

101105/14

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

Form A - Request for Appellate Division Intervention - Civil

See § 870.3 of the rules of this court for directions on the use of this form (22 NYCRR 870.3).

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or writ, or other cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance	
MYMOENA DAVIDS, by her parent and natural guardian MIAMONA DAVIDS, et al., and JOHN KEONI WRIGHT, et al., <p align="center">Plaintiffs,</p> <p align="center">-against-</p> THE STATE OF NEW YORK, et al., <p align="center">Defendants,</p> <p align="center">-and-</p> MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO, SETH COHEN, DANIEL DELEHANTY, ASHLEI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD GONIBENI, 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.		Date Notice of Appeal Filed:	
Case Type <input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> Intervenor-Defendants <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding		Filing Type <input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceeding <input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR § 704 Review	
Nature of Suit: Check up to five of the following categories which best reflect the nature of the case.			
A. Administrative Matters <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 checked="" type="checkbox"/> 6 Other	B. Domestic Relations <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	C. Prisoners <input type="checkbox"/> 1 Discipline <input type="checkbox"/> 2 Jail Time Calculation <input type="checkbox"/> 3 Parole <input type="checkbox"/> 4 Other G. Real Property <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 Leases <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	D. Torts <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
H. Business & Other Relationships <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	E. Miscellaneous <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 checked="" type="checkbox"/> 5 Notice of Claim <input checked="" type="checkbox"/> 6 Other	H. Statutory <input type="checkbox"/> 1 City of Mount Vernon Charter §§ 120, 127-1, 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 §§ 126 or 170 <input type="checkbox"/> 6 Other	I. Public & Financial <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

RICHMOND COUNTY CLERK
2015 DEC 10 P 1:58
DIVISION OF LAW & EQUITY

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 CourtCounty: RichmondDated: October 22, 2015Entered: October 28, 2015Judge (name in full): Phillip J. MinardoIndex No.: 101105/14Stage: ☒ Interlocutory ☐ Final ☐ Post-FinalTrial: ☐ Yes ☒ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal Information

Are any unperfected appeals pending in this case? ☒ Yes ☐ No. If yes, do you intend to perfect the appeal or appeals covered by the annexed notice of appeal with the prior appeals? ☒ Yes ☐ No. Set forth the Appellate Division Cause Number(s) of any prior, pending, unperfected appeals: 2015-03922

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ 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

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.

Intervenor-Defendants Cammarata and Mambretti are seeking an appeal of the October 22, 2015 Decision and Order of Hon. Phillip Minardo, denying their motion to renew their motion to dismiss the Complaints in this consolidated action, which was initially denied on March 12, 2015, on the basis that the Challenged Statutes concerning educator tenure, discipline, layoff and recall, and evaluations were radically altered by the Legislature as part of the budget process in April 2015.

Amount: If an appeal is from a money judgment, specify the amount awarded.

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review.

Intervenor-Defendants intend to raise the following issues on appeal:

1. The claims are moot due to the changes in the challenged statutes;
2. Plaintiffs' failure to state a cause of action;
3. Plaintiffs' lack of standing;
4. The claims are not justiciable;
5. The Courts do not have standing, as the challenged statutes fall within the political question doctrine.

Issues Continued:

Use Form 5 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	Mymona Davids	Plaintiff	Respondent
2	Miamona Davids	Plaintiff	Respondent
3	Eric Davids	Plaintiff	Respondent
4	Alexis Peralta	Plaintiff	Respondent
5	Stacy Peralta	Plaintiff	Respondent
6	Angela Peralta	Plaintiff	Respondent
7	Lemara Peralta	Plaintiff	Respondent
8	Andrew Hansen	Plaintiff	Respondent
9	Christine Hansen	Plaintiff	Respondent
10	Adrian Colson	Plaintiff	Respondent
11	Jacqueline Colson	Plaintiff	Respondent
12	Daniel Colson	Plaintiff	Respondent
13	Samantha Pirozzolo	Plaintiff	Respondent
14	Sam Pirozzolo	Plaintiff	Respondent
15	Franklin Pirozzolo	Plaintiff	Respondent
16	Izaiyah Ewers	Plaintiff	Respondent
17	Kendra Oke	Plaintiff	Respondent
18	John Keoni Wright	Plaintiff	Respondent
19	Guert Barrero	Plaintiff	Respondent
20	Tavara Bains	Plaintiff	Respondent

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

Attorney/Firm Name: School Administrators Assoc. of NY / Arthur Schervetman

Address: 8 Airport Park Blvd.

City: Latham

State: NY

Zip: 12110

Telephone No.: 515 732-0600

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):

7/1/42

Attorney/Firm Name: Jonathan W. Tribiano

Address: 1811 Victory Blvd., Suite 1

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 2 3 4 5 6 7 8 9 10

Attorney/Firm Name: Jonathan W. Tribiano

Address: 1811 Victory Blvd., Suite 1

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):

11 12 13 14 15 16 17

Attorney/Firm Name: Kirkland Ellis, LLP / Jay Leflowitz

Address: 601 Lexington Ave

City: New York

State: NY

Zip: 10022

Telephone No.: 212 446-4800

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):

18 19 20 21 22 23 24

Attorney/Firm Name: New York State Attorney General / Steven Banks

Address: 130 Broadway, 24th Floor

City: New York

State: NY

Zip: 10021

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):

25 26 27 28

Attorney/Firm Name: New York City Corporation Counsel / Janice Birnbaum

Address: 100 Church Street, Room 2-115

City: New York

State: NY

Zip: 10007

Telephone No.: 212 350-2035

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):

29 30

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	Nina Doster	Plaintiff	Respondent
22	Carla Williams	Plaintiff	Respondent
23	Mona Pradia	Plaintiff	Respondent
24	Angeles Barragan	Plaintiff	Respondent
25	State of New York	Defendant	Respondent
26	New York State Board of Regents	Defendant	Respondent
27	New York State Education Dept.	Defendant	Respondent
28	City of New York	Defendant	Respondent
29	New York City Dept. of Education	Defendant	Respondent
30	Mary H. Torch	Defendant	Respondent
31	John B. King	Defendant	Respondent
32	Michael McGrew	Intervenor-Defendant	Respondent

Additional Attorney Information			
Attorney/Firm Name: New York State United Teachers / Richard Casagrande			
Address: 800 Troy - Schenectady Road			
City: Latham	State: NY	Zip: 12110	Telephone No.: 518-213-6000
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): 31, 32, 37, 39, 40			
Attorney/Firm Name: Strack + Strack + Lavan LLP / Charles Harder			
Address: 180 Maiden Lane			
City: New York	State: NY	Zip: 10038	Telephone No.: 212-667-5898
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): 32			
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 FOR 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, ASHIL SKURA DREHER,
KATHLEEN FERGUSON, ISRAEL MARTINEZ,
RICHARD OGNIBEBE, JR., LONNETTE R. TUCK,
and KAREN E. MAGEE, Individually and as President
of the New York State United Teachers; PHILLIP A.
CAMMARATA, MARK MAMBRETTI, and THE
NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenor-Defendants.

NOTICE OF APPEAL

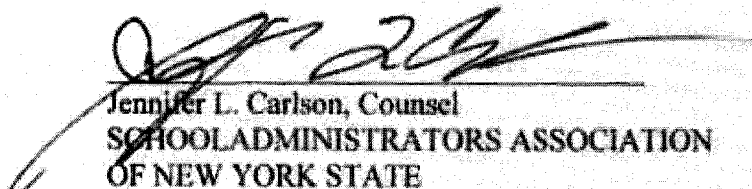
HON. PHILIP G. MINARDO
DCM PART 6

Index No. 101105/14

PLEASE TAKE NOTICE that the Intervenor-Defendants PHILIP A. CAMMARATA
and MARK MAMBRETTI, hereby appeal to the Appellate Division, Second Department of the
Supreme Court of the State of New York, from the Decision and Order of the Court dated
October 22, 2015 which denied the Intervenor-Defendants' Motion to Renew their Motion to
Dismiss, and entered by the Clerk of the Court on October 28, 2015, and Notice of Entry being
served on November 4, 2015. This appeal is taken from the each and every part of the Decision
and Order, as well as the whole thereto. A copy of the Decision and Order with Notice of Entry
is annexed hereto.

Dated: Latham, New York
November 20, 2015

Respectfully Submitted,



Jennifer L. Carlson, Counsel
SCHOOL ADMINISTRATORS ASSOCIATION
OF NEW YORK STATE

*Attorneys for Intervenor-Defendants Cammarata
And Mambretti*

8 Airport Park Blvd.
Latham, New York 12110

(518) 782-0600

TO: Jonathan W. Tribiano, PLLC
1811 Victory Boulevard
Staten Island, New York 10314
Counsel for Davids Plaintiffs

Kirkland & Ellis, LLP
Danielle R. Sassoon, Esq., of Counsel
Jay Lefkowitz, Esq., of Counsel
Devora W. Allon, Esq., of Counsel
601 Lexington Avenue
New York, New York 10022
Counsel for Wright Plaintiffs

Eric T. Schneiderman, Esq.
Attorney General of the State of New York
Steven L. Banks, Esq.
Monica Connell, Esq.
Christine Ryan, Esq.
Asst. Attorney General
120 Broadway, 24th Floor
New York, New York 10271
Counsel for State Defendants

Zachary Carter, Esq. Corporation Counsel of the City of New York
Janice Birnbaum, Esq., Senior Counsel
Maxwell Leighton, Esq., Senior Counsel
100 Church Street
New York, New York 10007
*Counsel for Intervenor-Defendants City of New York and
New York City Department of Education*

Stroock, Stroock & Lavan LLP
Charles G. Moerdler, Esq.
Alan M. Klinger, Esq.
180 Maiden Lane
New York, New York 10038
*Counsel for Intervenor-Defendant Michael Mulgrew, as President
Of the United Federation of Teachers*

Adam Ross, Esq.
United Federation of Teachers
52 Broadway, 14th Floor
New York, New York 10004
*Counsel for Intervenor-Defendant Michael Mulgrew, as President
Of the United Federation of Teachers*

Richard Casagrande, Esq.
General Counsel
New York State United Teachers
800 Troy Schenectady Road
Latham, New York 12110
Counsel for the NYSUT Intervenor-Defendants

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,

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

NOTICE OF ENTRY

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.

X

----- 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,

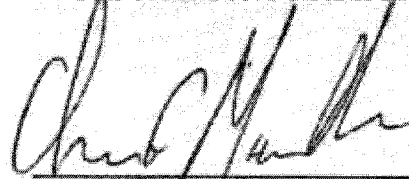
Intervenor-Defendant.

----- X

PLEASE TAKE NOTICE, that the attached is a true and accurate copy of the Decision and Order of the Supreme Court, Richmond County (Honorable Philip J. Minardo, J.S.C.), dated October 22, 2015 and duly filed and entered in the Office of the Clerk of Richmond County on October 28, 2015.

November 4, 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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1811 Victory Boulevard
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Counsel for Wright Plaintiffs
lefkowitz@kirkland.com

STEVEN L. BANKS, ESQ.
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*Counsel for Defendants State of New York and New York State Education Department
and New York State Board of Regents*
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ARTHUR P. SCHEUERMANN, ESQ.
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ascheuermann@saanys.org

Office of the Richmond County Clerk - Page 1 of 5 11/2/2015 1:45:29 PM

RICHMOND COUNTY CLERK
2015 OCT 28 P 2:14
DIVISION OF LAW & JUSTICE

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, ASHLEI 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; 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. 1996 - 013
2012 - 014
2110 - 015
2111 - 016
2186 - 017

*

*

"These motions have been consolidated for purposes of disposition."

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

The following papers numbered 1 to 12 were fully submitted on the 25th 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
MAMBRETTI,
(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

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 Constitution² (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.

² 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(e)(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(e)(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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MYMOENA DAVIDS, et al. v. THE STATE OF NEW YORK, et al.

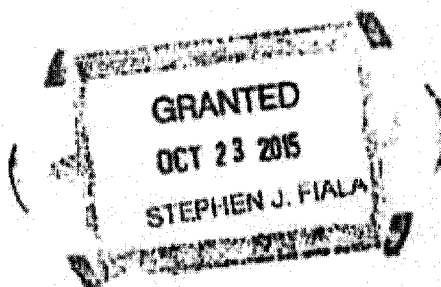
Nonetheless, given the extensive nature of discovery likely to be required in this case, it is only proper that all further proceedings in this matter should be stayed pending the determination of the Appellate Division.

Accordingly, it is

SO ORDERED.


J.S.C.

Dated: Oct 22, 2015



STATE OF NEW YORK
SUPREME COURT

COUNTY OF RICHMOND

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

AFFIDAVIT OF SERVICE

Plaintiffs,

-against-

HON. PHILIP G. MINARDO
DCM PART 6

THE STATE OF NEW YORK, et.al.,

Index No.: 101105-2014

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
OGNIBENE, 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,

Intervenors-Defendants.

STATE OF NEW YORK)
) S.S.:
COUNTY OF ALBANY)

I, MARIE E. LEONARDO, being duly sworn, deposes and says that I am over the age of
18 years, not a party to this action and reside at Clifton Park, New York.

On November 20, 2015, I served the Notice of Appeal by Jennifer L. Carlson, Counsel, in
the above captioned matter at the offices of the following attorneys:

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Attorney General of the State of New York
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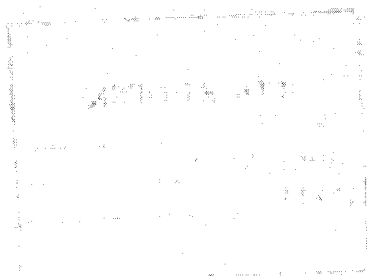
by depositing a true copy of the same by first class mail, enclosed in a postpaid properly addressed wrapper, in an official depository in Latham, New York, under the exclusive care and custody of the United States Post Office Department within the State of New York.


MARIE E. LEONARDO

Subscribed and Sworn to before
me this 20th day of November, 2015


Notary Public

JENNIFER L. CARLSON
Notary Public, State of New York
Qualified in Albany County
No. 02CA6129706
Commission Expires July 05, 20 17



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DEC 11/23/15

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SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF RICHMOND

NYMOENA DAVIDS, by her parent and natural guardian
MIAMONA DAVIDS, et al., and JOHN EBONI WRIGHI,
et al.

Plaintiffs

against

THE STATE OF NEW YORK, et al.

Defendants

and

MICHAEL M'LGREW, as President of the UNITED
FEDERATION OF TEACHERS, Local 2, American
Federation of Teachers, AFL-CIO, SETH COHEN,
DANIEL DELHANTY, ASHIL SKURA DREHER,
KATHLEEN FERGLSON, ISRAEL MARTINEZ,
RICHARD OGIBEBE, JR., LONNETTE R. TUCK,
and KAREN E. MACIEE, 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

NOTICE OF APPEAL

HON. PHILIP G. MINARDO
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Index No. 101105/14

NOTICE OF APPEAL

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OF NEW YORK STATE

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By: Jennifer L. Carlson, Counsel

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