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Kenneth K. Lee  
Tel +1 213 239 5152  
klee@jenner.com

VIA HAND DELIVERY

The Honorable Tani Gorre Cantil-Sakauye, Chief Justice  
and Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102

Re: *Vergara, et al. v. California, et al.*, California Supreme Court Case No. S234741  
(Petition for Review Filed 5/25/16)

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Education Trust-West, Oakland Alliance of Black Educators, Los Angeles Urban League, and Black Alliance for Education Options (collectively, “Amici”) respectfully submit this letter asking the Court to grant review of the California Court of Appeal’s *Vergara v. California* decision.

With its decision, the Court of Appeal has validated a statutory scheme that systematically denies Black, Latino, and low-income students educational equality with their peers. Extensive empirical evidence presented at trial shows that the five statutes at issue in this case have the effect of disproportionately depriving low-income and minority students of years of learning time over their academic career. As the Superior Court rightly determined, these statutes violate the California Constitution and should not be permitted to stand. The Court of Appeal, however, disregarded the evidence presented at trial and substituted its own factual finding about the source of educational inequality.

**STATEMENT OF INTEREST OF AMICI CURIAE**

The California statutes challenged in this case have a profound and destructive effect on California’s low-income and minority youth. This case is of great interest to Amici because each organization is committed to securing equality of education and opportunity for California’s minority and low-income students.

The Education Trust–West is an Oakland-based statewide educational policy, research, and advocacy organization founded in 2001 that works for the high academic achievement of all California students at all levels, pre-K through college. Education Trust-West exposes

opportunity and achievement gaps that separate students of color and low-income students from other youth, and identifies and advocates for strategies that will close those gaps. Its research has led to changes in state law, and has made national and state headlines for exposing education inequities and identifying promising solutions.

The Oakland Alliance of Black Educators is an organization that is dedicated to ensuring educational access for all students, with a focus on access for the most vulnerable student populations. It issues policy briefs, endorses curriculums, and works to eliminate systemic inequities adversely impacting vulnerable students within local schools and districts. The Oakland Alliance of Black Educators is comprised of current and retired teachers, administrators, parents, and school support-staff; its members represent thousands of years of administrative and instructional service within Oakland's schools.

The Los Angeles Urban League is an organization dedicated to advancing equal opportunities on behalf of African-Americans and other minority youths and adults. The Los Angeles Urban League works to enable African-Americans and other minorities to secure economic self-reliance, parity, power, and civil rights through advocacy activities, neighborhood change initiatives, youth achievement programs, and the provision of various other services throughout Los Angeles. With a board of directors which includes business leaders, corporations, and committed individuals, the Los Angeles Urban League has been at the forefront of identifying and addressing issues that are of concern to African Americans and other minorities in Los Angeles and throughout the state of California.

The Black Alliance for Educational Options is a Black-led national education advocacy organization whose mission is to increase access to high quality education options for Black children by actively supporting transformational education reform initiatives and parental choice policies that empower low-income and working-class Black families. The Black Alliance for Educational Options is the preeminent national organization for Black people who support parental choice in education and who are unwavering in the belief that bold, decisive education reform programs are urgently needed to address the educational crisis that exists in our communities.

### **REASONS WHY REVIEW SHOULD BE GRANTED**

#### **1. The Court of Appeal Ignored Evidence of the Disproportionate Harm the Challenged Statutes Impose on Minority and Low-Income Students.**

The Court of Appeal's decision in *Vergara, et. al. v. California, et. al.* ignores the real-world consequences of California's teacher tenure, dismissal, and layoff statutes. Extensive empirical evidence supports the trial court's conclusion that, as a practical matter, the five challenged statutes impose severe and disproportionate harm on Black, Latino, and low-income students. The Court of Appeal disregarded the extensive evidence presented at trial, and instead jumped to its own improper factual conclusion that school district administrators are the cause of

the inequitable distribution of effective and ineffective teachers. This factual finding from the Court of Appeal is out of touch with the reality on the ground. The challenged statutes tie the hands of school district administrators and have the inevitable effect of denying Black, Latino, and low-income students educational equality with their peers. If these statutes are allowed to stand, California will be failing generations of disadvantaged students by depriving them of the resource they need most to lift themselves out of their situation – effective teachers.

The challenged statutes constrain administrators by maintaining grossly ineffective teachers that they would otherwise prefer to dismiss. This process begins when administrators are forced to make tenure decisions based on extremely limited data regarding teacher effectiveness, since administrators must decide whether or not to offer a teacher permanent employment after the teacher has performed on the job for just sixteen months.<sup>1</sup> California's permanent employment statute thereby increases the likelihood that ineffective teachers will be able to enter the system, and its guarantee of life-long employment offers teachers little incentive to improve their performance.

Next, California's dismissal statutes effectively guarantee that, once ineffective teachers are added to the payroll, they will remain there.<sup>2</sup> These statutes require administrators to comply with termination procedures so time-consuming and expensive that it is practically impossible for administrators to rid their district of ineffective teachers. To put this situation in perspective, superintendent Vivian Ekchian testified at trial that there are at least 350 grossly ineffective teachers in the Los Angeles Unified School District ("LAUSD") that the district would prefer to terminate.<sup>3</sup> Meanwhile, it has been reported that from 2000 to 2010, the LAUSD spent \$3.5 million trying to fire just *seven* teachers for poor classroom performance. Ultimately, only four of these teachers were fired, two were paid large settlements in exchange for their resignation, and one was reinstated.<sup>4</sup> Given this reality, administrators have no choice but to keep grossly ineffective teachers on their district's payroll.

As a result of California's dismissal statutes, ineffective teachers who have been the subject of complaints cannot be terminated as a practical matter, and instead end up filling vacant teaching positions in their district. This phenomenon – termed the "Dance of the Lemons" – results in ineffective teachers disproportionately teaching at schools serving minority and low-income populations. The magnitude of this disproportionate effect is staggering. Data prepared by Education Trust-West demonstrates that not only are low-income students and minority students *far less likely* to be taught by teachers in the highest quartile in terms of teacher effectiveness, but that they are also *far more likely* to be taught by the teachers in the lowest

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<sup>1</sup> CAL. EDUCATION CODE § 44929.21(b).

<sup>2</sup> CAL. EDUCATION CODE §§ 44934, 44938(b)(1) & (2), 44944.

<sup>3</sup> See 23 Reporter's Transcript ["RT"] 9239:23–9240:4.

<sup>4</sup> Beth Barrett, *LAUSD's Dance of the Lemons*, L.A. WEEKLY (Feb. 11, 2010), <http://www.laweekly.com/news/lausds-dance-of-the-lemons-2163764>.

quartile of teacher effectiveness. Education Trust-West's data reveals that a Latino or Black student in California is *over three times as likely* as a white or Asian student to be taught by a bottom-quartile English language arts ("ELA") teacher and nearly *twice as likely* to be taught by a bottom-quartile math teacher.<sup>5</sup> Conversely, a White or Asian student is more than *twice as likely* to be taught by a top-quartile ELA teacher and *75 percent more likely* to be taught by a top-quartile math teacher, as compared with Latino and Black students.<sup>6</sup> Meanwhile, a low-income student is *66 percent more likely* to have a teacher in the lowest quartile teacher as a higher income peer, who in turn, is *39 percent more likely* to have a math teacher in the highest quartile of teacher effectiveness.<sup>7</sup>

This inequitable distribution of effective and ineffective teachers is the *not* the result of discriminatory decisions made by district administrators, but rather because these schools inevitably have more vacant positions than those serving student populations that are wealthier and whiter.<sup>8</sup> Further, district administrators are effectively unable to remedy the status quo by transferring effective teachers to low-performing schools because, as explained at trial by former LAUSD superintendent Dr. John Deasy, school districts cannot "force a teacher to go where a teacher does not wish to go" because doing so results in teachers "aggressively" objecting and filing grievances against their districts.<sup>9</sup>

Moreover, California's "Last-In, First-Out" layoff policy further ties the hands of administrators and has the result of disproportionately destabilizing schools serving minority and low-income communities.<sup>10</sup> Under this statute, school administrators are required to make reductions in force through quality-blind layoffs determined based on order of reverse seniority. This policy forces administrators to make hiring and firing decisions they would never make if they were allowed to base their decisions on teacher effectiveness. Education Trust-West found that in 2009, 20 percent of the ELA and math teachers who lost their jobs were top-quartile teachers.<sup>11</sup> These effective teachers are an invaluable resource to the district, and in many cases may be the best hope for a disadvantaged student to advance academically. But under California's LIFO policy, these effective teachers were kicked out of the classroom while statewide more than 2,000 ELA teachers and more than 1,500 math teachers in the lowest

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<sup>5</sup> See EDUCATION TRUST-WEST, LEARNING DENIED: THE CASE FOR EQUITABLE ACCESS TO EFFECTIVE TEACHING IN CALIFORNIA'S LARGEST SCHOOL DISTRICT (2012) (See Pls.' Trial Ex. 137) at 9.

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

<sup>7</sup> See LEARNING DENIED, *supra* at 9.

<sup>8</sup> See 9 RT 2784:10–2785:11.

<sup>9</sup> 4 RT 919:11–920:3.

<sup>10</sup> CAL. EDUCATION CODE § 44955(d).

<sup>11</sup> See LEARNING DENIED, *supra* at 13.

quartile kept their jobs.<sup>12</sup>

Further, an inevitable result of this the “Last-In, First-Out” layoff policy is that teacher layoffs are heavily concentrated in schools serving predominantly low-income and minority students, because these schools have higher proportions of inexperienced teachers who are more likely to be laid off.<sup>13</sup> When Education Trust-West examined layoffs in three school districts and compared the layoff rates at the districts’ top-quintile and bottom-quintile schools in terms of poverty, the results showed the districts’ highest poverty schools were *65% more likely than the lowest poverty schools* to experience teacher layoffs.<sup>14</sup>

Collectively, the challenged statutes operate as a perfect storm in denying equal educational opportunities to low-income students and students of color. Together, they ensure that a glut of ineffective teachers will remain in California’s system, and they increase the likelihood that these ineffective teachers will be shuffled into classrooms with lower-income students and students of color who are most in need of effective teaching.

The harm that these statutes impose on low-income and minority students – which again, was ignored by the Court of Appeal – is not hypothetical or speculative. Data analyzed by Education Trust-West shows that the difference between being taught by an effective versus an ineffective teacher is dramatic. Education Trust-West found that when students who were graded at a “Basic” proficiency on 2009 California Standards Test then received instruction from a *bottom-quartile teacher* in 2010, only around 10 percent advanced to a higher proficiency level during that school year in both English language arts (ELA) and math, whereas 53 percent slid backward to a lower proficiency level in math and 36 percent slid backward in ELA.<sup>15</sup> But when students graded at “Basic” proficiency in 2009 were taught by a *top-quartile teacher* in 2010, 54 percent advanced a proficiency level in math and 42 percent did so in ELA, advancing at a rate 4 to 5 times higher than students taught by bottom-quartile teachers. Meanwhile, only around 10 percent of students taught by top-quartile teachers slid backward during the school year, at one fifth the rate of students taught by bottom-quartile teachers.

For this reason, being taught by either an effective or ineffective teacher can be a life-defining event for many of California’s Black, Latino, and low-income students. If they are taught by an effective teacher, these students could be propelled to overcome the academic achievement gap that exists between themselves and their white and higher-income peers. But they are less likely than their white and higher-income peers to have the resources and family

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<sup>12</sup> *Id.*

<sup>13</sup> EDUCATION TRUST-WEST, VICTIMS OF THE CHURN: THE DAMAGING IMPACT OF CALIFORNIA’S TEACHER LAYOFF POLICIES ON SCHOOLS, STUDENTS, AND COMMUNITIES IN THREE LARGE SCHOOL DISTRICTS (2011) (*See* Pls.’ Trial Ex. 136) at 5.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *See* LEARNING DENIED, *supra* at 7.

supervision to overcome the effects of being taught by a grossly ineffective teacher. As explained by Kareem Weaver, a longtime principal and educator in Oakland public schools, “a high quality teacher” is a “trajectory changing event” for low income and minority students that dictates “how [they] are going to engage in learning for the rest of [their] academic career[s].”<sup>16</sup> Noting the precariousness of these students’ situations, Mr. Weaver “likened] it to standing on a razor’s edge.”<sup>17</sup>

### CONCLUSION

California’s Black, Latino, and low-income students are a vulnerable population in desperate need of effective teachers, and less-equipped to overcome the negative effects of grossly ineffective teachers as compared to their white and higher-income peers. Instead of addressing the needs of this population, the current statutory regime systematically denies these students equal access to effective teachers, and disproportionately subjects them to ineffective teachers. As the trial court rightly determined, this statutory scheme offends the California Constitution by imposing severe and disproportionate harm on low-income and minority students. The Court of Appeal’s factual finding to the contrary ignores the real-world consequences of these statutes. Local school district administrators are not to blame for the inequitable distribution of effective and ineffective teachers across racial and socioeconomic lines. The reality is that these administrators are powerless to alter the inevitable effects of the challenged statutes – which unavoidably trap in the school system grossly ineffective teachers that disproportionately teach California’s Black, Latino, and low-income students.

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**JENNER & BLOCK LLP**

Kenneth K. Lee

L. David Russell

Andrew G. Sullivan

By 

Kenneth K. Lee

Attorneys for Amici Curiae

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<sup>16</sup> RT at 2923:17-21.

<sup>17</sup> *Id.*