

A17-0033

STATE OF MINNESOTA
IN COURT OF APPEALS

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

Appellants,

v.

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,

Respondents.

**REQUEST OF ED ALLIES, A MINNESOTA NONPROFIT,
FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE***

In accordance with Minn. R. App. P. 129.01, Ed Allies, a Minnesota nonprofit, respectfully requests leave to participate in this action as *amicus curiae* in support of Appellants.¹

I. Identity and interest of *Amicus Curiae*

Ed Allies' interest in this case is public in nature. Ed Allies is a Minnesota-based education-advocacy nonprofit committed to the belief that all Minnesota students deserve educational excellence regardless of race, ethnicity, or socio-economic status. Ed Allies partners with other education, civic, and philanthropic leaders to advocate for better education policies and legislation in Minnesota. Ed Allies' partners include nonprofits, community organizations, schools, and parents.

Who is at the head of the classroom matters greatly to students and families. In fact, access to high-quality teachers is the single most important in-school factor impacting student achievement. Ed Allies is thus dedicated to championing policies that lead to the recruitment, preparation, support, and retention of effective classroom educators.

Appellants' claims undoubtedly raise important constitutional questions, including whether Minnesota Statutes related to hiring and firing public school teachers violate the Minnesota Constitution. But those claims are important to Ed Allies, its partners, and the general public for another reason: there is substantial evidence that in addition to potentially offending the state constitution—or, more accurately, as a corollary to those alleged

¹ Ed Allies hereby certifies that its counsel authored this request in whole and that no person or entity other than Ed Allies has made a monetary contribution to the preparation or submission of this request.

constitutional violations—the challenged statutes also harm Minnesota students by impeding the placement of effective teachers in every classroom.

II. A brief from Ed Allies as *amicus curiae* is desirable.

Education is a fundamental right under the Minnesota Constitution. *Skeen v. State*, 505 N.W.2d 299, 313 (Minn. 1993). The Education Clause, Minn. Const. art. XIII, § 1, places an affirmative duty on the legislature to ensure a “regular method throughout the state whereby all [Minnesota children are] enabled to acquire an education which will fit them to discharge intelligently their duties as citizens of the republic,” *Id.* at 310 (citing *Bd. of Educ. of Town of Sauk Ctr. v. Moore*, 17 Minn. 412, 416, 17 Gil. 391, 394 (1871)); *see also* Kathleen Smith Ruhland, *Equal Opportunity Education for Minnesota’s School Children: A Missed Opportunity by the Court*, 20 Wm. Mitchell L. Rev. 559 (1994) (citing *State ex rel. Bd. of Educ. of City of Minneapolis v. Erickson*, 190 Minn. 216, 222, 251 N.W. 519, 521 (1933)).

Appellants challenge certain sections of Minnesota’s Continuing Contract Law, Minn. Stat. § 122A.40, and Tenure Act, Minn. Stat. § 122A.41 (the “Challenged Statutes”). Of particular relevance here are the Challenged Statutes’ so-called “LIFO Provisions”—Minn. Stat. §§ 122A.40(10)–(11) and 122A.41(14). The LIFO Provisions generally require Minnesota school districts to use a seniority-based system for teacher layoffs. (Am. Compl. ¶ 100.) Similarly, when a school district reinstates previously laid-off teachers, the school district generally must first re-hire the most senior teachers. (*Id.* ¶ 101.) This means that school districts may not typically make firing and re-hiring decisions based on a teacher’s classroom effectiveness and impact on student academic achievement.

Ed Allies is concerned that the district court's premature dismissal of Appellants' claims has needlessly prevented constitutional review of these harmful statutory mandates. *Cf. Elzie v. Comm'r of Pub. Safety*, 298 N.W.2d 29, 33 (Minn. 1980) ("When constitutional violations are alleged, the defendant must demonstrate the complete frivolity of the complaint before dismissal under Rule 12.02 is proper.").

In its *amicus curiae* brief, Ed Allies expects to provide non-duplicative discussion regarding the broader implications of the Challenged Statutes and the LIFO Provisions. Ed Allies will present empirical and anecdotal evidence that seniority-based layoffs have a negative impact on educational outcomes. Research shows that, beyond the first few years of a teacher's career, a teacher's effectiveness does not necessarily improve with experience. Indeed, less experienced teachers (even new teachers) can be highly effective, and sometimes even more effective than their more senior colleagues.

Ed Allies also expects to provide a discussion of the disproportionate effect that LIFO Provisions have on traditionally underserved students. Data show that schools serving marginalized student populations typically employ the least experienced teachers. When layoffs occur, these less-senior teachers are among the first a school district must let go.

For low-income and minority students, assignment to a great teacher can have life-changing, positive consequences. According to a recent study of more than 2.5 million children in grades 3-8, placement in the classroom of a highly effective teacher for just one school year increases a student's likelihood of attending college and earning a higher salary, and decreases the likelihood of teenage pregnancy. Raj Chetty, John N. Friedman and Jonah

E. Rockoff, “Measuring the Impacts of Teachers II: Teacher Value-Added and Student Outcomes in Adulthood,” AM. ECON. REV. 104 (2014), *available at* <https://www.rajchetty.com/chettyfiles/w19424.pdf>. And one school year with highly effective teacher can increase a students’ expected lifetime earnings \$80,000, roughly \$2.25 million in increased expected earnings per classroom. *Id.*

Unfortunately, due to the LIFO provisions, a Minnesota school district facing layoffs generally has no discretion to retain its best teachers. This is true even if, for example, a teacher has won a statewide “Teacher of the Year” award or shown promise as a transformative, changing-the-odds classroom leader who consistently improves the likelihood of success for her disadvantaged students.

III. Conclusion

“[I]t is this court’s practice to freely grant amicus applications to ensure the development of a more complete appellate record.” *Brezga v. City of Minnetrista*, 706 N.W.2d 512, 514 n. 1 (Minn. App. 2005), *aff’d* 725 N.W.2d 106 (Minn. 2006). Ed Allies respectfully requests leave of the court to file an *amicus curiae* brief in this appeal in support of Appellants.

Dated: January 24, 2017

**FABYANSKE, WESTRA, HART & THOMSON,
P.A.**

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