

# Vergara v. California, and the Attenuation of Tenure, Part One: The Decision

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## Education Law Notes

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In a landmark, June 10, 2014 decision that could set off a wave of similar litigation across the country, a California Superior Court judge ruled in the case of *Vergara v. State of California, et al.* that a number of California's teacher tenure laws had the constitutionally impermissible effect of depriving students of equal protection under both the United States and California Constitutions.

The plaintiffs in *Vergara* consisted of nine California public school students who filed suit on May 14, 2012, claiming that the statutes in question violated the California Constitution's equal protection clause because they resulted in "grossly ineffective teachers obtaining and retaining permanent employment," because "these teachers are disproportionately situated in schools serving predominately low-income and minority students," and because these statutes consequentially violated students' "fundamental rights to quality of education by adversely affecting the quality of the education they are afforded by the state."

The *Vergara* court cited the United States Supreme Court's holding in *Brown v. Board of Education* – which struck down race-based "separate but equal" education as a violation of the Fourteenth Amendment to the United States Constitution -- that education is "a right which must be available to all on equal terms." The court went on to note that the California Supreme Court had previously identified education as a "fundamental interest," had invalidated California's earlier school-financing system as a violation of the California's Constitution's equal protection clause, and had characterized a school district's premature closing of schools due to insufficient funding as a denial of "basic educational equality." Contrary to these foregoing cases, which addressed the lack of *equality* of education, at issue in *Vergara* were the constitutional implications arising from variations in the *quality* of education. In reaching these issues, the court wrote that the "specific effect . . . on students" of what he repeatedly referred to as "grossly ineffective teachers . . . shocks the conscience."

The court specifically considered California's tenure – or "permanent employment" -- law, which provides that teachers automatically attain tenure unless a school district informs them otherwise by March 15 of their second year of teaching. The evidence established that in some cases, this short timeframe resulted in districts improvidently granting tenure to teachers, whereas other districts, conversely, denied tenure when faced with even the slightest suspicion of performance issues. Thus, the court held that "both students and teachers are unfairly, unnecessarily, and for no legally cognizable reason (let alone a compelling one), disadvantaged by the current Permanent Employment Statute" in violation of California's equal protection

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clause.

The court similarly faulted California's "Dismissal Statutes" for tenured teachers, citing "substantial evidence" that "grossly ineffective teachers are being left in the classroom . . . because administrators believe it to be 'impossible' to dismiss a tenured teacher under the current system." Although recognizing tenure as a property interest that entitled teachers to due process prior to discharge, when considering the due process afforded to other public employees, the court found that "the current tortuous process" required for teacher dismissals was "so complex, time consuming and expensive as to make an effective, efficient yet fair dismissal of a grossly ineffective teacher illusory." As such, children subjected to these essentially non-dischargeable teachers were unconstitutionally deprived of their right to equal quality of instruction.

Finally, the court rejected California's statutory mandate that junior teachers must be laid off before more senior teachers, regardless of "how grossly ineffective the senior teacher." Summing up its rationale, the court wrote:

Distilled to its basics, the State Defendants'/[Intervenor Teachers Unions'] position requires them to defend the proposition that the state has a compelling interest in the *de facto* separation of students from competent teachers, and a like interest in the *de facto* retention of incompetent ones. The logic of this position is unfathomable and therefore constitutionally unsupportable.

The court also cited evidence that students "attending high-poverty, low-performing schools are far more likely than their wealthier peers to attend schools having a disproportionate number of underqualified, inexperienced . . . and ineffective teachers and administrators," and far more likely to be victimized by the "churning" of tenured teachers districts could not dismiss, a process the court termed "Dance of the Lemons."

Despite finding these statutes unconstitutional, the court stayed the implementation of its decision pending appellate review. It will, of course, be interesting to see whether the trial judge's decision will survive that review. At the very least, though, in states such as Connecticut that may arguably have similar constitutional and statutory provisions pertaining to education and to tenure, *Vergara* may suggest possible legal bases upon which opponents to teacher tenure can predicate their challenges.

**Tags:** Tenure