by **Theodore J. Boutrous Jr., Marcellus A. McRae, and Joshua S. Lipshutz**

CHALLENGING *Inequality*

Vergara v. California has presented a constitutional challenge to California statutes affecting teacher tenure and dismissal

IN A RECENT CONSTITUTIONAL CHALLENGE to the California Education Code, *Vergara v. California*, the Los Angeles Superior Court declared that five of its challenged statutes violate the fundamental right of students to education—a right protected by the California Constitution. The plaintiffs successfully argued that the laws create inequalities in the educational opportunities being afforded to students across California. In striking down the challenged statutes, the court issued four important findings. First, the court held that the Permanent Employment Statute,[1] which forces school districts to make tenure decisions after teachers have been on the job for only 16 months, provides too little time for school administrators to evaluate whether a teacher is effective. Thus, districts grant permanent status to some grossly ineffective teachers who would be screened out if districts had more time to make considered decisions. Second, the court found that three statutes pertaining to teacher dismissal standards[2] make it virtually impossible for districts to remove ineffective teachers from the classroom once they obtain tenure. School districts must spend years and hundreds of thousands of dollars to dismiss a single grossly ineffective teacher—and even then, their efforts are likely to fail, with the result that district administrators are left with no choice but to assign ineffective teachers to classrooms. Third, when an economic downturn or declining enrollment forces school districts to conduct layoffs, administrators still may be prevented from removing grossly ineffective teachers because of the "last-in, first-out" layoff statute (also known as the LIFO statute)[3] forcing them instead to fire teachers based exclusively on seniority. Finally, poor and minority students are relegated disproportionately to classrooms with less effective teachers. Consequently, these students fall further behind their peers, which exacerbates the achievement gap that education is supposed to ameliorate.

The defendants, including California's teachers unions and the California Department of Education (CDE), argued that the challenged statutes are needed to protect due process rights of teachers and that without these laws school districts would be unable to recruit and

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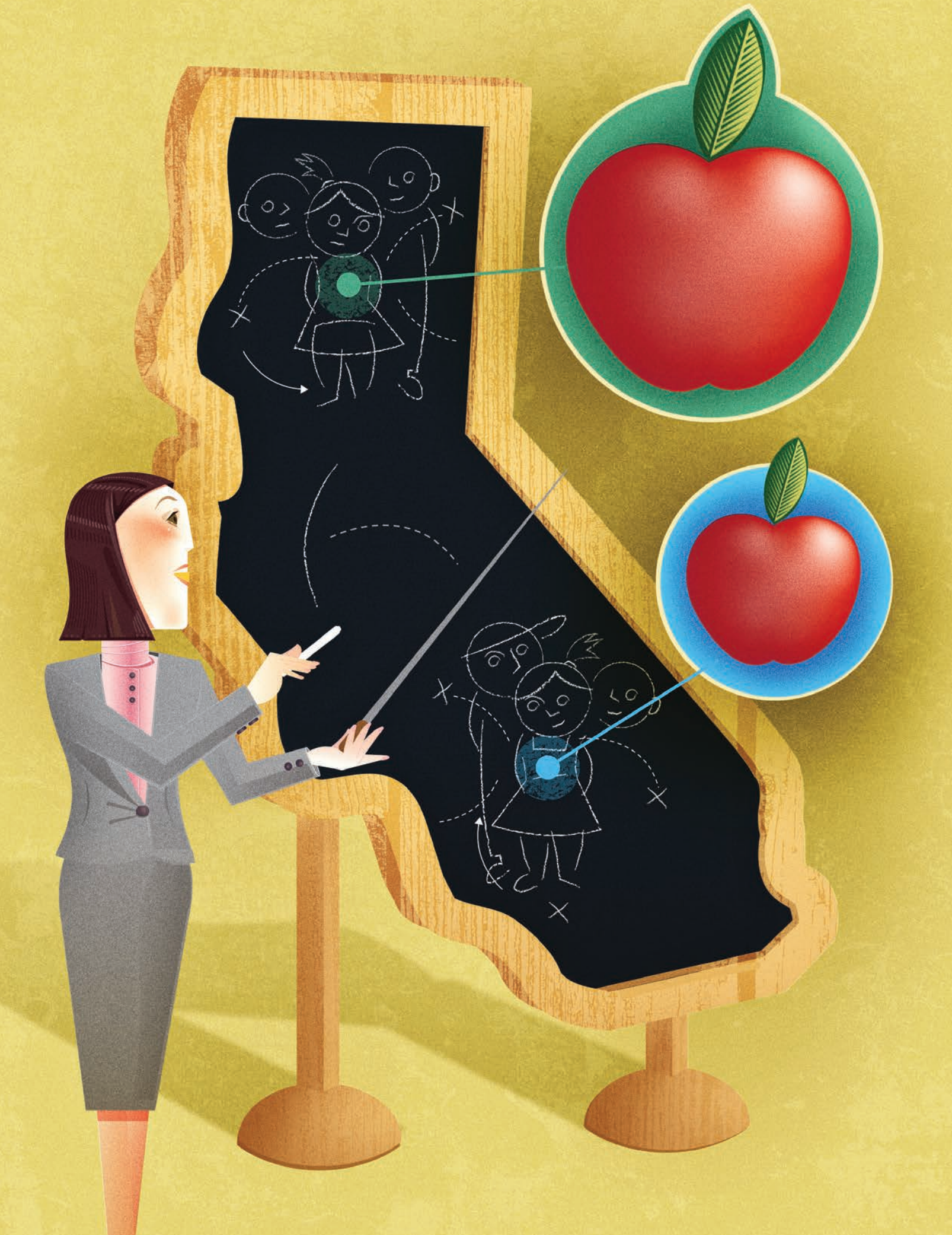


retain teachers. Ultimately, however, the defendants were unable to justify the harm that the challenged statutes impose on students or the disproportionate burden they place on economically disadvantaged and minority children. The court, therefore, ruled that the challenged statutes violate the California Constitution. The *Vergara* decision is a groundbreaking ruling because it represents the first time a court has declared teacher quality to be an integral component of a student's fundamental right to education and has ruled that excessive teacher employment protections are unconstitutional because they systematically harm students.[4] The legal arguments underpinning *Vergara*, however, are grounded in decades of constitutional litigation.

More than 40 years ago the California Supreme Court recognized in *Serrano v. Priest* that education is a fundamental interest guaranteed by the California Constitution.[5] Education is a fundamental right because it "lie[s] at the core of our free and representative form of government."[6] Moreover, access to education is "the bright hope for entry of the poor and oppressed into the mainstream of American society."[7] In *Serrano* and other cases, the California Supreme Court has declared that "the right to an education today means more than access to a classroom."[8] At a minimum, the fundamental right to education guarantees that "all California children should have equal access to a public education system that will teach them the skills they need to succeed as productive members of modern society."[9] In order to fulfill the constitutional promise of a meaningful education for all California children, "the State itself has broad responsibility to ensure basic educational equality."[10] When the state's laws infringe on the fundamental right to educational opportunity, it is the role of the courts to invalidate those unconstitutional laws.[11]

Serrano arose in the funding context: the court declared that there can be no equality of educational opportunity without equal funding.[12] Twenty years later, in *Butt v. California*, the California Supreme Court explained that the amount of time students spend in school also must be equal statewide.[13] However, if funding and time in school are equal, students still cannot be assured of equal educational opportunities unless they have equal access to effective teachers. Teachers are the very vehicle through which students receive their education. In the words of John Deasy, former superintendent of the Los Angeles Unified School District: "The mission of the District is to assure that students learn.... In order to do that, the most important factor is a teacher, a highly effective teacher."[14] The CDE has acknowledged that "[t]he academic success of California's diverse students is inextricably tied to the quality and commitment of our educator workforce,"[15] because "teacher quality is the single most important school-related factor in student success."[16]

Facial Challenge: Strict Scrutiny Review

In *Vergara* the court agreed with the plaintiffs' argument that the challenged statutes must be analyzed under the strict scrutiny standard, under which the "state bears the burden of establishing not only that it has a compelling interest which justifies the law but that the distinctions drawn by the law are necessary to further its purpose."[17] After the plaintiffs introduced the testimony of witnesses drawn from 28 school districts across California covering more than 22 percent of California students, seven leading education experts, and documentary evidence,[18] the court ruled that the challenged statutes are facially unconstitutional for two reasons. One, the challenged statutes impose a "real and appreciable impact" on the right of students to education,[19] and two, the challenged statutes have a disparate adverse impact on poor and minority students.[20]

The California Supreme Court has held that "the unique importance of public education in California's constitutional scheme requires careful scrutiny of state interference with basic educational rights."[21] When a statute inflicts "a real and appreciable impact on, or a significant interference with the exercise of [a] fundamental right...the strict scrutiny doctrine will be applied."[22] Because "education is the lifeline of both the individual and society,"[23] laws that inflict a "real and appreciable impact" on the fundamental right to education are unconstitutional unless they are narrowly tailored to serve a compelling state interest.[24] California courts may look beyond the text of a statute when determining whether the statute is facially unconstitutional.[25] As the name of the supreme court's test implies, it is the statute's impact" that matters.[26] The evidence presented by the *Vergara* plaintiffs established the substantial harms being imposed on students by the challenged statutes. The court in *Vergara* considered this evidence to determine whether the statutes in fact result in an unconstitutional deprivation of fundamental rights.

The *Vergara* plaintiffs successfully challenged the Permanent Employment Statute as harmful to students because it forces school districts to make tenure decisions before having an opportunity to evaluate the teacher's effectiveness in an informed manner. The statute requires districts to notify teachers whether they will be reelected to permanent teaching positions no later than March 15th of the teachers' second probationary year.[27] Sixteen months simply is an insufficient amount of time for administrators to make well-informed tenure decisions for all of their probationary teachers because of the limited amount of classroom evaluation data, student and parent input, and student achievement data that can be collected over such a short period.

The dismissal statutes harm students because they prevent school districts from dismissing grossly ineffective teachers. The *Vergara* plaintiffs established that when a district is forced to dismiss an ineffective teacher through the process prescribed by the three statutes pertaining to teacher dismissal, it takes two to 10 years and costs $250,000 to $450,000 or more per teacher. Even then, the Commission on Professional Competence does not rule in favor of dismissal unless the district can show that the teacher is "incapable of remediation." As a result, districts in California rarely seek dismissal of grossly ineffective teachers. Only 2.2 teachers are dismissed on average each year for unsatisfactory performance in California out of the 277,000 teachers statewide.[28] The Los Angeles Unified School District (LAUSD) alone is aware of at least 350 grossly ineffective teachers that it believes should be dismissed immediately.[29]

The LIFO statute harms students because, in the event of districtwide layoffs, it compels school districts to adhere to a reverse-seniority selection process. The statute means that a teacher can be named teacher of the year and be laid off the same year. A former superintendent described LIFO as follows: "[A] system that treats its best teachers this way... [and] ultimately doesn't serve children...is broken."[30]

De Facto Analysis

The California Supreme Court has emphasized the importance of factual analysis of external evidence and practical considerations in determining the facial constitutionality of a statute. For example, the statutes that comprised the school financing system at issue in *Serrano* were facially neutral, but the court examined the real-world effects of the relevant statutes and determined that "as a practical matter districts with small tax bases simply cannot levy taxes at a rate sufficient to produce the revenue that more affluent districts reap with minimal tax efforts."[31] The court rejected the state's argument that the court should not concern itself with "unequal treatment [that] is only de facto, not de jure,"[32] holding that courts "'must unsympathetically examine any action of a public body which has the effect of depriving children of the opportunity to obtain an education.'"[33]

Similarly, in *Somers v. Superior Court*, the plaintiff challenged the constitutionality of a law that required California-born trans-

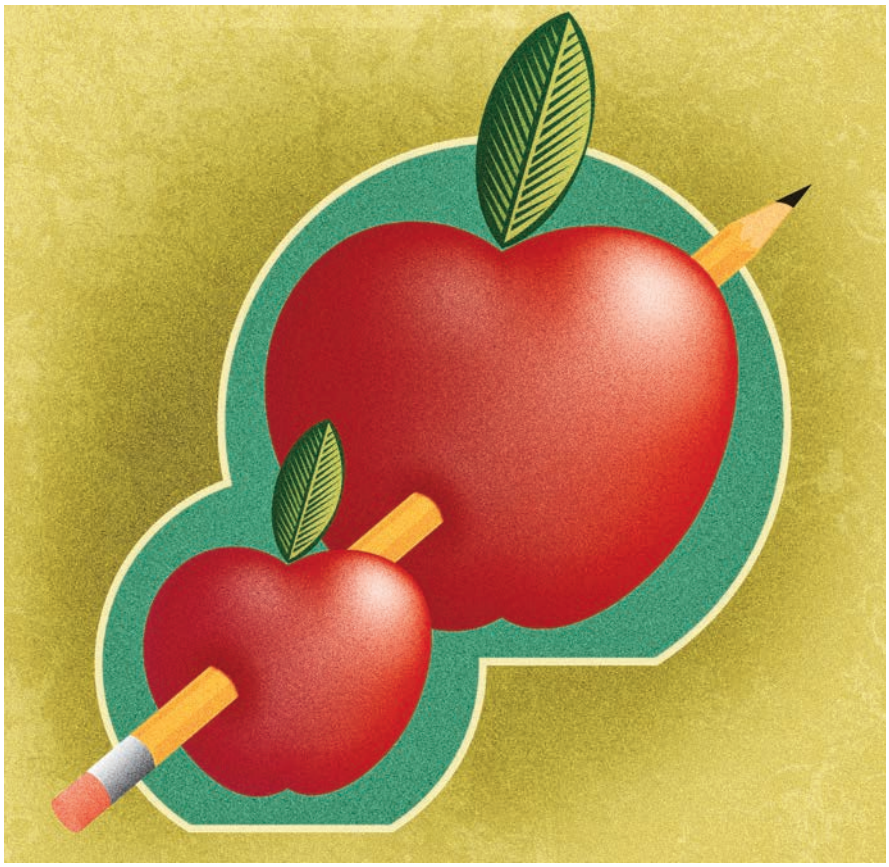
gendered individuals seeking changes of gender on their birth certificates to file petitions in their counties of residence.[34] The plaintiff alleged—and the court agreed—that the statutory provision at issue violated the equal protection rights of California-born transgendered individuals who lived out-of-state because it "effectively" denied them the right to obtain new birth certificates.[35] Crucially, although the statute "on its face [did] not appear to create a class of petitioners that [was] treated differently, the [statute]…act[ed] to deny the rights created under the statute" to California-born transgendered individuals who lived out-of-state.[36]

Indeed, when an equal protection challenge is premised on the infringement of a fundamental right rather than a suspect classification, the law at issue is often facially neutral. In *Bullock v. Carter*, for example, the U.S. Supreme Court held that a law requiring all political candidates to pay election filing fees was unconstitutional under the federal equal protection clause, despite the fact that the statutory language at issue did not expressly distinguish between individuals or classify groups of individuals.[37] The *Bullock* court held that the filing fee requirement, the "initial and direct impact" of which was "felt by aspirants for office, rather than voters," nonetheless violated the equal protection rights of voters because it "tend[ed] to deny some voters the opportunity to vote for a candidate of their choosing."[38] It would "ignore reality," the court held, to overlook the fact that the "limitation…[fell] more heavily on the less affluent segment of the community."[39]

Also, in *Gould*, the California Supreme Court was asked to "determine the constitutionality of an election procedure which automatically afford[ed] an incumbent, seeking reelection, a top position on the election ballot."[40] Even though the statute itself said nothing about voters, the court applied strict scrutiny and struck down the law because it "impose[d] a very real and appreciable impact on the equality, fairness and integrity of the electoral process," thereby infringing the equal protection rights of voters.[41] As the court explained, by providing "advantageous positions" to certain candidates, the election procedure "inevitably discriminate[d] against voters supporting all other candidates."[42]

The court in *Vergara* also recognized that the "real and appreciable impact" test does not require a showing by the plaintiffs that the challenged statutes are the sole cause, or even the "but for" cause, of the infringement on students' fundamental right to education. The court's ruling is premised on well-established precedent. The California Supreme Court clarified this very point in *Gould*:

> The city asserts that because its ballot placement procedure does not cause or encourage voters to cast their ballots haphazardly, it cannot be held constitutionally responsible for any resulting inequality in the voting procedure. This argument simply misconceives the nature of the equal protection guarantee….It is the unequal effect flowing from the city's decision to reserve the top ballot position for incumbents that gives rise to the equal protection issue in question in this case.[43]



In *Serrano*, the school financing statutes at issue did not cause districts to tax themselves at rates that produced disparities in educational opportunity—districts could, after all, select whatever tax rate they desired.[44] The court recognized, however, that "the system itself" imposed practical "limitations" on the ability of the districts to provide their students with equal educational opportunities.[45] Notwithstanding the nominal decisions that districts could make under the statutes, the court held that the "source of these disparities [was] unmistakable."[46] Relying on *Serrano*, the *Vergara* plaintiffs argued that the challenged statutes are facially unconstitutional because they "pose a present total and fatal conflict" with student rights, resulting in significant educational disparities.[47]

Disparate Impact

The *Vergara* court also accepted the argument of the plaintiffs that the challenged statutes required strict scrutiny review because of their disparate adverse impact on poor and minority students. The California Supreme Court repeatedly has held unconstitutional laws that have a disparate impact on the educational opportunities afforded to minority or low-income students because both race and wealth are suspect classifications under the California Constitution's equal protection guarantee.[48]

Disparate impact claims in California trigger strict scrutiny even when the text of the law does not expressly draw distinctions among students on the basis of race or wealth and even in the absence of evidence that the law was enacted (or is being applied) with the purpose or intent of harming minority or low-income students.[49] California law does not require a showing of discriminatory intent, provided there is a showing of disparate impact with respect to a fundamental right. In the words of the California Supreme Court, the California Constitution "demand[s] an analysis different from that which would obtain if only the federal standard were applicable."[50]

In the 1971 *Serrano* decision (*Serrano I*), the state argued that "no constitutional infirmity [was] involved because the complaint contain[ed] no allegation of purposeful or intentional discrimination."[51] The court explained that the "whole structure of this argument must fall for want of a solid foundation in law or logic" because, inter alia,

disparate impact is unconstitutional even when it is "merely de facto."[52] Accordingly, the court held that the plaintiffs properly asserted constitutional claims based on the "substantial disparities" resulting from the school financing scheme at issue.[53]

In *Serrano II*—the 1976 decision issued after *Washington v. Davis*[54]—the California Supreme Court affirmed its earlier holding.[55] As the court explained, "the fact that a majority of the United States Supreme Court ha[s] now chosen to contract the area of active and critical analysis under the strict scrutiny test for federal purposes can have no effect upon the existing construction and application afforded our own constitutional provisions."[56] In fact, the court pointed out that, even though the California Legislature had made "significant" and well-intentioned "improvements" to the state's school financing scheme following the *Serrano I* decision, the amended school financing system was still unconstitutional because of its disparate impact.[57]

Like *Serrano*, the *Vergara* plaintiffs proved harm by demonstrating the de facto disparate impact on students. Ruling that access to effective teachers is critical to a student's education, the court concluded that the challenged statutes—which ensure that California students will not have equal access to even minimally effective teachers—have a "real and appreciable impact" on the fundamental right to equal educational opportunity, and therefore that strict scrutiny applies.[58] The former superintendents of Los Angeles, Sacramento City, and Oakland school districts explained at trial that the focus of our education system must be on effective teaching that meets the needs of, and improves the lives of, the students. Moreover, they pointed out the various flaws in the challenged statues that thwart effective teaching, particularly for poor and minority students.

The court found that the challenged statutes lead to a well-documented phenomenon known colloquially as the dance of the lemons. Because dismissal is not a viable option, principals seeking to improve their schools try to transfer ineffective teachers to other schools within the district. The schools that bear the brunt of these transfers are the schools serving predominantly low-income students, which typically have more vacancies and families who are less likely to complain.

The *Vergara* plaintiffs relied on unrebutted data that bears out that in LAUSD African American and Latino students are 43 percent and 68 percent more likely, respectively, to be stuck with a teacher in the bottom 5 percent of effectiveness than are white students. Low-income students in LAUSD are nearly twice as likely to have an ineffective teacher than their more affluent peers. The CDE admitted the prevalence of this injustice in California: "[T]he most vulnerable students—those attending high-poverty, low-performing schools—are far more likely than their wealthier peers to attend schools having a disproportionate number of ineffective teachers."[59]

The existence of feasible alternatives is fatal under a strict scrutiny review.[60] The *Vergara* plaintiffs proved that with respect to the Permanent Employment Statute, California is one of only five states with a probationary period of two years or less.[61] Thirty-two states have three-year probationary periods, nine states have four- or five-year probationary periods, and four states have no tenure system.[62] The evidence also showed that, with respect to the statues pertaining to teacher dismissal, the California public school system itself provides feasible alternatives because the time and burden associated with dismissing nonteacher school employees is significantly less than dismissing a tenured teacher. LAUSD spends only $3,400 on average to dismiss a nonteacher employee, and the process takes "not much more than a month, month and a half."[63] With respect to the LIFO statute, California is one of only 10 states in which seniority must be considered in determining which teachers to lay off—20 states prohibit seniority from being the sole factor, and two states prohibit seniority from being considered.[64]

The *Vergara* defendants' due process argument also did not save the challenged statutes. The court ruled that striking down the challenged statutes does not impair the constitutional due process rights that teachers—like all other public employees in California—enjoy.[65] Teachers continue to have the rights to notice and an opportunity to be heard before being dismissed for cause.[66] The law still will prohibit districts from dismissing teachers for discriminatory reasons.[67] Also, teachers will not be dismissed for teaching controversial subjects like Islam or evolution, which are part of the state curriculum. In rejecting the due process argument, the court found that the statutes provide excessive and unnecessary protections that go far beyond the requirements of due process, placing teachers in a category all to themselves and harming students in the process.

Although stayed pending appeal, *Vergara* has already launched extensive public dialogue about the problems of excessive teacher protections,[68] sparked legislative initiatives to reform the California Education Code and related laws elsewhere,[69] and led to similar lawsuits being filed in other states.[70] U.S. Secretary of Education Arne Duncan described *Vergara* as "a mandate to fix these problems" and "an opportunity…to build a new framework for the teaching profession that protects students' rights to equal educational opportunities while providing teachers the support, respect and rewarding careers they deserve."[71] ■

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[1] Educ. Code §44929.21(b).
[2] Educ. Code §§44934, 44938(b)(1)-(2), and 44944.
[3] Educ. Code §44955.
[4] *A School Reform Landmark*, Wall St. J., June 10, 2014, http://www.wsj.com/articles/a-school-reform-landmark-1402442804; *see also*, *e.g.*, *A New Battle for Equal Education*, N.Y. Times, June 11, 2014, http://www.nytimes.com/2014/06/12/opinion/in-california-a-judge-takes-on-teacher-tenure.html.
[5] Serrano v. Priest, 5 Cal. 3d 584, 608-09 (1971) (Serrano I); *see also* Cal. Const. Art. I, §7; Art. IV, §16; Art. IX, §§1 & 5.
[6] Serrano v. Priest, 18 Cal. 3d 728, 767-68 (1976) (Serrano II); *see also* Serrano I, 5 Cal. 3d at 608-09.
[7] Serrano I, 5 Cal. 3d at 609; *see also* San Francisco Unified Sch. Dist. v. Johnson, 3 Cal. 3d 937, 950 (1971) ("Unequal education . . . leads to unequal job opportunities, disparate income, and handicapped ability to participate in the social, cultural, and political activity of our society.").
[8] Serrano I, 5 Cal. 3d at 607; *see also*, *e.g.*, Butt v. California, 4 Cal. 4th 668, 688 (1992).
[9] O'Connell v. Superior Ct., 141 Cal. App. 4th 1452, 1482 (2006); *see also* Serrano I, 5 Cal. 3d at 605-06.
[10] Butt, 4 Cal. 4th at 681.
[11] *See*, *e.g.*, Serrano II, 18 Cal. 3d at 776.
[12] *Id.* at 748.
[13] Butt, 4 Cal. 4th at 688; *id.* at 687 ("District students faced the sudden loss of the final six weeks, or almost one-fifth, of the standard school term . . . provided everywhere else in California.").
[14] Trial transcripts and exhibits are on file with the authors. Videos of most trial testimony and many trial exhibits are available at http://www.studentsmatter.org.
[15] Pls.' Ex. 327 at P0327-6.
[16] Pls.' Ex. 289 at P0289-3.
[17] Serrano v. Priest, 5 Cal. 3d 584, 597 (1971).
[18] Vergara v. California, No. BC484642 (L.A. Super. Ct.) (judgment Aug. 27, 2014), slip op. at 8.
[19] Butt v. California, 4 Cal. 4th 668, 685-86 (1992); *see also* Fair Political Practices Comm'n. v. Superior Ct. of L.A. County, 25 Cal. 3d 33, 47 (1979).
[20] Sakotas v. W.C.A.B., 80 Cal. App. 4th 262, 271 (2000); Serrano I, 5 Cal. 3d at 596-619.
[21] Butt, 4 Cal. 4th at 683.
[22] Fair Political Practices Comm'n , 25 Cal. 3d at 47; *see also* Neil S. v. Mary L., 199 Cal. App. 4th 240, 254 (2011).
[23] Serrano v. Priest, 5 Cal. 3d 584, 605 (1971).
[24] Butt, 4 Cal. 4th at 685-86.
[25] *See* Gould v. Grubb, 14 Cal. 3d 661, 669 n.9 (1975) ("It is the unequal effect flowing from the [challenged law] that gives rise to the equal protection issue in question"); In re Smith, 143 Cal. 368, 372 (1904) ("[C]ourts are not limited in their inquiry to those cases alone where such a situation is shown upon the reading of the statute. They will consider the circumstances in the light of existing conditions."); *see also* Griffin v. Illinois, 351 U.S. 12, 23 (1956) (Frankfurter, J., concurring) ("Law addresses itself to actualities. It does not face actuality to suggest that Illinois affords every convicted person, financially competent or not, the opportunity to take an appeal.").
[26] Butt, 4 Cal. 4th at 686.
[27] Educ. Code §44929.21(b).
[28] 2/29/14 Tr. at 4914:14-23 (testimony of F. Fekete); 3/18/13 Tr. at 8503:9-12 (testimony of L. Nichols).
[29] 3/21/14 Tr. at 9238:27–9240:4 (testimony of V. Ekchian).
[30] 2/3/14 Tr. at 2043:20–2045:15 (testimony of J. Raymond).

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[31] Serrano v. Priest, 5 Cal. 3d 584, 598 (1971); *see also id.* at 599-600 ("[A]s a statistical matter, the poorer districts are financially unable to raise their taxes high enough to match the educational offerings of wealthier districts.").
[32] *Id.* at 601.
[33] *Id.* at 606 (quoting Manjares v. Newton, 64 Cal. 2d 365, 376 (1966) (italics added); *see also* Parr v. Municipal Ct. for the Monterey-Carmel Jud. Dist. of Monterey County, 3 Cal. 3d 861, 865, 868 (1971) (refusing "to look exclusively to the operative language of the ordinance" because "we may not overlook its probable impact"); Mulkey v. Reitman, 64 Cal. 2d 529, 533-534 (1966), *aff'd sub nom.* Reitman v. Mulkey, 387 U.S. 369 (1967) ("A state enactment cannot be construed for purposes of constitutional analysis without concern for its…ultimate effect.").
[34] Somers v. Superior Court, 172 Cal. App. 4th 1407, 1411-12 (2009).
[35] *Id.* at 1414-16.
[36] *Id.* at 1414.
[37] Bullock v. Carter, 405 U.S. 134, 144-45 (1972).
[38] *Id.* at 142, 144.
[39] *Id.* at 144.
[40] Gould v. Grubb, 14 Cal. 3d 661, 664 (1975).
[41] *Id.* at 670.
[42] *Id.* at 664; *see also* Choudhry v. Free, 17 Cal. 3d 660, 664 (1976).
[43] Gould, 14 Cal. 3d at 669 n.9.
[44] Serrano v. Priest, 18 Cal. 3d 728, 742 (1976).
[45] *Id.* at 761; *see also* Fair Political Practices Comm'n v. Superior Ct. of L.A. County, 25 Cal. 3d 33, 46, 48 (applying strict scrutiny to a statutory provision that did "not directly limit or restrict the right to petition," but still constituted a "significant interference" with a constitutional right).
[46] Serrano II, 18 Cal. 3d at 740 (quoting Serrano v. Priest, 5 Cal. 3d 584, 594 (1971)).
[47] Tobe v. City of Santa Ana, 9 Cal. 4th 1069, 1084 (1995).
[48] *See*, *e.g.*, Coral Construction, Inc. v. City & County of S.F., 50 Cal. 4th 315, 332, 338 n.20 (2010); Serrano I, 5 Cal. 3d at 596-619.
[49] *Compare* Village of Arlington Heights v. Metro. Housing Dev. Corp., 429 U.S. 252, 265 (1977); Washington v. Davis, 426 U.S. 229, 242 (1976).
[50] Serrano II, 18 Cal. 3d at 764.
[51] Serrano I, 5 Cal. 3d at 600-01.
[52] *Id.* at 602-04 (citing Jackson v. Pasadena City Sch. Dist., 59 Cal. 2d 876, 881 (1963); San Francisco Unified Sch. Dist. v. Johnson, 3 Cal. 3d 937, 937 (1971).
[53] Serrano v. Priest, 5 Cal. 3d 584, 618 (1971); *see also* Butt, 4 Cal. 4th 668, 682 (1992) ("[U]nder California principles . . . the absence of purposeful conduct by the State [does] not prevent a finding that the State system for funding public education had produced unconstitutional results.") (citations omitted).
[54] The U.S. Supreme Court In *Washington* held that a facially neutral law does not violate the Equal Protection Clause of the federal Constitution "simply because it may affect a greater proportion of one race than of another." Washington, 426 U.S. at 242. Instead, a federal Equal Protection plaintiff must prove that a law was passed or is being implemented with a "racially discriminatory purpose." *Id.* at 240-41.
[55] *See* Serrano v. Priest, 18 Cal. 3d 728, 765-66 (1976).
[56] *Id.* at 765.
[57] *Id.* at 741, 768.
[58] Butt v. California, 4 Cal. 4th 668, 685-86 (1992); *see also* Fair Political Practices Comm'n. v. Superior Ct. of L.A. County, 25 Cal. 3d 33, 47 (1979).
[59] Pls.' Ex. 289 at P0289-5.
[60] Connerly v. State Personnel Bd., 92 Cal. App. 4th 16, 37 (2001).
[61] 2/19/14 Tr. at 4732:8–4733:3 (testimony of S. Jacobs).
[62] Pls.' Ex. 683 at P0683-3.
[63] 3/21/14 Tr. at 9244:20–9245:3 (testimony of V. Ekchian); 2/5/14 Tr. at 2622:15-19 (testimony of M. Douglas).
[64] 2/19/14 Tr. at 4742:16–4743:25 (testimony of S. Jacobs).
[65] *See* Skelly v. State Personnel Bd., 15 Cal. 3d 194, 215 (1975).
[66] *Id.*
[67] *See*, *e.g.*, GOV'T CODE §12940(a).
[68] *See*, *e.g.*, Merrill Balassone, *California voters reject tenure, layoff rules for public school teachers*, PACE, June 26, 2014, http://www.edpolicyinca.org/projects/calif-voters-reject-tenure-layoff-rules-public-school-teachers; Laurence H. Tribe, *Why progressives should defend 'Vergara v. California' ruling*, USA TODAY, Sept. 24, 2014, *available at* http:www.usatoday.com.
[69] *See*, *e.g.*, Sharon Bernstein, *California Republicans take on teachers' union in package of education bills*, REUTERS, Mar. 4, 2015, *available at* http://www.reuters.com; Paul Smith, *Proposed law would end seniority-based layoffs for teachers*, FOX NEWS (Harrisburg, PA), Mar. 17, 2015, *available at* http://fox43.com.
[70] *See* Davids v. New York, Index No. 101105-2014 (N.Y. Sup. Ct.); *see also* Michael Levenson, *Civil rights fight looms on charter schools cap*, BOSTON GLOBE, Mar. 8, 2015, *available at* http://www.bostonglobe.com.
[71] Press Release, U.S. Secretary of Education Arne Duncan, Statement from U.S. Secretary of Education Arne Duncan Regarding the Decision in Vergara v. California (June 10, 2014), *available at* http://www.ed.gov.