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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT

Tiffini Flynn Forslund; Justina Person; Bonnie Dominguez; and Roxanne Draughn,

Plaintiffs,

vs.

State of Minnesota; Mark Dayton, in his official capacity as the Governor of the State of Minnesota; the Minnesota Department of Education; and Brenda Cassellius, in her official capacity as the Commissioner of Education; St. Paul Public Schools, Independent School District 625; Anoka-Hennepin School District 11; Duluth Public Schools, Independent School District 709; West St. Paul-Mendota Heights Eagan Area Schools, Independent School District 197,

Defendants.

Court File No. 62-CV-16-2161
Case Type: Other Civil
Judge Margaret M. Marrinan

STATE DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

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This brief is filed on behalf of Defendants State of Minnesota, Governor Mark Dayton, Minnesota Department of Education, and Commissioner Brenda Cassellius (hereinafter "State Defendants").

INTRODUCTION

Minnesota's education system ranks as one of the best in the United States. For nearly a century, Minnesota lawmakers have relied on teacher tenure laws to ensure a professional workforce that is able to provide a quality system of education for Minnesota students throughout the State. Plaintiffs now challenge certain long-standing provisions of Minnesota's tenure laws, alleging that they violate the Minnesota Constitution.

State Defendants respectfully request that Plaintiffs' First Amended Complaint be dismissed because: (1) the Court lacks subject matter jurisdiction over the political questions raised; (2) Plaintiffs lack standing; (3) the State Defendants are not proper parties; (4) the Court lacks authority to grant the declaratory relief sought; and (5) Plaintiffs' claims fail as a matter of law.

RELEVANT FACTUAL BACKGROUND

A. The History Of Teacher Tenure.

Minnesota adopted its first tenure law in 1927.[1] Act of March 14, 1927, ch. 36, 1927 Minn. Laws 42–44. Historical accounts indicate that teacher tenure was enacted because local

[1] Minnesota's first tenure law applied only to teachers in so-called "cities of the first class"—i.e., Minneapolis, St. Paul, and Duluth. Minn. Stat. § 2935-1 *et seq.* (Mason 1927). Approximately ten years later, continuing contracts were extended to teachers in other districts. Minn. Stat. § 2903 (Mason 1938). Although Minnesota law continues to maintain two separate statutory provisions for tenure and continuing contracts, the provisions at issue in this case are now largely similar. As such, State Defendants refer to both as "tenure" laws.

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officials attempted to save money by replacing more expensive, experienced teachers with less-experienced ones and terminated teachers for a variety reasons unrelated to job performance, such as local politics and political patronage. *See, e.g.*, *McSherry v. City of St. Paul*, 277 N.W. 541, 543 (Minn. 1938) (explaining that when tenure laws were developed "[i]t was thought that for the good of the schools and the general public the profession [of teaching] should be made independent of personal or political influence, and made free from the malignant power of spoils and patronage.").

Tenure laws are designed to protect students and improve the quality of student education through development of a professional teaching staff. *Id.* at 544 ("[T]he [tenure] movement itself has for its basis the public interest, in that most advantages go to the youth of the land and to the schools themselves rather than the interest of teachers as such."). Thus, tenure was adopted so that "better talent would be attracted to the profession." *Id.*

Tenure is not and has never been a guarantee of future employment. Rather, the teacher tenure laws provide a legal framework for teacher employment decisions made by local school districts and guarantee certain procedural due process protections for teachers.[2] *See, e.g.*, Minn. Stat. §§ 122A.40–.41. Minnesota law expressly allows districts to terminate or remove any teacher for cause, including for poor teaching. Minn. Stat. §§ 122A.40, subds 9, 13 (allowing discharge for inefficiency in teaching); 122A.41, subd. 6 (same).

As the Minnesota Supreme Court explained in 1938:

> Plainly, the legislative purposes sought were stability, certainty, and permanency of employment on the part of those who had shown by educational attainment and by probationary trial their fitness for the teaching profession. By statutory

[2] Teachers are not the only civil service employees with due process protections. Under the Minnesota Public Employment Labor Relations Act ("PELRA"), many public employees at the state, county, and local levels also receive due process protections. Minn. Stat. Ch. 179A.

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> direction and limitation there is provided means of prevention of *arbitrary* demotion or discharges by school authorities. The history behind the act justifies the view that the vicissitudes to which teachers had in the past been subjected were to be done away with or at least minimalized. It was enacted for the *benefit and advantage of the school system* by providing such machinery as would tend to minimize the part that malice, political, or partisan trends, or caprice might play. It established *merit* as the essential basis for the *right* of permanent employment. On the other hand, it is equally clear the act does not impair *discretionary* power of school authorities to make the best selections consonant with the public good . . . . The right to demote or discharge provides remedies for safeguarding the future against incompetence, insubordination, and other grounds stated in the act.

McSherry, 277 N.W. at 544 (italics in original).

B. The Statutory Framework For Tenure in Minnesota.

As it relates to primary and secondary public school teachers, the statutes governing teacher tenure currently set forth the following basic framework:

- New teachers are considered probationary employees for at least three years. During that time, they must receive at least three evaluations in each school year by a peer review committee. Probationary teachers can be discharged, demoted, or have their contracts non-renewed, and they have no rights of appeal should that occur. Minn. Stat. §§ 122A.40, subd. 5; 122A.41, subd. 2.

- A teacher who is reemployed after the a continuous three-year probationary period "shall continue in service and hold their respective position during good behavior and efficient and competent service and must not be discharged or demoted except for cause after a hearing." Minn. Stat. §§ 122A.40, subd. 7; 122A.41, subd. 4.

- Teachers who are tenured can be terminated for cause, including for (1) inefficiency or gross inefficiency in teaching; (2) neglect or willful neglect of duty or persistent violation of school laws, rules, regulations, or directives; (3) conduct unbecoming a teacher, insubordination, immoral conduct, conviction of a felony; (4) failure without justifiable cause to teach; (5) other good and sufficient grounds render the teacher unfit to perform the teachers duties. *See* Minn. Stat. §§ 122A.40, subds. 9, 13; 122A.41, subd. 6.

Employment decisions on teacher probation, tenure, and dismissal are made at the district level, and the details about the implementation of these provisions is negotiated as part of collecting bargaining agreements. Minn. Stat. §§ 122A.40, 122A.41.

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After a teacher obtains tenure, the schools continue to provide development and evaluation. For example, school districts are required to implement teacher evaluation and peer review processes in order to "develop, improve, and support qualified teachers and effective teaching practices." Minn. Stat. §§ 122A.40, subd. 8(b); 122A.41, subd. (5)(b). In addition to setting out affirmative goals to improve teaching quality, districts must address any teacher not meeting professional standards through a teacher improvement plan with established goals and timelines. *Id.* at subd. 8(b)(12). Unless unavoidable, a student should not be taught in two consecutive years by a teacher who is on an improvement plan. Act of June 13, 2015, ch. 3, 2015 Minn. Laws 1, 30, 33 (codified at Minn. Stat. §§ 122A.40, subd. 8(d); 122A.41, subd. 5(d)). Further, if a teacher fails to make adequate progress while on an improvement plan, discipline is required including possible termination, discharge, or nonrenewal. Minn. Stat. §§ 122A.40, subd. 8(13); 122A.41, subd. 5(13). The commitment to teacher assessment, development, and improvement is specifically intended to provide for "improved and equitable access to more effective and diverse teachers." *See* Act of June 1, 2016, ch. 189, 2016 Minn. Laws 1, art. 24, §§ 6–7 (to be codified at Minn. Stat. §§ 122A.40, subd. 8; 122A.41, subd.).

In addition to the forgoing probation and dismissal provisions, Plaintiffs also take issue with the so-called "Last In, First Out" provisions. (Am. Compl.) These provisions set forth default procedures to be followed if constraints, such as budget or lower student enrollment, require a decrease in teacher staffing. Minnesota law provides that "[i]n the event it becomes necessary to discontinue one or more positions . . . teachers must be discontinued in any department in the inverse order in which they were employed." Minn. Stat. § 122A.41, subd. 14; *see also* Minn. Stat. § 122A.40, subds. 10–11. But Minnesota law does not mandate that such a system be used. Rather, it expressly allows school boards and teacher representatives "in the

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district [to] negotiate a plan providing otherwise." Minn. Stat. § 122A.41, subd. 14; *see also* Minn. Stat. § 122A.40, subd. 10.

Finally, the Minnesota legislature has enacted laws specifically "to pursue racial and economic integration and increase student achievement, create equitable educational opportunities, and reduce academic disparities. . . ." *See, e.g.,* Minn. Stat. § 124D.861, subd. 1(a); Act of June 1, 2016, ch. 189, 2016 Minn. Laws 1, art. 24, §§ 6–7 (to be codified at Minn. Stat. §§ 122A.40, subd. 8; 122A.41, subd. 5). Districts are to publish long-terms plans which, among other things, address "equitable distribution of diverse, effective, experienced and in-field teachers and strategies to ensure low-income and minority children are not taught at higher rates than other children by inexperienced, ineffective, or out-of-field teachers." *Id.* at art. 25, §§ 9-12.

C. Tenure Is Implemented by Individual School Districts, Who Have Authority To Address Any Concerns With Teacher Quality.

Minnesota does not have a statewide school board, and control over employment decisions at Minnesota schools rests with the local school districts. School districts have the discretion to determine how to evaluate teacher performance and how to implement statutory requirements for mentoring, education, and improvement in teaching practices. *Supra* at B. Local districts also have the ability to address and remove non-performing teachers. *Id.* Indeed, Plaintiffs' Amended Complaint cites a newspaper article which reported that the Minneapolis School District fired 200 teachers in the year prior to the article. Alejandra Matos, *Minneapolis' worst teachers are in the poorest schools, data show*, Minneapolis Star Tribune, Jan. 28, 2015, attached to Affidavit of Alethea M. Huyser as Ex. 1. (*See also* Am. Compl. at ¶ 119) By contrast, the State Defendants do not have legal authority over the hiring, evaluation, or discharge of individual teachers.

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D. Minnesota Is Committed To Providing All Students A High Quality Education.

Minnesota students perform well compared to students in other states. According to the National Assessment for Education Progress ("NAEP")—a federal effort to assess students across the country by comparing reading and math scores at grades four and eight—Minnesota student test scores are generally high compared to other states. In the 2015 NAEP Report Card, Minnesota students rank second and third nationally on mathematics scores at the fourth and eighth grade levels, respectively. Excerpts from NAEP Report Card, Huyser Aff. as Ex. 2. When broken down by racial and socioeconomic segments, math scores for Minnesota students rank above the national average for all students groups at both the fourth and eighth grade levels. *Id.* While reading levels at fourth grade rank lower, by eighth grade Minnesota students are near or above the national average for all student groups. *Id.*

Even so, achievement gaps do exist among Minnesota students, including between students of different races and socioeconomic backgrounds. Education officials in Minnesota, including the Minnesota Department of Education, have undertaken a focused effort in recent years to address these achievement gaps. For example, Commissioner Cassellius has led statewide efforts to measure and assess the gaps in performance, set performance expectations for schools, as well as to develop resources and tools to assist struggling schools in their efforts to improve student performance among all students. *See, e.g.*, Closing the Achievement Gap, Minnesota Department of Education Website, http://www.education.state.mn.us/MDE/Welcome/OfficeCom/CloseAchievGap/056694 (last visited June 14, 2016).

Nonetheless, publicly available data does not suggest that tenure laws are the driving cause of achievement gaps. For example, data collected by the Minnesota Department of Education shows that achievement gaps persist even within single schools. Huyser Aff. at Ex. 3.

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In other words, the achievement gap is not eliminated even when students are taught by the same teachers in the same school.[3] *See also* Borhrnstedt et al., *School Composition and the Black-White Achievement Gap,* U.S. Dept. of Educ., Nat. Center for Educ. Statistics (NCES 2015-018), attached to Huyser Aff. as Ex. 5, at 25 (analyzing Minnesota's achievement gap between black and white students on grade 8 mathematical assessments, finding that the majority of the gaps is attributable to within-school differences and not differences between schools).

In addition, although public schools in Minnesota are subject to teacher tenure laws, charter schools are not. Charter schools on average have not been able to eliminate or even make significant reduction in achievement gaps. To the contrary, charter schools are disproportionately represented among Minnesota's lowest performing schools. Affidavit of Kara Arzamendia (explaining that achievement gap is one factor in identifying low performing schools). Thus, the absence of tenure protections at charter schools has not improved student outcomes among minority and low income demographic groups.

ARGUMENT

I. STANDARD OF REVIEW.

On a motion to dismiss for lack of subject matter jurisdiction, the court analyzes whether it has the authority to consider an action. *See Irwin v. Goodno*, 686 N.W.2d 878, 880 (Minn. App. 2004). "Whenever it appears by suggestion of the parties or otherwise that the court lacks

[3] Even as to the data on districts presented by Plaintiffs, the Amended Complaint fails to provide adequate context. Plaintiffs do not define "effectiveness", and instead rely on teacher experience and student test scores as a proxy. Setting aside the issue of how well those particular statistics relate to teacher performance, school statistics vary widely.

For example, Plaintiffs' favorably cite schools whose teachers have both advanced degrees and high levels of experience, and suggest this is directly tied to student test results. But similar teacher qualifications can also be found at schools with lower test scores. Huyser Aff. at Ex. 4.

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jurisdiction of the subject matter, the court shall dismiss the action." Minn. R. Civ. P. 12.08(c). "Standing is a jurisdictional doctrine, and the lack of standing bars consideration of the claim by the court." *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011); *see also* Minn. R. Civ. P. 12.08(c). Likewise, courts have no subject matter jurisdiction to adjudicate claims that present nonjusticiable political questions. *See In re McConaughy*, 119 N.W. 408, 417 (Minn. 1909); *Farrington v. City of Richfield*, 488 N.W.2d 13, 16 n.2 (Minn. App. 1992).

On a motion to dismiss under Rule 12.02(e), the only question before the court is "whether the complaint sets forth a legally sufficient claim for relief." *Elize v. Comm'r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980); *Zutz v. Nelson*, 788 N.W.2d 58, 61 (Minn. 2010). A legal conclusion in the complaint is not binding, and a plaintiff must provide more than mere labels and conclusions to survive a motion to dismiss. *Bahr v. Capella University*, 788 N.W.2d 76, 80 (Minn. 2010). On a motion to dismiss, a court may consider materials that are part of the public record as well as materials that are necessarily embraced by the pleadings without converting the motion to summary judgment. *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999).

II. THIS COURT LACKS JURISDICTION OVER PLAINTIFFS' FIRST AMENDED COMPLAINT.

A. Plaintiffs' Amended Complaint Does Not Present A Justiciable Controversy.

Under the Minnesota Constitution, "it is the duty of the legislature to establish a general and uniform system of public schools" and to provide financially "to secure a thorough and efficient system of public schools . . . ." Minn. Const. art. XIII, § 1. Minnesota has long recognized that the "method by which these objectives were to be accomplished was left to legislative determination." *Board of Educ. v. Erickson*, 295 N.W. 302, 304 (Minn. 1940).

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Because Plaintiffs dispute the method chosen by the legislature to meet these public policy objectives, they present political questions that are not justiciable by this Court.

The political question doctrine exists to preserve the constitutional separation of powers between the executive, legislative, and judicial branches of government. *McConaughy*, 119 N.W. at 416–17. No branch of government "can legally exercise the powers which in the constitutional distribution are granted to any of the others. A grant to one is a denial to the others." *Id.* at 417.

A question is political, and not judicial, when "it has been specifically delegated to some other department or particular officer of the government with discretionary power to act." *Id.* As such, the courts may decide whether the legislature has acted within its Constitutional bounds, but cannot go further and exercise powers delegated by the constitution to the legislature. *See id.*; *Smith v. Holm*, 19 N.W.2d 914, 916 (Minn. 1945); *see also Arrowhead Bus Serv., Inc. v. Black & White Duluth Cab Co., Inc.*, 32 N.W.2d 590, 592 (Minn. 1948).

In this case, Plaintiffs' claims raise non-justiciable political questions. The Education Clause of the Minnesota Constitution requires only that the legislature create a "general and uniform system of public schools," and that funding be provided to allow that system to be "thorough and efficient." Minn. Const. art. XIII, § 1. As the Minnesota Supreme Court has recognized, by its plain the language, the Constitution commits to the legislature the discretion to determine the policies and methods through which to achieve those goals. *See, e.g.*, *Erickson*, 295 N.W. at 304; *Assoc. Schs. v. Sch. Dist. No. 83*, 142 N.W. 325, 327 (Minn. 1913) (requirement that local districts expand subject matter topics offered is "a legislative and not a judicial question, a question of legislative policy and not of legislative power").

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More recently in *Skeen v. State*, the Minnesota Supreme Court continued to adhere to fundamental separation of powers principles in its interpretation of the Education Clause. 505 N.W.2d 299, 308–16 (Minn. 1993). In rejecting a challenge to educational funding laws, the Court explained: "[W]e do not mean to suggest that it would be impossible to devise a fairer or more efficient system of educational funding. Instead, we believe that any attempt to devise such a system is a matter best left to the legislative determination." *Id.* at 318. Because the challenged law was within the powers delegated to the legislature, the Court concluded that any further inquiry was the province of lawmakers. *Id.* at 318–19 (citing *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1025 (Colo. 1982); *San Antonio Ind. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 58–59 (1973)).

Minnesota courts have also recognized in other contexts that claims that relate to educational quality are not, as a matter of policy, proper for court adjudication. For example, Minnesota courts have "rejected, on public policy grounds, claims for educational malpractice[,]" which "would require the court to engage in a 'comprehensive review of a myriad of educational and pedagogical factors, as well as administrative policies.'" *Alsides v. Brown Inst., Ltd.*, 592 N.W.2d 468, 473 (Minn. App. 1999) (citation omitted). *Alsides* involved claims that a private school failed to provide adequate instruction and education. *Id.* The court of appeals explained the public policy grounds for rejecting such a claim as including:

> (1) the lack of a satisfactory standard of care by which to evaluate an educator;
>
> (2) the inherent uncertainties about causation and the nature of damages in light of such intervening factors as a student's attitude, motivation, temperament, past experience, and home environment;
>
> (3) the potential for a flood of litigation against schools; and
>
> (4) the possibility that such claims will "embroil the courts into overseeing the day-to-day operations of schools."

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Id. at 472 (citation omitted).

Courts in other jurisdictions have recognized that constitutional claims related to educational quality are non-justiciable. As the Illinois Supreme Court explained, "the question of educational quality is inherently one of policy involving philosophical and practical considerations that call for the exercise of legislative discretion." *Comm. for Educ. Rights v. Edgar*, 672 N.E.2d 1178, 1191 (Ill. 1996). The court further explained:

> Judicial determination of the type of education children should receive and how it can best be provided would depend on the opinions of whatever expert witnesses the litigants might call to testify and whatever other evidence they might choose to present. Members of the general public, however, would be obliged to listen in respectful silence. We certainly do not mean to trivialize the views of educators, school administrators and others who have studied the problems which public schools confront. But nonexperts—students, parents, employers and others—also have important views and experiences to contribute which are not easily reckoned through formal judicial factfinding. In contrast, an open and robust public debate is the lifeblood of the political process in our system of representative democracy. Solutions to problems of educational quality should emerge from a spirited dialogue between the people of the State and their elected representatives.

Id.; *see also Woonsocket Sch. Comm. v. Chafee*, 89 A.3d 778, 792–94 (R.I. 2014); *Bonner ex rel. Bonner v. Daniels*, 907 N.E.2d 516, 522 (Ind. 2009); *Marrero ex rel. Tapalas v. Commonwealth*, 739 A.2d 110, 111, 114 (Pa. 1999) (rejecting education adequacy challenge under state constitutional provision because "[t]hese are matters which are exclusively within the purview of the [state legislature's] powers, and they are not subject to intervention by the judicial branch of government"); *Coalition for Adequacy and Fairness in Sch. Funding, Inc. v. Chiles*, 680 So.2d 400, 408 (Fla. 1996) (plaintiffs failed to meet burden to identify justiciable standard in education clause case); *City of Pawtucket v. Sundlun*, 662 A.2d 40, 58 (R.I. 1995) (finding "no judicially manageable standards" for education clause claim).

The Minnesota Constitution commits matters of education policy, including details regarding the type and quality of educators, to the legislative branch. "The public policy of a

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state is for the legislature to determine and not the courts." *Mattson v. Flynn*, 13 N.W.2d 11, 16 (Minn. 1944). Because Plaintiffs' concerns relate to the wisdom of legislative policy not the scope of its constitutional powers, the appropriate mechanism to address their objections is through the legislative process, not the courts. *Curryer v. Merrill*, 25 Minn. 1, 2, 7 (Minn. 1878).

B. Plaintiffs Lack Constitutional Standing to Sue for the Alleged Violations.

Standing is a constitutional doctrine that defines the Court's ability to redress an injury through coercive relief. *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 321 (Minn. App. 2007) (citation omitted). It is a feature of "tripartite constitutional structure" and the court must be careful to "abstain from encroaching on the power of a coequal branch." *Id.* The "standing inquiry" is "especially rigorous when reaching the merits of the dispute would force [a court] to decide whether an action taken by" another branch of government is constitutional. *See Clapper v. Amnesty Intern.*, 133 S.Ct. 1138, 1147 (2013).

To establish standing, a plaintiff first must have suffered an "injury-in-fact," which is an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *see also Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. App. 2005). Second, "there must be a causal connection between the injury and the conduct complained of" and the injury must be fairly traceable "to the challenged action of the defendant" and not the result of "the independent action of some third party not before the court." *Lujan*, 504 U.S. at 560; *see also Hanson*, 701 N.W.2d at 262; *Riehm v. Comm'r of Public Safety*, 745 N.W.2d 869, 873 (Minn. App. 2008). Third, it "must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561; *see also Hanson*, 701 N.W.2d at 262; *Riehm*, 745 N.W.2d at 873.

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1. Plaintiffs have not identified a concrete, particularized, and actual harm.

Plaintiffs allege that they are students who are "assigned to," or, are "at substantial risk of being assigned to," a so-called "ineffective teacher." (Am. Compl. ¶¶ 27-30.) These claims fail to allege a sufficient injury for at least four reasons.

First, the Amended Complaint does not identify concrete harms the individual Plaintiffs have suffered as a result of any alleged ineffective teacher. For example, the Amended Complaint does not assert any specific harm to a student as a result of particular teacher.

Second, to the extent Plaintiffs attempt to allege injury by pointing to aggregate, district-wide test scores, such aggregate harm is not sufficiently particularized to the Plaintiffs to establish standing. *See Lujan*, 504 U.S. at 560 n.1. (for alleged harm to be particularized, it "must affect [him] in a personal and individual way"); *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 40 n.20 (1976) ("[E]ven named plaintiffs who represent a class must allege and show that they *personally have been injured*, not that injury has been suffered by other, unidentified members of the class . . . .") (emphasis added) (internal citations omitted).

Third, Plaintiffs' contention that they are "at risk" of being assigned an "ineffective teacher" is a future harm that is speculative and not concrete or actual.[4] *See Clapper*, 133 S. Ct. at 1147 ("[W]e have repeatedly reiterated that 'threated injury must be *certainly impending* to constitute injury in fact, and that [a]llegations of *possible* future injury are not sufficient") (internal quotation marks omitted); *Valley Forge Christian Coll. v. Americans United for*

[4] Because the academic school year has ended at the time this brief is submitted, and Plaintiffs are no longer assigned to the teachers in question, there also appears to be a mootness concern. *In re Guardianship of Tschumy*, 853 N.W.2d 728, 734 (Minn. 2014) (stating that "mootness is 'the doctrine of standing set in a timeframe: the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).'") (quotation omitted).

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Separation of Church and State, 454 U.S. 464, 471 (1982). A threat of injury based on speculation about contingent future events is not certainly impending. *Clapper*, 133 S. Ct. at 1148.

Finally, Plaintiffs' do not define what an "ineffective teacher" is, nor do they identify a corresponding legally protectable interest which is invaded. (Am. Compl. ¶¶ 27-30.) As indicated *infra*, Plaintiffs cannot articulate a constitutional right to uniform or non-tenured teachers. As such, Plaintiffs' allegations do not allege an actual or concrete injury sufficient to establish standing.

2. Any harm alleged is not fairly traceable to Defendants' actions, and elimination of tenure provisions would not redress the alleged harm.

Plaintiffs have not alleged facts showing that any alleged injury is "fairly traceable" to the State Defendants' conduct. Where the chain of causation between the government's conduct and the asserted injury is "attenuated" or "speculative," a plaintiff lacks standing. *Allen v. Wright*, 468 U.S. 737, 758-59 (1984), *overruled on other grounds by Lexmark Int'l, Inc. v. Static Control Components*, 134 S.Ct. 1377 (2014); *Simon,* 426 U.S. at 44 (stating that "unadorned speculation" is insufficient to establish standing) (citation omitted). An alleged injury is not fairly traceable to a challenged statute if other factors caused the asserted injury. *See Clapper*, 133 S. Ct. at 1149.

In *Allen*, the plaintiffs challenged a decision of the Internal Revenue Service to allow tax exemptions to private schools that discriminated on the basis of race. 468 U.S. at 744-45. The Court held that the chain of causation between the injury—the plaintiffs' diminished ability to receive an education in a racially integrated public school—and the IRS's tax exemptions to racially discriminatory private schools, was too speculative to establish standing. *Id.* at 757-59. The Court noted it was entirely speculative whether withdrawal of the tax exemptions would lead

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a private school to change its discriminatory policies; whether a given private school parent would transfer their child to public schools as a result of such changes; and whether a large enough number of school officials and parents would reach decisions that "collectively would have a significant impact on the racial composition of the public schools." *Id.*

Here, as in *Allen*, it is entirely speculative whether a student's assignment to a so-called "ineffective teacher" is fairly traceable to the challenged provisions of the teacher tenure law. For example, Plaintiffs speculate that school districts would have less "ineffective" teachers absent the challenged provisions of the teacher tenure laws. But history reveals that concerns about ineffective teachers predated tenure. As the Minnesota Supreme Court explained, tenure laws were developed precisely because then-existing teacher hiring practices "had not resulted in the elimination of poor, incompetent, and inefficient teachers . . . and that not infrequently the best teachers were discharged for inadequate reasons." *McSherry*, 277 N.W. at 543. Tenure is a merit-based system designed to actually improve and protect the quality and professionalism of Minnesota's teachers. *Id.* at 543–44.

Furthermore, under the very law Plaintiffs challenge, school districts have discretion to determine which teachers to hire, tenure, and fire for cause—which includes the ability to not hire or to dismiss underperforming teachers. Minn. Stat. §§ 122A.40–41; Matos, *Minneapolis' worst teachers, supra* at 6 (indicating in the 2013-14 school year alone, Minneapolis School District fired approximately 200 teachers). Tenure laws only create a process to ensure that removal is based on meritorious reasons, and not based on factors unconnected to teacher performance. *McSherry*, 277 N.W. at 543–44.

Tenure also does not dictate which schools individual teachers prefer to teach at, and it is speculative to assume that elimination of tenure will draw Plaintiffs' preferred teachers to

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underperforming schools. Tenure law also does not address student-teacher assignments, and Plaintiffs have not alleged that the decision to assign a given teacher to any particular student has any causal connection to the teacher tenure laws.[5]

It also speculative whether elimination of tenure would result in higher district-wide test scores—an output by which Plaintiffs purport to measure teacher "effectiveness."[6] Indeed, myriad factors affect student test scores, and student performance more generally, including the student's family situation, the level of education attained by the student's parents, the number of books in a student's home, socio-economic status, class size, student absenteeism, and many other factors. *See, e.g.*, Borhrnstedt, *School Composition and the Black-White Achievement Gap, supra* at 7-8 (discussing these types of factors as relevant to gaps in student performance).

Significantly, as discussed above, student performance at many charter schools—which are not subject to the teacher tenure laws—are disproportionately represented among Minnesota's lowest performing schools. This fact strongly suggests that the causal relationship between teacher tenure laws and any "harm" caused by "ineffective teachers" is attenuated.

C. The State of Minnesota, Governor Mark Dayton, and the Minnesota Department of Education Are Not Proper Parties To Any Claims, And Commissioner Cassellius Is Not A Proper Party To The Procedural Due Process Claim.

"A person aggrieved by the application of a legal rule does not sue the rule *maker*—Congress, the President, the United States, a state, a state's legislature, the judge who announced

[5] Many Minnesota students also have a variety of school enrollment options, further weakening any possible causal link between the teacher tenure laws and the assignment of "ineffective teachers" to Plaintiffs. *See, e.g,* Minn. Stat. § 124D.03; *supra* at 8 (discussing charter schools which by law are not bound by the challenged tenure laws).

[6] In setting up Minnesota teacher evaluation methods, Minnesota lawmakers expressly declined to tie assessment of teacher performance solely to student outputs. *See* Minn. Stat. §§ 122A.40, subd. 8(9); 122A.41, subd. 5(9) (limiting student test performance to only 35% of teacher evaluation results).

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the principle of common law. He sues the person whose acts hurt him." *Quinones v. City of Evanston, Illinois*, 58 F.3d 275, 277 (7th Cir. 1995) (emphasis in original); *accord Travis v. Reno*, 163 F.3d 1000, 1007 (7th Cir. 1998). Minnesota courts have recognized the necessity of naming the actual party against whom the requested relief could be ordered. *See, e.g.*, *Meriwether Minn. Land & Timber, LLC v. State*, 818 N.W.2d 557, 573 (Minn. App. 2012) (questioning viability of action against the "State of Minnesota" because "the state can provide no relief other than that provided by the commissioner . . . ."); *Benson v. Alverson*, No. A11-0811, 2012 WL 171399, at *2 (Minn. App. Jan. 23, 2012) (in marriage license dispute local registrar is the proper party defendant, not the State of Minnesota), *rev. denied*, No. A11-0811 (Minn. April 17, 2012); *Clark v. Pawlenty*, 755 N.W.2d 293, 299 (Minn. 2008) (dismissing Governor of Minnesota because he "cannot implement any of the relief that petitioners request"); *Clark v. Ritchie*, 787 N.W.2d 142, 145 (Minn. 2010) (same).

Plaintiffs' also seek declaratory relief, which if granted, must be implemented by an individual. *See, e.g.,* Minn. Stat. § 555.13 (definition of person in Declaratory Judgments Act does not include "state"); Minn. Stat. § 645.27 (holding that State is not bound by statute unless it is explicitly named). For all these reasons, if this case proceeds, the Commissioner is the only proper State Defendant, not the "State of Minnesota," the Department, or the Governor. Furthermore, because none of the State Defendants could provide relief on Plaintiffs' procedural due process claim, no State Defendant is a proper party to that claim.

D. Governor Mark Dayton Is Immune From Suit.

The claims against the Governor also must be dismissed because he is immune from suit for his legislative acts. The Governor's constitutional role in signing bills into law are legislative in nature. *See Inter Faculty Org. v. Carlson*, 478 N.W.2d 192, 194 (Minn. 1991) (citing Minn.

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Const. art. IV, § 23). The Speech or Debate Clause of the Minnesota Constitution is an absolute bar to suit. Minn. Const. art. IV, § 10; *Advanced Auto Transport, Inc. v. Pawlenty*, 2010 WL 2265159, at *3 n.7 (D. Minn. June 2, 2010) (The "governor cannot be sued for signing a bill into law under the doctrine of absolute legislative immunity."). *See also* U.S. Const. art. I (identical to Minnesota clause), § 6; *Kahn v. Griffin*, 701 N.W.2d 815, 828 (Minn. 2005) (Minnesota courts' interpretation of Minnesota Constitutional provisions with identical federal counterparts guided by federal precedent); *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 503 (1975) (holding that "the Speech or Debate Clause is an absolute bar to interference.").

E. This Court Lacks Jurisdiction To Issue The Requested Declaratory Judgment Because All Interested Persons And Parties Have Not Been Joined.

"When declaratory relief is sought, all persons shall be made parties who have or claim any interest which could be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." Minn. Stat. § 555.11; *Frisk v. Bd. of Ed. of Duluth*, 75 N.W.2d 504, 514 (Minn. 1956) (no jurisdiction when interested person not a party). "[T]he joinder requirement in Minn. Stat. § 555.11 is consonant with but *broader than* the joinder requirement in [Minn. R. Civ. P.] 19." *Unbank Co., LLP v. Merwin Drug Co., Inc.*, 677 N.W.2d 105, 108 (Minn. App. 2004) (emphasis added). The failure to join an interested party is a "fatal defect." *Id.* at 107. The declaratory relief sought by Plaintiffs here would directly affect, and could adversely impact, the rights of nonparty school districts and teachers. As such, the Court lacks subject matter jurisdiction to declare such relief absent the participation of all interested parties. *See* Minn. Stat.§ 555.11; *Unbank*, 677 N.W.2d at 107.

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III. PLAINTIFFS' AMENDED COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Minnesota courts "presume statutes to be constitutional" and exercise their "power to declare a statute unconstitutional with extreme caution and only when absolutely necessary." *Gluba ex rel. Gluba v. Bitzan & Ohren Masonry*, 735 N.W.2d 713, 719 (Minn. 2007). "The party challenging the constitutionality of the statute bears the burden of establishing beyond a reasonable doubt that the statute violates a constitutional right." *Id.* Furthermore, in any "facial challenge to constitutionality, the challenger bears the heavy burden of proving that the legislation is unconstitutional in all applications." *McCaughtry v. City of Red Wing*, 831 N.W.2d 518, 522 (Minn. 2013) (citation omitted).

A. Plaintiffs Fail To State A Claim Under The Education Clause.

Plaintiffs allege that the teacher tenure laws violate their constitutional right to a "uniform" and "thorough" education. However, the Education Clause only requires the legislature to provide a uniform *system* of public schools, as well as the public funding necessary to maintain it; it does not govern the public policy choices by which the legislature meets that objective nor guarantee identical education or teachers to all students. Because the tenure provisions at issue in this case are, as a matter of law, part of the general and uniform system of public schools in Minnesota, they do not violate the Education Clause of the Minnesota Constitution.

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The Education Clause states as follows:

> Section 1. The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform *system* of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient *system* of public schools throughout the state.

Minn. Const. art. XIII, § 1 (emphasis added). As the language of Article 1 makes clear, the legislature has two obligations related to developing a "system of public schools" in Minnesota: (1) that the system be "general and uniform"; and (2) that funding be secured to ensure the system is "thorough and efficient" throughout the state. *See id.*; *Skeen*, 505 N.W.2d at 315 ("[A] clear reading of the original constitution indicates that the drafters intended to draw a distinction between the fundamental right to a 'general and uniform system of education' and the financing of the education system, which merely must be 'thorough and efficient.'"). Plaintiffs do not challenge school funding in this lawsuit.

From the beginning, the Minnesota Supreme Court interpreted the phrase "general and uniform" to speak only to the legislative obligation to ensure a *system* of public schools. *Curryer*, 25 Minn. at 6 ("The rule of uniformity contemplated by this constitutional provision which the legislature is required to observe, *has reference to the system* which it may provide . . . .") (emphasis added); *Sauk Centre v. Moore*, 17 Minn. 412, 415–16 (1871) ("The object [of Article 1] is to ensure a regular method throughout the state whereby all may be enabled to acquire an education which will fit them to discharge intelligently their duties is citizens of the republic.); *see also State v. Hamm*, 423 N.W.2d 379, 383 (Minn. 1988) (court decision rendered in 1869 interpreting the constitutional provision gives a "clear understanding" of the constitutional intent in 1857).

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The Court has repeatedly declined to find any constitutional requirement of identical education. In *Curryer*, for example, the plaintiff challenged a statute concerning the purchase of textbooks for public schools, but which did not apply to certain districts. 25 Minn. at 5–6. Plaintiff argued that the Education Clause compelled uniformity, and that the financial burden on some students in affected districts may preclude their education while other districts would not suffer the same burden. *Id.* at 7. The Court rejected the argument:

> The rule of uniformity . . . has reference to the system which it may provide, and not to the district organizations that may be established under it.

Id. at 6. Because the plaintiff's objections "raise[d] a question of legislative discretion and policy only, and not one of power" the Court upheld the law. *Id.* at 7. *See also State ex rel. Klimek v. Otter Tail County*, 283 N.W. 397, 398 (Minn. 1939) (rejecting that the Education Clause required uniformity in free school busing: "These provisions of the constitution are a mandate to the legislature. The legislature has complied with the mandate of the constitution by enacting the laws under which our present school system is organized."); *Melby v. Hellie*, 80 N.W.2d 849, 852 (Minn. 1957) (rejecting argument that the Education Clause requires "'general and uniform' in Access and Quality").

More recently, in *Skeen*, the Minnesota Supreme Court reaffirmed that "uniform" does not mean "identical" or even "nearly identical", and "merely applies to the general system, not to specific . . . disparities." 505 N.W.2d at 310–11. The plaintiffs in *Skeen* argued that a statute allowing a local school district to supplement financing violated the "uniformity requirement" in the Education Clause because it created wealth-based "unequal funding levels" among public school districts. Rejecting the plaintiffs' arguments, the court again held that the Minnesota Constitution required a uniform *system* not a uniform education. *Id.* ("[T]he 'uniform' language is 'complied with if the state requires and provides for a minimum of educational opportunities

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in the districts and permits the districts to exercise local control over what they desire, and can furnish, above the minimum.'" (citation omitted)). Like text books in *Curryer*, school busing in *Klimek*, and school funding in *Skeen*, there simply is no recognized right under the Education Clause to identical or "uniform" education or teachers.

Teacher tenure laws are part of a general system that has been in place since the 1920s, and apply uniformly to all public schools. Indeed, as the Minnesota Supreme Court recognized, the laws were created by the legislature specifically to replace local hiring practices that did not serve schools or students because they failed to ensure a professional and quality teacher workforce for Minnesota. *McSherry*, 277 N.W. at 543. Because the teacher tenure laws are part of a general and uniform system that has been developed, Plaintiffs have failed to state a cognizable constitutional claim under the Education Clause.

B. Plaintiffs Fail To State An Equal Protection Claim.

Plaintiffs also allege that the teacher tenure laws violate the Equal Protection Clause. (Am. Compl. ¶¶ 205–07.) The Equal Protection Clause states that "[n]o member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Minn. Const. art. I, § 2. As noted above, statutes are presumed valid, and the duty is on the challenging party to prove its invalidity beyond a reasonable doubt. *Skeen*, 505 N.W.2d at 312. The courts should not substitute their judgment for that of the legislature, and as long as a statute is rationally related to a legitimate government purpose, it should be upheld. *Id.* Strict scrutiny applies only if a challenged statute operates to disadvantage a suspect class or impinge upon a fundamental right. *Id.* When strict scrutiny applies, the state generally must prove that the statute is necessary to a compelling state interest. *Id.* (citing *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973)).

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1. Plaintiffs' claims do not involve a fundamental right cognizable under the Minnesota Constitution.

First, Plaintiffs allege that the teacher tenure laws impinge on an alleged fundamental right to a "uniform" and "thorough" education. As discussed *supra*, this misstates the rights secured by the Minnesota Constitution as it relates to education.

The Minnesota Supreme Court has "recognized that fundamental rights are '[t]hose which have their origin in the *express terms* of the Constitution or which are necessarily to be implied *from those terms*." *Skeen*, 505 N.W.2d at 313 (emphasis added) (quoting *State v. Gray*, 413 N.W.2d 107, 111 (Minn. 1987); Black's Law Dictionary 607 (Rev. 5th ed. 1979)). While the supreme court has recognized a fundamental right to a "general and uniform *system* of education" under the state constitution,[7] *Skeen*, 505 N.W.2d at 313, it has not held that there is a fundamental right to identical or uniform education or teachers. *See id.*; *supra* at III.A.

Furthermore, teacher tenure laws do not "directly or substantially interfere" with a cognizable fundamental right belonging to Plaintiffs. *Gluba*, 735 N.W.2d at 720 ((holding that a worker disability statute's effects on a fundamental right to live where one chooses are indirect and, therefore, not subject to scrutiny). Given the clear statutory authority on the part of school districts to manage teacher performance, any harms Plaintiffs' allege are indirect and "too attenuated to trigger the heightened scrutiny that [Plaintiffs'] seek." *Id.*

2. Plaintiffs have not alleged a disparate treatment claim or disparate impact claim under the Equal Protection Clause.

Here, Plaintiffs do not assert that the teacher tenure laws discriminate on their face or that they expressly identify any student groups that are to be treated differently.[8] Rather, Plaintiffs

[7] Education is not recognized as a fundamental right under the U.S. Constitution. *See Rodriguez*, 411 U.S. 1 (1973).

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appear to assert that application of the teacher tenure laws are disparately employed or that they disparately impact minority and low-income students. (Am. Compl. ¶ 205.)

"There are two types of equal protection claims: 'disparate treatment' and 'disparate impact.'" *Odunlade v. City of Minneapolis*, 823 N.W.2d 638, 647 (Minn. 2012). In order to state a disparate treatment claim, "the threshold question is whether the claimant is treated different from others who are similarly situated, because the equal protection clause does not require the state to treat differently situated people the same." *Id.* Minnesota courts "routinely reject[] equal protection claims when a party cannot establish that he or she is similarly situated to those whom they contend are being treated differently." *Id.*

"To make out a claim for an equal protection violation based on disparate impact, a plaintiff must show (1) that a state action impacts his suspect class more than others, and (2) that the state actor intended to discriminate against the suspect class." *Odunlade*, 823 N.W.2d at 648; *In re Contest of General Election*, 767 N.W.2d 453, 463 (Minn. 2009) (the "more" that is required for a disparate impact claim is "is intentional or purposeful discrimination") (citing *Snowden v. Hughes*, 321 U.S. 1, 8 (1944)); *Dean v. City of Winona v.*, 843 N.W.2d 249, 260 (Minn. App. 2014) (where statute is facially neutral, "only invidious discrimination is deemed constitutionally offensive").

Here, Plaintiffs' allegations against Defendants fail to state a "disparate treatment" claim because they do not allege that the teacher tenure laws themselves result in differential treatment of Plaintiffs. Rather, Plaintiffs allege that application of the teacher tenure laws exacerbates

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(Footnote Continued from Previous Page)

[8] "By definition, a facial challenge to a statute on equal protection grounds asserts that at least two classes are created by the statute, that the classes are treated differently under the statute, and that the difference in treatment cannot be justified." *In re McCannel*, 301 N.W.2d 910, 916 (Minn. 1980).

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existing discrepancies in low-income and minority schools. (*See, e.g.*, Am. Compl. ¶¶ 19–20.) According to Plaintiffs' own allegations, the teacher tenure laws are applied similarly across school districts, but allegedly negatively impact low-income and minority school districts because they have higher numbers of "ineffective teachers." (*Id.*)

Minnesota courts have held that such allegations do not state a claim for disparate treatment under the Equal Protection Clause. For example, in *Odunlade*, 823 N.W.2d at 647–48, the Minnesota Supreme Court rejected plaintiff-taxpayers' argument that they were treated differently in violation of the Equal Protection Clause where their residential properties were assessed at higher ratios than other communities due to "bank sales" being excluded from calculation of market value. *Id.* The court noted that there were simply "more bank sales in relators' neighborhoods" than in other neighborhoods, but that this does not give rise to an equal protection claim, because the statute was applied similarly across all neighborhoods. *Id.*; *see also City of Winona*, 843 N.W.2d at 259 ("Appellants real complaint is about the effect of an otherwise neutral ordinance on their particular circumstances, which does not give rise to an equal protection claim.") Because "discriminatory effects in the absence of disparate treatment" does not give rise to an equal protection claim, *Odunlade*, 823 N.W.2d at 648, Plaintiffs' allegations do not state a claim for disparate treatment under the Equal Protection Clause.

Additionally, Plaintiffs' First Amended Complaint does not state a disparate impact claim. Plaintiffs have not alleged that Defendants have *intentionally* discriminated against them on the basis of their race. Accordingly, Plaintiffs have failed to state an Equal Protection Clause claim against Defendants based on the alleged disparate impact of the teacher tenure laws. *Odunlade*, 823 N.W.2d at 648 (affirming dismissal of plaintiff's disparate impact claim because

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"relators fail to allege that respondents intentionally discriminated against them on the basis of any suspect class status").

3. Socioeconomic status is not a suspect class under the Equal Protection Clause.

Plaintiffs' allegations do not state a claim under the Equal Protection Clause for the additional reason that socioeconomic status is not a suspect class for purposes of the Equal Protection Clause. *Odunlade*, 823 N.W.2d at 648 ("But wealth or socioeconomic status does not constitute a suspect class, and therefore relators have failed to allege the first element of a disparate impact claim.") (citing *Rodriguez*, 411 U.S. at 23-24, 28); *Skeen*, 505 N.W.2d at 314–15 ("The alleged 'class' of low-income persons constitutes an incredibly amorphous group, a group which changes over time and by context, and which is unable to show the historical pattern of discrimination that traditional 'suspect' classes can.") (quoting *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d at 1021).

4. Teacher tenure laws satisfy rational basis review.

Because strict scrutiny does not apply to the teacher tenure laws, to withstand a constitutional challenge, the teacher tenure laws—which must be presumed valid—need only satisfy rational basis review: if the statute is "rationally related to the achievement of a legitimate government purpose, it will be upheld." *Skeen*, 505 N.W.2d at 312. A reviewing court must not substitute its judgment for that of the legislature. *Id.*

Minnesota courts have long recognized the purpose of the teacher tenure laws as "to promote 'stability, certainty, and permanency of employment on the part of those who had shown by educational attainment and by probationary trial their fitness for the teaching profession." *Strand v. Special Sch. Dist. No. 1*, 361 N.W.2d 69, 72 (Minn. App. 1984), *rev'd on other grounds*, 392 N.W.2d 881 (Minn. 1986). The teacher tenure laws promote this purpose by

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(1) allowing teacher dismissal only for cause and after a hearing, following a three-year probationary period, (2) giving teachers due process rights in the event of a discharge or demotion, and (3) laying off teachers in the order of least to most seniority, unless the school district and teachers' representative reach some other agreement. These enhanced teacher protections are rationally related to the purpose of promoting stability, certainty, and permanency of teacher employment. Indeed, the Minnesota Supreme Court long ago concluded that the teacher tenure laws are "wise legislation, promotive of the best interests, not only of the teachers affected, but of the schools as well." *Oxman v. Indep. Sch. Dist. of Duluth*, 227 N.W. 351, 352 (Minn. 1929). The teacher tenure laws must be upheld under a rational basis analysis.

C. Plaintiffs Fail To State A Procedural Due Process Claim Against Defendants.

As to Plaintiffs' procedural claim under the Due Process Clause of the Minnesota Constitution, the State Defendants do not have any role in district employment decisions, nor in district communication with students. As such, Plaintiffs cannot state a viable claim against any State Defendant for denying procedural due process. *See supra* Relevant Factual Background Part C. and Argument Part II.B.

Regardless, Plaintiffs' procedural due process claim also fails as a matter of law. Analysis of a procedural due process claim proceeds in two steps: the court first "must identify whether the government has deprived the individual of a protected life, liberty, or property interest," and, if that condition is met, second "must determine whether the procedures followed by the government were constitutionally sufficient." *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012) (citations, quotation marks, and emendations omitted).

Plaintiffs allege only a property interest. (Am. Compl. at ¶ 283). Protected property interests must stem from a source independent of the constitution, such as state laws or rules. *In*

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re Individual 35W Bridge Litigation, 806 N.W.2d 820, 830 (Minn. 2011). A property interest in public education has been recognized in the context of student expulsion cases. *See, e.g.*, *Goss v. Lopez*, 419 U.S. 565, 573–74 (1975). However, that property interest has been limited solely to circumstances of "total exclusion from the educational process." *Zellman ex rel MZ v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999). Plaintiffs acknowledge that they currently attend school, and as such do not allege they have suffered "total exclusion" from their public education. (*See* Am. Compl. ¶¶ 27–30.) Because Plaintiffs' have not been denied a protected interest, they fail to state a claim under the procedural due process clause. *Sawh*, 823 N.W.2d at 632 ("If the government's action does not deprive an individual of [a protected] interest, then no process is due.").[9]

Furthermore, Plaintiffs' procedural due process claim only highlights the fundamental problems with their case. As discussed above, the Minnesota Constitution delegates to the legislature the authority to determine how to a create a system of education in Minnesota. The legislature chose to create teacher tenure laws and specifically delegated to school districts the authority over teacher employment decisions. Contrary to the legislature's public policy choices, Plaintiffs now claim that each student from kindergarten through twelfth grade has a right to input on all teacher staffing decisions. (Am. Compl. ¶¶ 274, 280, 286.) Plaintiffs' novel theory has not been recognized in Minnesota or elsewhere, and should be rejected by this Court.

[9] Even if a property interest had existed, process is not due under the *Mathews* three-part balancing test. *Sawh*, 823 N.W.2d at 632 (quoting *Mathews v. Eldrige*, 424 U.S. 319, 335 (1976) (identifying three parts as: (1) the private interest affected, (2) the risk of erroneous deprivation through procedures used; (3) the probable value, if any of additional procedural safeguards, and (4) the government's interest, including burdens with additional or substitute process).

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CONCLUSION

For the reasons stated herein, State Defendants ask this Court dismiss Plaintiffs' Amended Complaint in its entirety and with prejudice.

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Respectfully submitted,

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MINN. STAT. § 549.211 ACKNOWLEDGMENT

The parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

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