Appendix A

In the
United States Court of Appeals
For the Seventh Circuit

No. 16-4168

JOSEPH R. ELLIOTT,

Plaintiff-Appellee,

v.

BOARD OF SCHOOL
TRUSTEES OF MADISON
CONSOLIDATED SCHOOLS,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. 1:13-cv-319-WTL-DML — **William T. Lawrence**, *Judge*.

ARGUED SEPTEMBER 6, 2017 — DECIDED DECEMBER 4, 2017

Before BAUER, EASTERBROOK, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. The Contract Clause of the United States Constitution prohibits States from passing laws "impairing the Obligation of Contracts." Art. I, § 10, cl. 1. The prohibition is not absolute, but it imposes substantial limits on laws that would undermine existing contractual rights. In 2012, an Indiana law took effect amending the State's teacher tenure law to cut back on the rights of tenured teachers in layoffs. The issue in this appeal is whether the new law violates the Contract Clause rights of a teacher who had tenure before the law took effect.

The Supreme Court of the United States held in 1938 that the Indiana teacher tenure statute created contractual rights protected by the Contract Clause. *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 104, 58 S.Ct. 443, 82 L.Ed. 685 (1938). From 1927 to 2012, that contract included job security when school districts needed to reduce their teaching staffs: as long as they were qualified for an available position, tenured teachers had a right to be retained over non-tenured teachers. The new Indiana law eliminates that right and orders school districts to base layoff choices on performance reviews without regard for tenure status.

In 2012, defendant Board of Trustees for Madison Consolidated Schools relied on the new law to lay off plaintiff Joseph Elliott, a teacher who earned tenure fourteen years before the new law took effect, while it retained non-tenured teachers in positions for which Elliott was qualified. Elliott sued, claiming that the amendment violated the Constitution when applied to him. The district court granted summary judgment in Elliott's favor. *Elliott v. Board of School Trustees of Madison Consol. Schools*, 2015 WL 1125022 (S.D. Ind. March 12, 2015). We affirm.

I. *Legal and Factual Background*

A. *Indiana's Teacher Tenure Law*

Indiana enacted its teacher tenure law as the Act of March 8, 1927, Laws of the State of Indiana 259–62 (1927) ("the Act"). The Act established how and when a teacher earns tenure, the "principal purpose" of which is "to secure permanency in the teaching force." *Watson v. Burnett*, 216 Ind. 216, 23 N.E.2d 420, 423 (1939). Permanency was intended to promote "the public good through the creation of a competent cadre of teachers in the state." *Stewart v. Fort Wayne Community Schools*, 564 N.E.2d 274, 278 (Ind. 1990). With the enactment, Indiana joined a national trend in the early twentieth century of offering job security to attract better teachers.

Unlike tenure statutes in many other States, Indiana's law has been treated as forming "an employment by contract between the teacher and the school corporation." *School City of Elwood v. State ex rel. Griffin*, 203 Ind. 626, 180 N.E. 471, 474 (1932); *see also Anderson*, 303 U.S. at 107, 58 S.Ct. 443 (distinguishing Indiana law from other States' laws). A teacher who had "serve[d] under contract as a teacher in any school corporation in the State of Indiana for five or more successive years" achieved tenure upon entering a sixth successive one-year contract. Ind. Code § 26-6967.1 (1927).[1] Once tenured, teachers have an "indefinite contract" that entitles them to employment contracts each year unless the employer has good cause to fire them. *Id.*;

[1] The original Act referred to "permanent" teachers, but we use the more common term "tenured."

Lost Creek School Township v. York, 215 Ind. 636, 21 N.E.2d 58, 64 (1939). The annual employment contracts can adjust variable terms like salary, hours, and the length of the school year, but they must always comply with the Act. *Lost Creek*, 21 N.E.2d at 64. In case of a conflict, the indefinite contract terms set by statute supersede the annual employment contract. *School City of Lafayette v. Highley*, 213 Ind. 369, 12 N.E.2d 927, 930 (1938) (parties cannot circumvent Act by relying on written contract).

The core terms of the Act limit the reasons and procedures for firing or laying off tenured teachers. To cancel a tenured teacher's contract, a school must provide written notice and, upon demand, a comprehensive hearing before the school board. Ind. Code § 20-28-7.5-2; Ind. Code § 26-6967.2 (1927). Schools can fire tenured teachers only for incompetence, insubordination, neglect of duty, immorality, a justifiable decrease in the number of teaching positions, or other good cause. Ind. Code § 20-28-7.5-1; Ind. Code § 6967.2 (1927). Recognizing a possible loophole, Indiana courts have long held under the Act that if a school district must reduce the number of its teachers, the district must retain qualified tenured teachers over non-tenured teachers. *Watson*, 23 N.E.2d at 423.

B. *Senate Bill 1*

The job security provisions in Indiana's tenure law remained unchanged until 2011. *Compare* Ind. Code § 26-6967.1 (1927) *with* Ind. Code § 20-28-7-1 (2010); *and* Ind. Code § 26-6967.2 (1927) *with* Ind. Code § 20-28-7-2 (2010). In 2011, Indiana amended the Act through Senate Bill 1, which took effect in 2012. As relevant here, Senate Bill 1 established a mandatory teacher-evaluation regime and removed the protection for tenured teachers in layoffs.[2]

Starting with the 2012–13 academic year, Senate Bill 1 requires schools to implement annual teacher-evaluation plans. Ind. Code § 20-28-11.5-4(a). Each year, schools must assess their teachers based on performance evaluations, "Objective measures of student achievement and growth," and "Rigorous measures of effectiveness." Ind. Code § 20-28-11.5-4(c). Schools must then assign each teacher a rating: highly effective, effective, improvement necessary, or ineffective. Ind. Code § 20-28-11.5-4(c)(4).

These annual evaluations affect teacher pay, student placement, and—most relevant here—selection of teachers for layoff during reductions in force. Under Senate Bill 1, a school district may no longer consider tenure status when reducing its teaching staff. Schools laying off teachers must now cancel teacher contracts "on the basis of performance rather than seniority." Ind. Code § 20-28-7.5-1(d). To decide between teachers with the same performance ratings, schools may consider other factors, including experience, additional degrees or credit hours, leadership roles, and the school's academic needs. Ind. Code §§ 20-28-7.5-1(d), 20-28-9-1.5(b).

[2] Senate Bill 1 also changed the terminology from "permanent teacher" to "established teacher." Any difference between the two labels is irrelevant here, so we continue to use the general term "tenured."

C. *Plaintiff's Employment History*

Plaintiff Joseph Elliott taught at Dupont Elementary School, part of Madison Consolidated Schools, for nineteen years. In 1998, Elliott entered his sixth successive contract with the school district and became a tenured teacher under the Act. He continued to teach at Dupont for fourteen more years. As is the norm in Indiana, Elliott signed a series of annual contracts, the last of which was for the 2011–12 school year. In 2012, Elliott's colleagues elected him president of the local teachers union.

During Elliott's time at Dupont Elementary, the school's evaluation policy assessed teachers across fourteen skills. Elliott received ten of these evaluations. In all but one, he received ratings of "strength" or "satisfactory"—the two highest ratings—in all fourteen skills. The exception was 2002, ten years before he was laid off, when he received "needs improvement" in the three skills related to "interpersonal relationships" and a comment that he sometimes had "difficulty accepting, graciously, a different point of view." In a few more recent evaluations, Elliott received critiques about his interpersonal skills but always earned ratings of satisfactory or above. Dupont evaluated Elliott for the last time in 2012 and found him satisfactory or better in all skills. Toward the end of the 2011–12 school year, Dupont's principal reviewed the evaluation and recommended Elliott for contract renewal.

D. *Defendant's 2012 Layoffs*

In the summer of 2012, however, the Madison school district faced declining enrollment and a corresponding reduction in state funding. The district decided to close two schools and to reduce its teaching staff effective that fall. The district had recently implemented a new retention policy that incorporated Senate Bill 1. Since we are reviewing a grant of summary judgment for plaintiff, we assume that the district properly followed that policy (though Elliott disputes the point). Elliott and five other teachers were notified that the district was laying them off.

As Indiana law provided, Elliott demanded a conference with the superintendent and then a full hearing with the Board. After the hearing, the Board made factual findings about Elliott. The findings in 2012 pointed to the 2002 evaluation that had rated Elliott low in interpersonal-relationship skills. The 2012 findings also cited a few comments from evaluators over the years suggesting that Elliott could be more compassionate. The Board also concluded that Senate Bill 1 allowed the district to cancel Elliott's contract during a justifiable reduction in force. The Board ordered Elliott's contract cancelled as of the end of the 2011–12 school year. The school district retained six non-tenured teachers in positions that Elliott was licensed to teach.

E. *Procedural History*

Elliott sued the school district in state court in January 2013 alleging four state-law claims: (1) that Senate Bill 1 violated the Indiana Constitution; (2) that the district applied Senate Bill 1 before its effective date; (3) that the district applied Senate Bill 1 incorrectly; and (4) that his layoff was not supported by sufficient evidence. He also alleged that Senate Bill 1 impaired his contractual rights in violation of the United States Constitution. The Board removed the case to the federal district court, and the State of Indiana later intervened to defend the new law's constitutionality. *See* 28 U.S.C. § 2403(b). The parties filed cross-motions for summary judgment, and the district court ruled in favor of Elliott.

The district court concluded that the layoff provisions of Senate Bill 1 violate the Contract Clause when applied retroactively to a teacher like Elliott who earned tenure before the new law took effect. Applying Supreme Court and Indiana precedent, Judge Lawrence concluded that tenured Indiana teachers have contractual rights to be retained over non-tenured teachers in a reduction in force. He then found that Senate Bill 1 "completely destroyed" this right and was a substantial impairment under the Contract Clause. Finally, he rejected the argument that this impairment was constitutionally permissible as a reasonable and necessary exercise of the State's power.

The State and the Board sought permission to take an interlocutory appeal under 28 U.S.C. § 1292(b). The district court granted permission but we did not. The district court then entered final judgment for Elliott and awarded him back pay under 42 U.S.C. § 1983 and attorney fees under 42 U.S.C. § 1988. Although the district court based its final judgment only on Elliott's federal-law theory and not his state-law theories, Elliott received the full relief that his state-law theories could have provided, so nothing more needed to be decided. The State and the Board appealed the final judgment.

II. *Analysis*

The issue is whether the district court correctly decided that the layoff provisions of Senate Bill 1 violate the Contract Clause when applied retroactively to a teacher who earned tenure before the new statute took effect. We review the district court's decision *de novo*. *Daniels v. Area Plan Comm'n of Allen County*, 306 F.3d 445, 458 (7th Cir. 2002) (reviewing *de novo* a summary judgment order that declared a state law unconstitutional).

At the outset, we note but bypass a potentially difficult issue. Elliott sought, and the district court awarded, damages under 42 U.S.C. § 1983. In *Carter v. Greenhow*, 114 U.S. 317, 5 S.Ct. 928, 29 L.Ed. 202 (1885), the Supreme Court found that there was no federal question jurisdiction over the plaintiff's Contract Clause claim. Using a predecessor of § 1983, the plaintiff challenged a state law that affected his state-issued bonds by prohibiting him from using his coupons to pay his property taxes. *Id.* at 321–23, 5 S.Ct. 928. Some courts have read *Carter* broadly as prohibiting any Contract Clause claims under § 1983. *See Kaminski v. Coulter*, 865 F.3d 339, 347 (6th Cir. 2017); *Crosby v. City of Gastonia*, 635 F.3d 634, 640 (4th Cir. 2011). But Supreme Court and other opinions reflect another view, reading *Carter* as based more narrowly on the way the particular claim in that case was pled and the failure to satisfy the amount-in-controversy requirement applicable at the time. *See Dennis v. Higgins*, 498 U.S. 439, 451 n.9, 111 S.Ct.

865, 112 L.Ed.2d 969 (1991), *quoting Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 613 n.29, 99 S.Ct. 1905, 60 L.Ed.2d 508 (1979); *Southern California Gas Co. v. City of Santa Ana*, 336 F.3d 885, 886–87 (9th Cir. 2003) (per curiam); *see also White v. Greenhow*, 114 U.S. 307, 307–08, 5 S.Ct. 923, 29 L.Ed. 199 (1885) (allowing claim for damages for violation of Contract Clause in companion case to *Carter*); *Kaminski*, 865 F.3d at 350 (Moore, J., dissenting) (arguing for limited scope of *Carter*). We need not take sides on this question. It does not affect our subject matter jurisdiction, and the defendants have waived this potential defense. They did not raise it in the district court, and the State told us at argument that the defendants do not rely on *Carter*.

Turning to the merits, the Contract Clause prohibits States from passing any "Law impairing the Obligation of Contracts," U.S. Const. art. I, § 10, cl. 1, but not all laws affecting contracts are unconstitutional. The Contract Clause prohibits changes in law only if they operate "as a substantial impairment of a contractual relationship." *General Motors Corp. v. Romein*, 503 U.S. 181, 186, 112 S.Ct. 1105, 117 L.Ed.2d 328 (1992), quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244, 98 S.Ct. 2716, 57 L.Ed.2d 727 (1978). This standard balances individual rights to organize personal affairs against the States' "necessarily reserved" sovereign power to protect the general welfare. *United States Trust Co. of New York v. New Jersey*, 431 U.S. 1, 21, 97 S.Ct. 1505, 52 L.Ed.2d 92 (1977). The Supreme Court has harmonized these interests by applying a two-step analysis, asking first whether a change in state law has substantially impaired a contractual relationship, *Energy Reserves Group v. Kansas Power & Light Co.*, 459 U.S. 400, 411, 103 S.Ct. 697, 74 L.Ed.2d 569 (1983), and second whether the impairment is reasonable and necessary for a legitimate public purpose. *United States Trust*, 431 U.S. at 25, 97 S.Ct. 1505; *Allied Structural Steel*, 438 U.S. at 247, 98 S.Ct. 2716.

A. *Substantial Impairment of Contractual Rights?*

We consider first whether applying Senate Bill 1 to Elliott substantially impaired his tenure contract. This issue itself can be divided into three parts: (1) whether there is a contractual relationship; (2) whether a change in law impairs that contract; and (3) whether the impairment is substantial. *General Motors*, 503 U.S. at 186, 112 S.Ct. 1105.

1. *The Contractual Relationship*

Statutes typically create regulatory rights not subject to the Contract Clause. *See, e.g.*, *Phelps v. Board of Education of West New York*, 300 U.S. 319, 323, 57 S.Ct. 483, 81 L.Ed. 674 (1937) (New Jersey tenure law did not create contract rights for teachers protecting them from salary reductions during Great Depression). But when a legislature uses contractual language that induces public reliance, it can create an enforceable contract, as the Supreme Court held Indiana's teacher tenure law did. *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100, 105, 58 S.Ct. 443, 82 L.Ed. 685 (1938). The defendants do not dispute this general point, but they dispute the scope of the contractual relationship and the obligations it imposes on the State and school districts.[3]

2. *Impairment of Contractual Rights*

The scope of the contractual obligations determines whether Senate Bill 1 impairs any contractual right. The State makes two main arguments on this point. First, it argues that the Act's job-security provisions are not part of the tenure contract but are variable terms that annual teaching contracts can change. *See* Def. Br. at 23–24. Therefore, goes the argument, amendments to the job-security terms cannot violate the Contract Clause. Second, the State argues that even if job security is part of the tenure contract, the Act has protected teachers only against dismissal without cause. Firing teachers based on performance is still firing for cause, the State argues, so that Senate Bill 1 does not impair any existing contractual right. We reject both of those arguments, which essentially try to rewrite Indiana law and history.

The State makes much of the fact that a tenured teacher works under two contracts, in effect: an indefinite statutory one that provides tenure and an annual one that governs variable terms like salary and hours. Just as annual contracts can change salary, the State argues, they can change the degree

[3] The State does, however, ask us to treat *Anderson* as an obsolete relic based arbitrarily on the particular language used in the 1927 Act. That is not for us to say. And regardless of any shift in how the Supreme Court might interpret the Contract Clause today, generations of Indiana teachers have relied on *Anderson* and the teacher tenure law it interpreted.

of job security that tenure provides without violating the Contract Clause. But *Anderson* and the Act itself squarely block this argument. In *Anderson*, a teacher challenged an amendment to the Act that eliminated job security for teachers in township schools. 303 U.S. at 97–98, 58 S.Ct. 443. *Anderson* considered "the existence and nature" of the Indiana teacher tenure law and found that it created a "binding and enforceable contract against school districts." *Id*. at 100, 105, 58 S.Ct. 443. The Supreme Court ultimately determined that the statutory amendment impaired the tenure contract when it changed the "admissible grounds of cancellation" by revoking the State's statutory promise to tenured township teachers. *Id*. at 105, 58 S.Ct. 443. If the grounds of cancellation were subject to change through annual teaching contracts, the Court in *Anderson* could not have concluded that repealing job-security provisions impaired the tenure contract. The Act—not the annual contracts—granted Elliott his contractual tenure rights. Under *Anderson*, these rights became enforceable the year Elliott earned tenure. A decrease in job security necessarily impairs his rights under that contract.

It is also well established under Indiana law that the Act protects against more than at-will termination. As noted, the Act allows schools to dismiss a tenured teacher during a "justifiable decrease in the number of teaching positions," Ind. Code § 26-6967.2 (1927), without much qualification. But early on, the Indiana courts concluded that reducing teaching staff does not permit schools to lay off whichever teachers they please. In *Watson v. Burnett*, 216 Ind. 216, 23 N.E.2d 420, 423 (1939), a school district laid off a tenured teacher who was qualified to teach positions that non-tenured teachers continued to teach. When challenged, the school district relied on its authority to fire tenured teachers when reducing teaching staff. The Indiana Supreme Court held that the Act did not permit this result, reasoning that if "a justifiable decrease in the number of teaching positions should be held to give the [district] the power to choose between tenure and non-tenure teachers," then the district would have "the power to nullify the Teachers' Tenure Act." *Id.* This holding answers our question directly: before Senate Bill 1, the Act granted a qualified tenured teacher an enforceable contractual right to be retained over non-tenured teachers during a reduction in force.

From the enactment of the Act in 1927, Indiana teachers thus benefitted from enforceable contractual rights when they became tenured. These contractual rights included job security rights in a layoff. Senate Bill 1, when applied retroactively to a teacher like Elliott who earned tenure before 2012, impairs those job security rights and the tenure contract. *See United States Trust*, 431 U.S. at 19 n.17, 97 S.Ct. 1505 (law adjusting the "express terms of an agreement" is more likely to be an unconstitutional impairment).

3. *"Substantial" Impairment*

Laws impairing contracts violate the Contract Clause only if the impairment is substantial, though substantial impairment does not require a complete destruction of the contractual relationship. *Energy Reserves*, 459 U.S. at 411, 103 S.Ct. 697. The issue is whether the impairment disrupts reasonable contractual expectations. *Id.* at 413–16, 103 S.Ct.

697; *Allied Structural Steel*, 438 U.S. at 245, 98 S.Ct. 2716. The Supreme Court's decisions under the Contract Clause show that reliance interests are key to this inquiry. The analysis must "reflect the high value the Framers placed on the protection of private contracts." *Allied Structural Steel*, 438 U.S. at 245, 98 S.Ct. 2716. Contracts "enable individuals to order their personal and business affairs," and once arranged, "those rights and obligations are binding under the law, and the parties are entitled to rely on them." *Id.*

Based on our reading of the Court's cases, we break this inquiry into two questions. First, was the impaired term a "central undertaking" of the bargain such that it "substantially induced" teachers to enter their contracts? *See City of El Paso v. Simmons*, 379 U.S. 497, 514, 85 S.Ct. 577, 13 L.Ed.2d 446 (1965). Second, was the change in law foreseeable, meaning that the risk of change was reflected in the original contract? *Energy Reserves*, 459 U.S. at 413–16, 103 S.Ct. 697. Put another way, we ask whether this change substantially disrupted teachers' important and reasonable reliance interests. *Id.*

a. *Central Undertaking*

Legislation causes a substantial impairment if it alters a "central undertaking" of the contract that "substantially induced" a party to enter the bargain. *Simmons*, 379 U.S. at 514, 85 S.Ct. 577 (finding no substantial impairment when it could not "seriously be contended that the buyer was substantially induced to enter into the[ ] contracts" on the basis of the impaired term). In other words, an impairment is substantial if it disrupts actual and important reliance interests. Here, the term at issue is narrow but important. When Elliott decided to become a tenured teacher, the State and school district promised him a substantial degree of job security: during a downsizing, Elliott's job would be more secure than that of a non-tenured teacher.

The promise of job security, especially during layoffs, lies close to the core of teacher tenure. Having job security, even in tough economic times, was a central term to induce people to become teachers and seek tenure in Indiana. It is a term with significant value to teachers, who as a matter of economics have traded higher salaries for the protections that tenure offers over the course of a career. Teachers earn lower salaries than similarly educated professionals. They receive part of their compensation through other benefits, including better job security, which includes a reduced risk of termination during staff reductions. This lower risk has material value and was a primary consideration that teachers could rely upon when seeking tenured employment.[4]

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[4] A recent report by the Economic Policy Institute found that public school teachers in the United States earn 11% less on average than similarly educated professionals. *See* Sylvia A. Allegretto & Lawrence Mishel, "The Teacher Pay Gap is Wider than Ever," at 17–18 (2016), accessible at http://www.epi.org/publication/the-teacher-pay-gap-is-wider-than-ever-teachers-pay-continues-to-fall-further-behind-pay-of-comparable-workers/. This estimate takes into consideration non-wage benefits such as pension, insurance, and paid leave, but not job security. *Id.* at 14–17. A 2015 report by the Organisation for Economic Cooperation and Development found that in the United States, public school teachers earn 67% to 71% of the salary of the average professional with similar education.

An impairment is even more substantial when it disrupts expectations "in an area where the element of reliance was vital." *Allied Structural Steel*, 438 U.S. at 246, 98 S.Ct. 2716. In that case, the Court considered how severely a change in pension law disrupted an employer's expectations about pension obligations. *Id*. at 246–47, 98 S.Ct. 2716. The Court found this reliance particularly important. Here we consider not an employer's but employees' expectations, yet the same reasoning applies. Just as an employer relies on a stable pension regime to fund its pension program properly, so too teachers rely on a stable job-security scheme to plan their personal and professional lives, their investments of time and money, and their retirements. Senate Bill 1 substantially disrupted tenured teachers' expectations about job security. It is not fair to change the rules so substantially when it is too late for the affected parties to change course. Tenured teachers cannot have do-overs in their careers, either to earn more money to make up for the lost job security or to find better job security in another school district or in another field entirely.

b. *Foreseeability*

There is a second requirement for the impairment to be substantial: the parties must not have anticipated the change in law. We have said that the "foreseeability of the [new] law when the original contract was made" is of "great" and even "controlling" importance. *Chrysler Corp. v. Kolosso*

Education at a Glance 2015: OECD Indicators at 442, accessible at http://dx.doi.org/10.1787/eag-2015-en.

Auto Sales, Inc., 148 F.3d 892, 894 (7th Cir. 1998). If the parties anticipated a change in the law, then their bargain would reflect the risk of a future impairment. *Id*. at 894–95 ("[W]hat was foreseeable then will have been taken into account in the negotiations over the terms of the contract."). If the new law was foreseeable, then reliance on the impaired terms may have been unreasonable so that a disruption to the relationship would not be deemed substantial.

The Supreme Court has found that a change in law was foreseeable in at least two contexts. In the first, the Court pointed to the history of "extensive and intrusive" regulation in the affected industry. *Energy Reserves*, 459 U.S. at 413–16, 103 S.Ct. 697 (new price controls on natural gas did not disrupt the supplier's reasonable expectations when the industry was heavily regulated and supplier "knew its contractual rights were subject to alteration by state price regulation"). In the second, the Court reasoned that because the original law had only a temporary goal, the parties must have anticipated a future legislative change. *Simmons*, 379 U.S. at 516, 85 S.Ct. 577 (change in land-sale law did not impair contracts when goal of law shifted from settlement of Texas frontier to "efficient utilization of public lands").

These contexts are quite different from teacher tenure. One can anticipate that any state law may change in the future, but retroactive application to impair existing contract rights and reliance interests is another question. Retroactive application of legislation like Senate Bill 1 was unforeseeable when teachers like Elliott became tenured. Indiana has historically regulated teacher compensation, but "a history of regulation is never a sufficient condition" by itself. *Chrysler Corp.*, 148 F.3d at 895. The question is whether the nature of the regulation puts the party "on notice that an entirely different scheme" would likely be imposed. *Id.* Although Indiana has regulated teacher tenure since 1927, the Supreme Court held in 1938 that those regulations were contractual, protected by the Contract Clause. *Anderson*, 303 U.S. at 105, 58 S.Ct. 443. The State did not materially amend those terms for more than eighty years.

Senate Bill 1 was thus not a "small and predictable step" in the evolution of the Act, *see Chrysler Corp.*, 148 F.3d at 895, at least as applied to already-tenured teachers. For teachers who have built their entire careers relying on those contractual rights as protected in *Anderson*, Senate Bill 1 amounts to unforeseeable backtracking by the State. This change in the fundamental trade-off of job security for money is not comparable to shifting pricing arrangements for natural gas markets. Nor are attracting qualified teachers and improving public education merely temporary goals that Indiana no longer pursues. Retroactive application of the layoff provisions of Senate Bill 1 to already-tenured teachers is not a foreseeable change that restricts "a party to those gains reasonably to be expected from the contract." *Simmons*, 379 U.S. at 515, 85 S.Ct. 577.

Indiana itself created the binding obligation on which tenured teachers have relied for decades—and from which the State itself has benefitted. This is not a case where private parties "whose rights . . . are subject to state restriction" attempt to "remove" themselves "from the power of the State by making a contract about them." *Blaisdell*, 290 U.S. at 437–38, 54 S.Ct. 231. Rather, Indiana established the teachers' contractual rights by statute. When a State enters a binding commitment, the other party's reliance on that commitment is even more justified. *Energy Reserves*, 459 U.S. at 412–13, 412 n.14, 103 S.Ct. 697. At any time after *Anderson*, Indiana could have amended its teacher tenure law prospectively, changing it from contractual to regulatory. Indiana declined to do so. This retroactive change to tenure's job protections was not foreseeable. Applying the layoff provisions of Senate Bill 1 substantially impaired Elliott's tenure contract rights by disrupting his reasonable contractual expectations.

B. *Reasonable and Necessary to Serve Important Public Purpose?*

Still, not even all substantial impairments of contracts are unconstitutional. If the impairment is both reasonable and necessary for an important public purpose, then the law does not violate the Contract Clause. *United States Trust*, 431 U.S. at 25, 97 S.Ct. 1505. Analyzing Senate Bill 1 within this framework, we agree with the district court that the amendment, though enacted for a legitimate and important public purpose, is unconstitutional as applied to an already-tenured teacher because it was not necessary or reasonable.

As a preliminary matter, the parties disagree about the extent of any deference we might owe the state legislature's policy decision to restrict tenure rights. Courts owe at least some deference to legislative determinations of reasonableness and necessity. *United States Trust*, 431 U.S. at 22–23, 97 S.Ct. 1505; *East New York Savings Bank v. Hahn*, 326 U.S. 230, 234, 66 S.Ct. 69, 90 L.Ed. 34 (1945). The degree of deference differs depending on the severity of the impairment and on the State's self-interest. *Allied Structural Steel*, 438 U.S. at 245, 98 S.Ct. 2716 ("The severity of the impairment measures the height of the hurdle the state legislation must clear."); *United States Trust*, 431 U.S. at 25–26, 97 S.Ct. 1505 ("[C]omplete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake.").

The State argues that heightened scrutiny under *United States Trust* applies only when a State itself enters into a financial obligation and not when the State exercises its police power. But that is not the only context in which a State can have a self-interest. "In almost every case, the Court has held a governmental unit to its contractual obligations when it enters financial *or other markets*." *Energy Reserves*, 459 U.S. at 412 n.14, 103 S.Ct. 697 (emphasis added). Also, self-interest is not the only justification for a more searching review. When a State makes an express commitment to private businesses or individuals, reliance may be highly justified. *Id.*, *citing* Note, *A Process-Oriented Approach to the Contract Clause*, 89 Yale L. J. 1623, 1647–48 (1980). The State therefore must have a substantial reason for breaking its own promise. *Id.*

We do not owe complete deference to the state legislature here. The impairment is substantial, the contract is an express commitment between the State and the teachers, and the State's self-interest is at stake. Under the Indiana Constitution, public education is ultimately the State's responsibility, even if it delegates execution to local school districts. *See* Ind. Const. art. 8, § 1. The State is thus not acting solely as a market participant here, for teacher tenure involves much more than impairment of "an isolated private contract." *See East New York Savings Bank*, 326 U.S. at 232, 66 S.Ct. 69 (deferring to legislative decision that impaired private financial contract following market collapse). The tenure contract has been a public promise, and the job security provisions are at the core of the economic bargain between the State and the teachers of local school districts. We need not scrutinize the legislature's decision in great detail to find it lacking, nor should we make the kind of "utilitarian comparison between public benefit and private loss" the Supreme Court has warned against. *United States Trust*, 431 U.S. at 29, 97 S.Ct. 1505. Complete deference is unwarranted, and review of the impairment is appropriate.

The Supreme Court refined modern Contract Clause jurisprudence in a series of challenges to state laws during the "unprecedented emergencies" of the Great Depression. *Allied Structural Steel*, 438 U.S. at 242, 98 S.Ct. 2716. Thus in *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 54 S.Ct. 231, 78 L.Ed. 413 (1934), the Court upheld a Minnesota law that temporarily suspended mortgage foreclosures. The Court explained that an "emergency existed" that "furnished a proper occasion for the exercise of the reserved power of the State to protect the vital interests of the community." *Id.* at 444, 54 S.Ct. 231. It compared the economic crisis to a "fire, flood, or earthquake." *Id.* at 439, 54 S.Ct. 231. An emergency is not a requirement for a State to impair contracts but remains relevant to whether an impairment is appropriate. *United States Trust*, 431 U.S. at 22 n.19, 97 S.Ct. 1505. With this context in mind, we assess whether the State's decision to impair contracts of already-tenured teachers was reasonable and necessary.

Improving teacher quality and public-education outcomes are both important public interests of the highest order. But even important goals and good intentions do not justify this substantial impairment of the tenure contract for already-tenured teachers. *See United States Trust*, 431 U.S. at 21, 97 S.Ct. 1505 ("the existence of an important public interest is not always sufficient to overcome [the Contract Clause's] limitation"). When a State impairs its own contracts, the impairment must be "clearly necessary" or "essential," not merely convenient or expedient. *Simmons*, 379 U.S. at 516, 85 S.Ct. 577 (upholding law that impaired a contract between Texas and purchasers of land when "clearly necessary" to achieve an important public goal); *United States Trust*, 431 U.S. at 29–30, 97 S.Ct. 1505 (invalidating law that impaired contract between States and bondholders when the impairment was not "essential"). A substantial impairment is not necessary if the State could achieve the goal through "a less drastic modification" or "without modifying" the contract "at all." *Id.*

Indiana has not shown it needs to impose this retroactive impairment of its earlier promises of job security to improve teacher quality. Senate Bill 1 does not change the State's power to fire ineffective teachers. School districts have had that power before and after 1927 to the present day. *See* Ind. Code § 26-6967.2 (1927); *Anderson*, 303 U.S. at 108, 58 S.Ct. 443. Instead, the impairing legislation requires schools to consider small differences in performance among teachers who are *not* ineffective. Here, the Madison school district needed to lay off a handful of teachers to save money. Shortly after deciding to renew Elliott's contract (and shortly after he was elected president of the local teachers union), the school district chose him for layoff. He had never been found ineffective. If he had been, the school district could have fired him without relying on Senate Bill 1. Ten years ago, Elliott was found to need improvement in one skill-set, and he apparently made that improvement. That stale problem is the proffered rationale for laying off him instead of a non-tenured teacher. Distinguishing between qualified and effective teachers on such a meager basis is not necessary to achieve Indiana's goals, at least as applied to teachers who earned tenure before Senate Bill 1 took effect.

The Contract Clause does not saddle the State forever with a teacher-tenure system that its policymakers have come to think is bad for public education. The Constitution does not prevent the State from changing the promises it makes on a prospective basis to new teachers. Also, if the State were to conclude that retroactive changes to tenure are necessary, the Contract Clause would give the State the option (much like the Takings Clause) of paying the individuals who would otherwise lose out from the change. (After all, a party to a contract is ordinarily free to breach the contract as long as it is willing to pay damages to the other party.) The State can make the changes it wants, but it cannot foist the costs onto private parties, other than through general taxes. Having restricted tenure for new teachers, the State and its school districts were and are free to buy out the tenure rights of more senior ones.

Finally, the retroactive impairment is not reasonable. Contractual impairments can be reasonable if either (1) the statute "had effects that were unforeseen and unintended" when originally adopted, or (2) "subsequent changes" in circumstances "caused the covenant to have a substantially different impact" than anticipated. *United States Trust*, 431 U.S. at 31–32, 97 S.Ct. 1505. In trying to meet this standard, the State emphasizes that public education is important and that teacher quality improves student achievement. We agree on the first point and have no reason to disagree on the second, but these points were surely as true in 1927, 1957, and 1987 as they are now. In fact, creating "a competent cadre of teachers" was the precise goal when Indiana established teacher tenure. *Stewart v. Fort Wayne Community Schools*, 564 N.E.2d 274, 278 (Ind. 1990). We see no changed circumstances that impose "unforeseen ad-vantages or burdens" on the parties. *Simmons*, 379 U.S. at 515, 85 S.Ct. 577.

The judgment of the district court is AFFIRMED.

Appendix B

Filed 03/12/15

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION

JOSEPH R. ELLIOTT
Plaintiff,
v.
BOARD OF SCHOOL TRUSTEES OF MADISON CONSOLIDATED SCHOOLS,
Defendant.

Case No. 1:13-cv-319-WTL-DML

Entry on Cross-Motions for Summary Judgment

Before the Court are three motions: the Plaintiff's motion for summary judgment (Dkt. No. 82); the Defendant's cross-motion for summary judgment (Dkt. No. 56); and the Intervenor-Defendant's motion for summary judgment (Dkt. No. 59). The motions are fully briefed, and the Court rules as follows.[1]

[1] The Court commends counsel for their briefing on the issues in this case. In light of the well-written and thorough briefs, the Court does not believe oral argument is necessary. Accordingly, the Plaintiff's Motion Requesting Oral Argument (Dkt. No. 83) is **DENIED**.

I. STANDARD

Federal Rule of Civil Procedure 56(a) provides that summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." In ruling on a motion for summary judgment, the admissible evidence presented by the non-moving party must be believed and all reasonable inferences must be drawn in the non-movant's favor. *Hemsworth v. Quotesmith.com, Inc.*, 476 F.3d 487, 490 (7th Cir. 2007); *Zerante v. DeLuca*, 555 F.3d 582, 584 (7th Cir. 2009) ("We view the record in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor."). However, "[a] party who bears the burden of proof on a particular issue may not rest on its pleadings, but must affirmatively demonstrate, by specific factual allegations, that there is a genuine issue of material fact that requires trial." *Id.* Finally, the non-moving party bears the burden of specifically identifying the relevant evidence of record, and "the court is not required to scour the record in search of evidence to defeat a motion for summary judgment." *Ritchie v. Glidden Co.*, 242 F.3d 713, 723 (7th Cir. 2001).

The fact that the parties have filed cross-motions for summary judgment does not alter the standard set forth in Federal Rule of Civil Procedure 56. When evaluating each side's motion, the Court simply "construe[s] all inferences in favor of the party against whom the motion under consideration is made." *Metro Life. Ins. Co. v. Johnson*, 297 F.3d 558, 561-62 (7th Cir. 2002) (quoting *Hendricks-Robinson v. Excel Corp.*, 154 F.3d 685, 692 (7th Cir. 1998)).

II. BACKGROUND

This case arises out of the termination of Plaintiff Joseph Elliott, a tenured[2] teacher, by Defendant Board of School Trustees of Madison Consolidated Schools ("the Board"). Before delving into the specific facts of this case, a brief background of Indiana law regarding teacher contracts is necessary.

In 1927, Indiana enacted the Teachers' Tenure Act ("the Act"), "the principal purpose of [which] was to secure permanency in the teaching force." *Watson v. Burnett*, 23 N.E.2d 420, 423 (Ind. 1939); *see State ex rel. Anderson v. Brand*, 5 N.E.2d 531, 532 (Ind. 1937), *rev'd on other grounds by State of Indiana ex rel. Anderson v. Brand*, 303 U.S. 95 (1938) (noting that the purpose of the Act was "to promote good order and the welfare of the state and of the school system by preventing the removal of capable and experienced teachers at the political or personal whim of changing officeholders"). A key cog in the Act was the provision for teacher tenure:

> Any person who has served or who shall serve under contract as a teacher in any school corporation in the State of Indiana for five or more successive years, and who shall hereafter enter

[2] The Court understands that the statutes in Indiana refer to "tenured" teachers as "permanent" or "established" teachers. Like Mr. Elliott, however, the Court will use the term "tenure" for the sake of clarity throughout this Entry, as it is the term used by most courts. *See* Pl.'s Br. at 1, n. 1.

> into a teacher's contract for further service with such corporation, shall thereupon become a permanent teacher of such school corporation. . . . [S]uch contract shall be known as an indefinite contract.

Dkt. No. 41-2, Act of Mar. 8, 1927, Laws of the State of Indiana 259. The Act provided that an "indefinite contract" could only be cancelled on grounds of immorality, insubordination, neglect of duty, incompetence, a justifiable decrease in the number of teaching positions, a conviction, or for a good and just cause. Dkt. No. 41-4, Ind. Code § 20-28-7-1(a)(1)-(7) (2010).

Prior to 2011, in a reduction in force ("RIF") situation, the Act was interpreted to mandate the retention of tenured teachers over non-tenured teachers.

> If a justifiable decrease in the number of teaching positions should be held to give to the trustee the power to choose between tenure [and] non-tenure teachers, both of whom are licensed to teach in the teaching position which remains, he is thereby given the power to nullify the Teachers' Tenure Act, and to discharge without cause a teacher who has, by reason of having served satisfactorily as a teacher during the specified period, secured a tenure status and an indefinite permanent contract.

Watson, 23 N.E.2d at 423; *see also Stewart v. Fort Wayne Cmty. Sch.*, 564 N.E.2d 274, 278 (Ind. 1990) ("Indiana Code § 20-6.1-4-10 and our decision in *Watson* protect [the plaintiff] from being fired before non-tenured teachers due to a reduction in force only as long as her qualifications make her eligible for the job she seeks."). From 1927 through 2010, the Act remained substantively unchanged.

In 2011, however, Indiana embarked on a series of educational reforms. On April 30, 2011, legislation known as SB 1 was signed into law, affecting the employment, evaluation, and dismissal of Indiana teachers. Among some of the most significant changes was the redesignation of "permanent" teachers as "established" teachers. Ind. Code § 20-28-6-8(a). SB 1 also mandated, beginning in the 2012-2013 school year, annual performance evaluations for all teachers, rating them in one of four categories: highly effective; effective; improvement necessary; or ineffective. Ind. Code § 20-28-11.5-4. In conducting these evaluations, SB 1 requires that "[o]bjective measures of student achievement and growth [] significantly inform the evaluation." Ind. Code § 20-28-11.5-4(c)(2). Further, under SB 1, teachers may be deemed "incompetent"—and subject to dismissal—if they receive an "ineffective" or "improvement necessary" rating in any three years out of a five-year period, or if they receive an "ineffective" rating for two consecutive years. Ind. Code § 20-28-7.5-1(3)(4).

However, most relevant to the case at bar is SB 1's RIF provision: "After June 30, 2012, the cancellation of teacher's contracts due to a justifiable decrease in the number of teaching positions [a RIF] *shall be determined on the basis of performance rather than seniority*." Ind. Code § 20-28-7.5-1(d) (emphasis added). Thus, under SB 1, a tenured teacher rated as "ineffective" or "improvement necessary" cannot be retained over a non-tenured teacher rated as "effective" or "highly effective" during a RIF. If teachers are placed in the same performance category, the following criteria may be considered: the number of years of a teacher's experience; if the teacher has additional content area degrees beyond the requirements for employment; the assignment of instructional leadership roles to the teacher; and the academic needs of students in the school corporation. *Id.*; Ind. Code § 20-28-9-1.5(b).

With this background in mind, the Court turns to the specific facts of this case, which are undisputed.

Plaintiff Joseph Elliott is a licensed teacher in the state of Indiana and certified to teach kindergarten and general elementary education. He also has an elementary administrator's license. On August 24, 1993, Mr. Elliott was hired by the Board to teach at Dupont Elementary School. In August 1998, Elliott entered into his sixth successive contract with the Board, making him a permanent teacher with an indefinite contract under then-Indiana law, i.e., a tenured teacher. Mr. Elliott remained employed with the Board for fourteen more years.

Mr. Elliott received ten written evaluations during his nineteen years as an employee of the Board. *See* Dkt. Nos. 41-8 thought 41-17. Mr. Elliott primarily received ratings of "strength" and "satisfactory" in all categories; however, in 2002, he received "needs improvement" ratings in the "interpersonal relationship" category from his then-principal, Karla Gauger. Dkt. No. 41- 13. This category including the following: demonstrates effective interpersonal relationships with students; demonstrates effective interpersonal relationships with others; and promotes positive self-concept of students. Ms. Gauger explained that Mr. Elliott "is very dedicated to education . . . At times, however, he has difficulty accepting, graciously, a different point of view." Mr. Elliott received ratings of "strength" and "satisfactory" in all categories in 2012, his final evaluation before his termination. *See* Dkt. No. 41-17.

In 2012, Madison Consolidated Schools ("MCS") was forced to reduce its workforce due to enrollment decline and financial struggles; two elementary school buildings, including Dupont Elementary School, were also being closed. In deciding which individuals' contracts should be cancelled, MCS followed its RIF Policy which provided, in pertinent part, the following:

> The purpose of this policy is to establish a procedure for reduction of licensed teachers due to a justifiable decrease in the number of teaching positions in the school system. When a reduction in force is determined to be needed under this policy, the provisions of I.C. 20-28-7.5 will be followed regardless of past practice.
>
> . . .
>
> The primary consideration in any reduction in force will be the maintenance of a sound and balanced educational program that is consistent with the functions and responsibilities of the school system. The following factors will be considered in determining which employees shall be included in the reduction in force:

> 1. Work performance;
>
> 2. Length of service in the school system;
>
> 3. Service in extra duty positions and ability to fill such positions;
>
> 4. Other beneficial services provided to the school system; and
>
> 5. Recommendations and advice from the Superintendent, the Superintendent's Designee(s) and principals.
>
> Among the above factors, primary consideration will be given to factors (1) and (5). In assessing an employee's work performance for purposes of this policy, the school system may consider performance evaluations, improvement plans, past disciplinary actions, and other relevant factors as determined by the Superintendent.

Dkt. No. 41-25, MCS Policy 6.20. MCS principals had several meetings to determine which teachers would be recommended for contract cancellation; ultimately, six teachers, including Mr. Elliott, were initially selected.

On June 7, 2012, Dupont Elementary School Principal Alvin Sonner sent a letter to Mr. Elliott informing him that he had "made a preliminary decision to decline to continue [Mr. Elliott's] teaching contract at the end of the 2011-2012 school year" due to a "[j]ustifiable decrease in the number of teaching positions." Dkt. No. 41-6. After receiving the letter, Mr. Elliott requested a private conference with Interim Superintendent Steve Gookins in accordance with Indiana Code § 20-28-7.5-2; this conference was held on June 11, 2012. Following this conference, Mr. Gookins recommended to the Board that Mr. Elliott's contract be cancelled effective at the end of the 2011-2012 school year. Mr. Elliott also requested a conference with the Board, which was held on August 2, 2012. At the conference, four members of the Board were present. Both Mr. Elliott and MCS were represented by legal counsel and had the opportunity to present evidence.

On August 8, 2012, the Board held its regular meeting. The following "Findings of Fact" were made regarding Mr. Elliott:

25. Joe Elliot is sometimes too hard on students and is too rigid. His classroom is sterile and his students do not speak unless spoken to. This creates a negative effect on education due to the children's fear of being ridiculed. There are parents who insist that their students be placed in other classrooms because of Mr. Elliot's rigidity.

26. Joe Elliott is moody. He creates turmoil, makes sarcastic comments towards other people, and is not respectful towards others at times. He does not get along well with others and sometimes gives certain teachers and administrators the silent treatment.

27. A past evaluation indicated that Mr. Elliott needed improvement in the following areas: demonstrating effective interpersonal relationships with students; demonstrating effective personal relationships with others;

and promoting positive self-concept of students.

28. A past evaluation suggested that Mr. Elliott make improvements by being compassionate and nurturing and by working on fostering teamwork and comradery with all Dupont staff members.

29. A past evaluation suggested that Mr. Elliot make improvements by always demonstrating compassion for students indicating that he was not demonstrating appropriate compassion for students.

30. A past evaluation noted that Mr. Elliott has, at times, difficulty accepting graciously a different point of view.

31. The Board saw no reason that the comments in the evaluations referred to would have been made if not true and accepted and found the same to be true.

32. Mr. Elliott had difficulties working well with at least one consultant.

33. Mr. Elliott coordinated the Spell Bowl program for several years. Coaches involved in the program had difficulty getting materials from Mr. Elliott and Mr. Elliott would not meet with the coaches as requested. When he was relieved from the position, he disposed of materials which had been developed for the program. It was difficult to find a replacement for Mr. Elliott because prospective teachers were afraid of Mr. Elliott's wrath.

34. At various times, Mr. Elliott made comments to at least 3 teachers which so upset the teachers that they came to the principal and cried.

35. Collegiality and collaboration are required for a good school, and discourse among employees has a negative effect on students. Future ventures will require the staff to get along and cooperate to reach goals.

36. Principals who testified at the Board conference were aware of the opinion that Mr. Elliott would create poor morale in their buildings and supported the recommendation that his contract not be continued.

Dkt. No. 41-1, August 8, 2012, Board Minutes. It was therefore ordered that "because of a justifiable decrease in the number of teaching positions, the indefinite teaching contract of Joseph Elliott is cancelled effective the end of the 2011/2012 school year." *Id.* Six teachers who were not permanent teachers with indefinite contracts, i.e. non-tenured teachers, were retained in positions for which Mr. Elliott was licensed. Dkt. No. 41-26.

Mr. Elliott filed suit in Jefferson County Superior Court on January 23, 2013, and the Board removed the suit to this Court on February 26, 2013.

III. <u>DISCUSSION</u>

Mr. Elliott's Amended Complaint sets forth five counts against the Board. He alleges that as applied to him, SB 1's RIF provision is unconstitutional under the Indiana and United States Constitutions, that the

Board's actions violated Indiana law, and that substantial evidence does not support the Board's decision to cancel his teaching contract. On September 19, 2013, this Court granted the State of Indiana's motion to intervene to defend the constitutionality of SB 1's RIF provision. The Court now turns to the present motions, beginning with the parties' arguments regarding Count One.

A. The Constitutionality of SB 1

As noted above, Count One alleges that, as applied to Mr. Elliot, SB 1's RIF provision violates both the United States and Indiana Constitutions. Specifically, Mr. Elliott argues that it

> violate[s] Article 1, § 24 of the Indiana Constitution which provides that "No ex post facto law, or law impairing the obligation of contracts shall ever be passed" and Article 1, § 10 of the United States Constitution which states in part that, "No state shall . . . pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts or grant any title of nobility."

Dkt. No. 21, Amend. Compl. ¶ 13. Mr. Elliott, the Board, and the State all agree on the relevant analysis. To prove a violation of either the United States or Indiana Constitutions, Mr. Elliott has to demonstrate that the new law substantially impairs his contractual rights. *See Sweeney v. Pence*, 767 F.3d 654, 667 (7th Cir. 2014) ("The relevant inquiry has three components: 1) whether there is a contractual relationship; 2) whether a change in law impairs that contractual relationship; and 3) whether the impairment is substantial."). If so, the Court then determines if SB 1's RIF provision was reasonable and necessary to serve an important public interest. *See Chicago Bd. of Realtors, Inc. v. City of Chi.*, 819 F.2d 732, 736 (7th Cir. 1987) ("[W]e must inquire whether the city has a significant and legitimate public purpose justifying the Ordinance [and] . . . whether the effect of the Ordinance on contracts is reasonable and appropriate given the public purpose behind the Ordinance.") (citing *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411-12 (1983)); *Girl Scouts of S. Illinois v. Vincennes Indiana Girls, Inc.*, 988 N.E.2d 250, 257 (Ind. 2013) ("Legislation [that] invade[s] freedom of contract can only be sustained . . . if it both relates to the claimed objective and employs means which are both reasonable and reasonably appropriate to secure such objective."). With this standard in mind, the Court turns to the first step in the analysis.

1. Contractual Rights

In Indiana, it is undisputed that teacher tenure is a contractual right. Indeed, in 1938, the Supreme Court, in interpreting the Act, noted that "[n]o more apt language could be employed to define a contractual relationship." *Brand*, 303 U.S. at 105. Since the Supreme Court held that tenured teachers obtained contractual rights under the Act, Indiana courts have recognized that "[a] permanent tenure teacher's indefinite contract is a protected contractual right entitling the teacher to a succession of definite contracts with terms meeting the requirements of the pertinent statutes[.]" *Lost Creek Sch. Twp., Vigo Cnty. v. York*, 21 N.E.2d 58, 64 (1939). This much is clear.

What the parties disagree on is what the contours of that right are. Mr. Elliott argues that part of his contractual right as a tenured teacher was the "right in the event of a reduction in force to be retained above non-tenured teachers for positions for which he was certified." Pl.'s Br. at 11. The Board and the State disagree. They opt for a more limited view of what contractual right Mr. Elliott obtained when he achieved tenure: "the 'concept of tenure' does not at its core refer to the right of [] tenured teachers to be retained over [] non-tenured teachers in the event of a reduction in force. Rather, it is more broadly defined as the 'right to continued employment by virtue of the indefinite contract[.]'" State's Resp. at 9. Thus, the Board and the State argue that Mr. Elliott, as a tenured teacher, simply had the contractual right to continuous, definite contracts. And, based on *York*, those definite contracts incorporate "the requirements of the pertinent statutes," i.e., SB 1's RIF provision. *York*, 21 N.E.2d at 64.

In the Court's view, the State and the Board's arguments regarding the limited scope of "tenure" are untenable. The Indiana Supreme Court in *Watson* was "presented [with] an early opportunity to explore the reach of the teacher tenure law's protections." *Stewart v. Fort Wayne Cmty. Sch.*, 564 N.E.2d 274, 278 (Ind. 1990). In holding that the Act required the retention of tenured teachers over non-tenured teachers during a RIF, the Indiana Supreme Court noted that "[t]o hold otherwise would be *contrary to the entire spirit and purpose of the Act* [and would] *nullify* the Teachers' Tenure Act . . . [it would] permit the trustee to do indirectly that which the law *expressly forbids* him to do directly." *Watson*, 23

N.E.2d at 423 (emphasis added). Indeed, later courts have noted that "*Watson* bestowed a powerful sword on tenured teachers[.]" *Stewart*, 564 N.E.2d at 278.

In the Court's view, *Watson* specifically interpreted the "right to continued employment by virtue of the indefinite contract" to include the right of tenured teachers to be retained over non-tenured teachers in a RIF, lest the Act be nullified. Indiana courts have held that "[a] written contract does not preempt a teacher's rights secured by the statutes," *Chambers v. Cent. Sch. Dist. Sch. Bd. of Greene Cnty.*, 514 N.E.2d 1294, 1297 (Ind. Ct. App. 1987); *see also Stiver v. State ex rel. Kent*, 1 N.E.2d 592, 593 (Ind. 1936) (holding that "the execution of a new contract for the [school] year. . . between the [teacher] and [school corporation] did not terminate the tenure of [the teacher]. The legislative purpose in authorizing a new contract to be entered into by a tenure teacher and the employing school corporation was not to provide a means of terminating tenure."). In light of this, the Court finds that Mr. Elliott has asserted a contractual right that is protected by the Contracts Clause. *See* Pl.'s Resp. at 3 ("[T]enure rights cannot be supplanted by a definite contract, lest the very concept of tenure be rendered meaningless."). The Court thus proceeds to the next step in the Contracts Clause analysis.

2. Substantial Impairment

Mr. Elliott next argues "that SB 1 impaired [his] contractual tenure rights and that such an impairment is substantial enough to violate the Contracts Clause." Pl.'s Br. at 13. There is no doubt that SB 1's RIF provision, as Mr. Elliott notes, "is plainly the source of [the] impairment of Elliott's contractual rights." *Id.* Disagreement exists as to whether that impairment was *substantial*.

Mr. Elliott argues that in *Watson*, the Indiana Supreme Court held that the contractual rights given to permanent teacher under the Act included the right to be retained over nontenured teachers in a RIF. *See Watson*, 23 N.E.2d at 423 ("If a justifiable decrease in the number of teaching positions should be held to give to the trustee the power to choose between tenure [and] non-tenure teachers, both of whom are licensed to teach in the teaching position which remains, he is thereby given the power to nullify the Teachers' Tenure Act[.]"). Thus, Mr. Elliott argues that SB 1's RIF provision, which expressly mandates that performance is the only criterion to be considered in a RIF situation,[3] regardless of a teacher's tenure status, is a "total destruction" of his contractual right. Pl.'s Resp. at 9. The Board and the State disagree.

The main thrust of the Board's argument is that SB 1 only made "limited" changes to Indiana's teacher laws. *See* Board's Br. at 12 ("The limited changes made by the Indiana General Assembly to the teacher tenure statutes do not rise to the level of a substantial impairment."). For example, it correctly notes that "the right to an indefinite contract continues following amendment" and that "the same grounds for cancellation of an indefinite contract [still] exist[.]"

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[3] The Court understands that if teachers are placed in the same performance category, other criteria may be considered. *See* Ind. Code § 20-28-7.5-1(d); Ind. Code § 20-28-9-1.5(b).

Id. Moreover, it notes that SB 1 still provides that "a teacher with an indefinite contract is entitled to notice, a statement of the reasons for the cancellation, an opportunity to meet with the Board to offer evidence opposing the cancellation, the Superintendent's recommendation on cancellation, and a majority vote of the Board before the contract can be cancelled." *Id.* at 16. While these are all true statements, the Court fails to see their import. In arguing this way, the Board focuses on what SB 1 *in general did not do* instead of focusing on what SB 1's *RIF provision did do*.

In directly addressing SB 1's RIF provision, the Board notes that SB 1 did not change the language of the Act, but rather simply "added language to clarify the General Assembly's intent that performance be the primary consideration in a reduction-in-force." Board's Br. at 3. Therefore, in the Board's opinion, "[b]ecause the amendment was done to clarify legislative intent due to the absence of any criteria for a RIF in the former statute, this is not a substantial impairment." *Id.* The Court believes that the General Assembly's desire for performance to be the primary determiner in RIF situations is best addressed in the next step of the Contracts Clause analysis; the reasons why the General Assembly amended the Act, however, do not address the issue of whether it substantially impaired Mr. Elliott's contractual right in doing so.

For its part, the State makes a similar argument to that which it made above. It argues that Mr. Elliott could not have reasonably relied on the right to be retained over non-tenured teachers in a RIF because the definite contract he signed in November 2011, incorporated SB 1's RIF provision. *See* State's Br. at 14 ("Because Elliott could not have reasonably relied on the rights he asserts in entering into his contracts with Madison Schools, the State's legislative revocation of those 'rights' did not . . . substantially impair those rights."). As noted above, the Court interprets *Watson* to incorporate the right of tenured teachers to be retained over nontenured teachers into the contractual "tenure" right espoused in *Brand*. Accordingly, the State's argument are without merit.

The Court cannot fathom a more substantial impairment than the one in the case at bar. Had SB 1 not been enacted, the Board would have been required to retain Mr. Elliott over any non-tenured teachers for positions in which he was qualified to teach, save any other grounds it might have had to cancel Mr. Elliott's contract. As there were six non-tenured teachers who were retained in MCS in positions for which Mr. Elliott was qualified to teach, this means that had SB 1 not been enacted, Mr. Elliott's contract would have been renewed. SB 1's RIF provision completely destroyed Mr. Elliott's contractual right.

3. Reasonable and Necessary to Serve an Important Public Interest

Having determined that SB 1's RIF provision was a substantial impairment of Mr. Elliott's contractual right, the Court now turns to whether SB 1's RIF provision was reasonable and necessary to serve an important public interest.

> If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem. . . . The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.

Energy Reserves, 459 U.S. at 411-12 (internal citations omitted). To begin, both the Board and the State note that in Indiana, the duty of the General Assembly to provide an education to the citizens of the state is contained in the Constitution: "it should be the duty of the General Assembly to . . . provide, by law, [] a general and uniform system of Common Schools[.]" Ind. Const. Art. 8, § 1. In accordance with this charge, both the Board and the State note that the goal of SB 1—including SB 1's RIF provision—was to improve teacher quality. The Board explains that

> the language [of SB 1] demonstrates an emphasis on teacher effectiveness, including student achievement and growth. . . . Thus, the statutory language evidences the General Assembly's intent to exercise its police power to ensure the education of its citizens was based upon teacher effectiveness and student achievement and not seniority.

Board's Br. at 9; *see also* Dkt. No. 58-2, Schlegel Aff. ¶ 12 ("The primary concerns for policymakers at the time were how to modify the Teacher Tenure Act to improve the quality of education being provided to students by ensuring schools appropriately measure teacher effectiveness/performance, emphasizing the importance of teacher effectiveness and performance in making decisions about teacher retention and layoffs, and providing school administrators with greater flexibility and discretion in making reduction-in-force decisions.").[4] Similarly, the State explains that "[t]he goal of SB 1 was to raise teacher quality by valuing teacher performance over longevity." State's Br. at 17.

The State notes that percolating in the years leading up to the 2011 educational reforms was "a long-developing public consensus, founded on objective data, that traditional public schools had not been successful over the past several decades." *Id.* It argues that Indiana's graduation rates were low, drop-out rates were high, and scores on national assessments remained static. Juxtaposed to this was the "growing body of research show[ing] a strong correlation between teacher quality and positive educational outcomes." *Id.* at 19.

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[4] In his Reply, Mr. Elliott moved to strike this affidavit as well as the corresponding evidentiary submissions (Dkt. Nos. 58-4 through 58-11) that the Board relied on in its CrossMotion for Summary Judgment. *See* Pl.'s Resp. at 10-14. His primary argument was that he did not have the opportunity to depose Mindy Schlegel, a former Indiana Department of Education employee, because during discovery, the Board did not list Ms. Schlegel as a potential witness; Mr. Elliot also filed a Motion for Additional Discovery and to Amend the Briefing Schedule arguing the same (Dkt. No. 76). His motion was granted by the Magistrate Judge (Dkt. No. 78). Mr. Elliott has since deposed Ms. Schlegel and filed a Surreply (Dkt. No. 84). Accordingly, his motion to strike Ms. Schlegel's affidavit and the attached evidentiary submissions is denied.

Perhaps most relevant to SB 1's emphasis on teacher quality, was the grade Indiana received in the State Teacher Policy Yearbook, published by the National Council on Teacher Quality ("NCTQ").[5] For the years 2008, 2009, and 2010, Indiana received an overall grade of 'D' in the following categories: delivering well prepared teachers; expanding the teaching pool; identifying effective teachers; retaining effective teachers; and exiting ineffective teachers. Dkt. Nos. 58-3 through 58-5. Further, in 2010, the top three "Critical Attention Areas" identified by the NCTQ for Indiana were to "ensure that teacher evaluations assess effectiveness in the classroom"; to "connect teacher tenure decisions to teacher effectiveness"; and to "prevent ineffective teachers from remaining in the classroom indefinitely." Dkt. No. 58-5. Thus, the State argues, there was a need to change Indiana's education laws to specifically emphasize teacher quality.

For his part, Mr. Elliott argues that the state of education in Indiana was not nearly as dire as the State argues. He challenges the statistics on graduation rates and notes that the State distorts the data from the national assessments. He also argues that the NCTQ's studies have "been roundly criticized as biased and lacking in rigor and its conclusions contradict those reached by venerated organizations." Pl.'s Resp. at 18. Essentially, Mr. Elliott disagrees

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[5] "The National Council on Teacher Quality advocates for reforms in a broad range of teacher policies at the federal, state and local levels in order to increase the number of effective teachers." http://www.nctq.org/about/ (last visited February 3, 2015).

that the education system in Indiana needed to be reformed and disagrees with the chosen means to do so—emphasizing teacher quality. *See id.* at 22 ("[E]ven if student performance were seriously deficient in Indiana . . . [E]ven if teachers can, in theory, have as large an impact on that performance as the highly questionable research presented by the Defendants claims . . ."). Mr. Elliott may feel that the education reforms were not needed; however, this does not mean that SB 1 does not serve an important public interest. *See, e.g.*, *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 92 (1987) ("The Constitution does not require the States to subscribe to any particular economic theory. We are not inclined to second-guess the empirical judgments of lawmakers concerning the utility of legislation[.]") (internal quotation marks omitted).

Mr. Elliott's disagreements aside, in all, the Court finds that providing a quality education—specifically, improving teacher quality—was an important public interest underlying SB 1. As expressed by the Defendants: "the statutory language [of SB 1] demonstrates that the General Assembly had concerns about assessing teacher effectiveness, retaining the most effective teachers, and measuring teacher effectiveness based on student growth and achievement. This certainly is a 'significant and legitimate' public purpose for the statutory amendments." State and Board's Surreply at 7-8. Thus, the crux of this case will turn on whether the Indiana General Assembly's decision to enact SB 1's RIF provision was reasonable and necessary to improve teacher quality.

Initially, the Court notes that deference is usually given to the legislature's conclusion as to what is necessary and reasonable. *See Energy Reserves*, 459 U.S. at 413 (noting that in reviewing social regulations, "courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure"). Mr. Elliott, however, argues that the Court must apply heighted scrutiny because Indiana abrogated its own contractual obligations in enacting SB 1's RIF provision.

In *U.S. Trust Co of New York v. New Jersey*, the Supreme Court held as follows:

> As with laws impairing the obligations of private contracts, an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. In applying this standard, however, *complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake*.

U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 25-26 (1977) (emphasis added). This approach was also noted in *Energy Reserves*: "*Unless the State itself is a contracting party* . . . courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Energy Reserves*, 459 U.S. at 412-13 (emphasis added); *see also Peick v. Pension Ben. Guar. Corp.*, 724 F.2d 1247, 1270 (7th Cir. 1983) ("*Energy Reserves Group* very clearly indicates that the Court continues to view the contract clause as requiring two different levels of analysis depending upon whether a State is one of the contracting parties.").

The State disagrees that heightened scrutiny is appropriate in this case. It argues that the heightened scrutiny espoused in *U.S. Trust* only applies when a state has entered into some sort of financial contract, and thus the heightened scrutiny is only applicable when the State's *financial* interest is at stake.[6] Mr. Elliott correctly argues that this distinction has not been expressly made in any case law; moreover, he notes that "the Seventh Circuit has suggested that the heightened scrutiny standard *does* apply in cases involving contractual tenure rights." Pl.'s Resp. at 15. Indeed, in *Pitman v. Chicago Bd. of Educ.*, 64 F.3d 1098 (7th Cir. 1995), the Seventh Circuit, noted that "[i]f tenure for principals were a term in a contract between the principals and the board of education, the state could not abrogate the term without a greater showing of justification than has been attempted." *Id.* at 1104. The Court, therefore, will apply heightened scrutiny to this analysis as suggested by the Seventh Circuit.

The State notes that all of the 2011 education reforms, including SB 1's RIF provision, were "aimed at improving student performance through retaining skilled teachers: performance-based raises; an overhaul of the evaluation system that based teacher

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[6] For its part, the Board argues that SB 1 should not be subject to heightened scrutiny "because the contracts at issue are not between the State and another party. Rather, the contracts are between a teacher and a school corporation[.]" Board's Br. at 9-10. The Court disagrees. As noted above, Mr. Elliott's contractual right to be retained over non-tenured teachers in a RIF is part of his contractual tenure right given to Mr. Elliott via statute by the State. Thus, the contractual right at issue is between Mr. Elliott and the State.

performance reviews on a combination of student performance, administrators' observations, and district-specific factors; and limitations on the scope of collective bargaining." State's Resp. at 18. It thus argues that "SB 1's alteration of retention factors is essential to the efficacy of the 2011 reform package." *Id.*

The Court disagrees that it was "essential" and/or necessary to enact SB 1's RIF provision to accomplish the asserted state interest. What SB 1's RIF provision eliminated was the mandatory retention of tenured teachers during a RIF situation. Of course, however, Indiana was not concerned with the mandatory retention of *all* tenured teachers; Indiana was concerned about the mandatory retention of *poor-performing* tenured teachers. Specifically, Indiana was concerned that retaining poor-performing, tenured teachers would have a negative impact on student achievement. Indeed, both the State and the Board highlight this throughout their briefs. *See, e.g.*, State's Br. at 19 ("A growing body of research shows a strong correlation between teacher quality and positive educational outcomes."); State's Resp. at 18 (quoting an educational journal that concluded that "[t]he policy of eliminating the least effective teachers is very consistent with . . . the policies found in high-performing school systems around the world"); *Id.* at 20 (arguing that it would be a disservice to "Hoosier children [to] subject[] them to the instruction of ineffective teachers, who may not retire for another thirty years"). Thus, when forced to reduce its workforce, Indiana wanted school boards to be able to terminate the worst teachers—regardless of their tenure status.

The problem is that school boards have *always* had the ability to fire poor-performing tenured teachers; in fact, school boards did not—indeed, they still do not—have to wait for a RIF in order to terminate poor-performing tenured teachers. As noted above, prior to 2011, a tenured teacher's contract could be cancelled on grounds of immorality, insubordination, neglect of duty, incompetence, a justifiable decrease in the number of teaching positions, a conviction, or for a good and just cause. Dkt. No. 41-4, Ind. Code. § 20-28-7-1(a)(1)-(7) (2010). Indeed, the Supreme Court noted that these reasons "*cover every conceivable basis* for such action growing out of a deficient performance of the obligations undertaken by the teacher, and diminution of the school requirements." *Brand*, 303 U.S. at 108 (emphasis added). These reasons remained the same after SB 1 was enacted; the only change SB 1 made is that "incompetence" now includes receiving a rating of "ineffective" for two consecutive years or receiving a rating of "ineffective" or "improvement necessary" for three years in a five year period. *See* Ind. Code § 20-28-7.5- 1(e)(4). Thus there was—and still is—a means of getting rid of ineffective teachers: terminate their contracts for incompetence. Not only was this an option pre-SB 1, but now that SB 1 has been enacted, there are *objective means*, specifically tied to the annual performance ratings, to measure whether a teacher is "incompetent." Moreover, under SB 1, annual evaluations are mandatory, giving school boards ample opportunity to thoroughly evaluate the quality of their tenured teachers.

Also troubling is that SB 1's RIF provision seems to be unconnected to the reports and publications the

IDOE considered in drafting SB 1. *See* Board's Br. at 21-22 ("Ms. Schlegel, who worked under then-Superintendent of Public Instruction Tony Bennett, recalls that they considered the 2008, 2009, and 2010 NCTQ Reports when proposing the statutory amendments to the Teacher Tenure Law. Additionally, they reviewed several reports published by The New Teacher Project ("TNTP") . . . and two publications by the Measures of Effective Teaching ("MET") Project launched by the Bill and Melinda Gates Foundation.") (internal citations omitted).[7] Both the Board and the State are correct that, in general, these reports emphasize the importance of teacher quality, yet none focus on RIF situations as the means to do so.

For example, as noted above, the NCTQ 2009 State Teacher Policy Yearbook graded Indiana in five broad categories related to teacher quality, including identifying effective teachers, retaining effective teachers, and exiting ineffective teachers. Dkt. No. 58-4. Certain "goals" were also identified for Indiana in order for it to improve its teacher quality, and indeed, many of the NCTQ's "Goals" for Indiana were implemented by SB 1. *See id.* at 9 ("The state should

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[7] The Court fully understands that "the State need not prove what was actually considered by the members of the General Assembly" and that "the Indiana General Assembly keeps no legislative history." Board and State's Surreply at 4. Nevertheless, Ms. Schlegel, "who served as the Indiana Department of Education Senior Advisor for Educator Effectiveness and Policy from May 2009 to May 2012," and who "was involved in the research and policy considerations that led to [SB 1]" identified these reports as being considered. Board's Br. at 21-22.

require annual evaluations of all teachers and multiple evaluations of all new teachers"; "The state should require instructional effectiveness to be the preponderant criterion of any teacher evaluation"; "The state should support performance pay."). Notably absent is any reference to RIFs.[8] This seems to suggest, as the Court has indicated, that eliminating ineffective teachers in RIF situations is not necessary to improve teacher quality.

Unfortunately, neither the State nor the Board explain why the former cancellation procedures were inadequate to address teacher quality such that SB 1's RIF provision was necessary. Their arguments are mostly focused on addressing the reasonableness of SB 1 and contesting Mr. Elliott's suggested alternatives. Nevertheless, in the Court's view, if school boards utilize the procedures already in place, there is no need, in a RIF situation, to have to choose between poor-performing teachers and effective teachers, regardless of their tenure status. Utilizing the cancellation procedures already provided for is adequate to accomplish both the goal of "getting rid of" ineffective teachers *and* retaining effective teachers. There simply is no basis for the repeated assertion of the State and Board that SB 1's RIF provision is necessary, lest Indiana students be subjected to "ineffective" teaching. *See, e.g.*, State's Resp. at 20 (warning of the "the potential harm" to students being taught by "ineffective teachers").

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[8] Interestingly, a "Goal" was for Indiana to "articulate consequences for teachers with unsatisfactory evaluations, including specifying that teachers with multiple unsatisfactory evaluations are eligible for dismissal." *Id.*

Indeed, even Mr. Elliott himself acknowledges that "if the Board truly believed that [he] was an ineffective teacher, it could have employed these procedures to terminate him at any time during his 19 years of employment." Pl.'s Resp. at 24.

Accordingly, the Court finds that SB 1's RIF provision is not necessary to accomplish the goal of improving teacher quality—as there are already adequate measures to address the State's concerns—and, as applied to Mr. Elliott, it is unconstitutional. *See Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 247 (1978) ("[T]here is no showing in the record before us that this severe disruption of contractual expectations was necessary to meet an important general social problem."); *U.S. Trust*, 431 U.S. at 29-31 ("[I]t cannot be said that total repeal of the covenant was essential; a less drastic modification would have permitted the contemplated plan . . . a State is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well."). Mr. Elliott's motion for summary judgment (Dkt. No. 82) is therefore **GRANTED** as to Count I, and the Board's motion for summary judgment (Dkt. No. 56) is **DENIED** as to Count I. The State's motion for summary judgment (Dkt. No. 59) is also **DENIED**.

B. Mr. Elliott's State Law Claims

Counts II through IV of Mr. Elliott's Amended Complaint allege violations of Indiana state law, *see* Amend. Compl. ¶ 19, 26, 34 (all asserting that the Board's action in cancelling Mr. Elliott's teaching contract violated Indiana law); Count V asserts that the Board's selection of Mr. Elliott for nonrenewal was not supported by substantial evidence. *See id.* ¶ 36 ("There was no substantial evidence to demonstrate that Elliott's teaching contract should be cancelled based on performance and the School Board's decision to cancel Elliott's teaching contract was arbitrary and capricious").[9] The relief Mr. Elliott seeks in these Counts is the same as what he seeks in Count I: "that judgment be entered for the Plaintiff and that the School Board be ordered to pay damages for lost wages and benefits, that the Court order that Plaintiff be reinstated to his teaching position, and for all other relief proper in the premises." *Id.* ¶¶ 17, 24, 28, 34, 37. The Court has ruled in favor of Mr. Elliott on his constitutional claim (Count I); thus, it need not consider the remaining state law claims, as they appear to be mooted by the complete relief Mr. Elliott is entitled to under Count I. Counts II through V are therefore **DISMISSED WITHOUT PREJUDICE**.

IV. CONCLUSION

For the foregoing reasons, Mr. Elliott's motion for summary judgment (Dkt. No. 82) is **GRANTED IN PART**. The Board's motion for summary judgment (Dkt. No. 56) is **DENIED IN PART**. The State's motion for summary judgment (Dkt. No. 59) is **DENIED**. **Within 21 days of the date of this Entry**, the parties shall file either a joint notice, or if they cannot agree, separate notices setting forth what issues, if any, remain to be resolved before final

[9] As noted above, the State intervened solely to defend the constitutionality of SB 1's RIF provision; accordingly, it did not address Mr. Elliott's state law claims (Counts II through V) in its briefs.

judgment is issued consistent with this Entry and what the final judgment should include, given Mr. Elliott's prayer for relief.

SO ORDERED: 03/05/2015

s/ William T. Lawrence
Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

Filed 11/21/16

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOSEPH R. ELLIOTT
Plaintiff,
v.
BOARD OF SCHOOL TRUSTEES OF MADISON CONSOLIDATED SCHOOLS,
Defendant.

Case No. 1:13-cv-319-WTL-DML

JUDGMENT

The Court having entered summary judgment in favor of the Plaintiff, judgment is hereby **ENTERED** in favor of the Plaintiff and against the Defendant in the amount of $253,486.00, which includes back pay in the amount of $224,309.00 and pre-judgment interest in the amount of $29,177. In addition, the Court awards the Plaintiff attorneys' fees in the amount of $192,972.50. Post-judgment issue shall accrue as provided by 28 U.S.C. § 1961(a).

SO ORDERED: 11/21/16

s/ William T. Lawrence
Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana