

No. A17-0033

STATE OF MINNESOTA
SUPREME COURT

Tiffini Flynn Forslund, et al.,

Appellant/Petitioners,

vs.

State of Minnesota, et al.,

Respondents,

**RESPONDENTS STATE OF MINNESOTA, GOVERNOR MARK DAYTON,
MINNESOTA DEPARTMENT OF EDUCATION, AND COMMISSIONER BRENDA
CASSELLIUS'S OPPOSITION TO PETITION FOR REVIEW**

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Commissioner Brenda Cassellius**

Attorneys for Petitioners

In response to Petitioners' constitutional challenge to Minnesota's laws governing the employment of public elementary and secondary school teachers, Minn. Stat. §§ 122A.40 and 122A.41, the Ramsey County District Court held that Petitioners' claims fail as a matter of law because, *inter alia*, they are not justiciable and Petitioners failed to assert viable legal claims. In a unanimous, unpublished decision, the Minnesota Court of Appeals affirmed that the court lacked jurisdiction to consider Petitioners' claims, and did not reach the remaining issues.

Respondents respectfully request that the Court deny review of the above-titled decision.

LEGAL ISSUES

I. Does Petitioners' challenge to Minn. Stat. §§ 122A.40 and 122A.41 present a nonjusticiable political question?

The court of appeals concluded that Petitioners' claims do not present a justiciable question and therefore must be dismissed.

II. Do Petitioners lack standing, where their alleged harm is not definite, concrete, fairly traceable to Respondents, and not redressable?

The court of appeals did not reach this issue. The district court held that Petitioners lack standing. Respondents request cross-review of this issue if the Court grants the Petition.

III. Alternatively, do Petitioners' challenges to Minn. Stat. §§ 122A.40 and 122A.41 necessarily fail because the laws are not unconstitutional in all applications?

The court of appeals did not reach this issue. The district court held that Petitioners' challenges are facial and necessarily fail because the challenged laws are not

unconstitutional in all applications. Respondents request cross-review of this issue if the Court grants the Petition.

IV. Alternatively, do Petitioners fail to state a claim under the Education Clause of the Minnesota Constitution?

The court of appeals did not reach this issue. The district court held that Petitioners did not plead a viable claim under the Education Clause. Respondents request cross-review of this issue if the Court grants the Petition.

V. Alternatively, do Petitioners fail to state a claim under the Equal Protection Clause of the Minnesota Constitution?

The Court of Appeals did not reach this issue. The district court held that Petitioners did not plead a viable claim under the Equal Protection Clause. Respondents request cross-review of this issue if the Court grants the Petition.

VI. Alternatively, do Petitioners' claims fail because Respondents are not proper Defendants?

The court of appeals and district court did not reach this issue. Respondents request cross-review of this issue if the Court grants the Petition.

VII. Alternatively, do Petitioners' claims fail because Petitioners seek relief under the Declaratory Judgment Act but have not joined all necessary parties?

The court of appeals and district court did not reach this issue. Respondents request cross-review of this issue if the Court grants the Petition.

VIII. Did the district court commit error in not providing Petitioners leave to amend the complaint when Petitioners never brought a motion asking for leave to amend?

The court of appeals ruled that the district court did not abuse its discretion.

STATEMENT OF THE CASE

Petitioners challenge the constitutionality of Minnesota’s long-standing teacher tenure laws. *See* Minn. Stat. §§ 122A.40; .41.¹ These laws require public school districts to provide due process protections for teachers who have been retained beyond the three-year probationary period. *Id.* at subd. 7; subd. 4. A school district may discharge teachers for just cause, including for “inefficiency or gross inefficiency in teaching.” *Id.* at subds. 9, 13; subd. 6.

Petitioners’ Amended Complaint alleges that school districts have hired and not discharged so-called “ineffective” teachers. Am. Compl. ¶17. Petitioners claim that the existence of these “ineffective” teachers—and the risk that their child will receive one—results in a constitutionally inadequate education. *Id.* ¶22-24. Petitioners further contend that the teacher tenure laws are the cause of ineffective teachers, and therefore are unconstitutional. *Id.* The Amended Complaint asserts claims against five school districts and several State defendants, alleging facial and as-applied challenges under the Education, Equal Protection, and Due Process Clauses of the Minnesota Constitution.

The district court dismissed Petitioners’ claims in their entirety and with prejudice for several independent and alternative reasons. First, the court found Petitioners’ claims

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, Respondents refer to both as “tenure” laws.

raised questions of education policy that are legislative in nature and therefore not justiciable. *Id.* 37-39.

Second, the court found that Petitioners lack standing. Among other things, the court held that the alleged harms were not concrete and actual, nor fairly traceable to the State Defendants, who do not hire and retain teachers, nor to the challenged laws, which explicitly allow districts to discipline and terminate teachers who are inefficient. *Id.* 34-36. Furthermore, Petitioners acknowledged that their children could still be taught by an “ineffective teacher” even if the challenged laws were enjoined, so the court held that it lacked the ability to redress the alleged harms. *Id.* 36-37.

Third, in the alternative, the district court held that Petitioners fail to state any viable claim under the Minnesota Constitution. *Id.* 4-5. Specifically, the court dismissed the Education Clause claim because “there simply is no recognized right under the Education Clause to identical or ‘uniform’ education or teachers.” *Id.* 43. The district court also rejected Petitioners’ claim that their education is constitutionally inadequate. *Id.* The court held there was no basis for such a legal theory and, in any event, found that Petitioners have not alleged facts showing their children’s education was inadequate. *Id.* 44. The court dismissed Petitioners’ facial Equal Protection claim on the basis that the challenged statutes do not discriminate on their face. *Id.* 47-48. Finally, the court also held that Petitioners had not pled a proper as-applied Equal Protection or Due Process claim, but that such a claim would also fail as a matter of law. *Id.* 48-52.

Petitioners appealed to the Minnesota Court of Appeals. On appeal, Petitioners withdrew their Equal Protection claim based on suspect class, Procedural Due Process

claim, and the claims asserted against the five school district defendants. App. Br. at 12. Petitioners also argued that the district court erred by not providing Petitioners leave to amend, even though Petitioners admitted that no formal motion had been brought. *Id.* at 45.

In an unpublished, unanimous decision, the court of appeals held that Petitioners' claims present nonjusticiable political questions. *Id.* at 11. The court of appeals also confirmed that the district court did not err by dismissing the Amended Complaint without leave to amend because Petitioners requested leave only orally in passing and never filed a motion to amend. *Id.* at 11-12. The court of appeals did not address the remaining issues on appeal.

Petitioners filed a Petition for Review on October 4, 2017.

ARGUMENT

I. Long-Standing Minnesota Law Supports The Decision Of The Minnesota Court Of Appeals.

This Court has recognized that the Minnesota Legislature passed tenure laws based on valid legislative purposes, including to serve “the *benefit and advantage of the school system . . .*” *McSherry v. City of St. Paul*, 277 N.W. 541, 544 (Minn. 1938) (italics in original) (explaining that tenure laws established a merit-based system, and “that most advantages go to the youth of the land and to the schools themselves, rather than the interest of the teachers as such.”). *See also Frye v. Indep. Sch. Dist. No. 625*, 494 N.W.2d 466, 467 (Minn. 1992); *Oxman v. Indep. Sch. Dist. of Duluth*, 227 N.W. 351, 352 (Minn. 1929) (tenure laws are “wise legislation, promotive of the best interests, not

only of teachers affected, but of the schools as well.”) The Court explained that the tenure laws do “not impair the *discretionary* power of school authorities.” *McSherry*, 277 N.W. at 544 (“The right to demote or discharge provides remedies for safeguarding the future against incompetence, insubordination, and other grounds stated in the act.”); *see* Minn. Stat. §§ 122A.40, subs. 9, 13; 122A.41, subd. 6.

The Minnesota Constitution textually commits these types of educational policy decisions to the Legislative Branch. Minn. Const., art. XIII, § 1; *Mattson v. Flynn*, 13 N.W.2d 11, 16 (Minn. 1944) (“The public policy of a state is for the legislature to determine and not the courts.”). Petitioners challenge the quality and practices of teachers.² Claims involving education policies and methods—including for educational malpractice—have long been recognized as not justiciable by Minnesota courts. *Id.*; *Assoc. Schs. of Ind. Dist. No. 63 v. Sch. Dist. No. 83*, 142 N.W. 325, 327 (Minn. 1913); *Alsides v. Brown Inst. Ltd.*, 592 N.W.2d 468, 473 (Minn. App. 1999); *see also Skeen v. State*, 505 N.W.2d 299, 318-19 (Minn. 1993) (recognizing that the legislature is the proper venue for debates about education policy, not the courts).

Appellants’ concerns with tenure laws relate to the wisdom of legislative policy, not the scope of legislative powers, and analysis of the tenure laws should therefore occur at the Legislature. *Curryer v. Merrill*, 25 Minn. 1, 2, 7 (Minn. 1878). Because the court

² The Court has granted review of a case that involves the justiciability of claims under the Education Clause, *Cruz-Guzman v. State*, 892 N.W.2d 533 (Minn. App. 2017), *review granted* (Minn. Apr. 26, 2017), but the cases involve different factual allegations.

of appeals decision is founded in long-standing Minnesota law, there is no need to clarify or harmonize the law. *See* Minn. R. Civ. App. P. 117, subd. 2(c), (d).

II. Petitioners' Claims Fail For Numerous Independent And Alternative Reasons.

Petitioners' claims present other flaws that are fatal to their claims. These flaws would render this Court's exercise of supervisory authority futile.

For example, Petitioners have not pled facts that would support standing to assert their claims. The Amended Complaint does not assert concrete harm to Petitioners, focusing instead on the "risk" of the district assigning an "ineffective teacher" and relying solely on aggregate data. Am. Compl. ¶¶27-30; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 n.1 (1992); *Clapper v. Amnesty Int'l USA*, 133 S.Ct. 1138, 1147 (2013). The harm alleged is not fairly traceable to the tenure laws or Respondents, because the laws provide school districts the authority to dismiss inefficient teachers. Minn. Stat. §§ 122A.40, subds. 9, 13; .41, subd. 6; *Clapper*, 133 S.Ct. at 1149. Furthermore, because Petitioners admit that ineffective teachers will remain even if the tenure laws are struck down, Add. 8, 37, their claims are not redressable. *Warth v. Seldin*, 422 U.S. 490 (1975); *see also McSherry*, 277 N.W. at 543-44 (recognizing harms alleged by Petitioners' predated tenure laws).

Likewise, Petitioners' claims fail because the laws are not unconstitutional in all applications. Petitioners assert facial claims. *See* App. Reply Br. at n.5; *see also John Doe No. 1 v. Reed*, 561 U.S. 186 (2010) (where a party seeks law be enjoined in entirety, challenge is facial); Am. Compl. ¶74. Petitioners must therefore carry the "heavy burden

of proving that the [tenure laws are] unconstitutional in all applications.” *McCaughtry v. City of Red Wing*, 831 N.W.2d 518, 522 (Minn. 2013); *United States v. Salerno*, 481 U.S. 739, 745 (1987). Here, Petitioners have admitted the “Challenged Statutes are not unconstitutional as they relate to effective teachers.” App. Br. at 36. Furthermore, the laws on their face provide school districts authority to dismiss ineffective and underperforming teachers.

These, in addition to the other legal issues identified above, each independently justifies the dismissal of Petitioners’ claims. Alternatively, in the event the Court accepts review of this matter, Respondents request the Court grant cross review of all eight legal issues identified herein. The issues were fully briefed below and Respondents rely on the arguments as alternate bases for dismissal of this action. *See* Minn. R. Civ. App. P. 117, subd. 4.

CONCLUSION

For the reasons above, Respondents respectfully request the Court deny review.

Dated: October 24, 2017

Respectfully submitted,

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**CERTIFICATION OF
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APPELLATE COURT
CASE NUMBER: A17-0033

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Dated: October 24, 2017

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