



# Vergara v. California... How Did David Vanquish Goliath?



Gregory J. Rolan Esq. with Haight Brown & Bonesteel LLP

In a political story reminiscent of David and Goliath, 9 kids have taken on the most powerful labor union in the world and won! On June 10, 2014, in a decision that is being compared to *Brown v. Board of Education*, Los Angeles Superior Court Judge Rolf True found laws governing teacher tenure, retention, and dismissal unconstitutional. As if that wasn't shocking enough, the court's opinion made it sound as if the battle was not even close. However, much like in the actual struggle of David v. Goliath, close analysis reveals that things are not always as they seem.

Upon initial analysis, the plaintiffs in *Vergara v. State of California* appeared to face an uphill battle. Plaintiff's counsel sought to invalidate the very core of California law as related to the teaching profession. Not only are our teachers generally beloved, but they are also protected by one of the best funded and most politically savvy labor organizations known to mankind. The California Teachers Association ("CTA") has methodically gained political clout through well-placed contributions and a public relations and lobbying apparatus that has put in place statutory protections unfathomable to most professions. Teachers can achieve permanent status in less than 16 months and achieve tenure on seniority alone. Furthermore, the process for dismissing a teacher for poor performance is Kafkaesque at best and impossible at worst. Do you have protections like this at your job? Yet, political candidates backed by CTA are usually re-elected, while well-intentioned reformers from both parties are silenced. Meet Goliath. By contrast, plaintiffs appeared to be a disenfranchised group of minority students seeking extraordinary legal relief. Even Gov. Brown, a lifelong advocate for the underprivileged and unprotected appeared to be against them. Say hello to David.

So how did David defeat Goliath? Perhaps Goliath's advantages became its disadvantages. CTA's power is so vast, and teachers' protections so great, they became like Goliath's armor - heavy and outdated. Judge True's decision framed the issue as whether the challenged statutes affected students' educational experience. Or stated differently, was the students' fundamental right to equality and education adversely affected by the laws. His honor found that the permanent employee statute, the teacher dismissal statutes, and the teacher tenure statutes so fundamentally affected the educational experience so as to "shock the conscience." Courts generally reserve that language for the most egregious injustices. You decide for yourself.

Testimony elicited at trial demonstrated that a student assigned to a grossly ineffective math teacher loses 3 months of learning per year compared to a student assigned to an average teacher. Testimony demonstrated that a student assigned to a grossly ineffective English teacher loses 9.54 months of learning per year compared to an average teacher. A student assigned to a grossly ineffective teacher loses \$50,000 in potential lifetime earnings compared to a student assigned to an average teacher. Consequently, if only 3% of California's 275,000 teachers are ineffective and teach only 25 students per year, students lose \$11.6 billion in lifetime earnings. According to Dr. Thomas Kane, in Los Angeles African-American students are 43% more likely to be taught by a teacher in the bottom 5% of effectiveness. Latino students are 68% more likely to have a teacher in the bottom 5% of effectiveness.

According to testimony from multiple administrators, it costs between \$50,000 and \$400,000 to dismiss a teacher for poor performance. Furthermore, of the 275,000 teachers in California, 2.2 teachers were successfully dismissed for unsatisfactory performance per year on average, which amounts to .0008%. Finally, another expert, Dr. Chetty, testified that students would gain \$2.1 million in lifetime earnings if California used effectiveness-based layoffs instead of seniority-based layoffs. This looks like pretty strong evidence, was Goliath's power the source of his own undoing?

Conversely, did David's appearance mask the real advantages? As history has taught us, David was not just a small boy, but instead a master projectile warrior capable of slinging a stone 35 meters with great velocity. Similarly, plaintiffs were funded by Silicon Valley billionaires and corporate interests, and represented by one of the world's most respected law firms, Gibson Dunn and Crutcher. Finally, leaders from both parties including high profile Democrats have broken their traditional alliances with teachers unions over issues such as charter schools and standardized testing. Much like in ancient Palestine the terrain was right; Goliath gave him an opening, and David was able to take it.

Now what? This battle will move to the Court of Appeal and California Legislature. Eventually, it may move throughout the nation. Goliath underestimated David once, and maybe twice. It won't happen again.