

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

NEW YORKERS FOR STUDENTS' EDUCATIONAL RIGHTS  
("NYSER"), by its President, JAY WORONA, RUBNELIA  
AGOSTINO, MIRIAM ARISTY-FARER, KATHRYN  
BARNETT, AVA CAPOTE, MILAGROS ARCIA. G.  
CHANGLERTH, MONA DAVIDS, JANET DURAN, ROLANDO  
GARITA, SARA HARRINGTON, SONJA JONES, NICOLE  
IORIO, HEIDI MOUILLESSEAU-KUNZMAN, GRETCHEN  
MULLINS-KIM, ANNETTE RENAUD, ELLEN  
TRACHTENBERG, HEIDI TESKA-PRINCE, ANDY WILLARD,  
NATASHA CAPERS, JACQUELINE COLSON, NICOLE JOB,  
CHRIS OWENS, SAM PRIOZZOLO, PATRICIA PADILLA,  
LYNN SANCHEZ, and ROBERT JACKSON

Plaintiffs,

-and-

THE CITY OF YONKERS,

Intervenor-Plaintiff,

vs.

THE STATE OF NEW YORK, ANDREW M. CUOMO,  
as Governor of the State of New York, NEW YORK STATE  
BOARD OF REGENTS, and JOHN B. KING, Jr.  
as President of the University of the State of New York, and  
Commissioner of Education,

Defendants.

Consolidated  
Index No. 100274/2013  
(formerly 650450/2014)

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS'**  
**MOTION FOR A STAY**

Defendants The State of New York, Andrew M. Cuomo, as Governor of the State of New York, the New York State Board of Regents, and the President of the University of the State of New York, and Commissioner of Education<sup>1</sup> (collectively “Defendants”) respectfully submit this memorandum of law in support of Defendants’ motion for a stay of this litigation until the First Department has issued decisions in the pending appeals in this action.

## **BACKGROUND**

This action is a consolidation of two separately filed lawsuits. In February 2013, a case entitled Aristy-Farer v. State of New York, Index No. 100274/2013, was filed in this court challenging state legislation that conditioned certain annual increases in state education funding to local public school districts on the districts’ timely adoption of revised annual professional performance review (APPR) systems for teachers and principals in accordance with new, more rigorous, state standards (“Aristy-Farer”). The Aristy-Farer plaintiffs subsequently amended their complaint twice, although their substantive allegations remained the same.

Defendants moved to dismiss the second amended Aristy-Farer complaint, and that motion was denied on April 7, 2014. Defendants timely noticed an appeal to the Appellate Division, First Department, which they perfected on February 23, 2015.

In February 2014, a separate action was brought (New Yorkers for Students’ Education Rights v. State of New York, et al., Index No. 650450/14) (“NYSER”), claiming that the State has violated the Education Article of the New York State Constitution (Article XI, § 1).

Plaintiffs claim that Defendants have not complied with the Court of Appeals’ decisions and

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<sup>1</sup> Plaintiffs named John B. King, Jr. as a defendant in this action in his official capacity as President of the University of the State of New York and Commissioner of Education. However, Mr. King resigned from that position, effective January 2, 2015, and Plaintiffs have not moved to substitute his successor pursuant to CPLR § 1019. Notwithstanding that substitution has not yet occurred and without prejudice to Defendants’ position that the President of the University of the State of New York and Commissioner of Education is not a necessary or proper party to this action, nevertheless for the limited purpose of this motion, Defendants submit this memorandum of law on behalf of the President of the University of the State of New York and Commissioner of Education pursuant to CPLR § 1023.

orders in Campaign for Fiscal Equity Inc. v. State of New York, 86 N.Y.2d 307 (1995); Campaign for Fiscal Equity Inc. v. State of New York, 100 N.Y.2d 893 (2003); and Campaign for Fiscal Equity Inc. v. State of New York, 8 N.Y.3d 14 (2006) (together “the CFE Litigation”) and have failed to provide the opportunity for a sound, basic education on a statewide basis (in all approximately 700 school districts in the State). Plaintiffs seek declaratory and injunctive relief compelling Defendants to establish and maintain a state education finance system that provides all students the opportunity for a sound basic education by providing certain services and notifications, as well as nullifying various statutes that could impact education financing.

Defendants filed a motion to dismiss the NYSER action on May 30, 2014, which was denied by the Court on November 17, 2014. A Notice of Appeal to the Appellate Division, First Department, was filed on December 15, 2014.

Plaintiffs moved to consolidate the NYSER action with the Aristy-Farer action, and the Court granted the motion to consolidate on August 12, 2014. On July 28, 2015, the Appellate Division, First Department issued an order directing that both the NYSER and Aristy-Farer appeals be heard during the December 2015 term.

By motion dated June 26, 2014, the City of Yonkers moved to intervene as a Plaintiff in this action. That motion was granted on November 17, 2014, and the decision is on appeal to the Appellate Division, First Department.

Defendants filed answers to the complaints brought by NYSER, Aristy-Farer, and the City of Yonkers on February 2, 2015. The parties have not exchanged any discovery.

On May 29, 2015, Plaintiffs moved for partial summary judgment.<sup>2</sup> Defendants filed their opposition to that motion and a cross-motion for partial summary judgment in separate papers filed today.

### **ARGUMENT**

CPLR § 2201 permits “the court in which an action is pending” to “grant a stay of proceedings in a proper case, upon such terms as may be just.” A court has broad discretion to grant a stay in order to “avoid[] the risk of inconsistent adjudications, application of proof and potential waste of judicial resources.” Britt v. International Bus Servs., Inc., 255 A.D.2d 143, 144 (1st Dep’t 1998); Zonghetti v. Jeromack, 150 A.D.2d 561, 563 (2d Dep’t 1989). Given the complex nature of the present action, a stay of the proceedings pending a resolution of the appeals of the decisions denying the motions to dismiss and the motion to intervene in NYSER and Aristy-Farer is warranted.

In this consolidated action, Plaintiffs assert novel causes of action and seek unprecedented relief. In their action, and in their motion for partial summary judgment, Plaintiffs ask this Court to facially invalidate State educational financing statutes without demonstrating that even a single student in any district in New York State has been denied the opportunity for a sound basic education. Significantly, this is the first time a group of plaintiffs has attempted to bring a statewide cause of action asserting an Education Article violation in all approximately 700 public school districts. As such, there are threshold questions of law that should be resolved by the Appellate Division before this action proceeds, including Plaintiffs’ capacity and standing, as well as the requisite standards on an Education Article claim. Cf. State Ass’n of Small City School Districts, Inc. v. State of N.Y., 42 A.D.3d 648, 650 (3d Dept. 2007). A decision by the Appellate Division on the pending appeals could clarify the nature of the rights

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<sup>2</sup> The City of Yonkers joined that motion by filing a Notice of Motion on July 6, 2015.

secured by the Education Article and the pleading standards, and possibly dispose of this action in its entirety or narrow its focus. Most critically, there is a significant risk of inconsistent adjudications if the motions for partial summary judgment are decided before the Appellate Division has the opportunity to rule on Defendants' appeals of the decisions on the motions to dismiss and the motion to intervene.

Further, given the nature of Plaintiffs' allegations and the broad scope of their claims, discovery in this action will be extremely costly and time consuming.<sup>3</sup> For example, in Maisto v. State of New York, Supreme Court, Albany County, Index Number 8997/08, which involved challenges to the educational opportunities provided in just thirteen small city school districts,<sup>4</sup> discovery lasted over three years, and the trial lasted approximately eight weeks, which included the examinations of school personnel from each district at issue and the testimony of 15 expert witnesses. If this case proceeds as a statewide challenge involving nearly 700 districts, the discovery process will be decidedly more onerous.

In the Campaign for Fiscal Equity ("CFE") litigation, which involved one district, and in which discovery lasted several years and the trial spanned seven months, the Court of Appeals noted that it did not believe that its recognition of an Education Article claim there would "necessarily inspire a host of imitators throughout the state" because:

Plaintiffs have prevailed here owing to a unique combination of circumstances: New York City schools have the most student need in the state and the highest local costs yet receive some of the lowest per-student funding and have some of the worst results. Plaintiffs in other districts who cannot demonstrate a similar combination may find tougher going in the courts. We trust that

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<sup>3</sup> Plaintiffs are precluded from pursuing discovery while their motion and Defendants' cross-motion for partial summary judgment are pending. See CPLR 3214(b) ("Service of a notice of motion under rule 3211, 3212, or section 3213 stays disclosure until determination of the motion unless the court orders otherwise."). However, if the motions for partial summary judgment are decided while the appeals are still pending, discovery should be stayed until the Appellate Division has issued its decisions.

<sup>4</sup> The number of districts at issue was reduced to eight by the time of trial.

fixing a few signposts in the road yet to be traveled by the parties will shorten the already arduous journey and help to achieve the hoped-for remedy.

Campaign for Fiscal Equity, Inc. v. State, 100 N.Y.2d 893, 932 (2003). It is respectfully submitted that the expensive and onerous process of discovery in this case should not be undertaken unless and until the Appellate Division has offered guidance on threshold issues and the parameters of Education Article claims. The taxpayers of this State should not be burdened with the cost of discovery and experts until and unless it becomes necessary after the Appellate Division decides the threshold legal questions raised in Defendants' appeals. Most critically, appellate guidance is critical to determining the scope of this action prior to undertaking discovery.

Plaintiffs will not be prejudiced by a stay. The pending appeals are scheduled to be heard by the First Department during the December 2015 term, less than four months from the current return date on the motions for summary judgment. Accordingly, this action, including discovery and the determination of Plaintiffs' motion for partial summary judgment and Defendants' cross-motion for partial summary judgment, should be stayed pending a decision on the pending appeals.

### **CONCLUSION**

For the foregoing reasons, Defendants respectfully request that the Court grant Defendants' motion for a stay, together with such other and further relief as it deems just and proper.

Dated: New York, New York  
July 31, 2015

OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF NEW YORK

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