

SUPREME COURT OF THE STATE OF NEW YORK  
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, 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,

Consolidated Index No. 101105/14  
(DCM Part 6)  
(Minardo, J.S.C.)

**NOTICE OF APPEAL**

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,

-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,

Intervenors-Defendants.

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2015 NOV 19 P 4 33  
DIVISION OF LAW & EQUITY

----- X  
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,

Intervenors-Defendants,

-and-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenor-Defendant,

-and-

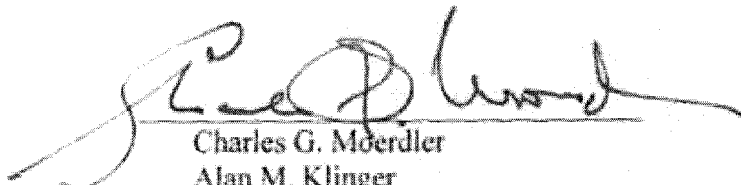
MICHAEL MULGREW, as President of the UNITED  
FEDERATION OF TEACHERS, Local 2, American Federation  
of Teachers, AFL-CIO,

Intervenor-Defendant.  
----- X

**PLEASE TAKE NOTICE**, that Intervenor-Defendant Michael Mulgrew, as President of the United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO, hereby appeals to the Supreme Court of the State of New York, Appellate Division, Second Department, from the Decision and Order dated October 22, 2015 (and entered October 28, 2015), a copy of which is annexed hereto, denying Intervenor-Defendant's Motion to Renew and, Upon Renewal, Dismiss the Complaints. Intervenor-Defendant appeals from each and every part of said Order and from the whole thereof, with the exception of the portion of the Order staying all further proceedings pending the determination of the Appellate Division.

November 18, 2015

STROOCK & STROOCK & LAVAN LLP



Charles G. Moerdler  
Alan M. Klinger  
180 Maiden Lane  
New York, New York 10038  
(212) 806-5400

-and-

Adam S. Ross, Esq.  
United Federation of Teachers  
52 Broadway  
New York, NY 10004

*Co-Counsel for Intervenor-Defendant UFT*

TO:

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jwtribiano@jwtesq.com

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New York, New York 10022  
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lefkowitz@kirkland.com

STEVEN L. BANKS, ESQ.  
Assistant Attorney General of the State of New York  
120 Broadway, 24<sup>th</sup> Floor  
New York, New York 10271  
*Counsel for Defendants State of New York and New York State Education Department  
and New York State Board of Regents*  
steven.banks@ag.ny.gov

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RICHARD E. CASSAGRANDE, ESQ.  
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ARTHUR P. SCHEUERMANN, ESQ.  
Office of General Counsel  
School Administrators Association of New York State  
8 Airport Park Boulevard  
Latham, New York 12110  
*Counsel for Defendant School Administrators Association of New York State*  
ascheuermann@saanys.org

**Supreme Court of the State of New York**  
**Appellate Division : Second Judicial Department**

**Form A - Request for Appellate Division Intervention - Civil**

See § 670.3 of the rules of this court for directions on the use of this form (22 NYCRR 670.3).

**Case Title:** Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

Mymoena Davids, et al.  
 Plaintiffs,  
 -against-  
 The State of New York, et al.,  
 Defendants,  
 -and-  
 Michael Mulgrew, et al.  
 Intervenor-Defendants.  
 (see attached full caption)

**For Court of Original Instance**

Date Notice of Appeal Filed

**For Appellate Division**

<b>Case Type</b> <input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<b>Filing Type</b> <input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceeding	<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR 5704 Review
<b>Nature of Suit:</b> Check up to five of the following categories which best reflect the nature of the case.			
<b>A. Administrative Review</b> <input type="checkbox"/> 1 Freedom of Information Law <input type="checkbox"/> 2 Human Rights <input type="checkbox"/> 3 Licenses <input type="checkbox"/> 4 Public Employment <input type="checkbox"/> 5 Social Services <input type="checkbox"/> 6 Other	<b>D. Domestic Relations</b> <input type="checkbox"/> 1 Adoption <input type="checkbox"/> 2 Attorney's Fees <input type="checkbox"/> 3 Children - Support <input type="checkbox"/> 4 Children - Custody/Visitation <input type="checkbox"/> 5 Children - Terminate Parental Rights <input type="checkbox"/> 6 Children - Abuse/Neglect <input type="checkbox"/> 7 Children - JD/PINS <input type="checkbox"/> 8 Equitable Distribution <input type="checkbox"/> 9 Exclusive Occupancy of Residence <input type="checkbox"/> 10 Expert's Fees <input type="checkbox"/> 11 Maintenance/Alimony <input type="checkbox"/> 12 Marital Status <input type="checkbox"/> 13 Paternity <input type="checkbox"/> 14 Spousal Support <input type="checkbox"/> 15 Other	<b>F. Prisoners</b> <input type="checkbox"/> 1 Discipline <input type="checkbox"/> 2 Jail Time Calculation <input type="checkbox"/> 3 Parole <input type="checkbox"/> 4 Other <b>G. Real Property</b> <input type="checkbox"/> 1 Condemnation <input type="checkbox"/> 2 Determine Title <input type="checkbox"/> 3 Easements <input type="checkbox"/> 4 Environmental <input type="checkbox"/> 5 Liens <input type="checkbox"/> 6 Mortgages <input type="checkbox"/> 7 Partition <input type="checkbox"/> 8 Rent <input type="checkbox"/> 9 Taxation <input type="checkbox"/> 10 Zoning <input type="checkbox"/> 11 Other	<b>I. Torts</b> <input type="checkbox"/> 1 Assault, Battery, False Imprisonment <input type="checkbox"/> 2 Conversion <input type="checkbox"/> 3 Defamation <input type="checkbox"/> 4 Fraud <input type="checkbox"/> 5 Intentional Infliction of Emotional Distress <input type="checkbox"/> 6 Interference with Contract <input type="checkbox"/> 7 Malicious Prosecution/Abuse of Process <input type="checkbox"/> 8 Malpractice <input type="checkbox"/> 9 Negligence <input type="checkbox"/> 10 Nuisance <input type="checkbox"/> 11 Products Liability <input type="checkbox"/> 12 Strict Liability <input type="checkbox"/> 13 Trespass and/or Waste <input type="checkbox"/> 14 Other
<b>B. Business &amp; Other Relationships</b> <input type="checkbox"/> 1 Partnership/Joint Venture <input type="checkbox"/> 2 Business <input type="checkbox"/> 3 Religious <input type="checkbox"/> 4 Not-for-Profit <input type="checkbox"/> 5 Other	<b>E. Miscellaneous</b> <input type="checkbox"/> 1 Constructive Trust <input type="checkbox"/> 2 Debtor & Creditor <input checked="" type="checkbox"/> 3 Declaratory Judgment <input type="checkbox"/> 4 Election Law <input type="checkbox"/> 5 Notice of Claim <input type="checkbox"/> 6 Other	<b>H. Statutory</b> <input type="checkbox"/> 1 City of Mount Vernon Charter §§ 120, 127-f, or 129 <input type="checkbox"/> 2 Eminent Domain Procedure Law § 207 <input type="checkbox"/> 3 General Municipal Law § 712 <input type="checkbox"/> 4 Labor Law § 220 <input type="checkbox"/> 5 Public Service Law §§ 128 or 170 <input checked="" type="checkbox"/> 6 Other	<b>J. Wills &amp; Estates</b> <input type="checkbox"/> 1 Accounting <input type="checkbox"/> 2 Discovery <input type="checkbox"/> 3 Probate/Administration <input type="checkbox"/> 4 Trusts <input type="checkbox"/> 5 Other
<b>C. Contracts</b> <input type="checkbox"/> 1 Brokerage <input type="checkbox"/> 2 Commercial Paper <input type="checkbox"/> 3 Construction <input type="checkbox"/> 4 Employment <input type="checkbox"/> 5 Insurance <input type="checkbox"/> 6 Real Property <input type="checkbox"/> 7 Sales <input type="checkbox"/> 8 Secured <input type="checkbox"/> 9 Other			

Appeal			
Paper Appealed From (check one only):			
<input type="checkbox"/> Amended Decree	<input type="checkbox"/> Determination	<input type="checkbox"/> Order	<input type="checkbox"/> Resettled Order
<input type="checkbox"/> Amended Judgment	<input type="checkbox"/> Finding	<input type="checkbox"/> Order & Judgment	<input type="checkbox"/> Ruling
<input type="checkbox"/> Amended Order	<input type="checkbox"/> Interlocutory Decree	<input type="checkbox"/> Partial Decree	<input type="checkbox"/> Other (specify):
<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Interlocutory Judgment	<input type="checkbox"/> Resettled Decree	
<input type="checkbox"/> Decree	<input type="checkbox"/> Judgment	<input type="checkbox"/> Resettled Judgment	
Court: Supreme Court of the State of New York		County: County of Richmond	
Dated: October 22, 2015		Entered: October 28, 2015	
Judge (name in full): Philip G. Minardo		Index No.: 101105/14	
Stage: <input type="checkbox"/> Interlocutory <input type="checkbox"/> Final <input type="checkbox"/> Post-Final		Trial: <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury	
Prior Unperfected Appeal Information			
Are any unperfected appeals pending in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No. If yes, do you intend to perfect the appeal or appeals covered by the annexed notice of appeal with the prior appeals? <input type="checkbox"/> Yes <input type="checkbox"/> No. Set forth the Appellate Division Cause Number(s) of any prior, pending, unperfected appeals:			
Original Proceeding			
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus			Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:			
Proceeding Transferred Pursuant to CPLR 7804(g)			
Court:		County:	
Judge (name in full):		Order of Transfer Date:	
CPLR 5704 Review of Ex Parte Order			
Court:		County:	
Judge (name in full):		Dated:	
Description of Appeal, Proceeding or Application and Statement of Issues			
<p>Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of the proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.</p> <p>Intervenor-Defendant UFT appeals from Judge Minardo's Decision and Order dated October 22, 2015 denying Intervenor-Defendant's Motion to Renew and, Upon Renewal, Dismiss the Complaints on the grounds that the matter is not justiciable and has been rendered moot.</p> <p>Amount: If an appeal is from a money judgment, specify the amount awarded.</p> <p>Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review.</p> <p>Whether the Supreme Court erred when it denied Intervenor-Defendant's motion to dismiss the Complaints, which allege that the tenure statutes in New York are unconstitutional, despite (1) the Complaints having been mooted by recent legislation amending the statutes challenged therein; and (2) the non-justiciable, unripe and unredressable nature of the claim.</p>			

Issues Continued:

Use Form B for Additional Appeal Information

**Party Information**

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

Examples of a party's original status include: plaintiff, defendant, petitioner, respondent, claimant, defendant third-party plaintiff, third-party defendant, and intervenor. Examples of a party's Appellate Division status include: appellant, respondent, appellant-respondent, respondent-appellant, petitioner, and intervenor.

No.	Party Name	Original Status	Appellate Division Status
1	Mymoena Davids, et al.	Plaintiffs	Respondent
2	Keoni Wright, et al.	Plaintiffs	Respondent
3	State of New York	Defendant	Appellant
4	City of New York (Board of Education)	Defendant	Appellant
5	United Federation of Teachers	Defendant	Appellant
6	Phillip Cammarata, et al.	Defendant	Appellant
7	Seth Cohen, et al.	Defendant	Appellant
8			
9			
10			
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**Attorney Information**

Instructions: Fill in the names of the attorneys or firms of attorneys for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be

provided

In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Jonathan Tribiano, Esq.

Address: 1811 Victory Boulevard, Suite One

City: Staten Island

State: NY

Zip: 10314

Telephone No.: (718) 530-1445

Attorney Type:

☒ Retained☐ Assigned☐ Government☐ Pro Se☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C):

1

Attorney/Firm Name: Kirkland Ellis LLP

Address: 601 Lexington Avenue

City: New York

State: NY

Zip: 10022

Telephone No.: (212) 446-1445

Attorney Type:

☒ Retained☐ Assigned☐ Government☐ Pro Se☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C):

2

Attorney/Firm Name: Attorney General of the State of New York

Address: 120 Broadway, 24th Floor

City: New York

State: NY

Zip: 10271

Telephone No.: (212) 416-8621

Attorney Type:

☐ Retained☐ Assigned☒ Government☐ Pro Se☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C):

3

Attorney/Firm Name: Corporation Counsel for the City of New York

Address: 100 Church Street, Rm. 2-195

City: New York

State: NY

Zip: 10007

Telephone No.: (212) 356-2085

Attorney Type:

☐ Retained☐ Assigned☒ Government☐ Pro Se☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C):

4

Attorney/Firm Name: Stroock &amp; Stroock &amp; Lavan LLP

Address: 180 Maiden Lane

City: New York

State: NY

Zip: 10038

Telephone No.: (212) 806-5400

Attorney Type:

☒ Retained☐ Assigned☐ Government☐ Pro Se☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C):

5

Attorney/Firm Name: New York State United Teachers

Address: 800 Troy-Schneclady Road

City: Latham

State: NY

Zip: 12110

Telephone No.: (518) 213-6000

Attorney Type:

☒ Retained☐ Assigned☐ Government☐ Pro Se☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C):

6

**Use Form C for Additional Party and/or Attorney Information**

The use of this form is explained in § 670.3 of the rules of the Appellate Division, Second Department (22 NYCRR 670.3). If this form is to be filed for an appeal, place the required papers in the following order: (1) the Request for Appellate Division Intervention (Form A, this document); (2) any required Additional Appeal Information Forms (Form B); (3) any required Additional Party and Attorney Information Forms (Form C); (4) the notice of appeal or order granting leave to appeal; (5) a copy of the paper or papers from which the appeal or appeals covered in the notice of appeal or order granting leave to appeal is or are taken; and (6) a copy of the decision or decisions of the court of original instance, if any.



Supreme Court of the State of New York

Appellate Division : Second Judicial Department

**Form C - Additional Party and Attorney Information**

Additional Party Information			
No.	Party Name	Original Status	Appellate Division Status
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			

Additional Attorney Information			
Attorney/Firm Name: School Administrators Association of New York State			
Address: 8 Airport Park Boulevard			
City: Latham	State: NY	Zip: 12110	Telephone No.: (518) 782-0600
Attorney Type: <input checked="" type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number[s] from table above or from Form A):			7
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No.:
Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number[s] from table above or from Form A):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No.:
Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number[s] from table above or from Form A):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No.:
Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number[s] from table above or from Form A):			

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

MYMEONA 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, 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,

-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,

Intervenors-Defendants.

Consolidated Index No. 101105/14  
(DCM Part 6)  
(Minardo, J.S.C.)

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----- X  
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,

Intervenors-Defendants,

-and-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenor-Defendant,

-and-

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

Intervenor-Defendant  
----- X

Office of the Richmond County Clerk - Page 1 of 1 11/2/2015 1:45:29 PM

RICHMOND COUNTY CLERK  
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JUDICIAL BRANCH

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

MYMOENA DAVIDS, by her parent and natural guardian  
MIAMONA DAVIDS, *et al.*, and JOHN KEONI WRIGHT,  
*et al.*,

Plaintiffs,

-against-

THE STATE OF NEW YORK, *et al.*,

Defendants,

-and-

MICHAEL MULGREW, as President of the UNITED  
FEDERATION OF TEACHERS, Local 2, American  
Federation of Teachers, AFL-CIO, SETH COHEN,  
DANIEL DELEHANTY, ASHLI SKURA DREHER,  
KATHLEEN FERGUSON, ISRAEL MARTINEZ,  
RICHARD OONIBENE, JR., LONNETTE R. TUCK,  
and KAREN E. MAGEE, individually and as President  
of the New York State United Teachers; PHILIP A.  
CAMMARATA, MARK MAMBRETTI, and THE  
NEW YORK CITY DEPARTMENT OF EDUCATION.

Intervenor-Defendants.

DCM PART 6

HON. PHILIP G. MINARDO

DECISION & ORDER

Index No. 101105-14

Motion Nos.<sup>1</sup> 1996 - 013  
2012 - 014  
2110 - 015  
2111 - 016  
2186 - 017

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<sup>1</sup> These motions have been consolidated for purposes of disposition.

MYMOENA DAVIDS, et al. v. THE STATE OF NEW YORK, et al.

The following papers numbered 1 to 12 were fully submitted on the 25<sup>th</sup> day of  
August, 2015.

Papers  
Numbered

Notice of Motion to Dismiss and/or Renew by Intervenor-Defendants MICHAEL  
MULGREW, as President of the UNITED FEDERATION OF TEACHERS,  
Local 2, American Federation of Teachers, AFL-CIO,  
with Exhibits and Memorandum of Law,  
(dated May 27, 2015) \_\_\_\_\_ 1

Notice of Motion to Dismiss and/or Renew by Defendants THE CITY OF NEW YORK  
and THE NEW YORK CITY DEPARTMENT OF EDUCATION,  
with Exhibits and Memorandum of Law,  
(dated May 27, 2015) \_\_\_\_\_ 2

Notice of Motion to Dismiss and/or Renew by Defendants STATE OF NEW YORK,  
et al., with Affirmation and Supplemental Affirmation of Assistant Attorney General  
Steven L. Banks,  
with Exhibits and Memorandum of Law,  
(dated May 27, 2015) \_\_\_\_\_ 3

Notice of Motion to Dismiss and/or Renew by Intervenor-Defendants SETH COHEN, et al.,  
with Exhibits and Memorandum of Law,  
(dated May 26, 2014) \_\_\_\_\_ 4

Notice of Motion to Dismiss and/or Renew by Intervenor-Defendants PHILIP  
CAMMARATA and MARK MAMBRETTI  
with Exhibits and Memorandum of Law,  
(dated MAY 26, 2015) \_\_\_\_\_ 5

Affirmation in Opposition by Plaintiffs JOHN KEONI WRIGHT, et al., to Defendants  
and Intervenor-Defendants' Motions to Dismiss and/or Renew,  
with Exhibits and Memorandum of Law  
(dated June 26, 2015) \_\_\_\_\_ 6

Affirmation in Opposition of Plaintiffs MYOMENA DAVIDS, et al., to Defendants and  
Intervenor-Defendants' Motion to Dismiss and/or Renew,  
with Exhibits and Memorandum of Law,  
(dated December 5, 2014) \_\_\_\_\_ 7

MYMOENA DAVIDS, et al. v. THE STATE OF NEW YORK, et al.

Reply Memorandum of Law by Intervenor-Defendants MICHAEL MULGREW, as President  
Of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of  
Teachers, AFL-CIO.  
(dated July 7, 2015) \_\_\_\_\_ 8

Reply Affirmation by Defendants THE CITY OF NEW YORK and THE NEW  
YORK CITY DEPARTMENT OF EDUCATION.  
(dated July 7, 2015) \_\_\_\_\_ 9

Reply Affirmation by Intervenor-Defendants PHILIP CAMMARATA and MARK  
MAMBRIETTI,  
(dated July 1, 2015) \_\_\_\_\_ 10

Reply Memorandum of Law by Intervenor-Defendants SETH COHEN, et al.,  
(dated July 7, 2015) \_\_\_\_\_ 11

Reply Memorandum of Law by Defendants STATE OF NEW YORK, et al.,  
(dated July 7, 2015) \_\_\_\_\_ 12

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Upon the foregoing papers, the motions by defendants and intervenor-defendants for, *inter alia*, dismissal of the complaints and/or leave to renew their prior motions for like relief are decided as follows:

The parties' familiarity with the facts is presumed from their participation in this litigation and the exhaustive Decision and Order of this Court entered on March 20, 2015.

In this action for a judgment declaring, singly and in combination, various sections of the Education Law as violative of Art. XI, §1 of the New York State Constitution<sup>2</sup> (hereinafter the Education Article), this Court previously denied defendants' and intervenor-defendants' several motions to dismiss the complaints on various grounds which the Court found to be without merit.

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<sup>2</sup> To the extent relevant, this article guarantees to all of the students within the State of New York a "sound basic education".

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Defendants and intervenor-defendants subsequently appealed that determination to the Appellate Division, Second Department, where it has yet to be calendared for oral argument. At or about the same time, the State Legislature undertook to amend certain sections of the Education Law challenged by plaintiffs, which prompted defendants and intervenor-defendants to file a second round of motions to dismiss on the ground that this action of the Legislature rendered the complaints moot and/or nonjusticiable. In the alternative, defendants and intervenor-defendants moved for leave to renew their prior motions based on "new facts not offered on the prior motions" or "a change in the law" (CPLR 2221(c)(2)), both of which plaintiffs strenuously opposed. Oral argument was held on August 25, 2015, at which time decision was reserved.

Except to the extent hereinafter provided, the motions are denied.

In principal part, movants assert the same grounds for dismissal rejected by the Court in its prior determination. To this extent, the present motions to dismiss are essentially motions for leave to reargue and, as such, are improperly "based on matters of fact not offered on the prior motion(s)" (CPLR 2221(d)(2)), e.g., the aforementioned legislative amendments. Accordingly, these motions are denied. Neither is the Court persuaded that the above amendments operated to render the prior motions nonjusticiable or moot, or to deprive this Court of subject matter jurisdiction (see CPLR 3211(a)(2); Matter of Newton v. Town of Middletown, 31 AD3d 1004, 1005-1006).

Moreover, while the introduction of "new facts" or "a change in the law" may serve as the basis for a renewal motion under CPLR 2221(c)(2), the motion will nevertheless be denied where, as here, neither of the foregoing "would change the prior determination" of the court (*id.*). In this case, the legislature's marginal changes affecting, e.g., the term of probation and/or the disciplinary proceedings applicable to teachers, are insufficient to achieve the required result.


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Nonetheless, given the extensive nature of discovery likely to be required in this case, it is only proper that all further proceedings in this matter should be stayed pending the determination of the Appellate Division.

Accordingly, it is

SO ORDERED.

  
J.S.C.

Dated: Oct 23, 2015





**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK       )  
                                      ) ss.:  
COUNTY OF NEW YORK    )

GARY W. MALPELL, being duly sworn, deposes and says:

1. Deponent is not a party to the action, is over 18 years of age and is employed by Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038.

2. That on the 18th of November, 2015, I served the within Notice Of Appeal via Regular Mail and via email, on the parties listed below:

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GARY W. MALPELI

Sworn to before me this  
14th day of November, 2015.

  
Kathleen A. Pedersen  
Notary Public

KATHLEEN A. PEDERSEN  
Notary Public, State of New York  
No. 01PE4965655  
Qualified in Kings County  
Commission Expires April 23, 2018

Index No. Consolidated Index No. 101105/14 (DCM Part 6) (Minardo, J.S.C.)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

MYMOENA DAVIDS, *et al.*,

Plaintiffs,

-against-

MICHAEL MULGREW, AS President of the UNITED  
FEDERATION OF TEACHERS, *et al.*,

Intervenor-Defendant.

COURT DESK
TYPE: <u>NA</u>
APPROVED: <u>[Signature]</u>
DATE: <u>11-19-2015</u>

**NOTICE OF APPEAL**

Attorneys for  
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*Intervenor-Defendant, United Federation of Teachers*

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**PLEASE TAKE NOTICE**

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20

☐ that an Order of which the within is a true copy will be presented for settlement to the  
NOTICE OF SETTLEMENT Hon. at one of the judges of the within named Court,

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20

at

M.

Attorneys for

**STROOCK & STROOCK & LAVAN LLP**

To:

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NEW YORK, NEW YORK 10038-4982  
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Approved for