

Vergara v. California: Its Real Meaning

June 16, 2014

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JD Supra Perspectives

The June 10, 2014 decision in *Vergara v. California*, which held California’s teacher tenure law to be unconstitutional, has garnered the kind of national media attention that is usually reserved for high-profile, United States Supreme Court decisions, not for trial-court rulings. The predictions by teacher unions and other tenure supporters that the decision will issue in educational end times is, to say the least, overheated, for the *Vergara* plaintiffs now face the daunting prospect of running the gauntlet of California’s appellate courts. Additionally, the state legislature could arguably assist an appellate court reversal by remediating those aspects of California’s tenure laws upon which the *Vergara* court based its decision, sacrificing some of its more unreasonable provisions in order to save the concept – and to a lesser extent the protections – of tenure. If it does so, however, it could be missing the real point of *Vergara*, which is not some one-man, jurisprudential referendum on tenure, but rather an inevitable next step in addressing the parameters of an individual’s constitutional right to equal protection in the context of public education.

To date, debates about tenure have generally focused solely on teachers, and the effects the elimination of tenure would have on them. Students are generally an afterthought, if they are considered at all. Consider the media coverage of *Vergara*; the focus is on the possible scuttling of what has devolved from a means of protecting academic freedom to an entitlement to “permanent employment” that is essentially based on avoiding a dischargeable offense in a two-year, three-year or even four-year pre-tenure window. Little attention has been paid to the underlying catalyst for the decision, which is the court’s finding that “low-income and minority students” are being disproportionately forced to endure the significant, adverse effects of having “grossly ineffective teachers.” As such, the media has missed the fact that *Vergara* is not primarily a case about tenure; rather it is a decision that seeks to eliminate what the court considered to be an unconstitutional dichotomy between the quality of educational experiences afforded to students who hail from different socio-economic and racial tiers of American society

As the *Vergara* court noted, in *Brown v. Board of Education*, the Supreme Court established that race-based segregation in public schools is unconstitutional. Similarly, the California Supreme Court – like supreme courts in a number of other states – have invalidated school-funding statutes due to unconstitutional disparities in how state funds are distributed. In the context of that precedent, *Vergara* is not particularly controversial. To the contrary, and particularly given that education is predicated in substantial part upon the teacher-student pedagogical dynamic, the *Vergara* decision could be considered an almost inevitable extension of court-driven attempts to ensure that all students are provided with at least the opportunity to

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