



11-1-2023

How an Amended Right to Education Could Meaningfully Improve California's Classrooms

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How an Amended Right to Education Could Meaningfully Improve California’s Classrooms

*Abigail Palmquist**

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I. INTRODUCTION

When Elizabeth and Beatriz Vergara testified before the Los Angeles Superior Court on February 11, 2014, they recounted experiences that would shock most of California’s public education stakeholders.¹ As a Los Angeles Unified School District (LAUSD) student, Beatriz witnessed teachers fall asleep on the job, tolerate classroom drug use, and make racially and sexually inappropriate comments.² Elizabeth testified to classroom environments where students talked on their phones, threw food, and did little learning.³

The *Vergara v. California* lawsuit commenced because of California’s Education Code provisions regarding teacher tenure and dismissal.⁴ The nine plaintiffs—including the Vergara sisters—alleged that the Code provisions keep ineffective teachers in schools serving primarily low-income and minority students.⁵ As a result, the plaintiffs argued the provisions violated their right to quality education under the California Constitution.⁶ Although the Second District Court of Appeal ultimately decided in favor of the State, the case raised an important question about the meaning of California’s right to education.⁷

The right to education in the California Constitution does not guarantee a right to any specific quality of education.⁸ Consequently, lawsuits arising from disparities in California’s public education system are often unsuccessful because

¹ Stephen Sawchuck, *Vergara Sisters Testify in Calif. Teacher-Protection Suit Bearing Their Name*, EDUC. WK. (Feb. 12, 2014), <https://www.edweek.org/teaching-learning/vergara-sisters-testify-in-calif-teacher-protection-suit-bearing-their-name/2014/02> (on file with the *University of the Pacific Law Review*); see also *Stakeholder*, GLOSSARY OF EDUC. REFORM (Sept. 25, 2014), <https://www.edglossary.org/stakeholder/> (on file with the *University of the Pacific Law Review*) (defining a stakeholder as “anyone who is invested in the welfare and success of a school and its students” such as parents, teachers, administrators, students, and community members).

² See *id.* (noting Beatriz’s teacher “told Latino students that ‘they would clean houses for a living’” and “referred to female students by names including ‘stick figure’ or ‘whore’”); see also Mark Harris, *Vergara Sisters Recall Teachers Who Inspired Them to Join Lawsuit*, L.A. SCH. REP. (Feb. 11, 2014), <https://www.laschoolreport.com/vergara-sisters-recall-teachers-who-inspired-them-to-join-lawsuit/> (on file with the *University of the Pacific Law Review*) (reporting the Vergara sisters attended Cesar Chavez Learning Academies in the Los Angeles Unified School District).

³ Harris, *supra* note 2 (“She testified she only read one book all year long.”).

⁴ See *id.* (explaining the statutes at issue governed “teacher seniority, tenure and dismissal”); *Tenure*, MERRIAM WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/tenure> (last visited Apr. 21, 2023) (on file with the *University of the Pacific Law Review*) (“[A] status granted after a trial period to a teacher that gives protection from summary dismissal.”).

⁵ *Id.*; *Vergara v. California*, 246 Cal. App. 4th 619, 627 (2016); *infra* Part II (describing the *Vergara* case).

⁶ Mark Harris, *Vergara Sisters Recall Teachers Who Inspired Them to Join Lawsuit*, L.A. SCH. REP. (Feb. 11, 2014), <https://www.laschoolreport.com/vergara-sisters-recall-teachers-who-inspired-them-to-join-lawsuit/> (on file with the *University of the Pacific Law Review*); *Vergara*, 246 Cal. App. 4th at 627; *infra* Part II (describing the *Vergara* case); CAL. EDUC. CODE § 44929.21(b) (West 1983); CAL. EDUC. CODE § 44934 (West 2015); CAL. EDUC. CODE § 44938(b)(1)–(2) (West 1996); CAL. EDUC. CODE § 44944 (West 2022); CAL. EDUC. CODE § 44955 (West 1983); *infra* Part II (describing plaintiffs’ argument in *Vergara* that California’s Education Code statutes governing teacher tenure and layoffs pushed ineffective teachers into schools with poorer and racially underrepresented students).

⁷ See *Vergara*, 246 Cal. App. 4th at 652 (reversing and remanding the findings of the Superior Court).

⁸ CAL. CONST. art. IX, § 1; CAL. CONST. art. IX, § 5; *Serrano v. Priest*, 5 Cal. 3d 584, 608–09 (1971) (“The distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a ‘fundamental interest.’”); *Campaign for Quality Educ. v. California*, 246 Cal. App. 4th 896, 914 (2016) (holding there is “no constitutional mandate to an education of a particular standard of achievement”).

plaintiffs cannot prove they have a right to quality education.⁹ California differs from a majority of states, both in its vague right to education and in the concerning state of its public education system.¹⁰ Many states define the substance of the right to education within the text of their constitution, but the California Constitution contains no such language.¹¹

Meanwhile, California's public education system consistently ranks among the worst in the nation.¹² In 2022, California's school districts were the second least equitable in the country.¹³ During lockdowns resulting from the COVID-19 pandemic, student academic achievement in California suffered.¹⁴ These school closures disproportionately affected English-learning students and students living in poverty.¹⁵ Students had to manage their remote learning online while their parents worked, often having to take care of younger siblings also learning from home.¹⁶ In addition, many students dealt with loneliness from social isolation and grief from losing relatives to COVID-19.¹⁷ Unfortunately, rates of violence in their neighborhoods increased as well, likely due to the economic and social challenges communities faced during the COVID-19 pandemic.¹⁸ Districts, like LAUSD, saw their students' academic achievement plummet, exacerbating

⁹ Campaign for Quality Educ., 246 Cal. App. 4th at 914; *see also* Vergara, 246 Cal. App. 4th 619, 209 Cal. Rptr. 3d 532 at 563 (Lui, J., dissenting) ("Both cases ultimately present the same basic issue: whether the education clauses of our state Constitution guarantee a minimum level of quality...").

¹⁰ *See infra* Section II.C (discussing other states' approaches to the right to education); Jonathan Kaplan, *Improving but Still Behind: California's Support for K-12 Education*, CAL. BUDGET & POL'Y CTR. (Jan. 2017), <https://calbudgetcenter.org/resources/improving-but-still-behind-californias-support-for-k-12-education/> (on file with the *University of the Pacific Law Review*) (reporting that California was ranked last in the nation for its number of teachers to students ratio and 41st for its spending per student adjusted for cost of living).

¹¹ *See infra* Section II.C (discussing other states' approaches to the right to education).

¹² *See Education Rankings*, U.S. NEWS & WORLD REP., <https://www.usnews.com/news/best-states/rankings/education/prek-12> (last visited Oct. 28, 2022) (on file with the *University of the Pacific Law Review*) (ranking California's Pre-K-12 education system 38th out of the fifty states).

¹³ Adam McCann, *2022's Most and Least Equitable School Districts in California*, WALLETHUB (Aug. 23, 2022), <https://wallethub.com/edu/e-most-least-equitable-school-districts-in-california/77056> (on file with the *University of the Pacific Law Review*).

¹⁴ *See* News Release, Cal. Dep't of Educ., CDE Releases Student Data for 2020-2021 that Shows Impacts of COVID-19 on Schools (Jan. 7, 2022) (on file with the *University of the Pacific Law Review*) ("Grade-level Smarter Balanced results in math and English language arts generally show academic progress but at a slower rate than in prior years."); Dan Walters, *COVID-19 School Closures Undermined Learning*, CALMATTERS (Sept. 18, 2022), <https://calmatters.org/commentary/2022/09/covid-19-school-closures-undermined-learning/> (on file with the *University of the Pacific Law Review*) (showing data from LAUSD that illustrates how COVID-19 worsened the achievement gap in California schools).

¹⁵ Walters, *supra* note 14; *see also* Jocelyn Wiener, *The Pandemic Laid Bare Existing Inequalities, California's Kids Felt the Pain*, CALMATTERS (June 30, 2021), <https://calmatters.org/health/coronavirus/2021/06/california-covid-inequality-oakland-rockridge/> (on file with the *University of the Pacific Law Review*) (noting that students took on other day time jobs that interfered with their studies to help their families make ends meet).

¹⁶ *See* Wiener, *supra* note 15 (highlighting how poorer students had trouble acquiring the appropriate technology required for remote learning, and school-provided alternatives did not always work).

¹⁷ *Id.*

¹⁸ *See id.* (noting approximately a 30% increase in the number of mental health emergency room visits for children ages five to seventeen and in the homicide rates of America's biggest cities); Neil MacFarquhar, *With Homicides Rising, Cities Brace for a Violent Summer*, N.Y. TIMES (June 1, 2021), <https://www.nytimes.com/2021/06/01/us/shootings-in-us.html> (on file with the *University of the Pacific Law Review*) (attributing the rise in crime in part to the social isolation and economic conditions created by the COVID-19 pandemic).

the gap between groups based on class and race.¹⁹ Such gaps will take years to remedy.²⁰ Some experts estimate it will take nearly three to five years for students to make up for the educational losses incurred during the pandemic.²¹

Under California’s pandemic-altered public education system, students are not thriving.²² While democratic action—through recent ballot initiatives and legislation—has attempted to fix cracks in California’s public education system, the efforts are not enough.²³ As *Vergara* illustrates, California courts will not address education disparities among students within the same public school system without a constitutional provision ensuring the right to quality education.²⁴ Therefore, the Legislature should amend California’s constitutional right to education and implement a judicial standard for evaluating educational quality.²⁵

Part II describes how California state courts have interpreted California’s right to education in the context of education litigation regarding disparities in public school quality.²⁶ Additionally, this section explores how other state constitutions treat the right to education—and how their courts have interpreted such constitutional language.²⁷ Part III proposes language for an amendment to the California Constitution that clearly defines high-quality education, emphasizing its connection to citizenship and statewide academic standards.²⁸ Part IV explains why the amendment proposed in Part III best effectuates the Framers of the California Constitution’s intent and rectifies lower courts’ erroneous interpretation of precedent.²⁹ Further, it evaluates the right-to-education provisions of other states and argues that California’s Constitution should be similarly amended.³⁰ Part V assesses how California courts might reach different conclusions in cases about educational quality if its constitutional standards were more robust.³¹

¹⁹ See Walters, *supra* note 14 (reporting that “[a]bout 83% of Black students, 78% of Latino students and 77% of economically disadvantaged students did not meet the math standards” in 2021); see also Jocelyn Wiener, *The Pandemic Laid Bare Existing Inequalities, California’s Kids Felt the Pain*, CALMATTERS (June 30, 2021), <https://calmatters.org/health/coronavirus/2021/06/california-covid-inequality-oakland-rockridge/> (on file with the *University of the Pacific Law Review*).

²⁰ Sarah Mervosh, *Students Are Learning Well Again. But Full Recovery? That’s a Long Way Off.*, N.Y. TIMES (July 19, 2022), <https://www.nytimes.com/2022/07/19/us/pandemic-learning-loss-recovery-time.html> (on file with the *University of the Pacific Law Review*) (“Recovery is expected to take longest for groups that were most affected by the pandemic, including low-income students . . .”).

²¹ *Id.*

²² Wiener, *supra* note 15; *Vergara v. California*, No. BC484642, 2014 WL 6478415, at *4–7 (Cal. Super. June 10, 2014); *infra* Part IV.

²³ See *The Equity 8 — California’s Key Legislative Proposals 2022*, EDUC. TR. W., <https://west.edtrust.org/the-equity-8-californias-key-legislative-proposals-2022/> (last updated Oct. 3, 2022) (on file with the *University of the Pacific Law Review*) (describing eight pieces of California legislation education equity advocates advanced in 2022).

²⁴ *Vergara*, 246 Cal. App. 4th at 643 (“Policy judgments underlying a statute are left to the Legislature; the judiciary does not pass on the wisdom of legislation.”); *infra* Part III.

²⁵ *Infra* Part III.

²⁶ *Infra* Section II.A.

²⁷ *Infra* Section II.C.

²⁸ *Infra* Part III.

²⁹ *Infra* Part IV.

³⁰ *Id.*

³¹ *Infra* Part V.

II. THE EVOLUTION OF THE CONSTITUTIONAL RIGHT TO EDUCATION IN CALIFORNIA AND NATIONWIDE

The history of California’s constitutional right to education illuminates what the California Framers intended to accomplish through the text.³² Similarly, the history reveals how California courts’ interpretation of the right has diverged from the judicial decisions of other states with similar right-to-education provisions.³³ Section A discusses the Framers’ view of the right to education.³⁴ Section B explains how California courts have in fact interpreted this fundamental right in the context of education litigation.³⁵ Section C surveys the language other states use in their constitutional rights to education and how courts have interpreted these more robust provisions.³⁶

A. The History of California’s Right to Education

The right to education for California public school students is rooted in Section 1 and Section 5 of Article IX of the California Constitution.³⁷ Section 1 states that “[a] general diffusion of knowledge and intelligence” is “essential to the preservation of the rights and liberties of the people.”³⁸ Further, it says, “the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.”³⁹ The language of these sections declares the importance of education to the flourishing of a democratic government and tasks the Legislature with ensuring an adequate education of its constituents.⁴⁰ Pursuant to this command, Section 5 requires the Legislature to establish a system of free public schools.⁴¹

The Framers of California’s Constitution believed the state’s provision of public education was necessary for creating self-governed citizens.⁴² For them, establishing a public education system meant it was the state’s responsibility to ensure students were growing the state’s intellectual, scientific, moral, and agricultural knowledge.⁴³ The Framers credited their inspiration for Article IX of the California Constitution to the constitutions of Arkansas and Missouri, which

³² *Infra* Section II.A.

³³ *Infra* Section II.B–II.C.

³⁴ *Infra* Section II.A.

³⁵ *Infra* Section II.B.

³⁶ *Infra* Section II.C.

³⁷ Campaign for Quality Educ., 246 Cal. App. 4th at 906–08.

³⁸ CAL. CONST. art. IX, § 1.

³⁹ *Id.*

⁴⁰ Anne D. Gordon, *California Constitutional Law: The Right to an Adequate Education*, 67 HASTINGS L.J. 323, 332 (2016).

⁴¹ CAL. CONST. art. IX, § 5.

⁴² See Gordon, *supra* note 40, at 332 (noting delegates of the 1849 California Constitutional convention “emphasized the need of a school system to . . . prepare [students] to be citizens . . .”); *Self-Governing*, MERRIAM WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/self-governing> (last visited Mar. 3, 2023) (on file with the *University of the Pacific Law Review*) (“[H]aving control or rule over oneself.”).

⁴³ See Gordon, *supra* note 40, at 335–36 (explaining the delegates’ argument over whether section 1 of the California Constitution had the force of law).

required these states to create public school systems.⁴⁴ As in California, the Framers of these states' constitutions believed the need for public education flowed from a state's responsibility toward developing its citizens.⁴⁵ Thus, each state, including California, created a public education system to ensure that state citizens could participate in the state's political and economic life.⁴⁶

B. California Courts' Interpretation of the Right to Education

Today, California courts recognize the right to education as a fundamental right entailing a strict scrutiny standard of judicial review.⁴⁷ When courts analyze a government action or statute under strict scrutiny, they consider whether the government narrowly tailored the action to further a compelling government purpose.⁴⁸ California courts, however, have shifted their interpretation of the constitutional right to education over time.⁴⁹ Subsection 1 demonstrates how California courts considered the implicit substance of the right to education provision before 2016 in *Serrano v. Priest* (*Serrano*) and *Butt v. California* (*Butt*).⁵⁰ Subsection 2 describes the courts' abandonment of this substantive analysis in *Vergara v. California* (*Vergara*) and *Campaign for Quality Education v. California* (*Campaign for Quality Education*).⁵¹

1. Right-to-Education Cases Before 2016

The California Supreme Court implicitly considered the substance of the right to education in *Serrano*.⁵² At the time, California's public school funding scheme apportioned funds to schools based partly on the property taxes collected in the school's geographical region.⁵³ The scheme resulted in students in poorer areas receiving less educational funding than wealthier areas with larger property

⁴⁴ Gordon, *supra* note 40, at 330–32; ARK. CONST. art. XIV, § 1 (“[T]he State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education.”).

⁴⁵ See Gordon, *supra* note 40, at 330–32 (describing how the framers of the California Constitution drew on the provisions of the Missouri and Arkansas state constitutions); ARK. CONST. of 1836, art. VII, § 1 (“Knowledge and learning generally diffused through a community being essential to the preservation of a free government . . .”); Comm. for Educ. Equal. v. Missouri, 294 S.W.3d 477, 482 n.5 (Mo. 2009) (“[K]nowledge, being necessary to good government and the happiness of mankind, schools and the means of public education shall be encouraged and provided for . . .”).

⁴⁶ Gordon, *supra* note 40, at 330–32.

⁴⁷ *Serrano*, 5 Cal. 3d at 608–09; see also *Vergara*, 246 Cal. App. 4th at 645 (explaining that discrimination which infringes on a fundamental right is subject to the strict scrutiny standard of review); *Butt v. California*, 4 Cal. 4th 668, 686 (1992) (“As we have seen, education is such a fundamental interest for purposes of equal protection analysis under the California Constitution.”).

⁴⁸ *Strict Scrutiny*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/strict_scrutiny (last visited Jan. 10, 2023) (on file with the *University of the Pacific Law Review*).

⁴⁹ *Infra* Subsection II.B.2.

⁵⁰ *Infra* Subsection II.B.1.

⁵¹ *Infra* Subsection II.B.2.

⁵² Gordon, *supra* note 40, at 339–40; *Serrano*, 5 Cal. 3d at 589–90; see also *Serrano v. Priest*, 18 Cal. 3d 728, 776 (1976) (affirming on appeal from remand that changes to California's statutory scheme for school funding violated the state constitution).

⁵³ *Serrano*, 5 Cal. 3d at 591–95; Gordon, *supra* note 40, at 339–40.

tax bases.⁵⁴ The California Supreme Court held that this statutory scheme violated the Equal Protection Clause.⁵⁵ Because education is a fundamental right under the California Constitution, the Legislature could not interfere with this right in a discriminatory way unless it satisfied strict scrutiny review.⁵⁶ Since the school funding scheme discriminated against poorer students by providing them with less educational funding, it violated the Equal Protection Clause.⁵⁷

While the Court struck down the provisions because they apportioned school funding unequally, it devoted portions of its analysis to considering the quality of the education the students received.⁵⁸ The Court wrote that the statutes impermissibly “make[] the quality of a child's education depend upon the resources of his school district.”⁵⁹ Additionally, the Court held the right to education “means more than access to a classroom.”⁶⁰ It suggested that teacher quality, class-size ratios, and the school’s learning materials and facilities were elements to consider when assessing the quality of education students received.⁶¹

In *Butt*, the California Supreme Court established the importance of “basic educational equality” under the California Constitution.⁶² The plaintiffs in *Butt* challenged a school district’s plan to end the school year six weeks early because it ran out of funding.⁶³ The court held that school district programs are constitutional “unless the actual quality of [their] program[s], viewed as a whole, falls[] fundamentally below prevailing statewide standards.”⁶⁴ As a result, the court implied that basic educational equality required the quality of an educational program to meet established “statewide standards.”⁶⁵ It did not define these standards but discussed the average school year length and the importance of ensuring students learn the material necessary for graduation and college entrance.⁶⁶

⁵⁴ Serrano, 5 Cal. 3d at 589–90; Gordon, *supra* note 40, 339–40.

⁵⁵ Serrano, 5 Cal. 3d at 617–18; U.S. CONST. amend. XIV, § 1 (“[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.”); CAL. CONST. art. I, § 7 (“A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws . . .”).

⁵⁶ Serrano, 5 Cal. 3d at 597; *Strict Scrutiny*, *supra* note 48.

⁵⁷ See Serrano, 5 Cal. 3d at 614–15 (holding the state’s funding scheme was not necessary for furthering a compelling interest).

⁵⁸ Gordon, *supra* note 40, at 340.

⁵⁹ Serrano, 5 Cal. 3d at 614–15; see also Gordon, *supra* note 40, at 339–40 (describing how the Court discussed quality at length when it affirmed the appeal on remand for the *Serrano* case); Serrano v. Priest, 18 Cal. 3d at 755–56 (describing different ways to assess the quality of education students receive).

⁶⁰ Serrano, 5 Cal. 3d at 606.

⁶¹ Serrano v. Priest, 18 Cal. 3d 728, 748 (1976).

⁶² Butt, 4 Cal. 4th at 681–82 (1992); Gordon, *supra* note 40, at 340–42.

⁶³ Butt, 4 Cal. 4th at 674–76.

⁶⁴ *Id.* at 686.

⁶⁵ *Id.* at 686–87; Gordon, *supra* note 40, at 340–42.

⁶⁶ Butt, 4 Cal. 4th at 687–88.

2. Right to Education Cases After 2016

In *Vergara* and *Campaign for Quality Education*, California courts departed from their earlier approach of implicitly considering the quality of education students received.⁶⁷ In *Vergara*, plaintiffs alleged California’s teacher tenure and dismissal statutes violated the Equal Protection Clause because it infringed upon students’ fundamental right to education.⁶⁸ The Los Angeles Superior Court agreed with the plaintiffs, emphasizing that it was specifically the court’s job to consider the quality of education students received.⁶⁹ The court concluded that California’s teacher tenure statutes deprive students of access to potentially competent teachers.⁷⁰ The court cited evidence showing that California’s system of providing teachers with permanent status within two years of employment was insufficient to determine if the teacher was effective.⁷¹ Further, it highlighted that forty-one other states have longer teacher tenure periods, and four have no tenure, making California an outlier.⁷²

The court also agreed that California’s teacher dismissal process makes it “too time consuming and too expensive . . . to rid school districts of grossly ineffective teachers.”⁷³ Because tenured teachers are entitled to due process protections, firing them requires extensive documentation, time to correct their behavior, hearings, and potentially litigation.⁷⁴ The court found substantial evidence that “dismissals are ‘extremely rare’ in California because administrators believe it to be ‘impossible’ to dismiss a tenured teacher under the current system.”⁷⁵ Likewise, the court found California’s “last in, first out” layoff policy unconstitutional.⁷⁶ By statute, districts must lay off the most recently hired employees—regardless of their competence.⁷⁷ The court found that the rule resulted in separating new, although effective, teachers from their students and retaining senior, although ineffective, teachers.⁷⁸

⁶⁷ *Vergara*, 246 Cal. App. 4th at 652; *Campaign for Quality Educ.*, 246 Cal. App. 4th at 906.

⁶⁸ *Id.* at 627.

⁶⁹ *Vergara*, No. BC484642, 2014 WL 6478415, at *7.

⁷⁰ *Id.* at *4–5.

⁷¹ *Id.* at *4–5 (“The Permanent Employment Statute does not provide nearly enough time for an informed decision to be made regarding the decision of tenure.”); CAL. EDUC. CODE § 44929.21 (West 1983) (explaining that a district must decide whether to allow a teacher permanent status by March 15 of their second year of teaching); *Vergara v. California, and the Attenuation of Tenure, Part One: The Decision*, PULLMAN & CONLEY (June 11, 2014), <https://www.pullcom.com/education-law-notes/vergara-v-california-and-the-attenuation-of-tenure-part-one-the-decision> (on file with the *University of the Pacific Law Review*) (explaining that permanent status grants teachers a property interest in their employment and strong due process protections if a district tries to fire them).

⁷² *Vergara*, No. BC484642, 2014 WL 6478415, at *5.

⁷³ *Id.*

⁷⁴ EDUC. TR. W., TEACHER LAYOFF AND DISMISSALS IN CALIFORNIA STATE LAW 1 (2011), https://media.scpn.org/documents/2012/03/07/ETW_April_2011_Teacher_Layoff_Dismissals_in_California_State_Law.pdf (on file with the *University of the Pacific Law Review*); CAL. EDUC. CODE § 44934 (West 2015); CAL. EDUC. CODE § 44938(b)(1)–(2) (West 1996); CAL. EDUC. CODE § 44944 (West 2022).

⁷⁵ *Vergara*, No. BC484642, 2014 WL 6478415, at *5.

⁷⁶ *Id.* at *6–7.

⁷⁷ Cal. EDUC. CODE § 44955 (West 1983).

⁷⁸ *Vergara*, No. BC484642, 2014 WL 6478415, at *6–7.

Lastly, the court concluded that evidence from both sides indicated that these staffing inequalities “disproportionately affect poor and/or minority students.”⁷⁹ Experts testified that relative to other students, those “taught by a teacher in the bottom five percent of competence lose 9.54 months of learning in a single year.”⁸⁰ Likewise, the California Department of Education admitted that “minority students bear the brunt of staffing inequalities.”⁸¹ However, the Second District Court of Appeal reversed the trial court’s judgment that these statutes were unconstitutional.⁸² According to the appellate court, the plaintiffs needed to prove the statutes themselves inevitably cause these disproportionate impacts and interfere with students’ right to “basic educational equality.”⁸³ Although the plaintiffs illuminated drawbacks to California’s statutory scheme, highlighted “deplorable staffing decisions,” and proved “deleterious impact[s] on poor and minority students,” they did not satisfy this burden.⁸⁴ Rather, the court believed local administrative decisions contributed to such disparities, so there was insufficient evidence that the statutes “inevitably” deprived students of their right to education.⁸⁵

The California Supreme Court denied the plaintiffs’ petition for review.⁸⁶ Justices Goodwin Liu, Ming Chin, and Mariano-Florentino Cuéllar, however, dissented from the decision to deny review.⁸⁷ Justice Liu, crucially, recognized the issue underlying *Vergara*: whether “our state Constitution guarantee[s] a minimum level of quality below which our public schools cannot . . . fall.”⁸⁸ Further, he wrote, “[T]his issue is surely one of the most consequential to the future of California.”⁸⁹ Likewise, Justice Cuéllar drew parallels to *Butt* and *Serrano*.⁹⁰

Alongside *Vergara*, the California Supreme Court denied a petition for review in a related 2016 case, *Campaign for Quality Education*.⁹¹ Here, plaintiffs argued that Article IX of the California Constitution implied that students have a judicially-enforceable right to an education of “some quality.”⁹² They alleged that California’s school funding scheme violated this right to an adequate education.⁹³

⁷⁹ *Vergara*, No. BC484642, 2014 WL 6478415, at *7; *Vergara*, 246 Cal. App. 4th at 633, *as modified* (May 3, 2016) (“[T]he 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.”).

⁸⁰ *Vergara*, No. BC484642, 2014 WL 6478415, at *4.

⁸¹ *Id.* at *7 (Cal. Super. Aug. 27, 2014); *Vergara*, 246 Cal. App. 4th at 635, *as modified* (May 3, 2016) (attributing this result in part to principals’ decisions to transfer ineffective teachers to other schools within the district to improve their own students’ teacher selection).

⁸² *Vergara*, 246 Cal. App. 4th at 652, *as modified* (May 3, 2016).

⁸³ *Id.* at 651.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Vergara v. California*, 246 Cal. App. 4th 619, 209 Cal. Rptr. 3d at 558, *as modified* (May 3, 2016).

⁸⁷ *Id.*

⁸⁸ *Id.* at 563 (Liu, J., dissenting).

⁸⁹ *Id.*

⁹⁰ *Id.* at 567 (Cuéllar, J., dissenting).

⁹¹ *Id.* at 563 (Cuéllar, J., dissenting).

⁹² *Campaign for Quality Educ.*, 246 Cal. App. 4th at 906.

⁹³ *Id.* at 902–03.

The First District Court of Appeal disagreed.⁹⁴ The court found no explicit textual evidence within Article IX indicating that students had the right to “education of a particular quality.”⁹⁵ Considering the lack of a textual basis for education of some quality, the court held that “the question of educational quality is inherently one of policy.”⁹⁶ As such, the court argued that determining the quality of education provided to California’s students should be left to the Legislature.⁹⁷

In an extensive dissent, however, Justice Pollak disagreed, finding that an implied “qualitative” component of the right to education was consistent with the text of Article IX.⁹⁸ He wrote, “[I]f the constitutional provision is to have meaning, it must imply that the system of common schools must provide some minimum qualitative level of education.”⁹⁹ Lastly, Pollak quoted the Kansas Supreme Court, arguing that courts can evaluate “whether the legislature has met its constitutional obligations to the people to provide for public education.”¹⁰⁰ As in *Vergara*, Justices Liu and Cuéllar wrote dissenting statements attached to the California Supreme Court’s decision to deny a petition for review.¹⁰¹ Justice Liu agreed with Pollak’s dissent, arguing the court should address “whether their fundamental right to education under our state Constitution has real content or is simply hortatory.”¹⁰² Justice Cuéllar agreed, contending that whether the Constitution requires some level of educational quality is a question “at the core of what this institution is empowered to adjudicate.”¹⁰³

C. Right-to-Education Clauses in Other States

Under the United States Supreme Court’s interpretation of the United States Constitution, there is no federal right to education.¹⁰⁴ Like California, most other states have provisions within their constitutions providing for the creation of a public school system.¹⁰⁵ Unlike California, many state constitutions contain

⁹⁴ *Id.*

⁹⁵ *Id.* at 909.

⁹⁶ *Id.* at 911.

⁹⁷ *Id.*

⁹⁸ *Id.* at 922 (Pollak, J., dissenting) (suggesting an implied right to quality may even be required based on the high value the California Supreme Court has placed on the fundamental right to education).

⁹⁹ *Id.* (noting that most other states interpret their constitutions to require that students receive an education of some quality).

¹⁰⁰ *Id.* at 931 (quoting *Gannon v. State*, 298 Kan. 1107, 1159 (2014)) (holding that the Kansas Constitution’s implicit educational adequacy standard requires its school financing system to ensure its students “meet or exceed” certain statutory standards).

¹⁰¹ *Campaign for Quality Educ. v. California*, 246 Cal. App. 4th 896, 209 Cal. Rptr. 3d 888, 919 (2016).

¹⁰² *Id.* at 928 (Liu, J., dissenting).

¹⁰³ *Id.* at 929 (Cuéllar, J., dissenting).

¹⁰⁴ *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973) (“Education, of course, is not among the rights afforded explicit protection under our Federal Constitution.”); David Dorsey, *Education Is Still (for Now) not a Fundamental Right Under the U.S. Constitution*, KAN. POL’Y INST. (Sept. 17, 2020), <https://kansaspolicy.org/education-is-still-for-now-not-a-fundamental-right-under-the-u-s-constitution/> (on file with the *University of the Pacific Law Review*) (suggesting federal court judges could depart from the Supreme Court’s interpretation that there is no federal right to education).

¹⁰⁵ *See Pauley v. Kelly*, 162 W. Va. 672, 719–23 (1979) (detailing thirty-two state constitutions with clauses providing for the creation of a system of public schools, including Alaska, Connecticut, Florida, Indiana, New York, Hawaii, New Hampshire, and Tennessee).

language explicitly mandating that the education students receive meet certain criteria.¹⁰⁶ For example, several state constitutions require the public school systems to be thorough, efficient, and/or uniform.¹⁰⁷ Most of the states' highest state courts have interpreted such language to mean the state must provide its students with an adequate education.¹⁰⁸ Other states' constitutions explicitly require the education provided to students to be quality or high-quality.¹⁰⁹ Even in states whose constitutions do not contain such expansive language, state supreme courts have implicitly interpreted such clauses to mandate that state-provided education is of adequate quality.¹¹⁰

Florida and Wyoming are two examples of states with expansive right-to-education provisions.¹¹¹ Florida's Constitution states that its public school students are entitled to "a uniform, efficient, safe, secure, and high quality system of free

¹⁰⁶ MINN. CONST. art. XIII, § 1; N.J. CONST. art. 8, § IV, ¶ 1; KY. CONST. § 183; TEX. CONST. art. 7, § 1; ARK. CONST. art. XIV, § 1; DEL. CONST. art. X, § 1; W. VA. CONST. art. XII, § 1; WASH. CONST. art. IX, § 2; VA. CONST. art. VIII, § 1; ILL. CONST. art. 10, § 1; FLA. CONST. art. IX, § 1(a); WYO. CONST. art. VII, § 9; *see also* Kristin Rinehart Totten & Jacquelyn Babinski, *A Fundamental Right to a Quality Education for All Michigan Children*, 100 Mich. B. J. 38, 40–41 (2021) (listing states that "provide a fundamental right to education with a standard").

¹⁰⁷ Totten & Babinski, *supra* note 106, at 40–41; MINN. CONST. art. XIII, § 1 (requiring the establishment of a "general and uniform system of public schools" that is "thorough and efficient"); N.J. CONST. art. 8, § IV, ¶ 1 ("thorough and efficient system of free public schools . . ."); KY. CONST. § 183 ("efficient system of common schools . . ."); TEX. CONST. art. 7, § 1 ("make suitable provision for the support and maintenance of an efficient system of public free schools"); ARK. CONST. art. XIV, § 1 ("general, suitable, and efficient system of free public schools . . ."); DEL. CONST. art. X, § 1 ("general and efficient system of free public schools . . ."); W. VA. CONST. art. XII, § 1 ("thorough and efficient system of free schools"); WASH. CONST. art. IX, § 2 ("general and uniform system of public schools").

¹⁰⁸ Campaign for Quality Educ. v. California, 246 Cal. App. 4th 896, 209 Cal. Rptr. 3d at 924 (Liu, J., dissenting); Skeen v. State, 505 N.W.2d 299, 318 (Minn. 1993) (requiring Minnesota to provide enough funding for its students to receive an adequate education); Robinson v. Cahill, 69 N.J. 449, 455 (1976) ("[M]oney is only one of a number of elements that must be studied in giving definition and content to the constitutional promise of a thorough and efficient education."); Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 211 (Ky. 1989) ("Each child, *every child*, in this Commonwealth must be provided with an equal opportunity to have an adequate education."); Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist., 176 S.W.3d 746, 783 (Tex. 2005) ("[[T]he public education system] cannot be so inadequate that it does not provide for a general diffusion of knowledge . . ."); Lake View Sch. Dist. No. 25 of Phillips Cnty. v. Huckabee, 351 Ark. 31, 67 (2002) (explaining that Arkansas' constitutional language and history "places on the State an absolute duty to provide the school children of Arkansas with an adequate education"); Pauley, 162 W. Va. at 708 ("We also have determined that the Thorough and Efficient Clause requires the development of certain high quality educational standards . . .").

¹⁰⁹ VA. CONST. art. VIII, § 1 ("[E]nsure that an educational program of high quality is established and continually maintained."); ILL. CONST. art. X, § 1 ("[A]n efficient system of high quality public educational institutions and services."); FLA. CONST. art. IX, § 1(a) ("[A] uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education . . .").

¹¹⁰ CONN. CONST. art. VIII, § 1; Connecticut Coal. for Just. in Educ. Funding, Inc. v. Rell, 295 Conn. 240, 270 (2010); KAN. CONST. art. VI, §§ 1–2; Gannon v. State, 298 Kan. 1107, 1170 (2014); Mass. Const. Pt. 2, C. 5, § 2; McDuffy v. Sec'y of Exec. Off. of Educ., 415 Mass. 545, 606 (1993); N.Y. CONST. art. XI, § 1; Campaign for Fiscal Equity, Inc. v. State, 100 N.Y.2d 893, 909 (2003); S.C. CONST. art. XI, § 3; Abbeville Cnty. Sch. Dist. v. State, 410 S.C. 619, 626–27 (2014), *amended by* 414 S.C. 166 (2015), *order superseded by* 415 S.C. 19 (2015), and *amended by* 415 S.C. 19 (2015); N.H. CONST. Pt. 2, art. LXXXIII; Claremont Sch. Dist. v. Governor, 138 N.H. 183, 184 (1993).

¹¹¹ FLA. CONST. art. IX, § 1(a) ("[A] uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education . . ."); WYO. CONST. art. VII, § 9 ("[A] thorough and efficient system of public schools, adequate to the proper instruction of all youth of the state . . .").

public schools.”¹¹² Wyoming requires a public school system that is “complete and uniform,” “thorough and efficient,” and “adequate to the proper instruction of all youth of the state.”¹¹³ The Wyoming Supreme Court explicitly defined each of these words and formulated its interpretation of the provision by relying on the intent of the state constitution’s Framers.¹¹⁴ Thus, the Wyoming Supreme Court held that its education system must be “reasonably sufficient” to adequately equip students as citizens, political participants, and economic and intellectual competitors.¹¹⁵

III. AN AMENDMENT TO MEANINGFULLY DEFINE THE RIGHT TO A QUALITY EDUCATION

Section 5 of Article IX of the California Constitution is amended to read as follows:

Section 5(a). The Legislature shall provide for a **uniform, thorough, efficient, and high-quality** system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

(b) The State must provide all public school students grades K-12 with **basic educational equality**, including **equal** access to a **high-quality educational program**.

(c) High-quality educational program shall be defined as program which:

- (1) Ensures students are provided with the skills and opportunities necessary to successfully learn how to participate as a citizen in a democratic society and
- (2) Furnishes students with the resources necessary to meet established statewide educational standards as defined by Education Code § 60605.

IV. ADOPTING THE PROPOSED AMENDMENT WILL PROTECT CALIFORNIA STUDENTS’ RIGHT TO EDUCATION

To ensure students in California have a judicially enforceable right to a high-quality education, the Legislature should adopt the proposed amendment.¹¹⁶ Section A evaluates the current state of education litigation in California and explains why the proposed amendment is necessary to remedy the failings under the current constitutional provision.¹¹⁷ Section B analyzes prior attempts to change California’s right-to-education clause and explains why the proposed amendment embodies a better approach.¹¹⁸ Section C highlights how the amendment is the best

¹¹² FLA. CONST. art. IX, § 1(a).

¹¹³ WYO. CONST. art. VII, §§ 1, 9.

¹¹⁴ Campbell Cnty. Sch. Dist. v. State, 907 P.2d 1238, 1258 (Wyo. 1995).

¹¹⁵ *Id.* at 1259.

¹¹⁶ *Infra* Part IV.

¹¹⁷ *Infra* Section IV.A.

¹¹⁸ *Infra* Section IV.B.

way to explicitly effectuate the intent of the Framers of the California Constitution.¹¹⁹ Section D explains how the amendment reinforces what California Supreme Court precedent has said about the right to education.¹²⁰ Section E compares the proposed amendment with other state constitutions, especially those with the best-ranked education systems in the nation.¹²¹ Section F explores the impact and limits of the amendment with an eye towards evaluating how a new standard might change future education litigation.¹²²

A. Evaluating the State of Education Litigation in California

The decisions in *Vergara* and *Campaign for Quality Education* highlight the legal effect of the absence of a constitutional right to quality education in California.¹²³ As a result of these cases, California does not need to provide its students with a quality education so long as the state provides the education equally.¹²⁴ In the words of the Kentucky Supreme Court, California law allows the State's education to be "uniformly deplorable."¹²⁵ California's nationwide ranking for its public education system confirms that—relative to the rest of the nation—its students are not thriving.¹²⁶ Additionally, the deficits in learning wrought by the COVID-19 pandemic have exacerbated the impact of this flawed educational system on students.¹²⁷

As *Vergara* and *Campaign for Quality Education* show, changing this state of affairs through litigation in California is unlikely to be successful without a constitutional amendment.¹²⁸ California courts have refused to decide whether there is a constitutional right to educational quality because they view the issue as nonjusticiable and adequately left to the Legislature.¹²⁹ This assertion conflicts with the reasoning of many other state supreme courts that have considered the issue.¹³⁰ Rather, these courts distinguish the judiciary's role in finding a

¹¹⁹ *Infra* Section IV.C.

¹²⁰ *Infra* Section IV.D.

¹²¹ *Infra* Section IV.E.

¹²² *Infra* Section IV.F.

¹²³ See *Vergara*, 246 Cal. App. 4th at 651, *as modified* (May 3, 2016) (upholding the Education Code statutes at issue involving teacher tenure, dismissal, and layoff); *Campaign for Quality Educ.*, 246 Cal. App. 4th at 915–16 (finding no constitutional mandate for education of a particular quality and thus no "particular level of education expenditures").

¹²⁴ See Gordon, *supra* note 40, at 327 (2016) (arguing that the courts' treatment of the educational quality cases as equal protection cases enables the "possibility of 'basically equal' but grossly inadequate schools").

¹²⁵ Gordon, *supra* note 40, at 327; Rose, 790 S.W.2d at 211; see also *Vergara*, 246 Cal. App. 4th at 651, *as modified* (May 3, 2016) ("The evidence also revealed deplorable staffing decisions being made by some local administrators that have a deleterious impact on poor and minority students in California's public schools.").

¹²⁶ See *Education Rankings*, *supra* note 12.

¹²⁷ See Sarah Mervosh, *supra* note 20 (estimating it will take years for students to recover from the learning loss experienced during the COVID-19 pandemic).

¹²⁸ *Vergara*, 246 Cal. App. 4th at 652; *Campaign for Quality Educ.*, 246 Cal. App. 4th at 915–16.

¹²⁹ See *Campaign for Quality Educ.*, 246 Cal. App. 4th at 903 ("Rather, the constitutional sections leave the difficult and policy-laden questions associated with educational adequacy and funding to the legislative branch.").

¹³⁰ See *Gannon*, 298 Kan. 1107 at 1159 ("[T]he separation of powers does not preclude the judiciary from determining whether the legislature has met its constitutional obligation to the people to provide for public

constitutional requirement of educational quality from the legislature's responsibility in deciding how to implement the requirement.¹³¹ Given California courts' rulings on the justiciability question, amending the Constitution's text is the best way to ensure the courts protect students' right to education.¹³²

B. Avoiding Pitfalls of Other Attempts to Reform California's Right to Education

Education reform activists in California unsuccessfully attempted to amend Article IX in 2022.¹³³ The 2022 proposed initiative would have given students a "right to a high-quality public education."¹³⁴ Further, the amendment would have required the state to provide students "with the skills necessary to fully participate in the economy, our democracy, and our society."¹³⁵ Unfortunately, the amendment failed to qualify for the ballot.¹³⁶ After the 2022 election, advocates filed a proposed ballot initiative containing the same language with the Secretary of State for the 2024 ballot.¹³⁷ Influential leaders in California's public education system have endorsed the initiative, claiming that over "90 percent of California voters support codifying high-quality public education as a civil right."¹³⁸

education.") (quoting *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 780–81 (Tex. 2005)); *Rose*, 790 S.W.2d at 210 ("Courts may, should and have involved themselves in defining the standards of a constitutionally mandated educational system."); *Lake View Sch. Dist. No. 25 of Phillips Cnty.*, 351 Ark. at 55 ("[W]e conclude the matter before us is justiciable.").

¹³¹ *Gannon*, 298 Kan. at 1159; *Rose*, 790 S.W.2d at 209; *Lake View Sch. Dist. No. 25 of Phillips Cnty.*, 351 Ark. at 55.

¹³² See *Campaign for Quality Educ.*, 246 Cal. App. 4th at 903 (describing the courts' belief that the task of evaluating questions of educational quality belongs to the legislature); see generally *Ballot Measures, SEC'Y OF STATE*, <https://www.sos.ca.gov/elections/ballot-measures> (last visited Jan. 10, 2023) (on file with the *University of the Pacific Law Review*) (describing how voters can place an initiative or referendum on the ballot in California); J. FRED SILVA, PUB. POL'Y INST. OF CAL., *THE CALIFORNIA INITIATIVE PROCESS: BACKGROUND AND PERSPECTIVE 1* (2000) (explaining the historical influences shaping California's ballot initiative process).

¹³³ *California Right to High-Quality Public School Education Initiative (2022)*, BALLOTPEDIA, [https://ballotpedia.org/California_Right_to_High-Quality_Public_School_Education_Initiative_\(2022\)](https://ballotpedia.org/California_Right_to_High-Quality_Public_School_Education_Initiative_(2022)) (last visited Jan. 10, 2023) (on file with the *University of the Pacific Law Review*); see also John Fensterwald, *Proposed 2022 California Ballot Initiative Sets Stage to Define "High Quality" Education*, EDSOURCE (Oct. 8, 2021), <https://edsource.org/2021/proposed-2022-california-ballot-initiative-sets-stage-to-define-high-quality-education/662172> (on file with the *University of the Pacific Law Review*) (explaining how entrepreneur David Welch, who was involved with the *Vergara* case, supported the initiative as well as former L.A. mayor Antonio Villaraigosa).

¹³⁴ Letter from Emelyn Rodriguez, KidsFirst, to Anabel Renteria, Initiative Coordinator, Off. of the Att'y Gen. of the State of Cal., *The Constitutional Right to a High-Quality Public Education Act*, No. 21-0033 (Nov. 12, 2021) (on file with the *University of the Pacific Law Review*).

¹³⁵ *Id.*

¹³⁶ *California Right to High-Quality Public School Education Initiative (2022)*, *supra* note 133.

¹³⁷ Letter from Emelyn Rodriguez, KidsFirst, to Anabel Renteria, Initiative Coordinator, Off. of the Att'y Gen. of the State of Cal., *The Constitutional Right to a High-Quality Public Education Act*, No. 22-0007 (Oct. 27, 2022) (on file with the *University of the Pacific Law Review*); Antonio Villaraigosa & John Deasy, *In 2024, California Voters Will Have a Chance to Make Quality Education a Civil Right*, CALMATTERS (Dec. 19, 2022), <https://calmatters.org/commentary/2022/12/public-education-california-school-proposition/> (on file with the *University of the Pacific Law Review*).

¹³⁸ Villaraigosa & Deasy, *supra* note 137 (supporting the 2024 initiative from the perspective of former Assembly member and Los Angeles Mayor, Antonio Villaraigosa, and former LAUSD and Stockton Unified School District Superintendent, John Deasy).

The language in the 2024 ballot initiative, however, is insufficient to accomplish its advocates' goal of realizing a high-quality education for all California public school students.¹³⁹ First, the 2022 and 2024 proposed amendments do not define "high-quality."¹⁴⁰ The California Attorney General's summary of the measure explains that the courts will define the requirements of a high-quality education.¹⁴¹ Such language is unhelpful because it does not provide the courts with any guidance as to what the legislature means by "high-quality."¹⁴² The proposed amendment in Part III more directly ties the meaning of high-quality to the values of democratic citizenship.¹⁴³ These are the same values that the California Constitution's Framers hoped to realize through instituting the public education system.¹⁴⁴ As discussed further below, defining "high-quality" in relation to citizenship provides courts with a flexible standard that can change over time.¹⁴⁵

Second, in contrast to the 2022 and 2024 right-to-education amendment initiatives, the proposed amendment requires California courts to assess educational quality based on statewide standards.¹⁴⁶ Groups in other states proposing similar amendments have noted that requiring comparison to uniform statewide standards "provide[s] for an objective standard" to assess educational quality.¹⁴⁷ Moreover, the California Supreme Court has already suggested that courts should assess educational quality by looking at "statewide standards."¹⁴⁸ In *Butt*, it found that the court could use "statewide standards" to assess whether students enjoyed "basic educational equality."¹⁴⁹ Further, the California Legislature has assigned the California State Board of Education the task of creating "statewide academically rigorous content standards."¹⁵⁰ Such standards "shall be based on the knowledge and skills that pupils will need in order to succeed in the information-based, global economy of the 21st century."¹⁵¹

¹³⁹ Letter from Emelyn Rodriguez, (Nov. 12, 2021), *supra* note 134; Letter from Emelyn Rodriguez, (Oct. 27, 2022), *supra* note 137.

¹⁴⁰ *Id.*

¹⁴¹ CAL. ATT'Y GEN., 22-0007 TITLE & SUMMARY 1 (2023) (on file with the *University of the Pacific Law Review*).

¹⁴² *Id.*

¹⁴³ *Supra* Part III; Gordon, *supra* note 40, at 362.

¹⁴⁴ *Supra* Section II.A.

¹⁴⁵ *Supra* Section IV.C; Gordon, *supra* note 40, at 362.

¹⁴⁶ *Supra* Part III.

¹⁴⁷ See Totten & Babinski, *supra* note 106, at 40–41; *Closing Minnesota's Achievement Gap: Why a Constitutional Amendment?*, FED. RSRV. BANK OF MINNEAPOLIS, <https://www.minneapolisfed.org/~media/asset/s/pages/education-achievement-gaps/closing-minnesotas-achievement-gaps-why-a-constitutional-amendment.pdf> (last visited Mar. 5, 2023) (on file with the *University of the Pacific Law Review*) (explaining why the group selected each piece of language in their proposed amendment to the Minnesota constitutional right to education).

¹⁴⁸ *Butt*, 4 Cal. 4th at 686.

¹⁴⁹ *Id.*

¹⁵⁰ CAL. EDUC. CODE § 60605(a)(1)(A).

¹⁵¹ § 60605(a)(2)(A); see also *Content Standards*, CAL. STATE BD. EDUC., <https://www.cde.ca.gov/be/st/ss/> (last visited Mar. 5, 2023) (on file with the *University of the Pacific Law Review*) (setting forth the California State Board of Education's most updated content standards).

The proposed amendment therefore makes explicit the reasoning articulated in *Butt* and connects it to the State Board of Education’s substantive body of academic standards.¹⁵² By relying on these established content standards, the amendment provides courts with the means for objectively assessing whether the state is providing its students with a “high-quality” education.¹⁵³ In providing clear criteria for defining and measuring high-quality, the proposed amendment in Part III overcomes the courts’ concern over the separation of powers and the proper role of the judiciary.¹⁵⁴ These concerns over justiciability motivated California appellate courts to reject finding an implied right to quality education within Article IX.¹⁵⁵ The amendment, however, ensures that the Legislature’s intent is clear and enables the courts to interpret the text of the amendment without fear of engaging in quasi-legislative policymaking.¹⁵⁶

Third, the language in the 2022 and 2024 proposed amendment is ineffective because it limits the possible remedies for a plaintiff who sues under the right to education.¹⁵⁷ Such language states that invalidating or enjoining an offending law or action is the only remedy available to plaintiffs.¹⁵⁸ Further, it says, “the remedies for this right shall not include new mandates for taxes or spending.”¹⁵⁹ As a result, plaintiffs could not sue for increased funding of certain school programs.¹⁶⁰ This language drastically limits the efficacy of a suit under the California Constitution’s right to education because “any right is only as good as its remedy.”¹⁶¹ This is especially true for education adequacy litigation when the problems plaintiffs seek to remediate may require increased funding.¹⁶² An effective amendment must provide the legal grounds for protecting students’ right

¹⁵² *Supra* Part III.

¹⁵³ Totten & Babinski, *supra* note 106, at 40–41; *Closing Minnesota’s Achievement Gap: Why a Constitutional Amendment?*, *supra* note 147.

¹⁵⁴ Campaign for Quality Educ., 246 Cal. App. 4th at 911; Vergara, 246 Cal. App. 4th at 643.

¹⁵⁵ Campaign for Quality Educ., 246 Cal. App. 4th at 911; Vergara, 246 Cal. App. 4th at 643; *see also* Julia Simon-Kerr & Robynn K. Sturm, *Justiciability and the Role of Courts in Adequacy Litigation: Preserving the Constitutional Right to Education*, 6 STAN. J. C.R. & C.L. 83, 86 (2010) (describing courts’ concerns over the judiciary’s role in determining questions of school financing based on arguments about educational quality).

¹⁵⁶ *Supra* Part III; *see also* *Quasi-Legislative*, MERRIAM WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/quasi-legislative> (last visited Apr. 21, 2023) (on file with the *University of the Pacific Law Review*) (“[E]ssentially legislative in character but not within the legislative power or function especially as constitutionally defined.”).

¹⁵⁷ Letter from Emelyn Rodriguez, (Nov. 12, 2021), *supra* note 134; Letter from Emelyn Rodriguez, (Oct. 27, 2022), *supra* note 137; *see also* Carol Kocivar, *The Right to a Quality Education*, ED 100 (Dec. 12, 2021), <https://ed100.org/blog/quality-education> (on file with the *University of the Pacific Law Review*) (arguing that an inability to sue for increased school funding cheapens the power of the amendment).

¹⁵⁸ Letter from Emelyn Rodriguez, (Nov. 12, 2021), *supra* note 134; Letter from Emelyn Rodriguez, (Oct. 27, 2022), *supra* note 134.

¹⁵⁹ Letter from Emelyn Rodriguez, (Nov. 12, 2021), *supra* note 134; Letter from Emelyn Rodriguez, (Oct. 27, 2022), *supra* note 137.

¹⁶⁰ Kocivar, *supra* note 157; *see also* Letter from Legis. Analyst’s Off., to Rob Bonta, Cal. Att’y Gen. 2 (Nov. 29, 2021) (on file with the *University of the Pacific Law Review*) (“A court would be unable to implement other remedies, such as awarding damages to a defendant or ordering the state or local governing boards to take specific actions.”).

¹⁶¹ *See* Fensterwald, *supra* note 133, (quoting Stanford Law Professor William Koski, who criticized the 2022 ballot proposition for “explicitly prohibit[ing] [plaintiffs] from seeking funding to improve their schools”); Kocivar, *supra* note 157 (citing further commentary from Professor Koski).

¹⁶² *Id.*

to a high-quality education while leaving open plaintiffs' options for remedies.¹⁶³ The amendment in Part III is the best approach to amending California's right to education because it defines "high-quality" and does not limit future plaintiffs' remedies.¹⁶⁴

C. Effectuating the Original Intent of the California Constitution's Creators

The Framers of California's Constitution saw the creation of a public school system as fundamental to the civic and democratic health of the state.¹⁶⁵ Other states interpreting nearly the same constitutional language have found an implied right to quality education based on the purpose and historical intent of the provision.¹⁶⁶ Arkansas, whose constitution inspired California's right to education, is an example of this.¹⁶⁷ The Arkansas Supreme Court interpreted its right-to-education provision to mean that the state had "an absolute duty to provide the school children of Arkansas with an adequate education."¹⁶⁸ The Wyoming Supreme Court similarly noted that the Framers of the Wyoming Constitution intended for the state to provide education of a certain character.¹⁶⁹ Namely, the state needed to ensure its public education system "equipped [students] for their future roles as citizens, participants in the political system, and competitors both economically and intellectually."¹⁷⁰ The Wyoming Supreme Court understood this history to show that students had a right to the best educational system that adequately prepares them for citizenship.¹⁷¹

California's Framers intended the state's right-to-education provision to reflect the provisions of other states in both its purpose and language.¹⁷² However, California courts have departed from the shared understanding of the highest courts in Arkansas and Wyoming about what this constitutional history and language logically implies.¹⁷³ Unlike California courts, these courts have held that the provisions' language and purpose implies a right to an education of some adequate quality.¹⁷⁴ In *Campaign for Quality Education*, the First District Court of Appeal

¹⁶³ *Supra* Part III.

¹⁶⁴ *Id.*

¹⁶⁵ Gordon, *supra* note 40, at 332.

¹⁶⁶ *Supra* Section II.C.

¹⁶⁷ Compare ARK. CONST. art. XIV, § 1 ("[A] general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education."), with CAL. CONST. art. IX, § 1 ("the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." and CAL. CONST. art. IX, § 5 ("The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district...").

¹⁶⁸ Lake View Sch. Dist. No. 25 of Phillips Cnty., 91 S.W.3d at 491.

¹⁶⁹ Campbell Cnty. Sch. Dist., 907 P.2d 1238 at 1259.

¹⁷⁰ *Id.*

¹⁷¹ See *id.* ("Because education is one of the state's most important functions, lack of financial resources will not be an acceptable reason for failure to provide the best educational system.")

¹⁷² *Supra* Section II.A.

¹⁷³ Gordon, *supra* note 40, at 332; see also *Campaign for Quality Educ.*, 246 Cal. App. 4th at 909 (finding no right to education of a particular quality).

¹⁷⁴ *Supra* Part II; see also Gordon, *supra* note 40, at 333 ("[T]he framers referred to education as the gateway to a robust economic future in the state, the key to self-governance, and a gateway out of poverty for the individual.").

explained that it interprets the text of the California Constitution to determine the intent of its Framers.¹⁷⁵ In denying the existence of a right to a quality education, the court cited the lack of any “explicit textual basis.”¹⁷⁶ While not relying on extrinsic evidence about the Framers’ intent, the court chose other principles of interpretation to explain the meaning of the provisions.¹⁷⁷ It declared that the purpose of the constitution is to “declare ‘great principles and fundamental truths.’”¹⁷⁸

Using this rationale, the court decided providing a quality education is not one such principle, but rather a policy decision within the jurisdiction of the legislature.¹⁷⁹ This position, however, is contingent on the majority of the court’s philosophy of constitutional interpretation at any given time.¹⁸⁰ While different courts might consider this powerful historical evidence, it cannot protect students’ right to educational quality when the court is committed to excluding evidence of legislative intent.¹⁸¹ Because California courts have been unwilling to interpret California’s right to education in accordance with its creators’ intent, this amendment more clearly embodies the purpose of the provisions.¹⁸² The amendment secures students’ right to a high-quality education and defines this standard using the citizenship values the Framers sought to further through California’s public education system.¹⁸³ Even if California judges are committed to excluding extrinsic evidence of legislative intent and purpose, they cannot avoid grappling with these ideas when they are explicitly within the text of the constitutional provision.¹⁸⁴ By making this history explicit in the text of the amendment, even courts committed to relying only on the constitutional text must uphold students’ right to quality education.¹⁸⁵

Further, the Framers’ vision for California’s education system—as the center of civic development— informs the proposed amendment’s emphasis on citizenship.¹⁸⁶ By tying the definition of “high-quality” to education that promotes

¹⁷⁵ Campaign for Quality Educ., 246 Cal. App. 4th at 905–06 (“In interpreting sections 1 and 5 of article IX, ‘our paramount task is to ascertain the intent of those who enacted it’”) (quoting *Thompson v. Dep’t of Corr.* 25 Cal. 4th 117, 122 (2001)).

¹⁷⁶ *Id.* at 909 (“[W]e find no explicit textual basis from which a constitutional right to a public school education of a particular quality may be discerned.”).

¹⁷⁷ *Id.* at 910.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 911 (“Rather, the question of educational quality is inherently one of policy involving philosophical and practical considerations that call for the exercise of legislative and administrative discretion.”).

¹⁸⁰ See BRANDON J. MURRILL, CONG. RSCH. SERV., R45129, *MODES OF CONSTITUTIONAL INTERPRETATION* 5–25 (2018) (on file with the *University of the Pacific Law Review*) (describing how judges debate the use of different methods of textual interpretation).

¹⁸¹ See Campaign for Quality Educ., 246 Cal. App. 4th at 909–10 (discussing canons of constitutional interpretation that prohibit courts from using extrinsic evidence to “infer the existence of a constitutional right” where such is not explicit in the constitutional text).

¹⁸² *Id.* at 916 (“[S]ections 1 and 5 of article IX do not impose on the Legislature any duties that can be judicially enforced”); *supra* Part III.

¹⁸³ *Supra* Part III; *supra* Section II.A.

¹⁸⁴ See Campaign for Quality Educ., 246 Cal. App. 4th at 905–06 (explaining how the court determines the intent behind a provision by looking at the text itself).

¹⁸⁵ *Supra* Part III.

¹⁸⁶ See Gordon, *supra* note 40, at 361 (arguing that the “citizenship approach” to defining an adequate education is best).

the values of democratic citizenship, Part III's proposed amendment more accurately reflects the intent of the constitution's creators.¹⁸⁷ In doing so, it offers a flexible judicial standard for evaluating educational quality as society's expectations of citizens evolve.¹⁸⁸ For example, quality education in the digital world may look much different than it did before the advent of modern technology.¹⁸⁹ Courts evaluating a challenge under the amended right to education could consider whether students in a district have equal and adequate access to digital devices or learning platforms.¹⁹⁰ Because teaching students to use these mediums is essential in developing them as citizens in a digital society, it falls directly within the amendment's definition of "high-quality."¹⁹¹ So long as students' education is preparing them for the demands of being a citizen in the modern world, it will satisfy the quality standard in the amendment.¹⁹² Thus, the language of the amendment incorporates both the historical purpose of California's right to education and provides a standard flexible enough to evolve.¹⁹³

D. Rectifying the Court's Failure to Rely on Its Own Precedent

The proposed amendment enshrines in text what the California Supreme Court's precedent logically implies regarding the existence of a right to a quality education.¹⁹⁴ Although the courts in *Campaign for Quality Education* and *Vergara* ignored evidence of intent as a matter of interpretive philosophy, they incorrectly interpreted and insufficiently distinguished binding precedent.¹⁹⁵ In early cases implicating the right to education, the California Supreme Court acknowledged that the right guaranteed certain concepts like "basic educational equality."¹⁹⁶ Beyond that, the court indicated that the right to education encompassed more than just the right to a system of public education.¹⁹⁷ It affirmed the existence of an

¹⁸⁷ *Id.*; *supra* Part III.

¹⁸⁸ See Gordon, *supra* note 40, at 362 ("Tying the definition to societal norms might produce a more just result, however, for as society changes, the minimum requirements of education must change with it.").

¹⁸⁹ See JAKE BRYANT ET AL., MCKINSEY & CO., NEW GLOBAL DATA REVEAL EDUCATION TECHNOLOGY'S IMPACT ON LEARNING (2020), <https://www.mckinsey.com/industries/education/our-insights/new-global-data-reveal-education-technologys-impact-on-learning> (on file with the *University of the Pacific Law Review*) (reporting various ways in which teachers' and students' classroom technology impacts student success outcomes).

¹⁹⁰ See *Why Digital Skills Are Imperative for All of Today's Students*, ECONOMIST, <https://connectinglearners.economist.com/skills/> (last visited Apr. 22, 2023) (on file with the *University of the Pacific Law Review*) (explaining how rapid digitalization means students will need to learn digital literacy skills in school to prepared to enter the workforce).

¹⁹¹ *Supra* Part III; see also Gordon, *supra* note 40, at 362 (explaining that education must change as society evolves); *Why Digital Skills Are Imperative for All of Today's Students*, *supra* note 190.

¹⁹² *Supra* Part III.

¹⁹³ Gordon, *supra* note 40, at 361–62; *supra* Part III.

¹⁹⁴ See Gordon, *supra* note 40, at 336 ("[U]nderlying these cases are two unavoidable conclusions . . . that this right means a right to a quality education.").

¹⁹⁵ Serrano, 5 Cal. 3d at 607; Butt, 4 Cal. 4th at 685; see also Gordon, *supra* note 40, at 341–43 (describing the implication of *Butt* and *Serrano* that the right to education encompasses some implicit standard of quality).

¹⁹⁶ See Butt, 4 Cal. 4th at 685 (stating the California Constitution "prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts").

¹⁹⁷ Serrano, 5 Cal. 3d at 607.

implicit quality standard when it said “surely the right to an education today means more than access to a classroom.”¹⁹⁸ In later cases, however, California’s appellate courts did not grapple with the implications of these statements.¹⁹⁹ Rather, because the right to a quality education was not the primary legal focus of each case, the court ignored the logical conclusion of its prior comments.²⁰⁰ In response, the proposed amendment will require courts to reckon with these prior statements and protect students’ right to a high-quality education.²⁰¹

In addition to arguments based on specific language in prior California precedent, the logic of the right to education necessitates the existence of a quality standard.²⁰² Dissenting in *Campaign for Quality Education*, Justice Pollak explained that the existence of an implicit quality standard is logically necessary “if the constitutional provision is to have meaning.”²⁰³ At least one California Supreme Court justice, Justice Liu, agreed with Pollak’s reasoning when he dissented from the court’s denial of review of *Campaign for Quality Education*.²⁰⁴ Justice Liu quoted with approval Pollak’s dissent and shared his argument that the right to education would have no meaningful content without a standard of some required quality.²⁰⁵ He highlighted Pollak’s statement that such a right is “fully consistent with, if not compelled by, the importance that our Supreme Court historically has placed on [education].”²⁰⁶ Further, Justice Liu showed many state supreme courts have accepted the precedential importance of education as a fundamental right and the logical necessity of a quality requirement.²⁰⁷ However, the lower court’s erroneous interpretation of the right to education remains operative law and the California Supreme Court has not intervened to correct it.²⁰⁸

The proposed amendment in Part III synthesizes the reasoning of Justices Liu and Pollak and corrects the courts’ failure to recognize the right to education’s implicit quality standard.²⁰⁹ Drawing on the reasoning in *Butt* and *Serrano*, the amendment clarifies that California must provide students with an education of some quality in addition to “basic educational equality.”²¹⁰ To assist the court in clarifying this already-established “some quality” standard, the amendment

¹⁹⁸ *Id.*

¹⁹⁹ *Campaign for Quality Educ.*, 246 Cal. App. 4th at 914 n.8 (“*Serrano I* neither addressed nor found a constitutional mandate imposing on the Legislature a duty to fund an education of ‘some quality’ . . .); *see also* Vergara, 246 Cal. App. 4th at 640 (describing *Butt* but failing to explain what “basic educational equality” means).

²⁰⁰ *Campaign for Quality Educ.*, 246 Cal. App. 4th at 914 n.8.

²⁰¹ *Supra* Part III.

²⁰² *Campaign for Quality Educ.*, 246 Cal. App. 4th at 922 (Pollak, J., dissenting); *Campaign for Quality Educ. v. California*, 246 Cal. App. 4th 896, 209 Cal. Rptr. 3d 888, 920 (2016) (Liu, J., dissenting).

²⁰³ *Campaign for Quality Educ.*, 246 Cal. App. 4th at 922 (Pollak, J., dissenting).

²⁰⁴ *Campaign for Quality Educ. v. California*, 246 Cal. App. 4th 896, 209 Cal. Rptr. 3d 888, 919 (2016) (Liu, J., dissenting).

²⁰⁵ *Id.* at 920 (Liu, J., dissenting).

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 924 (Liu, J., dissenting) (“These holdings reflect the minority view among the more than 30 state high court opinions addressing similar issues under their state constitutions.”).

²⁰⁸ *See id.* at 919 (denying California Supreme Court review of the case); Vergara, 246 Cal. App. 4th at 209 Cal. Rptr. 3d 532, 558 (2016), *as modified* (May 3, 2016) (denying California Supreme Court review of the case).

²⁰⁹ *Campaign for Quality Educ.*, 246 Cal. App. 4th at 922 (Pollak, J., dissenting); *Campaign for Quality Educ. v. California*, 246 Cal. App. 4th 896, 209 Cal. Rptr. 3d 888, 928 (2016) (Liu, J., dissenting).

²¹⁰ *Supra* Part III.

specifies that students receive a high-quality education, as the Framers would have intended.²¹¹ Thus, the proposed amendment compensates for the failure of the judiciary to respect and enforce its own precedent, and logic, by establishing a right to a high-quality education.²¹²

E. Bringing California into the Company of States With the Best Public Education Systems

The proposed amendment incorporates language from the numerous states whose constitutions and courts have established a right to quality education.²¹³ Many of these states have educational outcomes far superior to California.²¹⁴ This may be, in part, because an established educational quality requirement allows parties to successfully challenge unequal school funding schemes.²¹⁵ For example, the Supreme Court of New Jersey has ordered the institution and maintenance of several educational programs for students through “*Abbott Decisions*” since 1985.²¹⁶ In its 1990 decision, the New Jersey Supreme Court held that the state’s unequal school funding scheme violated the “thorough and efficient” component of the right to education.²¹⁷ Because property tax revenue in each district funded New Jersey’s schools, those in poorer districts had fewer financial resources available.²¹⁸ Thus, the Court concluded that “a thorough and efficient education is achievable” only when students are “given sufficient attention in an adequately financed system.”²¹⁹ Based on this initial *Abbott* decision, the New Jersey Supreme Court has issued other decisions mandating universal preschool, funding for special youth programs, and curriculum reform.²²⁰ These decisions—based on the language defining the state’s constitutional right to education—have resulted in

²¹¹ *Supra* Part III; *supra* Section II.A.

²¹² *Supra* Part III.

²¹³ VA. CONST. art. VIII, § 1 (“[E]nsure that an educational program of high quality is established and continually maintained.”); ILL. CONST. art. X, § 1 (“[A]n efficient system of high quality public educational institutions and services.”); N.J. CONST. art. VIII, § IV, ¶ 1 (“thorough and efficient system of free public schools . . .”).

²¹⁴ See *Education Rankings*, *supra* note 12 (ranking New Jersey, Illinois, and Virginia within the top fifteen for Pre-K-12 education systems in the nation).

²¹⁵ See *Abbott by Abbott v. Burke*, 119 N.J. 287, 393–94 (1990) (holding that New Jersey’s unequal school funding program violated the “thorough and efficient” requirement of its constitutional right to education); *Abbott Overview*, EDUC. L. CTR., <https://edlawcenter.org/litigation/abbott-v-burke/abbott-v.-burke-overview.html> (last visited Jan. 12, 2023) (on file with the *University of the Pacific Law Review*) (explaining that the *Abbott* rulings have allowed plaintiffs to challenge other unequal aspects of the state’s public education system).

²¹⁶ See *Abbott Decisions*, EDUC. L. CTR., <https://edlawcenter.org/litigation/abbott-v-burke/abbott-decisions.html> (last visited Jan. 12, 2023) (on file with the *University of the Pacific Law Review*) (defining “*Abbott* Districts” as the 31 “poorer urban” school districts” challenging discriminatory policies in the *Abbott* cases).

²¹⁷ See *Abbott*, 119 N.J. at 346 n.21 (“[T]he disparity between the two classes almost compels, by itself, the conclusion that the students in the poorer urban districts are not receiving a thorough and efficient education.”).

²¹⁸ *Id.* at 335.

²¹⁹ *Id.* at 394.

²²⁰ See *Abbott Overview*, *supra* note 215.

New Jersey leading the nation in K-12 public education.²²¹ Because of this connection, California should amend its constitutional right to education if it seeks to share New Jersey’s reputation as a state that prioritizes education.²²²

The proposed amendment in Part III explicitly draws on the language of the New Jersey Constitution and that of other states with more robust rights to education.²²³ Like the constitutions of these other states, the amendment provides for a public education system that is “uniform, thorough, efficient, and high-quality.”²²⁴

Likewise, it defines “high-quality” based on the purpose behind the right to education in California and other states whose courts have found a constitutional educational quality requirement.²²⁵ It does so by connecting “high-quality” to “the skills and opportunities necessary to successfully learn how to participate as a citizen in a democratic society.”²²⁶ The amendment further connects the definition of high-quality to “statewide educational standards.”²²⁷

California courts have recognized such language and used it in influential pre-2016 opinions.²²⁸ Thus, the amendment reflects the precedential reasoning of the California Supreme Court while bolstering it with influential language from other state constitutions and supreme court interpretations.²²⁹ In doing so, the amendment provides grounds for California courts to revisit the issue of educational quality and ensure California’s education system meets the new constitutional standard of quality.²³⁰

²²¹ *New Jersey Leads the Nation in Education for the Third Year in a Row*, N.J. EDUC. ASS’N (Sept. 16, 2021), <https://www.njea.org/new-jersey-leads-the-nation-in-education-for-the-third-year-in-a-row/> (on file with the *University of the Pacific Law Review*) (“States and communities that invest in their students and schools invest in the future. New Jersey has been at the top for public education for many years and that investment is going to lead to enormous rewards for our state . . .”).

²²² *Education Rankings*, *supra* note 12.

²²³ N.J. CONST. art. VIII, § IV, ¶ 1 (“thorough and efficient system of free public schools . . .”); VA. CONST. art. VIII, § 1 (“[E]nsure that an educational program of high quality is established and continually maintained.”); ILL. CONST. art. X, § 1 (“[A]n efficient system of high quality public educational institutions and services.”); *supra* Section II.C.

²²⁴ N.J. CONST. art. VIII, § IV, ¶ 1 (“thorough and efficient system of free public schools . . .”); VA. CONST. art. VIII, § 1 (“[E]nsure that an educational program of high quality is established and continually maintained.”); ILL. CONST. art. X, § 1 (“[A]n efficient system of high quality public educational institutions and services.”); *supra* Part III.

²²⁵ *Supra* Section III.C.

²²⁶ *Supra* Part III.

²²⁷ *Id.*

²²⁸ Butt, 4 Cal. 4th at 686 (referencing the need to assess the quality of an educational program through looking at “statewide standards” and noting the importance of “basic educational equality”).

²²⁹ Butt, 4 Cal. 4th at 686; *supra* Section II.C; MONT. CONST. art. X, § 1 (“Equality of educational opportunity is guaranteed to each person of the state.”); Campbell Cnty. Sch. Dist., 907 P.2d at 1258–59 (defining in detail the words “uniform,” “thorough,” “efficient,” and “adequate”); Rose, 790 S.W.2d at 210 (listing the curricular areas West Virginia decided “each child educated in the system should develop to full capacity” including literacy, mathematics, citizenship, and ethics).

²³⁰ *Supra* Part III.

F. Likely Impacts and Limits of the Amendment

With a new high-quality standard in place, California courts must reassess their holding that no constitutional right to an education of any particular quality exists.²³¹ The proposed amendment in Part III helps tackle the first barrier in judicial enforcement of the right to quality education: justiciability.²³² California courts have justified their failure to find a quality component of the right to education by claiming that questions about quality are the state legislature's responsibility.²³³ While this view contrasts that of other state supreme courts, enacting the proposed amendment removes any concern that the court is inventing a quality requirement.²³⁴ If new lawsuits like *Vergara* or *Campaign for Quality Education* arise, California courts would need to determine if particular state actions infringe the right to a high-quality education.²³⁵ Making this determination does not guarantee that the courts would strike down the elements of California's public education system that it upheld in *Vergara* and *Campaign for Quality Education*.²³⁶ Rather, courts would assess whether those elements of the public education system enable students to receive a high-quality education that meets established statewide standards of academic achievement.²³⁷ Because it has a specific definition within the language of the amendment, the proposed amendment ensures the court cannot evade the question of quality.²³⁸

Further, establishing a fundamental right to a high-quality education allows plaintiffs to pivot their strategy for bringing education litigation claims.²³⁹ Because the *Vergara* plaintiffs alleged Equal Protection Clause violations, the appellate court found they failed to prove the statutes inevitably caused the disproportionate impact at issue.²⁴⁰ Additionally, the court in *Vergara* held that plaintiffs failed to prove that the state's action unduly burdened the right to education of an identifiable group of students.²⁴¹ Proving that a statutory scheme caused a disproportionate impact inside a highly complex system like California's public education program is difficult.²⁴² Because plaintiffs must prove that the state

²³¹ *Campaign for Quality Educ.*, 246 Cal. App. 4th at 909.

²³² *See id.* at 911 (asserting that “the issue of educational quality is inherently one of policy” and thus is not a “subject within the judiciary’s field” because it is not mentioned in “the constitution in any meaningful sense”).

²³³ *Id.*

²³⁴ *See Gannon*, 298 Kan. at 1159; *Rose*, 790 S.W.2d at 210; *Lake View Sch. Dist. No. 25 of Phillips Cnty.*, 351 Ark. at 55.

²³⁵ *Supra* Part III.

²³⁶ *See Strict Scrutiny*, *supra* note 48 (explaining that even if a government action infringes a fundamental right, it may be upheld if it is narrowly tailored to serve a compelling government interest).

²³⁷ *Supra* Part III; CAL. EDUC. CODE § 60605(a)(2)(A); *Content Standards*, *supra* note 151.

²³⁸ *Supra* Part III.

²³⁹ *Vergara*, 209 Cal. Rptr. 3d 566, *as modified* (May 3, 2016) (Cuéllar, J., dissenting) (“When a fundamental interest is at stake, the sole preliminary inquiry is whether the challenged law has a real and appreciable impact on the exercise of that interest.”).

²⁴⁰ *Vergara*, 246 Cal. App. 4th at 651, *as modified* (May 3, 2016).

²⁴¹ *Vergara*, 209 Cal. Rptr. 3d at 564–65, *as modified* (May 3, 2016) (Cuéllar, J., dissenting) (“[I]f that burden is imposed at random rather than on a discrete and identifiable group, then no relief is available under the equal protection provisions . . .”).

²⁴² *Vergara*, 246 Cal. App. 4th at 651, *as modified* (May 3, 2016).

unequally burdens some group of students' right to education, plaintiffs struggle to achieve education reform through Equal Protection Clause suits.²⁴³

If a fundamental right to high-quality education had existed, the *Vergara* plaintiffs could have alleged its infringement based on the state's failure to provide high-quality public education.²⁴⁴ Using this legal theory would absolve the plaintiffs of meeting the high burden of proof required for an Equal Protection claim based on discrimination against a suspect class.²⁴⁵ Under this theory, plaintiffs would still need to prove that the challenged conduct, action, or statute violated students' fundamental right to a high-quality education.²⁴⁶ Crucially, however, plaintiffs could circumvent the pitfalls of having to rely exclusively on their ability to prove disproportionate impact between groups of students.²⁴⁷

Several scholars have argued that the most successful strategy for pursuing education reform through litigation involves combining claims about educational equality and adequacy.²⁴⁸ Citing many state supreme court decisions, Robert M. Jensen notes that plaintiffs' most successful strategy for pursuing education reform requires relying on the state's right-to-education provision.²⁴⁹ He aptly predicted that "the most effective language of state constitutions . . . will inevitably be that which prescribes a high level of educational quality."²⁵⁰ Thus, the proposed amendment will likely provide new grounds for education litigation in California that would have previously been unsuccessful.²⁵¹

One limitation of Part III's proposed amendment is its inability to resolve a major challenge facing education reform plaintiffs: obtaining effective remedies in state courts.²⁵² Because there is no federal right to education, education-reform suits are litigated in state courts.²⁵³ State courts, however, have been reluctant to issue and appropriately oversee injunctions requiring school districts to rectify

²⁴³ *Vergara*, 209 Cal. Rptr. 3d at 564–65 (2016), *as modified* (May 3, 2016) (Cuéllar, J., dissenting).

²⁴⁴ *Id.* at 566 (Cuéllar, J., dissenting) ("We can understand plaintiffs' claims . . . as ultimately predicated more directly on the argument that a fundamental interest has been unduly burdened.")

²⁴⁵ *Id.* 566–67 (Cuéllar, J., dissenting); *Suspect Class*, MERRIAM WEBSTER DICTIONARY, <https://www.merriam-webster.com/legal/suspect%20class> (last visited Apr. 22, 2023) (on file with the *University of the Pacific Law Review*) ("[A] class of individuals marked by immutable characteristics (as of race or national origin) and entitled to equal protection.")

²⁴⁶ *Vergara*, 209 Cal. Rptr. 3d at 566–67, *as modified* (May 3, 2016) (Cuéllar, J., dissenting).

²⁴⁷ *Vergara*, 246 Cal. App. 4th at 651, *as modified* (May 3, 2016).

²⁴⁸ See Robert M. Jensen, *Advancing Education Through Education Clauses of State Constitutions*, BYU EDUC. & L.J. 1, 27–34 (1997) (arguing that equal protection arguments are more prone to concerns over justiciability than educational adequacy arguments, but that a combination of both is most successful); Joshua Weishart, *Transcending Equality Verses Adequacy*, 66 STAN. L. REV. 477, 532–36 (2014) (describing the interrelation of arguments about educational equality and adequacy).

²⁴⁹ Jensen, *supra* note 248, at 27–34.; Pauley, 162 W. Va. at 708; Abbott, 119 N.J. at 393–94.

²⁵⁰ Jensen, *supra* note 248, at 4.

²⁵¹ See Gordon, *supra* note 40, at 343–50 (explaining that equal protection as grounds for vindicating the right to education is "infeasible and undesirable"); Jensen, *supra* note 248, at 27–34.

²⁵² See University of the Pacific, McGeorge School of Law, Critical Race Theory Class: Can Impact Litigation Solve the Problem of Structural Racism? A Focus on Education (Apr. 4, 2023) (notes on file with the *University of the Pacific Law Review*).

²⁵³ See *San Antonio Indep. Sch. Dist.*, 411 U.S. at 35.

legally problematic aspects of their programs for several reasons.²⁵⁴ First, orders requiring school districts to spend money in particular ways or alter elements of their educational programming require persistent monitoring, which courts may find burdensome.²⁵⁵ Further, courts may fear that interfering with elected officials' management of finances and operation of the education system represents impermissible judicial overreach.²⁵⁶ Second, education stakeholders similarly may oppose such stringent oversight by the courts.²⁵⁷ Lastly, some experts surmise that elected state court judges—without life tenure—may be more hesitant to require the compliance of elected political forces with stringent court orders.²⁵⁸

Even if state judges order injunctive relief in a suit under California's amended right to high-quality education, there is no guarantee the court will adequately enforce it.²⁵⁹ Thus, the success of future claims under the right to a high-quality education will rely on plaintiffs' strategic decisions about how to craft such claims.²⁶⁰ One approach that may prove fruitful is focusing on small-scale school district actions rather than larger, systemic structures like the statutory scheme governing teacher tenure.²⁶¹ One example might be focusing on the teacher placement policy in a specific school district.²⁶² By limiting the constitutional challenge to a smaller subset of issues within one district, plaintiffs may make courts more comfortable with issuing tailored injunctions that require less oversight.²⁶³ Without the constitutional grounds for defending the right to a high-quality education, plaintiffs will not be able to succeed on the merits of their claim.²⁶⁴ Even though remedies are crucial in making education reform litigation effective, plaintiffs must first ensure they have a legal argument that can win the

²⁵⁴ See Kamina Aliya Pinder, *Reconciling Race-Neutral Strategies and Race Conscious Objectives: The Potential Resurgence of the Structural Injunction in Education Litigation*, 9 STAN. J. CIV. RTS & CIV. LIBERTIES 247, 259 (2013) (describing reasons why courts shy away from issuing and enforcing structural injunctions); *Injunction*, MERRIAM WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/injunction> (last visited Apr. 22, 2023) (on file with the *University of the Pacific Law Review*) (“[A] writ granted by a court of equity whereby one is required to do or to refrain from doing a specified act.”); University of the Pacific, McGeorge School of Law, Critical Race Theory Class, *supra* note 252.

²⁵⁵ See Pinder, *supra* note 254, at 260 (describing how some courts have shifted towards collaboration with those under a structural injunction to “ameliorate[] the burden of extensive judicial oversight”).

²⁵⁶ See *id.* at 259 (“[C]ourts are sensitive to the financial burden their remedies may impose on districts and municipalities.”).

²⁵⁷ See University of the Pacific, McGeorge School of Law, Critical Race Theory Class, *supra* note 252 (explaining that school district administration and teachers' unions oppose stringent judicial oversight of school district management).

²⁵⁸ See *id.*; Joanna M. Shepherd, *The Influence of Retention Politics on Judges' Voting*, 38 J. LEGAL STUD. 169, 170 (2009) (finding that judges vote in line with the preferences of the political groups responsible for reelecting them).

²⁵⁹ See University of the Pacific, McGeorge School of Law, Critical Race Theory Class, *supra* note 252.

²⁶⁰ *Id.*

²⁶¹ *Id.*; Vergara, 246 Cal. App. 4th at 651 (“Plaintiffs elected not to target local administrative decisions and instead opted to challenge the statutes themselves. This was a heavy burden and one plaintiffs did not carry.”).

²⁶² Vergara, 246 Cal. App. 4th at 651; see also University of the Pacific, McGeorge School of Law, Critical Race Theory Class, *supra* note 252.

²⁶³ University of the Pacific, McGeorge School of Law, Critical Race Theory Class, *supra* note 252.

²⁶⁴ Campaign for Quality Educ., 246 Cal. App. 4th at 909; see also Vergara, 246 Cal. App. 4th at 652 (reversing the trial court's decision and finding that the challenged statutes were constitutional).

case.²⁶⁵ The proposed amendment in Part III provides plaintiffs with a constitutional basis on which to challenge the quality of education the state provides.²⁶⁶ Regardless of how courts may enforce the remedies they grant, Part III's proposed amendment succeeds in providing new legal grounds for challenging inadequacies within California's public education system.²⁶⁷

V. CONCLUSION

California's public education system does not provide all students with the kind of education its constitution's Framers intended to mandate.²⁶⁸ As a result, the academic performance of minority and low-income students in California is suffering.²⁶⁹ California Supreme Court precedent supports the argument that there is an implicit right to an education of adequate quality within the California Constitution.²⁷⁰ In the recent *Vergara* and *Campaign for Quality Education* cases, however, the court has been unwilling to find such a right.²⁷¹

To effectuate the intent of California's Framers and enable the judiciary to revisit the question of educational quality, legislators should amend the state's constitutional right to education.²⁷² Part III's proposed amendment incorporates the constitutional language of other states in requiring the State of California to provide uniform, thorough, efficient, and high-quality education.²⁷³ If adopted, this amendment would allow California courts to critically assess whether elements of California's public education system, like funding and teacher tenure, meet the "high-quality" standard.²⁷⁴ While California courts' conclusions in future cases remain unclear, the proposed amendment provides the text necessary for an effective approach to educational-quality litigation.²⁷⁵ It is time for California to keep its constitutional promise to the thousands of students, like Elizabeth and Beatriz Vergara, who deserve a high-quality education.²⁷⁶

²⁶⁵ *Id.*

²⁶⁶ *Supra* Part III.

²⁶⁷ *Id.*

²⁶⁸ *Supra* Section IV.C.

²⁶⁹ *Supra* Section II.A.

²⁷⁰ *Supra* Section II.B.

²⁷¹ *Supra* Subsection II.B.2.

²⁷² *Supra* Part III.

²⁷³ *Id.*

²⁷⁴ *Supra* Section IV.E.

²⁷⁵ *Supra* Section IV.F.

²⁷⁶ *Supra* Part I; *supra* Part III.