No. 22-0118

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STATE OF MINNESOTA
IN COURT OF APPEALS

Alejandro Cruz-Guzman, as guardian and next friend of his minor children, *et al.*

Plaintiffs-Appellants,

vs.

State of Minnesota, *et al.*,

Defendants-Respondents,

and

Higher Ground Academy, *et al.*,

Intervenors-Respondents.

REPLY BRIEF OF PLAINTIFFS-APPELLANTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Plaintiff-Appellants above-named ("Plaintiffs") reply to the briefs of Defendants-Appellees (collectively "the State") and Intervenors-Appellees (collectively "the Charter Schools") as follows.[1]

A. THE STATE HAS CONCEDED THAT INTENT IS NOT REQUIRED FOR AN EDUCATION CLAUSE VIOLATION.

In a footnote, the State concedes that the Education Clause, Minn. Const. art. XIII, § 1, does not require a showing of the State's intent to segregate or discriminate in order to prove a violation:

> State Respondents agree with Appellants and the district court that the Education Clause does not contain an intent requirement. The Legislature has a duty to establish a system that provides children with the opportunity to obtain an adequate education. Therefore, even if the Legislature has good motives, it fails to comply with the Education Clause if it fails in its duty.

(State Br. at 26, n.20.) This concession is both significant and entirely correct.

The State correctly recognizes the distinction between a prohibition and a mandate. The former, which is embodied in the Minnesota[2] and Federal[3] Equal

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[1] This Reply will address primarily the State's Brief. Plaintiffs did not sue the Charter Schools, have asserted no cause of action against them, and seek no relief from them. Their arguments for the most part echo those of the State. To the extent their arguments differ and Plaintiffs believe they merit a response, Plaintiffs will address them.

[2] Minn. Const. art. I, § 2. "No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers."

[3] U.S. Const. amend. XIV, § 1: "No State shall … deny to any person within its jurisdiction the equal protection of the laws."

Protection Clauses, proscribes discriminatory ***action*** by the State. Establishing a violation requires proof that the State has affirmatively done something to deprive the plaintiff of a right. The Education Clause, however, has no counterpart in the U.S. Constitution. Instead of prohibiting action by the State, it ***requires*** action. In fact, it imposes a ***mandate*** on the State to act. *Skeen v. State*, 505 N.W.2d 299, 313 (Minn. 1993) ("*Skeen*") ("…the Education Clause is a mandate, not simply a grant of power.").

The mandate is to establish a system of schools that is "general," "uniform," "thorough," and "efficient." Minn. Const. art. XIII, § 1. Thus, to show a violation, a plaintiff needs to show *inaction* by the State—that it has failed to fulfill its constitutional mandate by establishing a general, uniform, thorough, and efficient system of public schools. Accordingly, as the State properly concedes, "even if the Legislature has good motives, it fails to comply with the Education Clause if it fails in its duty."[4]

There is also nothing anomalous in the State's concession. The Minnesota Education Clause has no remotely comparable counterpart in the U.S. Constitution. As the Minnesota Supreme Court has recognized, Minnesota's

[4] The Charter Schools incorrectly continue to insist on intent as an element of an Education Clause violation. ("CS Br.", at 34, 37.) As discussed above, this position fails to recognize the difference between a prohibition and a mandate.

Education Clause is "*sui generis*." *Skeen*, 505 N.W.2d at 315. The Minnesota Supreme Court is also free to interpret rights under its constitution that are different from and broader than those under the U.S. Constitution. *State v. Fuller*, 374 N.W.2d 722, 726 (Minn. 1985) ("It is axiomatic that a state supreme court may interpret its own state constitution to offer greater protection of individual rights than does the federal constitution.").

The State tries to take the teeth out of its concession by claiming that "the Supreme Court has repeatedly held the Legislature has fulfilled its duty." (State Br. at 26, n. 20.) As support for this assertion, the State cites *Skeen*, 505 N.W.2d at 315, and *State ex. rel. Klimek v. School Dist. No. 70, Otter Tail County*, 283 N.W. 397, 398 (Minn. 1939). Neither case supports the State's broad assertion as it applies to the claims here.

Skeen was a lawsuit challenging public school ***funding*** under the Education Clause, in which the plaintiffs conceded that they were receiving an adequate education. In light of this concession, the Supreme Court held that the Legislature had satisfied its duties under the Education Clause. *Skeen*, *id*. Unlike *Skeen*, this is not a funding case, and Plaintiffs have not conceded that they are receiving an adequate education.

The Supreme Court decided *Klimek* in 1939, 15 years before *Brown*, when ruled racial segregation of schools was not yet unconstitutional. *Klimek* likewise

presented none of the issues in this case. The plaintiffs brought a mandamus action to compel the Otter Tail School District to pay for their child's bus transportation. In an opinion barely more than a page, the Supreme Court affirmed denial of the mandamus petition because, by statute, funding of school transportation was optional, and "The constitution does not contain any provision that school districts shall provide free transportation to school children." *Klimek*, *id*. at 398-99. Therefore the State, acting through the school district, had met its constitutional duty. Again, this in no way speaks to the issues in this case.

The State's argument—that the Supreme Court has previously held that the Legislature has fulfilled its duty—appears to arise from an erroneous assumption that if the Legislature established in the past a "general," "uniform," "thorough," and "efficient" system of education, it has no duty to maintain such a system over time. Clearly, the Supreme Court does not agree. Indeed, if the Supreme Court believed in this case that the State had fulfilled its duties to these Plaintiffs under the Education Clause, it would have concluded Plaintiffs' claims were moot and never would have issued the decision it did, or said, "It is self-evident that a segregated system of public schools is not 'general,' 'uniform,' 'thorough,' or 'efficient.' Minn. Const. Art. XIII, § 1." *Cruz-Guzman v. State*, 916 N.W.2d 1, 10 n.6 (Minn. 2018) ("*Cruz-Guzman*").

In view of the State's concession, there is no need for Plaintiffs to discuss further the issue of whether the State intended to create racial isolation in the Minneapolis and St. Paul School Districts, inasmuch as the issue is both mooted and fully discussed in the Plaintiffs' Opening Brief. (Pl. Br. at 46-53.)

B. THE STATE IS WRONG THAT PLAINTIFFS HAVE NOT ESTABLISHED THE REQUISITE CAUSATION.

The State acknowledges that the Supreme Court determined in *Skeen* that the Education Clause provides that Minnesota children have a fundamental right to an adequate education. (State Br. at 6.)[5] But the State argues, relying on *Forslund v. State*, 924 N.W.2d 25 (Minn. Ct. App. 2019), ADD. 15, that to show this fundamental right has been violated, Plaintiffs must prove that the conditions about which Plaintiffs complain are the cause of their inadequate education.[6]

[5] "In this case, the available evidence suggests that the right of the people of Minnesota to an education is *sui generis* and that there is a fundamental right, under the Education Clause, to a 'general and uniform system of education' which provides an adequate education to all students in Minnesota." *Skeen*, 505 N.W.2d at 315.

[6] The State does not interpret the causation requirement to necessitate a showing that the State has caused or is responsible for the conditions about which Plaintiffs complain—here racial and socioeconomic ("SES") segregation. The Charter Schools would require the State both to cause the conditions and to intend to cause them. This is improperly engrafting federal Equal Protection jurisprudence onto the Education Clause, which has no counterpart in the federal constitution.

Plaintiffs have three responses: (1) a segregated education is definitionally or *per se* inadequate; (2) the undisputed evidence already in the record establishes the requisite causation; and (3) following the State's reasoning leads to unacceptable conclusions.

1. A Segregated Education Is by Definition Inadequate.

The first response is that the Minnesota Supreme Court has already held in this case that a segregated education is, by definition, self-evidently not general, uniform, thorough, or efficient. *Cruz-Guzman*, 916 N.W.2d at 10 n.6 (Minn. 2018) ("*Cruz-Guzman*") ("It is self-evident that a segregated system of public schools is not 'general,' 'uniform,' 'thorough,' or 'efficient.' Minn. Const. Art. XIII, § 1.") A segregated education cannot be adequate.

The response by the State and Charter Schools is that the Court meant to limit its statement only to *de jure* segregation, thus following federal Equal Protection jurisprudence in interpreting Minnesota's Education Clause. Yet the United States Supreme Court has described the *de facto-de jure* distinction as a limitation only on federal court jurisdiction and remedial power, not as a limitation on the power of state governments. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971); *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 789 (2007) (Kennedy, J., concurring); *see also Bustop, Inc v. Bd. of Educ. of City of Los Angeles*, 439 U.S. 1380, 1382-83 (1978) (Rehnquist, J., denying

application for stay). Under these authorities, states remain free to remedy *de facto* segregation, even with "race conscious" measures so long as they "do not lead to different treatment based on a classification that tells each student he or she is to be defined by race." *Parents Involved*, 551 U.S. at 789.

Minnesota has done just that. In securing the enactment of a new desegregation rule in 1978, the Minnesota Department of Education ("MDE") supported its application with a Statement of Need and Reasonableness ("SONAR") that said "the Department of Education is not constitutionally prohibited from regulating *de facto* segregation."[7] The Hearing Examiner, approving the new rule, found that ""the Legislature intended to regulate *de facto* segregation." R. Doc. 283, Ex. 4 at P0000772, 774-777, Ex.5 at P0005619, 5621-22, 5624. In 1993, the Legislature passed a law for the convening of a Round Table to discuss a new desegregation rule, and to consider "at minimum … methods for preventing resegregation in urban districts, including metropolitan wide desegregation approaches." *Id*., Ex. 28.

There is thus a lack of support to conclude that the Supreme Court in *Cruz-Guzman* intended to limit footnote 6 to *de jure* segregation, and compelling reason to think that it did not.

[7] The "MDE" appellation also includes the Minnesota Board of Education and Department of Children, Families, and Learning. (*See* Pl. Brief, at 5, n.3.)

2. There Is Extensive, Undisputed Evidence to Conclude that Segregation Has Caused Minneapolis and St. Paul Students of Color ("SOC") to Receive an Inadequate Education.

Even if additional proof of causation were required, the undisputed evidence already in the district court record provides that proof. The record includes four material undisputed facts that establish that racial and SES segregation have produced an inadequate education for SOC and SES students in Minneapolis and St. Paul.

The first is that racial and SES segregation, whether defined as racial and SES imbalance, separation, or isolation, exist in the Minneapolis and St. Paul Public School Districts. R. Doc. 348, Ex. 1, ¶ 21; R. Docs. 346 at 4, 5; 348 at 2, Ex. 1 at 6-16.[8]

The second is that this situation has existed for at least five years and has worsened, in that more schools are separated or isolated by race or SES. R. Doc. 348 at 2, Ex. 1 at 18-20; R. Doc. 363 at 7-10; R. Doc 356, Ex. 3, at 4-17.

The third is that there is a wide achievement gap between SOC and white students, as shown by scores on standard achievement tests in reading, math, and science. R. Doc. 348, at 2, Ex. 1, at 20; R. Doc. 356, Ex. 3, cover letter at 1,

[8] Hereafter, Plaintiffs will use the term "racial isolation," or "racial separation" because "segregation" implies to some people *de jure* segregation and "racial imbalance" leads others to associate impermissible racial balancing as a remedy. Racal isolation and separation, on the other hand, are both neutral and accurate for current conditions in Minneapolis and St. Public School Districts.

Responses to Plaintiffs' Request for Admissions ("Responses"), at. 4-17; R. Doc. 365, Ex. 1, at 6- 41.

The fourth is that this achievement gap is intractable and has not diminished over time. *Id*.

Together these four undisputed facts establish a long-standing pattern of academic failure and inadequacy resulting from segregation. To argue otherwise leads to conclusions that Plaintiffs submit this Court must find unacceptable.

3. The Alternatives to Finding Causation Lead to Unacceptable Conclusions.

The unambiguous and undisputed demographic evidence shows racial isolation and separation. The test scores show a large, long-standing, unchanging achievement gap for Minneapolis and St. Paul District SOC. The State touts its financial investment in efforts to remedy both racial separation and the achievement gap. (State Br. at 3-4, n. 1, 28-29.)[9] The State also proposes "to

[9] The State also quotes an erroneous statement from an Administrative Law Judge: "Minnesota has never engaged in the type of intentional segregation declared unlawful by the United States Supreme Court in *Brown v. the Board of Education* in 1954[.]" (State Br. at 27, citing R. Doc. 356, Ex. 4 at 4.) To the contrary, in 1972, the U. S. District Court for the District of Minnesota found that the Minneapolis School District had engaged in unlawful *de jure* segregation. *Booker v. Special School District No. 1, Minneapolis, Minn.*, 351 F. Supp. 799 (D. Minn. 1972). This lawsuit is the result of the State's permitting the Minneapolis School District to resegregate upon the federal court's release of the District from the court's desegregation order. (Pl. Brief at 12-16, and record citations therein.)

produce reports from one or more experts concerning the requirements for providing students with the opportunity to receive an adequate education as required by the Minnesota Constitution." (State Br. at 31; R. Doc. 356 at 2.)[10]

Such evidence and expert reports, however, cannot contradict the undisputed demographic evidence or the undisputed testing data. The amount of the State's investment and the testimony of the State's proposed experts cannot change undisputed facts. Instead, the State's evidence leads to the conclusion that racial separation and isolation, which have not improved, but worsened, are the cause of Plaintiffs' undisputed failure to receive an adequate education.

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[10] There is a serious question whether expert testimony is admissible to educate the court on the requirements for an adequate education as required by the Minnesota Constitution. Such opinions would likely be inadmissible under Minn. R. Evid. 704 as legal opinions or opinions on mixed questions of law and fact. 1977 Committee Comment on Rule 704 ("In determining whether or not an opinion would be helpful or of assistance under these rules a distinction should be made between opinions as to factual matters, and opinions involving a legal analysis or mixed questions of law and fact. Opinions of the latter nature are not deemed to be of any use to the trier of fact."); *State v. Salazar*, 289 N.W.2d 753, 755 (Minn. 1980); *Conover v. Northern States Power Co.*, 313 N.W.2d 397, 403 (Minn. 1981). What the Education Clause of the Constitution requires is an issue of law for the court. In addition, the Minnesota Supreme has already repeatedly defined what the Education Clause requires, including in this very case. *Cruz-Guzman*, 916 N.W.2d at 12; *Skeen,* 505 N.W.2d at 310-311, *citing and quoting with approval Pauley v. Kelly*, 255 S.E.2d 859, 877 (W. Va. 1979); *Board of Education of Sauk Center v. Moore*, 17 Minn. 412, 416 (Minn. 1871).

The State appears to be retreating from the position that it has provided an adequate education to the position that it has provided ***the opportunity*** to obtain an adequate education, which is all it claims the Education Clause requires. The Education Clause, however, mandates the Legislature to establish a general, uniform, thorough, and efficient system of public schools, which provides an adequate education. The undisputed demographic and achievement evidence shows that the system has not been general, uniform, thorough, or efficient for SOC and SES students in Minneapolis and St. Paul and has not provided them with an adequate education.

The State's retreat to having to provide only the opportunity to obtain an adequate education cannot escape the undisputed evidence that racially separate and isolated schools in Minneapolis and St. Paul have failed to provide an adequate education. Racial isolation and separation in these school systems are not general, uniform, thorough, or efficient, as the test scores prove.

Plaintiffs are not saying the Education Clause requires the State to guarantee student outcomes. What Plaintiffs are saying is that the State has eliminated the possibility of an adequate education and acceptable outcomes by tolerating racial isolation and separation of SOC and SES students in Minneapolis and St. Paul school systems, which are therefore not general, uniform, thorough, or efficient.

Finally, through its position of limiting its obligation to providing merely the opportunity to obtain an adequate education, the State is heading to three unacceptable end points.

The first is to have this Court ignore the terms "general," "uniform," "thorough," and "efficient" in the Education Clause and fail to give them their proper meaning and effect in its decision.

The second is essentially to put the blame on the victims of the State's violation of the Education Clause—SOC and SES students in Minneapolis and St. Paul—for allegedly failing to use the opportunity the State has provided them to obtain an adequate education, even if their school systems are not general, uniform, thorough, or efficient.

The third is to have Minnesota courts, including this one, find that students can obtain an adequate education at racially isolated schools that unambiguous, undisputed evidence shows have failed for years. In other words, separate can be equal even in schools that are not general, uniform, thorough, or efficient.

Plaintiffs submit that the Education Clause does not permit Minnesota courts to accept the State's invitation to reach any of these end points.

C. THE STATE MISSTATES THE PLAINTIFFS' CLAIMS AND DESIRED RELIEF.

The State repeatedly misstates the claims Plaintiffs are making and the relief Plaintiffs request. Foremost among these are the repeated misstatements that Plaintiffs seek to have the courts or the legislature establish "a particular mix" of students by race or SES (State Br. at 5, 13, 9); a "particular demographic profile" (*id*., at 5); a "particular demographic mix" (*id*., at 13, 21); "specific racial and SES balances" (*id*., at 22); "specific student demographics" (*id*., at 16, 30); "specific racial balance" (*id*., at 22 n. 17).

Why the State would make this mischaracterization eight separate times in its brief is puzzling, when the Supreme Court definitively settled this issue in *Cruz-Guzman*. Here is what the Court said:

> Providing a remedy for Education Clause violations does not necessarily require the judiciary to exercise the powers of the Legislature. Appellants stress that their complaint "does not actually ask the court to institute any specific policy." Rather, their prayer for relief asks the district court to find, adjudge, and decree that the State has engaged in the claimed constitutional violations. Although appellants have also asked the district court to permanently enjoin the State "from continuing to engage in" the claimed constitutional violations and to order the State to "remedy" those violations, they "have consistently acknowledged that it is not the court's function to dictate to the Legislature the manner with which it must correct its constitutional violations."
>
> In essence, appellants' claims ask the judiciary to answer a yes or no question—whether the Legislature has violated its constitutional duty to provide "a general and uniform system of public schools" that is "thorough and efficient," Minn. Const. art. XIII,

> § 1, and "ensure[s] a regular method throughout the state, whereby all may be enabled to acquire an education which will fit them to discharge intelligently their duties as citizens of the republic," *Bd. of Educ. of Sauk Ctr.* , 17 Minn. at 416. To resolve this question, the judiciary is not required to devise particular educational policies to remedy constitutional violations, and we do not read appellants' complaint as a request that the judiciary do so. Rather, the judiciary is asked to determine whether the Legislature has violated its constitutional duty under the Education Clause.

916 N.W.2d at 9.

The State also makes the absurd assertion that Plaintiffs' proposed remedy will mean that "all schools in the State with fewer than 20% racial minorities and students eligible for free-or-reduced meals are unconstitutional, no matter what actions the Legislature undertakes to create a system of education and no matter how well those students perform," with the result of "large swaths of Greater Minnesota being declared per se unconstitutional." (State Br. at 12, n. 7.) First, the State knows that this is not the Plaintiffs' proposed remedy, or ought to know it from *Cruz-Guzman*. Second, the 20% number relates to the class definition, not to any requested remedy. Third, Plaintiffs' claims and summary judgment motion relate only to the Minneapolis and St. Paul School Districts.

As support for its mischaracterization of Plaintiffs' "definition and legal theory," the State cites R. Doc. 356, Ex. 1 at 5, Plaintiffs' July 14, 2016, responses to MDE's requests for admissions, specifically Plaintiffs' admission that "the constitutional right to education applies equally to all students throughout the

State of Minnesota." This is obviously true. It certainly does not mean, however, that the Legislature must apply one-size-fits-all, state-wide percentages in remedying an Education Clause violation in the Minneapolis and St. Paul School Districts. Moreover, any percentages that the State itself has used are not absolute, but are variances from school district demographics.

In the same footnote, the State says that the 15 and 20 percent deviations it has used in its desegregation rules to identify racial separation "are the product of educational policy, not the Minnesota Constitution." (State Br. at 12, n. 7.) Is the State seriously implying that its variation percentages are unconstitutional, or that its educational policy-making is not in compliance with the Education Clause?

It will be for the Legislature to craft a lawful remedy appropriate for its violation of the Education Clause. Suffice to say that in their mediation, Plaintiffs and the MDE were able to agree on a proposed legislative solution that would have made no student assignments on the basis of race and would have preserved existing parent choice, limited only by school capacity constraints, which is the present situation. *See* ADD. 5; R. Doc. 346 at 30-31.[11]

[11] Obviously, the Legislature has not yet passed the bill, although it still can, without running afoul of federal equal protection law.

The Supreme Court has thus thoroughly debunked the State's contentions here that Plaintiffs are asking the courts to make educational policy or otherwise direct the Legislature how to cure its Education Clause violation.

CONCLUSION

On the basis of the foregoing arguments and authorities, and those in the Plaintiffs' Opening Brief, Plaintiffs respectfully request this Court to reverse the order of the district court and remand this case with directions to enter partial summary judgment for Plaintiffs in accordance with their motion.

Dated: June 7, 2022

Respectfully submitted.

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APPELLATE COURT
CASE NO. 22-0118

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Respectfully submitted.

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