Case Number A23-0360

STATE OF MINNESOTA
THE SUPREME COURT

DEBORAH JANE CLAPP

Respondent,

v.

ROCHELLE COX, in her official capacity as Interim Superintendent of Minneapolis Public Schools, *et al.*,

Appellants.

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INTRODUCTION

Minneapolis Public Schools[1] and its Amici spill a lot of ink complaining that a "complete stranger" has sued to prevent MPS from carrying out an unconstitutional provision of a contract between it and its teachers. Plaintiff-Respondent Deborah Clapp, however, is not a stranger. She is a Minneapolis taxpayer, and this Court, since at least 1877, has recognized taxpayers as proper parties to bring such actions in Minnesota courts. This Court should not accept MPS's and its Amici's invitation to undermine this important check on government power.

STATEMENT OF FACTS

Clapp is a Minneapolis homeowner and resident since 2017. App. Add. 2, ¶ 1. She pays property tax yearly on her residence, and, as a real property owner residing in Minneapolis, her tax dollars fund MPS. *Id*. As a taxpayer whose tax money is being spent by MPS, Clapp is seeking to prevent MPS from carrying out one of the provisions of its contract with the Minneapolis Federation of Teachers Local 59. App. Add. 3, ¶ 7.

According to the teachers' union, the contract contains a section entitled "Article 15. Protections for Educators of Color." *Id*., ¶ 8. Under that provision, teachers of color are exempt from seniority-based layoffs and reassignments, meaning the next senior teacher who is not "of color" would be laid off or reassigned. App. Add. 3, ¶ 9. Article 15 also mandates that MPS reinstate teachers of color over more senior teachers who are

[1] Defendants-Appellants in this case are Minneapolis Public Schools, the Minneapolis Board of Education, and the MPS Superintendent. For ease of reference, they will be collectively referred to as "Minneapolis Public Schools" or "MPS."

not "of color." *Id*. There are no similar provision covering educators who are not "of color." *Id*., ¶ 8. Prior to the contract, teachers were laid off or reassigned in order of seniority, with the least senior teachers laid off or reassigned first, without regard to race or ethnicity. *Id*., ¶ 10. Similarly, teachers were reinstated in order of seniority, with the more senior teachers reinstated first, without regard to race or ethnicity. *Id*.

After a tentative agreement was reached, all parties to the contract publicly addressed the provision providing preferences, protections, and privileges for MPS teachers of certain races and ethnicities. Add. App. 4, ¶¶ 11-13. Specifically, on March 25, 2022, the MPS superintendent at the time stated:

> Minneapolis Public Schools, the Board, the Administration has had very much a focus and a priority to create a contract that allows us to recruit and retain and prioritize our educators of color . . . . And you'll see that we remained focused on that commitment. That was a priority. That was one of the most significant priorities that we talked about all through the negotiation process, and our negotiations team did a wonderful job of maintaining that focus and certainly we need our students to feel the representation in the educators, and that commitment remains.

Id., ¶ 11. The teachers' union president said, "We now have a legal document holding both the district and the union accountable to protect and support educators of color." *Id*., ¶ 12. Another union leader stated that the contract is "a nation-leading model that exempts teachers of color from seniority-based layoff[s]" and includes "national-leading language on protecting teachers of color." *Id*., ¶ 13.

Under its terms, the contract took effect on July 1, 2021 and remains in effect until the next contract is signed. *Id*., ¶ 14. During this period, approximately 31 percent of

MPS's costs will be paid for with local property taxes. *Id.*, ¶ 15. Such costs include programs, services, and other expenses, including expenses associated with the process of laying off, reassigning, reinstating, and retaining teachers. *Id.*

To implement the contract, including laying off, reassigning, reinstating, and retaining teachers in accordance with Article 15, MPS is using and will use public money. *Id.*, ¶ 16. In addition, MPS also is spending and will spend public money in furtherance of and to ensure compliance with Article 15. *Id.* Moreover, according to the former superintendent, MPS will need to lay off or reassign approximately 220 teachers between 2022 and 2027. App. Add. 5, ¶ 17. To lay off or reassign teachers, MPS must undertake a comprehensive process, which includes identifying all teachers employed at the school where the layoffs or reassignments are to occur; identifying positions to which teachers may be laid off or reassigned; several rounds of employment interviews for those reassigned positions; reference checks of teachers to be reassigned; and an appeal process, which includes mediation. *Id.* To comply with Article 15, MPS also will now have to identify and prioritize the race and ethnicity of each teacher to be laid off, reassigned, reinstated, and retained, as well as the next, more senior teacher. *Id.* Each step will cost money. *Id.*

ARGUMENT

I. Clapp Has Standing.

Because MPS moved to dismiss Clapp's lawsuit pursuant to Rule 12.02 of the Minnesota Rules of Civil Procedure, the allegations of the complaint are reviewed *de novo*. *Halva v. Minn. State Colleges & Univs.*, 953 N.W.2d 496, 500 (Minn. 2021). The Court "must 'accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party.'" *Id*. (quoting *DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019). This Court has recognized that "Minnesota is a notice-pleading state" and that "[p]laintiffs may plead their case 'by way of a broad general statement which may express conclusions rather than … by a statement of facts sufficient to constitute a cause of action.'" *Halva*, 953 N.W.2d at 500 (quoting *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963)). Stated another way, "'absolute specificity in pleading' is not necessary; rather, 'information sufficient to fairly notify the opposing party of the claim against it' is satisfactory." *Halva*, 953 N.W.2d at 500 (quoting *Hansen v. Robert Half Int'l, Inc.*, 812 N.W.2d 906, 917-18 (Minn. 2012)).

Moreover, although the statements of MPS and the teachers' union indicate a strong likelihood of proving the facts alleged, "it is immaterial whether or not the plaintiff can prove the facts alleged." *Martens v. Minnesota Mining & Mfg. Co.*, 616 N.W.2d 732, 739 (Minn. 2000). As this Court has consistently held:

> A claim is sufficient against a motion to dismiss if it is possible, on any evidence that might be produced, to grant the relief demanded. Thus, a pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support

> granting the relief demanded. And all pleadings shall be so construed as to do substantial justice.

Halva, 953 N.W.2d at 501 (internal quotation marks and citations omitted); *DeRosa*, 936 N.W.2d at 346; *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014); *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010); *Martens*, 616 N.W.2d at 739-40. In short, because this case was dismissed on a motion to dismiss, Clapp has not had the opportunity to prove any of her allegations as true. If the Court believes it needs additional information about how MPS is carrying out Article 15 and the money it is spending to do so to resolve the legal issues in this case, the case should be sent back to the District Court for jurisdictional discovery.

Notwithstanding its current procedural posture, Clapp could not have brought a more straightforward case. She alleges that she lives in Minneapolis and pays property tax on the home she has owned since 2017. App. Add. 2, ¶ 1. She also alleges that Minneapolis Public Schools is funded in part by her tax dollars. *Id.*; App. Add. 4, ¶ 15. In addition, she alleges that MPS spends those tax dollars to carry out the various provisions of its contract with the teachers' union. App. Add. 4, ¶¶ and 16; App. Add. 5, ¶ 17. Finally, she alleges that one of those provisions violates the Minnesota Constitution. App. Add. 5, ¶ 19. Therefore, she alleges that her tax dollars are being used in an unlawful manner. App. Add. 5, ¶ 22.

From as early as 1877 – if not earlier – this court has held that a taxpayer may bring the type of claim that Clapp has brought, with no exceptions. For example, in *Sinclair v. Board of County Commissioners*, a taxpayer sought to enjoin the county from

publishing a list of lands delinquent for taxes in the *Novelty Press* because the taxpayer believed the *Novelty Press* was not a newspaper and, therefore, the county was not legally entitled to publish the list in the *Novelty Press*. 23 Minn. 404 (Minn. 1877). This Court found the taxpayer to have standing because he would be injured "from the unlawful action of the [county] – to wit, the squandering and misappropriation of county funds – will be irreparable." *Id*. at 407. If the county had been able to carry out the contract to publish the list in violation of the law, any subsequent actions based on that publication would have been called into question, including the collection of delinquent taxes.

In *Flynn v. Little Falls Electric & Water Company*, the plaintiff was a taxpayer who sought to prevent the city from carrying out a contract between it and the water company. 74 Minn. 180 (Minn. 1898). The taxpayer asserted that the contract was unlawful because the city did not have the authority to "cede away, control or embarrass their legislative or governmental powers, or render the municipality unable in the future to control any municipal matter over which it has legislative power" to the water company in exchange for a 30-year monopoly. *Id*. at 186. In other words, the taxpayers sought to prevent the city from spending money to satisfy its contractual obligation. In reviewing whether the taxpayer was the proper party, the Court held, "If this contract is wholly void, as alleged, we have no doubt that plaintiff, as a taxpayer, may maintain this action." *Id*. at 185.

In *Grannis v. Board of Commissioners,* the county "made and entered into a contract" with an individual "to perform certain services," including recovering unpaid taxes on behalf of the county. 81 Minn. 55, 56 (Minn. 1900). In entering into this

agreement, the county agreed to pay the individual a certain compensation. Subsequently, a county taxpayer sued, seeking to "restrain [the county] from carrying out the terms of the contract" because, the taxpayer alleged that the county did not have the authority to recover unpaid taxes and, therefore, that any action to do so would be in violation of the law. *Id*. at 58-59. In deciding the case, this Court stated, "There can be no question as to the right of the plaintiff to maintain the action. He is a taxpayer of the county, and the funds of the county are threatened to be diverted from the proper channel, and his interests are such as to sustain the action." *Id*.

In *Arpin v. Thief River Falls*, "the plaintiff brought [an] action to enjoin the City of Thief River Falls and the Tri-State Telephone Company from entering into a contemplated contract for the construction and operation of a telephone system within the city." 122 Minn. 34, 35 (Minn. 1913). The plaintiff as a taxpayer alleged that the contemplated contract would be unlawful because the city did not comply with the legal requirement that it cannot enter into a contract unless it advertises for proposals. The Court concluded:

> The city, if the allegation is true, is about to enter into a contract, illegal under its charter, because of a failure to advertise for proposals. The result may be a more expensive construction contract or a franchise granted without conditions favorable to the city, or without receiving a sufficient consideration. We think the plaintiff alleges a sufficient special injury.

Id. at 37-38.

In *Oehler v. St. Paul*, three St. Paul taxpayers sued the city to prevent it from continuing to retain Clyde R. May as its general superintendent and engineer because he was appointed contrary to civil service rules. 174 Minn. 410 (Minn. 1928). This Court

concluded that the taxpayers had standing to bring their lawsuit because "a taxpayer may, when the situation warrants, maintain an action to restrain unlawful disbursements of public moneys; to recover for the use of the public subdivision entitled thereto money that has been illegally disbursed, as well as to restrain illegal action on the part of public officials." *Id*. at 417-418. It was irrelevant that the taxpayer was not a party to the contract.

In *Williams v. Klemmer*, taxpayers sued the city to prevent it from "accepting and using" a truck that the city purchased from the General Motors Truck Company. 177 Minn. 44 (Minn. 1929). The taxpayers brought suit because the city entered into a contract with the company without the approval of the mayor, which was required by law. The Court again found taxpayers to be proper parties because they sought to enjoin the unauthorized expenditure of funds.

In *Regan v. Babcock,* this Court held that the plaintiffs had standing to challenge the legality of paving and grading contracts. 247 N.W. 12 (Minn. 1933). The court reasoned that, because plaintiffs paid automobile license fees and state gas taxes, they had "a substantial interest in the honest expenditure of the funds into which their taxes are paid." *Id*. at 201.

Relying on *Oehler* and other cases, this Court in *Cranak v. Link* again found taxpayers to have standing when they sued Minneapolis to prevent it from hiring a former employee as a "technical consultant" contrary to civil service rules. 219 Minn. 112 (Minn. 1944).

In *Phillips v. Brandt*, a Minneapolis taxpayer sued to prevent the city from, among other actions, "assigning … duties of first assistant city attorney" because the proper procedure had not taken place to hire anyone to that position. 231 Minn. 423 (Minn. 1950). The Court concluded that the plaintiff had standing because "if plaintiff's claims in this respect are sustained, it follows that he and other taxpayers are affected by such illegal expenditures, since the source of funds for the payment of the challenged salary is the taxes paid by plaintiff and taxpayers represented by him." *Id*. at 429.

In *Arens v. Rogers*, taxpayers sued seeking to prevent the village of Rogers from establishing and operating municipal liquor stores. 240 Minn. 386 (Minn. 1953). When asked to decide whether taxpayers had standing to bring such an action, this Court ruled, "plaintiffs' interest as taxpayers is sufficient to enable them to litigate the constitutionality … in the present action. Taxpayers have a real and definite interest in preventing an illegal expenditure of tax money by a municipality." *Id*. at 392.

In *Borgelt v. Minneapolis*, the plaintiffs consisted of taxpayers who sought to enjoin the city from constructing and operating an asphalt plant. 271 Minn. 249 (Minn. 1965). The taxpayers sued before any final bid was accepted. There was no dispute that the plaintiffs had standing.

In *Lerner v. Minneapolis*, taxpayers sought to enjoin the city from "spending or contracting to expend further funds" to replace the East Hennepin Avenue bridge. 284 Minn. 46, 47 (Minn. 1969). In the end, the plaintiffs lost their legal challenge not because they did not have standing as taxpayers but because the actions taken by the city

were ruled to be lawful. In other words, standing exists even if a plaintiff fails on the merits at all evidence has been presented.

The above litany of cases is not a comprehensive list of all Minnesota taxpayer cases that have been decided by this Court. It is, however, a strong reflection of the type of contracts that taxpayers have been challenging for almost 150 years. Importantly, in each of these cases, this Court has had no issue recognizing taxpayers who seek to prevent the government from carrying out contractual provisions that they believed were contrary to law as proper plaintiffs. This Court held that each plaintiff had the requisite injury because the government was spending taxpayer money because of its contractual obligations. This case is no different.

Clapp has alleged that MPS is using and will use public money to implement the contract, including laying off, reassigning, reinstating, and retaining teachers in accordance with Article 15. App. Add. 4, ¶ 16. Clapp also alleged that MPS is expending and will expend public money in furtherance of and to ensure compliance with Article 15. *Id*. In other words, MPS is spending taxpayer money to satisfy the commitment it made to the teachers when it signed the contract.

In addition, Clapp plainly alleged that carrying out Article 15 will violate the Equal Protection Guarantee of the Minnesota Constitution. App. Add. 5, ¶ 19. Therefore, any teacher laid off, reassigned, reinstated, or retained under Article 15 will be the result of an unlawful process agreed-upon by MPS and the teachers. Those affected teachers are no different from the water company in *Flynn*, the contractor in *Grannis*, the

telephone company in *Arpin*, the engineer in *Oehler*, the truck company in *Williams,* and the contractors in *Regan* – all who were unlawfully contracted or employed.

Moreover, the act of carrying out Article 15 will cost MPS money. For example, Clapp alleged that, for MPS to lay off or reassign teachers, MPS must undertake a comprehensive process, which includes identifying all teachers employed at the school where the layoffs or reassignments are to occur; identifying positions to which teachers may be reassigned; several rounds of employment interviews for those reassigned positions; reference checks of teachers to be reassigned; and an appeal process, which includes mediation. App. Add. 5, ¶ 17. Such actions, obviously, cost money. *Id*.

In addition, the provision providing preferences, protections, and privileges for MPS teachers of certain races and ethnicities, like salary increases and time-off, was a bargained-for term of the contract. Add. App. 4, ¶¶ 11-13. It is consideration paid by MPS to the teachers, just like in the above-cited cases.

MPS nonetheless argues Clapp has not satisfied her burden of demonstrating standing. In MPS's view, for a taxpayer to have standing, it must allege that the money spent by the government in violation of the law is more than just general operating costs or money spent in the normal course. That simply is not the law. Nor should it be.

In each of the cases cited above, the taxpayers did not seek to prevent the government from spending a certain line-item. They sought to prevent the government from spending money in a specific manner. In *Sinclair*, the taxpayers did not seek to prevent the government from publishing a delinquency list; they simply sought to prevent the county from paying a publisher they did not believe was a newspaper. In *Flynn*, the

taxpayer did not seek to prevent the city from providing water to its residents; he simply sought to prevent the city from entering into a particular contract with the water company. In *Grannis*, the taxpayers sought to prevent the city from carrying out the terms of a contract because the city did not have the authority to enter into such a contract. In *Arpin*, the taxpayers solely sought for the city to follow the advertising rules, not prevent the city from ever entering into a contract. In *Williams*, the issue was not the purchase of the truck but the fact that the purchase was not approved by the mayor. In *Phillips*, the issue was that the proper procedure was not followed. Like here, those taxpayer cases sought to prevent the government from acting unlawfully. They did not seek to prevent the government from spending any money whatsoever for a specific purpose. As this Court in *Flynn* explained:

> This will not in any way prevent the common council from providing the city with water, or in any way interfere with the exercise of their discretion as to the choice of ways and methods of doing so. They will remain at liberty to contract for such supply with the same company. They are not now paying this money in the exercise of any discretion, but on the ground that the city is legally bound by contract to pay it. The effect of the injunction will be merely to restrain their carrying out this invalid provision of the ordinance, and thus compel the municipal authorities to exercise in a legal way their power to contract for a supply of water for fire protection, and properly to exercise their discretion as to ways and methods, precisely as if this invalid provision had never existed.

74 Minn. at 187. Clapp does not need to allege that MPS seeks to spend additional money to implement Article 15. Nor does she need to allege that, if Article 15 were to be enjoined, MPS would not be spending the same money on a different, lawful process. She simply needs to allege that money is being spent.

Because Minnesota law is not what MPS would like it to be, MPS directs the Court's attention to cases in seven states which MPS believes support its position that a Minnesota taxpayer must allege the spending of more than just general operating costs to have standing. Those seven states do not provide the Court with the full picture.[2] The requirements to establish taxpayer standing in each of the 50 states and the District of Columbia vary broadly. Candidly, there are states that do not recognize general operating costs as sufficient expenditures to satisfy taxpayer standing. *See* Arizona: *Welch v. Cochise Cnty. Bd. of Supervisors*, 251 Ariz. 519, 524 (Ariz. 2021); Colorado: *Reeves-Toney v. Sch. Dist. No. 1*, 2019 CO 40, P21-P30 (Colo. 2019); Connecticut: *W. Farms Mall, LLC v. Town of W. Hartford*, 279 Conn. 1, 13 (Conn. 2006); Delaware: *In re Del. Pub. Sch. Litig.*, No. 138-2023, 2024 Del. LEXIS 30, *45 (Del., Jan. 30, 2024); Florida: *Council for Secular Humanism, Inc. v. McNeil*, 44 So. 3d 112, 121 (Fla. App. 2010); Georgia: *Gaddy v. Ga. Dep't of Revenue*, 301 Ga. 552, 558 (Ga. 2017); Indiana: *Horner v. Curry*, 125 N.E.3d 584, 596 (Ind. 2019); Iowa: *Alons v. Iowa Dist. Court*, 698 N.W.2d 858, 871 (Iowa 2005); Kentucky: *Ward v. Westerfield*, 653 S.W.3d 48, 56 (Ky. 2022); Maryland: *George v. Balt. Cty.*, 463 Md. 263, 279 (Md. App. 2019) (general operating costs are insufficient to satisfy illegal expenditure requirement for taxpayer

[2] Contrary to MPS's representation, in Tennessee, the case law is conflicting on whether general operating costs are sufficient to satisfy its expenditure requirement for taxpayer standing. *See Fannon v. City of Lafollette*, 329 S.W.3d 418, 428 (Tenn. 2010); *Rutan-Ram v. Tenn. Dep't of Children's Servs.*, No. M022-00998-COA-R3-CV, 2023 Tenn. App. LEXIS 345, *55-57 (Tenn. App. 2023); *Metro. Gov't of Nashville v. Tenn. Dep't of Educ.*, No. M2022-01786-COA-R3-CV, 2024 Tenn. App. LEXIS 18, *24-25 (Tenn. App. Jan. 10, 2024).

standing; *however*, substantial waste in government operating costs is recognized as a pecuniary loss sufficient to confer taxpayer standing); Massachusetts: *Tax Equity Alliance v. Commissioner of Revenue*, 423 Mass. 708, 711-713 (Mass. 1996); Michigan: *Killeen v. Wayne County Civil Service Com.*, 108 Mich. App. 14, 19 (Mich. App. 1981); Missouri: *City of Slater v. State*, 494 S.W.3d 580, 587 (Mo. App. W.D. 2016); Nevada: *Schwartz v. Lopez*, 132 Nev. 732, 743 (Nev. 2016); New Hampshire: *Forward v. Scanlan*, No. 226-2022-CV-00233, 2023 N.H. Super. LEXIS 13, *8-10 (N.H. Super. Nov. 2, 2023); New York: *Godfrey v. Spano*, 13 N.Y.3d 358, 374-375 (N.Y. 2009); Pennsylvania: *Upper Moreland v. Commonwealth, Pennsylvania Dep't of Transp.*, 48 Pa. Commw. 27, 32 (Pa. Commonw. 1979); Texas: *Andrade v. Venable*, 372 S.W.3d 134, 138 (Tx. 2012); Virginia: *McClary v. Jenkins*, 299 Va. 216, 223-224 (Va. 2020); Wisconsin: *Teigen v. Wis. Elections Comm'n*, 2022 WI 64, P163 (Wis. 2022).

In stark contrast, however, there are states that explicitly recognize operating costs as sufficient expenditures to satisfy taxpayer standing. *See* Arkansas: *McGhee v. Ark. State Bd. of Collection Agencies*, 360 Ark. 363, 367-368, 370-71, 372 (Ark. 2005); California: *Blair v. Pitchess*, 5 Cal. 3d 258, 269 (Cal. 1971) and *Citizens for Unif. Laws v. County of Contra Costa*, 233 Cal. App. 3d 1468, 1472-1473 (Cal. App. 1991) ("It is sufficient that paid employees of a preexisting public entity have expended their time in performing acts prescribed by the challenged law. This approach is consistent with the policy of construing the taxpayer standing rule liberally to achieve the remedial purpose of enabling citizens to attack governmental action which would otherwise go unchallenged[.]") (citing *Blair*, 5 Cal. 3d at 267-68.); Illinois: *Krebs v. Thompson*, 387 Ill.

471, 475-476 (Ill. 1944) ("The expenditure of [$11,000 of administrative expenses] any other amount from the general funds of the State for the purpose of administering an unconstitutional statute is such an injury to every taxpayer that he may bring a suit to enjoin such unlawful expenditure and misapplication of the funds of the State."); Louisiana: *Woodard v. Reily*, 244 La. 337, 353 (La. 1963); Oklahoma: *Thomas v. Henry*, 2011 OK 53, P3-P7 (Ok. 2011) ("The Attorney General's interpretation that taxpayer standing can arise only when dealing with appropriated funds is too restrictive."); Washington: *State ex rel. Boyles v. Whatcom County Superior Court*, 103 Wn.2d 610, 614-615 (Wash. 1985).

In addition, there are other states (including a few states where general operating costs are insufficient to satisfy taxpayer standing) that recognize a public-interest exception to standing that does not require a taxpayer to allege any expenditure whatsoever. *See* Alabama: *Ex Parte State ex rel. Alabama Policy Inst.*, 200 So.3d 495, 515 (Ala. 2015) (abrogated on other grounds); Alaska: *Baxley v. State*, 958 P.2d 422, 428 (Alaska 1998); Idaho: *Coeur d'Alene Tribe v. Denney (In re Verified Petition for Writ of Mandamus)*, 161 Idaho 508, 514 (Id. 2015); Michigan: *Berry v. Garrett*, 316 Mich. App. 37, 45-46 (Mich. App. 2016); Montana: *Committee for an Effective Judiciary v. State*, 209 Mont. 105, 110-111 (Mont. 1984) (abrogated on other grounds); Nebraska: *Nebraskans Against Expanded Gambling, Inc. v. Nebraska Horsemen's Benevolent & Protective Ass'n*, 258 Neb. 690, 693-694 (Neb. 2000); New Mexico: *State ex rel. Clark v. Johnson*, 120 N.M. 562, 568-569 (N.M. 1995); Ohio: *State ex rel. Ohio Acad. of Trial Lawyers v. Sheward*, 86 Ohio St. 3d 451, 472-473 (Ohio 1999); South Carolina: *ATC*

South, Inc. v. Charleston County, 380 S.C. 191, 198-199 (S.C. 2008); South Dakota: *Parsons v. South Dakota Lottery*, Nos. 17944, 18039-a-HURD, 1993 S.D. LEXIS 101 (S.D. Aug. 4, 1993); Utah: *Utah Chapter of the Sierra Club v. Utah Air Quality Bd.*, 2006 UT 74, P41 (Utah 2006); West Virginia: *State ex rel. Brotherton v. Moore*, 159 W. Va. 934, 938 (W.V. 1976).

Moreover, there are states, like Minnesota, where the courts have not distinguished between general operating costs and expenditures generally when determining taxpayer standing. *See* Alabama: *Ingles v. Adkins*, 256 So. 3d 62 (Ala. 2017); District of Columbia: *Vining v. Exec. Bd. of the Dist. of Columbia Health Ben. Exch. Auth.*, 174 A.3d 272 (D.C. 2017); Hawaii: *Hawaii's Thousand Friends v. Anderson*, 70 Haw. 276, 282 (Hawaii 1989); Idaho: *Koch v. Canyon County*, 145 Idaho 158 (Idaho 2008); Maine: *Common Cause v. State*, 455 A.2d 1 (Maine 1982); Mississippi: *Prichard v. Cleveland*, 314 So. 2d 729 (Miss. 1975); Montana: *Grossman v. Department of Natural Resources*, 209 Mont. 427 (Mont. 1984); New Jersey: *People For Open Government v. Roberts*, 397 N.J. Super. 502 (N.J. Super. 2008); North Carolina: *Goldston v. State*, 361 N.C. 2 (N.C. 2006); North Dakota: *Billey v. North Dakota Stockmen's Ass'n*, 1998 ND 120 (N.D. 1998); Oregon: *Demartino v. Marion County*, 220 Ore. App. 44 (Ore. 2008); Vermont: *Baird v. City of Burlington*, 2016 VT 6 (Vt. 2016).

Finally, for completeness sake, three states do not recognize taxpayer standing or a public-interest exception to standing. *See* Kansas: *Crow v. Board of County Comm'rs*, 243 Kan. 287, 289 (Kan. 1988); Rhode Island: *Watson v. Fox*, 44 A.3d 130, 137-138 (R.I. 2012); Wyoming: *Allred v. Bebout*, 2018 WY 8, P32 (Wyom. 2018). In short, the

national legal landscape concerning the types of expenditures that satisfy taxpayer standing is indeterminate. Although this Court may look to other courts around the country, such a tour will not provide an answer.

Because the state survey is inconclusive, this Court should not accept MPS's and the Amici's invitation to adopt another state's standing requirement. The Court of Appeals concluded Clapp's complaint was sufficient to establish standing. This Court should do so as well. In addition, if after discovery Clapp cannot prove that any money whatsoever is being spent to carry out the bargained-for provision providing preferences, protections, and privileges for MPS teachers of certain races and ethnicities, the District Court can find in favor of MPS. However, at this time, Clapp has satisfied this Court's long-established and well-recognized taxpayer standing requirement.

II. Clapp's Case Is Ripe.

The Court of Appeals succinctly concluded, "Clapp's complaint alleges an actual future controversy in the context of a declaratory-judgment action," and, therefore, "her claims are ripe." App. Add. 35. It based its decision on the simple fact that Clapp alleged MPS was carrying out Article 15 and is using and will use taxpayer money to do so. *Id*. Clapp's claims are ripe.

In an effort to rebut the obvious, MPS argues that the case is not ripe because there has been no "actual disbursement of tax funds." This argument is wrong for several reasons. First, as detailed above, this Court has never required a taxpayer to allege a specific disbursement of tax funds to satisfy standing. Second, also detailed above, Clapp has alleged that MPS is spending her tax money to carry out Article 15. Third, to the

extent that MPS believes that Clapp must prove such an expenditure at this stage of the litigation, it is mistaken. Fourth, as this Court held in *Minneapolis Federation of Men Teachers, Local 238, AFL v. Board of Education of Minneapolis*, a declaratory judgment claim is ripe when a resolution is adopted. 238 Minn. 154 (Minn. 1952). The government is not required to start implementing the resolution for the case to be ripe. As this Court explained:

> In the first place, defendants apparently overlook that, pursuant to the resolution adopted by the board, the so-called contract would undoubtedly have been submitted to the teachers if the restraining order had not been issued. Secondly, defendants mistakenly assume that a destruction of the status quo between the parties is a prerequisite to the establishment of a justiciable controversy. A justiciable controversy may clearly exist without first having an actual disruption of the existing legal relationships between the parties, and such a controversy does not lose its justiciable character because the court in the exercise of a sound discretion issues a restraining order to preserve the status quo until the rights of the parties have been declared. It is no defense that the court by appropriate action has prevented the ripening seeds of a controversy from becoming ripe.

Id. at 158. A taxpayer is not required to wait until the tax money is being spent. She may sue once it has been obligated.[3] And, in this case, MPS was obligated to carry out Article 15 once the parties agreed to the contract and contract became law when ratified by the Minneapolis Board of Education. App. Add. 3, ¶ 7.

MPS' only response to this plain legal principle is to say Clapp is a different type of plaintiff than those in *Minneapolis Federation of Men Teachers.* However, ripeness concerns whether a case is timely. *Werlich v. Schnell*, 958 N.W.2d 354, 363 (Minn.

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[3] This Court also has held a taxpayer claim to be ripe when a city's contract was merely proposed, not even finalized or in the process of being implemented. *Arpin*, 122 Minn. at 35.

2021) ("Ripeness determines ***when*** a claim may be brought.") (emphasis added). Whether Clapp is a proper party is an issue of standing, which is addressed above. Because Clapp's complaint alleges that MPS is currently carrying out and will carry out Article 15 and is spending and will spend money to do so, Clapp's claims are ripe.

CONCLUSION

For the above reasons, Clapp respectfully requests that the Court affirm the Court of Appeals' decision and remand the case to the District Court for further proceedings.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that Appellant's foregoing brief conforms to the requirements of Minn. R. Civ. App. P. 128.02 and 132.01 for a brief produced with a proportional font. The length of Appellant's brief is 5,361 words. The brief was prepared using Microsoft Word in 13-point Times New Roman.

Dated: May 9, 2024

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