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## Teacher Shortages and the Fundamental Right to Education in California

Chris Yarrell

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# Teacher Shortages and the Fundamental Right to Education in California

Chris Yarrell\*

## *Abstract*

*That a qualified teacher workforce functions as the most important factor affecting student learning and achievement is beyond dispute. Yet, the right to education—which is a state obligation codified within all fifty 50 state constitutions—has been vindicated largely within the province of school finance litigation. Indeed, for nearly five decades, education litigants have brought school finance disputes in virtually every state, succeeding in more than half of them. Despite the hard-won victories notched by education liti-gants over this time, however, courts adjudicating school finance disputes have largely failed to move beyond declaring simple pro-scriptions on facially unequal school funding regimes. Although these wins have led to many of the important gains made within the education rights arena, courts' general reluctance to consider the deeper effects of such state-sanctioned inequality has undermined much of the foregoing gains. This reality has become painfully ap-parent in the context of our national teacher shortage crisis.*

*To be sure, courts are not constitutionally obligated to address many of the substantive questions implicit in school finance suits. In fact, courts that attempt to resolve these underlying, more substan-tive questions risk running afoul of separation of powers strictures. Yet, to vindicate a child's constitutional right to education, these risks should not preclude a court from engaging in more searching*

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*inquiries of presumptively suspect state action. In light of the prevailing teacher shortage, then, this Essay contends that state courts should demand that state legislatures redress the maldistribution of qualified, effective teachers as the key educational resource that they have always been. Indeed, as observed by Professor Derek Black, our nation's school finance precedents "obligate[] states to address their distributional failures in regard to key education resources." This distributional failure is especially apparent in California, the nation's largest state-run public school system, which is the focus of this Essay's analysis. Accordingly, by applying the reasoning adopted in key school finance precedent, this Essay demonstrates that qualified, effective K12 teachers function as "key education resources" that must, as a constitutional matter, be distributed equally.*

TABLE OF CONTENTS

I. INTRODUCTION.....	111
II. BACKGROUND: <i>VERGARA V. STATE</i> .....	114
III. CRITIQUE.....	115
IV. CHALLENGING THE CONSTITUTIONALITY OF UNEQUAL ACCESS TO QUALITY TEACHERS .....	116
V. CONCLUSION .....	119

## I. INTRODUCTION

In the spring of 2018, approximately 400,000 public school teachers and support staff across nearly twelve states led one of the largest labor struggles in U.S. history.<sup>1</sup> Widely known as the “Red for Ed” teachers’ movement, these strikers organized mass demonstrations and work-stoppages to protest, among other things, the budget-cutting austerity measures adopted by state legislatures in the wake of the Great Recession.<sup>2</sup> Indeed, over the decade following the Great Recession, school districts nationwide lost nearly \$600 billion in state funding as a result of these budget-cutting measures.<sup>3</sup> Consequently, tens of thousands of teachers and school support staff were laid off nationwide.<sup>4</sup> Worse still, a growing body of social science research suggests that the foregoing state-level funding cuts, and the corresponding harms that they engendered, were disproportionately imposed onto students experiencing poverty.<sup>5</sup>

With the advent of the COVID-19 pandemic in March 2020, the teacher shortage crisis has only worsened.<sup>6</sup> Among the states that have cut education

1. See ERIC BLANC, RED STATE REVOLT: THE TEACHERS’ STRIKE WAVE AND WORKING-CLASS POLITICS, 16 (VERSO, 2019).

2. *Id.*

3. See Danielle Farrie & David G. Sciarra, *\$600 Billion Lost: State Disinvestment in Education Following the Great Recession*, EDUCATION LAW CENTER, 2 (2021); Kenneth Shores & Matthew P. Steinberg, *The Impact of the Great Recession on Student Achievement: Evidence from Population Data*, STANFORD CENTER FOR EDUCATION POLICY ANALYSIS, 30 (Aug. 2017), <https://cepa.stanford.edu/sites/default/files/wp17-09-v201708.pdf> (noting that “[t]he educational impact of the Great Recession was also disproportionately distributed.” Further, the author observes “. . . that districts most reliant on state aid, and therefore more likely to be economically disadvantaged, were more adversely affected by the recession due to declines in the two principle sources of tax revenue—income and sales taxes—that support state education spending. Thus, it is no surprise that the adverse effect of the recession on achievement was also disproportionately felt by more economically disadvantaged school districts.”).

4. See Emma García & Elaine Weiss, *The Teacher Shortage is Real, Large and Growing, and Worse Than We Thought*, ECONOMIC POLICY INSTITUTE (Mar. 26, 2019), <https://www.epi.org/publication/the-teacher-shortage-is-real-large-and-growing-and-worse-than-we-thought-the-first-report-in-the-perfect-storm-in-the-teacher-labor-market-series/>.

5. See Michael Leachman, Kathleen Masterson & Eric Figueroa, *A Punishing Decade for School Funding*, CENTER ON BUDGET & POLICY PRIORITIES, 1 (Nov. 29, 2017), <https://www.cbpp.org/sites/default/files/atoms/files/11-29-17sfp.pdf>; Nicholas Johnson, *The Great Recession Badly Hurt Kids’ Schooling; Today’s Recession Could Do Much Worse*, CENTER ON BUDGET & POLICY PRIORITIES (May 27, 2020, 10:00 AM), <https://www.cbpp.org/blog/the-great-recession-badly-hurt-kids-schooling-todays-recession-could-do-much-worse> (explaining that “[w]hile state funding typically reduces disparities between wealthy and poor school districts, funding cuts magnify those disparities—and that’s what happened with the Great Recession, when state funding fell as a share of total school funding. Today, high-poverty school districts—which face higher costs—receive more state and local funding than low-poverty districts do in only about a third of states.”).

6. See García & Weiss, *supra* note 4.

funding since the start of the pandemic, scholars have found that these funding cuts closely track the education funding reductions made in the years immediately following the Great Recession.<sup>7</sup> As a result, public K-12 schools nationwide have experienced a roughly seven percent employment decline in employed school professionals, including teachers, between September 2019 and September 2020.<sup>8</sup> Worse yet, school employment figures from the 2020-2021 academic year—widely considered the height of the pandemic—dropped to their lowest point since the 2000-2001 academic year.<sup>9</sup> This is a problem.

That a qualified teacher workforce functions as the most important factor affecting student learning and achievement is beyond dispute.<sup>10</sup> Yet, the right to education—which is a substantive state obligation codified within all fifty state constitutions<sup>11</sup>—has been vindicated largely within the province of school finance litigation. Indeed, for nearly five decades, education litigants have brought school finance disputes in virtually every state, succeeding in more than half of them.<sup>12</sup> Despite the hard-won victories notched by education litigants over this time, however, courts adjudicating school finance

7. See Moriah Balingit, *Schools Get a \$54 Billion Lifeline in Stimulus Package – But the Money Won't Last Long*, WASH. POST (Dec. 28, 2020, 7:31 PM ET), [https://www.washingtonpost.com/education/schools-get-a-54billion-lifeline-in-stimulus-package--but-the-money-wont-last-for-long/2020/12/28/fdf22f62-4956-11eb-839a-cf4ba7b7c48c\\_story.html](https://www.washingtonpost.com/education/schools-get-a-54billion-lifeline-in-stimulus-package--but-the-money-wont-last-for-long/2020/12/28/fdf22f62-4956-11eb-839a-cf4ba7b7c48c_story.html); Mary McKillip, *Tracking State School Aid Cuts in the Pandemic*, EDUCATION LAW CENTER (Aug. 25, 2020), <https://edlaw-center.org/news/archives/school-funding-national/tracking-state-school-aid-cuts-in-the-pandemic.html> (analyzing research from the Education Law Center, which found that “Texas and New York followed a playbook from the 2009 Great Recession by cutting over \$1 billion in state aid, an amount equal to the one-time federal funds provided for emergency relief for public schools under the CARES Act. In both states, the cuts are disproportionately higher in districts segregated by poverty and those most in need from COVID-19.”).

8. See Barb Rosewicz & Mike Maciag, *Nearly All States Suffer Declines in Education Jobs*, PEW CHARITABLE TRUST (Nov. 10, 2020), <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/11/10/nearly-all-states-suffer-declines-in-education-jobs>.

9. See Valerie Bauerlein & Yoree Koh, *Teacher Shortage Compounds Covid-19 Crisis in Schools*, WALL STREET JOURNAL (Dec. 15, 2020, 11:36 AM ET), <https://www.wsj.com/articles/teacher-shortage-compounds-covid-crisis-in-schools-11608050176>.

10. See, e.g., LINDA DARLING-HAMMOND, *THE FLAT WORLD AND EDUCATION: HOW AMERICA'S COMMITMENT TO EQUITY WILL DETERMINE OUR FUTURE* (2010); DAN GOLDHABER, *TEACHERS CLEARLY MATTER, BUT FINDING EFFECTIVE TEACHER POLICIES HAS PROVEN CHALLENGING*, HANDBOOK OF RESEARCH IN EDUCATION FINANCE AND POLICY 157 (Helen F. Ladd & Margaret E. Goertz eds., 2d ed. 2015); Steven G. Rivkin, Eric A. Hanushek & John F. Kain, *Teachers, Schools, and Academic Achievement*, 73 *ECONOMETRICA* 417 (Mar. 2005).

11. See *The State Role in Education Finance*, NATIONAL CONFERENCE OF STATE LEGISLATORS (NCSL), <https://www.ncsl.org/research/education/state-role-in-education-finance.aspx> (last visited Oct. 21, 2021).

12. See Michael A. Rebell, *Poverty, Meaningful Educational Opportunity, and the Necessary Role of the Courts*, 85 N.C. L. REV. 1467, 1500 (2007).

disputes have largely failed to move beyond declaring simple proscriptions on facially unequal school funding regimes. Although these wins have led to many of the important gains made within the education rights arena,<sup>13</sup> courts' general reluctance to consider the deeper effects of such state-sanctioned inequality has undermined much of the foregoing gains.<sup>14</sup> This reality has become painfully apparent in the context of our national teacher shortage crisis.

To be sure, courts are not constitutionally obligated to address many of the substantive questions implicit in school funding suits. In fact, courts that attempt to resolve these underlying, more substantive questions risk running afoul of separation of powers structures. To vindicate a child's constitutional right to education, however, these risks should not preclude a court from engaging in more searching inquiries of presumptively suspect state action. In light of the prevailing teacher shortage, then, this Essay contends that state courts should demand that state legislatures redress the maldistribution of qualified, effective teachers as the key educational resource that they have always been. Indeed, as observed by Professor Derek W. Black, our nation's school finance precedents "obligate[] states to address their distributional failures in regard to key education resources."<sup>15</sup> This distributional failure is especially apparent in California, the nation's largest state-run public school system, which is the focus of this Essay's analysis. By applying the reasoning adopted in key school finance precedent, this Essay demonstrates that qualified, effective teachers function as key education resources that must, as a constitutional matter, be distributed equally.

This Essay proceeds in four parts. Part I provides a brief overview of *Vergara v. State*, a recent state challenge to California's teacher tenure laws. Part II argues that California's educator shortage has disproportionately deprived low-income and minority school districts of equal access to a key educational resource: quality teachers. Part III contends that California's maldistribution of quality teachers—rather than the state's teacher tenure laws, as argued in *Vergara*—have violated students' right to education under the

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13. See, e.g., *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (Ky. 1989) (declaring the Kentucky system of public education unconstitutional given the state legislature's failure to provide students with, among other things, sufficient "training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently"); *Abbott by Abbott v. Burke*, 119 N.J. 287, 294 (N.J. 1990); *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 931 (N.Y. 2003).

14. JAMES E. RYAN, *FIVE MILES AWAY, A WORLD APART: ONE CITY, TWO SCHOOLS, AND THE STORY OF EDUCATIONAL OPPORTUNITY IN AMERICA*, 155 (2010) (observing that "courts . . . are generally much less willing to ensure that legislatures do what it takes to fix [violations of state education rights]").

15. See Derek W. Black, *Taking Teacher Quality Seriously*, 57 WM. & MARY L. REV. 1597, 1660 (2016).

California Constitution. Part IV briefly concludes.

## II. BACKGROUND: *VERGARA V. STATE*

On August 27, 2014, nine plaintiffs in *Vergara v. State* challenged the constitutionality of California's teacher tenure and dismissal laws.<sup>16</sup> In so doing, the plaintiffs co-opted the legal framework established by decades of school finance precedent. Indeed, the challenge in *Vergara* sought to broaden the constitutional fault lines established within California's school finance case law by "substantiat[ing] the premise that any state policy that systematically and substantially impedes educational opportunity, whether financially or otherwise, is unconstitutional."<sup>17</sup> To that end, plaintiffs provided two principal arguments to support their claim. First, they claimed that "teacher tenure and dismissal statutes, to the extent they lead to the hiring and retention of grossly ineffective teachers, violate students' fundamental right to education."<sup>18</sup> Second, they claimed that the recipients of such grossly ineffective teachers were disproportionately concentrated within low-income, racially isolated school districts.<sup>19</sup>

Although the trial court accepted the *Vergara* plaintiffs' theory that California's teacher tenure laws denied students of their state right to an equal and adequate education<sup>20</sup>, this victory was short-lived. On appeal, a unanimous three-judge panel of the California Court of Appeal reversed the trial court decision on two grounds.<sup>21</sup> First, the panel held that the nexus between the alleged denial of a fundamental right to education through the deprivation of qualified teachers was not enough to establish an identifiable class.<sup>22</sup> Second, the panel concluded that the plaintiffs failed to meet their burden of "demonstrat[ing] that the [statute's] provisions inevitably pose a present total and fatal conflict with applicable constitutional provisions."<sup>23</sup> Indeed, the court reasoned that the trial record revealed that administrative decisions at the local level—rather than the state statutes—formed the ways in which teachers in

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16. See *Vergara*, 246 Cal.App.4th 619, 640 (Cal. Ct. App. 2016), review denied (Cal. Aug. 22, 2016).

17. See Black, *supra* note 15, at 1602.

18. See *Vergara*, 246 Cal.App.4th at 652 (Liu J., dissenting).

19. See *id.*

20. See First Amended Complaint for Declaratory & Injunctive Relief at 2–5, *Vergara v. State*, No. BC484642, 2014 WL 6478415 (Cal. Super. Ct. Aug. 27, 2014).

21. See *Vergara*, 246 Cal.App.4th at 652.

22. See *id.* at 646.

23. *Id.* at 643.



a district were assigned within their district.<sup>24</sup> While this decision was subsequently appealed to the California Supreme Court, the court declined to review the reversal by the Court of Appeal, thereby upholding the lower court's decision.

Despite the California Supreme Court's decision to decline review, the causal claim advanced in *Vergara*—that is, that teacher tenure violates students' state constitutional right to education—is flawed. The next Part begins by offering a brief critique of the argument presented in *Vergara*. It then provides a counterclaim to *Vergara* by importing the reasoning employed in key school finance precedents to support its thesis: that the maldistribution of quality teachers within predominately low-income, racially segregated schools functions as an unconstitutional deprivation of a key educational resource.

### III. CRITIQUE

The central argument in *Vergara*—that California's teacher tenure policies deprive poor students of their state right to education—is underinclusive. Indeed, “[p]laintiffs assume a causal connection between tenure and educational opportunities that is too simple and, as of yet, unsubstantiated.”<sup>25</sup> Despite our creation of elaborate teacher rating systems and a great many byzantine teacher development programs,<sup>26</sup> statisticians and education researchers find little empirical evidence suggesting a causal link between teacher tenure policies and equal educational opportunity. Yet, *Vergara*'s flawed attack on public K-12 teachers<sup>27</sup> was nevertheless replicated in state courts around the nation.<sup>28</sup> Worse still, the Supreme Court effectively furthered the attack on teachers in *Vergara* with its decision in *Janus*,<sup>29</sup> which severely undermined the ability of teachers' unions to collectively bargain.

As the teacher shortage crisis worsens nationwide, education reformers should begin to jettison the flawed, tenure-based reasoning presented in

24. See *id.* at 649.

25. See Black, *supra* note 15, at 1653.

26. See *State of the States 2012: Teacher Effectiveness Policies*, NATIONAL COUNCIL ON TEACHER QUALITY, 2–3 (2012).

27. See Valerie Strauss, *The War on Teachers: Why the Public is Watching It Happen*, WASH. POST (Mar. 12, 2012), [https://www.washingtonpost.com/blogs/answer-sheet/post/the-war-on-teachers-why-the-public-is-watching-it-happen/2012/03/11/gIQAD3XH6R\\_blog.html](https://www.washingtonpost.com/blogs/answer-sheet/post/the-war-on-teachers-why-the-public-is-watching-it-happen/2012/03/11/gIQAD3XH6R_blog.html).

28. See, e.g., *North Carolina Ass'n of Educators, Inc. v. State*, 241 N.C.App. 284, 318 (N.C. Ct. App. 2015), *cert. granted*, 368 N.C. 291 (N.C. 2015); see also Al Baker, *Lawsuit Challenges New York's Teacher Tenure Laws*, NEW YORK TIMES (July 3, 2014), <http://www.nytimes.com/2014/07/04/nyregion/lawsuit-contests-new-yorks-teacher-tenure-laws.html?r=0>.

29. See *Janus v. AFSCME*, 138 S. Ct. 2448, (2018).

*Vergara*. Instead, to meaningfully address the shortage of quality teachers, reformers should leverage the reasoning set forth in key school finance precedent to challenge the distribution of quality teachers within a state’s educator workforce. In fact, “even if states cannot increase the supply of quality teachers, the analytical principles developed in school finance litigation should dictate that states fairly distribute the ones they have.” The next subpart considers the teacher shortage crisis from this vantage. It argues that a state’s teacher assignment policies—as opposed to its teacher tenure policies—not only influence the prevailing shortage of quality teachers, but also support a state constitutional challenge to such assignment policies when they lead a state to misallocate its existing pool of quality teachers. This is especially apparent in California where education has been declared a first-order fundamental right.

#### IV. CHALLENGING THE CONSTITUTIONALITY OF UNEQUAL ACCESS TO QUALITY TEACHERS

The unequal distribution of quality teachers in California is a problem in at least two principal ways. First, as practical matter, “even small shortages have proved problematic because their effects are often concentrated in particular districts.”<sup>30</sup> Second, and relatedly, the California Constitution requires its state legislature to not only establish a basic system of public education, but also maintain a system of education that provides substantively equal opportunity.<sup>31</sup> Accordingly, this Essay argues that the maldistribution of qualified teachers across California undermines the legislature’s constitutional obligation to provide a substantively equal educational opportunity to all children within its borders. Although the plaintiffs in *Vergara* leveraged the foregoing constitutional argument to challenge California’s teacher tenure policies, this Essay demonstrates that the litigation strategy taken in *Vergara* was wrong.

The teacher shortage crisis is not evenly experienced in schoolhouses across the United States. In fact, “[s]chools serving large percentages of low-income and minority students are wildly unequal in their ability to attract, compensate, and retain quality teachers.”<sup>32</sup> Furthermore, the harms wrought by such unequal distribution of quality teachers is not entirely beyond the

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30. See Black, *supra* note 15, at 1660.

31. CALIF. CONST. art. IX, §§ 1, 5 (“[preserving] [] the rights and liberties of the people . . .”).

32. See Derek W. Black, *Abandoning the Federal Role in Education: The Every Student Succeeds Act*, 105 CAL. L. REV. 1309, 1354–55 (2017).

control of the state.<sup>33</sup> Indeed, at least a dozen state constitutions possess a distributional provision that expressly prohibits the unequal distribution of educational resources within its borders.<sup>34</sup> Yet, at the time of this writing, only “nineteen states have a progressive distribution of teachers, i.e., at least 5% more teachers per student in high poverty districts.”<sup>35</sup> Conversely, nearly a dozen other states maintain a regressive distribution of teachers such that students experiencing poverty are assigned fewer high-quality teachers, on average, than students attending schools located in more affluent districts.<sup>36</sup> Recent research best illustrates this alarming and growing trend:

The staffing fairness measure ranges from a progressive 154% in North Dakota to a regressive 75% in Florida. In other words, high poverty districts in North Dakota have, on average, 40% more teachers per 100 students than low poverty districts, potentially resulting in smaller class sizes, while in Florida, the poorest districts have about 25% fewer teachers per 100 students than low poverty districts. Predicted staff to student ratios, at 20% poverty, range from a high of 9.2 teachers per 100 students in North Dakota to a low of 4.4 in California.<sup>37</sup>

The foregoing national trends feature prominently in California, a state where approximately 60% of Latino students attend an intensely segregated public school.<sup>38</sup> Moreover, in the wake of the Great Recession, “[t]he teaching demand in California [was] 40% higher than the supply of individuals seeking teaching credentials this year. Current projections indicate the shortage will get worse before it gets better.”<sup>39</sup> Worse still, “students attending

33. See, e.g., *Hoke Cty. Bd. of Educ. v. State*, 358 N.C. 605, 634–35 (N.C. 2004); *Burke*, 119 N.J. at 404–06.

34. See, e.g., ARK. CONST. art. 14, §1; DEL. CONST. art. X, § 1; FLA. CONST. art. IX, § 1; ILL. CONST. art. X, § 1; KY. CONST. § 183; MD. CONST. art. VIII, § 1; MINN. CONST. art. XIII, § 1; N.J. CONST. art. VIII, § 4, ¶ 1; OHIO CONST. art. VI, § 2; PA. CONST. art. III, § 14; TEX. CONST. art. VII, § 1; W. VA. CONST. art. XII, § 1.

35. See Bruce D. Baker, Danielle Farrie & David Sciarra, *Is School Funding Fair: A National Report Card*, EDUCATION LAW CENTER, 24 (Feb. 2018), [https://edlawcenter.org/assets/files/pdfs/publications/Is\\_School\\_Funding\\_Fair\\_7th\\_Edit.pdf](https://edlawcenter.org/assets/files/pdfs/publications/Is_School_Funding_Fair_7th_Edit.pdf).

36. *Id.*

37. *Id.*

38. See Gary Orfield, *Harming Our Common Future: America’s Segregated Schools 65 Years After Brown*, THE CIVIL RIGHTS PROJECT (May 10, 2019), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/harming-our-common-future-americas-segregated-schools-65-years-after-brown>.

39. See Derek W. Black, *Averting Educational Crisis: Funding Cuts, Teacher Shortages, and the Dwindling Commitment to Public Education*, 94 WASH. U. L. REV. 423, 425 (2016).

predominantly poor and minority schools are assigned to novice, unqualified, and ‘out-of-field’ teachers at twice the rate of students in low poverty schools and predominantly white schools.”<sup>40</sup> Although the California Constitution does not possess a distributional principle, unequal access to quality teachers violates the California Constitution as defined by the California Supreme Court in *Serrano v. Priest I*.<sup>41</sup>

The *Serrano I* Court declared that “the right to an education in our public schools is a fundamental interest which cannot be conditioned on wealth.”<sup>42</sup> Accordingly, the *Serrano I* Court held that the State’s financing system violated the federal Equal Protection Clause as it “invidiously discriminate[d] against the poor because it makes the quality of a child’s education a function of the wealth of his parents and neighbors.”<sup>43</sup> Although subsequent decisions in the *Serrano I* line of cases further clarified the scope of the right to education, as I describe elsewhere,<sup>44</sup> this Essay imports the foundational framework set forth in *Serrano I* to argue that California’s unequal access to quality teachers is tantamount, at least as a constitutional matter, to the unequal school funding regimes that were outlawed in California following *Serrano I*.

A qualified teacher workforce functions as one of the most important factors influencing student learning and achievement.<sup>45</sup> Indeed, “studies at the state, district, school, and individual level have found that teachers’ academic background, preparation for teaching, and certification status, as well as their experience, significantly affect their students’ achievement.”<sup>46</sup> Yet, in response to teacher shortages, “states are likely to hire individuals without preparation to teach, and these individuals are most likely to be hired in the low-wealth, high-poverty schools serving the highest-need students.”<sup>47</sup> Relatedly, we have come to understand the vital importance of school finance equity in

40. *Id.* at 442.

41. See *Serrano v. Priest*, 5 Cal.3d 584, 604 (1971) (hereinafter *Serrano I*).

42. *Id.*

43. *Id.*; see also *The Emperor’s New Clothes: Stare Decisis and the Teacher Shortage Crisis*, 29 GEO. J. POVERTY L. & POL’Y 229 (2022)

44. See Chris Yarrell, *Reviving Rationality and the Federal Role in Education*, 51 JOURNAL OF LAW & EDUCATION 194 (2022).

45. See, e.g., LINDA DARLING-HAMMOND, *THE FLAT WORLD & EDUCATION: HOW AMERICA’S COMMITMENT TO EQUITY WILL DETERMINE OUR FUTURE* 240–51 (Tchrs. Coll. Press, 2010); Dan Goldhaber, *Teachers Clearly Matter, but Finding Effective Teacher Policies Has Proven Challenging*, in *HANDBOOK OF RESEARCH IN EDUCATION FINANCE AND POLICY* 157 (Helen F. Ladd & Margaret E. Goertz eds., 2d ed. 2015); Steven G. Rivkin, Erik A. Hanushek, & John F. Kain, *Teachers, Schools, and Academic Achievement*, 73 *ECONOMETRICA* 417 (2005).

46. See Linda Darling-Hammond, *Assuring Essential Educational Resources*, *FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY* 242–43 (Kimberly J. Robinson ed., 2019).

47. *Id.*

the production of greater student learning and achievement, especially among historically underserved populations. In fact, “[e]quity litigation [] is inherently premised on the notion that a state must structure its finance system to provide all school districts equal access to key resources.”<sup>48</sup> Yet, California officials continue to disproportionately distribute quality teachers—a key resource—unequally. Indeed, among the highest-need school districts in California, “75% of [these] districts [have] reported a shortage.”<sup>49</sup> Given the wide body of research demonstrating the causal connection between quality teachers and student outcomes, then, California’s maldistribution of quality teachers—which this Essay argues function as no less than a critical educational resource—violates a child’s constitutional right to education.

## V. CONCLUSION

The right to education is found in every state constitution nationwide. In California, the right to education takes on a greater role as it has been found to be fundamental. Accordingly, the continuing maldistribution of quality teachers—perhaps the most coveted educational resource available—across California’s most underserved school districts undermines this right. To mitigate the abdication of this right, California’s judiciary should intercede to prevent the state legislature from abdicating its constitutional duty. As our society continues to grapple with the fall-out from the COVID-19 pandemic, ensuring that every student has a quality teacher within their classroom would come none too soon.

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48. See Black, *supra* note 15, at 1660.

49. See Linda Darling-Hammond et al., *Teacher Supply Falls Short of Demand in High-Need Fields, Locations*, POLICY ANALYSIS FOR CALIFORNIA EDUCATION, 9 (Sept. 2018), <https://files.eric.ed.gov/fulltext/ED594728.pdf>.