

<p>COURT OF APPEALS, STATE OF  COLORADO  2 East 14<sup>th</sup> Ave.  Denver, CO 80203</p>	
<p>District Court, County of Denver  Honorable Michael A. Martinez  Case No. 2014 CV 30371</p>	
<p><b>Appellants:</b></p> <p>CYNTHIA MASTERS, MICHELE  MONTOYA, MILDRED ANNE KOLQUIST,  LAWRENCE GARCIA, PAULA SCENA,  JANE HARMON, LYNNE RERUCHA, and  DENVER CLASSROOM TEACHERS  ASSOCIATION</p> <p>v.</p> <p><b>Appellees:</b></p> <p>SCHOOL DISTRICT NO. 1 IN THE CITY  AND COUNTY OF DENVER, JANE GOFF,  ELAINE GANTZ BERMAN, DEBORA  SCHEFFEL, PAM MAZANEC, MARICA  NEAL, PAUL LUNDEEN, and ANGELIKA  SCHROEDER</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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**NOTICE OF APPEAL PURSUANT TO C.A.R. 3(d)**

The Appellants, by and through their counsel of record, hereby submit the following Notice of Appeal Pursuant to C.A.R. 3(d):

**TRIAL COURT INFORMATION**

This appeal is taken from an Order issued by the District Court, County of Denver, the Honorable Michael A. Martinez. The Plaintiff-Appellants are appealing the Court's Order Dismissing the case pursuant to C.R.C.P. 12(b)(5). The trial court case number is 2014 CV 30371.

## NATURE OF THE CASE

### A. Nature of the Controversy

This is a case of first impression. In May, 2010, the General Assembly enacted amendments to the Teacher Employment, Compensation and Dismissal Act, §22-63-101, *et seq.*, C.R.S. (“TECDA”) The Plaintiff-Appellants, on their own behalf and as class representative plaintiffs, challenged the constitutionality of the “consent” provisions of the 2010 amendments, which were codified at §22-63-202(2)(c.5), C.R.S., on their face and as applied by Defendant-Appellee School District No. 1 in the City and County of Denver (“District”).

Specifically, the Plaintiff-Appellants brought claims alleging a violation of Article II, Section 11 of the Colorado Constitution, which prohibits the state from impairing contracts (“the Contracts Clause”) and a violation of Article II, Section 25 of the Colorado Constitution requiring that the state provide due process before depriving an individual of his or her property (“the Due Process Clause”).

The challenged provisions of the 2010 amendments allow school officials to “remove” non-probationary teachers from their positions and subsequently place them on “unpaid leave”—effectively discharging them—without cause or any hearing as required under TECDA. Non-probationary teachers in Colorado, under TECDA, have a vested contractual right and a constitutionally protected property

interest in continued employment, and the challenged provisions impairs those vested contractual rights and due process rights of such non-probationary teachers.

The trial court granted the Defendant-Appellees' C.R.C.P. 12(b)(5) motion to dismiss, ruling that, in amending TECDA in 1990, the General Assembly eliminated "tenure" (as distinguished from non-probationary status), and with that also eliminated any potential for such non-probationary teachers to obtain vested contractual rights or property rights to continued employment. This ruling was issued in error, contrary to decades of jurisprudence, as well as the specific language of TECDA.

**B. Order Appealed and Basis of Jurisdiction**

The trial court entered an Order dismissing all of the appellants' claims pursuant to C.R.C.P. 12(b)(5). This Court has jurisdiction pursuant to C.A.R. 1(a).

**C. Order Resolved All Issues Before the Trial Court**

No further orders were necessary, and the Order and judgment resolved all issues pending before the trial court.

**D. Judgment Was Made Final For Purposes of This Appeal**

The trial court's Amended Final Order is final for purposes of this appeal pursuant to C.R.C.P. 54(b).

**E. Order Issue and Mailing Date**

The trial court's Order was issued on June 6, 2014, with notice to counsel of record by electronic filing.

**F. Extensions for Motions for Post-Trial Relief**

No extensions were requested or filed regarding motions for post-trial relief.

**G. Motions for Post-Trial Relief**

No motions for post-trial relief were filed.

**H. Denial or Granting of Post-Trial Relief**

No motions for post-trial relief were filed.

**I. Extensions Granted for Filing of Notice of Appeal**

No extensions for the filing of this appeal were requested or granted.

**ADVISORY LISTING OF ISSUES TO BE RAISED ON APPEAL**

1. Whether the provisions of TECDA create contractual rights as a matter of law for teachers who have achieved non-probationary status.
2. Whether the General Assembly deprived non-probationary teachers in Colorado of their vested contractual rights by amending Colorado's fair-dismissal law for teachers in 1990 and 1991.
3. Whether the General Assembly deprived non-probationary teachers in Colorado of their reasonable expectation of continued employment, and thus their

property rights for the purposes of the Due Process Clause, by enacting prior amendments to TECDA in 1990 and 1991.

4. Whether, by enacting the 2010 “consent” provisions, the General Assembly eliminated the legitimate expectations of continued employment for non-probationary teachers, and thus deprived them of their property rights for the purposes of the Due Process Clause.

### **TRANSCRIPT INFORMATION**

No trial testimony or other testimony and evidence were presented to the trial court. No transcript will be required.

### **PREARGUMENT CONFERENCE**

A pre-argument conference is not requested in this matter.

### **COUNSEL INFORMATION**

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## **APPENDIX**

Attached to this Notice of Appeal is a copy of the trial court's Order dated June 6, 2014.

DATED this 15th day of July, 2014.

Respectfully submitted:

/s/ Bradley Bartels  
Bradley Bartels



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 2014, the foregoing Notice of Appeal was filed via ICCE with service requested as follows:

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