

STATE OF MINNESOTA
IN COURT OF APPEALS

FILED

January 9, 2017

OFFICE OF
APPELLATE COURTS

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

**STATEMENT OF THE CASE
OF APPELLANT**

Plaintiffs,

TRIAL COURT CASE NO. 62-CV-16-2161

v.

APPELLATE COURT CASE NO.: _____

State of Minnesota; Mark Dayton, in
his official capacity as the Governor
of the State of Minnesota; the
Minnesota Department of Education;
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.

1. Court or agency of case origination and name of presiding judge or hearing officer.

Ramsey County District Court, Second Judicial District
Hon. Margaret M. Marrinan, presiding

2. Jurisdictional statement.

(A) Appeal from district court.

Statute, rule or other authority authorizing appeal:

Minn. R. Civ. App. P. 103.03(a)

Date of entry of judgment or date of service of notice of filing of order from which appeal is taken:

November 9, 2016

Authority fixing time limit for filing notice of appeal (specify applicable rule or statute):

Minn. R. Civ. App. P. 104.01, subd. 1

Date of filing any motion that tolls appeal time:

Not applicable.

Date of filing of order deciding tolling motion and date of service of notice of filing:

Not applicable.

(B) Certiorari appeal.

Statute, rule or other authority authorizing certiorari appeal:

Not applicable.

Authority fixing time limit for obtaining certiorari review (cite statutory section and date of event triggering appeal time, e.g., mailing of decision, receipt of decision, or receipt of other notice):

Not applicable.

(C) Other appellate proceedings.

Statute, rule or other authority authorizing appellate proceeding:

Not applicable.

Authority fixing time limit for appellate review (cite statutory section and date of event triggering appeal time, e.g., mailing of decision, receipt of decision, or receipt of other notice):

Not applicable.

(D) Finality of order or judgment.

Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees? Yes (X)

Did the district court order entry of a final partial judgment for immediate appeal pursuant to Minn. R. Civ. App. P. 104.01?

Yes () No () or

Not applicable.

If yes, provide date of order:

Not applicable.

If no, is the order or judgment appealed from reviewable under any exception to the finality rule? Yes () No ()

If yes, cite rule, statute, or other authority authorizing appeal:

Not applicable.

(E) Criminal only:

**Has a sentence been imposed or imposition of sentence stayed? Yes ()
No ()**

If no, cite statute or rule authorizing interlocutory appeal:

Not applicable.

3. State type of litigation and designate any statutes at issue.

This is a case involving a constitutional challenge to certain sections of Minnesota's Continuing Contract Law, Minn. Stat. § 122A.40, and Tenure Act, Minn. Stat. § 122A.41.

4. Brief description of claims, defenses, issues litigated and result below. For criminal cases, specify whether conviction was for a misdemeanor, gross misdemeanor, or felony offense.

Plaintiffs are mothers of children who attend (or have attended) public schools across the state of Minnesota. Plaintiffs' children are united by a common, unfortunate thread: They have each been assigned to chronically ineffective teachers (and face a substantially increased risk of being assigned to chronically ineffective teachers), whose employment is protected by Minnesota's Continuing Contract Law, Minn. Stat. § 122A.40, and Tenure Act, Minn. Stat. § 122A.41 (collectively, the "Challenged Statutes"). By providing near-permanent job security to chronically ineffective teachers, the Challenged Statutes jeopardize Plaintiffs' children's fundamental right to a general and uniform system of

education *and* an adequate education, as guaranteed by Article XIII, section 1 of the Minnesota Constitution (the “Education Clause”).

On April 13, 2016, Plaintiffs filed a complaint seeking a declaration that the Challenged Statutes burden their children’s fundamental right to a general, uniform, and adequate system of education. Plaintiffs’ complaint raised facial and as-applied claims for relief, and named as defendants the State of Minnesota; Mark Dayton, in his official capacity as the Governor of the State of Minnesota; the Minnesota Department of Education; and Dr. Brenda Cassellius, in her official capacity as the Commissioner of Education (collectively, the “State Defendants”). Plaintiffs’ complaint further alleged that the Challenged Statutes violate the Minnesota Constitution’s guarantee of equal protection of the law by creating an unjustifiable distinction between students taught by effective teachers and students taught by ineffective teachers; *and* its guarantee of due process of law by depriving children taught by ineffective teachers of their fundamental right to an adequate education without first providing notice and an opportunity to be heard.

On May 2, 2016, before the State Defendants submitted a responsive pleading, Plaintiffs filed their amended complaint. This amended complaint differed from the original complaint only to the extent that Plaintiffs added as-applied claims for relief against the individual school districts where Plaintiffs’ children attend school (collectively, the “School District Defendants”). In particular, Plaintiffs alleged that these districts’ policies and practices adopted in response to the Challenged Statutes result in as-applied violations of the Minnesota Constitution’s Education, Equal Protection, and Due Process Clauses.

On June 16, 2016, the State Defendants and the School District Defendants each filed motions seeking dismissal of Plaintiffs’ complaint in its entirety, and with prejudice. The Defendants’ various objections distilled to three themes: (i) the district court lacked jurisdiction over Plaintiffs’ claims because Plaintiffs failed to allege facts sufficient to establish a justiciable controversy among the parties; (ii) the district court lacked jurisdiction over Plaintiffs’ claims because Plaintiffs’ complaint amounted to a non-justiciable attack on legislative policy; and (iii) even assuming that the district court properly maintained jurisdiction, Plaintiffs’ claims still failed because no set of facts exist which would support granting a declaration that the Challenged Statutes are unconstitutional under the Education Clause, the Equal Protection Clause, or the Due Process Clause.

On July 5, 2016, Plaintiffs filed their consolidated opposition to the Defendants’ motions to dismiss. In addition to answering each of the points raised in the Defendants’ various motions to dismiss, Plaintiffs specifically requested the opportunity to amend and re-file should the district court determine that any or all of Plaintiffs’ claims should be dismissed for lack of jurisdiction or failure to state a claim.

On July 14, 2016, the district court heard oral argument on the Defendants' motions to dismiss. Thereafter, on October 26, 2016, the district court granted the Defendants' various motions to dismiss in their entirety, dismissing Plaintiffs' complaint with prejudice. First the court determined that Plaintiffs' complaint failed for lack of subject matter jurisdiction because Plaintiffs lack standing to seek a declaratory judgment regarding the constitutionality of the Challenged Statutes *and* because Plaintiffs' claims are barred by the political question doctrine. Thereafter, the Court determined that Plaintiffs' complaint failed for failure to state a cognizable claim under any of the constitutional provisions invoked. The district court did not address Plaintiffs' request for leave to amend.

On November 9, 2016, the district court entered judgment. Plaintiffs appeal the district court's judgment and seek review of the Order of October 26, 2016 as it relates to the State Defendants only.

5. List specific issues proposed to be raised on appeal.

Did the district court err as a matter of law when it determined that Plaintiffs lacked standing to seek a declaration that the Challenged Statutes burden their children's fundamental right a general and uniform system of education that provides an adequate education to all students in Minnesota?

Did the district court err as a matter of law when it determined that Plaintiffs' claims "relate to the wisdom of ... legislative policy" and are therefore immune from judicial review under the political question doctrine?

Did the district court err as a matter of law when it dismissed Plaintiffs' Education Clause claims with prejudice upon a determination that no set of facts, if proved, would establish that the Challenged Statutes unconstitutionally burden children's fundamental right a general and uniform system of education that provides an adequate education to all students in Minnesota?

Did the district court err as a matter of law when it dismissed Plaintiffs' Equal Protection Clause claims with prejudice upon a determination that no set of facts, if proved, would establish that the Challenged Statutes unconstitutionally burden children's right to equal protection of the law by creating an unjustifiable distinction between students that are taught by effective teachers (and therefore receive their rightful adequate education) and students that are taught by ineffective teachers (and therefore do not receive their rightful adequate education)?

Did the district court abuse its discretion when it dismissed Plaintiffs' complaint in its entirety and with prejudice, without first providing Plaintiffs an opportunity to amend?

6. Related appeals.

List all prior or pending appeals arising from the same action as this appeal. If none, so state.

Appellants are not aware of any other appeals arising from this action.

List any known pending appeals in separate actions raising similar issues to this appeal. If none are known, so state.

Appellants are not aware of any appeals in separate actions raising issues similar to this appeal.

7. Contents of record.

Is a transcript necessary to review the issues on appeal? Yes () No (X)

If yes, full () or partial () transcript?

Has the transcript already been delivered to the parties and filed with the trial court administrator? Yes () No (X)

If not, has it been ordered from the court reporter? Yes () No (X)

If a transcript is unavailable, is a statement of the proceedings under Rule 110.03 necessary? Yes () No (X)

In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04? Yes () No (X)

8. Is oral argument requested? Yes (X) No ()

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? Yes () No (X)

If yes, state where argument is requested:

Not applicable.

9. Identify the type of brief to be filed.

Formal brief under Rule 128.02. (X)

Informal brief under Rule 128.01, subd. 1 (must be accompanied by motion to accept unless submitted by claimant for reemployment benefits). ()

Trial memoranda, supplemented by a short letter argument, under Rule 128.01, subd. 2. ()

10. Names, addresses, zip codes and telephone numbers of attorney for appellant and respondent.

<p>Attorneys for Appellants Tiffini Flynn Forslund, Justina Person, Bonnie Dominguez, and Roxanne Draughn:</p> <p>FISHMAN HAYGOOD, L.L.P. James R. Swanson (LA #18455) Alysson L. Mills (LA #32904) Jesse C. Stewart (LA #36282) 201 St. Charles Avenue, 46th Floor New Orleans, Louisiana 70170-4600 Telephone: (504) 586-5252 Facsimile: (504) 586-5250 jswanson@fishmanhaygood.com amills@fishmanhaygood.com jstewart@fishmanhaygood.com</p> <p>BASSFORD REMELE <i>A Professional Association</i> Lewis A. Remele, Jr. (MN #90724) Frederick E. Finch (MN #29191) Kate L. Homolka (MN #395229) 33 South Sixth Street, Suite 3800 Minneapolis, Minnesota 55402-3707 Telephone: (612) 333-3000 Facsimile: (612) 333-8829 lremele@bassford.com ffinch@bassford.com khomolka@bassford.com</p> <p><i>and</i></p> <p>Nekima Levy-Pounds (MN #335101) 2901 Lyndale Avenue N. Minneapolis, Minnesota 55411 Telephone: (612) 210-3734 nekimalevypounds@gmail.com</p>	<p>Attorneys for Respondents 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:</p> <p>OFFICE OF THE ATTORNEY GENERAL State of Minnesota Alethea M. Huyser, Assistant Solicitor General (MN #0389270) Andrew Tweeten, Assistant Attorney General (MN #0395190) 445 Minnesota Street, Suite 1100 St. Paul, MN 55101-2128 Telephone: (651) 757-1243 ☐ Facsimile: (651) 282-5832 alethea.huyser@ag.state.mn.us andrew.tweeten@ag.state.mn.us</p>
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BASSFORD REMELE
A Professional Association

Dated: January 9, 2017

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