[NO MINUTES WERE GENERATED FOR FRIDAY, AUGUST 19, 2016]

SUPREME COURT MINUTES
MONDAY, AUGUST 22, 2016
SAN FRANCISCO, CALIFORNIA

S076339 **PEOPLE v. GRIMES (GARY LEE)**

Opinion filed: Judgment reversed
We reverse the judgment of death, and we set aside one of the findings under section 667.5, subdivision (b). The matter is remanded for a new penalty determination and for resentencing. The judgment is affirmed in all other respects.
Majority Opinion by Kruger, J.
-- joined by Werdegar, Liu, and Cuéllar, JJ.
Concurring and Dissenting Opinion by Cantil-Sakauye, C. J.
-- joined by Chin and Corrigan, JJ.

S222620 C074662 Third Appellate District **PEOPLE v. RINEHART (BRANDON LANCE)**

Opinion filed: Judgment reversed
For the foregoing reasons, we reverse the Court of Appeal.
Majority Opinion by Werdegar, J.
-- joined by Cantil-Sakauye, C. J., Chin, Corrigan, Liu, Cuéllar, and Kruger, JJ.

S223129 H038588 Sixth Appellate District **PEOPLE v. RODRIGUEZ (ADAM SERGIO)**

Opinion filed: Judgment reversed
We reverse the judgment of the Court of Appeal and remand the case with directions that the Court of Appeal instruct the trial court to determine on the record, consistent with our analysis here, whether Judge Chiarello is now available to hear Rodriguez's relitigated suppression motion.
Majority Opinion by Cuéllar, J.
-- joined by Cantil-Sakauye, C. J., Werdegar, Chin, Liu, and Kruger, JJ.
Concurring Opinion by Corrigan, J.

S236306 G051316 Fourth Appellate District, Div. 3 **ROBINS (NANCI S.) v. FERRY (JOSEPH P.)**

Order filed: cause suspended due to bankruptcy stay
The court is in receipt of a notice from respondent, Cathy Ostrow, that a bankruptcy petition has been filed. Such notice operates as an automatic stay in this proceeding and the applicable time periods of rule 8.512(b) of the California Rules of Court are hereby suspended.
Counsel for the respondent is directed to file quarterly reports with the Clerk of this court regarding the status of this bankruptcy action. At such time as this court receives proper notice terminating or granting relief from the bankruptcy stay of proceedings, the court will enter an order terminating the suspension of the applicable time periods of rule 8.512(b) and said time periods shall begin running anew from the date of that order.

S234741 B258589 Second Appellate District, Div. 2 **VERGARA (BEATRIZ) v. STATE OF CALIFORNIA (CALIFORNIA TEACHERS ASSOCIATION)**

The petition for review is denied.
Chin, Liu, and Cuéllar, JJ., are of the opinion the petition should be granted.

STATEMENT by Cantil-Sakauye, C. J.

The court, recently having resumed issuing, from time to time, statements by one or more justices dissenting from the denial of a petition for review, has adopted a policy that such statements, when they pertain to an appellate court opinion that has been published in the Official Reports, will also be published, appended to the original appellate court opinion in the Official Reports. With these policies now in place, separate statements will afford members of the court an opportunity to express their views regarding the denial of a petition for review, but of course any separate statement represents the views solely of the authoring justice or any justice signing the statement. In addition, it remains the case that an order denying review does not reflect the views of the justices voting to deny review concerning the merits of the decision below. Rather, an order denying review represents only a determination that, for whatever reason, a grant of review is not appropriate at the time of the order. (See *People v. Davis* (1905) 147 Cal. 346, 349-350; see also, e.g., *People v. Triggs* (1973) 8 Cal.3d 884, 890-891.) Similarly, that a justice has not prepared, responded to, or joined a separate statement should not be read as reflecting the views of that justice concerning any separate statement that has been filed by any other justice.
Werdegar, Chin, Corrigan, Liu, Cuéllar, and Kruger, JJ., concur.

DISSENTING STATEMENT by Liu, J.

This case concerns the constitutionality of California's statutes on teacher tenure, retention, and dismissal. The plaintiffs are nine schoolchildren — Beatriz Vergara, Elizabeth Vergara, Clara Grace Campbell, Brandon Debose, Jr., Kate Elliott, Herschel Liss, Julia Macias, Daniella Martinez, and Raylene Monterroza — who attend California public schools. They allege that

these statutes lead to the hiring and retention of what they call "grossly ineffective teachers" (i.e., teachers in the bottom 5 percent of competence) and that being assigned to a grossly ineffective teacher causes significant educational harm. Plaintiffs further allege that they have suffered or are at risk of suffering these harms and that the harms fall disproportionately on minority and low-income students. After hearing eight weeks of evidence, the trial court ruled that the challenged statutes violate the equal protection clause of the California Constitution (Cal. Const., art. I, § 7, subd. (a)), noting that the evidence of detrimental effects that grossly ineffective teachers have on their students "is compelling" and "shocks the conscience." The Court of Appeal reversed, holding that plaintiffs failed to establish a viable equal protection claim. (*Vergara v. State of California* (2016) 246 Cal.App.4th 619 (*Vergara*).)

Plaintiffs now seek this court's review. One of our criteria for review is whether we are being asked "to settle an important question of law." (Cal. Rules of Court, rule 8.500(b)(1).) Under any ordinary understanding of that criterion, our review is warranted in this case. As the trial court observed: "All sides to this litigation agree that competent teachers are a critical, if not the most important, component of success of a child's in-school educational experience. All sides also agree that grossly ineffective teachers substantially undermine the ability of that child to succeed in school." The controversy here is whether the challenged statutes are to blame for the hiring, retention, and placement of grossly ineffective teachers. Because the questions presented have obvious statewide importance, and because they involve a significant legal issue on which the Court of Appeal likely erred, this court should grant review. The trial court found, and the Court of Appeal did not dispute, that the evidence in this case demonstrates serious harms. The nine schoolchildren who brought this action, along with the millions of children whose educational opportunities are affected every day by the challenged statutes, deserve to have their claims heard by this state's highest court.

I.

As the Court of Appeal explained, this case involves equal protection claims by two groups of students. "Group 1" is "a 'subset' of the general student population, whose 'fundamental right to education' was adversely impacted due to being assigned to grossly ineffective teachers. According to plaintiffs, the students comprising this subset [are] located throughout the state, in all sorts of schools, and [are] of substantially the same age and aptitude as students of the general population. The Group 1 members [are] disadvantaged, however, because they received a lesser education than students not assigned to grossly ineffective teachers." (*Vergara*, *supra*, 246 Cal.App.4th at p. 629; see Cal. Const., art. IX, §§ 1, 5; *Serrano v. Priest* (1971) 5 Cal.3d 584, 607–609 [recognizing fundamental right to education under the Cal. Const.]; *Butt v. California* (1992) 4 Cal.4th 668, 685–686 (*Butt*) [same].) "Group 2" is "made up of minority and economically disadvantaged students. Plaintiffs alleged that schools predominantly serving these students have more than their proportionate share of grossly ineffective teachers, making assignment to a grossly ineffective teacher more likely for a poor and/or minority student." (*Vergara*, at p. 629.)

For reasons discussed by the Court of Appeal, there appear to be significant problems in plaintiffs' case with respect to Group 2. Quoting a report by the California Department of Education that was entered into the record, the trial court found that " '[u]nfortunately, the most

vulnerable students, those attending high-poverty, low-performing schools, are far more likely than their wealthier peers to attend schools having a disproportionate number of underqualified, inexperienced, out-of-field, and ineffective teachers and administrators. Because minority children disproportionately attend such schools, minority students bear the brunt of staffing inequalities.' " Further, the trial court found that "the churning . . . of teachers" — that is, the recurring transfer of ineffective teachers from school to school — "caused by the lack of effective dismissal statutes and [the seniority-based reduction in force statute] affect high-poverty and minority students disproportionately." However, the record does not appear to include substantial evidence that the concentration of grossly ineffective teachers in poor and minority schools is caused by the challenged statutes as opposed to teacher preferences, administrative decisions, or collective bargaining agreements. The Court of Appeal, finding insufficient evidence of that causal link, held that plaintiffs failed to establish that the challenged statutes on their face violate equal protection by disadvantaging poor or minority students. (*Vergara*, *supra*, 246 Cal.App.4th at pp. 649–651.)

The Court of Appeal's treatment of Group 1 is more problematic. In overturning the trial court's judgment with respect to this group, the Court of Appeal said the group is not "an identifiable class of persons sufficient to maintain an equal protection challenge" because "to claim an equal protection violation [citations], group members must have some pertinent common characteristic other than the fact that they are assertedly harmed by a statute." (*Vergara*, *supra*, 246 Cal.App.4th at p. 646.) On this point, the Court of Appeal likely erred.

In *Butt*, *supra*, 4 Cal.4th 668, this court made clear that an equal protection challenge may be brought and will trigger strict scrutiny "whenever the disfavored class is suspect *or* the disparate treatment has a real and appreciable impact on a fundamental right or interest." (*Id.* at pp. 685–686.) There, the Richmond Unified School District decided to shorten its school year by six weeks because it had run out of money, and a group of parents claimed that this would violate their children's fundamental right to education. We said it is "well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts. The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity." (*Id.* at p. 685.) Observing that the district's "students faced the sudden loss of the final six weeks, or almost one-fifth, of the standard school term originally intended by the District and provided everywhere else in California," we held that this "extreme and unprecedented disparity in educational service and progress" violated the state equal protection guarantee. (*Id.* at p. 687; see *id.* at p. 685 ["Whatever the requirements of the free school guaranty [(Cal. Const., art. IX, § 5)], the equal protection clause precludes the State from maintaining its common school system in a manner that denies the students of one district an education basically equivalent to that provided elsewhere throughout the State."].)

The students in *Butt* suffered a denial of equal protection not because they belonged to any identifiable class but because they were enrolled in a distressed school district. Here, as in *Butt*, students have asserted an equal protection claim on the ground that they are being denied significant educational opportunities that are afforded to others. The inequality in *Butt* arose from the fortuity of attending a school district that, unlike other districts, ran out of money. The inequality in this case arises from the fortuity of being assigned to grossly ineffective teachers

who, in comparison to competent teachers, substantially impede their students' educational progress. The Court of Appeal's insistence that "to claim an equal protection violation [citations], group members must have some pertinent common characteristic other than the fact that they are assertedly harmed by a statute" (*Vergara*, *supra*, 246 Cal.App.4th at p. 646) appears inconsistent with *Butt*. The claim asserted by students in Group 1 is simply an instance of a cognizable equal protection claim alleging arbitrary deprivation of fundamental rights. (See, e.g., *People v. McKee* (2010) 47 Cal.4th 1172, 1197–1198 [classifications in civil commitment laws are subject to strict scrutiny because the fundamental interest in liberty is at stake].)

The Court of Appeal cited *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220 and *Altadena Library District v. Bloodgood* (1987) 192 Cal.App.3d 585 in support of its view. Both of those cases relied on *Gordon v. Lance* (1971) 403 U.S. 1. All three cases involved constitutional challenges to supermajority voting schemes on the ground that voters who were members of a majority but not a supermajority would have their votes diluted. The plaintiffs in *Gordon* challenged a state requirement that any measure to raise taxes or incur bonded indebtedness be approved in a referendum by 60 percent of voters. The high court observed that it is permissible for the federal or state governments to constrain "majoritarian supremacy" in any number of ways. (*Gordon*, at p. 6.) What is constitutionally objectionable, as past cases had held, was "the denial or dilution of voting power because of group characteristics—geographic location and property ownership—that bore no valid relation to the interest of those groups in the subject matter of the election; moreover, the dilution or denial was imposed irrespective of how members of those groups actually voted." (*Id.* at p. 4.) *Guardino* and *Altadena*, both of which involved supermajority voting requirements on local tax measures, relied on *Gordon* in concluding that such requirements do not give rise to an equal protection claim unless the burdened voters comprise an identifiable class. (*Guardino*, at pp. 255–258; *Altadena*, at pp. 590–591.)

It is doubtful that the principle established in *Gordon* can be generalized beyond the context of voting rights. (See Elmendorf, *Structuring Judicial Review of Electoral Mechanics: Explanations and Opportunities* (2007) 156 U.Pa. L.Rev. 313, 327 [explaining that many laws burdening voting rights "receive light-touch judicial review" because "judicial review of election laws presents a distinctive set of challenges"].) The idea that vote dilution through supermajority requirements is constitutionally acceptable so long as no identifiable class is subject to discrimination has no analog when it comes to the fundamental right to education. As several leading constitutional law scholars explained in an amicus curiae letter in support of plaintiffs' petition for review, both state law and federal law have long recognized that plaintiffs asserting an equal protection claim involving a fundamental right need not be identifiable on a basis other than the alleged harm: "There is no basis in law or in logic for the Court of Appeal's central holding in this case that, without a showing that all the students injured by the challenged state laws share a 'common characteristic,' the Equal Protection claim they make is not 'meritorious' and cannot be 'maintained.' "

II.

There is considerable evidence in the record to support the trial court's conclusion that the hiring and retention of a substantial number of grossly ineffective teachers in California public schools

have an appreciable impact on students' fundamental right to education. The trial court credited "a massive study" by Stanford economist Raj Chetty finding that "a single year in a classroom with a grossly ineffective teacher costs students $1.4 million in lifetime earnings per classroom." The trial court also cited a four-year study by Harvard economist and education professor Thomas Kane finding that "students in [the Los Angeles Unified School District] who are taught by a teacher in the bottom 5% of competence lose 9.54 months of learning in a single year compared to students with average teachers." Moreover, the trial court found "no dispute that there are a significant number of grossly ineffective teachers currently active in California classrooms" and cited testimony of the state's own expert estimating that 1 to 3 percent of California teachers are grossly ineffective, which translates to 2,750 to 8,250 teachers statewide.

The trial court also found that the challenged statutes substantially contribute to the hiring and retention of grossly ineffective teachers. The evidence is particularly suggestive with respect to the dismissal statutes. These statutes provide extensive procedural protections to teachers subject to dismissal for poor performance. (Ed. Code, §§ 44934, 44938, subd. (b)(1), (2), 44944, 44945.) At the time of trial, the laws required a district to first give a teacher a written statement of specific instances of unsatisfactory behavior, allow the teacher 90 days to improve, and then provide a written statement of charges and intent to dismiss. The teacher then had 30 days to request a hearing, which had to begin within 60 days of the request. The hearing was conducted by a three-member panel comprised of an administrative law judge, one teacher selected by the district, and one teacher selected by the teacher subject to the hearing. The panel had to issue a written decision, and the decision was subject to judicial review. If the district lost, it had to pay the hearing expenses and the teacher's attorney's fee. If the district won, the parties split the hearing expenses and paid their own attorney's fees. (*Vergara*, *supra*, 246 Cal.App.4th at pp. 630–631; see *id.* at pp. 631–632 [discussing 2015 amendments to the dismissal statutes].)

The trial court found that "it could take anywhere from two to almost ten years and cost $50,000 to $450,000 or more to bring these cases to conclusion under the Dismissal Statutes, and that given these facts, grossly ineffective teachers are being left in the classroom because school officials do not wish to go through the time and expense to investigate and prosecute these cases." The trial court did not dispute that providing teachers with due process before dismissal was a legitimate and even compelling interest. But it concluded that this interest could be pursued without what it called the "*über* due process" that leads to retention of grossly ineffective teachers. The trial court observed that classified (i.e., nonteacher) school employees, who are afforded due process rights to notice and a hearing under *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, "had their discipline cases resolved with much less time and expense than those of teachers."

The trial court also concluded that other features of the challenged statutes contribute to the hiring and retention of grossly ineffective teachers. California is one of only five states with a two-year probation period before tenure, in contrast to three or more years in other states. The trial court cited "extensive evidence presented, including some from the defense," that two years "does not provide nearly enough time for an informed decision to be made regarding the decision of tenure (critical for both students and teachers)." Further, California is one of only 10 states that use seniority as the *sole* factor or as a factor that *must* be considered in laying off teachers. (Ed. Code, § 44955, subds. (b), (c); see *id.*, § 44955, subd. (d) [narrow exceptions].) The trial court noted that many other states either treat seniority as one factor that may be considered or leave layoff

criteria to the district's discretion. The trial court's findings do not suggest that teacher tenure invariably burdens students' fundamental right to education; instead, they suggest that California's particular scheme does.

III.

Plaintiffs have styled this claim as an equal protection challenge, perhaps because this approach is supported by *Butt* and other cases that have applied strict scrutiny to equal protection claims alleging harms to fundamental rights. With respect to Group 1, however, this lawsuit at bottom states a claim that the 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. Plaintiffs locate the source of that right in sections 1 and 5 of article IX of the California Constitution. These are the same provisions at issue in *Campaign for Quality Education v. State of California* (2016) 246 Cal.App.4th 896, an education adequacy case in which this court also denies review today. The two cases involve different yet complementary claims concerning the importance of resources and reform to improving the education system. Both cases ultimately present the same basic issue: whether the education clauses of our state Constitution guarantee a minimum level of quality below which our public schools cannot be permitted to fall. This issue is surely one of the most consequential to the future of California.

Despite the gravity of the trial court's findings, despite the apparent error in the Court of Appeal's equal protection analysis, and despite the undeniable statewide importance of the issues presented, the court decides that the serious claims raised by Beatriz Vergara and her eight student peers do not warrant our review. I disagree. As the state's highest court, we owe the plaintiffs in this case, as well as schoolchildren throughout California, our transparent and reasoned judgment on whether the challenged statutes deprive a significant subset of students of their fundamental right to education and violate the constitutional guarantee of equal protection of the laws.

I respectfully dissent from the denial of review.

DISSENTING STATEMENT by Cuéllar, J.

What Beatriz Vergara and eight of her fellow public school students allege in this case is that they, and vast numbers of children in our state's public schools, are burdened by certain statutes governing teacher dismissal, retention, and tenure that create a surplus of grossly ineffective teachers. After a 10-week bench trial, the trial court found that these statutes result in the denial of equal protection not only because they assign grossly ineffective teachers to classrooms where the children are disproportionately minority and poor, but also because the enduring effects of these statutes disproportionately burden an arbitrary subset of children. The evidence supporting this conclusion, according to the trial court, "shocks the conscience." In a public school system responsible for educating millions of children, "a single year in a classroom with a grossly ineffective teacher costs students $1.4 million in lifetime earnings per classroom." And students in the Los Angeles Unified School District "who are taught by a teacher in the bottom 5% of competence lose 9.54 months of learning in a single year compared to students with average teachers." Yet the statutes in question make it exceedingly difficult, the trial court concluded, to

remove a grossly ineffective teacher from the classroom or properly evaluate a teacher before long-term employment is granted.

Beatriz Vergara and her fellow plaintiffs were part of that arbitrary group of thousands of children attending California public schools that the trial court found to be deprived of equal protection. According to the trial court, plaintiffs had "proven, by a preponderance of the evidence, that the Challenged Statutes impose a real and appreciable impact" to the detriment of these students' fundamental right to equality of education. At no time did the Court of Appeal dispute this conclusion. What was instead fatal to the claim advanced on behalf of the arbitrarily burdened children, according to the appellate court, was plaintiffs' failure to prove the existence of an identifiable group treated differently by the challenged laws, a group separate and apart from the individuals allegedly harmed by those laws.

Nothing in California's Constitution or any other law supports the Court of Appeal's reasoning. When a fundamental right has been appreciably burdened, we apply strict scrutiny. (See *Butt v. State of California* (1992) 4 Cal.4th 668, 685-686 (*Butt*); *Fair Political Practices Com. v. Superior Court* (1979) 25 Cal.3d 33, 47 (*Fair Political Practices*); *Serrano v. Priest* (1971) 5 Cal.3d 584, 597 (*Serrano I*).) The appellate court did not. Instead it erected a novel barrier — not only for Beatriz Vergara and her fellow student plaintiffs, but for all California litigants seeking to raise equal protection claims based on a fundamental right. Such a right could be unquestionably burdened, the decision implies, but if that burden is imposed at random rather than on a discrete and identifiable group, then no relief is available under the equal protection provisions of our state Constitution. (See *Vergara v. State of California* (2016) 246 Cal.App.4th 619, 646 (*Vergara*) ["Here, the unlucky subset is not an identifiable class of persons sufficient to maintain an equal protection challenge. Although a group need not be specifically identified in a statute to claim an equal protection violation [citations], group members must have some pertinent common characteristic other than the fact that they are assertedly harmed by a statute" (fn. omitted)].)

Even if one ignores the appellate court's inconsistency with settled law, the question its approach begs is as simple as it is important: Why? Certainly not because we have ever held that arbitrarily denying the fundamental rights of schoolchildren — or any Californian — is acceptable when a burden is imposed more or less at random, by the anodyne machinery of a statutory system's gears and pulleys rather than by any person's deliberate choice to target some people instead of others. Would it make sense to treat as cognizable an equal protection claim to vindicate a fundamental rights violation — but only because *all* the affected children were victimized for wearing purple shirts, or because they happened to live in rural towns in Southern California — even as we cast aside the claims of the children in this case?

Beatriz Vergara and her fellow plaintiffs raise profound questions with implications for millions of students across California. They deserve an answer from this court. Difficult as it is to embrace the logic of the appellate court on this issue, it is even more difficult to allow that court's decision to stay on the books without review in a case of enormous statewide importance. We grant review where necessary to forestall infringement of a fundamental right. (See, e.g., *In re Marriage Cases* (2008) 43 Cal.4th 757, 809 [right to marry]; *Fashion Valley Mall, LLC v. National Labor Relations Board* (2007) 42 Cal.4th 850, 865 [right to free speech]; *Gould v. Grubb* (1975) 14 Cal.3d 661, 670 [right to vote].) This, too, is a case that merits review so we can address the problems with the Court of Appeal's approach in a matter of considerable statewide importance, and clarify that an equal protection claim under the California Constitution calls for

searching scrutiny where it arises from the imposition of an impermissible burden on a fundamental right. And if the appellate court had addressed the fundamental rights issue perfectly against a legal backdrop that was crystal clear, there still would be compelling reasons to grant review.

I.

We treat certain rights as fundamental under the California Constitution — the right to vote, for example, or to marry, to access our courts, to an expectation of privacy, and to an education — because they are foundational to how we choose to define our personal and civic lives. But it would border on madness to think that because these rights are fundamental, we can routinely expect perfection when the state protects — or through its activities, vindicates — these rights. The nature of any person's actual relationship to his or her fundamental rights is as much affected by ordinary governance — polling place and school locations, routine agency practices, long-past histories, and unexpected emergencies — as it is by a shared aspiration articulated in constitutional text or a judicial opinion that government honor such rights. Yet these realities make it even more important to distinguish routine shortcomings of implementation, or instances where government legitimately chooses to harmonize competing goals in a given way, from the infringement of a fundamental right by the imposition of an appreciable burden thereon.

The trial court found that such a burden was shown to exist in this case. The evidence, according to the trial court, established that the quality of education received by California's millions of schoolchildren depends substantially on the quality of instruction. The evidence further established that the existence of a substantial number of grossly ineffective teachers in the California school system — about 1 to 3 percent statewide, or 2,750 to 8,250 teachers — "has a direct, real, appreciable, and negative impact on a significant number of California students." Yet teacher dismissals "could take anywhere from two to almost ten years and cost $50,000 to $450,000 or more to bring these cases to conclusion under the Dismissal Statutes, and that given these facts, grossly ineffective teachers are being left in the classroom because school officials do not wish to go through the time and expense to investigate and prosecute these cases." There was also evidence, which the trial court credited, showing that two years is too short a time to properly evaluate teacher competence, and that California is one of only 10 states that use seniority as the sole factor in determining whether to lay off teachers. The Court of Appeal never disputed these findings.

These findings instead failed to justify a remedy, according to the Court of Appeal, because there was no identifiable group explicitly targeted or uniquely burdened by the statutes. This conclusion is, at best, in stark tension with settled law. We have long recognized that equal protection challenges may be brought "whenever the disfavored class is suspect *or* the disparate treatment has a real and appreciable impact on a fundamental right or interest." (*Butt*, *supra*, 4 Cal.4th at pp. 685-686.) Strict scrutiny applies to both types of equal protection claims. (See *ibid.*; see also *Fair Political Practices*, *supra*, 25 Cal.3d at p. 47 ["It is only when there exists a real and appreciable impact on, or a significant interference with the exercise of the fundamental right that the strict scrutiny doctrine will be applied"].)

We can understand plaintiffs' claims here as involving equal protection grounded in a fundamental interest, or as ultimately predicated more directly on the argument that a fundamental

interest has been unduly burdened. Under either conception, the Court of Appeal failed to appreciate the distinction we have drawn between claims involving a fundamental interest and those centered on a suspect class. To state a fundamental interest claim sounding in equal protection, the alleged disparate treatment need not be focused on a suspect class. (See *Bd. of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 914; accord, *Bullock v. Carter* (1972) 405 U.S. 134, 144 [finding a denial of equal protection even though the affected group "cannot be described by reference to discrete and precisely defined segments of the community"].) 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. (*Butt, supra*, 4 Cal.4th at p. 686; accord, *Bullock*, at p. 144; see generally *Engquist v. Oregon Dept. of Agriculture* (2008) 553 U.S. 591, 597 ["It is well settled that the Equal Protection Clause 'protect[s] persons, not groups . . . .' "].) If it does, the law will be invalidated unless the state can show it is necessary to achieve a compelling governmental interest. (*Serrano I, supra*, 5 Cal.3d at p. 610.) It is no answer under any standard of review — much less strict scrutiny — that violations of a fundamental right will be tolerated so long as they are felt at random.

And even if the law were more opaque, my doubts are grave about whether one could articulate a reasonable understanding of fundamental rights under the California Constitution that would countenance the imposition of material burdens on those rights without strict scrutiny or even the opportunity for judicial review under any standard, so long as those burdens were imposed largely at random. Invidious classifications deserve strict scrutiny even where fundamental rights are not at issue, while ordinary instances of treatment that could arguably be described as unequal do not merit particularly searching scrutiny where they do not involve fundamental rights. Where fundamental rights are at issue, however, we have never held that an equal protection challenge may proceed without the searching scrutiny that fundamental rights merit. We shouldn't start now simply because those rights may have been burdened arbitrarily. True: Arbitrary selection has at times been considered a means of rendering a governmental decision legitimate. (See Samaha, *Randomization in Adjudication* (2009) 51 Wm. & Mary L.Rev. 1, 24-27.) But where an appreciable burden results — thereby infringing a fundamental right — arbitrariness seems a poor foundation on which to buttress the argument that the resulting situation is one that should not substantially concern us.

Just as the arbitrariness of the alleged injury is no cause to deny review, neither is the nature of the fundamental right so injured. That education is the right at issue has posed no insurmountable bar in the past. (See *Butt, supra*, 4 Cal.4th at p. 686 ["education is . . . a fundamental interest for purposes of equal protection analysis under the California Constitution"]; *Serrano I, supra*, 5 Cal.3d at pp. 608-609 ["We are convinced that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a 'fundamental interest' "].) Why should we treat differently the material interference with a fundamental right arising from the challenged statutes — interference the trial court found to exist, and the Court of Appeal did not dispute — from the disruption occasioned by a shorter school year (see *Butt*, at p. 686), or the drastic inequities in funding that undermine equal access to an education (see *Serrano I*, at pp. 590-591)? The harmful consequences to a child's education caused by grossly ineffective teachers — the evidence for which the trial court found compelling — are no less grave than those resulting from a shortened period of instruction or financial shortfalls.

In considering this case, we must respect the role of the representative branches of government and the public itself in shaping education policy. But our responsibility to honor the court's proper constitutional role makes it as important for us to review a case that merits our attention as it is for us to avoid a dispute beyond the court's purview. This case is the former. It squarely presents significant questions of state constitutional jurisprudence that our court, rather than the Legislature or the executive branch, is best suited to address. Moreover, even in a world where we clarify our fundamental rights jurisprudence as this case requires — and address concerns associated with the Court of Appeal's decision — considerable room would remain for the legislative and executive branches to decide how best to address the important balance between honoring the fundamental right to education and addressing other goals, such as retaining protections for public employees from arbitrary dismissal.

Had we accepted our charge to ensure uniformity of decision on legal issues of statewide importance (see Cal. Rules of Court, rule 8.500(b)(1)), and had we declined to adopt the Court of Appeal's approach, I am confident we would have appreciated the practical constraints that sometimes result in different educational inputs or outcomes for different children. Our track record suggests as much. (See *Butt*, *supra*, 4 Cal.4th 668; *Serrano I*, *supra*, 5 Cal.3d 584.) But there is a distinction between such conventional differences and what the trial court concluded was occurring as a result of these statutes — namely, that they resulted in "a direct, real, appreciable, and negative impact on a significant number of California students." That is a difference we should not ignore. For it is certainly possible to conclude that the extent of the interference with students' fundamental right to education has legal consequences, while at the same time acknowledging the role of the Legislature and the importance of maintaining flexibility within the context of the state's constitutional responsibility to honor this most fundamental right.

II.

The Court of Appeal also failed to apply the standard for facial constitutional challenges that ordinarily governs cases involving fundamental rights. (See *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 343 (*American Academy*) [requiring proof of a constitutional conflict in only "the vast majority of [the law's] applications"].) What the appellate court did instead is apply the more stringent "must be unconstitutional in all its applications" standard, without any apparent justification. (See *Vergara*, *supra*, 246 Cal.App.4th at pp. 643, 648.) At a minimum, the court did not wrestle with the "uncertainty" in our case law surrounding the governing standard for facial constitutional challenges. (*Today's Fresh Start, Inc. v. Los Angeles County Office of Educ.* (2013) 57 Cal.4th 197, 218.) By granting review, we could have brought much-needed clarity to this frequently recurring issue of constitutional law.

The court below concluded that a successful facial challenge depends on showing that the challenged law " ' "inevitably pose[s] a present total and fatal conflict with applicable constitutional prohibitions" ' " in all the law's applications. (*Vergara*, *supra*, 246 Cal.App.4th at p. 643; accord, *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 181.) Only rarely have we applied the more stringent standard alone (see *East Bay Asian Local Development Corp. v. State of California* (2000) 24 Cal.4th 693, 709), and not when a fundamental right is involved (see *American Academy*, *supra*, 16 Cal.4th at p. 343 ["a facial challenge to a statutory provision that broadly impinges upon fundamental constitutional rights may not be defeated simply by showing

that there may be some circumstances in which the statute constitutionally could be applied"]). In fundamental rights cases, we require a showing of unconstitutionality in only "the vast majority of [the law's] applications." (*Ibid.*) Had the Court of Appeal applied this standard, and properly deferred to the trial court's factual findings on causation, it is difficult to see how it could have rejected the trial court's conclusions.

The Court of Appeal also appears to have confused the question of whether a facially discriminatory statute exists with the question of what showing is required to prove that statute is invalid on its face. "Because plaintiffs did not demonstrate any facial constitutional defect," the appellate court stated in a footnote, "they certainly did not show that such a defect existed in the generality or vast majority of cases." (*Vergara, supra*, 246 Cal.App.4th at p. 649, fn. 14.) Not so. Just because a statute does not discriminate on its face — i.e., does not "demonstrate any facial constitutional defect" — does not necessarily mean a facial challenge to that statute does not lie. If this were the case, facial challenges in this day and age would be dead on arrival. Moreover, it cannot be that because plaintiffs failed to satisfy the more stringent standard for bringing a facial challenge they, by necessity, failed to satisfy the less stringent one. What determines instead whether plaintiffs have succeeded in making such a challenge is whether they must prove a constitutional conflict in all of the statute's applications, or in just the great majority of them. This is precisely the uncertainty we could have clarified by granting review.

III.

There is no right without an adequate remedy. And no such remedy exists without review by a court of last resort when the decision of the appellate court, the importance of the case, and the question presented so clearly merit review. Denying review in this case leaves in place a decision that is in considerable tension with existing law and accepts with little explanation the notion of material interference with the fundamental right to an education — interference that the trial court here found was caused by the challenged statutes. The Court of Appeal then concluded that our law permits the wanton imposition of material burdens on or even deprivations of fundamental rights, as long as such imposition is sufficiently wanton that the burden does not fall on an "identifiable group" defined by some characteristic other than the burden imposed by the statutes themselves.

No one should doubt that plaintiffs' lawsuit raises difficult questions and implicates a variety of concerns, including the importance of protecting public employees from arbitrary dismissal. (See *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 335-336 [explaining that because "the state not only has monopolized the process of determining whether permanent public school teachers should be dismissed or suspended, but it also is the entity seeking to deprive teachers of their constitutionally protected liberty and property interests," it is therefore "required by the due process guarantee to provide the teacher a meaningful hearing"].) Public institutions must often reconcile their protection of a fundamental right with the realities of governing, the resolution of competing priorities, and the imperfections of any system forged and adapted by human hands. But here, the trial court concluded that a fundamental right was infringed when it was appreciably burdened by statutes protecting grossly ineffective teachers — and the evidence "shock[ed] the conscience." There is a difference between the usual blemishes in governance left as institutions implement statutes or engage in routine trade-offs and those staggering failures that

threaten to turn the right to education for California schoolchildren into an empty promise. Knowing the difference is as fundamental as education itself. Which is why I would grant review.

S234901 A134423/A134424 First Appellate District, Div. 3 **CAMPAIGN FOR QUALITY EDUCATION v. STATE OF CALIFORNIA**

The petition for review is denied.
Chin, Liu, and Cuéllar, JJ., are of the opinion the petition should be granted.

DISSENTING STATEMENT by Liu, J.

The question at the heart of this case is whether California's K-12 education system has fallen below a minimum level of quality guaranteed by our state Constitution. The plaintiffs include dozens of students of various races, ethnicities, and socioeconomic backgrounds, from first graders to twelfth graders, all of whom attend public schools throughout the state. Citing a wide range of studies and indicators, these schoolchildren allege that the state is failing to provide access to a meaningful education that prepares them to meet the state's academic standards, to achieve economic and social success, and to participate in the political and civic life of their communities. This failure, they contend, violates the education clauses of the California Constitution. (Cal. Const., art. IX, §§ 1 ["A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement."], 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 at least six months in every year, after the first year in which a school has been established."].)
The Court of Appeal, in a 2-1 decision, affirmed the trial court's dismissal of the complaints. (*Campaign for Quality Education v. State of California* (2016) 246 Cal.App.4th 896 (*Campaign for Quality Education*).) The panel produced three opinions. The majority, in an opinion by Justice Jenkins, held that "sections 1 and 5 of article IX do not provide for an education of 'some quality' that may be judicially enforced by appellants." (*Id.* at p. 906.) Those provisions, the majority explained, "do not allow the courts to dictate to the Legislature, a coequal branch of government, how to best exercise its constitutional powers to encourage education and provide for and support a system of common schools throughout the state." (*Id.* at pp. 915–916.) Justice Siggins, in a concurring opinion, took the view that "the academic standards articulated in our Education Code" essentially define "the constitutional right to a quality education" and that any claims of systemic inadequacy "should arise under the statutes . . . without resort to the general language of article IX." (*Id.* at p. 918 (conc. opn. of Siggins, J.).) Justice Pollak dissented, saying that "if [article IX] is to have meaning, it must imply that the system of common schools must provide some minimum qualitative level of education. Such a reading of article IX is fully consistent with, if not compelled by, the importance that our Supreme Court historically has placed on the role of education and the recognition that it is a fundamental right of all the state's children." (*Id.* at p. 922 (dis. opn. of Pollak, J.).)

Because this case presents unsettled questions of the utmost importance to our state and its schoolchildren, the petition before us readily meets our criteria for review. We are clearly being asked "to settle an important question of law." (Cal. Rules of Court, rule 8.500(b)(1).) Plaintiffs have made serious allegations of chronic deficiencies in California's K-12 education system, and they have asserted constitutional claims that only this court can definitively resolve. The issues are ones that divided our colleagues in the Court of Appeal, whose three opinions illuminate the momentous and complex nature of the controversy. That court ultimately held that the constitutional adequacy of the largest function of our state government is not an issue within the judiciary's purview. A holding of this magnitude, whether correct or not, warrants a full and reasoned examination by the state's highest court.

The high courts in more than two-thirds of the states have addressed these issues over the past three decades in cases arising under the education clauses of their state constitutions. A substantial majority of these courts have decided it is their duty to resolve the constitutional issues; the minority that have found the issue nonjusticiable have done so in published opinions. Many courts have articulated standards for educational adequacy, and such standards have led to progress in some states but not others. All of this experience is available to aid our resolution of this case. Yet this court today decides that the issues presented do not merit our review.

It is not the judiciary's job to make educational policy or to run the public schools. Those functions are constitutionally committed to the political branches (Cal. Const., art. IX, §§ 1–3, 5, 7), and no system will ever be perfect. But plaintiffs do not complain of mere imperfections. They allege that systemic deficiencies have deprived large numbers of children of the most basic educational opportunities, have disproportionately harmed the least advantaged children, and have persisted not only for years but for decades — even as "there can be no doubt that the fundamental right to a public school education is firmly rooted in California law . . . ." (*Campaign for Quality Education*, *supra*, 246 Cal.App.4th at p. 906.) It is regrettable that this court, having recognized education as a fundamental right in a landmark decision 45 years ago (*Serrano v. Priest* (1971) 5 Cal.3d 584), should now decline to address the substantive meaning of that right. The schoolchildren of California deserve to know whether their fundamental right to education is a paper promise or a real guarantee. I would grant the petition for review.

I.

In order to understand the significance of this case, it is useful to have some historical context. Fifty years ago, California's public schools were the envy of the nation. As an eminent scholar of California history has written, "[i]n the so-called Golden Age following World War II, the schools of California were considered among the best in the nation, and test scores proved it." (Starr, California: A History (2005) p. 335.) During that period, "[p]ublic schools were being built by the hour, and dedicated. And public school architecture was at its best. An entire generation of talented young men and women went into public school teaching and administration. There was a sense that a utopia was being formed in the classroom." (Learning Matters, *First to Worst* (2004) [video program; Kevin Starr interview].) So confident were the state's leaders in the educational future of California's schoolchildren that they devised and executed a "Master Plan" to build what many regard as the best public university system in the world. (Starr, Golden Dreams: California in an Age of Abundance (2009) pp. 217–244.)

"But by the early 1990s, California had dropped to the lowest rankings in terms of scores and dollars spent on K-12 education. In 1993, for example, fourth-graders in California were vying with fourth-graders in Mississippi for the dubious distinction of being the worst readers in the nation." (Starr, California: A History, *supra*, at p. 335.) This decline of California's K-12 education system, as the student population has become more diverse, is well-documented. (See Carroll et al., Rand Corp., California's K-12 Public Schools: How Are They Doing? (2005).) For two decades now, California has trailed most states on student achievement and education funding. (See *Quality Counts*, Education Week (1997–2016) <http://www.edweek.org/ew/qc/> [as of Aug. 22, 2016].) The allegations in the complaints, which we must accept as true at this stage of the litigation (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081), paint a sobering picture.

According to one of the complaints (there are two in this case), "[d]espite having one of the most diverse and challenging student population [*sic*] in the nation, California per pupil spending in 2008-09 was $2,131 below the national average, ranking the State 44th in the country. California's per pupil spending was less than each of the largest 10 states in the nation, with New York spending almost $6,000 more per pupil." The staffing of California's public schools reflects the state's low spending levels. In 2007–2008, plaintiffs allege, "California ranked at or near the bottom in the nation in staffing ratios: 49th in total school staff; 47th in principals and assistant principals; 49th in guidance counselors; 50th in librarians; and 49th in access to computers. California educates over 1.7 million students more than Texas, but does so with 16,700 fewer teachers."

The test scores of California students, on average and disaggregated by subgroups, are among the lowest in the nation, as measured by the federally administered National Assessment of Educational Progress. On the 2009 assessment, one complaint alleges, "California tied for 47th of fourth grade reading and tied for 46th in eighth grade math. [¶] Academic performance is low for all subgroups of students. Even for students who are not academically disadvantaged, California ranks tied for 43rd in fourth grade reading and tied for 41st in eighth grade math. For California students whose parents graduated from college, the rank is still 40th in fourth grade reading and 39th in eighth grade math. . . . [¶] . . . California's economically disadvantaged students rank 49th in fourth grade reading and 48th in eighth grade math when compared to economically disadvantaged students in other states."

In addition, plaintiffs allege, large majorities of our African American, Latino, and low-income students as well as English learners do not achieve proficiency according to the state's own academic standards: "In 2008-09, only 50% of California's students were proficient in English-Language Arts; only 37% of African-American students, 37% of Hispanic students, 36% of economically disadvantaged students, and 20% of English Learners reached this level. Only 46% of California's students were proficient in Mathematics; this percentage dropped to 30% for African-American students, 36% for Hispanic students, 37% for economically disadvantaged students, and 32% for English Learners. By eleventh grade, students in these groups had fallen even farther – in English language Arts, only 25% of African-American students, 26% of Hispanic students and economically disadvantaged students, and 5% of English Learners reached proficiency."

Moreover, according to one complaint, California sends a smaller percentage of its high school graduates to four-year colleges and universities than all but three states: "Of those California

students who do graduate from high school, many fail to successfully complete the course requirements (known as 'A-G requirements') needed to even *apply* for admission to California's four-year public universities. Of 550,000 students who enrolled in California public schools as ninth graders in the fall of 2004, only about one quarter completed the A-G requirements and graduated eligible for a four-year college or university. [Rogers et al., California Educational Opportunity Report (2010) p. 7]. . . . [¶] Among those graduates who do gain admission into California's university system, many are unprepared to succeed there. Sixty percent of freshmen in the California State University system are not proficient in either Math or English, or both, and beginning in 2012, will be required to take remedial courses in these subjects before they can begin college."

Although the legislative process has produced a variety of education initiatives over the years, none has yet to substantially reverse these indicators. The passage of Proposition 98 in 1988 and Proposition 111 in 1990, which guarantee K-12 education a minimum share of the state's General Fund, was arguably the last time the policymaking process sought to establish a constitutional minimum for the state's commitment to public schools. (Cal. Const., art. XVI, § 8.) In 1992, the Legislature passed the Charter Schools Act, which launched the growth of charter schools in California. (Ed. Code, § 47600 et seq.) In 1996, the Legislature enacted the Class Size Reduction program, which seeks to limit class sizes to 20 students per certificated teacher. (Ed. Code, former § 52120 et seq.) In 1999, the Legislature passed the Public School Accountability Act, which set the stage for California's compliance with the federal No Child Left Behind Act of 2001 by introducing a comprehensive system of assessments and accountability mechanisms to track and facilitate student progress toward statewide academic standards. (Ed. Code, § 52050 et seq.) Also in 1999, the Legislature created the California High School Exit Exam (Stats. 1999, 1st Ex. Sess. 1999–2000, ch. 1, § 5, p. 8075), but in 2015, the Legislature suspended it, and it is no longer a condition of receiving a diploma (Stats. 2015, ch. 572, § 1).

More recently, the voters in 2012 passed Proposition 30, which imposed temporary tax increases to support K-12 education and community colleges. (Cal. Const., art. XIII, § 36, subd. (e).) And in 2013, the Legislature restructured the school finance system by creating the Local Control Funding Formula, which is designed to improve the ability of school districts to flexibly use state education dollars to address the most pressing areas of need. (Ed. Code, § 42238.02.) Each district now receives a base funding allocation per student, plus supplemental funding depending on the district's population of English learners and low-income students as well as the concentration of those students in the district. (*Ibid.*)

As these efforts suggest, educational policymaking in California has not been a tale of intransigence. At the state and local levels, many educational leaders have labored mightily to provide all children with access to a decent education, and we should not ignore their successes. (See Cal. Dept. of Education Success Stories <http://www.cde.ca.gov/nr/re/ss/> [as of Aug. 22, 2016].) However, as the complaints allege, the past two decades have not produced a tale of overall efficacy either. It is of course unrealistic to expect a major turnaround of any large school system to occur overnight; such "miracles" are properly met with skepticism. But some states have made significant gains in education over the past 20 years (see Hanushek et al., Achievement Growth: International and U.S. State Trends in Student Performance (2012) pp. 5–16), even as student achievement in California, despite some progress, has remained generally low.

It is against this backdrop that plaintiffs have turned to the courts for an elaboration of the Legislature's duty to provide for a system of common schools. The schoolchildren who brought these actions do not claim they are entitled to a world-class education. They ask only whether the California Constitution protects them from being deprived of a minimally adequate education. They are asking the judiciary, as the ultimate guarantor of constitutional rights, to define and safeguard their fundamental right to education.

II.

Despite recognizing that education is a fundamental right under the California Constitution, the Court of Appeal found "no explicit textual basis [in section 1 or section 5 of article IX] from which a constitutional right to a public school education of a particular quality may be discerned." (*Campaign for Quality Education, supra*, 246 Cal.App.4th at p. 909.) The court said that section 1 is " 'general and aspirational' " and that section 5 does not " 'delineate or identify any specific outcome standards.' " (*Id.* at pp. 908–909.) The court also refused to read sections 1 and 5 together to find a right to an education of some quality. (*Id.*at p. 909.) Further, the Court of Appeal invoked separation of powers principles in finding the controversy nonjusticiable, concluding that " '[t]he quandary described in the complaint[s] is lamentable, but the remedy lies squarely with the Legislature, not the judiciary.' " (*Id.* at p. 916.)

As Justice Pollak argued in dissent, there is significant reason to question the Court of Appeal's holdings that article IX's education clauses do not imply any minimum standard of quality and do not impose any duties on the Legislature that are judicially discernible or enforceable. These holdings reflect the minority view among the more than 30 state high court opinions addressing similar issues under their state constitutions. (See *Campaign for Quality Education, supra*, 246 Cal.App.4th at p. 920 (dis. opn. of Pollak, J.) ["The different outcomes [among state high courts] result less from differences in the wording of the respective constitutions than from different perceptions of the role properly played by the courts in overseeing compliance with the state's basic charter."].) A significant number of these courts have recognized a judicially enforceable right to an adequate education. The adequacy standards articulated by the high courts of Connecticut, Kansas, Kentucky, Massachusetts, New Jersey, New York, South Carolina, Texas, Washington, West Virginia, and Wyoming are reviewed in Justice Pollak's dissent. (*Id.* at pp. 925–929, citing *Conn. Coalition for Justice in Education Funding, Inc. v. Rell* (Conn. 2010) 990 A.2d 206; *Gannon v. State* (Kan. 2014) 319 P.3d 1196; *Rose v. Council for Better Education* (Ky. 1989) 790 S.W.2d 186; *McDuffy v. Secretary of Education* (Mass. 1993) 615 N.E.2d 516; *Robinson v. Cahill* (N.J. 1973) 303 A.2d 273; *Campaign for Fiscal Equity, Inc. v. State of New York* (N.Y. 2003) 801 N.E.2d 326; *Abbeville County School Dist. v. State* (S.C. 2014) 767 S.E.2d 157; *Neeley v. West Orange-Cove Consolidated Independent School Dist.* (Tex. 2005) 176 S.W.3d 746; *McCleary v. State* (Wn. 2012) 269 P.3d 227; *Pauley v. Kelly* (W.Va. 1979) 255 S.E.2d 859; *Campbell County School Dist. v. State* (Wyo. 1995) 907 P.2d 1238; see also *Lake View School Dist. No. 25 of Phillips County v. Huckabee* (Ark. 2002) 91 S.W.3d 472; *Claremont School Dist. v. Governor* (N.H. 1993) 635 A.2d 1375.) These decisions "demonstrate that courts are capable of articulating such a standard, albeit a standard that is general and requires intensive factual analysis to apply." (*Campaign for Quality Education*, at p. 925 (dis. opn. of Pollak, J.).)

Justice Pollak concluded "that the provisions of our state Constitution requiring the state to support a system of common schools is not without substance, and that the Constitution requires a system that provides students with a meaningful basic education in reality as well as on paper. . . . [A] standard such as those articulated in the opinions quoted above, though general, permits meaningful evaluation of a school system by educational professionals and experts." (*Campaign for Quality Education, supra,* 246 Cal.App.4th at p. 929 (dis. opn. of Pollak, J.).) Judicial formulation of broad and general standards "reflects not only the 'recognition of the political branches' constitutional responsibilities, and indeed, greater expertise, with respect to the implementation of specific educational policies' and that 'the specific educational inputs or instrumentalities suitable to achieve this minimum level of education may well change over time,' but that 'like any other principle of constitutional law, this broad standard likely will be refined and developed further as it is applied to the facts eventually to be found at trial in this case.' " (*Id.* at pp. 929–930.)

Apart from its concerns about formulating an adequacy standard, the Court of Appeal worried that adjudication of plaintiffs' claims would potentially put the judiciary on a collision course with the Legislature in violation of the separation of powers. Two points from Justice Pollak's dissent are pertinent here.

First, "[t]o a large extent," this worry "rest[s] on the premise that plaintiffs are seeking to compel the California Legislature to appropriate additional funds for K-12 education, which is beyond the constitutional province of the judiciary." (*Campaign for Quality Education, supra,* 246 Cal.App.4th at p. 931 (dis. opn. of Pollak, J.).) However, "[p]laintiffs do not allege simply that the amount of funds appropriated to the schools is insufficient, but that the system by which funds are allocated among schools and school districts is significantly responsible for the inadequacies in the educational system." (*Ibid.*) Further, "[p]laintiffs allege that the present system incorporates inadequate teacher training, and some plaintiffs also attribute deficiencies to the methods of teacher evaluation, promotion and discipline." (*Id.* at p. 932.) At this point, it is far from clear that any remedy for a proven violation would require the courts to order increased spending on education. "[A]s the experience in other states confirms, various forms of relief are available short of ordering the legislature to appropriate funds. Courts have required plans to be developed to address and correct adjudicated deficiencies. The intensive examination of the system that trial of plaintiffs' allegations would necessarily entail may be expected to yield other specific forms of relief." (*Id.* at pp. 932–933.) Indeed, it may be that reforms designed to make more efficient use of existing funds would provide an important measure of relief if plaintiffs were to prove a violation. (See *id.* at pp. 918–919 (conc. opn. of Siggins, J.) ["the balance between more resources and operational and organizational change in the schools may need to be differently struck"]; *Vergara v. State of California* (2016) 246 Cal.App.4th 619, 640–641 [trial court found that hiring and retention of grossly ineffective teachers severely hamper students' educational progress].)

Second, and more fundamentally, whatever limitations on judicial authority may constrain a court's ability to order remedies for proven violations, "[w]e need not presume that the Legislature will fail to respond appropriately if the court should ultimately determine that the Constitution is being violated by the lack of sufficient funding." (*Campaign for Quality Education, supra,* 246 Cal.App.4th at p. 932 (dis. opn. of Pollak, J.).) Although courts in some states have clashed with their legislatures over educational adequacy remedies (e.g., Kansas and

Washington), there are also examples of such litigation resulting in interbranch collaboration and important reform (e.g., Kentucky and Massachusetts). Like Justice Pollak, "I would not presume to predict the long-term consequences of permitting plaintiffs' disturbing allegations to be examined at trial and the appropriateness of any remedy for confirmed inadequacies evaluated on appeal. . . . It may well be that the extent to which proven deficiencies in California's educational system ultimately are corrected will depend on the good faith of legislators and other public officials and the play of political forces. Nonetheless, I would not assume that a judicial edict, entered and upheld after the searching inquiry demanded by our court system, would be for naught." (*Id.* at p. 935.)

This last point bears emphasis. The potential for conflict between courts and the political branches is inherent in the power of judicial review. Even so, "[i]t is emphatically the province and duty of the judicial department to say what the law is." (*Marbury v. Madison* (1803) 5 U.S. 137, 177; see *Marin Water & Power Co. v. Railroad Com.* (1916) 171 Cal. 706, 711–712 ["The judicial function is to 'declare the law and define the rights of the parties under it.' "].) I do not underestimate the uncertainties that might attend a judicial declaration of the law in this context. But it has always been the case that "[t]he judiciary . . . has no influence over either the sword or the purse . . . . It may truly be said to have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments." (The Federalist No. 78 (Cooke ed., 1961) p. 523 (Hamilton).) We ought to proceed in this case, as we do in all constitutional cases, with a strong presumption that public officials — having taken the same oath we have taken to "support and defend the Constitution of the United States and the Constitution of the State of California" (Cal. Const., art. XX, § 3) — will work in good faith to effectuate any judgment duly entered by the courts. This understanding is not only a matter of the respect we owe the coordinate branches of government, but also an essential underpinning of the rule of law as practiced in our constitutional tradition.

III.

The challenges facing California's K-12 education system remain within the purview of the Governor, the Legislature, the Superintendent of Public Instruction, and other state and local officials. This court's passivity in the face of plaintiffs' claims should not be understood as an implied judgment that those claims are unmeritorious or unfit for judicial resolution. Our denial of review suspends, for now, the prospect of judicial elaboration of what the fundamental right to education entails. But it is possible that the complexion of the issue and, in turn, this court's posture may change if our education system further stagnates or worsens.

At the same time, my vote to grant review should not be construed as a judgment that plaintiffs have established a constitutional violation. Apart from the unsettled questions of justiciability and interpretation of article IX, plaintiffs' allegations have not been tested at trial, and it appears that some of the conditions alleged in the complaints have changed. Since 2010, the year plaintiffs filed their complaints, state funding of K-12 education has risen significantly. Proposition 98 funding per pupil is projected to exceed $10,000 in 2015–2016, a 28 percent real increase since 2010–2011. (Legis. Analyst, The 2016-17 Budget, EdBudget Tables, K-12 Education, K-12 Proposition 98 Funding Per Pupil <http://lao.ca.gov/Publications/Report/3326#8> [as of Aug. 22, 2016].) The current budget returns our K-12 system to the funding level that existed in 2007–

2008, before the economic downturn. (*Ibid.*) Whether education funding will continue its current upward trajectory remains to be seen. (See Cal. Const., art. XIII, § 36, subd. (f) [Proposition 30's tax increases to fund education will expire in 2016 (sales tax) and 2018 (personal income tax)].) As a result of the Local Control Funding Formula, enacted in 2013, a significant portion of education dollars are now allocated to districts according to their numbers of low-income students and English learners as well as the concentration of those students in the district. (Ed. Code, § 42238.02.) The formula replaced what many believed to be an outdated and arbitrary funding scheme with a more rational and equitable distribution. School districts now have more discretion in spending their funds, and each district is responsible for adopting a three-year local control and accountability plan. (*Id.*, § 52060 et seq.) This devolution of control and accountability marks a pronounced shift from the decades of centralized education governance catalyzed by Proposition 13 and reinforced by the federal No Child Left Behind Act. Time will tell whether these reforms prove effective.

Meanwhile, student achievement remains low. On the 2015 National Assessment of Educational Progress, California ranked 48th in fourth-grade math, 49th in fourth-grade reading, 41st in eighth-grade math, and 44th in eighth-grade reading. (U.S. Dept. of Education, Nat. Center for Education Statistics, NAEP State Comparisons <http://nces.ed.gov/nationsreportcard/statecomparisons/> [as of Aug. 22, 2016].) These low rankings persist when test scores are disaggregated by subgroups. In fourth-grade reading, for example, California students eligible for free or reduced-price lunch ranked 48th compared to their counterparts in other states; students who were not eligible ranked 40th. (*Ibid.*)

Although the initiatives above are significant, none of them directly addresses the fundamental question of adequacy at the heart of plaintiffs' complaints. Proposition 98 funding is designed to increase with growth in the economy and K-12 attendance, but the funding level is not based on what resources are needed to provide a minimally adequate education to all students. The Local Control Funding Formula aims to distribute funds more equitably according to student needs, but it does not purport to prescribe adequate funding levels.

In order to identify a concerted effort to examine the adequacy of California's K-12 education system, one has to go back a full decade. In 2005, a bipartisan group of state leaders — the President Pro Tem of the Senate, the Speaker of the Assembly, the Superintendent of Public Instruction, the Governor's Committee on Education Excellence, and the Secretary of Education — commissioned a comprehensive review of California's school finance and governance systems. Funded by four major foundations, this initiative enlisted dozens of scholars throughout California and the nation, and resulted in over 20 research papers not only on resource adequacy and equity, but also on state and local governance, teacher policies, and data and information systems. (Stanford Center for Education Policy Analysis, Getting Down to Facts <https://cepa.stanford.edu/gdtf/overview> [as of Aug. 22, 2016].) This unprecedented body of research was completed in 2007, but its potential impact in the policymaking arena was largely eclipsed by a severe recession. Now that economic conditions have improved, there have been calls to renew the wide-ranging inquiry that began a decade ago. (Cal. School Boards Assn., California's Challenge: Adequately Funding Education in the 21st Century (2015).)

Today this court declines to decide whether our state Constitution lends urgency or guidance to such inquiry. This is unfortunate given what is at stake. In *Serrano v. Priest*, *supra*, 5 Cal.3d 584, we described "the indispensable role which education plays in the modern industrial

state. . . . [F]irst, education is a major determinant of an individual's chances for economic and social success in our competitive society; second, education is a unique influence on a child's development as a citizen and his participation in political and community life. . . . Thus, education is the lifeline of both the individual and society." (*Id.* at p. 605.) We quoted *Brown v. Board of Education* (1954) 347 U.S. 483, 493: " 'Today, education is perhaps the most important function of state and local governments. . . . It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.' " (*Serrano v. Priest*, at p. 606.)

We should not leave the schoolchildren of California to wonder whether their fundamental right to education under our state Constitution has real content or is simply hortatory. The policymaking process may eventually address plaintiffs' claims, or it may not. Plaintiffs urge this court to clarify the state's obligation. They seek an education system that is truly capable of fulfilling its vital role for all children of the Golden State. These issues, however we might resolve them, deserve this court's full consideration.

I respectfully dissent from the denial of review.

DISSENTING STATEMENT by Cuéllar, J.

Time and again we have emphasized how fundamental the right to education is for California. (See *Butt v. State of California* (1992) 4 Cal.4th 668, 686 ["education is . . . a fundamental interest for purposes of equal protection analysis under the California Constitution"]; *Serrano v. Priest* (1971) 5 Cal.3d 584, 608-609 ["the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a 'fundamental interest' "].) And rightly so: Meaningful access to public education is foundational not only to economic opportunity for millions of students, but to our shared civic life. But what good are such judicial exhortations if that right has no meaningful content?

Arguing that such content must exist to render meaningful the fundamental right to education, plaintiffs allege that the California public schools fail to provide large numbers of students with a level of minimally acceptable education in violation of article IX of the California Constitution.[1] According to plaintiffs, California does too little to define a minimally adequate education for its students. It ranks at or near the bottom relative to other states in terms of educational outcomes and staffing ratios. It provides inadequate teacher training, and fails to provide the resources students need to succeed. As a result of these deficiencies, plaintiffs allege, California students are directly harmed: nearly two-thirds of low-income and minority students fail to meet the

[1]Section 1 of article IX of the California Constitution states: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement."

Section 5 of article IX of the California Constitution states: "The Legislature shall provide for a 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."

state's own standard of proficiency in mathematics or language arts; and fewer than 60 percent of African-American and Latino students even graduate from high school. (See *Campaign for Quality Education v. State of California* (2016) 246 Cal.App.4th 896, 924-925 (dis. opn. of Pollak, J.).)

Whether plaintiffs could have proven as much at trial — this case having been squelched at the pleading stage — remains unanswered. So do the important questions of state constitutional law presented by this case that our court is best suited to resolve. (See Cal. Rules of Court, rule 8.500(b)(1).) Indeed, the question whether our state Constitution demands *some* minimum level of educational quality, as opposed to resolving precisely how schools should be administered, lies at the core of what this institution is empowered to adjudicate. And because plaintiffs' claims here concern a range of state activities affecting education, the key question in this case implicates more than simply an exercise in defining the appropriate level of funding or of any other single input to support an adequate education.

We consider that question against the backdrop of separation of powers principles that are vital to our government. Yet never have these principles meant that we should strain to avoid our responsibility to interpret the state Constitution simply because the right at issue touches on concerns the Legislature might ultimately address, or because the task of resolving a case implicating the right to education demands careful attention to the proper role of courts as well as our sister branches. We routinely treat as justiciable those challenges based on other fundamental rights, such as the right to marry, vote, or engage in free speech. (See, e.g., *In re Marriage Cases* (2008) 43 Cal.4th 757, 809 [right to marry]; *Fashion Valley Mall, LLC v. National Labor Relations Board* (2007) 42 Cal.4th 850, 865 [right to free speech]; *Gould v. Grubb* (1975) 14 Cal.3d 661, 670 [right to vote].) The right to education is no less fundamental, nor is it any less worthy of protection. Courts of other states, when faced with similar challenges based on this right, overwhelmingly agree. (See, e.g., *Gannon v. State* (Kan. 2014) 319 P.3d 1196, 1226 ["Most state supreme courts have rejected the nonjusticiability argument . . ."].)

It is especially important for California's highest court to speak on this issue. Our state educates one-eighth of all public school students in the country. (See Nat. Ed. Assn., Rankings of the States 2015 and Estimates of School Statistics 2016 (May 2016) p. 11.) Many of those kids who come from low-income families find themselves concentrated in particular schools or districts that, despite the best intentions, fail to deliver an education remotely worthy of the students they are serving. These realities make it all the more critical that the representative branches play the crucial role that belongs to them, but with greater clarity about the scope of the right to education — clarity only this court can provide.

Respectfully, I would grant review.

S052210 **PEOPLE v. RODRIGUEZ III (JERRY)**

Extension of time granted
Good cause appearing, and based upon Deputy Attorney General Ryan B. McCarroll's representation that the supplemental respondent's brief is anticipated to be filed by February 10, 2017, counsel's request for an extension of time in which to file that brief is granted to October 14, 2016. After that date, only two further extensions totaling about 118 additional days are contemplated.
An application to file an overlength brief must be served and filed no later than 60 days before the anticipated filing date. (See Cal. Rules of Court, rule 8.631(d)(1)(A)(ii) & (B)(ii).)

S093944 **PEOPLE v. BERTSCH (JOHN ANTHONY) & HRONIS (JEFFERY LEE)**

Extension of time granted
Good cause appearing, and based upon counsel Mark E. Cutler's representation that the appellant Jeffery Lee Hronis's opening brief is anticipated to be filed by October 11, 2016, counsel's request for an extension of time in which to file that brief is granted to October 11, 2016. After that date, no further extension will be granted.

S127621 **PEOPLE v. ERSKINE (SCOTT THOMAS)**

Extension of time granted
Good cause appearing, and based upon counsel Kimberly J. Grove's representation that the appellant's reply brief is anticipated to be filed by December 30, 2016, counsel's request for an extension of time in which to file that brief is granted to October 17, 2016. After that date, only two further extensions totaling about 73 additional days are contemplated.
An application to file an overlength brief must be served and filed no later than 60 days before the anticipated filing date. (See Cal. Rules of Court, rule 8.631(d)(1)(A)(ii) & (B)(ii).)

S132256 **PEOPLE v. HELZER (GLEN TAYLOR)**

Extension of time granted
Good cause appearing, and based upon counsel Jeanne Keevan-Lynch's representation that the appellant's reply brief is anticipated to be filed by June 30, 2017, counsel's request for an extension of time in which to file that brief is granted to October 25, 2016. After that date, only four further extensions totaling about 247 additional days will be granted.
An application to file an overlength brief must be served and filed no later than 60 days before the anticipated filing date. (See Cal. Rules of Court, rule 8.631(d)(1)(A)(ii) & (B)(ii).)

S142959 **PEOPLE v. YOUNG (DONALD RAY) & YOUNG (TIMOTHY JAMES)**

Extension of time granted
On application of appellant Timothy Young and good cause appearing, it is ordered that the time to serve and file appellant's opening brief is extended to October 17, 2016.

S142959 **PEOPLE v. YOUNG (DONALD RAY) & YOUNG (TIMOTHY JAMES)**

Extension of time granted
On application of appellant Donald Young and good cause appearing, it is ordered that the time to serve and file appellant's opening brief is extended to October 17, 2016.

S146939 **PEOPLE v. CAPERS (LEE SAMUEL)**

Extension of time granted
Good cause appearing, and based upon Supervising Deputy State Public Defender Peter R. Silten's representation that the appellant's reply brief is anticipated to be filed by February 16, 2017, counsel's request for an extension of time in which to file that brief is granted to October 17, 2016. After that date, only two further extensions totaling about 123 additional days are contemplated.
An application to file an overlength brief must be served and filed no later than 60 days before the anticipated filing date. (See Cal. Rules of Court, rule 8.631(d)(1)(A)(ii) & (B)(ii).)

S148863 **PEOPLE v. FRAZIER (ROBERT WARD)**

Extension of time granted
Good cause appearing, and based upon Supervising Deputy State Public Defender Evan Young's representation that the appellant's reply brief is anticipated to be filed by February 21, 2017, counsel's request for an extension of time in which to file that brief is granted to October 21, 2016. After that date, only two further extensions totaling about 122 additional days are contemplated.
An application to file an overlength brief must be served and filed no later than 60 days before the anticipated filing date. (See Cal. Rules of Court, rule 8.631(d)(1)(A)(ii) & (B)(ii).)

S155160 **PEOPLE v. RAMIREZ (IRVING ALEXANDER)**

Extension of time granted
Good cause appearing, and based upon Deputy State Public Defender Maria Morga's representation that the appellant's reply brief is anticipated to be filed by April 18, 2017, counsel's request for an extension of time in which to file that brief is granted to October 18, 2016. After that date, only three further extensions totaling about 181 additional days are contemplated.
An application to file an overlength brief must be served and filed no later than 60 days before the anticipated filing date. (See Cal. Rules of Court, rule 8.631(d)(1)(A)(ii) & (B)(ii).)

S165649 **PEOPLE v. COOK (MICHAEL)**

Extension of time granted
Good cause appearing, and based upon counsel Marcia A. Morrissey's representation that the appellant's opening brief is anticipated to be filed by May 15, 2017, counsel's request for an extension of time in which to file that brief is granted to October 17, 2016. After that date, only four further extensions totaling about 204 additional days will be granted.
An application to file an overlength brief must be served and filed no later than 60 days before the anticipated filing date. (See Cal. Rules of Court, rule 8.631(d)(1)(A)(ii) & (B)(ii).)

S176812 **PEOPLE v. YONKO (TONY RICKY)**

Extension of time granted
Good cause appearing, and based upon counsel Deputy Attorney General Tami Falkenstein Hennick's representation that the respondent's brief is anticipated to be filed by October 18, 2016, counsel's request for an extension of time in which to file that brief is granted to October 18, 2016. After that date, no further extension is contemplated.

S178113 **BRAMIT (MICHAEL LAMAR) ON H.C.**

Extension of time granted
Good cause appearing, and based upon counsel Mary T. McKelvey's representation that the reply to the informal response to the petition for writ of habeas corpus is anticipated to be filed by February 27, 2017, counsel's request for an extension of time in which to file that document is granted to October 14, 2016. After that date, only three further extensions totaling about 135 additional days will be granted.

S181555 **PEOPLE v. MARTIN (VALERIE DEE)**

Application to file over-length brief granted
Good cause appearing, appellant's "Second Application for Permission to File an Appellant's Opening Brief in Excess of the 102,000 Word Limit," filed August 12, 2016, is granted. The opening brief must not exceed 129,300 words.

S182341 **PEOPLE v. BUETTNER (JEFFREE JAY) & JONES (GLEN JOSEPH)**

Extension of time granted
On application of appellant Jeffree Jay Buettner and good cause appearing, it is ordered that the time to serve and file appellant's opening brief is extended to October 17, 2016.

S182341 **PEOPLE v. BUETTNER (JEFFREE JAY) & JONES (GLEN JOSEPH)**

Extension of time granted
On application of appellant Glen Joseph Jones and good cause appearing, it is ordered that the time to serve and file appellant's opening brief is extended to October 17, 2016.

S186162 **PEOPLE v. MEJORADO (JOSE SERGIO)**

Extension of time granted
Good cause appearing, and based upon counsel Eric S. Multhaup's representation that the appellant's opening brief is anticipated to be filed by October 18, 2016, counsel's request for an extension of time in which to file that brief is granted to October 18, 2016. After that date, no further extension is contemplated.

S187726 **PEOPLE v. ROTTIERS (BROOKE MARIE)**

Extension of time granted
On application of appellant and good cause appearing, it is ordered that the time to serve and file appellant's opening brief is extended to October 17, 2016.

S188589 **PEOPLE v. VALLES, JR., (PEDRO CORTEZ)**

Extension of time granted
On application of appellant and good cause appearing, it is ordered that the time to serve and file appellant's opening brief is extended to October 25, 2016.

S188961 **PEOPLE v. ZANON (DAVID CHARLES)**

Extension of time granted
On application of appellant and good cause appearing, it is ordered that the time to serve and file appellant's opening brief is extended to October 25, 2016.

S198309 **PEOPLE v. FLETCHER (MARCUS)**

Extension of time granted
On application of appellant and good cause appearing, it is ordered that the time to serve and file appellant's opening brief is extended to October 17, 2016.

S224701 **LEWIS, SR., (KEITH ALLEN) ON H.C.**

Extension of time granted
Good cause appearing, and based upon counsel Pamala Sayasane's representation that the reply to the informal response to the petition for writ of habeas corpus is anticipated to be filed by December 2, 2016, counsel's request for an extension of time in which to file that document is granted to October 17, 2016. After that date, only one further extension totaling about 47 additional days will be granted.

S230239 **JONES (JEFFREY GERARD) ON H.C.**

Extension of time granted
Good cause appearing, and based upon counsel Michael R. Snedeker's representation that the reply to the informal response to the petition for writ of habeas corpus is anticipated to be filed by September 6, 2016, counsel's request for an extension of time in which to file that document is granted to September 6, 2016. After that date, no further extension is contemplated.

S230510 G049773 Fourth Appellate District, Div. 3 **M. (J.) v. HUNTINGTON BEACH UNION HIGH SCHOOL DISTRICT**

Extension of time granted
On application of appellant and good cause appearing, it is ordered that the time to serve and file the response to amicus curiae brief is extended to September 19, 2016.

S230782 **PETERSON (SCOTT LEE) ON H.C.**

Extension of time granted
Good cause appearing, and based upon Supervising Deputy Attorney General Donna M. Provenzano's representation that the informal response to the petition for writ of habeas corpus is anticipated to be filed by December 15, 2017, counsel's request for an extension of time in which to file that document is granted to October 21, 2016. After that date, only seven further extensions totaling about 419 additional days will be granted.

S230916 **CHAMPION (STEVE ALLEN) ON H.C.**

Extension of time granted
Good cause appearing, and based upon Deputy Federal Public Defender Michael Parente's representation that the reply to the informal response to the petition for writ of habeas corpus is anticipated to be filed by November 21, 2016, counsel's request for an extension of time in which to file that document is granted to October 21, 2016. After that date, only one further extension totaling about 30 additional days is contemplated.

S232557 **HOLMES (JESSICA) ON H.C.**

Extension of time granted
On application of petitioner and good cause appearing, it is ordered that the time to serve and file the reply to informal response is extended to September 6, 2016.

S233215 **MONTERROSO (CRISTHIAN ANTONIO) ON H.C.**

Extension of time granted
Good cause appearing, and based upon Deputy Federal Public Defender Elizabeth Richardson-Royer's representation that the reply to the informal response to the petition for writ of habeas corpus is anticipated to be filed by September 19, 2016, counsel's request for an extension of time in which to file that document is granted to September 19, 2016. After that date, no further extension is contemplated.

S234727 **GONZALEZ III (MANUEL) ON H.C.**

Extension of time granted
On application of respondent and good cause appearing, it is ordered that the time to serve and file the informal response to the petition for writ of habeas corpus is extended to September 15, 2016.

S235903 A142858/A143428 First Appellate District, Div. 1 **UNITED EDUCATORS OF SAN FRANCISCO AFT/CFT, AFL-CIO, NEA/CTA v. CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD (SAN FRANCISCO UNIFIED SCHOOL DISTRICT)**

Extension of time granted
On application of Defendant, Cross-Defendant and Appellant and good cause appearing, it is ordered that the time to serve and file the reply to the answer to the petition for review is extended to August 22, 2016.

S234265 A141605 First Appellate District, Div. 3 **PEOPLE v. DELEON (ALLEN DIMEN)**

Counsel appointment order filed
Upon request of appellant for appointment of counsel, Roberta Simon is hereby appointed to represent appellant on the appeal now pending in this court.

S231771 **LEWIS (VONDELL) ON H.C.**

Order filed
The order filed on August 9, 2016, extending the time to file respondent's informal response is amended to reflect the above case title.

S235735 B264493 Second Appellate District, Div. 1 **RAND RESOURCES, LLC v. CITY OF CARSON**

Order filed
The application of respondent for permission to file the untimely reply to answer to petition for review is hereby granted.

S236517 **LACK (DAVID) v. S.C. (PEOPLE)**

Transferred to Court of Appeal, Second Appellate District
The above-entitled matter is transferred to the Court of Appeal, Second Appellate District, Division Six, for consideration in light of *Hagan v. Superior Court* (1962) 57 Cal.2d 767. In the event the Court of Appeal determines that this petition is substantially identical to a prior petition, the repetitious petition must be denied.

S236545 **BRANDON (JEREMY CHRISTOPHER) v. S.C. (PEOPLE)**

Transferred to Court of Appeal, Second Appellate District
The above-entitled matter is transferred to the Court of Appeal, Second Appellate District, for consideration in light of *Hagan v. Superior Court* (1962) 57 Cal.2d 767. In the event the Court of Appeal determines that this petition is substantially identical to a prior petition, the repetitious petition must be denied.