

June 9, 2016

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

Re: ***Vergara v. State of California***
California Supreme Court Case No. S234741
Amicus 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), I urge the Court to grant review in this case.

Interest of Amicus

I write both as a product of public education and as a civil rights lawyer committed to improving public school education for all students regardless of economic or social circumstances.

I attended public junior high school and high school in California, and both of my parents were public school teachers in California. I am also a longtime Board Member of StudentsFirstNY, a nonprofit dedicated to New York students who depend on public education for the skills they need to succeed, but who are too often failed by a system that puts special interests first. And I recently became the Chairman of the Partnership for Educational Justice, a group dedicated to improving public education for New York students in low-income communities through coalition building and legal action.

Particularly given California's history as a trailblazer on important issues in education and civil rights law, this Court's decision in *Vergara* will have profound implications for students' rights across the country, including New York, which faces many of the same challenges at issue here.¹ *Vergara* has brought these and other

¹ See *Wright et al. v. New York et al.*, consolidated with *Dauids et al. v. New York et al.*, Index No. 101105/14 (N.Y. Sup. Ct.).

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critical issues to the forefront of the national debate on education reform and the role of education in constitutional litigation.

Why Review Should Be Granted

Sixty years ago, we stopped segregating our schools based on race. (See *Brown v. Board of Ed. of Topeka* (1954) 347 U.S. 483.) After cataloguing education’s critical role in breaking down barriers and enabling personal and professional success, the United States Supreme Court made clear that education, “where the state has undertaken to provide it, is a right which must be made available to all on equal terms.” (*Id.* at p. 494.) In the years since *Brown* was decided, education has become even more essential to the “foundation of good citizenship.” (*Ibid.*) Education is the best hope we have to give every child—regardless of race or socioeconomic background—a chance at the American dream. But just as equal access to education can level the playing field, unequal access to education can perpetuate inequality for generations. Indeed, in today’s global economy, “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.” (*Ibid.*)

Unfortunately, despite *Brown*’s historic significance, education is not currently “available to all on equal terms.” We are still effectively segregating our schools based on economics, which has the same corrosive effect of destroying opportunity as racial segregation. Without an adequate education, low-income students lose the opportunity to thrive and our nation’s ability to compete in a global economy is diminished.

For too many low-income and minority students in California, the right to educational opportunity is elusive, in part because of the laws being challenged in this case. Studies show that the single most important school-based factor for determining a child’s success is the quality of his or her teachers. Yet California’s laws governing teacher tenure, dismissal, and layoffs ensure that school districts’ employment decisions are quality-blind. The laws force districts to make tenure decisions prematurely, make it nearly impossible to dismiss incompetent teachers (even those who have engaged in misconduct), and forbid districts from considering teacher quality during layoffs. These laws make no sense, they harm students and teachers alike, and they contravene what should be the guiding principle of all education-related laws: putting the needs of children first.

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Vergara is not an anti-teacher lawsuit; if it were, I would not support it. On the contrary, *Vergara* recognizes that teachers hold the key to providing low-income and minority students with the opportunities they need to succeed and ensuring that such students are not left behind their wealthier peers. Indeed, teaching is one of the most important professions in this country, and excellent teachers ought to be rewarded. But ineffective teachers must not be protected from dismissal at the expense of the children whose lives they are supposed to enrich.

In 1971, this Court intervened under similarly dire circumstances to invalidate California's school finance scheme. (See *Serrano v. Priest* (1971) 5 Cal.3d 584, 605 (*Serrano I*.) *Serrano* recognized that education is "the lifeline of both the individual and the society" because it is "a major determinant of an individual's chances for economic and social success in our competitive society" and "a unique influence on a child's development as a citizen and his participation in political and community life." (*Ibid.*) Accordingly, the Court held that education's "distinctive and priceless function" "compels . . . treating it as a 'fundamental interest.'" (*Id.* at pp. 608-609.) Five years later, after the U.S. Supreme Court found the right to education absent from the federal Constitution (see *San Antonio Independent School District v. Rodriguez* (1973) 411 U.S. 1), this Court had the courage to reaffirm the fundamental right to equality of educational opportunity under the California Constitution. (See *Serrano v. Priest* (1976) 18 Cal.3d 728, 266 (*Serrano II*.)

By adhering to this bold commitment and recognizing education as a basic civil right, this Court paved the way for other States to adopt similar holdings. (See, e.g., *Helena Elementary Sch. Dist. No. 1 v. State* (Mont. 1989) 769 P.2d 684, 690-691 [holding that Montana's school finance scheme "failed to provide a system of public education granting to each student the equality of educational opportunity guaranteed under" the state constitution]; *Edgewood Ind. Sch. Dist. v. Kirby* (Tex. 1989) 777 S.W.2d 391, 397 [same in Texas]; *Rose v. Council for Better Ed., Inc.* (Ky. 1989) 790 S.W.2d 186, 206 ["recogniz[ing] that education is a fundamental right in Kentucky"]; *DuPree v. Alma Sch. Dist. No. 30* (Ark. 1983) 651 S.W.2d 90, 91 [same in Arkansas]; *Washakie Cnty. Sch. Dist. No. One v. Herschler* (Wyo. 1980) 606 P.2d 310, 315 [same in Wyoming]; *Pauley v. Kelley* (W. Va. 1979) 255 S.E.2d 859, 863 [same in West Virginia]; *Horton v. Meskill* (Conn. 1977) 376 A.2d 359, 375 [holding that Connecticut's school-finance system violated the state's equal protection clause].) Without this Court's leadership on the issue, it is doubtful so many States would have reached this conclusion.

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The *Vergara* case presents this Court with an important opportunity to reaffirm *Serrano* and reassert California's bold leadership among the States in the fields of education and civil rights. Just as the laws in *Serrano* "invidiously discriminate[d] against the poor because [they] ma[de] the quality of a child's education a function of the wealth of his parents and neighbors" (*Serrano I, supra*, 5 Cal.3d at p. 589), the laws at issue in *Vergara* also discriminate against the poor by making the quality of a child's teachers a function of the wealth of his parents and neighbors. By refusing to apply *any* form of equal protection scrutiny to the laws—let alone strict scrutiny—the Court of Appeal broke sharply from the groundbreaking decisions of this Court.

The decision below reflects a flawed and disappointing retreat from this Court's historic commitment to educational opportunity, and deprives the rest of the country of California's bold leadership on this critical issue. I urge this Court to grant review.

Respectfully submitted,

By: 

David Boies

cc: See attached Proof of Service

PROOF OF SERVICE

On June 9, 2016, I served the foregoing document described as:

AMICUS CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW

to each of the persons named below at the address(es) shown, in the manner described below:

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- BY OVERNIGHT DELIVERY:** I enclosed a true copy of the document in an envelope provided by an overnight delivery carrier and addressed to the persons at the addresses above. I placed the envelope for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 9, 2016.



Linda Carlsen