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No. 22-0118

STATE OF MINNESOTA
IN SUPREME COURT

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

v.

State of Minnesota, *et al.*,
Defendants-Respondents,

and
Higher Ground Academy, *et al.*,
Intervenors-Respondents.

BRIEF OF AMICI CURIAE EDUCATION LAW CENTER AND THE CONSTITUTIONAL AND EDUCATION LAW SCHOLARS IN SUPPORT OF PLAINTIFFS-APPELLANTS

Of Counsel:

David Sciarra
Wendy Lecker
Education Law Center
60 Park Place, Suite 300
Newark, NJ 07102

Derek W. Black
Professor of Law
University of South Carolina School of Law*
701 Main Street, Room 407
Columbia, SC 29208
* *University affiliation for informational and identification purposes only*

Berglind Halldorsdottir Birkland
Counsel of Record
Minn. I.D. 0402508
Debevoise & Plimpton LLP
66 Hudson Boulevard
New York, NY 10001
(212) 909 6361
(651) 216 1056
bhbirkla@debevoise.com

Of Counsel (Continued)

Shannon Selden
Debevoise & Plimpton LLP
66 Hudson Boulevard
New York, NY 10001

February 2, 2023

LIST OF AMICI CURIAE[1]

Education Law Center
60 Park Place, Suite 300
Newark, NJ 07102

Derek W. Black
Professor of Law
University of South Carolina
School of Law

David C. Bloomfield
Professor of Education Leadership,
Law & Policy
Brooklyn College and
The CUNY Graduate Center

Jack Charles Boger
Professor of Law
University of North Carolina
School of Law

Kristine Bowman
Associate Dean and Professor
Michigan State University
College of Education

Kevin D. Brown
Professor of Law
University of South Carolina
School of Law

John C. Brittain
Professor of Law
UDC David A. Clarke School of Law

Erwin Chemerinsky
Dean and Professor of Law
University of California, Berkeley
School of Law

Janet Decker
Associate Professor
Indiana University, Bloomington
School of Education

Suzanne Eckes
Professor
University of Wisconsin, Madison
College of Education

Lia Epperson
Professor of Law
American University Washington
College of Law

Rob A. Garda, Jr.
Professor of Law
Loyola University New Orleans
College of Law

Preston Green, III
Professor of Education
Leadership and Law
University of Connecticut NEAG
College of Education

Steven K. Green
Professor of Law
Willamette University College of Law

Osamudia James
Professor of Law
University of North Carolina
School of Law

Daniel Kiel
Professor of Law
University of Memphis
School of Law

[1] Institutional affiliations are listed solely for purposes of identification and do not indicate institutional support for the positions articulated in this amicus brief.

Christine Kiracofe
Professor of Educational Leadership
and Policy Studies
Purdue University
College of Education

William S. Koski
Professor of Law
Stanford University School of Law

Daniel Losen
Director of the Center for Civil Rights
Remedies
University of California, Los Angeles

Julie Mead
Professor Emeritus
University of Wisconsin, Madison
College of Education

Isabel Medina
Professor of Law
Loyola University, New Orleans
College of Law

Caitlin Millat
Climenko Fellow and Lecturer on Law
Harvard Law School

Raquel Muñiz
Assistant Professor
Boston College School of Education and
Human Development

David Nguyen
Assistant Professor
Indiana University-Purdue University,
Indianapolis School of Education

Kimberly Jade Norwood
Professor of Law
Washington University School of Law

Mark Paige
Associate Professor
University of Massachusetts, Dartmouth
College of Arts and Sciences

Matthew Patrick Shaw
Assistant Professor of Public Policy,
Education, and Law
Vanderbilt Peabody College
Vanderbilt Law School

Benjamin M. Superfine
Chair & Professor of Educational Policy
Studies
University of Illinois, Chicago
College of Education

Aaron Tang
Professor of Law
U.C. Davis School of Law

Paul Tractenberg
Professor of Law
Rutgers Law School

Julie Underwood
Professor Emeritus
University of Wisconsin, Madison
College of Education

Joshua Weishart
Professor of Law
West Virginia University College of Law

Kevin Welner
Professor
University of Colorado, Boulder
School of Education

Kimberly West-Faulcon
Professor of Law
Loyola Law School, Los Angeles

Erika K. Wilson
Associate Professor of Law
University of North Carolina School of Law

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STATEMENT OF INTERESTS OF AMICI CURIAE[2]

Education Law Center ("ELC") is a non-profit organization that advocates, on behalf of public-school children, for access to fair and adequate educational opportunity under state and federal laws through policy initiatives, research, public education, and legal action. ELC represented the plaintiff school children in the landmark case *Abbott v. Burke*, which was a challenge to inadequate educational opportunities under the education clause of New Jersey's constitution, and in which ELC secured a series of remedial measures to ensure disadvantaged school children a constitutional education. ELC continues to advocate for effective implementation of the *Abbott* remedies, which the New Jersey Supreme Court has found to have "enabled children in [urban] districts to show measurable educational improvement." *Abbott v. Burke*, 971 A.2d 989, 995 (N.J. 2009) (internal citation omitted). As part of this work, ELC advocates for adherence to New Jersey's longstanding precedent that racial imbalance resulting from de facto segregation is inimical to the constitutional guarantee of a thorough and efficient education under New Jersey's education clause. ELC has also served as co-counsel representing plaintiffs in two cases interpreting the constitutional right to education in New York: *Maisto v. State* and *New Yorkers for Students' Educational Rights v. State*.

[2] No counsel for any party authored this brief in whole or in part, and no person or entity other than amicus curiae or their counsel made a monetary contribution to the preparation or submission of this brief.

In states across the nation, ELC also broadly advances children's opportunities to learn and assists those who promote such opportunities. ELC provides research and analyses related to education cost and fair school funding, high quality preschool, and other proven educational programs; assistance to parent and community organizations, school districts, and states in gaining the expertise needed to narrow and close achievement gaps for disadvantaged children; and support for litigation and other efforts to bridge resource gaps in the nation's high-need schools. As part of its work, ELC has participated as amicus curiae in state educational opportunity cases in California, Colorado, Connecticut, Delaware, Florida, Indiana, Kansas, Maryland, North Carolina, Oregon, Pennsylvania, South Carolina, Texas, and Wyoming. ELC also previously filed an amicus curiae brief with this Court in the case at bar.

The Constitutional and Education Law Scholars (the "Education Law Scholars") are scholars of constitutional and education law who believe strongly in upholding a proper role for courts in enforcing constitutional rights, particularly where majoritarian democratic processes may have caused violations of the rights of disfavored minorities. Through their scholarship and teaching, the Education Law Scholars are immersed in the study of education clauses in state constitutions, including the obligation such clauses impose with respect to addressing school segregation, and they wish to assist this Court by providing the historical, legal, and social science context for the interpretation of the Education Clause in the Minnesota State Constitution. Several of the undersigned scholars previously filed an amicus curiae brief with this Court in the case at bar.

INTRODUCTION

The Minnesota Supreme Court is called upon yet again to make clear that state policies that consign students to segregated schools, and that cause the kinds of educational harms alleged in Appellants' complaint, violate the Education Clause of the Minnesota Constitution because a de facto segregated system of public schools is not general, uniform, thorough, or efficient. The Court of Appeals decision must be reversed and the case remanded for adjudication of Appellants' claims.

As this Court observed in its prior ruling in this case, "[a]n education that does not equip Minnesotans to discharge their duties as citizens intelligently cannot fulfill the Legislature's duty to provide an adequate education under the Education Clause." *Cruz-Guzman v. State*, 916 N.W.2d 1, 12 (Minn. 2018). And as demonstrated in our earlier amicus brief before the Court, a robust body of research shows that segregated schools disadvantage minority and lower-income students while integrated schools with diverse student bodies provide benefits to all students and are essential for productive participation in today's diverse civil life, workplaces, and global economy. Educ. L. Ctr., et al. as Amici Curiae Supporting Plaintiffs, *Cruz-Guzman*, 916 N.W.2d. A segregated school system resulting in the types of educational harms set forth in Appellants' complaint runs afoul of the Education Clause'a mandate to provide an adequate education. And it does so regardless of whether the state intended its policies to have that effect.

As we explain, reaffirming that de facto segregation violates Minnesota's Education Clause is entirely consistent with this Court's precedents and the decisions of courts in sister states interpreting education clause gaurantees in their state constitutions.

This Court has long recognized that the Minnesota State Constitution imposes an affirmative obligation on the Legislature to "establish a general and uniform system of public schools" and to "secure a thorough and efficient system of public schools throughout the state." MINN. CONST. art. XIII, § 1; *Bd. Of Educ. Of Sauk Ctr. v. Moore*, 17 Minn. 412, 416 (1871); *Curryer v. Merill*, 26 Minn. 1, 6–7 (1878); *Skeen v. State*, 505 N.W.2d 299, 309 (Minn. 1993); *Cruz-Guzman*, 916 N.W.2d at 8–9; *Forslund v. State*, 924 N.W.2d 25, 33–34 (Minn. 2019). This Court has affirmed that education "*is* a fundamental right under the state constitution." *Skeen*, 505 N.W.2d at 313. And, in its earlier opinion in this case, the Court recognized the crucial role that the judicial branch plays in defining and enforcing the Legislature's affirmative constitutional duty under the Education Clause. *Cruz-Guzman*, 916 N.W.2d, at 10. In none of its prior opinions has the Court required a showing of the state's intent to violate its duty. This is consistent with precedent in sister states whose courts have found that violations of the affirmative obligations in their state constitutions require no showing of intent.

Further, case law in sister states confirms that since intent is not required to establish an education clause violation, state policies that maintain or cause de facto school segregation and its resulting harms are unconstitutional. *See, e.g., Booker v. Bd. of Ed. of City of Plainfield, Union Cnty.*, 212 A.2d 1 (N.J. 1965); *Jenkins v. Morris Tp. Sch. Dist.*, 279 A.2d 619 (N.J. 1971); *Sheff v. O'Neill*, 678 A.2d 1267 (Conn. 1996); *Crawford v. Bd. of Educ.*, 551 P.2d 28, 39 (Cal. 1976) (*en banc*). These courts have recognized that the harms of de facto and de jure segregation are indistinguishable and the judiciary's obligation to address and remedy them "applies with equal force." *See, e.g., In re Grant*

of Charter Sch. Application of Englewood on Palisades Charter Sch., 753 A.2d 687, 692 (N.J. 2000) [hereinafter *Palisades Charter*] ("Whether due to an official action, or simply segregation in fact, our public policy applies with equal force against the continuation of segregation in our schools.").

Amici curiae respectfully ask this Court to reverse the decisions of the District Court and the Court of Appeals below and to clarify the scope of the state's obligation under the Education Clause and of the Judiciary's role in enforcing it. The lower courts correctly recognized that Minnesota's Education Clause imposes an affirmative right—and affirmative obligation—wholly distinct from the negative rights accorded under the Equal Protection Clause in the United States Constitutuion. *See* Pet'r-Appellant's Br., Addendum, [hereinafter Appellants' Addendum], ADD 31 ("[T]his Court rejects the arguments advanced by Defendants and Defendant-Intervenors that it must necessarily apply Equal Protection jurisprudence . . . as it attempts to discern the proper elements of Minnesota's Education Clause violation."). Yet the lower courts incorrectly raised the concern that any as-yet-unidentified remedy to address a finding of de facto school segregation in this case would be incompatible with federal Equal Protection jurisprudence. *See* Appellants' Addendum, ADD 33. That concern is entirely unfounded. Equal Protection jurisprudence under the federal constitution is of no relevance to the merits of Plaintiffs' claims. Nor does the U.S. Supreme Court's decision in *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007) [hereinafter *Parents Involved*] bar the Legislature from remedying the state constitutional violation in this case.

ARGUMENT

I. REAFFIRMING THAT DE FACTO SEGREGATION IS A VIOLATION OF MINNESOTA'S EDUCATION CLAUSE IS CONSISTENT WITH EDUCATION CLAUSE JURISPRUDENCE.

A. Neither Minnesota Precedent Nor Precedent in Other States Require a Showing of Intent in Adjudicating Education Clause Violations

It is well-established and undisputed that the Education Clause imposes an affirmative "duty" or "mandate" upon the state to provide Minnesota students with an adequate education. *Skeen*, 505 N.W.2d at 308–09 (citing *Curryer*, 26 Minn. at 6–7); *Cruz-Guzman*, 916 N.W.2d at 9 (citing *Associated Schs. Of Indep. Dist.*, 122 Minn. at 327); *State ex rel. Smith v. City of St. Paul*, 150 N.W. 389, 391 (Minn. 1914). "The Education Clause thus creates a positive right—the right to have the government do something—that is distinguishable from the negative rights guaranteed by other provisions of the United States and Minnesota Constitutions—the rights to have the government *not* do something." *Forslund*, 924 N.W.2d at 33 **(**internal citations omitted).

The obligation of the Legislature under the Education Clause is an affirmative one. Consequently, intent is irrelevant to whether the mandate is violated. Indeed, the language of the Education Clause simply states that "it is the duty of the legislature to establish a general and uniform system of public schools," without any mention of intent. MINN. CONST. art. XIII, § 1. Thus, when the Legislature fails to fulfill its "duty," it violates the Education Clause, just as an individual who drives over the speed limit breaks the law regardless of intent to do so. *See Crime*, BLACK'S LAW DICTIONARY (11th ed. 2019). As

Defendants conceded below, "even if the Legislature has good motives, it fails to comply with the Education Clause if it fails in its duty." State Resp't's Br. at 26, n.20.

The Court's analysis in *Skeen* provides "guidance," regarding the "elements of a claim for violation of the Education Clause." *Forslund*, 924 N.W.2d at 34. Rather than attempt to analyze the *intent* behind the challenged measures, the *Skeen* Court considered their *effect*. *Skeen*, 505 N.W.2d at 310–12. The question posed in that case was precisely the same "yes or no question" posed here—namely whether or not the Legislature has violated its affirmative obligation to provide "a general and uniform system of public schools" that is "thorough and efficient." *Compare id.* at 302 *with Cruz-Guzman*, 916 N.W.2d at 9. Importantly, the *Skeen* court did not consider whether the State intentionally underfinanced certain schools. Instead, it simply evaluated whether the financing scheme as a whole led to the provision of an inadequate education. As succinctly stated by the Court of Appeals, in order "to establish a violation of the Education Clause, a plaintiff must demonstrate that the legislature *has failed or is failing* to provide an adequate education," without any consideration of intent. *Forslund*, 924 N.W.2d at 34–35 (emphasis added).

Here too, the Court must only consider whether state action or inaction has resulted in segregated schools in Minneapolis and St. Paul, which causes educational harm to students as articulated in the complaint. If so, the Legislature has failed to discharge its duty of providing a "general and uniform," "thorough and efficient" public school system, and has thus violated the Education Clause. *Cruz-Guzman*, 916 N.W.2d at 12 ("If the legislature's actions do not meet a baseline level, they will not provide an adequate education.").

Numerous state courts, interpreting their constitutions' education clauses, have similarly concluded that whether a deprivation is intentional is not relevant to assessing a violation of affirmative education obligations, only that a deprivation has occurred as a result of the state's acts or omissions. *See, e.g.*, *McCleary v. State*, No. 84362-7, 2016 WL 11783312, at *5 (Wash. 2016) (Washington Supreme Court held that the state's "good intentions" did not excuse its continuing failure to provide a constitutionally adequate education); *Hoke Cnty Bd. of Educ. v. State*, 599 S.E.2d 365, 390 (N.C. 2004) (finding a constitutional violation when a combination of state action and inaction resulted in the deprivation of students' right to a sound basic education); *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 333–36 (N.Y. 2003) (finding a constitutional violation based upon a showing that the state's finance system was a cause of insufficient resources and unacceptably low student outcomes); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 198 (Ky. 1989) (finding a constitutional violation when state funding system proved inadequate education "in spite of legislative efforts" to increase state funding); *see also*, Joshua E. Weishart, *Equal Liberty in Proportion*, 59 Wm. & Mary L. Rev. 215, 261 (2017) ("State court adjudication of education clause claims diverges from federal means-end testing in [that] ends scrutiny has not been used to 'smoke out' illicit motives or improper purposes[.]").

In finding a violation of affirmative education clause duties, no court has ever required proof of intent. To prevail on an education clause claim, plaintiffs need only establish "that the substantial education deprivation in question falls within the purview of state control or responsibility" by demonstrating "a state statute or policy is the cause of

some . . . tangible deficiency in local school districts" and that there is a "causal connection between the deficiency . . . and educational outcomes." Derek W. Black, *The Constitutional Challenge to Teacher Tenure*, 104 Cal. L. Rev. 75, 118–20 (2016).

B. Reaffirming that De Facto Segregation Violates Minnesota's Education Clause Would Be Consistent with Interpretations of Education Clauses in Other States

A finding that de facto segregation resulting in the type of harms alleged in Plaintiff's complaint violates Minnesota's Education Clause would be consistent with rulings by several sister state courts, which have allowed courts to consider claims of de facto school segregation under their constitutions' guarantees of public education without requiring an evidentiary showing of intent to discriminate.

The New Jersey Supreme Court has, in numerous rulings over five decades, firmly established that its constitutional guarantee of a "thorough and efficient" education prohibits de facto segregation in the state's public school system. The court has also articulated core principles to guide the judiciary in adjudicating claims of unconstitutional school segregation without requiring any showing of intent.

In its seminal 1965 ruling *Booker v. Board of Education of City of Plainfield, Union County*, the New Jersey Supreme Court made clear that the state has a "long standing and vigorous" policy against discrimination and segregation in public schools, 212 A.2d. at 8. In subsequent cases it has affirmed that this "abhorrence of discrimination and segregation" is "not tempered by *the cause* of that segregation." *Palisades Charter*, 753 A.2d at 692 (emphasis added). The court has explained that "[w]hether due to an official action, or

simply segregation in fact, our public policy applies with equal force against the continuation of segregation in our schools." *Id.* On this basis, New Jersey's courts have "consistently held that racial imbalance resulting from de facto segregation is inimical to the constitutional guarantee of a thorough and efficient education." *In re Petition for Authorization to Conduct a Referendum on the Withdrawal of N. Haledon Sch. Dist. From the Passaic Cnty. Manchester Reg'l High Sch.*, 854 A.2d 327, 336 (N.J. 2004) [hereinafter *North Haledon*]; *see also Jenkins*, 279 A.2d at 629 (finding that the state education commissioner "must have power to cross district lines to avoid 'segregation in fact'").

The New Jersey Supreme Court has applied these principles in cases involving state and district policies and practices that are race-neutral on their face, and which are remarkably similar to the policies at issue in this case. In *North Haledon*, for example, the court invalidated on constitutional grounds a New Jersey borough's facially race-neutral attempt to withdraw from its regional high school district. The court recognized that there was "no suggestion in the record" that the petition for withdrawal was "racially motivated" but rather was instigated to address citizens' concern over local tax burdens. *North Haledon*, 854 A.2d at 341. The court nonetheless found the proposed withdrawal incompatible with the state's constitutional guarantee of a thorough and efficient education because of its impact on the racial balance of students attending the affected school. *Id.* at 328, 341 (finding that a nine percent decrease in the white student population at the affected school was unacceptable given the educational harms resulting from racially segregated learning environments); *see also Booker*, 212 A.2d at 5 (finding that de facto segregation resulting from district school assignment policies is prohibited even where the

resultant educational harm arises not from official policy but "from long standing housing and economic discrimination and the rigid application of neighborhood school districting").

The New Jersey Supreme Court has also ruled that the affirmative obligation to prevent and redress de facto segregation applies to the state's implementation of the Legislature's charter school law. *Palisades Charter*, 753 A.2d at 694 ("The constitutional command to prevent segregation in our public schools superimposes obligations on the Commissioner when he performs his statutory responsibilities under the Charter School Act."). To ensure that the state prevents segregation in its charter school program, the court has explicitly directed the state education commissioner to carefully evaluate the impact charter schools may have on the student demographics of their host districts both before approving a new charter school and every year thereafter. *Id.* Furthermore, the commissioner's ongoing obligation to assess and prevent segregative effects of charter schools exists regardless of whether or not the host district raises concerns about the issue. *In re Renewal Application of TEAM Academy Charter Sch.*, 252 A.3d 1008, 1022–23 (N.J. 2021).

Other state courts have also ruled that the school segregation attributable to state policies violate their constitutional education obligations, regardless of intent. The Supreme Court of Connecticut in *Sheff v. O'Neill* noted that "[t]he state has not intentionally segregated racial and ethnic minorities in the Hartford public school system," that except for a "brief period" in the nineteenth century "[t]here has never been any other manifestation of de jure segregation either at the state or the local level", and that "[s]ince

1970, the state has supported and encouraged voluntary plans for increasing interdistrict diversity." 678 A.2d at 1274. However, despite the state's lack of invidious intent, the court recognized that state policy—specifically, the legislature's enactment of a districting statute in 1909—"is the *single most important factor* contributing to the present concentration of racial and ethnic minorities in the Hartford public school system." *Id.* Given the "pervasive and invidious impact" of segregation on schools, *id.* at 1285, the court thus found that Connecticut was in violation of its "affirmative constitutional obligation to provide all public schoolchildren with a substantially equal educational opportunity." *Id.* at 1280–81.

Similarly, the California Supreme Court has found that de facto segregation causes educational harm in violation of the California Constitution, and the state has an affirmative obligation to remediate it. *See Crawford*, 551 P.2d at 39 ("Given the fundamental importance of education, particularly to minority children, and the distinctive racial harm traditionally inflicted by segregated education, a school board bears an obligation, under . . . the California Constitution, mandating the equal protection of the laws, to attempt to alleviate segregated education and its harmful consequences, even if such segregation results from the application of a facially neutral state policy.").

These sister state courts provide a framework for adjudication of Appellant's claims in this case. Given the consistent research, which we summarized in our earlier amicus brief, that confirms that segregation causes educational harm *regardless of intent*, the Court should remand the case with the instruction that evidence of intent is not required.

C. The Complaint in this Case Sets Forth Allegations which, if Proven True, are Sufficient to Establish an Education Clause Violation

The Appellants in the instant case have alleged facts sufficient to establish a violation of the Education Clause in the Minnesota State Constitution because the complaint has identified specific State policies and practices that are the cause of educational harms to appellant students.

In particular, Appellants have alleged that the following state actions and omissions have "caused or contributed to the segregation of the Minneapolis and Saint Paul public schools": boundary decisions for school districts and school attendance areas; the formation of segregated charter schools and the decision to exempt charter schools from desegregation plans; the use of federal and state desegregation funds for other purposes; the failure to implement effective desegregation remedies; and the inequitable allocation of resources. Compl. ¶ 48.

Moreover, after documenting the existence of de facto segregation and describing the policies that have exacerbated racial imbalance in schools, the complaint sets forth allegations that this segregation depresses student achievement across a variety of metrics. Appellants describe the extensive harms created by segregation, including, but not limited to, the negative impact on "academic achievement of children of color in racially segregated schools"; the disproportionate likelihood that children attending segregated schools will be placed in special education programs; the reduced likelihood of graduation; and decreased opportunities for interactions across racial lines, leading to reduced "intergroup competency as an adult." *Id*. at ¶ 65. These allegations point to a direct causal

link between state policies and segregation, and between segregation and educational harm. Whether that segregation is de facto or de jure is immaterial to this causal framework.

Appellants have alleged that state policies cause segregation that has the effect of depriving students of an adequate education. Appellants are thus entitled to substantiate their allegations.

II. RECOGNIZING DE FACTO SEGREGATION AS A VIOLATION OF MINNESOTA'S EDUCATION CLAUSE DOES NOT RUN AFOUL OF UNITED STATES SUPREME COURT PRECEDENT.

This Court should use the opportunity created by this appeal to affirm the irrelevance of federal Equal Protection jurisprudence to the interpretation of Minnesota's Education Clause and assuage the lower court's unwarranted fear that any remedial measures for de facto segregation would necessarily "place Defendants squarely in front of the propeller blade of a[ ] [federal] Equal Protection claim." Appellants' Addendum, ADD 34 (Distxrict Court Decision).

As this Court noted in its earlier opinion in this case, "the judiciary is not required to devise particular educational policies to remedy constitutional violations," and Appellants' complaint is not "a request for the judiciary to do so." *Cruz-Guzman*, 916 N.W.2d at 9. Rather "[t]his case asks the judiciary to make the same type of determination that [this Court has] made repeatedly: whether the Legislature has satisfied its constitutional obligations under the Education Clause." *Id.* The development of measures to remedy a constitutional violation is the province of the Legislature. Only when and if a

court is asked to evaluate the sufficiency of specific measures enacted to remedy a violation of the Minnesota constitution might federal Equal Protection jurisprudence be implicated.

In any event, there is simply no basis to the District Court's speculation that any remedy approved by the Legislature would be inconsistent with Supreme Court precedent, in particular *Parents Involved*. The measures that the Supreme Court found could not survive strict scrutiny in *Parents Involved* utilized explicit individual racial classifications that assigned students to specific schools based on their race alone. *Parents Involved*, 551 U.S. 701 at 701. In contrast, the legislative bill that the parties jointly proposed two years ago in this case involved only race-neutral measures, including incentives to low-income students to transfer to schools that are not racially identifiable; increased access to transportation; staff development opportunities; strategies for attracting and retaining staff to serve as role models; smaller class sizes; greater counseling and support services; and more extracurricular opportunities. H.F. 2471, 92nd Leg. (Minn. 2021), available at https://www.revisor.mn.gov/bills/bill.php?f=HF2471&b=house&y=2021&ssn=0.

Not only do those measures bear no relationship to those struck down in *Parents Involved*, but they fall squarely within the framework laid out by Justice Kennedy in his controlling opinion in that case. *Confer Marks v. United States*, 430 U.S. 188, 193 (1977) ("When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds . . . .'"); *Grutter v. Bollinger*, 539 U.S. 306, 325 (2003) (following and quoting from *Marks v. U.S.* at 193); *see also Spurlock v. Fox*, 716 F.3d 383 (6th Cir. 2013) (applying Kennedy's

Parents Involved opinion because it was the "controlling concurrence"). Justice Kennedy expressly dismissed a reading of the Constitution that "mandates that state and local school authorities must accept the status quo of racial isolation in schools" as "profoundly mistaken," and stated that school authorities should be "free to devise race-conscious measures to address the problem in a general way and without treating each student in a different fashion solely on the basis of a systematic, individual typing by race." *Id.* at 788-789. He went on to state:

> School boards may pursue the goal of bringing together students of diverse backgrounds and races through other means, including strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting student and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race. These mechanisms are race conscious but do not lead to different treatment based on a classification that tells each student he or she is to be defined by race, so it is unlikely any of them would demand strict scrutiny to be found permissible. *Id.* at 789.

The de facto school segregation in Minneapolis and St. Paul alleged in Appellants' complaint and the consequential harms of such segregation can be remedied effectively—and constitutionally—by the types of measures Justice Kennedy identified. As the New Jersey Supreme Court observed in a pre-*Parents Involved* decision, "[w]hether or not the federal constitution compels action to eliminate or reduce de facto segregation in the public schools, it does not preclude such action by state school authorities in furtherance of state law and state educational policies." *Booker*, 212 A.2d at 6. Nothing in the U.S. Supreme Court's decision in *Parents Involved* altered that logic, as *Parents Involved* only addressed a narrow question regarding the use of individual racial classifications. This Court should

remand to the lower court to adjudicate the constitutional violation alleged in the complaint.

CONCLUSION

ELC and the Education Law Scholars urge the Court to reverse the Court of Appeals' ruling and find that de facto segregation resulting in the types of educational harm alleged in Appellants' complaint is a violation of the Education Clause of the Minnesota Constitution.

Dated: February 2, 2023
Saint Paul, Minnesota

Respectfully submitted.
/s/ Berglind H. Birkland

Berglind Halldorsdottir Birkland
Minn. I.D. 0402508
DEBEVOISE & PLIMPTON LLP
66 Hudson Boulevard
New York, NY 10001
(212) 909 6361
(651) 216 1056
bhbirkla@debevoise.com

Of Counsel:

Shannon Selden
DEBEVOISE & PLIMPTON LLP
66 Hudson Boulevard
New York, NY 10001

David Sciarra
Wendy Lecker
Education Law Center
60 Park Place, Suite 300
Newark, NJ 07102

Derek W. Black*
Professor of Law
University of South Carolina
School of Law
701 Main Street
Room 407
Columbia, SC 29208

* *University affiliation for informational and identification purposes only*

Pro bono attorneys for amici curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 132.01, subdivisions 1 and 3, of the Minnesota Rules of Civil Appellate Procedure, I hereby certify that this brief (a) was prepare using Microsoft Word 2019, (b) complies with the typeface requirements provided by Rule 132.01, and (c) contains 4518 words.

Dated: February 2, 2023
Saint Paul, Minnesota

Respectfully submitted.
/s/ Berglind H. Birkland
Berglind Halldorsdottir Birkland
Minn. I.D. 0402508
DEBEVOISE & PLIMPTON LLP
66 Hudson Boulevard
New York, NY 10001
(212) 909 6361
(651) 216 1056
bhbirkla@debevoise.com