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# Taking On Teacher Tenure Backfires

## California Ruling on Teacher Tenure Is Not Whole Picture

By JESSE ROTHSTEIN JUNE 12, 2014

BERKELEY, Calif. — In his decision on Tuesday to strike down California's teacher

union's protection from dismissal, the state's highest court ruled that laws

provide "a basically equal opportunity to achieve a quality education" and drew parallels with prior cases concerning school desegregation and funding levels.

But there is a difference between recognizing students' rights to integrated, well-funded schools and Judge Tran's conclusion that teacher employment protections are unconstitutional.

The issue is balance. Few would suggest that too much integration or too much desegregation is a bad thing. But there are trade-offs about firing teachers, and the state must balance the need to fire ineffective teachers, but also to attract and retain effective teachers.

Judge Tran's opinion in the case, *Vergara v. California* (in which I provided legal support for the defense), ignores these trade-offs. In fact, eliminating

schools, and may even make them worse.

With the passage of time, the role of teachers in the labor market has changed in recent decades. When new professions were open to highly skilled workers, schools could hire them for low salaries. Now, teaching must compete with other professions. That has made it hard to recruit the best candidates.

One study found that the share of the highest-achieving women who were teachers fell by half between 1964 and 2000; another found an 80 percent drop.

Thomas I. Kane, a professor of education at Harvard and an expert witness for the Vergara plaintiffs, co-wrote a paper in 2000 on the "willingness and a looming need in the initial hiring of teachers to consider" teaching. Significant layoffs during the last recession, which refilled the pool of job openings, partially alleviated the problem. But those will be absorbed quickly as education budgets recover.

One of the few things that helps to recruit good people into teaching is job security. That is

In a recent study, I examined the effects of changing job protections not just on the quality of teachers given tenure, but also on a district's ability to attract and

First, firing bad teachers actually makes it harder to recruit new teachers

higher salaries — but that in turn could force increases in class size that themselves

harm student achievement.

Second, while it might seem better to wait on granting tenure, early decisions — not in the first year, but soon after — actually improve student achievement. That's partly because stable faculties are better for students, but also because an attentive district knows a great deal about which teachers are good and bad after just two years, and waiting longer provides little additional information.

Finally, the freedom to fire experienced teachers is valuable only when dismissal rates are very high, say, 40 percent or more. And yet such rates come with costs: The risk of firing good teachers is high, and the impact on a school's culture is detrimental to learning.

But with lower dismissal rates, marginal teachers are much worse than the average new recruit, and it is more important to get rid of them quickly than to get the decision exactly right.

So what's the solution? You face a decision: once you've hired the worst 10 percent of teachers, do you decide early, realizing that you might make a

might be the next worst, do you decide early, realizing that you might make a

waiting outweigh the benefits, and you should do it soon. Tenure laws can usefully tie your hands, forcing you to do that.

In short, while the notion of “clearing the stables” of bad teachers seems attractive, it is almost impossible to get right in practice. No conceivable system can eliminate all “grossly ineffective” teachers, and efforts aimed at doing so can do more harm than good.

Everyone agrees that closing the achievement gap should be a high priority. But the remedy should fit the problem.

The lack of effective teachers in impoverished schools contributes to that gap.

Working in these schools is a hard job, and many teachers

quit. That leads to high turnover and

incentive to entrust them, whether they have tenure or not.

Instead, policy makers should continue experiments with bonuses to attract

good teachers, as well as ways to reduce the transfer of effective teachers out of

impoverished schools, the most needed

problem.

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