Subject: Re: Flores case

The hearing ended on Friday, Nov. 21 at 1:00 PM. During the week, the defense presented testimony from a half dozen witnesses, including Adela Santa Cruz (ADE), Kevin Clark (Consultant to the ELL Task Force), Alan Maguire (Chair of the Task Force), and John Stollar (ADE). Tim Hogan, the Flores family's attorney, showed that the state was applying the law arbitrarily. Proposition 203 clearly distinguishes "mainstream classes" from "SEI classes." It states that ELLs are not allowed to be in mainstream classes until they have achieved proficiency. The state argues that ELLs can't learn mainstream content until they have learned English. Yet the state allows ELLs to receive content instruction in mainstream classes as long as it takes place outside of the mandated 4 hours. It also fails to monitor the quality of instruction during those other two hours. Hogan also was also able to show that the state's funding formula for the 4-hour mandate was full of contradictions and flaws.
For example, Tim showed that the funding application asks districts to list "textbooks" needed for the 4-hour classes but Stollar had to admit that the state rejected all textbook requests. The formula also illegally uses federal funds to supplant state responsibility in hiring teachers. When the defense attorneys asked Santa Cruz what materials schools really needed to implement the 4-hour model, she said teachers didn't really need any materials except perhaps "chart paper and markers." Even the state attorneys looked embarrassed by her answer. None of the state's witnesses were able to explain away the discrepancies, and the question asked by the judge suggested that he was skeptical about the state's claims, especially the expectation that ELLs would all learn English in one year because of the 4-hour model. The judge gave the attorneys until January 20 to file their findings as a result of the hearing. I expect that the judge will then issue a ruling by the end of January. By then we will also know whether or not the U.S. Supreme Court has rejected the state's appeal.

The state has turned the Lau v. Nichols 1974 Supreme Court decision on its head. The Lau ruling said that students must not be foreclosed from receiving equal access to the regular school curriculum because of their lack of English proficiency while AZ is arguing that they must not be allowed access to the mainstream curriculum UNTIL they learn English. The meaning and spirit of Lau is that English Language Learners are not to be segregated and deprived of content learning while they are acquiring English. That is the rationale for bilingual education and L1 instruction. It was never the intent of Lau that ELL

had to be pulled out (into classes with only chart paper and markers) and expected to "earn their way" into back the mainstream by learning enough English (and how much is enough has never been determined).

If AZ's Prop 203 is allowed to pass a test of constitutionality with the ADOE ELL Task Force's interpretation of the law, we can say without a doubt that the courts have allowed the majority to vote away the rights of the minority in Arizona. We must all do everything we possibly can to counter AZ's awful racism and discrimination against language minority students.