SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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MYMOENA DAVIDS, 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,

Intervenor-Defendant,

- and -

SETH COHEN, et al.,

Intervenors-Defendants,

- and -

PHILIP A. CAMMARATA and MARK MAMBRETTI,

Intervenors-Defendants.

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Index No. 101105/14
DCM Part 6

***WRIGHT* PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS FOR A STAY**

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JOHN KEONI WRIGHT, et al.,

Plaintiffs,

- against -

THE STATE OF NEW YORK, et al.,

Defendants,

- and -

SETH COHEN, et al.,

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.

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INTRODUCTION

Four years ago, parents of students in New York public schools filed a complaint in this Court seeking to enforce New York's constitutional guarantee of a sound basic education for their children and for children across the State. They alleged that several state statutes governing teacher tenure, discipline, evaluation, and quality-blind layoffs cause ineffective teachers to remain in New York's public schools and thereby deny students that constitutional right. Over the course of the past four years, however, Defendants have yet even to answer Plaintiffs' complaint. Instead, Defendants and Intervenor-Defendants, in an effort to avoid litigating these issues on their merits, sought dismissal of Plaintiffs' claims on the grounds that Plaintiffs did not adequately allege a violation of Article XI and that their claims are nonjusticiable. Both this Court and the Appellate Division squarely rejected those arguments.

This Court should deny Defendants' request to further delay these proceedings. Defendants have sought a stay pending the Appellate Division's consideration of their motions for leave to appeal to the Court of Appeals, and, if leave is granted, pending the Court of Appeals' decision. In support of this request, Defendants primarily rehash the merits of their arguments in favor of dismissal, which have been uniformly rejected by this Court and a unanimous decision from the Appellate Division. They also argue that proceeding with discovery would be unduly costly and prejudicial, but it is hard to see how merely answering the complaint and engaging in ordinary discovery (which every defendant in litigation must do) will unduly burden them. If the Court believes a stay is nevertheless warranted at this time, Plaintiffs respectfully request that it be limited so that at a minimum the pleadings and document discovery may proceed in the ordinary course. There is no reason for Defendants not to answer the Complaint at this stage, as the resources required to answer a lawsuit that has been pending for four years should be minimal, and would not require any resources at all from the Court. And document discovery is significantly

less costly than expert discovery. While Plaintiffs do not think a stay is warranted at all, a limited stay would allow this litigation to finally begin to proceed through the preliminary pleading and document discovery stages.

With every day that passes, students across the state are being denied their constitutional right to a sound basic education—and, at a minimum, the opportunity for their parents to litigate their sincere claims that their school-aged children's rights are being violated. Defendants' arguments on appeal are not meritorious, and there is no good cause to relieve them of their ordinary burden to defend against the allegations in this litigation. This Court and the unanimous Appellate Division have already declined to "close the courthouse door to parents and children with viable constitutional claims." Order on Motions to Dismiss at 17 (Mar. 12, 2015). Plaintiffs respectfully request that the Court deny the motion to stay and allow this case to proceed.

BACKGROUND

The *Wright* Plaintiffs are nine parents of students who attend or attended public schools throughout New York State, including in Albany, the Bronx, Brooklyn, Queens, and Rochester. They allege that the State's enforcement of several education-related statutes denied New York schoolchildren, including their own, a sound basic education, in violation of Article XI, § 1, of the New York Constitution. In particular, they allege that the State's enforcement of Education Law §§ 2509, 2510, 2573, 2585, 2588, 2590, 3012, 3012-c, 3020, and 3020(a) (the "Challenged Statutes") individually and collectively have led to the hiring and retention of ineffective teachers, resulting in deleterious effects on student performance in the classroom and causing long-term harm that also affects them outside the classroom.

The *Wright* Plaintiffs commenced this action on July 28, 2014, against the State of New York and several individual state officials in Albany County. *See Wright v. State of New York*, Index No. A00641/2014 (Sup. Ct. Albany Cty.); R67-89. The action was later consolidated with

a similar action, *Davids v. State of New York*, Index No. 101105/2014 (Sup. Ct. Richmond Cty.), which was brought by another group of parents (the "*Davids* Plaintiffs," and collectively with the *Wright* Plaintiffs, "Plaintiffs"). The Court granted motions to intervene filed by additional state parties and the New York City Department of Education. It also granted motions to intervene filed by two teachers' unions, the United Federation of Teachers and the New York State United Teachers ("Intervenor-Defendants, and collectively with the State defendants and municipal defendants, "Defendants").

In late fall 2014, Defendants filed motions to dismiss. *See* R461; R598; R747; R751; R754. This Court dismissed the claims against two state officials but denied the balance of the motions. *See* R17-33. In its decision, this Court squarely rejected Defendants' contention that Plaintiffs failed to state a claim under Article IX or that their claims were nonjusticiable. Plaintiffs stated a claim, the Court explained, because the Court of Appeals has clearly provided that "it is the state's responsibility to provide minimally adequate funding, resources, and educational supports to make basic learning possible, . . . which has been judicially recognized to entitle children to minimally adequate teaching of reasonably up-to-date basic curricula . . . by sufficient personnel adequately trained to teach those subject areas." R30-31 (internal quotation marks and citations omitted). Plaintiffs' allegations about "serious deficiencies in teacher quality" and the resulting "negative impact on the performance of students," to name only a few, were "sufficient to make out a prima facie case of constitutional dimension connecting the retention of ineffective teachers to the low performance levels exhibited by New York students, *e.g.*, a lack of proficiency in math and english." *Id.* at 31. And the claims were justiciable, this Court ruled, both because the judiciary is well-equipped to "interpret and safeguard constitutional rights and review the acts of the other branches of government," *id*., and because Plaintiffs "clearly have standing," as they "have been

or are being injured by the deprivation of their constitutional right to receive a 'sound basic education.'" R32.

This Court also denied Defendants' renewed requests to dismiss following modest modifications to the state education laws that in no way remedied Plaintiffs' claims. R954-58. "[T]he legislature's marginal changes," the Court explained, "would [not] change the prior determination of the court." R957 (internal quotation marks and citation omitted). Although it rejected the motions on the merits, this Court granted a stay pending appeal so that Defendants could seek review in the Appellate Division.

The Appellate Division unanimously affirmed on March 28, 2018, fully agreeing with this Court's conclusions on all of the issues raised in the appeal. It first agreed with this Court that Defendants "were not entitled to dismissal" for failure to state a claim, because Plaintiffs had stated a cause of action that the Challenged Statutes "separately and together[] violate the right to a sound basic education protected by the Education Article of the NY Constitution." *Davids v. State*, 159 A.D.3d 987, 990 (2d Dep't 2018). The Appellate Division also agreed that the case is not moot. "[D]espite the amendments to some of the statutes they challenge," the it explained, Plaintiffs' claims "are not academic," *id.* at 992, as a "declaration as to the validity or invalidity of those statutes" would have a "practical effect on the parties." *Id.* (internal quotation marks and citation omitted). And it agreed that Plaintiffs clearly had standing, "as they adequately alleged a threatened injury in fact to their protected right of a sound basic education due to the retention and promotion of alleged ineffective teachers." *Id.* (citing *Bernfeld v. Kurilenko*, 91 A.D.3d 893, 894 (2d Dep't 2012)). The Appellate Division thus affirmed, noting that Defendants' "remaining contentions are without merit." *Id.*

Approximately a month later, Defendants moved the Appellate Division for leave to appeal, repeating their well-worn arguments that Plaintiffs failed to state a claim and that the controversy is not justiciable.[1] The State and municipal defendants have now returned to this Court seeking a further stay of proceedings pending the disposition of the motions for leave to appeal and, if they are granted, pending the Court of Appeals' review.

ARGUMENT

This Court should deny Defendants' request for a further stay in this case. Defendants' arguments on appeal lack merit, as evidenced by the fact that their multiple prior attempts at seeking dismissal of Plaintiffs' claims have been uniformly and fully rejected by both this Court and by the Appellate Division. And Defendants will not suffer any undue costs or prejudice by proceeding through the initial stages of pleadings and discovery (or at a minimum, document discovery) while their further attempts at appeal are pending.

Litigation ordinarily proceeds in the trial court following the denial of a motion to dismiss, unless this Court "grant[s] a stay of proceedings in a proper case." C.P.L.R. § 2201. The Court's discretion is guided by "whether (1) the appeal has merit, (2) any prejudice will result from granting or denying a stay, and (3) the stay is designed to delay proceedings." *People ex rel. Schneiderman v. Coll. Network, Inc.*, No. 2978-15, 2016 WL 6330584, at *5 (N.Y. Sup. Ct.. Aug. 19, 2016); *see also In re Terrence K.*, 135 A.D.2d 857, 857 (2d Dep't 1987); *Hebert v. City of New York*, 126 A.D.2d 404, 407 (1st Dep't 1987). Its discretion is also guided by its own sense of "prudence" and "justice." *Bethlehem Baptist Church v. Trey Whitfield Sch.*, 2003 N.Y. Slip. Op. 50927(U), at *5 (Civ. Ct., Kings Cty. 2003).

[1] Defendants also sought a stay from the Appellate Division, but as Plaintiffs explained in their opposition to the motions for leave, those requests are procedurally improper. Under C.P.L.R. § 2201, motions for a stay of proceedings must be filed in this Court, as it is the "court in which [the] action is pending."

A stay of all proceedings can be a "drastic remedy," so only "good cause" can make a "proper case" under C.P.L.R. § 2201. *Hala v. Orange Regional Med. Ctr.*, __ N.Y.S.3d __, 2018 N.Y. Slip Op. 28130, at *4 (Sup. Ct., Orange Cty. 2018). The party seeking a stay thus must provide an "excellent reason" to warrant "bring[ing] to a halt a litigant's quest for a day in court," as "justice delayed is justice denied." *Id.* Although "the risk of inconsistent adjudications, application of proof and potential waste of judicial resources" may justify a stay, *Zonghetti v. Jeromack*, 150 A.D.2d 561, 563 (2d Dep't 1989), "the mere pendency" of a case on appeal "is not by itself ground on which to stay an action," Siegel, *N.Y. Practice* § 255 (6th ed., Mar. 2018 update).

Defendants have failed to show "good cause" for a stay at this juncture. The issues they raise on appeal are not meritorious, there is no risk of inconsistent adjudication, and any potential imposition on judicial resources is far outweighed by advancing this important litigation that, although pending for half a decade, has yet to proceed beyond the motion-to-dismiss stage.

On the merits, this Court and the Appellate Division have already squarely and uniformly rejected Defendants' arguments in their appeal, and those decisions follow directly from binding Court of Appeals precedent. This Court and the Appellate Division were eminently correct in holding that Plaintiffs have adequately alleged the "two elements" of a claim under Article XI: "the deprivation of a sound basic education" and "causes attributable to the State." *Davids*, 159 A.D.3d at 989 (quoting *Aristy-Farer v. State*, 29 N.Y.3d 501, 517 (2017)). It is beyond dispute that effective teachers are an essential ingredient for a sound basic education, as "[c]hildren are . . . entitled to minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas." *Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307,

317 (1995) ("*CFE I*"). And this Court and the Appellate Division were correct to reject Defendants' arguments that Plaintiffs' complaints are legally insufficient because they do not state a claim for funding deficiency, they lack district-specific allegations, and they rely on unreliable studies and statistics. *See Davids*, 159 A.D.3d at 991.

This Court and the Appellate Division were also correct to reject Defendants' other "threshold questions of law." Affirmation in Support of State's Motion for Stay at 6 ¶ 11. The Judiciary has the authority to adjudicate Plaintiffs' constitutional claims. *See, e.g.*, *Campaign for Fiscal Equity, Inc. v. State*, 8 N.Y.3d 14, 28 (2006) ("*CFE III*") ("We [the judiciary of New York] are the ultimate arbiters of our State Constitution.") (citation omitted); *Cohen v. State*, 94 N.Y.2d 1, 11 (1999) ("The courts are vested with a unique role and review power over the constitutionality of legislation . . . .") (citations omitted). Plaintiffs have standing because "they adequately alleged a threatened injury in fact to the protected right of a sound basic education due to the retention and promotion of alleged ineffective teachers," *Davids*, 159 A.D.3d at 992. And this dispute is not moot, as the Legislature's modest changes to the education laws in no way remedied Plaintiffs' allegations and thus "a declaration [of] the validity or invalidity of those statutes" would carry a "practical effect on the parties." *Id.* (internal quotation marks omitted) (citing *Saratoga Cty. Chamber of Commerce v. Pataki*, 100 N.Y.2d 801, 811 (2003)). Finally, Defendants' challenge to the Plaintiffs' legal theory—arguing that Plaintiffs' claims should be construed as impermissible "facial" challenges—misconstrues Plaintiffs' claims and mischaracterizes the doctrine of facial challenges.

In light of the Appellate Division's unanimous affirmance of this Court's decision, the case arrives at this Court in a meaningfully different posture from when this case was stayed more than three years ago pending the Appellate Division's decision. And no other special factors counsel

in favor of a stay at this juncture. There is no "risk of inconsistent adjudications," *Zonghetti*, 150 A.D.2d at 563, as no other cases are pending on appeal that raise the same issues as the claims raised in Plaintiffs' complaint. There also is no risk of undue prejudice to Defendants or waste of judicial resources were this case to proceed to the next stage. *See id.*; *Schneiderman*, 2016 WL 6330584, at *5. Defendants cannot seriously claim that they will be unduly prejudiced or incur any substantial costs by being required to answer a complaint that has been pending for four years, and filing an answer would not involve any judicial resources (much less risk wasting them). Defendants also have not shown how proceeding with discovery in this case would require them to incur any excessive costs. By Defendants' own account, the state legislature "has thoroughly weighed" the policies at issue in this litigation, and "[f]ew areas of public policy have received more consideration." Municipal Defts.' Br. In Support Of Motion for Stay at 5. Many of the documents relevant to discovery in this case thus should be readily available to Defendants, decreasing any cost and burden in undergoing initial discovery while the Appellate Division considers their motions for leave or the Court of Appeals decides their appeal.

Any potential costs also must be weighed against Plaintiffs' significant interest in having their day in court, *see Hala*, 2018 N.Y. Slip Op. 28130, at *4, and this Court's own sense of justice, *Bethlehem Baptist Church*, 2003 N.Y. Slip Op. 501927(U), at *5. With every day that proceedings in this Court are stayed, students across New York public schools are receiving a constitutionally inadequate education. Plaintiff Wright's twins, for instance, had just started elementary school when this complaint was filed; they are now graduating from elementary school and beginning middle school in the fall. The Constitution guarantees those twins—no less than any other student across this State—the right to a sound, basic education. If that right is being violated, justice requires that this litigation proceed with all due haste. And that need is even greater if the issues

in this litigation are truly as expansive as Defendants claim, as any delay would substantially impact when Plaintiffs can reach a resolution of their claims on their merits.

If the Court nevertheless concludes that a stay is warranted in this case at this time, Plaintiffs respectfully request that any stay order be limited, allowing the pleadings and factual document discovery to proceed. As noted, there is no reason for Defendants not to answer the complaint, as they have identified no unique burden in doing so, and the resources required to answer a 25-page complaint that has been pending for four years should be minimal. Factual document discovery is also significantly less costly than depositions or expert discovery—in particular exchanging responses to uncontested requests, which would not involve any judicial resources at all. And indeed some of the Defendants have not even moved or argued for a stay. A limited stay would at a minimum allow this important litigation to begin to proceed through the preliminary pleading and document discovery stages.

CONCLUSION

For the foregoing reasons, Defendants' motions for a stay should be denied.

June 12, 2018

Respectfully submitted,

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