

## POLICY NOTE

# How the historic *Vergara v. California* decision will affect students, teachers and unions

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### Key findings

1. A California court has ruled union rules have a disproportionate impact on poor and minority students, since they are more likely to be assigned to an ineffective teacher.
2. By striking down special laws favoring unions, the court lifted restrictions that burden schools, students and teachers alike.
3. The case showed that being assigned to a highly-effective teacher generates long-term gains for students.
4. The court found that low-quality teachers are being disproportionately assigned to underprivileged and minority students.
5. Given the difficulty of firing teachers, principals often transfer ineffective teachers to other schools in the district, a practice known as the "Dance of the Lemons."
6. The case is ground-breaking because for the first time a court has ruled that teacher quality is essential to a good public education, and that union rules systematically harm students and teachers.

In May 2012, California parents who felt their children were not receiving a quality public education filed a statewide lawsuit, *Vergara v. California*.

With the support of Students Matter, a student advocacy group, nine public school students and their parents from different cities and backgrounds sued the state on the grounds that several California laws violate the state constitution by retaining grossly ineffective teachers in class, and thus deny a quality education to students assigned to those teachers.

According to the lawsuit, these laws have a disproportionate impact on poor and minority students, since they are more likely to be assigned to the classroom of an ineffective teacher.<sup>1</sup>

The Los Angeles superior court agreed. The 2014 ruling in *Vergara v. California* affirmed the fundamental, constitutional right of every student to learn from effective teachers and have an equal opportunity to succeed in school. By striking down special laws favoring unions, the court lifted restrictions that burden schools, students and teachers alike.

The union-backed laws provide permanent employment, complicate teacher dismissal and ensure the "Last-In, First-Out" layoff rules in schools. Permanent employment forces school districts to make premature tenure decisions. Superintendent for the Los Angeles Unified School District, Dr. John Deasy, noted the danger of this by testifying that 16 months of teaching in the classroom is not a sufficient time to make such a long-term, weighted judgment.<sup>2</sup>

Lawyers for the students argued that making these binding decisions before teacher effectiveness can be properly evaluated puts schools at risk of retaining ineffective teachers. In doing so, this unfairly disadvantages both students and teachers. Furthermore, the restrictive dismissal law

1 "Superior Court of the State of California County of Los Angeles," Court Tentative Decision, Students Matter, June 10, 2014, page 3, at <http://studentsmatter.org/wp-content/uploads/2014/06/Tenative-Decision.pdf>.

2 "Vergara v. California Day 3: LAUSD Superintendent Deasy Completes Testimony; Expert Witness Dr. Raj Chetty Called to the Stand," Students Matter, January 29, 2014, page 1, at [http://studentsmatter.org/wp-content/uploads/2014/01/SM\\_Day3\\_EndofDayPressRelease\\_FINAL.pdf](http://studentsmatter.org/wp-content/uploads/2014/01/SM_Day3_EndofDayPressRelease_FINAL.pdf).

prevents school districts from firing ineffective teachers who harm students. The “Last-In, First-Out” rule requires seniority-based layoffs, forcing school districts to make layoff decisions that ignore teacher quality. In addition to harming students, this practice fails to reward and retain the most deserving high-quality educators.

To properly measure the importance of teacher quality, lawyers for the students called in three experts in economics and education to explain the direct effect teacher quality has on students. Dr. Raj Chetty, an economics professor at Harvard University; Eric A. Hanushek, a Jean Hanna Senior Fellow at The Hoover Institution, one of Stanford’s public policy think tanks; and Dr. Thomas Kane, Professor of Education and Economics at Harvard Graduate School of Education, all testified on behalf of the students.

By measuring a teacher’s impact on students, Dr. Raj Chetty concluded that being assigned to a highly-effective teacher generates long-term gains for students. He reviewed school district records of 2.5 million children and tax records that disclosed earnings, college attendance and teen birth rates. Dr. Chetty then followed three steps to evaluate teacher effectiveness.

First, he calculated each student’s test score gain from the prior year. Second, he used a regression model to adjust each student’s score gain for differences in characteristics (e.g., prior test scores, gender, race, access to free or reduced-price lunches and English language skill level). Third, he computed the value-added by a teacher from average adjusted performance for each student.

Dr. Chetty found that students taught by effective teachers are more likely to attend college, to attend a high-quality college, to have higher earnings, to live in better neighborhoods, to save more for retirement and to avoid teenage pregnancy.<sup>3</sup> In fact, teachers in the 50th percentile for teacher quality set students on a track for \$50,000 more in lifetime earnings per child.<sup>4</sup> He found that even one ineffective teacher makes these outcomes less likely.

Eric A. Hanushek’s study, *The Economic Value of Higher Teacher Quality*, found that a grossly ineffective teacher limits a student’s academic growth to half a year, while an effective teacher provides students with a full year’s worth of academic growth.

As a result, a student who has an effective teacher three years in a row will benefit from three full years of academic growth. A student assigned to a grossly ineffective teacher for three years in a row will only gain a year and a half of academic growth.<sup>5</sup>

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3 “The Long-Term Impacts of Teachers: Teacher Value-Added and Student Outcomes in Adulthood,” by Raj Chetty, John N. Friedman, and Jonah E. Rockoff, NBER Working Paper Series, National Bureau of Economic Research, December 2011, page 17, at [http://obs.rc.fas.harvard.edu/chetty/value\\_added.pdf](http://obs.rc.fas.harvard.edu/chetty/value_added.pdf).

4 “Designated Topics of Expert Opinion: The Value of Improving Teacher Effectiveness,” Students Matter, page 13, at [http://studentsmatter.org/wp-content/uploads/2014/01/SM\\_Chetty-slides\\_01.30.14.pdf](http://studentsmatter.org/wp-content/uploads/2014/01/SM_Chetty-slides_01.30.14.pdf).

5 “The Economic Value of Higher Teacher Quality,” by Eric A. Hanushek, *Economics of Education Review*, June 2011, pages 466-479, at <http://hanushek.stanford.edu/publications/economic-value-higher-teacher-quality>.

Dr. Thomas Kane led the “Measures of Effective Teaching Project,” funded by the Bill and Melinda Gates Foundation. This three-year study determined ways to identify and promote great teaching. Dozens of independent research teams collaborated with nearly 3,000 teacher volunteers from seven U.S. public school districts as part of the study.

In Los Angeles, Dr. Kane analyzed data on student achievement growth over seven academic years from 2004 to 2011. The study included information on 1.1 million students and 58,000 teachers. Dr. Kane found that teacher effectiveness is both measurable and predictable and that Los Angeles school officials allow wide disparities in teacher effectiveness. He found the bottom 5 percent of Los Angeles teachers achieve very low gains in student learning.<sup>6</sup>

The *Vergara v. California* case not only demonstrated the importance of teacher quality, it also found that low-quality teachers are being disproportionately assigned to underprivileged and minority students.<sup>7</sup> As teachers gain seniority, they tend to migrate toward more affluent schools in search of perceived better working conditions in higher-income neighborhoods.

Schools serving predominantly high-need communities, including minority and low-income students, generally have more teachers with low-seniority relative to schools serving predominantly white and non-low-income students. This leaves less affluent schools with grossly ineffective teachers.

Low-quality teachers tend to “accumulate” in such schools rather than being fired, because it is costly, time-consuming and burdensome to dismiss permanent teachers under the district’s complex Dismissal Statutes.

Dr. Kane noted that less-effective teachers tend to fill schools where there are more vacancies. These are the schools where there are a disproportionate number of African-American and Latino students. Given the difficulty of firing teachers, principals often resort to transferring their ineffective teachers to other schools in the district, a staffing practice known as the “Dance of the Lemons.”<sup>8</sup>

Ultimately, the state defendants failed to justify the harm that the union-favored state laws impose on students, or the disproportionate burden they place on economically disadvantaged and minority children.<sup>9</sup>

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6 “Ensuring Fair and Reliable Measures of Effective Teaching: Culminating Findings from the MET Project’s Three-Year Study,” Policy and Practice Brief, MET Project, at [http://www.metproject.org/downloads/MET\\_Ensuring\\_Fair\\_and\\_Reliable\\_Measures\\_Practitioner\\_Brief.pdf](http://www.metproject.org/downloads/MET_Ensuring_Fair_and_Reliable_Measures_Practitioner_Brief.pdf).

7 “Evaluating Progress Toward Equitable Distribution of Effective Educators,” No Child Left Behind Act of 2001, 2001, page 5, at <http://studentsmatter.org/wp-content/uploads/2014/08/Plaintiffs-Trial-Exhibit-289-California-Department-of-Education-Report-Evaluating-Progress-Toward-Equitable-Distribution-of-Effective-Educators.pdf#page=5&zoom=auto,-14,722>.

8 “Students Matter: Evidence,” Students Matter, at <http://studentsmatter.org/evidence/#dr-raj-chettys-presentation-on-the-impact-of-teachers-on-student-learning-and-lifetime-success>.

9 “Challenging Inequality,” by Theodore J. Boutrous Jr., Marcellus A. McRae, and Joshua S. Lipshutz, Law Review, *Los Angeles Lawyer*, July 2015, at <http://www.gibsondunn.com/publications/Documents/Boutrous-McRae-Lipshutz-Challenging-Inequality-Los-Angeles-Lawyer-JulyAugust-2015.pdf>.



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The court's ruling in *Vergara* is ground-breaking because it represents the first time a court has acknowledged teacher quality as an important component in a student's fundamental right to a quality public education. Furthermore, it has ruled for the first time that the union's employment protections are unconstitutional because they systematically harm students and teachers.<sup>10</sup>

As a result, unions will have to find other ways to advance the economic interest of their members, without hurting student learning in the process.

*Correction: An earlier version of this Policy Note mistakenly listed the Vergara decision as coming from the state supreme court*

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<sup>10</sup> "A New Battle for Equal Education," Opinion Editorial, *The New York Times*, June 11, 2014, at [http://www.nytimes.com/2014/06/12/opinion/in-california-a-judge-takes-on-teacher-tenure.html?\\_r=0](http://www.nytimes.com/2014/06/12/opinion/in-california-a-judge-takes-on-teacher-tenure.html?_r=0).