

June 2, 2016

Honorable Tani Cantil-Sakauye
and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, California 94102

HORVITZ & LEVY LLP
15760 VENTURA BOULEVARD
18TH FLOOR
ENCINO, CALIFORNIA 91436-3000
T 818 995 0800
F 818 995 3157
WWW.HORVITZLEVY.COM

Re: *Vergara v. State of California*
California Supreme Court Case No. S234741
Amici Curiae Letter in Support of Petition for Review

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rules of Court, rule 8.500(g), we write in support of the petition for review in this case on behalf of the following amici curiae: the California Chamber of Commerce, the Foundation for Excellence in Education, the Silicon Valley Leadership Group, the Orange County Business Council, and the Valley Industry & Commerce Association.¹

Description of Amici

Amici represent a wide range of voices in the California business community, and are invested in ensuring development of a local workforce prepared to meet the needs and challenges of the world economy in the 21st century.

The California Chamber of Commerce (CalChamber) is a nonprofit business association with over 13,000 members, both individual and corporate, representing virtually every economic interest in the state of California. For over 100 years, CalChamber has been the voice of California business. While CalChamber represents several of the largest corporations in California, 75 percent of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the state's economic and jobs climate by representing business on a broad range of

¹ No counsel for a party wrote this letter in whole or in part, and no counsel for a party or party made a monetary contribution intended to fund the preparation or submission of this letter. No person other than the amici curiae, their members, or their counsel made a monetary contribution to fund the preparation or submission of this letter.

Hon. Tani Cantil-Sakauye
and Associate Justices
California Supreme Court
Vergara v. State of California
June 2, 2016
Page 2

legislative, regulatory, and legal issues. CalChamber often advocates before federal and state courts by filing amicus curiae briefs and letters in cases, like this one, involving issues of paramount concern to the business community.

The Foundation for Excellence in Education was established to help reverse the declining competitiveness of American students in the global economy. The 21st century economy is the most competitive in world history and requires a growing number of educated and skilled workers. Yet, on international assessments, American students rank 21st in science and 27th in math, behind their peers in countries like Singapore, Japan and Canada. The Foundation believes our states' leaders, educators, parents, and students are ready and able to reverse the trend of declining competitiveness and achieve the goal of returning America to its dominant role.

The Silicon Valley Leadership Group (Leadership Group) is a public policy business trade organization that was founded in 1978 by David Packard of Hewlett-Packard and represents more than 390 of Silicon Valley's most respected employers on issues, programs, and campaigns that affect the economic health and quality of life in Silicon Valley. The Leadership Group members collectively provide nearly one of every three private sector jobs in Silicon Valley and contribute more than \$3 trillion to the worldwide economy. One of the Leadership Group's core missions is to promote and champion quality public education through partnerships with local, state, and federal decision makers, to ensure that the educational system in California and Silicon Valley fosters academic excellence and high quality instruction, while producing world-class graduates, particularly armed with 21st century skills. The Leadership Group's Education Policy Team initiates outreach and advocacy to inform internal and external stakeholders and policymakers that a desirable, accessible, and affordable education system ensures Silicon Valley and California can remain competitive in the innovation economy.

For more than 120 years, Orange County Business Council (OCBC), through its predecessor organizations, has served as a nonpartisan association of business members, working with government and academia, to enhance economic prosperity while maintaining a high quality of life for America's sixth largest county. OCBC's members employ over 250,000 people in the Southern California region, and over two million people worldwide. Members of OCBC find it increasingly difficult to secure well-educated, basic-skilled California workers to fill jobs at every level. To help address this problem, OCBC focuses on four core initiatives: (1) enhancing the state's

Hon. Tani Cantil-Sakauye
and Associate Justices
California Supreme Court
Vergara v. State of California
June 2, 2016
Page 3

infrastructure; (2) preparing a workforce for a 21st century global economy; (3) assuring housing is available for that workforce; and (4) promoting economic development for California, including the attraction and retention of business and well-paying jobs in a high cost-of-living state.

The Valley Industry & Commerce Association (VICA) is a leading business advocacy organization in Southern California's San Fernando Valley. VICA is committed to ensuring access to quality education, which plays an important role in preparing the greater San Fernando Valley's workforce for the 21st century economy.

Why Review Should Be Granted

The trial court found, based on "compelling" evidence taken during a 10-week trial, that the combined effect of Education Code sections 44929.21, subdivision (b); 44934; 44938, subdivision (b); 44944; and 44955 is to disproportionately deprive low-income and minority students of equal access to effective teachers. In other words, the overwhelming evidence, as the trial court found, is that the statutes deny low-income and minority students equal access to the most important education resource our schools provide. The trial court thus enjoined those statutes because they violate the fundamental constitutional right to equal educational opportunity of our state's most vulnerable populations of students.

In reversing the trial court, the Court of Appeal shortchanged our state's low income and minority students. The Court of Appeal did not defer to the trial court's factual findings. Instead, the Court of Appeal concluded in the first instance, by selectively pointing to evidence in the record not credited by the actual trier of fact, that the unfair distribution of qualified teachers is somehow caused by administrators. In so holding, the Court of Appeal ignored the trial court's factual finding that *the statutes* drive those administrative actions. As the trial court found, the statutes effectively force administrators to retain grossly ineffective teachers and to allow those teachers to accumulate in schools where the students are *most* in need of the *best* teachers. As long as these statutes continue to tie the hands of administrators, our state's students will continue to suffer.

Hon. Tani Cantil-Sakauye
and Associate Justices
California Supreme Court
Vergara v. State of California
June 2, 2016
Page 4

Whether the challenged statutes should be enjoined in light of the trial court’s factual findings that they cause unequal educational opportunity is an issue of great statewide importance. Indeed, nothing could be more significant than the educational future of millions of California’s students. As the highest courts of our state and nation have long recognized, “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.” (*Brown v. Board of Education of Topeka* (1955) 347 U.S. 483, 493 [74 S.Ct. 686, 691, 98 L. Ed. 873]; accord, *Serrano v. Priest* (1971) 5 Cal.3d 584, 609 [education is “essential” in “preserving an individual’s opportunity to compete successfully in the economic marketplace”].)

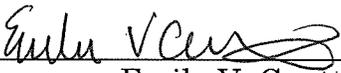
Moreover, this significant constitutional question concerning equal educational opportunities also impacts California’s vital economic interests. Specifically, California is one of the top 10 largest economies in the world, and depends on continuing access to a well-educated workforce to maintain that status. Preparing California’s workforce for the 21st century requires increasing the educational achievement of all California’s children, but most importantly, low-income and minority children, who provide the diversity of experience our globalized economy needs and are the largest source of under-utilized human capital in the state. When the Court of Appeal disregarded the trial court’s findings that the challenged statutes effectively preclude equal educational advancement of low-income and minority children, it acquiesced to a system that unduly undermines the chances for California’s long-term economic prosperity.

Hon. Tani Cantil-Sakauye
and Associate Justices
California Supreme Court
Vergara v. State of California
June 2, 2016
Page 5

Although this case raises issues of policy, because of “the unique importance of public education in California’s constitutional scheme” (*Butt v. State of California* (1992) 4 Cal.4th 668, 683), and the relative lack of political power wielded by students, who cannot vote, *the courts* play an important role in ensuring that state actions affecting education protect students’ rights to equal educational opportunity. This Court should grant review to weigh in on the critical issues presented by this case.

Respectfully submitted,

HORVITZ & LEVY LLP
JEREMY B. ROSEN
ROBERT H. WRIGHT
EMILY V. CUATTO

By: 
Emily V. Cuatto

Attorneys for Amici Curiae
**CALIFORNIA CHAMBER OF COMMERCE;
FOUNDATION FOR EXCELLENCE IN
EDUCATION; SILICON VALLEY
LEADERSHIP GROUP; ORANGE COUNTY
BUSINESS COUNCIL; AND VALLEY
INDUSTRY & COMMERCE ASSOCIATION**

cc: See attached Proof of Service

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.

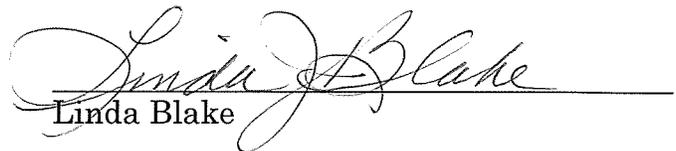
On June 2, 2016, I served true copies of the following document(s) described as **LETTER REQUESTING PUBLICATION OF COURT OF APPEAL OPINION** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 2, 2016, at Encino, California.


Linda Blake

SERVICE LIST

Beatriz Vergara v. State of California et al.

Court of Appeal No. B258589

| Counsel | Party(s) Represented |
|--|--|
| Theodore J. Boutrous Theano E. Kapur Enrique A. Monagas GIBSON DUNN & CRUTCHER LLP 333 South Grand Avenue Los Angeles, CA 90071 | Plaintiffs and Respondents <i>Beatriz Vergara et al.</i> |
| Theodore B. Olson GIBSON, DUNN & CRUTCHER LLP 1050 Connecticut Avenue, N.W. Washington, D.C. 20036 | Plaintiffs and Respondents <i>Beatriz Vergara et al.</i> |
| Joshua S. Lipshutz Kevin J. Ring-Dowell GIBSON, DUNN & CRUTCHER LLP 555 Mission Street San Francisco, CA 94105 | Plaintiffs and Respondents <i>Beatriz Vergara et al.</i> |
| Susan Marie Carson Nimrod Pitsker Elias OFFICE OF THE ATTORNEY GENERAL 455 Golden Gate Ave 11th Floor San Francisco, CA 94102 | Defendants and Appellants <i>State of California, Superintendent of Public Instruction, California Department of Education, State Board of Education, Edmund G. Brown, Jr. Governor</i> |
| Glenn Rothner ROTHNER, SEGALL & GREENSTONE 510 South Marengo Avenue Pasadena, CA 91101 | Intervenors and Appellants <i>California Teachers Association, California Federation of Teachers</i> |
| Eileen Beth Goldsmith Michael Rubin Stacey Monica Leyton Patrick Casey Pitts ALTSHULER BERZON LLP 177 Post Street, Suite 300 San Francisco, CA 94108 | Intervenors and Appellants <i>California Teachers Association, California Federation of Teachers</i> |

| | |
|--|---------------------------------|
| <p>Clerk to Honorable Rolf M. Treu Los Angeles County Superior Court 111 North Hill Street, Dept. 58 Los Angeles, CA 90012</p> | <p>[LASC Case No. BC484642]</p> |
| <p>Clerk Court of Appeal Second District, Division Two 300 South Spring Street, 2nd Flr. Los Angeles, CA 90013</p> | <p>[COA No. B258589]</p> |