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June 1, 2016

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

Re: **Amici Curiae in Support of Petition for Review**
Vergara v. California
Case No. S234741
Court of Appeal Decision Filed April 14, 2016
Petition for Review Filed May 24, 2016

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rules of Court, Rule 8.500(g), the National Council on Teacher Quality (“NCTQ”) and The New Teacher Project (“TNTP”) (collectively, “*Amici*”) respectfully submit this letter urging the Court to grant review in the above-entitled case.

This Court has long recognized the unique and critical importance of education and the duty of the courts of California to “unsympathetically examine any action of a public body which has the effect of depriving children of the opportunity to obtain an education.” *Serrano v. Priest* (1971) 5 Cal.3d 584, 606. The Court of Appeal in this case effectively abdicated that duty, concluding that it was powerless to strike down statutes that the trial court found disproportionately expose poor and minority students to grossly ineffective teachers. *Amici* write to highlight the decision’s adverse impact on California’s children, particularly its poor and minority children, as well as the social, economic, and political fabric of the State as a whole.

Interest of Amici

NCTQ is a nonpartisan research and policy organization led by the vision that every child deserves effective teachers. NCTQ recognizes that it is not teachers who bear responsibility for their profession’s many challenges, but the institutions with the greatest authority and influence over teachers. To that end, NCTQ works to achieve fundamental changes in the policies and practices of teacher preparation programs, school districts, state governments, and teachers unions. NCTQ advocates for reforms at the federal, state and local levels. NCTQ’s Board of Directors and Advisory Board are composed of Democrats, Republicans and Independents, all of whom believe that policy changes are overdue in the recruitment and retention of teachers.

TNTP is a national nonprofit organization committed to ending the injustice of educational inequality by providing excellent teachers to the students who need them most and by advancing policies and practices that ensure effective teaching in every classroom. In partnership with schools, districts, and states, TNTP works in more than 30 cities, including most of the nation's largest school districts. TNTP has trained over 34,000 new teachers for high-need schools and subjects. TNTP's designs have influenced evaluation systems reaching 15 percent of U.S. teachers, and TNTP's career and compensation pathway work benefited 113,000 teachers in 2013.

Reasons Why Review Should be Granted

In recognizing education as a fundamental interest protected by the California Constitution, this Court described the "indispensable role which education plays in the modern industrial state." *Serrano, supra*, 5 Cal.3d 584, 605. "[E]ducation is a major determinant of an individual's chances for economic and social success in our competitive society [and] is a unique influence on a child's development as a citizen and his participation in political and community life." *Id.* "[U]nequal education, then, leads to unequal job opportunities, disparate income, and handicapped ability to participate in the social, cultural, and political activity of our society." *Id.* at 606 (internal quotations omitted).

Effective teachers are crucial to effective education, and a grossly ineffective teacher can reap harm on a young child's educational and life prospects. *See Vergara v. California* (2016) 246 Cal. App. 4th 619, 632-33 ["Opn."] ("At trial, plaintiffs elicited testimony from numerous witnesses who agreed that effective teachers are vital to a child's education. . . . Furthermore, although a host of factors, including child poverty and safety, affect student achievement, teachers nevertheless have a highly important and significant impact on student learning."); *id.* at 633 ("Numerous other witnesses testified that highly ineffective teachers impede a child's access to a reasonable education.")¹

Nowhere is the damage better illustrated than in the early years of schooling when teachers are charged with one of the most important jobs they have: teaching children how to read. A child is utterly dependent on schooling for reading instruction, as it involves a complicated set of skills most parents are generally not able to fulfill. Even just one poorly-trained, ineffective first grade

¹ See also Raj Chetty, John N. Friedman, and Jonah E. Rockoff, *Measuring The Impacts of Teachers II: Teacher Value-Added and Student Outcomes in Adulthood*, 104(9) AMERICAN ECONOMIC REVIEW 2633, 2633-34 (2014) (finding that students assigned to an effective teacher are more likely to attend college and higher-ranked colleges, earn higher salaries, save more for retirement, and less likely to have children as teenagers, in study examining the school data of 2.5 million children in grades 3-8 linked to tax records over 20 years); TNTP, THE IRREPLACEABLES 2 (2012), http://tntp.org/assets/documents/TNTP_Irreplaceables_2012.pdf (concluding that districts' high-performing teachers generated 5-6 months more student learning than their poor performing peers, in study of 90,000 teachers across four large, urban school districts and the learning estimates of their students).

teacher can derail a child's educational progress.² For children unlucky enough to then be assigned to a second and third grade teacher equally incapable, the damage is essentially irreversible. A child who is not reading by fourth grade is far less likely to graduate from high school.³

Lack of literacy bars adults from acting as responsible public citizens. Adults who cannot read fluently face a litany of problems such as: filling in an order or application form; using a bus schedule; understanding written jury instructions; comparing and contrasting two types of employee benefits; interpreting instructions from an appliance warranty; writing a brief letter explaining an error made on a credit card bill; analyzing a table comparing different types of credit cards; or calculating the yearly amount a couple would receive for basic supplemental social security income, based on an eligibility table.⁴ People with the lowest levels of literacy are not able to "locate information in text, to make low-level inferences using printed materials, [or] to integrate easily identifiable pieces of information."⁵

Low student achievement has lifelong earnings costs. *See* Opn. at 633 ("According to [Raj] Chetty, highly ineffective teachers, which he defined as the worst 5 percent of teachers (based on value-added measurements), had long-term negative impacts. He estimated that the lifetime aggregate earnings of a classroom of students taught for one year by a highly ineffective teacher was \$1.4 million less than a classroom taught by an average teacher."). Based on Chetty's

² *See* Joseph K. Torgesen, *Avoiding the Devastating Downward Spiral: The Evidence That Early Intervention Prevents Reading Failure*, AMERICAN EDUCATOR (Fall 2004), <http://www.aft.org/periodical/american-educator/fall-2004/avoiding-devastating-downward-spiral> (describing "the very sobering fact obtained from several longitudinal studies" that "[c]hildren who are poor readers at the end of first grade almost never acquire average-level reading skills by the end of elementary school"). Children in kindergarten and first grade weak in critical phonological skills have trouble decoding unknown words, which spirals quickly as it becomes more difficult for words to become sight words, delayed reading skills impede vocabulary growth, and lack of vocabulary prevents comprehension. *See id.*; Joseph K. Torgesen, *Catch Them Before They Fall: Identification and Assessment to Prevent Reading Failure in Young Children*, AMERICAN EDUCATOR (Spring/Summer 1998), <http://www.aft.org/sites/default/files/periodicals/torgesen.pdf> (describing how "the consequences of a slow start in reading become monumental as they accumulate exponentially over time").

³ *See* Donald J. Hernandez, *Double Jeopardy: How Third-Grade Reading Skills and Poverty Influence High School Graduation*, THE ANNIE E. CASEY FOUNDATION 4 (2012), <http://www.aecf.org/m/resourcedoc/AECF-DoubleJeopardy-2012-Full.pdf>.

⁴ *See National Assessment of Adult Literacy*, NATIONAL CENTER FOR EDUCATION STATISTICS (2003), https://nces.ed.gov/naal/fr_tasks.asp; Irwin S. Kirsch et al., *Adult Literacy in America: A First Look at the Findings of the National Adult Literacy Survey*, NATIONAL CENTER FOR EDUCATION STATISTICS 10 (April 2002), <https://nces.ed.gov/pubs93/93275.pdf>. There are three types of literacy, the lack of any or all of which make it difficult to successfully manage basic life functions: "Prose literacy — the knowledge and skills needed to understand and use information from texts that include editorials;" "Document literacy — the knowledge and skills required to locate and use information contained in materials that include job applications, payroll forms, transportation schedules, maps, tables, and graphs;" and "Quantitative literacy — the knowledge and skills required to apply arithmetic operations, either alone or sequentially, using numbers embedded in printed materials." Kirsch, *supra*, at 3-4.

⁵ *See id.* at xvi.

research, replacing a highly ineffective teacher with even an average teacher would increase students' lifetime earnings by over \$250,000.⁶

The impact of the statutes challenged in this case is not limited to the lives and futures of individual students. "Public education forms the basis of self-government and constitutes the very corner stone of republican institutions." *Hartzell v. Connell* (1984) 35 Cal.3d 899, 906-09 (internal quotations omitted). As this Court previously observed, "[w]ithout high quality education, the populace will lack the knowledge, self-confidence, and critical skills to evaluate independently the pronouncements of pundits and political leaders. Moreover, education provides more than intellectual skills; it also supplies the practical training and experience—from communicative skills to experience in group activities—necessary for full participation in the uninhibited, robust, and wide-open debate that is central to our democracy." *Id.* at 908 (internal quotations omitted).

Conclusion

Because the statutes challenged in this case impact the State of California's fundamental interest in ensuring that all children, including poor and minority children, have equal access to quality education, *Amici* urge the Court to grant the pending Petition for Review.

Sincerely,



Michelle B. Goodman
Peter D. Kauffman
SIDLEY AUSTIN LLP
Attorneys for *Amici Curiae*

cc: See attached proof of service

⁶ See Chetty, *supra*, at 2633.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 West Fifth Street, Suite 4000, Los Angeles, California 90013.

On June 1, 2016, I served the foregoing document(s) described as **AMICUS LETTER** on all interested parties in this action as follows:

Plaintiffs-Respondents

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Defendants-Appellants

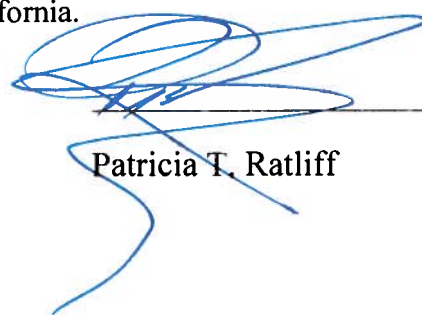
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Intervenors-Appellants

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(VIA U.S. MAIL) I served the foregoing document(s) by U.S. Mail, as follows: I placed true copies of the document(s) in a sealed envelope addressed to each interested party as shown above. I placed each such envelope with postage thereon fully prepaid, for collection and mailing at Sidley Austin LLP, Los Angeles, California. I am readily familiar with Sidley Austin LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 1, 2016, at Los Angeles, California.



Patricia T. Ratliff