



Written by [Bob Adelman](#) on June 12, 2014

## Teacher Tenure Laws Struck Down in California

The one thing the California teachers' unions wanted to avoid was a full-on public trial which would expose the dark underbelly of the system that for years has protected incompetent teachers with tenure. The ruling on Tuesday in *Vergara v. State of California* by Los Angeles Superior Court Judge Rolf Treu is their worst nightmare come true: All of the egregious laws protecting incompetents [were thrown out](#).



As the evidence in the four-week trial began to mount up, so did the judge's indignation. At issue were five rules affecting how school administrators managed their teachers: the "permanent employment" statute, three dismissal statutes, and the "LIFO" rule ("last in, first out," i.e., the last ones hired were the first ones fired in the event of layoffs).

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The permanent employment statute requires school superintendents to grant or withhold tenure within two years of employment. Treu pointed out, however, that "the California 'two year' statute is a misnomer to begin with." In fact, superintendents have less than 16 months to make that determination and with 275,000 teachers in the system, it's often easier to grant tenure than to take the time to determine whether tenure should be granted. Wrote the judge:

The Permanent Employment Statute does not provide nearly enough time for an informed decision to be made regarding ... tenure....

As a result, teachers are being [granted tenure] who would not have been had more time been provided for the process....

This court finds that both students and teachers are unfairly, unnecessarily, and for no legally cognizable reason (let alone a compelling one), disadvantaged by the current Permanent Employment Statute....

[This Court] finds the Permanent Employment statute unconstitutional under the equal protection clause of the Constitution of California.

The judge was equally harsh in his ruling on the dismissal statutes which effectively make it practically impossible for a school superintendent to fire an incompetent teacher once they have been granted tenure. Wrote Treu:

The evidence this Court heard was that it could take anywhere from two to almost ten years and cost \$50,000 to \$450,000 or more to bring these cases to conclusion under the Dismissal Statutes....

Given these facts, grossly ineffective teachers are being left in the classroom because school officials do not wish to go through the time and expense to investigate and prosecute these cases.

After hearing arguments from the defendants (the California Teachers Association and the California Federation of Teachers) that striking down this statute would impair the right to due process of both



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teachers and the school officials, Treu responded:

This Court heard no evidence that [the] dismissal process ... violated due process. Why, then, the need for the current tortuous process required by the Dismissal Statutes for teacher dismissals...?

This is particularly pertinent in light of evidence before the Court that teachers themselves do not want grossly ineffective colleagues in the classroom....

Based on the evidence before this Court, it finds the current system ... to be so complex, time consuming and expensive as to make an effective, efficient yet fair dismissal of a grossly ineffective teacher illusory. Thus the Court finds the Dismissal Statutes unconstitutional.

The judge reserved his most concentrated vitriol for the final rule working against competence in the classroom: last in, first out, or LIFO. The rule to fire the last hired makes no sense nor does it have any exception for competence, wrote the judge. He explained:

This statute contains no exception or waiver based on teacher effectiveness. The last-hired teacher is the statutorily-mandated first-fired ... when lay-offs occur....

The logic of this position is unfathomable....

[The Court] thus finds the LIFO statute unconstitutional.

Reporting of the court's decision by the media makes much of the judge's final comments, which indicate that the system somehow causes a greater concentration of those incompetent "ineffective" teachers to end up teaching in poor neighborhoods. However, the judge makes only passing reference to the "dance of the lemons" whereby the worst teachers often wind up in the worst schools which "greatly affects the stability of the learning process to the detriment of such students."

What the judge didn't do was question the matter of education being a constitutional "right." Instead he relied on *Brown v. Board of Education* and extended the Supreme Court's ruling there to apply implicitly in his present ruling:

In these days [the 1960s] 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.

The response to Judge Treu's ruling from some liberals and most union officials was predictable. Mark DeCambre, writing at Quartz, noted that the lawsuit, begun in March 2012 and funded largely by a Silicon Valley entrepreneur, David Welch, was "an all-out assault on teacher tenure" while others suspected "wealthy benefactors" and "special interests" of using their financial clout to "force their policy views on the state." One case in point was the whining over the decision by Dennis Van Roekel, president of the National Education Association, who vented:

Let's be clear: this lawsuit was never about helping students but is yet another attempt by millionaires and corporate special interests to undermine the teaching profession and push their own ideological agenda on public schools and students while working to privatize public education.

In his own defense of such canards, Welch himself explained why he was pouring millions of his own money into the effort:

Instead of demanding results and rewarding achievement, California's education system is tethered to a handful of statutes that refuse to distinguish between good teachers and bad. These laws encourage the retention of seriously underperforming teachers, require schools to tolerate failure



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among their teaching ranks, and devalue talented teachers. Put simply, these laws are destroying California's public education system, demoralizing the teaching profession, and robbing California's children of their future.

Some liberals, however, were supportive of the decision, including Rep. George Miller (D-Calif.), who said,

It is not only Californians who should celebrate today's decision, but families in every state and school district across the country...

Unfortunately, school districts nationwide have policies in place that mirror those challenged in Vergara....

This is simply indefensible. Today's ruling puts every school with similar policies on notice.

Once this ruling is made permanent by the judge in a couple of weeks, Welch and his cordon of attorneys will be filing similar suits in New York, Connecticut, Maryland, Oregon, New Mexico, Idaho, and Kansas, where powerful teacher unions have made legislative efforts to nullify teacher tenure rules come to naught. Said Theodore Boutros, the plaintiff's lead attorney: "This is going to be the beginning of a series of these lawsuits that could fix many of the problems in education systems nationwide."

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