



August 31, 2016

### CALIFORNIA SUPREME COURT DECLINES REVIEW OF APPELLATE DECISIONS IN *VERGARA V. STATE OF CALIFORNIA* AND *CAMPAIGN FOR QUALITY EDUCATION*

Over the last several years, two important legal battles with the potential to greatly impact our education system have been progressing through the California courts. Recently, the California Supreme Court declined review in both cases – allowing the Appellate Court decisions to stand. Below is a brief summary of each case.

#### *Vergara et al. v. State of California (Vergara)*

*Vergara v. State of California (Vergara)* was first filed at the trial court level in May of 2012.<sup>1</sup> In the *Vergara* lawsuit, nine California public school students, assisted by the advocacy group Students Matter, sought a court order invalidating five Education Code statutes concerning the permanency/tenure, dismissal, and layoff of teachers.<sup>2</sup> The plaintiffs argued in an eight-week trial that the five challenged statutes were unconstitutional on their face and lead to a higher number of “grossly ineffective teachers,” causing certain classes of students to suffer. The California Teachers Association and the California Federation of Teachers intervened in the lawsuit and defended against it.

The trial court judge issued a landmark, but short-lived, decision striking down the five challenged statutes as unconstitutional. The defendants appealed the case to the California Court of Appeal and on April 14, 2016, the appellate court reversed the trial court’s decision. The Court of Appeal indicated at the outset of its decision that the plaintiffs failed to establish the challenged statutes violated equal protection “primarily because they did not show that the statutes inevitably cause a certain group of students to receive an education inferior to the education received by other students.”<sup>3</sup> The court further held:

“Although the statutes may lead to the hiring and retention of more ineffective teachers than a hypothetical alternative system would, the statutes do not address the assignment of teachers; instead administrators—not the statutes—ultimately determine where teachers within a district are assigned to teach. Critically, plaintiffs failed to show that the statutes themselves make any certain group of

<sup>1</sup> *Vergara v. State of California* (2016) 246 Cal.App.4th 619.

<sup>2</sup> Education Code sections 44929.21(b), 44934, 44938 (b)(1) and (b)(2), 44944, and 44955 were the challenged statutes.

<sup>3</sup> *Vergara, supra*, at 627.

students more likely to be taught by ineffective teachers than another group of students.

With no proper showing of a constitutional violation, the court is without power to strike down the challenged statutes. The court’s job is merely to determine whether the statutes are constitutional, not if they are ‘a good idea.’”<sup>4</sup>

Soon after their loss at the appellate level, the *Vergara* plaintiffs appealed to the California Supreme Court. On August 22, 2016, after a 4-3 split decision, the California Supreme Court denied the petition for review. In a lengthy dissenting statement indicating he would have granted review of this case, Justice Liu stated in part:

“Because the questions presented have obvious statewide importance, and because they involve a significant legal issue on which the Court of Appeal likely erred, this court should grant review... The trial court found, and the Court of Appeal did not dispute, that the evidence in this case demonstrates serious harms. The nine schoolchildren who brought this action, along with the millions of children whose educational opportunities are affected every day by the challenged statutes, deserve to have their claims heard by this state’s highest court.”

With the Supreme Court’s denial of review comes the end of this particular fight in our state courts. However, it is likely we will continue to see passionate arguments in our state legislature and courts regarding potential changes to the retention, dismissal, and layoffs of teachers. For now, the challenged California statutes remain legally valid and the current system of teacher tenure, dismissal, and layoff remains intact. Our office continues to assist clients in working within the confines of that system to help administrators best serve the students in our communities by ensuring prepared and engaged teachers are the ones who remain in our local education agencies.

***Campaign for Quality Education et al. v. State of California and  
Robles-Wong et al. v. State of California (Campaign for Quality Education)***

In two related lawsuits, *Campaign for Quality Education et al. v. State of California* and *Robles-Wong et al. v. State of California* (“*Campaign for Quality Education*”), the minimum level of quality education and the adequacy of California’s school funding system was challenged.<sup>5</sup> The plaintiffs in the cases sought declaratory and injunctive relief affirming that all public school children have a constitutional right to an education of “some quality,” and alternatively, that the Legislature is failing to meet its constitutional obligation to “provide for” and “keep up and support” the “system of common schools” due to its current allocation of education funds.

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<sup>4</sup> *Ibid.*

<sup>5</sup> *Campaign for Quality Education v. State of California* (2016) 246 Cal.App.4th 896.

At the trial court level, the defendants filed a successful demurrer and motion for judgment on the pleadings. The plaintiffs' complaints were thereafter dismissed and the plaintiffs later appealed that decision.

The Court of Appeal issued its 2-1 decision on April 20, 2016 and agreed with the trial court—the plaintiffs failed to state a claim for which judicial relief may be accorded. The court held that while there is undoubtedly a fundamental right to a public school education in California, there is “no support for finding implied constitutional rights to an education of ‘some quality’ for public school children or a minimum level of expenditures for education...” as the plaintiffs requested.<sup>6</sup> The court further held the constitutional provisions challenged in the cases did not require an education of a “particular standard of achievement” or an affirmative Legislative duty to provide for a “particular level of education expenditures.”<sup>7</sup> Declining to judicially enforce sections 1 and 5 of Article IX of the California Constitution, the court left the “difficult and policy-laden questions associated with educational adequacy and funding to the legislative branch.”<sup>8</sup>

The *Campaign for Quality Education* plaintiffs sought review of the appellate decision by the California Supreme Court. On August 22, 2016, again, in a 4-3 split decision, the Supreme Court declined review. As with *Vergara*, Justice Liu again authored a lengthy dissenting statement indicating he would have granted review and providing sobering data about the history of California's school funding system and the academic achievement of California's students. According to Justice Liu:

“Because this case presents unsettled questions of the utmost importance to our state and its schoolchildren, the petition before us readily meets our criteria for review...Plaintiffs have made serious allegations of chronic deficiencies in California's K-12 education system, and they have asserted constitutional claims that only this court can definitely resolve...It is regrettable that this court, having recognized education as a fundamental right in a landmark decision 45 years ago (*Serrano v. Priest* (1971) 5 Cal.3d 584), should now decline to address the substantive meaning of that right. The schoolchildren of California deserve to know whether their fundamental right to education is a paper promise or a real guarantee.”

As with the *Vergara* case, while the Supreme Court's decision not to grant review of the lower court's ruling in *Campaign for Quality Education* ends those particular legal challenges, the adequacy of school financing and the quality of our education system will no doubt remain an important topic for debates in the public, legislature, and the courts. This is especially true as educators, policy makers, and the public review the Local Control Funding Formula and its impacts on our schools. We will continue to monitor the political and legal developments in this area and provide updates as they arise.

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<sup>6</sup> *Id.* at 902.

<sup>7</sup> *Id.* at 915.

<sup>8</sup> *Id.* at 903.

If you have any questions concerning this Labor and Employment Law Update, please do not hesitate to contact our office.

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