination that full-certification makes a difference in student performance. Moreover, most of the TFA Brief studies focus only on TFA teacher interns or graduates, who comprise only a fraction of the interns allowed to masquerade as “highly-qualified” under the Department's rewording of NCLB.

Equally off-point, and unsupported by evidence, is the litany of terribles that ED and the Alternative Route *Amici* speculate would result from shining a light on the number and distribution of interns cast as “highly qualified” teachers. They

² [Corrected] Brief of *Amici Curiae* Teach for America, *et al.*, in Support of Defendants-Appellees' Petition for Rehearing and Rehearing En Banc (“TFA Brief”) at 4-5, 8-10, 11-13, 15-17.

speculate that enforcing the Congressional definition will cause schools to stop using interns and, faced with teacher shortages, be forced either to increase class sizes and reduce course offerings or hire even less qualified teachers. These assertions are mere hyperbole and conjecture. Real world experience has shown that schools faced with a shortage of fully-certified teachers can and will continue to hire teacher interns, even while using a variety of recruitment and retention tools, workplace improvements and salary incentives to attract a greater number of fully-certified teachers. Bringing transparency to the number and distribution of teacher interns can only encourage programs to increase the number of fully-certified teachers—including graduates from alternative route programs—and ensure equality in their placement in the poorer schools. The transparency and accountability mandated by NCLB will encourage more and better teachers, not the opposite.

ED and the Alternative Route *Amici* do not dispute the fact that, as noted by the Panel, interns *are* disproportionately concentrated in “disadvantaged districts” and schools. Permitting parents, students, and their communities to know the extent to which inexperienced teacher interns are being sent to high-need schools is a necessary precondition to resolving that problem.

ARGUMENT

I. THE PANEL'S DECISION ASSURES THE TRANSPARENCY AND ACCOUNTABILITY AT THE HEART OF NCLB

Students in disadvantaged areas are disproportionately taught by teacher interns.³ Schools and school districts located in these disadvantaged areas sometimes have trouble recruiting experienced, fully-certified teachers, and their investments in training new teachers are appropriated by more affluent districts who hire such teachers away once they gain experience. Schools in disadvantaged areas must be able to implement measures which will attract fully-certified experienced teachers and prevent turnover, including mentoring programs, salary increases, and improvements in school conditions. Progress will require effort, dedication and resources from local, state, and federal governments, none of which will occur without transparency and accountability as mandated by NCLB.

Under NCLB, states schools and districts are charged with taking steps “to ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified or out-of-field teachers.” *See* 20 U.S.C. §§

³ U.S. Department of Education, Report Highlights of *State & Local Implementation of No Child Left Behind Act: Volume VIII – Teacher Quality Under NCLB: Final Report* (2009), available at <http://www2.ed.gov/rschstat/eval/teaching/nclb-final/highlights.pdf>; *see also* *Final Report* at <http://www2.ed.gov/rschstat/eval/teaching/nclb-final/report.pdf>; *see also* TFA Brief at 15, 16-17. All studies and reports cited in this brief have also been appended as exhibits.

(continued...)

6311(b)(8)(C), 6312(c)(1)(L). Schools must notify parents if their child has been taught for four consecutive weeks by a teacher who is not “highly qualified.” *Id.* § 6311(h)(6)(B)(ii). These provisions of NCLB work in parallel to increase awareness of gaps in teacher resource distribution across low-income and minority areas and, in turn, to enable states and school districts to use that information to make satisfactory progress in closing those gaps.

These provisions are gutted if interns or teachers-in-training are counted as “highly qualified” for purposes of reporting, accountability and progress toward the goals of NCLB. The Panel correctly decided in favor of transparency by holding ED to the statutory mandate that only those teachers who “[have] obtained full State certification” may be deemed “highly qualified.”⁴ *Op.* at 16334.

II. THE CONGRESSIONAL DECISION TO REQUIRE FULL STATE CERTIFICATION FOR “HIGHLY QUALIFIED” TEACHERS WAS WELL FOUNDED

As noted by the Panel, “[i]n adopting NCLB, Congress decided that teachers with ‘full State certification’ are, in the aggregate, better teachers than those without such certification.” *Op.* at 16335 (quoting 20 U.S.C. § 7801(23)(A)(i)).

(...continued from previous page)

⁴ Not addressed by the Alternative Route *Amici* is the fact that some children will be taught by teacher intern who, being classified as “highly qualified” prior to obtaining certification, will subsequently fail certification requirements or may never bother to complete their training.

Congress' conclusion was, and continues to be, supported by a wealth of evidence demonstrating that, on the whole, certification has a positive impact on student learning across core subjects.⁵

⁵ See, e.g., Ildiko Laczko-Kerr & David C. Berliner, *The Effectiveness of "Teach for America" and Other Under-certified Teachers on Student Academic Achievement: A Case of Harmful Public Policy*, 10 Educ. Policy Analysis Archives, abstract (2002), available at <http://epaa.asu.edu/ojs/article/view/316> (finding that students of fully-certified teachers significantly outperformed those of less-than-fully-certified teachers on all sub-tests of the SAT-9); Linda Darling-Hammond et al., *Does Teacher Preparation Matter? Evidence about Teacher Certification, Teach for America, and Teacher Effectiveness*, 13 Educ. Policy Analysis Archives, at 2-3, 18 (2005), available at <http://epaa.asu.edu/ojs/article/viewFile/147/273> (finding that students of fully-certified teachers consistently outperformed those of less than fully-certified teachers including TFA recruits); Donald Boyd et al., *How Changes in Entry Requirements Alter the Teacher Workforce and Affect Student Achievement*, at 32 (Nov. 2005), available at http://www.teacherpolicyresearch.org/portals/l/pdfs/how_changes_in_entry_requirements_alter_the_teacher_workforce.pdf (finding that students of new elementary teachers with pre-service training achieved significantly higher gains in reading, language arts, and mathematics than students of new teachers enrolled in certain alternative route programs, including TFA); Charles T. Clotfelder et al., *Teacher Credentials and Student Achievement in High School: A Cross-Subject Analysis with Student Fixed Effects*, at 2 (Urban Institute, Working Paper No. 11, 2007), available at http://www.caldercenter.org/PDF/1001104_Teacher_Credentials_HighSchool.pdf (finding that among the greatest negative influences on student achievement was having a new teacher who entered through an alternative route program requiring no initial teacher preparation); Linda Darling-Hammond, *Educational Opportunity and Alternative Certification: New Evidence and New Questions*, Stanford University: A Scope Policy Brief, at 1 (March 2009), available at http://edpolicy.stanford.edu/pages/pubs/pub_docs/alternative%20certification%20brief.pdf (teachers who entered teaching through alternative programs were less effective during the years while they were still in training than fully prepared beginning teachers working with similar students).

In urging *en banc* review, the Alternative Route *Amici* take issue with the Congressional mandate and its adoption of “full state certification” as the benchmark for teacher quality under NCLB. They urge the non-sequitur that Congress has expressed no preference for traditionally *certified* teachers over alternatively *certified* teachers. Equally unavailing are the numerous studies cited by the Alternative Route *Amici* on the merits of alternative route programs. None of their arguments directly addresses, much less impeaches, the Panel’s decision that ED’s regulation contravenes NCLB’s definition of a “highly qualified” teacher.

First, and most critically, Congress has the final say. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984) (“If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.”). The Panel, recognizing that it is “bound to accept Congress’ determination,” correctly applied this law. Op. at 16336. If the Alternative Route *Amici* believe that Congress was wrong, they must seek to persuade Congress, not this Court.

Second, the Alternative Route *Amici* contend that “Congress did not conclude that alternatively certified teachers were less qualified than traditionally certified teachers.” TFA Brief at 9-11. They protest that Congress supports alternative route certified teachers. *Id.* Both points are non-sequiturs in their focus

on fully-certified teachers. Neither the Panel nor any party in this litigation has ever suggested that NCLB's definition of "highly qualified" differentiates between teachers who *obtained* their certification through traditional programs and those who *obtained* it using alternative routes. *See* 20 U.S.C. § 7801(23)(A)(i) (noting "highly qualified" means teachers certified "*through alternative routes to certification.*") (emphasis added). The differentiation in NCLB relevant to this litigation is between *fully-certified* teachers and those merely "making progress" toward full-certification. NCLB makes it clear that "highly qualified" includes only teachers who "*have obtained*" their state's full-certification—not those who are merely enrolled in a certification program. Whether there is a qualitative difference between teachers who have obtained full state certification via alternative routes as opposed to traditional programs has no bearing on this appeal.

Third, the studies cited by the Alternative Route *Amici* as supporting the effectiveness of teachers-in-training cast no doubt on the importance of full-certification for teacher quality and effectiveness. *See* TFA Brief at 11-13; *supra* at 7, n.5. Most of the studies cited by the Alternative Route *Amici* do not even purport to compare TFA program participants, or other interns, with fully-certified

teachers. For example, Decker et al.⁶ compares TFA teachers with even more under-prepared teachers still in training.⁷ With regard to Xu et al.,⁸ a non-peer reviewed study, TFA teachers were compared to *all other* teachers, not just fully-certified teachers, and the comparison group had a greater share of teachers uncertified in their field than was true for the TFA teachers.⁹ As for Kane et al.,¹⁰ TFA teachers are compared with teacher groups that “minimize the effect of teacher preparation, because the authors included teachers licensed through ‘transcript review’ and temporary permits in the same group as college-prepared

⁶ Paul T. Decker, Daniel P. Mayer & Steven Glazerman, *The Effects of Teach For America on Students: Findings from a National Evaluation*, Mathematica Policy Research, Inc. (June 9, 2004) (TFA Appendix ¶1).

⁷ Julian Vasquez Heilig & Su Jin Jez, *Teach For America: A Review of the Evidence* 5, 7 (2010), available at <http://epicpolicy.org/publication/teach-for-america>.

⁸ Zeyu Xu, Jane Hannaway & Colin Taylor, *Making a Difference? The Effects of Teach For America in High School*, The Urban Institute/CALDER (Revised March 2009) (TFA Appendix ¶6).

⁹ Vasquez Heilig et al., *supra* note 7, at 7. Moreover, this study was criticized by the What Works Clearing-House at the Department’s Institute of Education Sciences for “not linking students with the teacher who taught them; instead, students were matched to teachers based on a test proctor and classroom demographics.” *Id.*

¹⁰ Thomas J. Kane, Jonah E. Rockoff & Douglas O. Staiger, *Photo Finish: Certification Doesn’t Guarantee a Winner*, Education Next, vol. 7, no. 1 (Winter 2007) (TFA Appendix ¶2); Thomas J. Kane, Jonah E. Rockoff & Douglas O. Staiger, *What Does Certification Tell Us About Teacher Effectiveness? Evidence from New York City*, Economics of Education Review (May 2007) (TFA Appendix ¶3).

teachers.”¹¹ Kane’s study in fact demonstrated that, in math and reading, students of first-year teachers-in-training did worse than those of regularly certified first-year teachers.¹² Noell et al.,¹³ also a non-peer reviewed study, merely shows that TFA teachers and certified teachers perform better than teachers with even less training and experience.¹⁴ Constantine et al. offers a similarly irrelevant comparison across different groups of certified teachers who have obtained their certification through alternative route and traditional programs.¹⁵

Many of the studies cited by the Alternative Route *Amici* also focus narrowly on TFA, to the exclusion of the many other programs in which interns participate.¹⁶ TFA participants represent a tiny minority—around 8%— of all

¹¹ Vasquez Heilig et al., *supra* note 7, at 6.

¹² *Id.*

¹³ George Noell & Kristin Gansle, *Teach For America Teachers’ Contribution to Student Achievement in Louisiana in Grades 4-9: 2004-2005 to 2006-2007*, Technical Report to the Louisiana Board of Regents (Oct. 27, 2009) (TFA Appendix ¶7).

¹⁴ Vasquez Heilig et al., *supra* note 7, at 7.

¹⁵ Jill Constantine et al., *An Evaluation of Teachers Trained Through Different Routes to Certification*, U.S. Department of Education (Feb. 2009) (TFA Appendix ¶4).

¹⁶ See Decker et al., *supra* note 6; Xu et al., *supra* note 8; Noell et al., *supra* note 13.

teacher interns in California.¹⁷ The remaining approximately 92% of intern teachers cannot be cloaked with the mantle of TFA's purported benefits—which are themselves a matter of strenuous debate in the profession.¹⁸ In sum, whatever the merit of some interns, the weight of the empirical evidence supports the unsurprising conclusion, as reached by Congress, that teachers still in training are generally less qualified and effective than those who have obtained full state certification.¹⁹

III. THE NINTH CIRCUIT'S DECISION TO ENFORCE NCLB'S TEACHER QUALITY PROVISIONS WILL NOT HAVE DISASTROUS CONSEQUENCES

The Alternative Route *Amici* and ED urge this Court to rehear this case *en banc* by speculating about a series of disastrous consequences that they claim

¹⁷ Based on available data, TFA represented 727 teacher interns in California in 2009-2010. Teach for America, *Our Regions at a Glance*, available at <http://www.teachforamerica.org/about-us/regions/>. In 2008-2009, the most recent years available, California had nearly 9,000 teacher interns in total. California Department of Education, *Teacher Credential and Experience Report, 2008-09*, available at <http://dq.cde.ca.gov/dataquest/Staff/StaffTeachCred.aspx?cChoice=StTchExp&cYear=2008-09&cLevel=State&cTopic=Paif&myTimeFrame=S>.

¹⁸ Many scholars have expressed strong skepticism about the benefits of TFA. See, e.g., Vasquez Heilig, et al., *supra* note 7, at 2; Darling-Hammond (2005), *supra* note 5; Barbara Torre Veltri, *Learning on Other People's Kids: Becoming a Teach For America Teacher* (2010). This skepticism is based not only on classroom effectiveness, but the related high rates of attrition and other issues. See, e.g., Vasquez Heilig et al., *supra* note 7, at 8; Darling-Hammond (2005), *supra* note 5, at 14; Boyd et al., *supra* note 5.

¹⁹ See *supra* 7, n.5.

might arise from enforcing NCLB's "fully-certified" standard. Happily, the parade of horrors invoked by the Alternative Route *Amici* is conjecture, not content, and more informed by rhetoric than reality.

A. There Is No Basis for Asserting That By Upholding NCLB's Full State Certification Standard, the Panel's Decision Will Lead To the Hiring of Less Able Teachers and Cause Harmful Shortages

The Alternative Route *Amici* and ED baldly assert, without evidence or logic, that the Panel's decision will prohibit the hiring of "alternatively *certified* teachers of their choosing," which in turn will "effectively condemn such districts to increased vacancies and an even greater reliance on the use of less qualified, long-term substitute teachers." TFA Brief at 14-15 (emphasis added). This unsupported scaremongering is reprised elsewhere, with predictions that transparency and accountability will compel a "shift *en masse* from teachers enrolled in alternative certification programs to substitute teachers [and] drain the pool of talent entering the profession" *Id.* at 16. Absolutely no support is provided for these predictions of disaster, because there is none. Nothing in the Panel's decision, and no stretch of logic, suggests that schools could not or would not hire fully-certified teachers who have completed alternative route programs. The Panel's decision and NCLB are clear that graduates of alternative certification programs are indeed "highly qualified" under the statute. *Op.* at 16333-34; 20 U.S.C. § 7801(23)(A)(i). Logic, in fact, would suggest that alternatively certified

teachers, like other certified teachers, will be more likely to find and keep their jobs than interns, once there is information and accountability in the hiring of “highly qualified” teachers.

Nor does NCLB prohibit the hiring of teacher interns by individual states and districts where shortages may exist. It simply requires states to develop a plan to maximize the use of teachers who are fully-certified under state law and, most importantly, equitably distribute those “highly qualified” teachers to privileged and disadvantaged schools alike. *See* 20 U.S.C. § 6311(b)(8)(C).

The notion that ending the misclassification of teacher interns will lead to drastic teacher shortages is also far-fetched. Where shortages of fully-certified teachers exist, districts will still be able to hire teacher interns, as they do now. The disclosure of data on the actual distribution of interns will, however, inform the public and policy-makers, enabling dialogue and consequent pressure on schools and school districts to handle shortage issues by implementing recruitment and retention programs.²⁰

There are many effective solutions to the staffing demands in high-need schools that do not require placing teachers in classrooms before they are fully-

²⁰ “[O]ne of the accomplishments of Teach for America and HISD [Houston Independent School District] was the development of means for enabling recruits to participate in preparation and become certified for teaching in their second or third year of teaching.” Darling-Hammond (2005), *supra* note 5, at 22.

certified. California and other states have shown that shortages of fully-certified teachers can be addressed with a comprehensive set of recruitment and retention strategies: streamlining hiring practices, improving outreach and recruitment, providing service scholarships to underwrite preparation for those who will teach in high-need fields and locations, raising and equalizing salaries across districts, improving working conditions in high-need schools, providing incentives for expert veteran teachers to teach in these schools, and ensuring adequate mentoring for all beginners.²¹ Research demonstrates that these strategies have reduced teacher shortages, provided fully prepared teachers for most students, and, in the process, reduced costly teacher turnover. Those gains in turn increase student achievement by fostering a more experienced and stable teaching force.²²

B. The Notion That the Panel’s Decision Will Cause Confusion Among State Regulators Is Far-Fetched

The Alternative Route *Amici* postulate that, because states maintain control over their own teacher credentialing frameworks, the Panel’s decision might cause

²¹ U.S. Department of Education, *State & Local Implementation of No Child Left Behind Act: Volume VIII – Teacher Quality Under NCLB: Final Report* at 66-78 (2009), available at <http://www2.ed.gov/rschstat/eval/teaching/nclb-final/report.pdf>.

²² Linda Darling-Hammond & Gary Sykes, *Wanted: A National Supply Policy for Education: The Right Way to Meet the “Highly Qualified Teacher” Challenge*, 11 Educ. Policy Analysis Archives, at 1, 2-3 (2003), available at <http://epaa.asu.edu/ojs/article/viewFile/261/387>.

confusion in states like Florida and Massachusetts. TFA Brief at 5-7. There is no basis for this concern. Under the Panel’s decision, the states’ responsibility over credentialing systems is unaffected, just as it is by NCLB itself. Each state has determined what “full-certification” means for its teaching cohort. Like California, neither Florida nor Massachusetts considers alternative route *participants* to be fully-certified but rather, like California, simply bootstrapped their alternative route participants into the definition of “highly qualified” because ED’s regulation encouraged them to do so. *See id.* The statute and Panel decision merely ensure that teachers not fully-certified under the laws of each state will no longer be hidden behind ED’s regulatory expansion of “highly qualified” for NCLB teacher quality and transparency purposes.

C. Alternative Route Programs Will Maintain Their Importance

Amici do not oppose high-quality alternative route programs. Those programs provide an important pathway into the teaching profession and can also be highly valuable in recruiting teachers. Indeed, thousands of teachers who have achieved full state certification through alternative route programs serve today as effective and highly qualified teachers.²³ Those teachers are still “highly qualified”

²³ *See Darling-Hammond (2005), supra note 5, at 22.*

under the Panel's decision, and these programs will continue to play an important role in our educational system.

Amici only oppose eviscerating the statutory definition of a "highly qualified" teacher by including interns who are only making "progress toward full-certification." This subterfuge does violence to both the letter and spirit of NCLB. NCLB's promise of increased transparency and accountability in improving teacher quality and educational equality can only be achieved if states and schools are honest about where the disparities in educational resources lie. Allowing interns to enter the classroom disguised as "highly qualified" teachers undermines transparency and interdicts the expected efforts by states, school districts, parents and policy makers to close the "achievement gap between high- and low-performing children, especially the achievement gaps between minority and nonminority students, and between disadvantaged children and their more advantaged peers." 20 U.S.C. § 6301(3).

CONCLUSION

For the foregoing reasons, Defendants-Appellees' Petition for Rehearing and Rehearing *En Banc* should be denied.

Dated: November 24, 2010

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POWER in Education, and Student
Equity Action Network

**CERTIFICATE OF COMPLIANCE PURSUANT TO FED. R. APP. 32(A)(7) AND
CIRCUIT RULE 32-1**

I certify that: ***

4. *Amicus Briefs*

- x Pursuant to Fed. R. App. P. 29(d) and Ninth Circuit Rule 32-1 the attached amicus brief is proportionately spaced, has typeface of 14 points or more and contains 4,138 words.

Dated: November 24, 2010

By: /s Charles T.C. Compton
Charles T.C. Compton
Attorneys for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 24, 2010.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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