

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ALBANY

---

JOHN KEONI WRIGHT, GINET BORRERO,  
TAUANA GOINS, NINA DOSTER,  
CARLA WILLIAMS, MONA PRADIA,  
and ANGELES BARRAGAN,

Plaintiffs,

NOTICE OF MOTION  
TO INTERVENE

-against-

STATE OF NEW YORK, REGENTS OF THE  
UNIVERSITY OF THE STATE OF NEW YORK,  
MERRYL H. TISCH, CHANCELLOR OF THE  
BOARD OF REGENTS, JOHN B. KING,  
COMMISSIONER OF EDUCATION AND  
PRESIDENT OF THE UNIVERSITY OF  
THE STATE OF NEW YORK,

Index No. A00641/2014

Defendants,

Oral Argument Is Requested

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER,  
KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD  
OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE,  
Individually and as President of the New York State United Teachers,

Proposed Intervenors-Defendants.

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**PLEASE TAKE NOTICE** that upon the annexed affirmation of Richard E. Casagrande, Esq., dated August 28, 2014, and the proposed answer annexed thereto as an exhibit, the accompanying memorandum of law, the affidavits of proposed intervenors-defendants, and all of the papers and proceedings had in this action, a motion will be made on behalf of the proposed intervenors-defendants, at a civil part of the Supreme Court of the State of New York, Albany County, at the Courthouse located at 16 Eagle Street, Albany, New York 12207, on the 19th day

of September, 2014, at 9:30 a.m. in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order:


(A) granting permission for all proposed intervenors-defendants to intervene in the above-entitled action pursuant to CPLR §§1012 or 1013;

(B) directing that the proposed intervenors-defendants be added as party defendants, directing that the Summons and Complaint be amended by adding the proposed intervenors-defendants as party defendants, and allowing the proposed intervenors-defendants to serve their answer within a reasonable period of time to be determined by the Court; and

(C) granting such other and further relief as may be just and proper.

**PLEASE TAKE FURTHER NOTICE**, that pursuant to CPLR 2214, any answering papers, and any notice of cross-motion, with supporting papers, if any, shall be served upon the undersigned at least seven (7) days prior to the return date.

Dated: Latham, New York  
August 28, 2014

  
RICHARD E. CASAGRANDE  
Attorney for Proposed Intervenors-Defendants  
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Attorney for State Defendants  
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New York, NY 10271

115704/CWA1141

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ALBANY

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AFFIRMATION IN SUPPORT  
OF MOTION TO INTERVENE

Index No. A00641/2014

Hon. \_\_\_\_\_

RICHARD E. CASAGRANDE, an attorney duly admitted to practice law in the Courts  
of the State of New York affirms as follows under penalty of perjury pursuant to CPLR 2106:

1. I am general counsel to the New York State United Teachers and the attorney of  
record for the proposed intervenors-defendants. I am fully familiar with the pleadings, facts and  
circumstances in this matter.

2. I submit this affirmation in support of the proposed intervenors-defendants' motion to intervene. The proposed intervenors-defendants include seven (7) individual public school teachers, as well as the New York State United Teachers ("NYSUT") by its President, Karen E. Magee.

#### INDIVIDUAL INTERVENORS

3. Plaintiffs seek a declaration that certain state statutes are unconstitutional. The challenged statutes define, in significant part, employment safeguards and obligations of New York's public school teachers and other pedagogues. Plaintiffs ask this Court to strip from all of New York's public school teachers these statutorily vested safeguards, which protect their right to teach and to effectively advocate for their students, and which protect educators from arbitrary dismissal, discipline or layoff.

4. Each of the proposed individual intervenors is a public school teacher who has been appointed on tenure by her or his school board. As more fully set forth in their affidavits, the proposed individual intervenors-defendants have a real and substantial interest in the outcome of this case, as any final judgment will be binding upon them and, if plaintiffs are successful, any judgment could adversely affect their ability to teach and their basic terms and conditions of employment. Moreover, the proposed individual intervenors' claims share common questions of law and fact with those raised in the complaint.

5. The proposed individual intervenors, under authoritative judicial precedent, have a constitutionally protected liberty interest in their right to teach, and a constitutionally protected property interest in their public employment. (See accompanying memorandum of law).

6. The plaintiffs seek to eviscerate laws that have been carefully designed and continually and rationally refined by the Legislature, over the course of more than a century, to

attract and retain qualified, dedicated public school teachers, and to protect them from arbitrary dismissal, in the interest of promoting the best possible education for New York's students. The evisceration of these laws would not only damage the professional and legal interests of these and all public school teachers, but would impair the right of New York's school children to a sound basic education. (See accompanying memorandum of law).

7. Intervention by individual school teachers is appropriate. The terms and conditions of employment established by the challenged laws are fundamental to any employment relationship. And, the safeguards and obligations established by the challenged laws inure, for the most part, to individual teachers, not to the labor organizations which represent them for collective bargaining purposes.

8. The laws dealing with probationary appointments preserve the authority of employing school boards to evaluate newly hired teachers before deciding whether to grant individual teachers tenure. New York's three year probationary period for teachers is, in fact, considerably longer than that required under New York law for almost any other professional public servant.

9. The tenure/due process protections of Education Law §§ 3020 and 3020-a do not guarantee "lifetime" employment. These laws only ensure that an educator who has successfully completed her probation, and who has been appointed on tenure, is guaranteed a fair chance to defend herself if she is accused of misconduct, pedagogical incompetence or physical or mental disability. Millions of American workers employed in the public and private sectors enjoy this fundamental right to workplace justice.

10. Similarly, the seniority provisions of Education Law §§2510, 2585, 2588 and 3013 provide a safeguard that is not unique to educators, but one that for decades has been

extended to many public and private sector employees. Seniority promotes continuity of service and protects qualified teachers who might be targeted based on age, rate of pay, cronyism or other improper, subjective motivation.

11. As determined by our courts, the laws challenged by plaintiffs were enacted by the Legislature to promote public education in New York by attracting qualified educators to the teaching profession; by promoting stability in our public schools; by protecting academic freedom and the right of teachers to advocate for students; by insulating teachers from political influences; and by safeguarding teachers from discrimination and other forms of improperly motivated discharge, punishment or layoff.

12. Under these laws, in return for years of dedicated, competent service, educators are promised a limited measure of employment security, so long as they continue to meet their obligations of competent and faithful service. Each of the individual teachers who seek intervention has, for many years, fulfilled her or his obligations under these laws, and each should be heard in defense of plaintiffs' attack on the safeguards provided by these laws.

#### MOTION TO INTERVENE/NYSUT

13. As set forth more fully in the affidavit of Karen E. Magee, NYSUT is a statewide labor organization that represents nearly all public school teachers in the State of New York, including each of the proposed individual intervenors.

14. NYSUT is particularly interested in promoting and improving public education and teaching, and is particularly experienced in representing the rights of school teachers in cases involving tenure, fair dismissal, seniority and probation.

15. The NYSUT Office of General Counsel has been involved with litigation regarding New York State Education Law for more than forty (40) years.

16. NYSUT has furnished counsel to represent individual teachers in numerous cases involving New York's tenure laws, as they apply to fair dismissal, seniority protection and probation. Examples of cases involving tenure and due process in which NYSUT has furnished counsel include: *Kilduff v. Rochester City Sch. Dist.*, 107 A.D.3d 1536 (4th Dep't 2013) lv. granted 22 N.Y.3d 854 (2013); *City Sch. Dist., City of New York v. McGraham*, 17 N.Y.3d 917 (2011); *Matter of Joseph M.*, 82 N.Y.2d 128 (1993); *Winter v. Bd. of Educ.*, 79 N.Y.2d 1 (1992); *Syquia v. Bd. of Educ.*, 80 N.Y.2d 531 (1992); *Derle v. N. Bellmore Union Free Sch. Dist.*, 77 N.Y.2d 483 (1991); *Aronsky v. Bd. of Educ.*, 75 N.Y.2d 997 (1990); *Hawley v. S. Orangetown Cent. Sch. Dist.*, 67 N.Y.2d 796 (1986); *Martin v. Ambach*, 67 N.Y.2d 975 (1986); *Winston v. City of New York*, 759 F.2d 242 (2<sup>nd</sup> Cir. 1985); *Conley v. Ambach*, 61 N.Y.2d 685 (1984); *Harris v. Mechanicville Cent. Sch. Dist.*, 45 N.Y.2d 279 (1978); *Bott v. Bd. of Educ.*, 41 N.Y.2d 265 (1977); *Jerry v. Bd. of Educ.*, 35 N.Y.2d 534 (1974); examples of seniority cases include: *Madison-Oneida BOCES v. Mills*, 4 N.Y.3d 51 (2004); *Dinerstein v. Bd. of Educ.*, 50 N.Y.2d 879 (1980); *Rippe v. Bd. of Educ.*, 64 N.Y.2d 281 (1985); *Waiters v. Bd. of Educ.*, 46 N.Y.2d 885 (1979); *Lezette v. Bd. of Educ.*, 35 N.Y.2d 272 (1974); an example of a probationary rights case is: *Vetter v. Bd. of Educ.*, 14 N.Y.3d 729 (2010).

17. In addition, one of the statutes challenged by plaintiffs is Education Law §3012-c. This statute was enacted in 2010, as part of New York's federal Race to the Top Application, through which more than \$700 million in federal education aid was secured for New York. The primary purpose of this statute is to enhance student learning and teacher effectiveness by implementing a statewide, comprehensive teacher evaluation system, designed to measure teacher effectiveness based on performance, including measures of student achievement. Key

provisions of this law are designed to improve teacher effectiveness. *See* Education Law §3012-c(1).

18. As part of the enactment of this law, teacher disciplinary procedures were amended to provide expedited hearings for teachers rated as pedagogically "ineffective" in consecutive years. *See* Education Law §3012-c(6) and Education Law §§3020(1) and (3); and 3020-a(2)(c) and 3020-a(3)(c)(i-a)(A)-(B).

19. The Board of Regents and the State Education Department, who are defendants in this action, together with NYSUT, jointly developed the proposed legislation that became Education Law §3012-c, as Chapter 103 of the Laws of 2010. *See NYSUT v. Board of Regents*, 33 Misc.3d 989, 992 (Albany Co., Sup. Ct., Lynch, J.) (2011).

20. As can be seen from this decision, which is now final, the named state defendants and the proposed intervenor defendants do not always agree on the meaning or interpretation of the challenged statutes. Therefore, intervention should be granted to ensure that the interests of the proposed intervenors are adequately represented in the current action.

21. NYSUT also has a legal and institutional interest in preserving the fair hearing, due process safeguards provided under Education Law §3020-a. As a matter of NYSUT Board of Directors policy, since the mid-1970's NYSUT has furnished counsel to NYSUT members who are charged under Education Law §3020-a, or who are threatened with such charges. While any teacher charged under Section 3020-a may choose to be represented by private counsel, NYSUT has furnished legal counsel to tenured teachers in thousands of Section 3020-a cases. NYSUT, therefore, has particular familiarity with the length of time it takes to try or settle such cases, particularly after the most recent amendments to Education Law 3020-a in 2008, 2010 and 2012 (L. 2008, c. 296, §2 and c. 325, §2; L. 2010, c. 103, §§3-5; L. 2012, c. 57, Pt. B, §1).



22. In addition to public school teachers whose fair hearing rights are governed by Education Law §3020-a, NYSUT, through its Office of General Counsel, furnishes counsel to civil servants when they are charged under Civil Service Law §75 or under collectively bargained alternative provisions to that statute, as well as to private sector employees under collectively bargained "just cause" disciplinary provisions. Contrary to the plaintiffs' allegations, the due process safeguards accorded to tenured teachers are not extraordinary. Substantially equivalent safeguards are enjoyed by tens of thousands of other New York public servants, including physicians, attorneys, nurses, engineers, research scientists, those in uniformed public safety services, and countless other positions essential to the public welfare, as well as to many private sector employees.

23. NYSUT is also currently participating in other litigation involving the state's obligation to provide a sound basic education to its school children.

24. In New York, per-student education spending varies greatly between school districts, based, in large part, on the relative property wealth of these districts. *See Levittown Union Free Sch. Dist. v. Nyquist*, 57 N.Y.2d 27 (1982). Spending is often lowest in our poorest school districts, where our poor and minority school children are concentrated. *Id.* While teachers in wealthy and poor districts have identical safeguards under the tenure laws, students in our poorest districts often are provided less education resources, for example, access to smaller classes, individualized instruction, access to art, music and extracurricular activities and sports.

25. Accordingly, NYSUT and several individual NYSUT members are currently prosecuting a challenge to the state's regressive property tax cap/freeze (Education Law §§2023-a and 2023-b), under which school districts are inequitably restricted from raising additional

school funding. *See, NYSUT, et al. v. State*, pending before the Honorable Patrick J. McGrath, Supreme Court, Albany County, Index No. 963-13.

26. NYSUT is also furnishing co-counsel in *Maisto v. State of New York*. This case was remanded for trial by the Court of Appeals (*sub nom Hussein v. State*, 19 N.Y.3d 899 (2012)). It will be heard by the Honorable Thomas J. McNamara in the Albany County Supreme Court in December. This case involves the claim that students in eight small city school districts are, due to underfunding, not being provided a sound basic education.

#### OTHER RELEVANT LITIGATION

27. Currently pending in Supreme Court, Richmond County, is a related action: *Davids, et al. v. State of New York, et al.* (Richmond County Index No. 101105/14).

28. That action raises claims that are substantially similar to those raised in this action.

29. Pending in that action is a motion to consolidate these cases in Richmond County, and a motion by the United Federation of Teachers (UFT) to intervene as a defendant. Based on conversations with the attorney general's office and counsel for the UFT, those motions are returnable on September 3, before the Honorable Thomas P. Aliotta.

30. Proposed defendant intervenors in this case have not appeared in the *Davids* case, but do not oppose consolidation of these two cases before Justice Aliotta, and support UFT's intervention motion.

#### PROPOSED VERIFIED ANSWER

31. Intervention will not delay this litigation or prejudice the substantial rights of any party. The state defendants have not yet responded to the complaint. Based on my conversations

with counsel for the plaintiffs and the state defendants, the state defendants' time to respond to the complaint has been extended to September 19.

32. Attached to this affirmation as Exhibit "A" is the intervenors-defendants' proposed answer to the complaint.

33. I respectfully request that the motion to intervene be granted in all respects.

Dated: August 28, 2014  
Latham, New York

  
RICHARD E. CASAGRANDE

115950/CWA1141

EXHIBIT "A"

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ALBANY

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JOHN KEONI WRIGHT, GINET BORRERO,  
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OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE,  
Individually and as President of the New York State United Teachers,

Intervenors-Defendants.

---

Intervenors-Defendants Seth Cohen, Daniel Delehanty, Ashli Skura Dreher,  
Kathleen Ferguson, Israel Martinez, Richard Ognibene, Jr., Lonnette R. Tuck, and Karen  
E. Magee, individually and as President of the New York State United Teachers, by their  
attorney Richard E. Casagrande, Esq., for their answer to the complaint, state as follows:

## PRELIMINARY STATEMENT

1. Affirmatively state that, contrary to the allegations in the complaint, the challenged sections of the Education Law that provide for a three year probationary period before tenure can be granted, that require that educators after being appointed on tenure may be disciplined only for just cause on specified charges after a hearing heard by an impartial hearing officer, and that require teachers be laid off and recalled according to seniority, are reasonable and objective measures for recruiting and retaining competent teachers. Further, these provisions were designed by the Legislature to protect teachers from arbitrary removal based on cronyism or whim, and to protect academic freedom. Where students, particularly low income and minority students, are not getting a sound basic education, it is not the fault of the tenure laws or their implementation; rather the blame is appropriately placed on the inadequate and inequitable funding of education in New York.

## RESPONSES TO ALLEGATIONS

### *Allegations in Plaintiffs' Preliminary Statement*

2. The allegations in paragraph 1 of the complaint call for a legal conclusion as to which no response is required, and, to any extent that a response may be required, deny the allegations in paragraph 1, except admit that the State Constitution guarantees all children in the state a sound basic education.

3. Deny the allegations in paragraphs 2 and 3 of the complaint.

4. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraphs 4 and 5 of the complaint, and otherwise deny the allegations in paragraphs 4 and 5.

5. Admit those allegations in paragraph 6 of the complaint stating that plaintiffs challenge Education Law sections 2509, 2510, 2573, 2585, 2590, 3012, 3012-c, 3020, and 3020-a, but deny that plaintiffs state a cause of action or are entitled to any relief regarding those or any other sections of the Education Law, and further state that the allegations in paragraph 6 of the complaint call for a legal conclusion as to which no response is required, and, to any extent that a response may be required, deny the allegations in paragraph 6.

6. With respect to the allegations in paragraph 7 of the complaint, deny knowledge or information sufficient to form a belief as to what plaintiffs are seeking, and otherwise deny the allegations in paragraph 7.

*Allegations Regarding Jurisdiction and Venue*

7. Admit the allegations in paragraph 8 of the complaint.

8. With respect to the allegations in paragraph 9 of the complaint, admit that the Supreme Court has jurisdiction to grant a declaratory judgment and injunctive relief, but deny that plaintiffs are entitled to a declaratory judgment or injunctive relief, and otherwise deny the allegations in paragraph 9.

*Allegations Regarding the Parties*

9. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraphs 10, 11, 12, 13, 14, 15 and 16 of the complaint.

10. The allegations in paragraphs 17, 18, 19, 20, and 21 of the complaint call for legal conclusions as to which no response is required, and, to any extent that a response may be required, deny the allegations in paragraphs 17, 18, 19, 20, and 21, and

respectfully refer the Court to Articles 5 and 7 of the Education Law for a full and accurate description of the powers and duties of the state defendants.

*Allegations Regarding "Background"*

11. The allegations in paragraphs 22 and 23 of the complaint call for a legal conclusion as to which no response is required, and, to any extent that a response may be required, deny the allegations in paragraphs 22 and 23 of the complaint. To the extent that plaintiffs purport to characterize Article 11, § 1 of the State Constitution, respectfully refer the Court to that provision for a full and accurate description of its contents.

12. Deny the allegations in paragraphs 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 of the complaint.

13. The allegations in paragraph 35 of the complaint call for a legal conclusion as to which no response is required, and, to any extent that a response may be required, deny the allegations in paragraph 35. To the extent that plaintiffs purport to characterize the cited sections of the Education Law, respectfully refer the Court to those sections for a full and accurate description of their contents.

14. Deny the allegations in paragraphs 36 and 37 of the complaint.

15. Deny the allegations in paragraph 38 of the complaint except admit that there is a three-year probationary period for most teachers in New York.

16. The allegations in paragraphs 39 and 40 of the complaint call for a legal conclusion as to which no response is required, and, to any extent that a response may be required, deny the allegations in paragraphs 39 and 40. To the extent that plaintiffs purport to characterize the cited sections of the Education Law, respectfully refer the Court to those sections for a full and accurate description of their contents.



17. Deny the allegations in paragraphs 41, 42, 43, 44, 45, 46, 47 and 48 of the complaint.

18. The allegations in paragraph 49 of the complaint call for a legal conclusion as to which no response is required, and, to any extent that a response may be required, deny the allegations in paragraph 49. To the extent that plaintiffs purport to characterize the cited sections of the Education Law, respectfully refer the Court to those sections for a full and accurate description of their contents.

19. Deny the allegations in paragraphs 50, 51, 52, 53, 54, 55, 56, and 57 of the complaint.

20. The allegations in paragraphs 58, 59, 60 and 61 of the complaint call for a legal conclusion as to which no response is required, and, to any extent that a response may be required, deny the allegations in paragraphs 58, 59, 60 and 61. To the extent that plaintiffs purport to characterize the cited sections of the Education Law, respectfully refer the Court to those sections for a full and accurate description of their contents.

21. Deny the allegations in paragraphs 62, 63, 64, and 65 of the complaint.

22. The allegations in paragraph 66 of the complaint call for a legal conclusion as to which no response is required, and, to any extent that a response may be required, deny the allegations in paragraph 66. To the extent that plaintiffs purport to characterize the cited sections of the Education Law, respectfully refer the Court to those sections for a full and accurate description of their contents.

23. Deny the allegations in paragraphs 67, 68, and 69 of the complaint.

24. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 70 of the complaint, and deny that the challenged statutes violate the State Constitution.

25. Deny the allegations in paragraph 71, 72, 73, 74, 75 and 76 of the complaint.

Allegations Regarding Alleged Causes of Action

26. The allegations in paragraphs 77, 80, and 83 merely repeat and re-allege the preceding paragraphs, and the court is respectfully referred to the corresponding responses in this answer for the responses to those paragraphs.

27. Deny the allegations in paragraphs 78, 79, 81, 82, 84 and 85 of the complaint.

28. Deny that the plaintiffs are entitled to any of the relief they seek in their prayer for relief.

FIRST AFFIRMATIVE DEFENSE

29. The complaint fails to state a cause of action.

SECOND AFFIRMATIVE DEFENSE

29. The complaint fails to set forth a justiciable controversy.

THIRD AFFIRMATIVE DEFENSE

30. Plaintiffs lack standing.

FOURTH AFFIRMATIVE DEFENSE

31. Plaintiffs' alleged causes of action are not ripe.

FIFTH AFFIRMATIVE DEFENSE

32. Plaintiffs' claims are moot.

SIXTH AFFIRMATIVE DEFENSE

33. The Court should not proceed in the absence of a person or persons who should be parties.

SEVENTH AFFIRMATIVE DEFENSE


35. The invalidation of the challenged statutes would violate the rights of intervenors-defendants to equal protection of law and to due process, guaranteed by the U.S. and New York State Constitution.

WHEREFORE, the intervenors-defendants respectfully request an order:

- (A) dismissing plaintiffs' complaint with prejudice;
- (B) granting costs and disbursements; and
- (C) ordering such other, further and different relief as may be just and proper,

together with reasonable attorney fees.

Dated: August 28, 2014  
Latham, New York

  
RICHARD E. CASAGRANDE, ESQ.  
Attorney for Intervenors-Defendants  
800 Troy-Schenectady Road  
Latham, NY 12110-2455  
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115960/CWA1141

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MEMORANDUM OF LAW IN SUPPORT OF PROPOSED  
INTERVENORS-DEFENDANTS' MOTION TO INTERVENE

RICHARD E. CASAGRANDE, ESQ.  
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Defendants  
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ROBERT T. REILLY, ESQ.  
JAMES D. BILIK, ESQ.  
JENNIFER N. COFFEY, ESQ.  
JACQUELYN HADAM, ESQ.  
Of Counsel

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PRELIMINARY STATEMENT

In this action, plaintiffs seek a declaration that certain state statutes, which define in part the employment safeguards and obligations of New York's public school teachers and other pedagogues, are unconstitutional. Plaintiffs ask this Court to strip teachers of these vested safeguards, which protect their right to teach and to effectively advocate for their students, and which protect them from arbitrary dismissal, discipline or layoff.

Each of the proposed individual intervenors-defendants is a public school teacher who has been appointed on tenure by her or his school board. As such, each of them, under authoritative judicial precedent, has a protected liberty interest in her or his right to teach, and a constitutionally protected property interest in her or his public employment.

The laws plaintiffs seek to eviscerate have been carefully designed and continually and rationally refined by the Legislature, over the course of more than a century, to attract and retain qualified, dedicated public school teachers, and to protect them from arbitrary dismissal, in the interest of promoting the best possible education for New York's students. The evisceration of these laws would not only damage the legal and professional interests of school teachers, but would impair the right of New York's students to a sound basic education.

As is demonstrated below, the proposed intervenors-defendants have a real and substantial interest in the outcome of this case. Accordingly, their motion to intervene should be granted.

#### ARGUMENT

##### THE MOTION TO INTERVENE SHOULD BE GRANTED BECAUSE THE PROPOSED INTERVENORS-DEFENDANTS HAVE A REAL AND SUBSTANTIAL INTEREST IN THE OUTCOME OF THIS ACTION.

###### *A. The Standards Governing the Instant Motion*

A motion to intervene can be made either as of right or by permission, and under the relevant liberal rules of construction, “whether intervention is sought as a matter of right under CPLR §1012(a), or as a matter of discretion under CPLR §1013 is of little practical significance.” *Perl v. Aspromonte Realty Corp.*, 143 A.D.2d 824, 825 (2d Dep’t 1988), lv. dismissed 74 N.Y.2d 649 (1989). Moreover, “[I]ntervention should be

permitted where the intervenor has a real and substantial interest in the outcome of the proceedings.” *Id. Accord, Norstar Apartments, Inc. v. Town of Clay*, 112 A.D.2d 750 (4th Dep’t 1985).

Here, the proposed intervenors-defendants seek to intervene both as of right and, alternatively, as a matter of discretion. *Berkoski v. Bd. of Trustees, Inc. Vill. of Southampton*, 67 A.D.3d 840 (2<sup>nd</sup> Dep’t 2009); *City of Buffalo v. State Board of Equalization and Assessment*, 44 Misc.2d 716 (Sup. Ct. Albany Co. 1964). Intervention as of right is appropriate when, among other grounds, “the representation of the person’s interest by the parties is or may be inadequate and the person is or may be bound by the judgment.” CPLR §1012. *Village of Spring Valley v. Village of Spring Valley Housing Auth.*, 33 A.D.2d 1037 (2<sup>nd</sup> Dep’t 1970); *Romeo v. New York State Department of Education*, 39 A.D.3d 916 (3<sup>rd</sup> Dep’t 2007).

CPLR § 1013 allows for intervention by permission. According to that section, “[u]pon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person’s claim or defense and the main action have a common question of law or fact.” CPLR §1013; *Berkoski, supra*. The CPLR addresses the court’s discretion on such motions, requiring that “[i]n exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.” CPLR §1013.

*B. The Interests of Proposed Intervenors-Defendants in the Outcome of this Action are Substantial.*

As tenured teachers, the proposed intervenors-defendants have substantial interests in upholding the challenged laws, which protect them from being arbitrarily



dismissed, or disciplined or laid off. In this action, plaintiffs challenge the validity of various provisions of the Education Law, including those that protect teachers who have passed probation and have been granted tenure from being terminated without just cause (Education Law §§2509, 2573, 3012, 3012-c, 3020 and 3020-a), and the laws that ensure that seniority is respected when layoffs take place (Education Law §§2510, 2588 and 3013).

That the rights being attacked by plaintiffs in this case are indeed substantial. Statutes protecting tenured teachers' rights not to be removed from employment except for cause have been in existence in one form or another in New York since 1897. *See e.g., People ex rel. Murphy v. Maxwell*, 177 N.Y. 494, 497 [1904]). Statutes requiring that teachers not be laid off except by inverse seniority in the relevant tenure area have existed in New York since 1940. Indeed, the first tenure laws were enacted just three years after the Education Article (Article 11§1) was added to the State Constitution in 1894.

Individual teachers who have been appointed on tenure have a constitutionally protected property interest in their continued employment. *Gould v. Sewanhaka Central High School District*, 81 N.Y. 2d 446, 451 (1993). To ordinary working people, including school teachers, the property interest in one's employment is of fundamental importance.

As the U.S. Supreme Court has noted:

. . . the significance of the private interest in retaining employment cannot be gainsaid. We have frequently recognized the severity of depriving a person of the means of livelihood. [citations omitted] While a fired worker may find employment elsewhere, doing so will take some time and is likely to be burdened by the questionable circumstances under which he left his previous job.

*Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 543 (1985).

The tenure statutes not only confer a substantial private property interest on tenured teachers, they reflect an important public interest - - protection from arbitrary removal for educators who have successfully completed a probationary period. As stated by the Court of Appeals in *Holt v. Bd. of Educ., Webutuck Cent. School Dist.*, 52 N.Y.2d 625, 632 (1981):

One of the bulwarks of that tenure system is section 3020-a of the Education Law which protects tenured teachers from arbitrary suspension or removal. **The statute has been recognized by this court as ‘a critical part of the system of contemporary protections that safeguard tenured teachers from official or bureaucratic caprice.’** (emphasis supplied, quoting from *Abramovich v. Bd. of Educ. of Cent. School Dist. No. 1 of Towns of Brookhaven & Smithtown*, 46 N.Y.2d 450, 454 [1979].)

The Court of Appeals has also instructed that the tenure system must be vigilantly protected against strategies that attempt to circumvent the will of the Legislature, and that the protections of the tenure statutes must be broadly construed in favor of teachers who have successfully completed their probationary periods. As stated in *Ricca v. Bd. of Educ., City School Dist. of City of New York*, 47 N.Y.2d 385, 391 (1979):

[The tenure system] . . . is a legislative expression of a firm public policy determination that the interests of the public in the education of our youth can best be served by a system designed to foster academic freedom in our schools and to protect competent teachers from the abuses they might be subjected to if they could be dismissed at the whim of their supervisors. In order to effectuate these convergent purposes, it is necessary to construe the tenure system broadly in favor of the teacher, and to strictly police procedures which might result in the corruption of that system by manipulation of the requirements for tenure.

\* \* \*

Even 'good faith' violations of the tenure system must be forbidden, lest the entire edifice crumble from the cumulative effect of numerous well-intentioned exceptions.

Another court described the tenure and seniority protections as follows:

Education Law §§3012 and 3013 provide teachers with two fundamental protections. They are tenure and its protection from political or economically motivated firing, and seniority preservation during periods of layoffs. The tenure and seniority provisions serve a firm public policy to protect the interests of the public in the education of our youth which can 'best be served by a system designed to foster academic freedom in our schools and to protect competent teachers from the abuses they might be subjected to if they could be dismissed at the whim of their supervisors' (*Ricca v Board of Educ.*, 47 NY2d 385, 391 (1979)). Academic freedom is the goal for those to whom the minds of our children are entrusted.

*Lambert v. Bd. of Educ., Middle Country CSD*, 174 Misc.2d 487, 489 (Sup. Ct. Nassau Co. 1997).

In addition to a property interest in continued employment unless removed for just cause, the proposed intervenors-defendants have a constitutionally protected liberty interest in their right to pursue their chosen profession. *See, e.g., Meyer v. Nebraska*, 262 U.S. 390 (1923). In *Meyer*, the Court, invalidating a law restricting the teaching of foreign languages, stated as follows:

Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. The calling always has been regarded as useful and honorable, essential, indeed, to the public welfare . . . [Plaintiff's] right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the [Fourteenth] amendment.

*Id.*, 262 U.S. at 400. *Accord*, *Knutsen v. Bolas*, 114 Misc. 2d 130, 132 (Sup. Ct. Erie Co. 1982), *aff'd*, 96 A.D. 2d 723 (4<sup>th</sup> Dep't 1983), *lv. denied*, 60 N.Y.2d 557 (1983) (explaining that “[l]iberty under the Fourteenth Amendment . . . includes the right of an individual to engage in any of the common occupations of life”).

These authorities make it clear that protecting teachers from being removed or laid off in an arbitrary manner is not only about protecting their rights, but also serves the public’s interest in academic freedom. *Ricca, supra*. In this way, the tenure statutes, contrary to plaintiffs’ claim, actually protect students’ right to a sound basic education as guaranteed by the Education Article of the State Constitution (Article 11, §1). In sum, plaintiffs are seeking by this lawsuit to destroy very substantial individual safeguards to the detriment of very substantial public interests.

Plaintiffs describe the challenged statutes as “archaic.” It is true that the tenure and seniority laws are long-standing, even though they have been continually refined by the legislature. (*See, e.g.*, L. 2008, c. 296, §2 and c. 325, §2; L. 2010, c. 103, §§3-5; L. 2012, c. 57, Part B, §1, each significantly amending the challenged tenure laws.) But, contrary to plaintiffs’ assertion, the safeguards provided by tenure are no less important to teachers today. Under recent U.S. Supreme Court precedent, when a public employee speaks in her capacity as a public employee, she may have no first amendment protection. *See Garcetti v. Ceballos*, 547 U.S. 410, 426 (2006). Thus, today tenure remains as perhaps the last redoubt of academic freedom, and of teachers who advocate for their students.

It is clear, therefore, that the proposed intervenors-defendants will be adversely affected if plaintiffs are successful in this litigation. In particular, if this Court were to grant the relief the plaintiffs seek, declaring the Education Law’s seniority and tenure

safeguards to be unconstitutional, the proposed intervenors-defendants would be stripped of these crucial statutory protections.

The proposed individual intervenors have served their districts and the students they teach for many years. Each has served with distinction and has been recognized as an effective educator. Three of the individual proposed intervenors-defendants have been named Teacher of the Year by the State Education Department (Affidavit of Ashli Skura Dreher at ¶4; Affidavit of Richard Ognibene, Jr. at ¶7; Affidavit of Kathleen Ferguson at ¶5). Other distinctions earned by the proposed intervenors-defendants include the prestigious National Board Certification for Professional Teaching Standards and numerous local awards for teaching and other service to the community. *See* Affidavit of Daniel Delehanty at ¶7; Affidavit of Lonnette Riley Tuck at ¶8; Ognibene Affidavit at ¶12; Skura Dreher Affidavit at ¶8; and Ferguson Affidavit at ¶6.

Notwithstanding these achievements, each of the proposed intervenors-defendants would be subject to removal or other discipline for arbitrary reasons were it not for the protection of Education Law §3020-a which plaintiffs seek to have invalidated (Complaint ¶¶49-65). And, in the case of layoffs, each would be subject to being terminated without regard to their years of faithful service if the seniority statutes were invalidated as plaintiffs seek (Complaint ¶¶66-76). Indeed, because of their years of service, their higher pay would make them tempting targets for budget cutters.

Proposed intervenor-defendant New York State United Teachers (NYSUT) also has a real and substantial interest in the outcome of this lawsuit. NYSUT counts among its over 600,000 members nearly every K-12 teacher in New York State, all of whom are covered by the laws being challenged in this case. NYSUT furnishes legal counsel to its

members who are brought up on charges under Section 3020-a, and gives advice and legal representation to members in enforcement of the laws governing probation, tenure and seniority. Also, as part of New York's successful effort to obtain over \$700 million in federal education aid, NYSUT was involved in developing the teacher evaluation law, Education Law §3012-c, which is also being challenged in this case. *See Casagrande Affirmation* at ¶¶14-27; and Affidavit of Karen E. Magee, submitted in support of the motion.

The relevant case law supports granting the motion to intervene. *Berkoski v. Bd. of Trustees, Incorp. Vill. of Southampton*, 67 A.D.3d 840 (2<sup>nd</sup> Dep't 2009) (holding that day laborers had a real and substantial interest in the outcome of a case brought to enjoin a village from setting aside park land for day laborers to gather in for purposes of being hired; there was at least one common question of law raised by the village's answer and the intervenors' proposed answer and there was no showing that the intervention would cause undue delay); *City of Buffalo v. State Board of Equalization and Assessment*, 44 Misc.2d 716 (Albany Co. 1964) (motion to intervene granted so that the moving parties could defend, just as the intervenors would do here, the constitutionality of a statute); *Village of Spring Valley v. Village of Spring Valley Housing Auth.*, 33 A.D.2d 1037 (2<sup>nd</sup> Dep't 1970) (holding that the trial court should have allowed low-income persons residing in sub-standard housing to intervene in a proceeding brought to dissolve the housing authority, because there were common questions of law and fact raised by the Authority's and intervenors' answers, the intervenors' interests may not have been adequately represented by the authority, and intervenors may have been bound by the judgment).

Here, the proposed intervenors-defendants will be bound by the judgment if plaintiffs prevail, and obviously there are common issues of law and fact as between the allegations in the complaint and the defenses in the proposed answer (Casagrande Affirmation Exhibit “A”). In addition, the defendants may not adequately represent the interests of the proposed intervenors-defendants. While the state has an interest in defending generally the constitutionality of the statutes at issue, none of the defendants currently in the case, unlike the proposed intervenors-defendants, individually possess the statutory rights threatened by this lawsuit.

There would be no undue delay or prejudice to any party if the motion to intervene is granted. The case is still in its early stages. The state defendants have made a motion, returnable on September 3, 2014 in Richmond County Supreme Court, to consolidate<sup>1</sup> the instant action with the similar case, entitled  *Davids, et al., v. State of New York*  (Richmond County Index No. 101105/14).

Further, defendants in the instant action have obtained an extension of time to respond to the complaint, until September 19, 2014.  *See*  Casagrande Affirmation at ¶31. Clearly, granting the instant motion will not create undue delay or prejudice to the plaintiffs or defendants.

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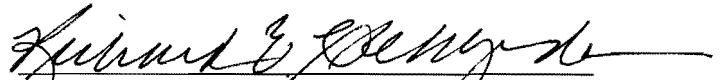
<sup>1</sup> Proposed intervenors-defendants do not oppose the motion to consolidate.

CONCLUSION

For the reasons set forth above, the motion to intervene should be granted, along with such other and further relief as is deemed just and proper.

Dated: August 28, 2014  
Latham, NY

Respectfully submitted,



RICHARD E. CASAGRANDE, ESQ.

Attorney for Proposed Intervenors-  
Defendants

800 Troy-Schenectady Road  
Latham, NY 12110-2455  
Tel. (518) 213-6000

116024/cwa1141



STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ALBANY

---

JOHN KEONI WRIGHT, GINET BORRERO,  
TAUANA GOINS, NINA DOSTER,  
CARLA WILLIAMS, MONA PRADIA,  
and ANGELES BARRAGAN,

Plaintiffs,

-against-

STATE OF NEW YORK, REGENTS OF THE  
UNIVERSITY OF THE STATE OF NEW YORK,  
MERRYL H. TISCH, CHANCELLOR OF THE  
BOARD OF REGENTS, JOHN B. KING,  
COMMISSIONER OF EDUCATION AND  
PRESIDENT OF THE UNIVERSITY OF  
THE STATE OF NEW YORK,

Defendants,

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER,  
KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD  
OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE,  
Individually and as President of the New York State United Teachers,

Proposed Intervenors-Defendants.

---

STATE OF NEW YORK

COUNTY OF ALBANY            SS.:

SETH COHEN, being duly sworn, deposes and says:

1.        I am a public school teacher employed by the Enlarged City School District of Troy. I make this affidavit in support of my motion to intervene in this litigation, the outcome of

AFFIDAVIT IN SUPPORT  
OF MOTION TO  
TO INTERVENE

Index No. A00641-14

Hon. \_\_\_\_\_

which could impact my ability to teach, as well as my most basic terms and conditions of employment.

2. I have been employed by the Enlarged City School District of Troy as a Science teacher for twenty seven years. Currently, I teach Earth Science at Troy High School. I served as a probationary employee from September 1, 1987 to May 4, 1990, and was awarded tenure by action of the Board of Education on April 5, 1990.

3. I serve as the Curriculum Leader (Science department chair) for grades Kindergarten-12 for the Enlarged City School District of Troy.

4. From late Fall 1982 to December 1986, I was a permanent substitute and assistant to the principal at Vanderheyden Hall in the school of education, located in Wynantskill, New York. Vanderheyden Hall is a non-profit organization that provides services to youth, who, among other things, have been abused, neglected or abandoned; and have emotional and behavioral needs. Upon information and belief, many of the adolescents at Vanderheyden Hall are placed there by court order.

5. I graduated from Springfield High School in Springfield, Pennsylvania (Delaware County) and the State University of New York at Geneseo, in Geneseo, New York, with a BA in Geology. In 1987, I received my Master's Degree in Science Teaching from the University at Albany in Albany, New York.

6. I am certified in the license areas of Earth Science and General Science, Grades 7-12. I received my Permanent New York State Certification in Earth Science and General Science Grades 7-12 from the New York State Education Department in 1989.

7. I became a teacher because I enjoy working with kids to help them achieve their potential. I am dedicated to the children I teach, and to my profession.

8. Each school year, I spend approximately \$250-\$300 of my own money for supplies for my students.

9. I am the President of the Troy Teachers Association and serve on the executive board of the Capital District Area Labor Federation.

10. I have never been the subject of charges of misconduct or incompetence, but the safeguards afforded to me under New York's tenure laws are important to me. These laws allow me to practice my profession in the best interests of the children I teach, with reasonable assurance that I will not be arbitrarily fired or punished.

11. This is particularly crucial to me as a public school teacher. I am advised by counsel that, under recent U.S. Supreme Court precedent, when I speak on behalf of my students in my capacity as a public school teacher, I may have no protection under the First Amendment to the United States Constitution.

12. The seniority safeguards provided by New York's tenure laws are also important to me. Such safeguards further collaboration between teachers in the school community. Without such safeguards, in the event of economic layoffs, more senior and more highly compensated teachers could be targeted, as could teachers who have spoken out for students or about problems in the school district.

13. Senior teachers are important, as they mentor new and inexperienced teachers. Without the seniority protections provided by New York's tenure laws, these mentor teachers could be targeted in the event of economic layoffs.

14. The safeguards of the tenure and seniority laws also provide me and my family with a reasonable measure of employment security, so long as I competently perform my duties and continue to meet my obligations under those laws.

15. My school district is facing many challenges in providing a sound basic education to our children. In the four years prior to the 2012-2013 school-year, the district eliminated approximately 80 teaching positions. Due to the elimination of these positions, the district closed an elementary school, and went from six to five elementary schools. In recent years, class size has increased, especially at the middle and high school levels. At Troy High School, the district reduced the number of business teachers from 5 full time business teachers to one .4 business teacher, which resulted in a significant reduction in the number of business courses offered. Also, Troy High School eliminated German as a language option for students and eliminated all theatre courses.

16. The Enlarged City School District of Troy is a city school district with approximately 4,000 students. A high percentage of the students are from low income families. Many students come from single parent households. Many students do not have internet access or a computer at home, making it difficult for these students to complete assignments.

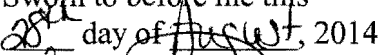
17. None of the problems my school district faces will be rectified by taking away or diminishing the professional safeguards that I and my colleagues were promised when we became public school teachers, and which we earned through years of dedicated service. To the contrary, these laws allow us to practice our profession in the best interests of the children we teach.

18. I have one teenaged daughter who attends school in the Stillwater Central School District. My daughter benefits from the tenure and seniority laws, as these laws ensure that her

teachers are afforded safeguards that allow them to teach without fear of reprisal or arbitrary dismissal.

19. Without conceding that plaintiffs' claims have legal merit, I should be allowed to intervene in this lawsuit to defend my most basic employment rights, since these rights may be adversely affected if plaintiffs succeed.

  
\_\_\_\_\_  
SETH COHEN

Sworn to before me this  
 day of ~~August~~, 2014

  
\_\_\_\_\_  
Notary Public

115945

GINA ROBINSON  
Notary Public, State of New York  
No. 01RO6138977  
Qualified in Schenectady County  
Commission Expires 12/~~2014~~

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ALBANY

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JOHN KEONI WRIGHT, GINET BORRERO,  
TAUANA GOINS, NINA DOSTER,  
CARLA WILLIAMS, MONA PRADIA,  
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OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE,  
Individually and as President of the New York State United Teachers,

Proposed Intervenors-Defendants.

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AFFIDAVIT IN SUPPORT  
OF MOTION TO  
TO INTERVENE

Index No. A00641/2014

Hon.

STATE OF NEW YORK

COUNTY OF MONROE      SS.:

DANIEL DELEHANTY, being duly sworn, deposes and says:

1.        I am a public school teacher employed by the Rochester City School  
District. I make this affidavit in support of my motion to intervene in this litigation, the

outcome of which could adversely impact my ability to teach, as well as the most basic terms and conditions of my employment.

2. I have been employed by the Rochester School District as a Social Studies teacher since 2000. Currently, I am the Co-Facilitator of the Teaching & Learning Institute (“TLI”) at East High School. The TLI program is a magnet program for future teachers and leaders, with the ultimate goal of diversifying Rochester’s teaching corps with progressive leaders empowered to lead students on a path to social activism. Additionally, I teach AP US Government & Politics, Participation in Government, US History & Government, Global History I and Global History II. I served as a probationary employee from September 2000 to June 2002, and was awarded tenure by action of the Board of Education in September of 2002.

3. Previously, from 1997 to 2000, I taught high school Social Studies at Eastridge High School in the East Irondequoit Central School District, a suburban school district in Monroe County, New York.

4. In addition to my regular teaching duties, I am the Cooperating Teacher of Choice for SUNY Geneseo, Nazareth College, St. John Fisher College and the University of Rochester. I also co-host and lead Collegial Learning Circles for a dozen professionals annually.

5. I graduated from Fairport High School and Syracuse University in Syracuse, New York, with dual Bachelor of Arts degree in both History and Writing for Television, Radio & Film. I received my Master's Degree in Education from the University of Rochester in 1998.

6. I am certified in the following license area: Social Studies. I received the following certification from the New York State Education Department: Social Studies 7-12 Permanent Certificate (2004).

7. In 2011, I achieved National Board Certification from the National Board for Professional Teaching Standards.

8. I became a teacher to empower students to take charge of their own learning, to teach them tolerance and collaboration, and to lead them to make positive, progressive change in the community.

9. I have received the following awards: 2013 AERA Conference—San Francisco – Invited to premiere student made documentary film “College Ready;” 2012 Columbia University Teacher’s College – Keynote Speaker for Diversity in Education Conference; 2012 Nazareth College Community Service Recognition; 2011 Best Film - Teen Film Festival of Western NY.

10. I have never been the subject of charges of misconduct or incompetence, but the safeguards afforded to me under New York's tenure laws are important to me. These safeguards allow me to practice my profession in the best interests of the children I teach, with reasonable assurance that I will not be arbitrarily fired or punished.

11. This is particularly crucial to me as a public school teacher. I am advised by counsel that, under recent U.S. Supreme Court precedent, when I speak on behalf of my students in my capacity as a public school teacher, I may have no protection under the First Amendment to the United States Constitution. This is important because tenure provides me with academic freedom. As a teacher of U.S. History, I cover many controversial topics in my classroom. For example, one debate-style lesson dealt with



gun control. The student-led debate of the pros and cons of gun control resulted in a parent complaint to the Superintendent requesting my termination. Without the tenure law safeguards my career could have been jeopardized by single parental complaint.

12. The Rochester City School District's administration is in a constant state of flux. Without the safeguards of tenure and seniority, the constant administrative turnover could result in the arbitrary dismissal of qualified educators. Furthermore, because of the tenure laws, I am able to advocate for my students, even if my views are unpopular with the administration.

13. Over the years, I have been a staunch advocate for my students, both inside and outside the classroom.

14. The seniority safeguards provided by New York's tenure laws are also important to me. Such safeguards further collaboration between teachers in the school community. Without such objective safeguards, in the event of economic layoffs, more senior and more highly compensated teachers could be targeted, as could teachers who have spoken out for students or about problems in the school district.

15. For me, seniority is synonymous teacher mastery. In my school district, it is the veteran teachers who provide the most valuable professional development and mentor the younger teachers. The experienced teachers, with their vast knowledge and expertise, are an invaluable resource to the staff, the administration, and, most importantly, the students.

16. The safeguards of the tenure and seniority laws also provide me with a reasonable measure of employment security, so long as I competently perform my duties and continue to meet my obligations under those laws.

17. The Rochester City School District is facing many challenges in providing a sound basic education to our children. Of approximately 29,000 students, 85% are classified as “economically disadvantaged” with 80% eligible for Free Lunch and another 3% eligible for Reduced-Price Lunch (see NYS School Report Card [2012-2013] [the latest version available] <http://data.nysed.gov/reportcard.php?year=2013&instid=800000050065> [last visited Aug. 26, 2014]).

18. Rochester City School District is a “minority as majority” school district. The ethnic breakdown of students, as of 2012-2013, is as follows: 61% Black or African American; 25% Hispanic or Latino and 3% Asian or Native Hawaiian/Other Pacific Islander.

19. Like many of my colleagues, I regularly purchase supplies for the classroom and for projects in the classroom.

20. The Rochester is City School District is, and has been, facing numerous challenges including inequitable funding, inadequate funding and widespread staffing cuts.

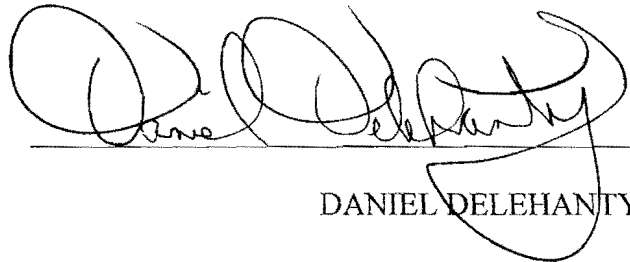
21. The problems faced by my school district will not be ameliorated by taking away or diminishing the professional safeguards that I and my colleagues were promised when we became public school teachers and that we earned through years of

dedicated service. To the contrary, these laws allow us to practice our profession in the best interests of the students we teach.

22. I have three (3) children. Two of my children, Aidan Delehanty (6<sup>th</sup> Grade) and Maeve Delehanty (3<sup>rd</sup> Grade), attend School 58, the World of Inquiry School, in Rochester, New York. My youngest child, Finn Delehanty, is two (2) years old.

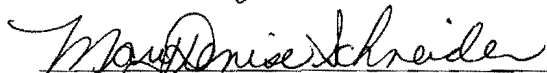
23. My children benefit from the safeguards provided by the tenure laws, as these laws ensure that their teachers are afforded the necessary employment safeguards that allow them to teach without fear of arbitrary reprisal or discharge.

24. Without conceding that plaintiffs' claims have legal merit, I should be allowed to intervene in this lawsuit to defend my right to teach and my most basic terms and conditions of employment, since these may be adversely affected if plaintiffs succeed.

  
DANIEL DELEHANTY

Sworn to before me this

27 day of August 2014

  
Notary Public

116025

Mary Denise Schneider  
Notary Public, State of New York  
Monroe County #4864446  
Commission Expires June 30, 2018

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ALBANY

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Plaintiffs,

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AFFIDAVIT IN SUPPORT  
OF MOTION TO  
TO INTERVENE

Index No. A00641/2014

Hon. \_\_\_\_\_

STATE OF NEW YORK    )  
COUNTY OF ALBANY    ) ss.:

ASHLI SKURA DREHER, being duly sworn, deposes and says:

1.     I am a public school teacher employed by the Lewiston Porter Central School District.

I make this affidavit in support of my motion to intervene in this litigation, the outcome of which could adversely impact my ability to teach, as well the most basic terms and conditions of my

employment.

2. I have been employed by the Lewiston Porter Central School District as a teacher since 1998. Currently, I am a Special Education Teacher in an 12:1:1 classroom at Lewiston-Porter High School teaching life skills to students with moderate intellectual disabilities. I served as a probationary employee from September 1, 1998 to August 31, 2001, and was awarded tenure by action of the Board of Education on September 1, 2001.

3. From 1996-1998, I was employed by the Franklinville Central School District as a Resource Room and Special Education Consultant Teacher for students in grades K-6. Additionally, I taught a GED prep for students on probation and/or parole.

4. Since 2005, I have regularly served as an adjunct at Ulster County Community College.

5. I graduated from Kenmore West High School and Canisius College in Buffalo, New York with a Bachelor of Arts Degree in Elementary Education and English. I received my Master of Science in Special Education in 1998 from D'Youville College. In 2002, I earned a Certificate of Advanced Study in Educational Leadership from the State University of New York at Buffalo. Presently, I am a Doctoral Degree Candidate in the Teaching and Curriculum Department at the University of Rochester's Margaret Warner School of Education.

6. I am certified in the following license areas: Elementary Education, Special Education and School Administration. I received the following certifications from the New York State Education Department: Pre K-6 & English 7-9 Ext Permanent Certificate (2005); Special Education Permanent Certificate (2000) School District Administrator Permanent Certificate (2003).

7. The New York State Education Department selected me as the 2014 New York State Teacher of the Year.

8. In 2002, I achieved National Board Certification for Professional Teaching Standards Middle Level Generalist from the National Board for Professional Teaching Standards.

9. I became a teacher because I wanted ensure student success by helping students with special needs meet and achieve their potential. I am dedicated to the children I teach, and to my profession.

10. My professional memberships over the years have included the New York State Academy for Teaching and Learning, participation in Phi Delta Kappa as the Niagara Local Chapter's Grant Chair, and as a Pi Lambda Theta and Kappa Delta Pi International Honor Societies in Education member. Turnkey training has always been important to me.

11. Since 2002, I have been an instructor for the New York State United Teachers Education and Learning Trust (NYSUT ELT). The NYSUT ELT is a nonprofit professional development organization serving NYSUT members with a wide variety of professional development opportunity.

12. I have received the following awards and grants: National Education Association's 2015 California Casualty Awards for Teaching Excellence; 2014 Am-Pol Eagle's Citizen of the Year for Education; School Community Partnership Award; 2011 Tower Foundation Grant for Lifeskills Classes at LPCSD; 2010 Infusing Technology in General Education Classrooms ONTRACT Grant; 2009 Open Minds & Educate Award, Family & Friends Down Syndrome Association of Nagara; 2009 Frog Bogs & Butterfly Bungalows Metamorphosis ONTRACT Grant; 2006 New York State Rehabilitation Award for Community-Work Program; 2006 Community-Work Experience

ONTRACT Grant; 2005 Classroom Kitchen Lab ONTRACT Grant; and the 2002 Performance Assessment Staff Development ONTRACT Grant.

13. With the assistance of my colleagues, I developed a life skills special education program at Lewiston Porter High School and the NU Transitions Program at Niagara University, an extended school year summer program.

14. I have never been the subject of charges of misconduct or incompetence, but the safeguards afforded to me under New York's tenure laws are important to me. These safeguards allow me to practice my profession in the best interests of the children I teach, with reasonable assurance that I will not be arbitrarily fired or punished.

15. This is particularly crucial to me as a public school teacher. I am advised by counsel that, under recent U.S. Supreme Court precedent, when I speak on behalf of my students in my capacity as a public school teacher, I may have no protection under the First Amendment to the United States Constitution.

16. Over the years, I have been a staunch advocate for my students with special needs, both inside and outside the classroom.

17. Of approximately 2100 students at Lewiston Porter Central School District, 17% are classified as “economically disadvantage” with 13% eligible for Free Lunch and another 5% eligible for Reduced-Price Lunch (*see* NYS Report Card 2012-2013 [latest version available] *available at* <http://data.nysed.gov/reportcard.php?year=2013&instid=800000041739> [last visited Aug. 25, 2014]).

18. The seniority safeguards provided by New York's tenure laws are also important to me. Such safeguards further collaboration between teachers in the school community. Without such objective safeguards, in the event of economic layoffs, more senior and more highly compensated

teachers could be targeted, as could teachers who have spoken out for students or about problems in the school district.

19. My nineteen (19) years of experience in the classroom have allowed me to hone by professional skills for the benefit of my students. My students are the beneficiaries of my many years of hard work and professional development. I could not have attained this mastery without the job security afforded by the tenure and seniority laws.

20. The safeguards of the tenure and seniority laws also provide me and my family with a reasonable measure of employment security, so long as I competently perform my duties and continue to meet my obligations under those laws.

21. My school district is facing many challenges in providing a sound basic education to our children. These include: the loss of 79 staff members since 2009, and the District's use of its fund balance reserve of \$1,800,000 and debt service reserve of \$1,100,000 to partially negate the reduction in State Aid.

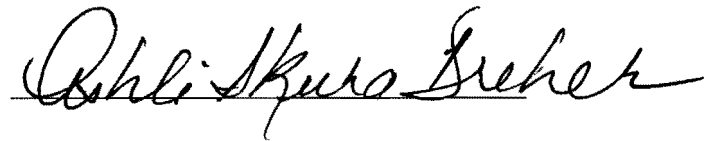
22. The problems faced by my special education students and by my school district will not be rectified by taking away or diminishing the professional rights and safeguards that I and my colleagues were promised when we became public school teachers, and that allow us to practice our profession in the best interests of the students we teach. We need qualified, experienced teachers in the classroom who are protected from arbitrary dismissal in order to teach our students at the highest possible level.

23. I have two (2) children. My oldest daughter, Heavyn Dreher, graduated in June 2014 from Grand Island High School. My youngest daughter, Skye Dreher, is a second grade student at William Kaegebein Elementary School.



24. My children benefit from the safeguards provided by the tenure laws, as these laws ensure that their teachers are afforded the necessary employment safeguards that allow them to teach without fear of arbitrary reprisal or discharge.

25. Without conceding that plaintiffs' claims have legal merit, I should be allowed to intervene in this lawsuit to defend my right to teach and my basic terms and conditions of employment, since these may be adversely affected if plaintiffs succeed.



ASHLI SKURA DREHER

Sworn to before me this  
27 day of August, 2014



Notary Public

115924

JACQUELYN ANN HADAM  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02HA6232905  
QUALIFIED IN SCHOHARIE COUNTY  
COMMISSION EXPIRES DECEMBER 26, 2014

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ALBANY

---

JOHN KEONI WRIGHT, GINET BORRERO,  
TAUANA GOINS, NINA DOSTER,  
CARLA WILLIAMS, MONA PRADIA,  
and ANGELES BARRAGAN,

Plaintiffs,

-against-

STATE OF NEW YORK, REGENTS OF THE  
UNIVERSITY OF THE STATE OF NEW YORK,  
MERRYL H. TISCH, CHANCELLOR OF THE  
BOARD OF REGENTS, JOHN B. KING,  
COMMISSIONER OF EDUCATION AND  
PRESIDENT OF THE UNIVERSITY OF  
THE STATE OF NEW YORK,

Defendants,

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER,  
KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD  
OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE,  
Individually and as President of the New York State United Teachers,

Proposed Intervenors-Defendants.

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AFFIDAVIT IN SUPPORT  
OF MOTION TO  
TO INTERVENE

Index No. 641-14

Hon. \_\_\_\_\_

STATE OF NEW YORK     )  
COUNTY OF ALBANY    ) ss.:

KATHLEEN FERGUSON, being duly sworn, deposes and says:

1.     I am a public school teacher employed by the Schenectady City School District. I make this affidavit in support of my motion to intervene in this litigation, the outcome of which could adversely impact my ability to teach, as well the most basic terms and conditions of my

employment.

2. I have been employed by the Schenectady City School District as an Elementary Education teacher since 1998. Currently, I am a second-grade integrated co-teacher. This is an inclusion class where nearly half the children have special needs. I served as a probationary employee from February 2, 1998 to February 1, 2001, and was awarded tenure by action of the Board of Education on February 2, 2001.

3. I graduated from Mont Pleasant High School in Schenectady and State University of New York at Oneonta in Oneonta, New York with a Bachelor of Science degree in Elementary Education. I received my Master's Degree in 2001 from Sage Graduate School in Education. In June 2014, I completed a Reading K-12 Program through Walden University online.

4. I am certified in the following license areas: Elementary Education and Special Education. I received certifications from the New York State Education Department in the following subject areas: Permanent Elementary Education (N-6) on September 1, 2002 and Permanent Special Education (K-12) on September 1, 2002.

5. The New York State Education Department selected me as the 2012 New York State Teacher of the Year.

6. The Schenectady City School District selected me as the 2010 Schenectady City School District Teacher of the Year.

7. Over the years, I attained the following professional achievements: co-led half day training sessions; featured in a teacher case study, The Virtual Education Web Project, The Evaluation Consortium, University at Albany, May 2006; featured in an instructor magazine article, "How I did It: 8 Teachers Share Their Top Tech Solutions;" and in the Daily Gazette article,

“Schools Learning Video Lessons.”

8. I am the recipient of the following awards: " NEA Pearson Global Learning Fellow, February (July 2013); California Casualty Award for Excellence (February 2013) and the Red Apple Quality of Life Award, June 1998 and April 1999.

9. I have participated in numerous committees and professional development programs and workshops. Additionally, I am an active participant and organizer for various school community events and have been a member of the Parent Partnership Team.

10. I am dedicated to the children I teach, and to my profession. I work in a high-needs, severely underfunded school district. Every year, I spend hundreds of dollars of my own money to provide my students with the basic supplies for the classroom, including paper and pencils. This year, my building principal was forced to discontinue the \$100 stipend for such expenditures.

11. I have never been the subject of charges of misconduct or incompetence, but the safeguards afforded to me under New York's tenure laws are important to me. These safeguards allow me to practice my profession in the best interests of the children I teach, with reasonable assurance that I will not be arbitrarily fired or punished.

12. This is particularly crucial to me as a public school teacher. I am advised by counsel that, under recent U.S. Supreme Court precedent, when I speak on behalf of my students in my capacity as a public school teacher, I may have no protection under the First Amendment to the United States Constitution.

13. The seniority safeguards provided by New York's tenure laws are also important to me. Such safeguards further collaboration between teachers in the school community. Without such objective safeguards, in the event of economic layoffs, more senior and more highly compensated

teachers could be targeted, as could teachers who have spoken out for students or about problems in the school district.

14. The safeguards of the tenure laws also provide me and my family with a reasonable measure of employment security, so long as I competently perform my duties and continue to meet my obligations under those laws.

15. My school district is facing many challenges in providing a sound basic education to our children. Schenectady is a “minority as majority” school district. The ethnic breakdown of students, as of 2012-2013, is as follows: 34% Black or African American; 17% Hispanic or Latino; 16% Asian or Native Hawaiian/Other Pacific Islander and 2% Multiracial (*see* The New York State School Report Card [2012-2013][the latest version available] *available at* <http://data.nysed.gov/reportcard.php?year=2013&instid=800000038389> [last visited Aug. 25, 2014]).

16. In Schenectady, 80% of the district’s nearly 10,000 students are characterized as “economically disadvantaged” with 69% of the students eligible for Free Lunch and another 8% eligible for Reduced-Price Lunch (*see* The New York State School Report Card [2012-2013] *available at* <http://data.nysed.gov/reportcard.php?year=2013&instid=800000038389> [last visited Aug. 25, 2014]).

17. Since 2009, Schenectady has struggled in the face of severe budget gaps. The budget gaps total more than \$30 million. During this same period of time, Schenectady has cut nearly 400 positions, affecting programs, services and departments district-wide.

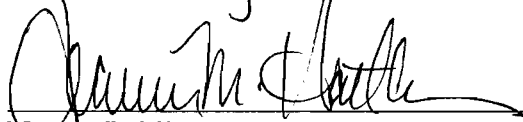
18. None of these problems will be rectified by taking away or diminishing the professional safeguards that I and my colleagues were promised when we became public school teachers, and that we have earned through years of dedicated service. To the contrary, these

safeguards allow us to practice our profession in the best interests of the children we teach.

19. Without conceding that plaintiffs' claims have legal merit, I should be allowed to intervene in this lawsuit to defend my right to teach and my basic terms and conditions of employment, since these may be adversely affected if plaintiffs succeed.

  
KATHLEEN FERGUSON

Sworn to before me this  
27<sup>th</sup> day of August, 2014

  
Notary Public

115930

**JEANNE M. HAMILTON**  
Notary Public, State of New York  
No. 01HA6184010  
Qualified in Albany County  
Commission Expires March 24, 2016

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ALBANY

---

JOHN KEONI WRIGHT, GINET BORRERO,  
TAUANA GOINS, NINA DOSTER,  
CARLA WILLIAMS, MONA PRADIA,  
and ANGELES BARRAGAN,

Plaintiffs,

-against-

AFFIDAVIT IN SUPPORT OF  
MOTION TO INTERVENE

STATE OF NEW YORK, REGENTS OF THE  
UNIVERSITY OF THE STATE OF NEW YORK,  
MERRYL H. TISCH, CHANCELLOR OF THE  
BOARD OF REGENTS, JOHN B. KING,  
COMMISSIONER OF EDUCATION AND  
PRESIDENT OF THE UNIVERSITY OF  
THE STATE OF NEW YORK,

Index No. A00641/2014

Defendants,

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER,  
KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD  
OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE,  
Individually and as President of the New York State United Teachers,

Proposed Intervenors-Defendants.

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STATE OF NEW YORK       :  
                                      :  
                                      : ss.:  
COUNTY OF ALBANY       :

KAREN E. MAGEE, being duly sworn, says:

1. I am the president of New York State United Teachers (“NYSUT”). NYSUT is affiliated with the American Federation of Teachers, the National Education Association and the AFL-CIO. Before I was elected president of NYSUT in April of this year, I worked as a

classroom teacher in the Harrison Central School District for 28 years, as an Elementary school teacher, a special education teacher, and in providing Academic Intervention Services to students with special learning needs. My son attends public school in Harrison.

2. I make this affidavit in support of the proposed intervenors-defendants' motion to intervene. In making this affidavit, I rely on my own experience and knowledge as a classroom teacher, as a union leader, and on my discussions with NYSUT staff.

3. NYSUT represents over 600,000 public and private sector employees and retirees in New York. The majority of in-service NYSUT members – over 266,000 – are currently employed as public school teachers, teaching assistants, school counselors, school social workers and school psychologists. Of these 266,000, approximately 167,000 are employed outside of the City of New York. Each of these teachers is covered by the employment safeguards and obligations under the challenged statutes.

4. Of NYSUT's K-12 teaching membership, over 71% are women. Outside the City of New York, the percentage is even higher – more than 75% are women. In the State of New York, and nationally, teaching remains a predominately female profession, employing more women than any other occupation. (See United States Department of Labor Women's Bureau, *Leading Occupations*, available at <http://www.dol.gov/wb/stats/leadoccupations.htm> [last visited August 19, 2014]).

5. Notably, the statutory safeguards and obligations of teachers under the tenure laws were enacted by the Legislature to promote public education in New York. (See accompanying memorandum of law).



6. NYSUT also represents tens of thousands of school-related professionals, including teacher aides, custodians, food service workers, and bus drivers, who are in-service or retired employees of public school districts or Boards of Cooperative Educational Services. NYSUT also represents the teaching and certain of the other professional staff of the State University of New York, the City University of New York and many charter schools. Overall, NYSUT represents the vast majority of all education-related professionals in New York State.

7. NYSUT is the statewide affiliate for approximately 1,260 local labor organizations, known under the Taylor Law (Civil Service Law §200 *et seq.*) as employee organizations. These employee organizations represent over 98% of New York's public school teachers. Each of these locals is a duly recognized collective bargaining agent for the employees it represents. Many of these local employee organizations have negotiated alternative disciplinary procedures for tenured professionals pursuant to Education Law §3020(1).

8. Public school teachers in New York have faced severe challenges in recent years.

9. According to NYSUT membership records, since 2009, New York has eliminated over 30,000 jobs in public education as a result of the recession and education funding cuts.

10. These job losses have been accompanied by significant cuts in academic and extra-curricular programs for our students, particularly in our poorest school districts.

11. Now, the plaintiffs ask this Court to eliminate or fundamentally diminish the basic terms and conditions of employment that safeguard teachers from arbitrary or discriminatory discipline, discharge or layoff.

12. The laws challenged by plaintiffs are essential to attract and retain highly qualified teachers for our public schools and, just as important, to ensure that teachers are free to

teach without political interference; to advocate for students; to treat all students fairly; and to report and speak freely about threats to student health or safety, inadequate resources, and other problems that may affect public education.

13. Accordingly, the individual proposed intervenors, each of whom is currently a public school teacher and NYSUT member, should be granted intervention. If plaintiffs' claims are successful, each of these teachers, and over 200,000 other public school teachers in New York, will be stripped of long-standing statutory safeguards that are a crucial part of their terms and conditions of employment, and that protect their ability to teach.

14. NYSUT should also be permitted to intervene, because of its long history of working to improve the teaching profession and public education in New York. NYSUT's primary constitutional objectives include:

- a. To promote the best interests of schools, higher education, and health care institutions of the state and to expand and improve these facilities of the state;
- b. To identify and promote practices and strategies that enhance student achievement in safe and supportive learning environments;
- c. To advance the standards of professions whose members form an organizational affiliation with NYSUT.

15. NYSUT has, throughout its history, worked to defend and improve public education for our state's schools and students.

16. NYSUT works to improve teacher qualification. Through its legislative program and advocacy agenda with the New York State Board of Regents and State Education Department, NYSUT seeks to ensure that all children have a teacher who is well prepared, supported and fairly evaluated; that all students are provided a safe, healthy and orderly learning

environment; that quality teaching and learning encompasses clear academic standards, well developed curricula, skillful instruction and fairly aligned student assessments; and that local, state and federal governments provide the programs and resources necessary to provide each student with access to a high quality education.

17. For example, NYSUT takes a direct role in promoting excellence in public education, including teacher quality. NYSUT's teacher evaluation and development system (TED) provides school districts a systemic, research-based approach to implementing their annual professional performance plans. TED has received national attention as a model for helping teachers enhance their practice and improve student learning. NYSUT's teacher practice rubric, aligned with the state's teaching standards, has been adopted by over 200 school districts to assess "what teachers should know and be able to do."

18. Through its advocacy, NYSUT has achieved changes in state and federal policies that afford a variety of opportunities for teacher unions and their members to have a professional voice in local, state and federal educational policy making. NYSUT provides local union leaders and members with training and informational resources on emerging educational issues, to assist local leaders in crafting and implementing policies and procedures related to these issues. These issues include, but are not limited to, teacher evaluation, school and district improvement efforts, professional development and teacher retention and promotion.

19. In support of its principle that all students deserve a qualified teacher, NYSUT has initiated and supported programs and policies aimed at enhancing teaching practices, and affording opportunities for teachers to achieve higher standards within the profession. NYSUT provides direct educational support to teachers pursuing National Board Certification, and

advocates for state and federal funding for this program, resulting in over one thousand National Board Certified teachers throughout New York State. Additionally, NYSUT advocates for Teacher Centers, which provide an opportunity for teachers to take the lead in development and implementation of professional learning programs that contribute to increased teacher effectiveness and student achievement. These Centers also provide leadership in supporting the integration of educational technology into teaching and learning practices.

20. NYSUT's Education and Learning Trust is a professional development source for NYSUT members. The Trust offers on-the ground and on-line courses, seminars and educational programs for teachers and school-related professionals across the state for professional learning, obtaining certification, and meeting mandated requirements for professional development. The Trust helps teachers to acquire the skills and knowledge needed to improve their practice and to assume a variety of teacher leadership roles in their districts, including as educational or literacy coaches, peer observers and mentors.

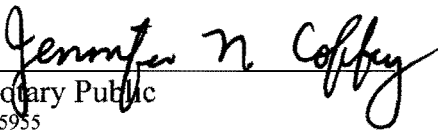
21. NYSUT supports enhanced funding for all schools, and equitable funding for our poorest schools, where the majority of poor, minority, special needs, and English language learning school children are located. As discussed in the affirmation of NYSUT's general counsel, Richard E. Casagrande, Esq., NYSUT has in the past, and continues to participate in, litigation to ensure that all public schools have the resources they need to provide high quality education to the students of our state.

22. Therefore, I respectfully ask that the motion to intervene be granted in all respects.



Karen E. Magee

Sworn to before me this  
28th day of August, 2014.



Notary Public  
115955

**JENNIFER COFFEY**  
**NOTARY PUBLIC, State of New York**  
**No. 02CO8178228**  
**Qualified in Saratoga County**  
**Commission Expires December 24 20** **15**

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ALBANY

---

JOHN KEONI WRIGHT, GINET BORRERO,  
TAUANA GOINS, NINA DOSTER,  
CARLA WILLIAMS, MONA PRADIA,  
and ANGELES BARRAGAN,

Plaintiffs,

-against-

STATE OF NEW YORK, REGENTS OF THE  
UNIVERSITY OF THE STATE OF NEW YORK,  
MERRYL H. TISCH, CHANCELLOR OF THE  
BOARD OF REGENTS, JOHN B. KING,  
COMMISSIONER OF EDUCATION AND  
PRESIDENT OF THE UNIVERSITY OF  
THE STATE OF NEW YORK,

Defendants,

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER,  
KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD  
OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE,  
Individually and as President of the New York State United Teachers,

Proposed Intervenor-Defendants.

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AFFIDAVIT IN SUPPORT  
OF MOTION TO  
TO INTERVENE

Index No. A00641-14

Hon. \_\_\_\_\_

STATE OF NEW YORK

COUNTY OF ERIE                      SS.:

ISRAEL MARTINEZ, being duly sworn, deposes and says:

1. I am a public school teacher employed by the Niagara Falls City School District.

I make this affidavit in support of my motion to intervene in this litigation, the outcome of which

could adversely impact my ability to teach, as well as the most basic terms and conditions of my employment.

2. I have been employed by the Niagara Falls City School District as a Spanish and French teacher since 1989. Currently, I teach Spanish at Niagara Falls High School. I served as a probationary employee from on or about September 1, 1989 to September 1, 1992, and was awarded tenure by action of the Board of Education at its meeting in June 1992, effective September 1, 1992.

3. I graduated from Lockport High School and the University of Buffalo in Buffalo, New York with a BA in Education. I received my Master's Degree in February 1994 from the University of Buffalo in Foreign Language Education.

4. I am certified in the following license areas: Spanish Grades 7-12 and French Grades 7-12. I received the following certifications from the New York State Education Department: Permanent New York State Certification in Spanish Grades 7-12 (1994); and Permanent New York State Certification in French Grades 7-12 (1994).

5. I became a teacher because I had teachers and coaches in junior high school and high school whom I greatly respected. In the same way those teachers and coaches were my mentors and made a difference in my youth, I enjoy guiding students toward successful lives and careers. I am dedicated to the children I teach, and to my profession.

6. I have coached wrestling in my district for twenty-two years, and I also coach cross-country and track.

7. I am the Section 6 wrestling chairman for large schools in the New York State Public High School Athletic Association. I also serve as a representative on the State-wide New

York State Public High School Athletic Association committee, and I am the cross country league chairman for the Niagara Frontier League.

8. Each school year, I spend approximately \$200-\$500 of my own money for supplies for my students. In the past, I served as an advisor for the student language club. On a regular basis, I informally assist and advise colleagues, including newer teachers.

9. I have never been the subject of charges of misconduct or incompetence, but the safeguards afforded to me under New York's tenure laws are important to me. These laws allow me to practice my profession in the best interests of the children I teach, with reasonable assurance that I will not be arbitrarily fired or punished.

10. This is particularly crucial to me as a public school teacher. I am advised by counsel that, under recent U.S. Supreme Court precedent, when I speak on behalf of my students in my capacity as a public school teacher, I may have no protection under the First Amendment to the United States Constitution.

11. The seniority safeguards provided by New York's tenure laws are also important to me. Such safeguards further collaboration between teachers in the school community. Without such safeguards, in the event of economic layoffs, more senior and more highly compensated teachers could surely be targeted, as could teachers who have spoken out for students or about problems in the school district.

12. The safeguards of the tenure and seniority laws also provide me and my family with a reasonable measure of employment security, so long as I competently perform my duties and continue to meet my obligations under those laws.



13. My school district is facing many challenges in providing a sound basic education to our children. These include: the inability to fill teaching positions lost due to attrition and retirement; reduction in spending on supplies; and the virtual elimination of the modified sports program district-wide.

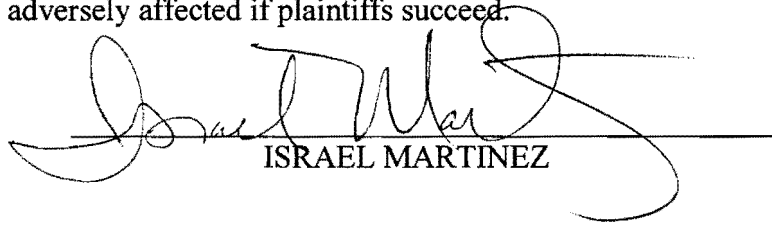
14. The Niagara Falls City School District is a city school district with approximately 6,800 students. Upon information and belief, approximately 70% of the district's student population is economically disadvantaged. Many students come from single parent homes and do not have computer access at home. Also, approximately 15% of students in my district have individualized education plans.

15. None of the problems my school district faces will be rectified by taking away or diminishing the professional safeguards that I and my colleagues were promised when we became public school teachers, and which we earned through years of dedicated service. To the contrary, these laws allow us to practice our profession in the best interests of the children we teach.

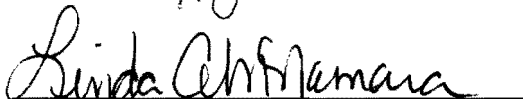
16. I have two daughters. One daughter will be entering 5<sup>th</sup> grade in September 2014, and the other will be entering 3<sup>rd</sup> grade in September, 2014. Both of my daughters attend elementary school in the Grand Island Central School District.

17. My daughters benefit from the protections provided by the tenure and seniority laws, as these laws ensure that their teachers are afforded the necessary safeguards that allow them to teach without fear of unjust reprisal.

18. Without conceding that plaintiffs' claims have legal merit, I should be allowed to intervene in this lawsuit to defend my right to teach and my most basic terms and conditions of employment since these may be adversely affected if plaintiffs succeed.

  
ISRAEL MARTINEZ

Sworn to before me this  
27 day of August, 2014

  
Notary Public

LINDA A. MCNAMARA  
Notary Public, State of New York  
Qualified in Niagara County  
My Commission Expires Nov. 14, 2015

115987

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ALBANY

---

JOHN KEONI WRIGHT, GINET BORRERO,  
TAUANA GOINS, NINA DOSTER,  
CARLA WILLIAMS, MONA PRADIA,  
and ANGELES BARRAGAN,

Plaintiffs,

-against-

STATE OF NEW YORK, REGENTS OF THE  
UNIVERSITY OF THE STATE OF NEW YORK,  
MERRYL H. TISCH, CHANCELLOR OF THE  
BOARD OF REGENTS, JOHN B. KING,  
COMMISSIONER OF EDUCATION AND  
PRESIDENT OF THE UNIVERSITY OF  
THE STATE OF NEW YORK,

Defendants,

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER,  
KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD  
OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE,  
Individually and as President of the New York State United Teachers,

Proposed Intervenors-Defendants.

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AFFIDAVIT IN SUPPORT  
OF MOTION TO  
TO INTERVENE

Index No. A00641/2014

Hon. \_\_\_\_\_

STATE OF NEW YORK

COUNTY OF MONROE      SS.:

RICHARD OGNIBENE, JR., being duly sworn, deposes and says:

1.      I am a public school teacher employed by the Fairport Central School District. I make this affidavit in support of my motion to intervene in this litigation, the outcome of which

could adversely impact my ability to teach, as well as the most basic terms and conditions of my employment.

2. I have been employed by the Fairport Central School District as a Chemistry and Physics teacher since 1992. Currently, I teach Chemistry at Fairport Senior High School. I served as a probationary employee from on or about September 1, 1992 to on or about June 30, 1994, and was awarded tenure by action of the Board of Education on May 17, 1994, effective September 1, 1994.

3. From September 1986 to April 1990 I taught middle school Science in the Perry Central School District. I was awarded tenure after three years.

4. From on or about April 1990 to June 1992, I taught Chemistry in the Caledonia-Mumford Central School District.

5. I graduated from Niskayuna High School and Siena College in Loudonville, New York, with a BS in Chemistry. I received my Master's Degree in Chemistry from the University of Rochester.

6. I am certified in the following license areas: Chemistry and General Science Grades 7-12; and Physics Grades 7-12. I received the following certifications from the New York State Education Department: Permanent New York State Certification in Chemistry and General Science Grades 7-12 (1988); and Permanent New York State Certification in Physics Grades 7-12 (1988).

7. The New York State Education Department selected me as the 2008 New York State Teacher of the Year.

8. I became a teacher because I cannot imagine spending my life doing anything else. My parents were teachers and I consider it a noble profession. I am dedicated to the children I teach, and to my profession.

9. At Fairport Senior High School, I am an advisor to the Gay Straight Alliance. The Gay Straight Alliance meets on a weekly basis to discuss social issues, topical and recent events in the news and how to make the school more welcome for lesbian, gay, bisexual and transgender (“LGBT”) students. The Gay Straight Alliance also engages in advocacy work throughout the school to promote awareness, tolerance and acceptance.

10. In the Fairport Central School District I founded and currently serve in a leadership role in Fairport’s Brotherhood-Sisterhood week, which focuses on civility, awareness, respect and embracing differences. The program is about teaching kids to accept human differences. As part of Brotherhood-Sisterhood week, there are assemblies with keynote speakers; smaller assemblies where students tell personal stories through the spoken word and music; and high school students go to the elementary schools to speak with students about acceptance.

11. In past years, I have served as a mentor in Fairport’s mentoring program for new teachers. I also regularly assist colleagues on an informal basis and have student teachers in my classroom.

12. I have received the following awards: the Horace Mann-National Education Association Foundation Award for Teaching Excellence (2009); the Fairport Senior High School Crystal Apple Award (2006) for excellence in teaching; the American Chemical Society Teacher of the Year Award (2002); and the key to the city of Rochester, New York (Fall 2007).

13. I have never been the subject of charges of misconduct or incompetence, but the safeguards afforded to me under New York's tenure laws are important to me. These safeguards allow me to practice my profession in the best interests of the children I teach, with reasonable assurance that I will not be arbitrarily fired or punished.

14. This is particularly crucial to me as a public school teacher. I am advised by counsel that, under recent U.S. Supreme Court precedent, when I speak on behalf of my students in my capacity as a public school teacher, I may have no protection under the First Amendment to the United States Constitution.

15. The seniority safeguards provided by New York's tenure laws are also important to me. Such safeguards further collaboration between teachers in the school community. Without such objective safeguards, in the event of economic layoffs, more senior and more highly compensated teachers could be targeted, as could teachers who have spoken out for students or about problems in the school district.

16. The safeguards of the tenure and seniority laws also provide me with a reasonable measure of employment security, so long as I competently perform my duties and continue to meet my obligations under those laws.

17. While Fairport is a high achieving school district, like most other school districts in New York State, it faces challenges in providing a sound basic education to our children. These include cuts in the 2012-2013 and 2013-2014 school years to elective courses throughout the district, various programs, after school activities, clubs, and school bus runs. While some programs have been renewed for the upcoming 2014-2015 school year, not all programs have been reinstated.

18. Like many of my colleagues, I regularly purchase supplies for the classroom and for projects in the classroom.

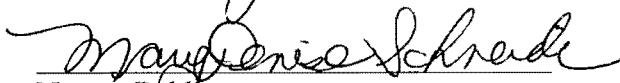
19. The problems faced by my school district will not be rectified by taking away or diminishing the professional safeguards that I and my colleagues were promised when we became public school teachers and that we earned through years of dedicated service. To the contrary, these laws allow us to practice our profession in the best interests of the students we teach.

20. Without conceding that plaintiffs' claims have legal merit, I should be allowed to intervene in this lawsuit to defend my right to teach and my most basic terms and conditions of employment, since these may be adversely affected if plaintiffs succeed.

  
\_\_\_\_\_  
RICHARD OGNIBENE, JR.

Sworn to before me this

26 day of August, 2014

  
\_\_\_\_\_  
Notary Public

115956

**Mary Denise Schnelder**  
Notary Public, State of New York  
Monroe County #4864446  
Commission Expires June 30, 2016

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ALBANY

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JOHN KEONI WRIGHT, GINET BORRERO,  
TAUANA GOINS, NINA DOSTER,  
CARLA WILLIAMS, MONA PRADIA,  
and ANGELES BARRAGAN,

Plaintiffs,

-against-

STATE OF NEW YORK, REGENTS OF THE  
UNIVERSITY OF THE STATE OF NEW YORK,  
MERRYL H. TISCH, CHANCELLOR OF THE  
BOARD OF REGENTS, JOHN B. KING,  
COMMISSIONER OF EDUCATION AND  
PRESIDENT OF THE UNIVERSITY OF  
THE STATE OF NEW YORK,

Defendants,

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER,  
KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD  
OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE,  
Individually and as President of the New York State United Teachers,

Proposed Intervenors-Defendants.

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AFFIDAVIT IN SUPPORT  
OF MOTION TO  
TO INTERVENE

Index No. A00641/2014

Hon. \_\_\_\_\_

STATE OF NEW YORK                      )  
COUNTY OF WESTCHESTER            ) ss.:

LONNETTE RILEY TUCK, being duly sworn, deposes and says:

1.        I am a public school teacher employed by the White Plains City School District. I make this affidavit in support of my motion to intervene in this litigation, the outcome of which could impact my ability to teach, as well the most basic terms and conditions of my employment.



2. I have been employed by the White Plains School District as a teacher of Social Studies since 1988. Currently, I teach 7<sup>th</sup> grade Social Studies. I served as a probationary employee from September 1, 1988 to August 31, 1991, and was awarded tenure by action of the Board of Education on September 1, 1991.

3. I graduated from Memphis Catholic High School and Tennessee State University in Nashville, Tennessee with a Bachelor of Science in History. I received my Juris Doctor Degree in 1981 from Thurgood Marshall School of Law in Houston, Texas.

4. I enlisted in the United States Navy as a Judge Advocate General (“JAG”) in 1982 and served until 1985. I began as a Lieutenant Junior Grade and was promoted to Lieutenant.

5. I received the following certification from the New York State Education Department: Social Studies 7-12 Permanent Certificate (1990).

6. I became a teacher because I loved the work I had done promoting legal education in the public schools of Houston and with the White Plains Youth Bureau.

7. I am dedicated to the children I teach, and to my profession. This is my 5<sup>th</sup> year as District-wide Mentor Facilitator for the Mentoring Program at White Plains. I support teachers who want to mentor the new teachers. I also help teachers who are veterans to support their colleagues. I was the advisor to the National Junior Honor Society.

8. The White Plains - Greenburgh chapter of the NAACP named me the 2014 Teacher of the Year.

9. I serve on the Executive Board of the White Plains Teachers' Association as Parliamentarian and Board Liaison. Prior to this I served as a building representative and as a head building representative.

10. I have never been the subject of charges of misconduct or incompetence, but the safeguards afforded to me under New York's tenure laws are important to me. These protections allow me to practice my profession in the best interests of the children I teach, with reasonable assurance that I will not be arbitrarily fired or punished.

11. This is particularly crucial to me as a public school teacher. I am advised by counsel that, under recent U.S. Supreme Court precedent, when I speak on behalf of my students in my capacity as a public school teacher, I may have no protection under the First Amendment to the United States Constitution.

12. I am an outspoken advocate for my profession and my students. I have attended numerous Board of Education meetings and attended rallies. Additionally, I have faced criticism from parents who were disgruntled over the grades I gave to their children, notwithstanding the fact that the grades were appropriate.

13. The seniority safeguards provided by New York's tenure laws are also important to me. Such safeguards further collaboration between teachers in the school community. Without such safeguards, in the event of economic layoffs, more senior and more highly compensated teachers could be targeted, as could teachers who have spoken out for students or about problems in the school district.

14. The safeguards of the tenure and seniority laws also provide me and my family with a reasonable measure of employment security, so long as I competently perform my duties and continue to meet my obligations under those laws.

15. My school district is facing many challenges in providing a sound basic education to our children. Of approximately 7,000 students, 50% are classified as “economically disadvantaged” with 45% eligible for Free Lunch and another 8% eligible for Reduced-Price Lunch (*see* NYS School Report Card [2012-2013] [the latest version available] <http://data.nysed.gov/reportcard.php?year=2013&instid=800000034913> [last visited Aug. 25, 2014]). The food insecurity of these families makes it difficult for students to be prepared in the classroom. Additionally, the income gap between the poor and the wealthy students has grown during my employment at White Plains. And now, more than ever, there is a language barrier between the teachers and students, as many students are English language learners.


16. None of these problems will be rectified by taking away or diminishing the professional safeguards that I and my colleagues were promised when we became public school

teachers, and that we have earned through years of dedicated service. To the contrary, these safeguards allow us to practice our profession in the best interests of the children we teach.

17. Without conceding that plaintiffs' claims have legal merit, I should be allowed to intervene in this lawsuit to defend my right to teach and my basic terms and conditions of employment, since these may be adversely affected if plaintiffs succeed.

  
LONNETTE R. TUCK

Sworn to before me this  
27<sup>th</sup> day of August, 2014

  
Notary Public

115976

