



Vergara overturned, but teacher tenure conversation changed forever

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The same week a state appellate court overturned a lower court's ruling that barred teacher tenure, four families in Minnesota filed a similar lawsuit questioning the fairness of tenure laws and last in-first out policies.

“There’s no doubt though that [*Vergara v. California*] has already changed the conversation,” Andy Smarick, a partner at Bellwether Education Partners, told Watchdog.org. “People are now debating whether traditional tenure and LIFO rules are so unfair to students as to rise to the level of unconstitutionality. So the cases in New York, Minnesota, and possibly elsewhere will keep that discussion in the news, which is a major goal of the lawsuits’ proponents.”

But, Smarick noted, that’s a “preliminary victory. Eventually, those advancing these lawsuits, if they want to bring about real change, will have to win in a state supreme court or convince legislators to change existing statutes.”

Lance Izumi, Koret senior fellow and senior director of education studies at the Pacific Research Institute, said that until laws are changed, lawsuits will continue.

“*Vergara*-type lawsuits will undoubtedly pop up in other states, regardless of the ultimate resolution in California,” said Izumi. “The negative impact of tenure and seniority laws are too great, and the inertia of union-influenced legislative bodies is too overwhelming, for lawsuits not to occur.”

Vergara overturned

Theodore J. Boutros, Jr., lead counsel for the Vergara plaintiffs who were on the losing end in California’s Second District Court of Appeal, told reporters during a conference call Friday the case would be appealed to the state Supreme Court.

Boutros said the appeal needs to be filed by May 24; the high court then has at least 60 days to decide if it wants to accept the case.

“We took a hit yesterday but have dusted ourselves off and are ready to fight the next round,” said Boutros, adding that he woke up today thinking about the nine student plaintiffs he

represents. “We think we will win the third and final round because we know we are on the right side of this case and on the right side of history.”

Boutrous said the appellate court disregarded evidence presented to the lower court and misinterpreted the state’s laws regarding education and equal protection. Boutrous and Ben Austin, policy director of Students Matter, the group that brought the case, both said a legislative remedy is necessary regardless of what the courts decide.

“The courts or the legislature need to do something and stand up with courage,” said Boutrous. “We’re pushing for both paths.”

Raylene Monterroza, 18, one of the Vergara plaintiffs who graduated last year, said during the same conference call she watched her most inspiring teacher lose her job get replaced by an ineffective teacher because of “rules that don’t make sense to anyone.”

“The fight is not over and that gives me hope,” said Monterroza. “I believe change is going to come so long as we keep fighting.”

Minnesota case filed

On Thursday, four Minnesota families, backed by Partnership for Educational Justice and Students for Education Reform Minnesota, announced they were filing *Forsslund v. Minnesota*. The lawsuit challenges teacher tenure, dismissal and seniority-based layoff laws and is modeled after the *Vergara* case and a similar case in New York in which PEJ also supports the plaintiffs.

The case was brought by Tiffini Flynn Forsslund of Minneapolis, Justina Person of Eagan, Bonnie Dominguez of Duluth, and Roxanne Draughn of St. Paul. The plaintiffs claim Minnesota’s Continuing Contract Law and Tenure Act, including “last in, first out” layoff rules, denies their children the right to a “uniform” and “thorough” education as guaranteed by the state constitution. The families argue the existing laws protect ineffective teachers and prevent school leaders from being able to make employment decisions based on a teacher’s effectiveness in the classroom. In Minnesota, teachers can receive tenure after three years, which the plaintiffs say is not enough time to determine whether a teacher is effective.

“My daughter’s 5th grade teacher was outstanding. He engaged and inspired her to learn above and beyond any other teacher that any of my children have ever had,” Forsslund said in a press release. “I was devastated when I found out her teacher was laid off due to Minnesota’s seniority-based layoffs, realizing that my youngest child wouldn’t have the opportunity to learn from this teacher who’d made such a positive difference for so many children. I did everything I could: I wrote letters to the local papers, spoke with school administrators, testified before the legislature. They all just threw up their hands and said ‘this is just how the system works.’ I refuse to accept that Minnesota laws are denying our children an equal chance to have great teachers.”

Education advocates react

While teachers’ unions celebrated the overturning of *Vergara*, school choice advocates expressed deep disappointment.

“This appellate court decision is appalling given the shocking evidence and testimony presented at the trial,” said Izumi. “The trial court judge said that the evidence ‘shocked the conscience.’ Evidently, the appellate judges put their consciences in a jar on the shelf and sided with the teacher unions to put adults over children.”

But Izumi said the notoriety that the case has brought to teacher tenure laws and job protections is a good thing.

“Regardless of the ultimate court resolution of the *Vergara* case, the testimony at the trial level fundamentally changed how we view tenure, seniority and discipline laws,” said Izumi. “Reform will come, but the pace and the route is the question.”

Neal McCluskey, director of the Center for Educational Freedom at the Cato Institute, said the reversal on appeal was not surprising, but the filing of similar cases will most likely continue.

“While California statutes make it hard to remove bad teachers, and may tend to cause the worst teachers to be disproportionately assigned to schools serving low-income kids, district administrators could curb that if they really, really wanted to,” said McCluskey. “So technically, the law may not be unconstitutional. But to defend it, in reality, is to defend a system heavily slanted against low-income students.”

Larry Sand, a former teacher and head of the California Teachers Empowerment Network, said he is certain that *Vergara* or a similar case will eventually lead to change.

“There is no national tenure or LIFO law; these matters are determined by the states,” said Sand. “Parents and reformers across the country won’t give up until these policies are moderated or eradicated.”

Jonathan Butcher, education director at the Goldwater Institute, says he hopes *Vergara* and similar cases will lead to state lawmakers reconsidering hiring practices, including putting less emphasis on degrees from teaching colleges and advanced degrees in education.

In the end, reformers will have to win hearts and minds to change the system.

“Though I have no love for teacher tenure, especially as prescribed in California, this case was always a long shot,” said Michael J. Petrilli, president of the Thomas B. Fordham Institute. “The appeals court wasn’t wrong that local educators could be doing a lot more to ensure teacher quality within the confines of existing laws. The lesson for reformers . . . is that we can’t count on the courts winning our fights for us.”