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LAW SUMMARY

We Have to Do Better: Attacking Teacher Tenure Is Not the Way to Solve Education Inequity

ELLEN HENRION*

I. INTRODUCTION

“[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”¹ In *Brown v. Board of Education*, the Supreme Court of the United States struck down public school segregation laws and declared that equal access to education was a right that must be afforded to every student.² Sixty years after this landmark decision, significant education equity issues continue to plague the country’s schools, which are still “disturbingly racially segregated.”³ Students who attend mostly white or low-poverty schools are much more likely to receive a quality education⁴ than their peers who attend high-minority or high-poverty schools.⁵ Today, Missouri students are left to wonder why, if education is a right that “must be

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1. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

2. *Id.*

3. Janie Boschma, *American Schools Are Disturbingly Racially Segregated*, NAT’L J. (Oct. 22, 2014), <http://www.nationaljournal.com/next-america/population-2043/american-schools-are-disturbingly-racially-segregated>.

4. The definition of “quality education” is elusive. The Missouri Department of Elementary and Secondary Education suggests that a quality education exists when students have access to effective teachers and a curriculum that will prepare them for college and careers. See MO. DEP’T OF ELEMENTARY & SECONDARY EDUC., ENSURE EQUITABLE ACCESS TO EXCELLENT EDUCATORS 28 (July 20, 2015), <https://dese.mo.gov/sites/default/files/Educator-Equity-Plan-Missouri.pdf>. This Note adopts this definition.

5. HEATHER G. PESKE & KATI HAYCOCK, EDUC. TR., TEACHING INEQUALITY: HOW POOR AND MINORITY STUDENTS ARE SHORTCHANGED ON TEACHER QUALITY 1 (June 2006), <http://edtrust.org/wp-content/uploads/2013/10/TQReportJune2006.pdf>.

made available to all on *equal* terms,” such inequalities are so prevalent amongst their schools.⁶

Missouri’s leaders have been unable to create an effective solution to remedy these problems, though they have tried. Most recently, Missouri politicians and lobbyists have shifted their focus to the removal of teacher tenure laws.⁷ The basis for these attacks is as follows: because teacher tenure laws presumably provide job security to inadequate teachers, and because inadequate teachers are more prevalent at high-poverty and high-minority schools, teacher tenure laws disproportionately affect poor and minority students.⁸ This argument, which may be logical and well intentioned, is incredibly difficult to meaningfully analyze due to a lack of available data that suggests what, if any, causal effect tenure laws have on education inequity.

Efforts to eliminate teacher tenure in the name of improving education equity neglect the fact that these education deficiencies exist for political and societal reasons. The efforts to sweepingly remove tenure in order to somehow fix education inequity are “based on the faulty assumption that if you treat everyone equally, then everyone is equal.”⁹ Importantly, little to no data exists that offers a tangible assessment regarding whether these tenure laws do indeed unfairly affect poor and minority students.¹⁰ Rather, the act of removing tenure itself may disproportionately harm these students, as high-poverty schools already struggle to attract the best teachers and removing tenure may take away one of the profession’s most attractive aspects.¹¹ This Note attempts to analyze whether the elimination of Missouri tenure laws is truly the key to promoting education equity, or whether there are other solutions more likely to produce real, tangible results that may improve equity in Missouri schools.

6. See *Brown*, 347 U.S. at 493.

7. See Elisa Crouch, *Missouri Voters to Consider Teacher Tenure, Evaluations in November*, ST. LOUIS POST-DISPATCH (Aug. 5, 2014), http://www.stltoday.com/news/local/govt-and-politics/missouri-voters-to-consider-teacher-tenure-evaluations-in-november/article_66924a61-6e0c-5f35-8aad-54cd4b8dea1a.html.

8. Scott Lemieux, *Why The California Tenure Decision Is Wrong and Will Hurt Disadvantaged Students*, AM. PROSPECT (June 12, 2014), <http://prospect.org/article/why-california-tenure-decision-wrong-and-will-hurt-disadvantaged-students>.

9. *Id.*

10. *Id.*

11. *Id.*

II. LEGAL BACKGROUND

Teacher tenure was first established in 1909.¹² New Jersey lawmakers were the first to institute teacher tenure laws, putting them in place to protect teachers against politically influenced appointments.¹³ The laws additionally safeguarded teachers from being fired for activities they chose to participate in outside of work and from termination based on race or sex.¹⁴ Tenure protections also allowed teachers academic freedom within the classroom¹⁵ and provided an extra incentive to join the typically low-paying profession.¹⁶ By the 1940s, approximately seventy percent of the nation's public school teachers had some tenure protections; by the 1950s, the numbers had risen to over eighty percent.¹⁷ Despite the country's growing prevalence of tenure protections for teachers, it took sixty years from tenure's inception for the movement to make its way to Missouri. It was not until 1970 that Missouri teachers were afforded the tenure protections enjoyed by their out-of-state peers.¹⁸ The Teacher Tenure Act, an extensive bundle of statutes aimed at protecting Missouri teachers, is still the law of the land today.¹⁹

A. Missouri's Teacher Tenure Act

The Teacher Tenure Act puts into place practical and contractual obligations for Missouri school boards in hiring, retaining, and firing teachers. Generally, once a teacher is hired by a school district, she is considered a "probationary teacher"²⁰ and will be up for re-hire by that district the follow-

12. Richard D. Kahlenberg, *Tenure: How Due Process Protects Teachers and Students*, AM. EDUCATOR 6 (2015), http://www.aft.org/sites/default/files/ae_summer2015_kahlenberg.pdf.

13. *Id.*

14. *Id.* Prior to tenure laws, teachers were at risk of being fired without just cause for their personal activities. *Id.* For example, New York teachers who opposed World War I were fired for "conduct unbecoming a teacher," and during the civil rights movement, some southern states sought to revoke teacher licenses for membership in organizations that supported integration of schools. *Id.*

15. *Id.* Proponents of teacher tenure recognize these rationales as the basis for their continued support of tenure. *See generally id.* The laws' critics, meanwhile, contend that civil service and labor laws that have been passed since tenure's inception "adequately address the abuses against which tenure was meant to shield teachers." *Id.* at 6–7.

16. *Id.* at 8.

17. Thomas A. Kersten, *Teacher Tenure: Illinois School Board Presents' Perspectives and Suggestions for Improvement*, 37 PLAN. & CHANGING 234, 234, 237 (2006), <http://files.eric.ed.gov/fulltext/EJ756253.pdf>.

18. MO. REV. STAT. § 168.102 (2000).

19. MO. REV. STAT. § 168.104 (Cum. Supp. 2013).

20. *Id.*

ing spring.²¹ The authority to make contract renewal decisions is vested in the school board; however, such decisions are influenced heavily by the school's administration.²² In Missouri, a teacher obtains tenure after five consecutive years of service.²³ This probationary period is a relatively long period of time compared to many other states,²⁴ and it is significantly longer than the one- or two-year periods found in states such as Hawaii and California.²⁵

Once a Missouri teacher has been re-hired by the school five times and given a sixth contract, she is tenured: a "permanent teacher"²⁶ under Missouri law.²⁷ The permanent teacher is no longer subject to annual contract renewal, but instead becomes a party to an "indefinite contract" with the school district.²⁸ The indefinite contract is subject only to compulsory or optional retirement, modification by a succeeding indefinite contract, revocation of the teacher's certification, or the teacher's resignation or termination.²⁹

The most significant – and controversial – method of educator contract termination is the firing of the teacher. Under Missouri law, a teacher may be terminated for only a limited number of causes.³⁰ Once termination procedures are underway, the teacher is afforded the right of due process.³¹ When a school board decides that it is in the school's best interest to terminate a teacher, likely at the recommendation of the administration,³² it must provide

21. Interview with Kelli Hopkins, Assoc. Exec. Dir., Mo. Sch. Bds. Ass'n., in Columbia, Mo. (Sept. 16, 2015).

22. *Id.*

23. *Id.*

24. *Teacher Tenure – Requirements for Earning Nonprobationary Status*, EDUC. COMMISSION STATES, <http://ecs.force.com/mbdata/mbquestRTL?rep=TT01> (last visited Sept. 20, 2015). Most states have a three-year probationary period. *Id.*

25. *Id.*

26. MO. REV. STAT. § 168.104 (Cum. Supp. 2013).

27. Interview with Kelli Hopkins, *supra* note 21.

28. MO. REV. STAT. § 168.106 (2000).

29. *Id.*

30. The causes for termination are as follows:

- (1) Physical or mental condition unfitting [the teacher] to instruct or associate with children;
- (2) Immoral conduct;
- (3) Incompetency, inefficiency, or insubordination in the line of duty;
- (4) Willful or persistent violation of, or failure to obey, the school laws of the state or the published regulations of the board of education of the school district employing [the teacher];
- (5) Excessive or unreasonable absence from performance of duties; or
- (6) Conviction of a felony or a crime involving moral turpitude.

Id. § 168.114.1.

31. Interview with Kelli Hopkins, *supra* note 21.

32. *Id.*

the teacher with adequate notice.³³ If the termination decision is based on incompetency, inefficiency, or insubordination, the school board must first provide the teacher with a written warning stating the specific causes that may, if not corrected, result in formal charges.³⁴ The teacher then has a thirty-day curative period in which she may make efforts to improve her performance.³⁵

If, after the curative period has lapsed, the teacher has not adequately addressed the school board's performance concerns, the school board must serve upon the teacher formal written charges "specifying with particularity the grounds alleged to exist for termination of [the] contract."³⁶ Upon the filing of formal charges, the school board has the authority to suspend the teacher from active duty until a termination decision is rendered,³⁷ and the teacher has the power to request a public hearing in which the teacher may call witnesses and cross-examine the school's witnesses.³⁸ At this hearing, the school board acts as the "jury," and the teacher may appeal the school board's charges to the school board itself.³⁹

If, at the end of the hearing, the school board elects to terminate the teacher, the teacher has the right to appeal the decision to the circuit court of the county in which the teacher works.⁴⁰ If the circuit court overturns the school board's ruling, the teacher is restored to permanent teacher status and receives compensation for the duration of the suspension.⁴¹ If, however, the circuit court rules in favor of the school board, the teacher may appeal the decision as part of the regular judicial process.⁴²

This administrative process and possible subsequent judicial review inevitably cost the school district significant time and money.⁴³ Critics of teacher tenure have long argued that tenure protections make it impossible to fire under-qualified teachers due to the burdens the process places on schools.⁴⁴ Many Missouri superintendents feel that removing a tenured teacher on performance grounds is difficult and support "some type of teacher tenure reform."⁴⁵ Removing a tenured teacher can be costly, especially if the

33. *Id.*

34. *Id.* § 168.116.2.

35. Interview with Kelli Hopkins, *supra* note 21.

36. § 168.116.1.

37. *See id.* § 168.120.4.

38. *Id.* § 168.118(1)–(4).

39. Interview with Kelli Hopkins, *supra* note 21.

40. § 168.120.1.

41. *Id.* § 168.120.4.

42. *Id.* § 168.120.3.

43. Interview with Kelli Hopkins, *supra* note 21.

44. *See* Dana Ford, *Will California Teacher Tenure Ruling Be A Lesson for Other States?*, CNN (June 13, 2014), <http://www.cnn.com/2014/06/13/us/teacher-tenure/>.

45. James V. Shuls, *Analysis of Superintendent Survey Responses Regarding Teacher Tenure*, EJOURNAL EDUC. POL'Y 1 (2014), https://nau.edu/COE/eJournal/_Forms/fall2014/Shuls/. One hundred ninety-two of Missouri's 522 public school

teacher exhausts all appeals.⁴⁶ This cost in both time and money may be an obstacle that some school boards will not, or cannot, take on.⁴⁷ Because of these difficulties, there has been a strong initiative over the past decade in several states to weaken teacher tenure laws in an effort to improve our country's public education system.

B. Poor and Minority Students Have Been Consistently Shortchanged on Educator Quality

Research continually demonstrates unequivocal patterns of lower quality education in high-minority and high-poverty schools.⁴⁸ The disparities are numerous. Students in high-poverty and high-minority schools are less likely to be taught by educators with a degree in their subjects of instruction.⁴⁹ These deficiencies are most significant in areas such as math and science. A 2006 survey of three states' public education systems showed that in high-poverty and high-minority middle schools, seventy percent of math classes were taught by a teacher who lacked even a minor in math or a math-related field.⁵⁰ Furthermore, these schools also experience much higher rates of teacher turnover than their more affluent counterparts; on average, high-poverty schools lose twenty percent of their faculty from year to year.⁵¹ Dubbed by experts as "teaching's 'revolving door,'" this high turnover rate forces schools to quickly hire replacement teachers who may not be a good

superintendents responded to this electronic survey, a response rate of 36.6%. *Id.* at 3. According to the survey, 73% of these school superintendents indicated that it was "somewhat" or "very difficult" to terminate tenured teachers on performance grounds, and 92% would be in favor of some sort of tenure reform. *Id.* at 1. Nevertheless, many superintendents agreed that "teachers need some job protection." *Id.* at 7.

46. *Id.* at 5. Mr. Tom Mickes of the education law firm Mickes, Goldman, O'Toole estimated the costs incurred by a school district when removing a tenured teacher to be between \$30,000 and \$37,000. *Id.* Some superintendents estimated costs as high as \$100,000. *Id.* Roger Kurtz, executive director of Missouri Association of School Administrators, says the cost depends on the specific circumstances of each case. *Id.*

47. *Id.* According to this survey, .003% of the tenured teachers in districts represented by the participating superintendents were removed for performance in the 2013–2014 school year. *Id.* The costs in money and time in removing tenured teachers has likely contributed to this low number. *See id.*

48. PESKE & HAYCOCK, *supra* note 5, at 2.

49. *Id.*

50. *Id.* at 2–3. The study surveyed the biggest school systems of Illinois, Ohio, and Wisconsin. *Id.* at 1.

51. Nicole S. Simon & Susan Moore Johnson, *Teacher Turnover in High-Poverty Schools: What We Know and Can Do 5* (Project on the Next Generation of Teachers, Harvard Graduate Sch. of Educ., Working Paper, Aug. 2013), <http://isites.harvard.edu/fs/docs/icb.topic1231814.files/Teacher%20Turnover%20in%20High-Poverty%20Schools.pdf>.

fit, subsequently leading to further turnover.⁵² Because school districts incur significant costs in recruiting, hiring, and training teachers, this steady turnover diverts financial resources from the classroom and widens the gap between high- and low-poverty schools.⁵³ Finally, due to this level of turnover, high-poverty schools employ teachers with less experience on average.⁵⁴ Though effective and ineffective teachers exist at all experience levels, research shows that the first three years of a teacher's career are critical in elevating effectiveness.⁵⁵ Because teachers with fewer than three years of experience are more likely found at high-poverty and high-minority schools, students attending these schools are more likely to be taught by less-experienced teachers.⁵⁶

All of the above factors have a direct impact on student achievement.⁵⁷ Research consistently finds that a teacher's effectiveness is improved by strong academic abilities, mastery of content, and experience.⁵⁸ If minority and low-income students have teachers who are, on average, less experienced and more likely to be teaching out-of-field, they may be less prepared and suffer as a result.

III. RECENT DEVELOPMENTS

Education reform is a constant topic of discourse.⁵⁹ Recent Missouri attempts at reform have been aimed at the Teacher Tenure Act, which has come under legislative fire by politicians who hope to eliminate tenure in an effort to improve Missouri schools.⁶⁰ In other states, opposition to tenure has arisen in the form of constitutional challenges to tenure laws.⁶¹ Meanwhile, at the state and national levels of government, education departments have been

52. *Id.* at 5–6.

53. *Id.* at 8.

54. PESKE & HAYCOCK, *supra* note 5, at 11.

55. *Id.* at 8.

56. *See generally id.*

57. *Id.* at 8.

58. *Id.*

59. The “No Child Left Behind” Act, Teach for America, charter schools, and voucher programs are just some of the programs and policies instituted in the past several years in an attempt to improve public education. Newsweek Staff, *25 Years of U.S. Education: Reform Still Needed*, NEWSWEEK (Apr. 23, 2008, 8:00 PM), <http://www.newsweek.com/25-years-us-education-reform-still-needed-86059>.

60. Alex Stuckey, *Missouri State Senator Files Bill to Eliminate Teacher Tenure*, ST. LOUIS POST-DISPATCH (Dec. 4, 2014), http://www.stltoday.com/news/local/govt-and-politics/missouri-state-senator-files-bill-to-eliminate-teacher-tenure/article_57fd92eb-dcd9-587c-9ada-1fedf5b82f7d.html.

61. *See Vergara v. California*, No. BC484642, 2014 WL 6478415, at *7 (Cal. Super. Ct. Aug. 27, 2014); *see also* Al Baker, *Lawsuit Challenges New York's Teacher Tenure Laws*, N.Y. TIMES (July 3, 2014), http://www.nytimes.com/2014/07/04/nyregion/lawsuit-contests-new-yorks-teacher-tenure-laws.html?_r=0.

tasked with the responsibility of determining and analyzing the causes of education inequity and developing strategies to redress such problems.⁶² While there may be disagreement amongst reformers as to which methods of reform would be most effective, their common goal is clear: provide a high-quality education for each and every Missouri student, regardless of the student's race or socioeconomic status.

A. Challenges to Tenure

Recent challenges to teacher tenure have arisen across the nation, spanning from Missouri to the coasts. In Missouri, recent challenges have developed legislatively, the most significant being Amendment 3, which appeared on the state's ballot during the November 2014 election season.⁶³ The proposed amendment would have modified the Missouri Constitution to:

- require teachers to be evaluated by a standards based performance evaluation system for which each local school district must receive state approval to continue receiving state and local funding;
- require teachers to be dismissed, retained, demoted, promoted and paid primarily using quantifiable student performance data as part of the evaluation system;
- require teachers to enter into contracts of three years or fewer with public school districts; and
- prohibit teachers from organizing or collectively bargaining regarding the design and implementation of the teacher evaluation system[.]⁶⁴

The proposed amendment was met with support from some key political players,⁶⁵ such as the Teach Great organization,⁶⁶ and opposition from school

62. See *New Initiative to Provide All Students Access to Great Educators*, U.S. DEP'T EDUC. (July 7, 2014), <http://www.ed.gov/news/press-releases/new-initiative-provide-all-students-access-great-educators>; see also MO. DEP'T OF ELEMENTARY & SECONDARY EDUC., *supra* note 4, at 2–3.

63. Crouch, *supra* note 7.

64. *2014 Initiative Petitions*, MO. SEC'Y ST., http://www.sos.mo.gov/elections/2014petitions/14init_pet.asp#2014024 (last visited Feb. 11, 2016).

65. Rex Sinquefield, a strong opponent of Missouri tenure laws, has notably donated \$1.6 billion in the past few years to fighting teacher tenure. Jason Hancock, *On Missouri Taxes and Education Policies, Rex Sinquefield's Clout Is Growing*, KANS. CITY STAR (July 19, 2014), <http://www.kansascity.com/news/government-politics/article765892.html>.

66. The Teach Great organization was an education advocacy group founded by Rex Sinquefield that initiated Amendment 3. *What Is 'Teach Great'?*, MO. PARENT, <http://moparent.com/what-is-teach-great> (last visited Nov. 14, 2015). Its mission was

boards⁶⁷ and teachers' unions.⁶⁸ Supporters emphasized the measure's increased accountability of schools and teachers alike,⁶⁹ while opponents from across the state criticized the measure for its emphasis on standardized tests,⁷⁰ expected exorbitant costs,⁷¹ and handcuffing of teachers' unions.⁷² The amendment's opposition warned against unintended consequences that they suspected would result from the amendment's passing, such as giving more control to the state over hiring, promotion, and dismissal procedures and taking such control away from local school boards.⁷³

Missourians echoed the concerns voiced by school boards and teachers and overwhelmingly voted against the proposal.⁷⁴ The defeat came after the bill's strongest advocate, Teach Great, withdrew its support after the measure did not poll as well as hoped.⁷⁵ Without Teach Great's backing, the Amend-

to "reward and protect good teachers, ensure administrators are able to support struggling teachers, and make it easier for schools to hire great teachers." *Id.*; see also Collin Reischman, *Teach Great Gearing Up for Tenure Fight*, MO. TIMES (Aug. 12, 2014), <http://themissouritimes.com/12303/teach-great-gearing-tenure-fight/>.

67. Ryne Dittmer, *School Board Takes Stand Against Amendment 3*, LIBERTY TRIB. (Oct. 30, 2014), http://www.libertytribune.com/schools/k_12/article_b4be998c-c00a-5a5f-af2c-21b002ef3f27.html. Over 230 Missouri school boards passed resolutions in opposition of Amendment 3. *Id.*

68. Stephanie Ebbs, *Despite Lack of Support, Campaigns for Teacher Performance Amendment Continue*, COLUMBIA MISSOURIAN (Oct. 27, 2014), http://www.columbiamissourian.com/news/despite-lack-of-support-campaigns-for-teacher-performance-amendment-continue/article_b178fca5-0f73-5512-a5a7-0108adbe9044.html.

69. Reischman, *supra* note 66.

70. Editorial Board, *Editorial, Amendment 3 Strikes Out. Vote No on Anti-Schools Measure*, ST. LOUIS POST-DISPATCH (Oct. 14, 2014), http://www.stltoday.com/news/opinion/columns/the-platform/editorial-amendment-strikes-out-vote-no-on-anti-schools-measure/article_9f848596-1da6-546e-844c-3cf108c4b1fa.html.

71. Editorial, *Amendment 3 is Short-Sighted Way to Evaluate Teachers*, SOUTHEAST MISSOURIAN (Oct. 5, 2014), <http://www.semissourian.com/story/2125098.html> ("Officials estimate the amendment could impose a collective cost on Missouri school districts of \$1 billion.").

72. Keith Meyers, *Editorial, More Harmful Initiatives Than Good Ones on Missouri's Nov. 4 Ballot*, KAN. CITY STAR (Oct. 3, 2014, 5:06 PM), <http://www.kansascity.com/opinion/editorials/article2500526.html>.

73. Jason Johnson, *County Schools Oppose Constitutional Amendment 3*, CASSVILLE DEMOCRAT (Oct. 29, 2014), <http://www.cassville-democrat.com/story/2133003.html>.

74. *Pick a Race Results, Missouri – General Election – November 4, 2014*, MO. SEC'Y ST., <http://enrarchives.sos.mo.gov/enrnet/> (select "General Election – November 4, 2014" in first dropdown menu; then select "Constitutional Amendment 3" in second dropdown menu; then select "Submit" button) (last visited Feb. 12, 2016). Over seventy-five percent of Missouri voters voted against Amendment 3. *Id.*

75. David A. Lieb, *Update: Missouri Group Calls Off Campaign for Teacher Tenure Measure*, COLUMBIA MISSOURIAN (Sept. 10, 2014), <http://www.columbia>

ment 3 campaign became largely one-sided, as the amendment's opponents declined to back down from the fight.⁷⁶ The opposition's efforts paid off with strong results at the polls, and Amendment 3 did not pass.⁷⁷

Despite this setback, teacher tenure was quickly readdressed in a new bill, S.B. 27, introduced just one month after Amendment 3's defeat.⁷⁸ The bill's components were in many ways identical to the proposals in Amendment 3, but it went a step further by aiming to completely eliminate tenure for teachers hired on or after August 28, 2015.⁷⁹ The bill was ultimately unsuccessful, never having made it out of committee.⁸⁰

On the coasts, meanwhile, teacher tenure has met its opposition in court. In 2014, a New York education advocacy group filed a lawsuit challenging the constitutionality of the state's tenure laws.⁸¹ The lawsuit raised concerns commonly held by tenure critics, arguing that the laws render the firing of unqualified teachers too difficult and improperly protect veteran teachers regardless of their quality.⁸² This suit came on the heels of a landmark decision from California, *Vergara v. California*, which declared the state's tenure statutes unconstitutional.⁸³

In *Vergara*, nine students ranging in age from seven to sixteen brought suit against the State of California, its governor, its department and board of education, and various school districts.⁸⁴ The plaintiffs claimed that the "hiring and continued employment of such grossly ineffective teachers in the California public school system [was] the direct result of the continued enforcement of [California's tenure laws]."⁸⁵ Moreover, the plaintiffs alleged that the state's tenure laws caused the disproportionate assignment of ineffective teachers to predominantly minority and economically disadvantaged

missourian.com/news/k12_education/update-missouri-group-calls-off-campaign-for-teacher-tenure-measure/article_eca8f985-500e-5047-9a7e-4c98c889cb2e.html.

76. Dale Singer, *Backers of Teacher Tenure Amendment Pull Back, But Foes Plan to Fight On*, ST. LOUIS PUB. RADIO (Sept. 14, 2015), <http://news.stlpublicradio.org/post/backers-teacher-tenure-amendment-pull-back-foes-plan-fight>.

77. Claire Boston et al., *Two Ballot Measures Pass Statewide, and Two Are Defeated*, COLUMBIA MISSOURIAN (Nov. 9, 2014), http://www.columbia-missourian.com/news/state_news/two-ballot-measures-pass-statewide-and-two-are-defeated/article_ed213198-bed1-5a2a-b50c-d43916119494.html.

78. Stuckey, *supra* note 60.

79. Tim Lloyd & Dale Singer, *Student Transfers Top List of Pre-Filed Education Bills Facing Legislators*, ST. LOUIS PUB. RADIO (Dec. 29, 2014), <http://news.stlpublicradio.org/post/student-transfers-top-list-pre-filed-education-bills-facing-legislators>.

80. *MO-SB27*, TRACKBILL, <https://trackbill.com/bill/MO/2015/SB27/modifies-provisions-relating-to-elementary-and-sec> (last visited Feb. 12, 2016).

81. Baker, *supra* note 61.

82. *Id.*

83. *Vergara v. California*, No. BC484642, 2014 WL 6478415, *7 (Cal. Super. Ct. Aug. 27, 2014).

84. First Amended Complaint for Declaratory and Injunctive Relief at 5–9, *Vergara*, 2014 WL 6478415 (No. BC484642), 2012 WL 10129922.

85. *Id.* at 3.

schools.⁸⁶ Thus, the plaintiffs claimed, the tenure laws made the quality of education turn on race and wealth, in violation of the equal protection provisions in the California Constitution.⁸⁷

The *Vergara* court, upon finding substantial evidence that the state's tenure laws disproportionately affected low-income and minority students, held that the laws violated the equal protection rights of California's students.⁸⁸ In his opinion, Judge Rolf M. Treu relied upon a report from the California Department of Education, which provided:

[T]he 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.⁸⁹

While no evidence was presented that established a causal relationship between teacher tenure and education inequity, Judge Treu reasoned that because students in low-income schools are instructed by a larger number of under-qualified teachers, the laws which afford such teachers job security must be unconstitutionally unfair to students attending these schools.⁹⁰ The opinion further noted that the "lack of effective dismissal statutes" and the last-in-first-out scheme⁹¹ greatly affected the stability of the learning process of minority and high-poverty students.⁹² Moreover, the opinion denounced the relatively short requisite time period⁹³ a teacher must work before obtain-

86. *Id.* at 5.

87. *Id.*

88. *Vergara*, 2014 WL 6478415, at *7.

89. *Id.* (quoting CAL. DEP'T OF EDUC., EVALUATING PROGRESS TOWARD EQUITABLE DISTRIBUTION OF EFFECTIVE EDUCATORS (July 2007)).

90. *Id.*

91. *Id.* The "last-in-first-out" scheme is one statutory provision that *Vergara* held unconstitutional. *Id.* at *6–7. The statute provides: "[T]he services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." CAL. EDUC. CODE § 44955(b) (West 2016). Missouri has a similar seniority provision; in Missouri, probationary teachers will be placed on leave before permanent teachers when a reduction in force is necessary due to enrollment decrease, district reorganization, or budget constraints. See MO. REV. STAT. § 168.124(1) (Cum. Supp. 2013). Amongst permanent teachers, retention is based on performance and seniority, although seniority cannot be the controlling factor. See *id.* § 168.124(2).

92. *Vergara*, 2014 WL 6478415, at *7.

93. California currently employs a two-year probationary period. See *id.* at *4.

ing tenure under California law, acknowledging the testimony of defense experts that a three- to five-year period would be more ideal.⁹⁴

The federal government has echoed Judge Treu's concerns of inequity. A lack of access to high-quality education has been a significant concern as of late for the U.S. Department of Education ("Department").⁹⁵ In a letter to all chief state school officers nationwide, Secretary of Education Arne Duncan acknowledged that "family income and race still too often predict how likely a child is to attend a school staffed by great educators."⁹⁶ In response to this inequity, the Department imposed requirements on all fifty states to address such issues in a timely, but precise and thorough, manner.⁹⁷

B. Addressing Significant Inequity in Education

In July 2014, the Department launched its Excellent Educators for All Initiative.⁹⁸ Secretary Duncan stated: "Despite the excellent work and deep commitment of our nation's teachers and principals, systemic inequalities exist that shortchange students in high-poverty, high-minority schools across our country. We have to do better."⁹⁹ The initiative called on all state education departments to act, requiring each state to develop educator equity plans establishing procedures to ensure that every student has access to quality educators.¹⁰⁰

On September 10, 2015, the Department approved sixteen states' plans – including Missouri's.¹⁰¹ The Missouri Department of Elementary and Secondary Education ("DESE") developed its plan after performing a comparative analysis of high-poverty, high-minority, and rural areas.¹⁰² DESE's plan

94. *Id.* at *5. Even defense experts testified that a three- to five-year period would be more ideal. *Id.*

95. Arne Duncan, *Key Policy Letters from the Education Secretary and Deputy Secretary*, U.S. DEP'T EDUC. (July 7, 2014), <http://www2.ed.gov/policy/elsec/guid/secletter/140707.html>.

96. *Id.*

97. *Id.*

98. *New Initiative to Provide All Students Access to Great Educators*, *supra* note 62.

99. *Id.*

100. *Id.*

101. Elisa Crouch, *Missouri's Teacher Equity Plan Receives Federal Approval*, ST. LOUIS POST-DISPATCH (Sept. 10, 2015), http://www.stltoday.com/news/local/education/missouri-s-teacher-equity-plan-receives-federal-approval/article_242d41df-22d6-5c50-9c69-4cc4753ce7fd.html.

102. MO. DEP'T OF ELEMENTARY & SECONDARY EDUC., *supra* note 4, at 2–4. DESE compared the following groups in its analysis: the five percent of Missouri schools (110 schools) with the highest percentage of students eligible for free and reduced price lunch ("FRPL") were referenced as high-poverty schools; the five percent of Missouri schools with the highest percent of minority students (non-white and Hispanic of any race) were referenced as high-minority schools; 315 Missouri schools classified as "Rural: Remote" were referenced as rural schools; and five percent of

acknowledged at the outset that students in “high-poverty, high-minority and rural [schools] experience less effective teachers at a higher rate than do students in low-poverty [i.e., more affluent] schools.”¹⁰³ Specifically, significant gaps exist between high- and low-poverty schools when it comes to teachers who are fully qualified.¹⁰⁴ Nearly twenty-eight percent of secondary education teachers in Missouri high-poverty schools are considered less than fully qualified, while only 10.5% of the educators in the state’s low-poverty schools fall under this classification.¹⁰⁵ The DESE study also highlighted the degree of educator turnover in Missouri schools. Teachers in the lowest-poverty schools were retained from one year to the next at an eighty-five percent rate.¹⁰⁶ Conversely, the retention rates were eighty-one percent for teachers in rural schools, sixty-nine percent in high-minority schools, and sixty-eight percent in high-poverty schools.¹⁰⁷ Because teacher turnover cripples student achievement,¹⁰⁸ students attending high-poverty and high-minority schools are more likely to be hindered by a lack of teacher retention.¹⁰⁹ Relatedly, teachers in high-poverty, high-minority, and rural schools generally have less experience than teachers in low-poverty schools.¹¹⁰ DESE’s analysis is a sobering representation of the ubiquitous inequity within the Missouri public school system.

DESE’s study of Missouri schools and the disparate quality of education provided to Missouri students parallels Judge Treu’s concerns for California students; those attending high-poverty and high-minority schools lack the access to high-quality educators afforded to those attending more affluent schools. To counter this problem, Missouri plans to focus on the following areas: recruitment, preparation, educator support, and effective school leaders and mentorship.¹¹¹ DESE’s published report, *Ensure Equitable Access to Excellent Educators*, details plans to recruit high-quality and diverse individuals,¹¹² ensure educators possess the necessary pedagogical skills for the pro-

Missouri schools with the lowest percentage of students eligible for FRPL were referenced as more affluent schools. *Id.* at 3.

103. *Id.* at 56.

104. *Id.* at 9.

105. *Id.* at 60.

106. *Id.* at 10.

107. *Id.*

108. Matthew Ronfeldt et al., *How Teacher Turnover Harms Student Achievement* 1, 3, 13–14 (Nat’l Bureau of Econ. Research, Working Paper No. 17176, 2011), <http://www.nber.org/papers/w17176.pdf>.

109. *Id.* at 1.

110. MO. DEP’T OF ELEMENTARY & SECONDARY EDUC., *supra* note 4, at 10.

111. *Id.* at 35–50.

112. *Id.* at 35. On average, minority teachers make up seven percent of a school’s faculty. *Id.* Increased diversity in the profession would “create a better overall teacher workforce in that it better matches the diverse student population found in many of Missouri’s schools.” *Id.*

fession,¹¹³ ensure adequate quantities of qualified teachers,¹¹⁴ attract candidates to hard-to-staff areas and locations, and ensure teachers are well-supported by mentors¹¹⁵ and effective school leaders.¹¹⁶ However, because Missouri's plan for educator equity focuses on implementing *institutional* strategies to improve the quality of the workforce, and is not a legal proposal, it is understandably silent on legislative strategies, including treatment of the state's tenure laws.

These simultaneous attempts to jumpstart the reformation of Missouri schools – legislators' efforts to overhaul, or even eliminate, the Teacher Tenure Act and DESE's long-term plans to improve access to and equity in education for disenfranchised students – share the common strands of improving Missouri schools.

IV. DISCUSSION

Missouri's public education system and the state laws that govern it are understandably a sensitive issue; they directly impact the state's children and have a long-lasting effect on the wellbeing of Missouri students.¹¹⁷ Teacher tenure is a complicated issue with many intricacies,¹¹⁸ and a blanket pro- or anti-tenure stance that reflexively classifies tenure as entirely positive or exclusively problematic disregards the complexities of the law.¹¹⁹

Missouri's Teacher Tenure Act is not perfect. While it provides due process to Missouri educators during the termination process, it necessarily lengthens the time required and increases the cost accrued in terminating an ineffective teacher.¹²⁰ However, the attempt to wholly remove Missouri tenure laws to promote equity across Missouri schools is a misguided approach to increase education equity, and reformers who have turned their sights to removing tenure have chosen the wrong target for fixing the public education system.¹²¹ Instead of continued attempts to remove or reform Missouri's

113. *Id.* at 38.

114. *Id.* at 40–41. When there are shortages of teachers certified in specific academic areas, out-of-field teachers are used in their place, which is one way a teacher may be less than fully qualified. *Id.* at 40.

115. *Id.* at 44.

116. *Id.* at 48.

117. Interview with Kelli Hopkins, *supra* note 21.

118. Jenna McCarthy et al., *Teacher Tenure Is Misunderstood in California*, GRANITE BAY TODAY (Jan. 29, 2015), <http://www.granitebaytoday.org/teacher-tenure-misunderstood-california/>.

119. Interview with Kelli Hopkins, *supra* note 21.

120. *Id.*

121. Erwin Chemerinsky, *Teacher Tenure: Wrong Target*, N.Y. DAILY NEWS (Oct. 23, 2014, 3:39 AM), <http://www.nydailynews.com/opinion/teacher-tenure-wrong-target-article-1.1983826>.

tenure laws, which are some of the country's most conservative,¹²² Missouri legislators must act to improve education funding, which may in turn improve many of the problems causing education inequity in Missouri.

A. *The Case for Missouri's Tenure Laws*

Because of the general weakness of Missouri's collective bargaining laws, teacher tenure does not affect Missouri schools the same way it affects schools housed in states that have stronger union laws. Missouri does not have, and has never had, the equivalent of New York's "rubber rooms," where tenured teachers, who had been removed from teaching due to claims of incompetency, would sit every day for years, clocking in and out as they waited for adjudication of the claims against them.¹²³ The cost for removing a tenured teacher is also lower in Missouri than other states. It has been reported that it can cost as much as \$250,000 to fire a tenured teacher in New York City;¹²⁴ whereas a Missouri education lawyer estimated the cost to fire a Missouri tenured teacher to be significantly less.¹²⁵ These negative connotations attached to tenure are not as prevalent in Missouri as they are in other states.

Additionally, Missouri tenure laws are generally conservative and cautious when it comes to awarding tenure. In calls for tenure reform, one of the most frequent proposals is extending the probationary period, which would defer the conferral of tenure until a teacher is further along in her career. Such an extension would ideally "allow[] for [a] more complete evaluation of fully-developed performance."¹²⁶ A five-year probationary period, rather than a two- or three-year period, can improve "the reliability of the teacher outcome data upon which [teacher] evaluations are based."¹²⁷ Because re-

122. *Teacher Tenure – Requirements for Earning Nonprobationary Status*, *supra* note 24.

123. Steven Brill, *The Rubber Room: The Battle Over New York City's Worst Teachers*, *NEW YORKER* (Aug. 31, 2009), <http://www.newyorker.com/magazine/2009/08/31/the-rubber-room>. In 2010, the practice of using Reassignment Centers was purportedly discontinued, but as of 2013, hundreds of New York teachers were still paid to sit in these rooms. Rachel Monahan & Ben Chapman, *City Will Spend \$29 Million on Salaries, Benefits of Educators It Can't Fire*, *N.Y. DAILY NEWS* (Oct. 5, 2013), <http://www.nydailynews.com/new-york/education/city-spend-29m-paying-educators-fire-article-1.1477027>.

124. *Rhee-Forming D.C. Schools: A Democrat Shakes Up Washington's Failed Public Schools*, *WALL ST. J.* (Nov. 22, 2008, 12:01 AM), <http://www.wsj.com/articles/SB122731062221349277>.

125. *See* Schuls, *supra* note 45 (estimating the cost of firing a Missouri tenured teacher to be between \$30,000 to \$37,000).

126. PUB. IMPACT, *TEACHER TENURE REFORM: APPLYING LESSONS FROM THE CIVIL SERVICE AND HIGHER EDUCATION* 13, http://opportunityculture.org/images/stories/teacher_tenure_reform-public_impact.pdf (last visited Mar. 6, 2015).

127. *Id.*

search suggests that teachers have “steep growth curves” in their first five years on the job, making tenure decisions at the five-year mark may better predict long-term performance.¹²⁸ As acknowledged above, Missouri’s Teacher Tenure Act already employs a requisite five-year probationary period,¹²⁹ which requires a teacher to be reviewed five different times before receiving tenure.¹³⁰ Thus, Missouri already has this procedural safeguard sought by education reformers throughout the country.

Furthermore, research shows that tenure law does not in itself cause education deficiencies. Studies on teacher tenure have recently come out of North Carolina, likely triggered by many recent challenges to its tenure laws,¹³¹ including a Duke University study that found a “significant jump” in educator quality at the tenure cutoff, beyond the normal trend, between years four and five of district experience.¹³² According to the researcher, low-quality teachers do not persist in the same district after year four.¹³³ This suggests that tenure protections are effective in retaining high-quality teachers and removing those less qualified.¹³⁴ While the study’s author cautions against interpreting this analysis as there being causation between tenure and quality, North Carolina’s tenured teachers were, on average, of higher quality than probationary teachers, more than the expected increase in quality attributable to teaching experience.¹³⁵

Removing tenure in Missouri is not guaranteed to have any effect on improving the quality of education in struggling Missouri schools and may actually exacerbate the problems that these schools already face.¹³⁶ Struggling schools already experience difficulty in attracting and retaining quality teachers, and the removal of tenure might make this process even more difficult.¹³⁷ Abolishing tenure may even further narrow the pool of interested and

128. *Id.*

129. Interview with Kelli Hopkins, *supra* note 21.

130. *Id.*

131. Dave Dewitt, *Pay Cuts, End of Tenure Put North Carolina Teachers on Edge*, NPR (Feb. 11, 2014, 8:00 PM), <http://www.npr.org/2014/02/11/275368362/pay-cuts-end-of-tenure-put-north-carolina-teachers-on-edge>.

132. Dana E. Fenster, *Implications of Teacher Tenure on Teacher Quality and Student Performance in North Carolina*, DUKE U. 1, 40 (2014), http://econ.duke.edu/uploads/media_items/danafensterdjepaper.original.pdf. The study measured quality using student test scores, teacher fixed effect on those test scores, and consecutive years of teaching experience in the same district. *Id.* at 13. This is just one way to attempt to measure teacher effectiveness, which may be difficult to quantify.

133. *Id.* at 40.

134. *Id.* at 3.

135. *Id.* at 41.

136. Lemieux, *supra* note 8.

137. Max Ehrenfreund, *Teacher Tenure Has Little to Do With Student Achievement*, *Economist Says*, WASH. POST (Sept. 10, 2014), <http://www.washingtonpost.com/news/wonkblog/wp/2014/09/10/teacher-tenure-has-little-to-do-with-student-achievement-economist-says/>.

qualified teaching candidates by eliminating one of the profession's main attractions.¹³⁸ Moreover, unless the underlying problems¹³⁹ that cause poor and minority students to be shortchanged on educator quality are addressed, the removal of tenure will have no effect on their quality of education.¹⁴⁰ A principal may be entitled to more easily remove an ineffective teacher, but must replace that teacher with another possibly ineffective teacher,¹⁴¹ creating a cycle of constant and costly turnover. Because removing tenure is a "shot in the dark" attempt to improve education equity, and may even do more harm than good, Missouri would be better served by taking a more effective approach to improving Missouri schools.

B. Other Remedial Actions Are More Certain to Produce Tangible Results

Eliminating Missouri's tenure laws will not address the systemic inequalities in the Missouri public school system.¹⁴² Unless direct actions are taken to fix the underlying problems that cause education inequity, the removal of, or even the reform of, Missouri's tenure laws will be but a bandage placed upon a deeply-ingrained, complex problem.¹⁴³ One course of action more likely to have a direct impact on improving education equity is an increase in funding across the state's schools.¹⁴⁴

138. *Id.*

139. A plethora of causes have been suggested to contribute to education inequalities, such as socioeconomic status and segregation by race and class. See Eduardo Porter, *Education Gap Between Rich and Poor is Growing Wider*, N.Y. TIMES (Sept. 22, 2015), <http://www.nytimes.com/2015/09/23/business/economy/education-gap-between-rich-and-poor-is-growing-wider.html>; see also Chemerinsky, *supra* note 121.

140. Ehrenfreund, *supra* note 137.

141. *Id.*

142. Chemerinsky, *supra* note 121.

143. *Id.*

144. Skeptics of increasing education funding may point to the Kansas City Public Schools' failed attempt to overhaul its education deficiencies using a substantial increase in funding. See Paul Ciotti, *Money and School Performance: Lessons from the Kansas City Desegregation Experiment*, CATO POL'Y ANALYSIS (Mar. 16, 1998), <http://www.cato.org/pubs/pas/pa-298.html>. In 1985, a federal judge ordered an increase in funding for Kansas City Public Schools. *Id.* The school district simply mismanaged the money. *Id.* With the increased funding, the district built fifteen new schools and renovated fifty-four others, adding amenities such as an Olympic-sized swimming pool, a planetarium, an arboretum, a zoo, and a twenty-five-acre wildlife sanctuary. *Id.* A 1991 audit discovered that fifty-four percent of the school district's budget was spent on food service, transportation, and administration, rather than classroom or educational needs. *Id.* In 1997, the judge ended the increased payments to the school district. *Id.* The school district subsequently lost accreditation status in 2012 and is currently only provisionally accredited. See Holly Edgell & Dia Wall, *Parents, Faculty Hopeful as KCPS System Retains Provisional Accreditation*, KSHB

An alarming, tangible source of education inequity in Missouri public schools is the funding deficiencies amongst the respective schools. Recently, the state legislature's efforts to properly fund Missouri schools have fallen flat. In 2005, a legislative funding bill passed that was designed to phase in a new funding formula over a seven-year period based on student needs.¹⁴⁵ The bill provided a funding formula, which was designed to make sure that each Missouri school had the financial means to provide a quality education for its students, which applied regardless of the district's ability to raise money from property taxes and other sources.¹⁴⁶ However, this phase-in period never happened due to the recession and a drop in state revenue.¹⁴⁷ The funding has been below the mandated levels since 2010, and Missouri schools are still greatly underfunded.¹⁴⁸

In 2014, the Missouri Budget Project released a report that analyzed the underfunding of Missouri public schools.¹⁴⁹ The study concluded that Missouri schools were underfunded by \$696 million, which was twenty percent below the required funding level.¹⁵⁰ This equates to a shortfall of approximately \$700 per student,¹⁵¹ though the deficits vary widely amongst the various school districts.¹⁵² The underfunding was generally worse in rural schools than schools in more populous cities or suburbs.¹⁵³

(Oct. 23, 2015, 5:53 PM), <http://www.kshb.com/news/education/we-are-on-the-right-path-kansas-city-public-schools-system-retains-provisional-accreditation>. This was an extreme case of mismanaged blank-check education funding, and it is not what this Note proposes should happen.

145. S. 287, 93d Gen. Assemb., Reg. Sess. (Mo. 2005).

146. Dale Singer, *Formula For Missouri Schools Is Sharply Underfunded*, *New Study Says*, ST. LOUIS PUB. RADIO (Mar. 9, 2014), <http://news.stpublicradio.org/post/formula-missouri-schools-sharply-underfunded-new-study-says>.

147. *Id.*

148. *Id.* In his final State of the State address, Governor Jay Nixon called for additional school funding for Missouri schools. Ellen Cagle et al., *In Annual Address, Nixon Calls for Increased Education Funding; Medicaid Expansion*, COLUMBIA MISSOURIAN (Jan. 20, 2016), http://www.columbiamissourian.com/news/state_news/in-annual-address-nixon-calls-for-increased-education-funding-medicare/article_9f94c130-bfce-11e5-ab2e-d3dbe0918b1f.html.

149. *Id.*; *A Shaky Foundation: Missouri Underfunding the School Formula*, MO. BUDGET PROJECT 1 (Mar. 19, 2014), http://www.mobudget.org/files/A_Shaky_Foundation.pdf.

150. *A Shaky Foundation: Missouri Underfunding the School Formula*, *supra* note 149. Missouri's education funding formula was adopted in 2005 to ensure that each school district "had adequate funding to meet educational standards, regardless of the district's ability to generate local revenue from property taxes and other sources." *Id.* at 2.

151. *Id.* at 1.

152. *Id.* at app. C, 8–24.

153. Singer, *supra* note 146.

Moreover, there are great disparities in funding fairness amongst Missouri schools. A 2015 report compiled by the Education Law Center analyzed the equity of each state's education funding using four measures: funding level, funding distribution, effort, and coverage.¹⁵⁴ Missouri was one of the poorest-positioned states in fairness funding: it received a failing grade in funding distribution,¹⁵⁵ an average grade in effort,¹⁵⁶ and below average rank in funding level¹⁵⁷ and coverage.¹⁵⁸ A key here is funding distribution. Some states, such as Indiana and Ohio, have "progressive funding distributions,"¹⁵⁹ providing additional resources for schools in settings of concentrated student poverty.¹⁶⁰ Missouri, meanwhile, is one of fourteen states that employs "regressive funding" distribution,¹⁶¹ providing less funding to its highest-poverty districts.¹⁶² Thus, not only are Missouri schools not receiving the money they have been promised by the legislature, they are also not receiving equitable levels of funding.

These figures are not negligible: funding matters.¹⁶³ Because Missouri is not providing the money the formula requires, schools have had to reduce costs in ways that necessarily harm students.¹⁶⁴ Schools have cut staff, offered fewer classes, and increased class sizes.¹⁶⁵ Additional funding is need-

154. BRUCE D. BAKER ET AL., EDUC. L. CTR., IS SCHOOL FUNDING FAIR? A NATIONAL REPORT CARD 1, 4, (2015), http://www.schoolfundingfairness.org/National_Report_Card_2015.pdf. The "funding level" benchmark measures the overall level of state and local revenue provided to school districts, adjusted to reflect differences in regional wages, poverty, economies of scale, and population density. *Id.* "Funding distribution" measures the distribution across each state's districts, relative to student poverty, determining whether a state provides more or less funding to schools based on their poverty concentration. *Id.* "Effort" is defined as the ratio of state spending to state GDP and measures the differences in state education funding relative to state fiscal capacity. *Id.* "Coverage" measures the proportion of school-age children attending the state's public schools as compared to those students in private or home schools, which is an "important indicator of the distribution of funding relative to student poverty . . . and the overall effort to provide fair school funding." *Id.* Missouri has one of the country's lowest percentages of public-school enrollment. *Id.* at 23.

155. *Id.* at 24.

156. *Id.* at 25.

157. *Id.* Missouri was ranked twenty-ninth of the fifty states in funding level. *Id.*

158. *Id.* Missouri was ranked forty-fifth of the fifty states in coverage. *Id.*

159. *Id.* at 8.

160. *Id.*

161. *Id.*

162. *Id.* at 9. Missouri's highest-poverty schools receive eighty-eight cents for every dollar that its lowest-poverty schools receive. *Id.*

163. See BRUCE D. BAKER, ALBERT SHANKER INST., REVISITING THE AGE-OLD QUESTION: DOES MONEY MATTER IN EDUCATION? iv (2012), <http://files.eric.ed.gov/fulltext/ED528632.pdf>.

164. Singer, *supra* note 146.

165. *Id.*

ed, and the allocation of such additional funding is especially critical.¹⁶⁶ Increased funding, if spent carefully and wisely, could go a long way in improving education equity. Additional funding would create a much more robust state education system; it would boost teacher salaries,¹⁶⁷ provide more adequate resources to the state's most vulnerable schools,¹⁶⁸ and allow DESE to more efficiently implement its educator equity plan.¹⁶⁹

An increase in teacher salaries would go a long way to further equity throughout the state's schools.¹⁷⁰ Teacher salaries are increasingly uncompetitive.¹⁷¹ Notably, teachers in the United States "work more hours and are paid less than their counterparts in almost every other developed country."¹⁷² Comparing teacher salaries to other professionals in the same labor market who are of similar age, education level, and working hours, teacher salaries "fall far below their non-teacher counterparts."¹⁷³ A Missouri teacher starting her career at age twenty-five, for example, would earn about thirty percent less than a similarly situated non-teacher counterpart.¹⁷⁴

Moreover, palpable income disparities exist amongst Missouri teachers.¹⁷⁵ On average, teachers at the poorest Missouri schools are paid over \$10,000 less annually than their peers teaching at the most affluent schools.¹⁷⁶ A teacher could increase her yearly salary by over twenty percent simply by leaving her position at one of Missouri's poorest schools and taking a job at

166. Eduardo Porter, *In Public Education, Edge Still Goes to Rich*, N.Y. TIMES (Nov. 5, 2013), <http://www.nytimes.com/2013/11/06/business/a-rich-childs-edge-in-public-education.html?partner=rss&emc=rss&smid=tw-nytimes&r=0> (Money alone "will [not] automatically lift the test scores of poor American children and close performance gaps. How the money is deployed is absolutely crucial.").

167. Sabrina Laine, *The Debate Room: Raise Teacher's Salaries*, BLOOMBERG BUS., http://www.businessweek.com/debateroom/archives/2009/03/raise_teachers.html (last visited Nov. 18, 2015).

168. BAKER, *supra* note 163.

169. Samantha Kummerer, *Missouri Education Plan Gains Approval But Lacks Funding*, KBIA MID-MO. PUB. RADIO (Sept. 14, 2015), <http://kbia.org/post/missouri-education-plan-gains-approval-lacks-funding>.

170. Frank Adamson & Linda Darling-Hammond, *Addressing Inequitable Distribution of Teachers: What It Will Take to Get Qualified, Effective Teachers in All Communities*, STAN. CTR. FOR OPPORTUNITY POL'Y EDUC. 3-4 (Dec. 2011), https://edpolicy.stanford.edu/sites/default/files/publications/addressing-inequitable-distribution-teachers-what-it-will-take-get-qualified-effective-teachers-all_1.pdf.

171. BAKER, *supra* note 163.

172. Chemerinsky, *supra* note 121. See also Sarah Marsh, *How The Job Of A Teacher Compares Around The World*, GUARDIAN (Sept. 5, 2014, 2:00 PM), <http://www.theguardian.com/teacher-network/teacher-blog/2014/sep/05/how-the-job-of-a-teacher-compares-around-the-world>.

173. BAKER ET AL., *supra* note 154, at 28.

174. *Id.*

175. See MO. DEP'T OF ELEMENTARY & SECONDARY EDUC., *supra* note 4, at 60.

176. *Id.*

one of Missouri's richest schools.¹⁷⁷ Low pay makes it hard for poorer schools to attract the most qualified candidates, limiting hiring decisions to a less-qualified applicant pool.¹⁷⁸ Studies show that teacher salaries play a "potentially important role" in improving the equity of student outcomes.¹⁷⁹ Not only can higher salaries draw higher-quality candidates into teaching, relative salaries amongst school districts may influence the distribution of teaching quality.¹⁸⁰

As discussed above, teacher turnover is a problem in Missouri. Not only does educator turnover harm students, but it also harms the schools themselves.¹⁸¹ Teacher turnover costs school districts billions of dollars each year.¹⁸² Related costs include recruiting, hiring, and training new employees.¹⁸³ This is a large burden on Missouri schools, which are already underfunded, and some schools have had to forego replacing departing teachers in order to save money.¹⁸⁴ In addition, teacher turnover is higher at rural or high-poverty school districts, as teachers will work there for a couple of years to gain experience before moving on to a higher-paying job.¹⁸⁵ Some suggest that many teachers in urban school districts view employment there as a stepping-stone rather than an option for a long-term career.¹⁸⁶ By increasing teacher salaries, these hard-to-staff schools may graduate from career stepping-stones to places where teachers may have a long-lasting, lucrative career.¹⁸⁷

Additionally, increased funding would provide Missouri's teachers with the materials they need to succeed. Teachers working in high-poverty schools often must use outdated textbooks and technology and are often provided with inadequate teaching supplies, such as science equipment or materials.¹⁸⁸ Deficient supplies and decreased opportunities to learn "can diminish

177. *Id.* A balance in teacher salaries across the state would remove the incentive for teachers to transfer to more affluent schools for economic reasons. *See id.*

178. Adamson & Darling-Hammond, *supra* note 170.

179. BAKER, *supra* note 163, at 8.

180. *Id.*

181. Jessica Bock, *Mehlville is Learning the Costs of Teacher Turnover*, ST. LOUIS POST-DISPATCH (July 7, 2015, 12:15 AM), http://www.stltoday.com/news/local/education/mehlville-is-learning-the-costs-of-teacher-turnover/article_f59edc7d-3768-55cc-83a1-fbea46285dbc.html.

182. *Id.*

183. *Id.*

184. *Id.*

185. Kummerer, *supra* note 169.

186. *Id.*

187. *Id.*

188. Cynthia Hudley, *Education and Urban Schools*, 6 SES INDICATOR (May 2013), <http://www.apa.org/pi/ses/resources/indicator/2013/05/urban-schools.aspx>; *see also* KEVIN WELNER & AMY FARLEY, NAT'L COMMITTEE FOR RESPONSIVE PHILANTHROPY, CONFRONTING SYSTEMIC INEQUALITY IN EDUCATION: HIGH IMPACT STRATEGIES FOR PHILANTHROPY 7 (2010) (quoting Linda Darling-Hammond, *The*

student engagement and achievement.”¹⁸⁹ Increased funding may also allow schools to reduce their class sizes, which leads to an increase in academic performance and a decrease in the achievement gap in later years.¹⁹⁰ These benefits can only transpire if Missouri legislators proactively put forth the effort to ensure that Missouri schools are adequately funded.

Missouri legislators can put their power to good use by providing money to one of the state’s most important resources – its schools. While DESE’s plan proposes several key problem areas to focus on in improving education equity, its implementation is still in its early stages.¹⁹¹ And though the plan is full of optimistic solutions for improving Missouri schools, DESE lacks the funding necessary to implement the strategies.¹⁹² Aside from reallocating current funds, a solution that is not ideal, DESE does not have adequate options to actualize its proposals.¹⁹³ This lack of funding is troubling because the DESE plan is a necessary jumpstart to remedying Missouri’s education inequity. DESE’s proposed institutional measures will go a long way toward achieving education equity, and the Missouri legislature should allocate sufficient resources to implementing the DESE plan.¹⁹⁴

In addition to all of these hypothetical improvements, increased funding may also quiet some of tenure’s critics by rendering the process of removing an ineffective teacher feasible, less necessary, or both. If the administrative costs are truly a deterrent to terminating poor teachers, it must necessarily follow that with an increased budget, a school would be less apprehensive to take the steps necessary to remove a teacher it felt was not a good fit because it would be able to afford the process. Moreover, increased funding would give schools the opportunity to establish more robust teacher mentoring systems, which would improve and sustain teacher quality.¹⁹⁵ If the best candidates are selected for teaching positions, and teachers are paid competitively, provided with adequate materials, and adequately supported by the school, it

Color Line in American Education: Race, Resources, and Student Achievement, 1 DU BOIS REV.: SOC. SCI. RES. ON RACE 213, 215 (2004)), http://ncrp.org/files/publications/Confronting_Systemic_Inequities_in_Education_lowres.pdf (“On every tangible measure – from qualified teachers and class sizes to textbooks, computers, facilities and curriculum offerings – schools serving large numbers of students of color have significantly fewer resources than schools serving mostly White students.”).

189. Hudley, *supra* note 188.

190. BAKER, *supra* note 163.

191. Kummerer, *supra* note 169.

192. *Id.*

193. *Id.*

194. The DESE plan seeks to implement recruitment strategies, develop teacher assessment programs, develop loan forgiveness strategies, and implement mentorship programs for new teachers. See MO. DEP’T OF ELEMENTARY & SECONDARY EDUC., *supra* note 4, at 35–50. This is a far cry from Kansas City Public Schools’ expenditures, many of which had no effect on classroom improvement or performance. See Ciotti, *supra* note 144.

195. MO. DEP’T OF ELEMENTARY & SECONDARY EDUC., *supra* note 4, at 60.

is less likely that there will be a need to go through the removal process of an ineffective teacher, making tenure a less likely target for education reformers.

V. CONCLUSION

Missouri is failing its students. Our public schools exacerbate inequity and appoint students as haves and have-nots based upon, by virtue of chance, the level of privilege students are born into. Attempts to completely eliminate tenure in the name of fighting for disadvantaged students are a red herring in the grand scheme of improving education equity. There is simply no direct evidence of a causal relationship between teacher tenure and education inequity. Too much time, money, and effort has been spent to try to eliminate a law that is not the root of the problem. If Missouri leaders truly want to ensure that every student is guaranteed access to a high-quality education, it must invest in its students. It must spend to gain. Not only must it increase education funding, it must distribute its funding fairly; it must focus not on mere equality, but equity. A student should not be denied a qualified educator, an up-to-date and intact textbook, or a well-rounded education because of luck. DESE has put its plan in place; it is up to Missouri to enforce it.

