STATE OF NEW YORK
SUPREME COURT COUNTY OF RICHMOND

MYMOENA DAVIDS, by her parent and natural guardian MIAMONA DAVIDS, ERIC DAVIDS, by his parent and natural guardian MIAMONA DAVIDS, ALEXIS PERALTA, by her parent and natural guardian ANGELA PERALTA, STACY PERALTA, by her parent and natural guardian ANGELA PERALTA, LENORA PERALTA, by her parent and natural guardian ANGELA PERALTA, ANDREW HENSON, by his parent and natural guardian CHRISTINE HENSON, ADRIAN COLSON, by his parent and natural guardian JACQUELINE COLSON, DARIUS COLSON, by his parent and natural guardian JACQUELINE COLSON, SAMANTHA PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, FRANKLIN PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, IZAIYAH EWERS, by his parent and natural guardian KENDRA OKE,

Plaintiffs,

-against-

THE STATE OF NEW YORK, THE NEW YORK STATE BOARD OF REGENTS, THE NEW YORK STATE EDUCATION DEPARTMENT, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, JOHN AND JANE DOES 1-100, XYZ ENTITIES 1-100,

Defendants,

-and-

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO,

Intervenor-Defendant.

Index No.: 101105-2014

AFFIDAVIT IN SUPPORT of MOTION to INTERVENE

Hon. Philip G. Minardo

STATE OF NEW YORK
SUPREME COURT COUNTY OF RICHMOND

JOHN KEONI WRIGHT, GINET BORRERO, *TAVANA* GOINS, NINA DOSTER, CARLA WILLIAMS, MONA PRADIA, ANGELES BARRAGAN,

Plaintiffs,

-against-

THE STATE OF NEW YORK, THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK, MERRYL H. TISCH, in her official capacity as Chancellor of the Board of Regents of the University of the State of New York, JOHN B. KING, in his official capacity as the Commissioner of Education of the State of New York and President of the University of the State of New York,

Defendants,

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and as President of the New York State United Teachers,

Intervenors-Defendants,

-and-

PHILIP A. CAMMARATA and MARK MAMBRETTI.

Proposed Intervenors-Defendants.

STATE OF NEW YORK)
ss:
COUNTY OF CHAUTAUQUA)

Philip A. Cammarata, being duly sworn deposes and says:

1. I make this affidavit in support of the motion to intervene in this litigation, the outcome of which could directly impact my ability to fulfill my role as the building leader. It will also impact my most basic terms and conditions of employment.

2. I am currently the tenured principal at Persell Middle School in the Jamestown City School District ("Jamestown"). Jamestown is a small city school district comprised of five elementary buildings, three middle schools and one high school and provides quality public education to approximately 5,000 students.

3. I have been employed in the public education system of the State of New York for 24 years. I have served three probationary terms and awarded tenure upon recommendation of the Superintendent and vote of the Board of Education in each instance. I have faithfully and professionally served the school district during my employment.

4. I am the President of the Jamestown Principal's Association and serve on several other district committees. I have led Persell Middle School in hundreds of hours of professional development and curriculum training over the past fifteen years. I was recently awarded the School Administrators Association of New York State Middle School Principal of the Year for one of twelve regions across the State of New York.

5. I hold permanent New York State Certification in the teaching areas of Elementary Education N-6 and 7-12 Social Studies as well as permanent administrative certification as a School Administrator and Supervisor and School District Administrator. I have been employed in Jamestown for 20 years. I started first teaching a ih grade Social Studies and then became an

Assistant Principal for three years at Persell Middle School, Finally, for the past thirteen years I have been the middle school principal for a building of 500 students in grades 5 through 8.

6. My primary responsibility is to advance the educational programs offered to middle school students while maintaining a safe, secure, but open and engaging administration of educational program for all the students, teachers, clerical and janitorial staff in my building.

7. As such, I work closely with the teachers assigned to Persell Middle School on curriculum, instructional methods and applications, and intervention services for children who are on not on grade level. In addition, I establish a set of disciplinary standards for students and staff alike and am in charge of the day to day operations of the building, including budgeting, scheduling, evaluation of staff, and professional development. I constantly strive to improve the effectiveness of my teachers.

8. My days begin at 7:30 AM and I leave regularly at 7:00 to 8:00PM and often work until I fall asleep. Last year I completed over 110 observations of my staff and my assistant did as well. This is not a complaint. It is the daily reality at the most important time in my career because it concerns the professional development of my teachers.

9. The City of Jamestown is confronted with significant socio-economic issues such as a large percentage of Free and Reduced Lunch students at 58%. The Free and Reduced Lunch program is based on household income and determines the poverty rate. As a school district of almost 5,000 students, approximately 69% of our students qualify for Free and Reduced Lunch. The New York State Education Department has designated Jamestown as a "Focused District" for the past three years. That means our District is being monitored for its test scores and must comply with certain mandates issued by the State Education Department. These external socio-economic issues, such as extreme poverty, are outside of my control as a school principal. Yet

my district, and me as a building principal, are under extensive State mandated scrutiny to raise our student's in-school performance. Inasmuch, reasonable job protections such as tenure and seniority become more important.

10. Despite a large indigent population, Persell middle school has reached its targeted Adequate Yearly Progress ("AYP") goal. The AYP is a State mandated measure of annual growth in student test scores. AYP's are broken into sub-groups including minorities and students with disabilities among others. We were able to meet this goal in all areas this year because of an extensive application of data to improve teacher instruction.

11. The school district faces other challenges in providing a sound basic education. In each of the past seven school years, Jamestown has had to reduce staff as a result of the unfair aid formula in New York State. Our District has been involved with the state and other districts in the Campaign for Fiscal Equity [CFE] lawsuit from the beginning. The CFE lawsuit involved a challenge to the State's Public School Financing System. We were involved because the necessary tax rate increase for our city to fund a sound basic education was unfairly disproportionate to wealthy and affluent districts. While we have won the lawsuit, the state continues to withhold our money which has adversely impacted our ability to instill the programs and maintain the staffing levels that would provide the sound basic education to the children the lawsuit here purports to seek.

12. Under the recently enacted property tax cap legislation, Jamestown faces new fiscal challenges each year that may jeopardize the continuation of a sound basic education currently being given to our students.

13. For example, this 2014-15 school year, there is a significant likelihood we will have to make mid-year cuts to resolve a growing deficit of, I have been told, $3.8 million dollars. Such a

large deficit would necessarily amount to cuts in staff and programs. Ifwe did not have tenure many of our best staff could be cut thus further hurting the quality of education for our students.

14. As a school district in a poor socio-economic area, Jamestown has a significant student population with mental health issues. I am observing now an increase in the mental health issues affecting our poor community, but with continued budget reductions we are at a breaking point. Last year, after another round of budget cuts, one of Persell's school counselor positions was not filled after the incumbent counselor retired. That left only one school counselor and a part-time school psychologist to handle the mental health issues of 500 students. With me, the staff in my building has been required to assist with the extensive workload associated with this cut. Without reasonable job protections like tenure, my job could be in jeopardy without consideration of the external socio-economic circumstances that are beyond my control.

15. In my role as Principal I make decisions for my building that require a level of judgment commensurate with my training and certification. I make such decisions in the best interests of the education enviromnent in my building. Having earned the protection of tenure, I am able to base my decisions on the facts before me and free from the political influences that are the invariable result of our govermnent based educational system. Tenure provides me a reasonable level of employment security including protection from politically motivated retaliation and repercussions having an adverse impact on my employment.

16. This is particularly important as I am advised that, under recent U.S. Supreme Court precedent, when I speak on behalf of my staff or students in my capacity as principal, I may have no protection under the first amendment of the U. S. Constitution.

17. I seek to become a named party to this case because invalidation of the tenure and seniority statutes would result in my loss of seniority rights for creditable service in my tenure

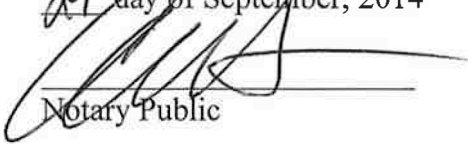
area. Should my seniority derived through my statutory rights be eliminated, I could lose my position for political reasons to a less senior administrator. For example, our Board of Education closed one building three years ago thus resulting in questions of seniority. Had there been no existing seniority statutes, I could have been arbitrarily terminated even without regard for my experiences and accomplishments occurring at Persell that I set forth above.

18. Furthermore, I would lose the due process rights accorded by the challenged statutes which would leave me vulnerable to arbitrary discipline and termination at the whims of the Board and its political appointees. None of the problems my school district faces would be corrected by eliminating professional safeguards that are provided to teachers and principals like me by the tenure, seniority and other provisions being challenged in this lawsuit. These statutory safeguards were promised to us when we entered the profession and we have earned them through years of dedicated service. In fact these protections allow us to practice our chosen profession in the best interests of the children and community we serve without fear of reprisal or arbitrary dismissal.

19. I make this affidavit requesting that I be allowed to intervene in this lawsuit without conceding that the plaintiff s claims have legal merit. I make this affidavit in defense of my most basic employment rights since these rights would be adversely impacted affected if the plaintiff s succeed.

ip A. Cammarata

Sworn to before me this
29 day of September, 2014



Notary Public

AUTIJMN" L WRIGHT fr01WR6079462
Mota.-y Public, Stale of New York
QuA!if.ct in Chautauc:ua County/
My on Expires 1J/Ji-f {J.DJ{

STATE OF NEW YORK
SUPREME COURT COUNTY OF RICHMOND

MYMOENA DAVIDS, by her parent and natural guardian MIAMONA DAVIDS, ERIC DAVIDS, by his parent and natural guardian MIAMONA DAVIDS, ALEXIS PERALTA, by her parent and natural guardian ANGELA PERALTA, STACY PERALTA, by her parent and natural guardian ANGELA PERALTA, LENORA PERALTA, by her parent and natural guardian ANGELA PERALTA, ANDREW HENSON, by his parent and natural guardian CHRISTINE HENSON, ADRIAN COLSON, by his parent and natural guardian JACQUELINE COLSON, DARIUS COLSON, by his parent and natural guardian JACQUELINE COLSON, SAMANTHA PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, FRANKLIN PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, IZAIYAH EWERS, by his parent and natural guardian KENDRA OKE,

Plaintiffs,

-against-

THE STATE OF NEW YORK, THE NEW YORK STATE BOARD OF REGENTS, THE NEW YORK STATE EDUCATION DEPARTMENT, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, JOHN AND JANE DOES 1-100, XYZ ENTITIES 1-100,

Defendants,

-and-

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO,

Intervenor-Defendant.

Index No.: 101105-2014

AFFIDAVIT IN SUPPORT of MOTION to INTERVENE

Hon. Philip G. Minardo

STATE OF NEW YORK
SUPREME COURT COUNTY OF RICHMOND

JOHN KEONI WRIGHT, GINET BORRERO, *TAVANA* GOINS, NINA DOSTER, CARLA WILLIAMS, MONA PRADIA, ANGELES BARRAGAN,

Plaintiffs,

-against-

THE STATE OF NEW YORK, THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK, MERRYL H. TISCH, in her official capacity as Chancellor of the Board of Regents of the University of the State of New York, JOHN B. KING, in his official capacity as the Commissioner of Education of the State of New York and President of the University of the State of New York,

Defendants,

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and as President of the New York State United Teachers,

Intervenors-Defendants,

-and-

PHILIP A. CAMMARATA and MARK MAMBRETTI.

Proposed Intervenors-Defendants.

STATE OF NEW YORK)
ss:
COUNTY OF ERIE)

Mark D. Mambretti, being duly sworn deposes and says:

1. I make this affidavit in support of the motion to intervene in this litigation, the outcome of which could directly impact my ability to fulfill my role as the building leader. It will also impact my most basic terms and conditions of employment.

2. I am currently the tenured principal at East Aurora Middle School in the East Aurora Union Free School District ("East Aurora"). East Aurora is a small-town (suburban) school district comprised of one elementary building, one middle school and one high school and provides quality public education to approximately 1,700 students.

3. I have been employed in the public education system of the State of New York for seven (7) years. I have served my probationary terms and awarded tenure upon recommendation of the Superintendent and unanimous vote of the Board of Education. I have faithfully and professionally served the school district during my employment.

4. Prior to this, I served as principal (and teacher) in three different private and parochial schools in which instances, there is no guarantee or protection of tenure. As such, I am uniquely and personally aware of the difference between executing my duties as a school administrator with, and without, the protections afforded to me by tenure.

5. I have led East Aurora Middle School in hundreds of hours of professional development and curriculum training over the past seven years. I have presented at the NCEA, NYSMSA NAMSP and SAANYS conferences and have written for professional publications in my field. I was recently awarded the School Administrators Association of New York State (SAANYS) Middle School Principal of the Year for the State of New York (2013), the National Association

of Secondary School Principals (NASSP) Middle School Principal of the Year for the State of New York (2013), The National Association of Middle School Principals (NAMSP) "Principal of the Year" award (2014) and was named to Buffalo Business First's "40 under Forty" (2013). In 2012, my school was awarded the US Department of Education's Blue Ribbon School of Excellence award.

6. I hold permanent New York State Certification in the teaching area 7-12 Social Studies with a grade 5-6 extension as well as permanent administrative certification as a School Administrator and Supervisor (SAS) and School District Administrator (SDA). I have been employed in East Aurora for 7 years serving as the administrator of a grade 5-8 building serving approximately 600 youth.

7. My primary responsibility is to advance the educational programs offered to middle school students while maintaining a safe, secure, but open and engaging administration of educational program for all the students, teachers, clerical and custodial staff in my building.

8. As such, I work closely with the teachers assigned to East Aurora Middle School on curriculum, instructional methods and applications, and intervention services for children who are on not on grade level. In addition, I establish a set of disciplinary standards for students and staff alike and am in charge of the day to day operations of the building, including budgeting, scheduling, evaluation of staff, and professional development. I constantly strive to improve the effectiveness of my teachers on a regular and routine basis.

9. My days begin at 7:40 AM and I leave regularly at well after the dinner hour. Last year I completed over 100 observations of my staff. This is not a complaint. It is the daily reality at the most important time in my career because it concerns the professional development of my teachers.

10. External socio-economic issues are outside of my control as a school principal. Yet my district, and me as a building principal, are under extensive public and State mandated scrutiny to raise our student's in-school performance. Inasmuch, reasonable job protections such as tenure and seniority become more important.

11. For example, East Aurora is not unique in as it has a notable student population with a variety of mental health issues and Special Education concerns. I am observing now an increase in the mental health issues affecting our community, but with continued budget reductions we are at a breaking point. Last year, after another round of budget cuts, we have only one school counselor and a one school psychologist to handle the mental health issues of 600 students. In addition, Special Education teacher's case loads are at the highest they've been in years. With me, the staff in my building has been required to assist with the extensive workload associated with this cut. Without reasonable job protections like tenure, my job could be in jeopardy without consideration of the external circumstances that are beyond my control.

12. East Aurora middle school has reached its targeted Adequate Yearly Progress ("AYP") goal. The AYP is a State mandated measure of annual growth in student test scores. AYP's are broken into sub-groups including minorities and students with disabilities among others. We were able to meet this goal in all areas this year because of an extensive application of data to improve teacher instruction. Our school district faces other challenges in providing a sound basic education. In each of the past seven school years, East Aurora has had to reduce staff as a result of the aid formula in New York State.

13. Under the recently enacted property tax cap legislation, East Aurora faces new fiscal challenges each year that may jeopardize the continuation of a sound basic education currently being given to our students. As such, I have been forced to make a series of increasingly

complex and unpopular decision that have been debated both publically and privately in our small town.

14. In my role as Principal I make decisions for my building that require a level of judgment commensurate with my training, experience, and certification. The routine nature of these decisions regularly involves both educational and disciplinary decisions that personally impact the children of my supervisors and their friends. In addition, in the current climate of public scrutiny, politically-based school reform and increasingly difficult budgetary realities, the totality of the decisions I am making are becoming more complex and more controversial. I continue to make such decisions in the best interests of the educational environment in my building. Despite the high-profile nature of my job and the decisions I make, having earned the protection of tenure, I am able to base my decisions on the facts before me and free from the political (both formal and informal) influences that are the invariable result of our government based educational system. Tenure provides me a reasonable level of employment security including protection from politically motivated retaliation and repercussions having an adverse impact on my employment.

15. Having worked as a principal in a system without the protections that tenure provides, I can attest that I am freer and better able to make decisions without fear of unjust repercussions while having the protections of tenure. I am able to be a more effective leader operating within a system that offers respect to me as a trained and skilled professional.

16. This is particularly important as I am advised that, under recent U.S. Supreme Court precedent, when I speak on behalf of my staff or students in my capacity as principal, I may have no protection under the first amendment of the U. S. Constitution.

17. I seek to become a named party to this case because invalidation of the tenure and seniority statutes would result in my loss of rights for creditable service in my tenure area and, in tum, my position may be in jeopardy.

18. Furthermore, I would lose the due process rights accorded by the challenged statutes which would leave me vulnerable to arbitrary discipline and termination at the whims of the Board and its political appointees who may disagree with the educational or disciplinary decisions I make regarding their children.

19. Most importantly, none of the problems my school district faces would be corrected by eliminating professional safeguards that are provided to teachers and principals like me by the tenure, seniority and other provisions being challenged in this lawsuit. These statutory safeguards were promised to us when we entered the profession and we have earned them through years of dedicated service. Infact these protections allow us to practice our chosen profession in the best interests of the children and community we serve without fear of unjust reprisal or arbitrary dismissal.

20. I make this affidavit requesting that I be allowed to intervene in this lawsuit without conceding that the plaintiff's claims have legal merit. I make this affidavit in defense of my most basic employment rights since these rights would be adversely impacted affected if the plaintiff s succeed.

Sworn to before me this
/.SI day of October, 2014

/hH Vl4-H 11.MJfL--
Notary Public

DONNA M. KROL
Nmarv Publlc, State of New York
Qualiflcid In Erle county ;';J) IT
Col'i\rf\I aIon ""¢,"nIres August 13, .;;;---

STATE OF NEW YORK
SUPREME COURT COUNTY OF RICHMOND

MYMOENA DAVIDS, by her parent and natural guardian MIAMONA DAVIDS, ERIC DAVIDS, by his parent and natural guardian MIAMONA DAVIDS, ALEXIS PERALTA, by her parent and natural guardian ANGELA PERALTA, STACY PERALTA, by her parent and natural guardian ANGELA PERALTA, LENORA PERALTA, by her parent and natural guardian ANGELA PERALTA, ANDREW HENSON, by his parent and natural guardian CHRISTINE HENSON, ADRIAN COLSON, by his parent and natural guardian JACQUELINE COLSON, DARIUS COLSON, by his parent and natural guardian JACQUELINE COLSON, SAMANTHA PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, FRANKLIN PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, IZAIYAH EWERS, by his parent and natural guardian KENDRA OKE,

Plaintiffs,

-against-

THE STATE OF NEW YORK, THE NEW YORK STATE BOARD OF REGENTS, THE NEW YORK STATE EDUCATION DEPARTMENT, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, JOHN AND JANE DOES 1-100, XYZ ENTITIES 1-100,

Defendants,

-and-

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO,

Intervenor-Defendant.

AFFIRMATION IN SUPPORT of MOTION TO INTERVENE

Index No. 101105-2014

Hon. Philip G. Minardo

STATE OF NEW YORK
SUPREME COURT COUNTY OF RICHMOND

JOHN KEONI WRIGHT, GINET BORRERO, *TAVANA* GOINS, NINA DOSTER, CARLA WILLIAMS, MONA PRADIA, ANGELES BARRAGAN,

Plaintiffs,

-against-

THE STATE OF NEW YORK, THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK, MERRYL H. TISCH, in her official capacity as Chancellor of the Board of Regents of the University of the State of New York, JOHN B. KING, in his official capacity as the Commissioner of Education of the State of New York and President of the University of the State of New York,

Defendants,

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and as President of the New York State United Teachers,

Intervenors-Defendants,

-and-

PHILIP A. CAMMARATA and MARK MAMBRETTI,

Proposed Intervenors-Defendants.

ARTHUR P. SCHEUERMANN, an attorney duly admitted to the practice of law before the courts of the State of New York, affirms the following under the penalty of perjury:

1. I am the General Counsel of the School Administrators Association of New York State ("SAANYS"), attorneys for Proposed Intervenor-Defendants Philip Cammarata and Mark Mambretti. I am fully familiar with pleadings, facts and circumstances of this matter.

2. I submit this affirmation in support of the proposed intervenors-defendants' motion to intervene. The proposed intervenors-defendants are two (2) individual public school principals.

3. Plaintiffs seek an order declaring the provisions of the Education Law that pertain to teacher tenure, discipline, seniority and evaluations violate Article XI, Section 1 of the New York Constitution ("the Education Article"). While the action was couched as an attack on public school teachers, the challenged statutes also directly apply to public school principals as well as most other certificated building and central office administrators and supervisors (hereinafter referred to as "administrators") employed in New York public schools, except small city school district assistant superintendents. Plaintiffs ask this Court to eliminate New York's public school principals and administrators' employment safeguards, which protect their right to supervise the operations of public schools in the most effective manner to serve their students, and which protect the principals and administrators form arbitrary dismissal, politically motivated discipline or layoff.

4. Each of the proposed intervenors is a public school principal who has been appointed on tenure by his school board. As more fully set forth in their affidavits, the proposed intervenors-defendants have a real and substantial interest in the outcome of this case, as any final judgment will be binding upon them and, if plaintiffs are successful, any judgment would affect their ability to implement curriculum, to supervise teachers, to oversee independently the operations of public schools, and their basic terms and conditions of employment. In addition, the proposed

intervenors-defendants' claims share common questions of law and fact with those raised in the complaint.

5. The proposed intervenors-defendants, under authoritative judicial precedent, have a constitutionally protected interest in their public employment and a related constitutionally protected liberty interest

6. The plaintiffs seek to strike down laws that have been carefully enacted, amended and revised by the Legislature over many years, including at one point in the early 1970s (May 1971 – July 1975) the short abolishment of tenure for principals and administrators. Without the minimal protections afforded by tenure, school principals and administrators were compromised by the political considerations and consequences of their actions, rather than being able to act solely in the best interests of children. A principle reason for re-establishing tenure for principals and administrators in 1975, according to the legislative history, was the critical need to restore the stability and independence in public schools' administrative structure. It was noted that during the four year period administrators were without tenure protections, there was an inordinately high number of arbitrary and capricious dismissals with a corresponding increase in litigation. The evisceration of these laws would not only damage the professional and legal interests of these and all public school principals and administrators, but would impair the right of New York's school children to a sound basic education, just as was legislatively created for a short time in the 1970s.

7. Intervention by individual principals (and other administrators) is appropriate. The terms and conditions of employment established by the challenged laws are fundamental to any employment situation. The laws provide a minimal level of job security for administrative personnel that inure, for the most part, to individual principals and administrators, not to labor

organizations which represent most of them (some central office administrators are designated management/confidential by the Civil Service Law, and thus, are prohibited from being a member of a union) for collective bargaining purposes.

8. The laws dealing with probationary appointments preserve the authority of employing school boards to apply an independent merit standard to evaluate newly hired principals and administrators based on professional competency before deciding to grant the individual principal or administrator tenure. New York's three year probationary period for principals and administrators is significantly longer than other professional public servants and thwarts the likelihood of favoritism being employed in making administrative appointments. Unlike teachers, principals and administrators must be appointed to a three year probationary period, regardless of achieving any prior grant of tenure.

9. In addition, unlike teachers, administrative tenure is not heavily regulated by New York State. Rather, by legal design, a school district is only required to create a single administrative area, though the governing board of education may choose to create more than one administrative tenure area. In some school districts, the board of education creates a single tenure area for each administrator it employs.

10. The tenure/due process protections of Education Law §§3020 and 3020-a do not guarantee "lifetime" employment. The laws only ensure that a principal or administrator who has successfully completed probation, and who has been appointed on tenure, is guaranteed a fair chance to defend himself if he is accused of misconduct, pedagogical incompetence or physical or mental disability. The laws provide an orderly process for removal, which are the same protections afforded in public and private sections. Even then, given the absence of regulatory administrative tenure oversight, a district, which has created individual administrative tenure

areas for every administrator it employs, may abolish certain administrative positions under the guise of reorganization or financial reasons, simply to terminate the employment of administrators who have fallen out of favor. Without the laws currently in place, this phenomenon could be an epidemic.

11. Moreover, the seniority provisions of Education Law 2510, 2585, 2588 and 3013 provide the same safeguards that have existed in the public and private sectors for over one hundred years. For example, in New York, the Civil Service Law, under which all public employees are governed, is grounded in a seniority based system. Seniority promotes continuity of service and protects qualified principals and administrators who might be targeted based on age, rate of pay, cronyism or other improper, subjective motivation.

12. The laws challenged by plaintiffs were enacted by the Legislature to remove politics from public education, they were designed to promote public education in New York by attracting qualified educators to supervise public education (usually from the teaching ranks), to provide stability in our public schools, to afford principals and administrators with independent educational leadership, to enable long-term planning free from arbitrary dismissal or other improperly motivated repercussions.

13. Under these laws, in return for years of dedicated, competent service, educators are promised a limited measure of employment security, so long as they continue to meet their professional obligations through competent and faithful service. Each individual principal who seeks intervention has, for many years, fulfilled his obligations under these laws, and each should be heard in defense of plaintiffs' attack on the safeguards provided by these laws.

14. Furthermore, the rights of the proposed intervenor-defendants will not be adequately represented by any of the currently named defendants. Not only are there statutory and

regulatory differences in regards to tenure and seniority that preclude adequate representation via the intervening teacher defendants, but the interests of administrators are not always aligned with those of the State defendants, resulting in litigation between the two. For example, administrators challenged the regulatory scheme initially promulgated by the State Defendants under the new annual professional performance review law. See Education Law Section 3012-c, 8 NYCRR 30-2.1 et seq. The State defendants also opposed the re-establishment of administrative tenure in 1975. Moreover, due to the aforementioned Legislative history surrounding administrative tenure, the Proposed Intervening Defendants are in a unique position to help this Court not repeat the mistakes of the past and avoid unnecessary congestion of the Court system should tenure be abolished.

OTHER RELEVANT LITIGATION

15. An action was originally commenced in Supreme Court, Richmond County: *Davids, et al. v. State of New York, et al. (Richmond County Index No. 101105l14).*

16. Subsequently, a related action was filed in Supreme Court, Albany County, *Wright, et al v. State of New York, et al.,* (Albany County Index No. A00641/2014).

17. Both actions raise claims that are substantially similar.

18. Since then, the Supreme Court in Richmond County consolidated the two actions in Richmond County upon motion of the State Defendants and further granted a motion by United Federation of Teachers (UFT), eight individual teachers and the New York State United Teachers to intervene as defendants.

19. Based on conversations with the attorney general's office and counsel for NYSUT, there is a schedule for dispositive motions to dismiss set for October 14, 2014 before the Honorable Phillip G. Minardo.

20. Intervention will not unduly delay this litigation or prejudice the substantial rights of any party. Although the state defendants have recently responded to the complaint, no discovery has occurred in the case. Based on my conversations with counsel for the plaintiffs and the state defendants, the Court has established a motion schedule for CPLR Section 3211 motions for October 14, 2014.

21. Attached to this affirmation as Exhibit "A" is the intervenors-defendants' proposed answer to the complaint.

22. I respectfully request that the motion to intervene be granted in all respects.

Dated: October 2, 2014
Latham, New York

SCHOOL ADMINISTRATORS SOCIATION
of NEW YORK STATE
Office of General Counsel, Arthur P. Scheuermann

By: _____
ARTHUR P. SCHEUERMANN
Attorney for Proposed Intervenors-Defendants
8 Airport Park Boulevard
Latham, New York 12110
518-782-0600

EXHIBIT A

STATE OF NEW YORK
SUPREME COURT COUNTY OF RICHMOND

MYMOENA DAVIDS, by her parent and natural guardian MIAMONA DAVIDS, ERIC DAVIDS, by his parent and natural guardian MIAMONA DAVIDS, ALEXIS PERALTA, by her parent and natural guardian ANGELA PERALTA, STACY PERALTA, by her parent and natural guardian ANGELA PERALTA, LENORA PERALTA, by her parent and natural guardian ANGELA PERALTA, ANDREW HENSON, by his parent and natural guardian CHRISTINE HENSON, ADRIAN COLSON, by his parent and natural guardian JACQUELINE COLSON, DARIUS COLSON, by his parent and natural guardian JACQUELINE COLSON, SAMANTHA PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, FRANKLIN PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, IZAIYAH EWERS, by his parent and natural guardian KENDRA OKE,

Plaintiffs,

-against-

THE STATE OF NEW YORK, THE NEW YORK STATE BOARD OF REGENTS, THE NEW YORK STATE EDUCATION DEPARTMENT, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, JOHN AND JANE DOES 1-100, XYZ ENTITIES 1-100,

Defendants,

-and-

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO,

Intervenor-Defendant.

Index No.: 101105-2014

PROPOSED ANSWER

Hon. Philip G. Minardo

STATE OF NEW YORK
SUPREME COURT COUNTY OF RICHMOND

JOHN KEONI WRIGHT, GINET BORRERO, TAUANA GOINS, NINA DOSTER, CARLA WILLIAMS, MONA PRADIA, ANGELES BARRAGAN,

Plaintiffs,

-against-

THE STATE OF NEW YORK, THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK, MERRYL H. TISCH, in her official capacity as Chancellor of the Board of Regents of the University of the State of New York, JOHN B. KING, in his official capacity as the Commissioner of Education of the State of New York and President of the University of the State of New York,

Defendants,

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and as President of the New York State United Teachers,

Intervenors-Defendants,

-and-

PHILIP A. CAMMARATA and MARK MAMBRETTI.

Proposed Intervenors-Defendants.

Intervenors-Defendants Philip A. Cammarata and Mark Mambretti, individually, by and through their attorneys, School Administrators Association of NYS, Arthur P. Scheuermann, General Counsel as and for an Answer submits as follows:

PRELIMINARY STATEMENT

1. The Constitution speaks for itself, Deny the remainder of the allegations within paragraph 1.
2. Deny the allegations within paragraph 2.
3. Deny the allegations within paragraph 3.
4. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph 4.
5. Deny the allegations within paragraph 5.
6. Deny the allegations within paragraph 6.
7. Deny the allegations within paragraph 7.
8. Admits the allegations within paragraph 8.
9. Deny the allegations within paragraph 9.
10. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph 10.
11. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph 11.
12. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph 12.
13. Deny knowledge or information sufficient to confirm or deny the allegations within Paragraph 13.
14. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph 14.
15. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph 15.

16. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph 16.

17. Admits the allegations within paragraph 17.

18. Admits the allegations within paragraph 18.

19. Admits the allegations within paragraph 19.

20. Admits the allegations within paragraph 20.

21. Deny the allegations within paragraph 21.

BACKGROUND

22. The Constitution speaks for itself, Deny the remainder of the allegations within paragraph 22.

23. Deny the allegations within paragraph 23.

24. Deny the allegations within paragraph 24.

25. Deny the allegations within paragraph 25.

26. Deny the allegations within paragraph 26.

I. TEACHER EFFECTIVENESS IS A NECESSARY INPUT TO A SOUND BASIC EDUCATION.

27. Deny the allegations within paragraph 27.

28. Deny the allegations within paragraph 28.

29. Deny the allegations within paragraph 29.

30. Deny the allegations within paragraph 30.

31. Deny the allegations within paragraph 31.

32. Deny the allegations within paragraph 32.

33. Deny the allegations within paragraph 33.

II. THE TEACHER TENURE STATUTES CONFER PERMANENT EMPLOYMENT ON INEFFECTIVE TEACHERS.

34. The cited statutes speak for themselves. Deny the remainder of the allegations within paragraph 34.

35. The statute speaks for itself within paragraph 35. The cited statutes within footnote 1 speak for themselves.

36. Deny the allegations within paragraph 36.

37. Deny the allegations within paragraph 37.

38. Deny the allegations within paragraph 38.

39. The cited statute speaks for itself within paragraph 39.

40. The cited statute speaks for itself, Deny the remainder of the allegations contained within paragraph 40.

41. Deny the allegations contained within paragraph 41. Deny knowledge or information sufficient to confirm or deny the allegations contained within footnote 2.

42. Deny the allegations within paragraph 42.

43. Deny the allegations within paragraph 43.

44. Deny the allegations within paragraph 44.

45. Deny the allegations within paragraph 45. Deny knowledge of information sufficient to confirm or deny the allegations contained within footnote 3.

46. Deny the allegations within paragraph 46.

47. The cited statute speaks for itself. Deny the remainder of the allegations contained within paragraph 47.

48. Deny the allegations within paragraph 48.

III. THE DISCIPLINARY STATUTES KEEP INEFFECTIVE, TENURED TEACHERS IN THE SCHOOL SYSTEM.

49. The cited statutes speak for themselves within paragraph 49.

50. Deny the allegations within paragraph 50.

51. Deny the allegations within paragraph 51.

52. Deny the allegations within paragraph 52.

53. Deny the allegations within paragraph 53.

54. Deny the allegations within paragraph 54.

55. Deny the allegations within paragraph 55.

56. Deny the allegations within paragraph 56. Deny knowledge of information sufficient to confirm or deny the allegations contained within footnote 4.

57. Deny the allegations within paragraph 57

58. The Cited statute speaks for itself, deny the rest of the allegations in paragraph 58.

59. Deny the allegations within paragraph 59.

60. The cited statutes speak for themselves, deny the rest of the allegations in paragraph 60.

61. The cited statute speaks for itself, deny the rest of the allegations in paragraph 61.

62. Deny the allegations within paragraph 62.

63. Deny the allegations within paragraph 63

64. Deny the allegations within paragraph 64.

65. Deny the allegations within paragraph 65.

IV. THE LIFO STATUTES REQUIRE THE STATE TO RETAIN MORE SENIOR TEACHERS AT THE EXPENSE OF MORE EFFECTIVE TEACHERS.

66. The cited statute speaks for itself, deny the rest of the allegations in paragraph 66. The cited statutes within footnote 5 speak for themselves.

67. Deny knowledge or information sufficient to confirm or deny the allegations within

paragraph 67.

68. Deny the allegations within paragraph 68.

69. Deny the allegations within paragraph 69.

70. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph 70.

71. Deny the allegations within paragraph 71.

72. Deny the allegations within paragraph 72.

73. Deny the allegations within paragraph 73.

74. Deny the allegations within paragraph 74; Deny knowledge or information sufficient to confirm or deny the allegations within footnote 6.

75. Deny the allegations within paragraph 75.

76. Deny the allegations within paragraph 76.

FIRST CAUSE OF ACTION

77. Deny the allegations within paragraph 77.

78. Deny the allegations within paragraph 78.

79. Deny the allegations within paragraph 79.

SECOND CAUSE OF ACTION

80. Deny the allegations within paragraph 80.

81. Deny the allegations within paragraph 81.

82. Deny the allegations within paragraph 82.

THIRD CAUSE OF ACTION

83. Deny the allegations within paragraph 83.

84. Deny the allegations within paragraph 84.

85. Deny the allegations within paragraph 85.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

86. The Plaintiffs have failed to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

87. The Plaintiffs lack standing to bring about the instant action, as they are not within the zone of interest contemplated by the challenged statutes.

88. The infant students are the real parties in interest in the instant litigation, not their parents.

89. Although the Complaint asserts that the Plaintiffs are bringing the instant action on behalf of their minor children, said children are not named as Plaintiffs herein.

90. Even if the minor children were named parties to the instant action, they are not within the zone of interest contemplated by the challenged statutes.

91. Plaintiffs have failed to allege any facts that would give rise to an inference that they have standing to sue.

92. Plaintiff are residents of statutorily designated "large city school districts" and, therefore, have no potential claim of standing to challenge statutes specifically designated to govern other statutorily recognized forms of school districts within New York State.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

93. The Plaintiffs failed to name necessary parties to the litigation.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

94. The Plaintiffs failed to obtain jurisdiction over the answering defendants.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

95. The Plaintiffs only challenged the constitutionality of Education Law §§2510, 2588, 3013 as it pertains to the Rochester City School District.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

96. The pleadings are in violation of CPLR §2101(c) insofar as it fails to name all of the Plaintiffs.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

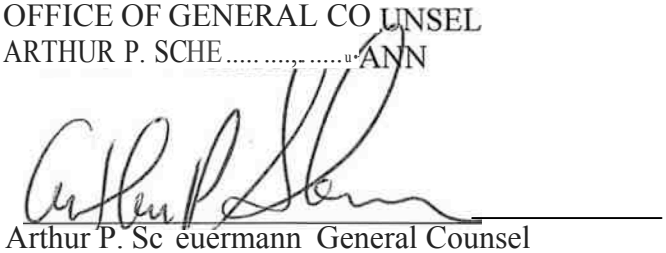
97. The New York State Board of Regents exercise legislative functions over the state educational system, determine its educational policies, and, except as related to the judicial functions of the commissioner of education, establish rules for carrying out the state's laws and policies relating to education and the functions, powers, duties, and trusts granted to or authorized by the University of the State of New York and the NYS Education Department (§ 207).

98. The standards, rules and regulations promulgated by the Board of Regents and State Education Department are codified by the State Legislature.

99. Therefore, the Complaint raises political questions that are non-justiciable because they are governed by other branches of the State government.

Dated: Latham, New York
October 2, 2014

SCHOOL ADMINISTRATORS ASSOCIATION
OF NEW YORK STATE,
OFFICE OF GENERAL COUNSEL
ARTHUR P. SCHEUERMANN



By: Arthur P. Scheuermann General Counsel
8 Airport Park Boulevard
Latham, New York 12110

TO: ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Steven L. Banks, Esq., Asst. Attorney General *(via e-mail steven.banks@ag.ny.gov)*
Attorney for State Defendants in *Wright and Davids*

OFFICE OF NEW YORK CITY CORPORATION COUNSEL
Janice Birnbaum, Esq., Asst. Corporation Counsel *(via e-mailjbirnbau@law.nyc.gov)*
Attorneys for City Defendants in *Davids*

RICHARD E. CASAGRANDE
General Counsel for New York State United Teachers
Attorneys for Intervenors-Defendants *(via e-mailrcasagra@nysutmail.org)*

STROCK & STROOCK & Lavan LLP
Charles G. Moerdler, Esq. *(via e-mail cmoerdler@stroock.com)*
Alan M. Klinger, Esq. *(via e-mail aklinger@stroock.com)*
Attorney for Proposed Intervenor UFT in *Davids*

KIRKLAND & ELLIS LLP
Danielle R. Sassoon, Esq. *(via e-mail Danielle.sassoon@kirkland.com)*
Attorneys for Plaintiffs in *Wright*

GIBSON, DUNN & CRUTCHER
Randy M. Mastro, Esq. *(via e-mail rmastro@gibsondunn.com)*
Attorneys for Plaintiffs in *David*

JONATHAN W. TROBIANO, PLLC
Jonathan W. Trobiano, Esq.
1811 Victory Boulevard
Staten Island, New York 10314
Attorney for Plaintiffs in *David*

STATE OF NEW YORK
SUPREME COURT COUNTY OF RICHMOND

JOHN KEONI WRIGHT, GINET BORRERO,
TAUANA GOINS, NINA DOSTER,
CARLA WILLIAMS, MONA PRADIA,
ANGELES BARRAGAN,

Plaintiffs,

-against-

THE STATE OF NEW YORK, THE BOARD OF REGENTS
OF THE UNIVERSITY OF THE STATE OF NEW YORK,
MERRYL H. TISCH, in her official capacity as Chancellor
of the Board of Regents of the University of the State of
New York, JOHN B. KING, in his official capacity as
the Commissioner of Education of the State of New York and
President of the University of the State of New York,

Defendants,

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER,
KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD
OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE,
Individually and as President of the New York State United Teachers,

Intervenors-Defendants,

-and-

PHILIP A. CAMMARATA and MARK MAMBRETTI.

Proposed Intervenors-Defendants.

ARTHUR P. SCHEUERMANN, ESQ.
Attorney for Proposed Intervenors-Defendants
School Administrators Association of New York State
8 Airport Park Boulevard
Latham, New York 12110
518-782-0600

JENNIFER L. CARLSON, ESQ.
A. ANDRE DALBEC, ESQ.
REBEKAH J. STAATS, ESQ.

STATE OF NEW YORK
SUPREME COURT COUNTY OF RICHMOND

MYMOENA DAVIDS, by her parent and natural guardian MIAMONA DAVIDS, ERIC DAVIDS, by his parent and natural guardian MIAMONA DAVIDS, ALEXIS PERALTA, by her parent and natural guardian ANGELA PERALTA, STACY PERALTA, by her parent and natural guardian ANGELA PERALTA, LENORA PERALTA, by her parent and natural guardian ANGELA PERALTA, ANDREW HENSON, by his parent and natural guardian CHRISTINE HENSON, ADRIAN COLSON, by his parent and natural guardian JACQUELINE COLSON, DARIUS COLSON, by his parent and natural guardian JACQUELINE COLSON, SAMANTHA PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, FRANKLIN PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, IZAIYAH EWERS, by his parent and natural guardian KENDRA OKE,

Plaintiffs,

-against-

THE STATE OF NEW YORK, THE NEW YORK STATE BOARD OF REGENTS, THE NEW YORK STATE EDUCATION DEPARTMENT, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, JOHN AND JANE DOES 1-100, XYZ ENTITIES 1-100,

Defendants,

-and-

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO,

Intervenor-Defendant.

Index No.: 101105-2014

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE

Hon. Philip G. Minardo

TABLE OF CONTENTS

PRELIMINARY STATEMENT

The Plaintiffs in the instant consolidated action are challenging the constitutionality of several statutes relating to the tenure and retention of educators under New York's public school system. (Hereinafter referred to as "Challenged Statutes".) While the Complaint[1] specifically refers to the protections provided under the Challenged Statutes to teachers, the Challenged Statutes also specifically apply to central office and building level administrators, including specifically principals, such as the Proposed Intervening Defendants, as well as other public school employees.

The Proposed Intervening Defendants have a real and substantial, direct and personal interest in the outcome of this litigation. These Intervening Defendants, as well as every other public school administrator in New York, rely on the statutory protections, which are challenged by the Plaintiffs, to protect them from arbitrary, unfair or unjustifiable dismissal. These protections provide minimal job security and allow administrators to develop and maintain new curriculum to enhance the educational experience for the teachers and students under them without the fear of being dismissed. These statutory provisions protect the quality of education in New York by encouraging the recruitment and retention of quality administrators by providing a safeguard from being replaced by lower paid and less experienced administrators in time of budgetary restraints and/or political umest at the local school board level.

Plaintiffs are looking to have this Court declare unconstitutional a tenured public school educator's right to due process protections prior to termination, leaving administrators subject to

---

[1]Pursuant to a motion by the State Defendants, the case of John Keoni Wright. et al.. v. State of New York, et al. (Albany County Index Number A00641/2014) was recently consolidated with the Supreme Court, Richmond County, action Mymoena Davids, et al.. v. State of New York, et al., (Richmond County Index Number 101105/2014). As the Davids Complaint challenges laws specifically applicable to the New York City School District, although the rights at issue are the same as those challenged in the Wright Complaint, and the Proposed Intervening Defendants herein are not located in New York City, any references to either "Plaintiffs" or "the Complaint" refer to the facts alleged in the Wright Complaint.

the whims and caprices of the Superintendent, Board of Education and external political considerations. Further, Plaintiffs seek to have the provisions of Educational Law that requires layoffs on the basis of seniority within a tenure area declared unconstitutional which would put administrators at risk during budget cuts merely based on salary. Ifthe Plaintiffs prevail, all public school educators, including administrators, will become at-will employees and subject to arbitrary termination, in direct contravention of decades worth of legislative history and judicial analysis.

Unlike with teachers, who have defined tenure areas controlled by regulation, for administrators, there can be many different tenure areas within any given school district. Similar to permanent status for public employees under the Civil Service Law, tenure has a long standing orderly process of providing protection under the Education Law. Declaring the Challenged Statutes unconstitutional will destroy the property right granted to thousands of school administrators and teachers in New York. The result will not only be detrimental to the administrators, it will also affect the structure and stability of each school district. Without tenure, there is no room for professional discretion, and the ability to make individual decisions for the needs of individual students. Administrators must be able to make decisions based on the best interests of each child's educational needs and tenure allows them to make such decisions without fear of political retribution, which was intended to be prevented through the creation of the Education Laws.

The Proposed Intervenor Defendants seek to intervene in this action to defend the constitutionality of the Challenged Statutes, as an adverse determination will have a cognizable impact on their statutory and constitutional rights. Intervention as of right is warranted because the Proposed Intervenor Defendants have a vested interest in the outcome of the litigation. The

constitutionality of these provisions of the Education Law help ensure professionalism in school districts by providing certain employment protections for administrators as well as teachers. Should such statutes be found unconstitutional, the Proposed Intervenor Defendants would be bound by any decision. The administrators have a real and substantial interest in this litigation and should be granted Intervenor status.

BACKGROUND

Plaintiffs in the Wright Complaint are seven (7) parents, allegedly on behalf of their minor children, who reside in New York and attend New York City School District and the Rochester City School District. See Wright Complaint at ii! 10-16. The Plaintiffs challenge the constitutionality of Education Laws §§ 2509, 2510, 2573, 2585, 2588, 2590[2], 3012, 3012-c, 3020, and 3020(a)3. Wright Complaint, at if 6. The statutes at issue, however, provide important educational and employment benefits upon which the Proposed Intervenor Defendants rely. See generally, Affidavits of Intervening Defendants.

Specifically, the Challenged Statutes provide professional educators, such as the Proposed Intervenor Defendants, with job protection in the form of tenure upon the completion of a probationary period (Education Law §§ 2509, 2573, 3012); due process hearings prior to termination once tenure is achieved (Education Law §§ 3020, 3020-a) guidelines for layoffs in the event of position abolishment (Education Law §§ 2510, 2585, 2588[4]); and a mandatory annual evaluation process for teachers and building principals (Education Law § 3012-c).

---

[2] Education Law § 2590 deals solely with the applicability of that particular article to the City School District of New York and contains no substantive areas oflaw relating to the challenged aspects of the Education law.
[3] The Wright Complaint often alternates citations between Education Law § 3020(a) and § 3020-a. Given that § 3020(a) is subsumed within another specifically challenged statute, § 3020, and that § 3020-a is the statute providing for due process disciplinary rights for tenured teachers and administrators, the Proposed Intervener-Defendants shall assume that all references to § 3020(a) in the Complaint are in error.
[4] Although not challenged in the Complaint, Education Law § 3013 also deals with layoffs and seniority.

There are two other known motions to intervene by teacher unions in this consolidated action, both of which have been granted. Allowing the proposed additional intervening defendants will not add any delay to this litigation and, as detailed below will permit a group who will be directly impacted by the outcome of this matter to be heard at the trial level.

ARGUMENT

THE PROPOSED INTERVENORS-DEFENDANTS SHOULD BE PERMITTED TO INTERVENE IN THIS ACTION PURSUANT TO CPLR 1012(A) AND 1013

A. THE PROPOSED INTERVENORS-DEFENDANTS SHOULD BE PERMITTED TO INTERVENE AS OF RIGHT IN THIS ACTION PURSUANT TO CPLR 1012(A)

CPLR § 1012(a)(2) authorizes intervention as ofright, "[w]hen the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment." The tenure statutes being attacked clearly specify by title teachers and principals and other administrative and supervisory personnel in regards to the acquisition of tenure. Education Law §§ 2509, 2573, 2585, 3012[5]. One distinction between administrators and teachers in terms of tenure is that when re-acquiring tenure in a previously tenured position, teachers need only serve a two year term which is commonly known as the 'jarema credit'. 8 NYCRR § 30 *et seq.* The challenged annual evaluation statute specifically states it applies to teachers and building principals. Education Law §3012-c.

The rationale for tenure has been explained by the Court of Appeals as follows:

> "...it is a legislative expression of a firm public policy determination that the interests of the public in the education of our youth can best be served by a system designed to foster academic freedom in our schools and to protect competent teachers from the abuses they might be subjected to if they could be dismissed at the whim of their supervisors. In order to effectuate these convergent

[5] In small city school districts, central office administrators are statutorily ineligible for tenure.

> purposes, it is necessary to construe the tenure system broadly in favor of the teacher, and to strictly police procedures which might result in the corruption of that system by manipulation of the requirements for tenure ... Even 'good faith' violations of the tenure system must be forbidden, lest the entire edifice crumble from the cumulative effect of numerous well-intentioned exceptions." Ricca v. Board of Educ. of City School Dist. of City of N.Y.. 47 N.Y.2d 385, 391 (1979).

While the Court of Appeals' decision in Ricca may be thirty-five years old, the necessities for the protections have not changed. School districts are highly political animals, oftentimes run by well-intentioned individuals who would be willing to please a zealous parent over permitting educators to utilize new and creative means to expand the minds of the children within their care. It was for these forces that caused tenure for administrators and principals to be restored in 1975 after a disastrous four year period of at-will employment. These concerns apply equally to the teachers on the frontlines, as well as the administrators responsible for the management and implementation of the educational mandates set forth by the State.

The Challenged Statutes refer to "any person" or "employee" in terms of the application of discipline, seniority[6] and other appurtenant rights subsequent to the acquisition of tenure. Education Law §§ 2510, 3020-a.

Education Law § 3020-a protects tenured teachers and administrators from arbitrary suspension or removal and has repeatedly been recognized by the Court of Appeals as "a critical part of the system of contemporary protections that safeguard tenured teachers from official or bureaucratic caprice". Holt v. Bd. of Ed. of Webutuck Cent. Sch. Dist., 52 N.Y.2d 625, 632 (1981), *quoting* Matter of Abramovich v. Board of Educ., 46 N.Y.2d 450, 454 (1979).

[6] It should be noted that seniority and recall rights are not contingent upon receiving tenure. Therefore, if an administrator's positon is abolished during his probationary period and he is subsequently recalled, he would be obligated to fulfill the remainder of his probationary period.

The protections of Education Law § 3020-a provide minimal constitutional due process to tenured educators. These protections and processes are no less important for tenured administrators, who are more often the targets of political ire due to their salaries and disciplinary responsibilities, than they are for teachers. Declaring this statute unconstitutional will undoubtedly have an adverse impact on administrators, such as the Proposed Intervening Defendants.

In analyzing the applicability of Education Law § 3013, which is a companion statute to those challenged on the basis of layoff order, to Teaching Assistants, the Court of Appeals cited to the Legislative Bill Jacket, which provides:

> "The bill aims to prevent the use of favoritism by a school board or BOCES in the retention of staff and to protect tenured personnel by clarifying the process by which staff are dismissed and subsequently rehired. In addition, the bill prevents school boards from abolishing a position as means for disposing of unwanted tenured personnel, when in fact, no savings in cost or increase in efficiency is expected to be realized.
>
> "Identical language appears in Article 51 of the Education Law, which governs small city school districts. However, the courts and the Commissioner of Education have interpreted this provision to apply to school districts and boards of cooperative educational services generally. This bill will clarify that these provisions apply to all school districts." Madison-Oneida Bd. of Co-op. Educ. Servs. v. Mills, 4 N.Y.3d 51, 60 (2004), *quoting* Budget Report on Bills, Bill Jacket, L 1992, ch 737.

Thus, based upon the clear legislative intent for these statutes, as recognized as valid by the Court of Appeals, the purpose of the challenged layoff and retention statutes is to protect *school district employees* from arbitrary termination through a layoff scheme. As the Court of

Appeals has recognized that these statutes apply to more than teachers, it is without doubt that eliminating seniority based layoffs will have a calamitous effect on administrators.

Therefore, the Proposed Intervening Defendants, as tenured administrators governed by the Challenged Statutes are parties in interest. Should the litigation be successful and the Challenged Statutes deemed unconstitutional, the Proposed Intervening Defendants, and all central office and building level administrators who enjoy tenure, will be adversely impacted, requiring this court to permit them to intervene as of right.

i. Interest In The Litigation

The statutes at issue apply not only to teachers, but also to school administrators and other certificated administrative personnel. The statutes are essential for providing minimal job security to school administrators in order to create a stable and constructive foundation for the implementation of educational programs and oversee the work of teachers in order to have school districts that will not only benefit but enhance children's learning experiences. The Proposed Intervening Defendants have a great interest in protecting the statutory provisions that provide vital employment benefits, including protection from termination without just cause following a three year probationary period (Education Law §§ 2509, 2573, 2585, 3012); due process rights in situations involving discipline or termination (Education Law §§ 3020, 3020-a); mandatory annual evaluation procedures (Education Law § 3012-c) and seniority-based terminations in the event of necessary employee reduction (Education Law §§ 2510, 2585, 2588). These statutes provide the Proposed Defendants, who have been granted tenure after a probationary period, a form of job security that is appealing to qualified, educated candidates to acquire and remain within a position and remain loyal to the district they work in and protect them from unlawful termination stemming from political considerations. Administrators have a

real and substantial interest in defending the protections these statutes provide them and the Proposed Defendants should be allowed to intervene as of right.

n. Inadequate Representation Of Interests

A nonparty may intervene as of right "when the representation of the person's interest by the parties is *or may be* inadequate and the person is or may be bound by the judgment" (CPLR 1012 (a)(2) [emphasis added]). Intervention can occur at any time, even after judgment for the purpose of taking and perfecting an appeal. Matter of Robert A. Romeo v. New York State Dept. of Educ., 39 A.D.3d 916 (2007) *(see* Matter of Greater N.Y. Health Care Facilities Assn. v DeBuono, 91 N.Y. 2d 716, 720 (1998); Matter of Tennessee Gas Pipeline Co. v Town of Chatham Bd. of Assessors, 239 A.D. 2d 831, 832 (3d Dept., 1997)). The interests of the Proposed Defendants will not be adequately represented in this case.

The named Defendants, the State of New York, Regents of the University of the State of New York, Chancellor of the Board of Regents, Commissioner of Education and President of the University of the State of New York have a basic duty to protect the public's interest in defending the constitutionality of all laws validly enacted by the New York Legislature, and specifically the Legislature's education policy decisions. See, New York Executive Law § 63. The interest of the general public is not necessarily synonymous with those of the administrators who are directly called out within the statutes. For example, administrators have taken litigation positions contrary to Defendants State of New York, Regents of the University of the State of New York, Chancellor of the Board of Regents, Commissioner of Education and President of the University of the State of New York as it related to the promulgation of regulations pertaining to Annual Professional Performance, See 8 NYCRR 30-2. In addition, when tenure for administrators was restored by law (McKinney's Laws of 1975 Ch.. 468) following a four year

period when it was legislatively abolished, the defendant Commissioner at that time opposed reinstatement of tenure. Hence, it is important to have the voice of administrators heard in this litigation. Declaring these statutes unconstitutional will harm all individuals named under the statutes, not just the teachers within the New York City and Rochester City School Districts cited within the Complaints.

Additionally, the presence of the intervening teacher defendants is insufficient to protect the rights of administrators under the Challenged Statutes. While there are many common interests between teachers and administrators in the outcome of this litigation, there are several notable differences between teachers and administrators under the laws that require participation in the instant action by the Proposed Intervening Defendants.

The first difference relates to the statutory probationary periods when an educator has already achieved tenure in one tenure area and subsequently seeks tenure in a new district, a second tenure area or a completely new tenure area. By statute, teachers in any of the above situations need only be appointed to an abbreviated two-year probationary period. Education Law § 2509(1)(a). This is known as a Jarema credit and is legally not available to administrators. 8 NYCRR § 30 *et seq* Should an administrator, who has already achieved tenure, wish to move into a new tenure area or work in a new public school district, he or she must be appointed to another full three year probationary period. Education Law § 2509(1)(b).

The second main legal difference between teachers and administrators involves tenure areas themselves and, correspondingly, seniority rights. The tenure areas in which districts may appoint teachers are heavily regulated and employing districts have no discretion. 8 NYCRR 30-1.4, et. seq. Administrator tenure areas are not governed by regulation and leave each individual school district free to assign administrators tenure areas as it sees fit to create and/or abolish. Bell

v. Board of Educ., 61 N.Y.2d 149, 151 (1984); Matter of Durso, 19 Ed. Dept. Rep. 72. Inother words, a district may assign a single tenure area to all its administrators, regardless of title, but a neighboring district may have multiple administrative tenure areas based upon specific job titles. This difference oftentimes results in a different, much more complicated duty based analysis when determining seniority and recall rights for administrators. Cowan v. Board of Educ., 99 A.D.2d 831, 832 (2nd Dept. 1984); Bork v City School District, 60 A.D.2d 13 (4th Dept. 1977).

The creation of "stand-alone" tenure areas often subject administrators to the political price of the governing Board which may simply abolish a stand-alone tenure area and hence terminate the services of a tenured administrator who have fallen out of political favor. That administrator has lost recall rights that can be easily manifested.

Furthermore, in the Wright Complaint, administrators are only referenced in regards to the alleged difficulties in disciplining teachers and are otherwise not mentioned in relation to execution of the statutes. The fact that administrators are virtually ignored in the Complaint but are nonetheless subject to the Challenged Statutes, their interests will not be adequately represented and therefore are entitled to intervention as of right.

III. The Proposed Intervenors-Defendants Will Be Bound By The Judgment Herein

A declaration that the Challenged Statutes are unconstitutional will terminate the acquired rights of tenured administrators by removing their constitutional property rights in employment; make them vulnerable to arbitrary termination by removing their right to due process; and eliminating their seniority rights granted through years of loyal service. Thus, the Proposed Defendants will be adversely bound by any judgment holding that the Challenged Statutes are unconstitutional and they should be allowed to intervene.

B. THE PROPOSED INTERVENORS-DEFENDANTS SHOULD BE GRANTED PERMISSIVE INTERVENTION PURSUANT TO CPLR § 1013

CPLR §1013 allows permissive intervention "when the person's claim or defense and the main action have a common question of law or fact" and when intervention will not "unduly delay the determination of the action or prejudice the substantial rights of any party."

As set forth in Section A, above, the Challenged Statutes not only apply to teachers, as set forth within the Complaint, but also directly apply to almost all administrators like the Proposed Defendants. The legal question of whether the Challenged Statutes violate the Plaintiffs' constitutional rights would not change with the addition of administrators as Intervening Defendants. Since the Complaints seek to have the Challenged Statutes declared unconstitutional in their entireties and does not seek to carve out exceptions for non-teachers who are also covered within the scope of the Challenged Statutes, there can be absolutely no doubt that the Proposed Intervening Defendants share questions of law and fact with those set forth in the underlying Complaints. Permitting the Proposed Defendants to intervene would not prejudice the substantial rights of any party, rather, it is the rights of the Proposed Defendants that will be prejudiced if intervention is denied.

Further, permitting the Proposed Intervening Defendants to join the litigation will not unduly delay this proceeding. Attached to the instant motion to intervene is a proposed Answer on behalf of the Proposed Intervening Defendants, eliminating the need to request an extension oftime to file an Answer should this motion be granted. Further, the Proposed Defendants are willing to participate in the creation of a scheduling order and adhere to any such order, in order to ensure this matter moves forward at an appropriate pace.

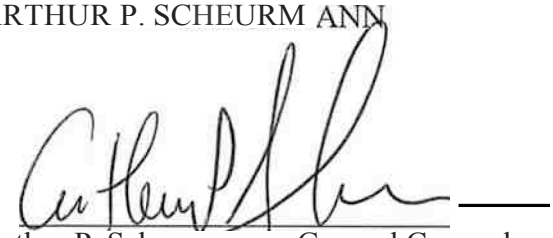
Thus, it is respectfully submitted that the Proposed Defendants should be permitted to intervene as a matter oflaw.

CONCLUSION

For the foregoing reasons, Proposed Intervenors-Defendants respectfully request that the Court grant their motion to intervene as additional defendants and amend the case caption accordingly.

Dated: Latham, New York
October 2, 2014

SCHOOL ADMINISTRATORS ASSOCIATION
OF NEW YORK STATE,
OFFICE OF GENERAL COUNSEL
ARTHUR P. SCHEURM ANN

By: 

Arthur P. Scheuer n, General Counsel
8 Airport Park Boulevard
Latham, New York 12110

TO: ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Steven L. Banks, Esq., Asst. Attorney General *(via e-mail steven.banks@ag.ny.gov)*
Attorney for State Defendants in *Wright and Davids*

OFFICE OF NEW YORK CITY CORPORATION COUNSEL
Janice Birnbaum, Esq., Asst. Corporation Counsel *(via e-mail jbirnbau@law.nyc.gov)*
Attorneys for City Defendants in *Davids*

RICHARD E. CASAGRANDE
General Counsel for New York State United Teachers
Attorneys for Intervenors-Defendants *(via e-mailrcasagra@nysutmail .org)*

STROCK & STROOCK & Lavan LLP
Charles G. Moerdler, Esq. *(via e-mail cmoerdler@stroock.com)*
Alan M. Klinger, Esq. *(via e-mail aklinger@stroock.com)*
Attorneys for Intervenor UFT in *Davids*

KIRKLAND & ELLIS LLP
Danielle R. Sassoon, Esq. *(via e-mail Danielle.sassoon@kirkland.com)*

Attorneys for Plaintiffs in *Wright*

GIBSON, DUNN & CRUTCHER
Randy M. Mastro, Esq. *(via e-mail rmastro@gibsondunn.com)*
Attorneys for Plaintiffs in *David*

JONATHAN W. TROBIANO, PLLC
Jonathan W. Trobiano, Esq.
1811 Victory Boulevard
Staten Island, New York 10314
Attorney for Plaintiffs in *Davids*

School Administrators Association of New York State
SAANYS

8 Airport Park Boulevard
Latham, New York 12110

Phone: (518) 782-0600
Fax: (518) 782-9552
www.saanys.org

KEVIN S. CASEY
Executive Director

October 3, 2014

Via Facsimile 718-815-2775 and electronically

Honorable Justice Philip G. Minardo
Court, Richmond County
18 Richmond Terrace
Staten Island, New York 10301

RE: Davids et. al. v. State of New York, et al., Richmond County, Index No. 101105ll4) and Wright, John K., et al. v. State of New York, et al. Albany County, Index No. A00641/2014).

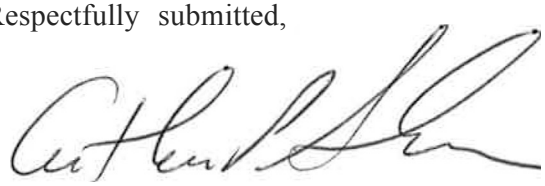
Dear Justice Minardo:

I represent two individual public school administrators in connection with their motion to intervene in the Wright, John K. et al. v. State of New York, et al., (Albany County Index No. A00641-14) which was consolidated with Davids et al. v. State of New York, et al. in Richmond County (Richmond County Index No. 101105/14). I am attaching courtesy copies of our papers filed in our motion to intervene via this e-mail.

Based on prior consent of the attorneys who represent the parties in the *Wright* and *Davids* cases to accept electronic service of our motion to intervene, attached hereto is the motion to intervene and related papers thereby constituting service.

Thank you in advance for the courtesies extended in this case.

Respectfully submitted,



Arthur P. Scheuermann
General Counsel

APS:mel

TO: ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Steven L. Banks, Esq., Asst. Attorney General *(via e-mail steven.banks@ag.ny.gov)*
Attorney for State Defendants in *Wright and Davids*

OFFICE OF NEW YORK CITY CORPORATION COUNSEL
Janice Birnbaum, Esq., Asst. Corporation Counsel *(via e-mail jbirnbau@law.nyc.gov)*
Attorneys for City Defendants in *Davids*

RICHARD E. CASAGRANDE
General Counsel for New York State United Teachers
Attorneys for Intervenors-Defendants in *Wright (via e-mail rcasagra@nysutmail.org)*

STROCK & STROOCK & Lavan LLP
Charles G. Moerdler, Esq. *(via e-mail cmoerdler@stroock.com)*
Alan M. Klinger, Esq. *(via e-mail aklinger@stroock.com)*
Attorneys for Intervenor, UFT in *Davids*

KIRKLAND & ELLIS LLP
Danielle R. Sassoon, Esq. *(via e-mail Danielle.sassoon@kirkland.com)*
Attorneys for Plaintiffs in *Wright*

JONATHAN W. TROBIANO, PLLC
Jonathan W. Trobiano, Esq. *(via e-mail jwtrobiano@wtesq.com)*
1811 Victory Boulevard
Staten Island, New York 10314
Attorney for Plaintiffs in *Davids*