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COURT OF APPEALS
A22-0118

Alejandro Cruz-Guzman, as guardian and next friend of his minor children; Me'Lea Connelly, as guardian and next friend of her minor children; Ke'Aundra Johnson, as guardian and next friend of her minor child; Izreal Muhammad, as guardian and next friend of his minor children; Roxxanne O'Brien, as guardian and next friend of her minor children; and Diwin O'Neal Daley, as guardian and next friend of his minor children, Lawrence Lee, as guardian and next friend of his minor child; and One Family One Community, a Minnesota non-profit corporation,

Appellants,

v.

State of Minnesota; Minnesota Department of Education; Dr. Brenda Casselius, Commissioner Minnesota Department of Education; Minnesota Senate; and Minnesota House of Representatives,

State-Respondents,

and

Higher Ground Academy; Mohamed Abdilli; Friendship Academy of the Arts; Sharmaine Russell; Paladin Career and Technical High School; and Rochelle LaVanier,

Intervenor-Respondents.

INTERVENOR-RESPONDENTS' OPPOSITION BRIEF

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STATEMENT OF THE ISSUES

ISSUE NO. 1: Whether an Education Clause claim requires a showing of "causation."

ANSWER BELOW: Yes.

KEY AUTHORITIES:

(1) Minn. Const. art. XIII § 1 (1858);

(2) *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993);

(3) *Cruz-Guzman v. State*, 916 N.W.2d 1 (Minn. 2018);

(4) *Forslund v. State*, No. A17-0333, 2017 WL 3864082 (Minn. App. Sept. 5, 2017) (*Forslund I*), *vacated and remanded for reconsideration*, 924 N.W.2d 24 (Minn. App. 2019) (*Forslund II*); and

(5) *State v. Derek Chauvin*, 955 N.W.2d 684 (Minn. App. 2021).

ISSUE NO. 2: Whether Appellants proved "causation."

ANSWER BELOW: No.

STATEMENT OF THE CASE AND FACTS

A. THE THREE SETS OF PARTIES

1. Appellants

"Appellants are [(1)] Alejandro Cruz-Guzman [(Cruz-Guzman)], as guardian and next friend of his minor children; [(2)] Me'Lea Connelly [(Connelly)], as guardian and next friend of her minor children; [(3)] Ke'Aundra Johnson [(Johnson)], as guardian and next friend of her minor child; [(4)] Izreal Muhammad [(Muhammad)], as guardian and next friend of his minor children; [(5)] Roxxanne O'Brien [(O'Brien)], as guardian and next friend of her minor children; [(6)] Diwin O'Neal Daley [(Daley)], as guardian and next friend of his minor children; [(7)] Lawrence Lee [(Lee)], as guardian and next friend of his minor child; and [(8)] One Family One Community, a Minnesota nonprofit corporation." *Cruz-Guzman*, 916 N.W.2d at 5 n.1 (bracketed information added). But, on January 11, 2019, "Lee, Johnson, and One Family One Community [were] dismissed . . . ; all [five of the] other [Appellants] [were] appointed as class representatives." Doc.239 at 17 ¶2 (bracketed information added).

2. The State

The "State" means "[R]espondents [(1)] State of Minnesota [(State)], [(2)] the Minnesota Senate [(Senate)] [and] the Minnesota House of Representatives [(House)] [(collectively, the Legislature[1])], [and] [(3)] the Minnesota Department of Education

[1] Per Minn.Stat. § 645.01, subd. 3, "'Legislature' means the senate and the house of representatives of the state of Minnesota."

[(MDE)] and Dr. Brenda Cassellius, the Commissioner of Education [(MDE Commissioner Cassellius)] [(collectively, MDE[2])] (collectively, the State)." *Id.* at 5 (bracketed information added).[3]

3. Intervenors

"The [I]ntervenors in the district court are three charter schools in Minneapolis and Saint Paul and parents of students who attend those charter schools: [(1)] Higher Ground Academy [(HGA)], [and] Mohamed Abdilli, [(2)] Friendship Academy of the Arts [(FAA)], [and] Sharmaine Russell, [and] [(3)] Paladin Career and Technical High School [(Paladin)], and Rochelle LaVanier." *Id.* at 5 n.2 (bracketed information added).

B. APPELLANTS' CONSTITUTIONAL CLAIMS

The Supreme Court previously described, as follows, Appellants' constitutional claims against the State:

> 1. "Appellants assert that the State has violated its constitutional duty under the Education Clause of the Minnesota Constitution, Minn.Const. art. XIII, § 1" (*Cruz-Guzman,* 916 N.W.2d at 6 (emphasis added)); and

[2] Per Minn.Stat. § 15.01, MDE is a "designated" executive branch "department[] of the state government." And, per Minn.Stat. § 15.06, subd. 1, Governor Mark Dayton "appoint[ed]" MDE Commissioner Casselius.

[3] The Office of the Attorney General (AG) herein represents both (1) the Legislature and (2) MDE. But, as discussed below, these respondents have "a directly adverse conflict of interest" on key components of Appellants' Education Clause claim. As such, there is a "serious" ethical issue with the AG's joint representation of them. MRPC 1.7; *In re Disciplinary Action Against Coleman,* 793 N.W.2d 296, 305 (Minn. 2011) ("[a] directly adverse conflict of interest is more serious than a material limitation conflict in terms of the potential impact on the lawyer's duties of loyalty and independent judgment to both clients" (emphasis added)).

2. "Appellants contend that in addition to failing to fulfill its constitutional duty under the Education Clause, the State has violated the Equal Protection and Due Process Clauses of the Minnesota Constitution, Minn.Const. art. I, §§ 2, 7" (*id.* (emphasis added)).

And, as described by the Supreme Court, Appellants' constitutional claims are based upon their allegations that the State is both "[(1)] enabling school segregation and [(2)] depriving students of their fundamental right to an adequate education." *Id.* (emphasis and bracketed information added).

C. APPELLANTS' FACTUAL SUPPORT

With regard to Appellants' factual support for their constitutional claims against the State, the Supreme Court ruled, in full, as follows:

> The complaint contains copious data demonstrating a "high degree of segregation based on race [(as measured by students of color (SOC))] and socioeconomic status [(SES)] [(as measured by qualifying for free or reduced lunch (FRL))]" in Minneapolis and Saint Paul public schools. The public schools in Minneapolis and Saint Paul that [A]ppellants' children and other school-age children attend are "disproportionately comprised of [SOC] and students living in poverty [(receiving FRL)], as compared with a number of neighboring and surrounding schools and districts." These segregated [(">80 Percent" SOC and/or FRL)] and "hyper-segregated" [(">95 Percent" SOC and/or FRL)] schools have significantly worse academic outcomes in comparison with neighboring schools and suburban school districts in measures such as [(1)] graduation rates; [(2)] pass rates for state-mandated Basic Standards Tests; and [(3)] proficiency rates in [(a)] math, [(b)] science, and [(c)] reading. Appellants describe these racially and socioeconomically segregated schools as "separate and unequal" from "neighboring and surrounding whiter and more affluent suburban schools" and detail the extensive harms of racial and socioeconomic segregation.
>
> Appellants highlight several practices by [(1)] the Minneapolis and Saint Paul public *6 schools, [(2)] other school districts, [(3)] charter schools,[4]

[4] In rejecting "the State's argument that the district court lacks jurisdiction over [A]ppellants' claims because [A]ppellants failed to join all necessary parties (*i.e.*, these

> and [(4)] the State as contributing to school segregation and inadequate educational outcomes. The practices include [(1)] boundary decisions for school districts and school attendance areas[5]; [(2)] the formation of segregated charter schools and the decision to exempt charter schools from desegregation plans[6]; [(3)] the use of federal and state desegregation funds for other purposes; [(4)] the failure to implement effective desegregation remedies; and [(5)] the inequitable allocation of resources.

Cruz-Guzman, 916 N.W.2d at 5-6 (emphasis and bracketed information added). Notably, the first two of Appellants' complaint-identified "several practices . . . as contributing to school segregation and inadequate educational outcomes" — *i.e.*, (1) "open-enrollment policies" and (2) "the exemption of charter schools from particular desegregation efforts" — are key components to the Legislature's "parent choice" policy. Doc.32, Ex. 4 at 18-19.

"school districts" and "charter schools")," the Supreme Court held that, "[e]ven if [they] might eventually be affected by actions potentially taken by the State in response to this litigation, . . . school districts and charter schools are not indispensable parties when relief is sought only from the State." *Cruz-Guzman*, 916 N.W.2d at 14-15 (emphasis and bracketed information added). But, even though the Supreme Court noted that its "decision has no impact on the right of school districts and charter schools to move to intervene" (*id.* at 14 n.8), neither (1) the "school districts," including the Minneapolis and St. Paul public school districts, nor (2) the "charter schools" in Minneapolis and St. Paul other than Intervenors did so.

[5] As more precisely described by the dissent, "[A]ppellants claim that open-enrollment policies, see Minn.Stat. § 124D.03 (2016), . . . are causally related to the alleged inadequacy asserted in their claims." *Cruz-Guzman*, 916 N.W.2d at 20 n.7 (Anderson, J. and Gildea, C.J., dissenting) (emphasis added); Doc.1 at 12-13 ¶¶27-28; *id.* at 16 ¶32.

[6] As more precisely described by the dissent, "[A]ppellants claim that . . . the exemption of charter schools from particular desegregation efforts, see Minn.Stat. §§ 124D.861; 124D.03, subds. 1-2 (2016), are causally related to the alleged inadequacy asserted in their claims." *Cruz-Guzman*, 916 N.W.2d at 20 n.7 (Anderson, J. and Gildea, C.J., dissenting) (emphasis added); Doc.1 at 13-16 ¶¶29-31. The Legislature's latest iteration of its "desegregation efforts" are found in Minn.Stat. § 124D.862's 2013 Achievement and Integration for Minnesota Act (2013 AIM Act).

D. APPELLANTS' "CLASS"

As ruled by the district court,

[Appellants'] class is defined as follows:

> All children who are enrolled during the pendency of this action in a school in [(1)] the Minneapolis Public Schools, Special School District No. 1, or [(2)] the St. Paul Public Schools, Independent School District 625 that is racially or socioeconomically imbalanced as defined herein: a school with less than 20% or more than 60% minority students or students eligible for free-or-reduced price meals.

Doc.239 at 17 ¶3 (emphasis and bracketed information added).

E. THE DISTRICT COURT'S REASON FOR GRANTING AND RE-AFFIRMING ITS GRANT OF INTERVENORS' INTERVENTION

Though they are public schools in Minneapolis and St. Paul (Minn. Stat. § 124E.03 ("[a] charter school is a public school and is part of the state's system of public education")), Intervenors are within neither the Minneapolis or St. Paul public school districts nor, therefore, Appellants' "class." Consistent, however, with the Supreme Court's express allowance for such "interven[tion]" by "charter schools" (*see* above n.4 (quoting *Cruz-Guzman*, 916 N.W.2d at 14 n.8)), the district court explained, as follows, why it, nevertheless, initially granted and then later re-affirmed its grant of Intervenors' intervention over Appellants' repeated opposition thereto:

> (1) "[I]f [they] prevailed, [Appellants] clearly envision that charter schools would be subject to remedies to eradicate segregation since charter schools are public schools" (Doc.50 at 3 ¶5 (emphasis and bracketed information added)); and
>
> (2) "[Appellants] envision — despite their protestations that they are not attacking charter schools — that charter schools would be subject to remedies

to eradicate segregation since charter schools are public schools" (Doc.109 at 4-5 ¶4 (emphasis and bracketed information added)).

The district court otherwise explained that the "complaint sends the message loudly and clearly that charter schools are part of the problem" (Doc.64, Ex. 12 at T.40 (emphasis added); *id*. at T.20 (same)), and the complaint described the charter schools as "front and center of th[e] problem" (*id.* at T.41 (emphasis and bracketed information added)). The district court later added that "charter schools are in a unique situation because they're really very much on the front lines [as they're] likely to be materially impacted by any remedy that the State would employ should there be a ruling in favor of [Appellants]." Doc.256, Ex. A at T.72 (emphasis and bracketed information added).

F. IN DIRECT CONTRAVENTION OF THE ABOVE-DISCUSSED CONTRARY PREMISE TO APPELLANTS' EDUCATION CLAUSE CLAIM, INTERVENORS PROVED THAT "ALL-MINORITY SCHOOLS CAN SUCCEED"

Intervenors are not formal "class" representatives thereof. They are, however, representative of Appellants' complaint-identified 35 currently-operational SOC and/or FRL "hyper-segregated" charter schools in Minneapolis and St. Paul. Doc.1 at 13-15 ¶29; Doc.358 at xii n.5.

FAA is one of the complaint-identified 22 SOC and/or FRL "hyper-segregated" charter schools in Minneapolis, and it has "99%" SOC and "91%" FRL. Doc.1 at 13-15 ¶29. For context, "the public schools of the City of Minneapolis are 66 percent [SOC] and 64 percent [FRL]." *Id.* at 7-8 ¶22 (bracketed information added).

HGA is one of the complaint-identified 13 SOC and/or FRL "hyper-segregated" charter schools in St. Paul, and it has "100%" SOC and "97%" FRL. *Id.* at 13-15 ¶29. For context, "the public schools of the City of St. Paul are approximately 78 percent [SOC] and 72 percent [FRL]." *Id.* at 7-8 ¶22 (bracketed information added).

Despite being complaint-defined as racially and socioeconomically "hyper-segregated" (Doc.1 at 13-15 ¶29), FAA and HGA have objectively proven their "educational adequacy" (Doc.358 at xiv-xv). They did so based on their students' "average" "Academic Performance" on MDE's Report Cards in "reading," "math" and "science" relative to the "averages" of both (1) the "Minneapolis School District" and the "St. Paul School District," respectively, and (2) "MN statewide." *Id*. Appellants' counsel has, in fact, admitted to FAA and HGA's "educational adequacy." Doc.256, Ex. A at T.83 (Intervenors are "[k]illing it. . . . There are exceptions").

FAA and HGA are, moreover, <u>not</u> the only complaint-identified 35 SOC and/or FRL "hyper-segregated" charter schools in Minneapolis and St. Paul which support former MDE Commissioner Cassellius' publicly-pronounced "belie[f] that <u>all-minority schools can succeed</u>." Doc.1 at 3 ¶5 (emphasis added). Rather, citing to *Star Tribune*'s 2014 "Beating the Odds" article, Appellants themselves admit that former MDE Commissioner Cassellius proclaimed that "'[t]here are some spectacular stories out there of schools <u>beating the odds</u>.'" *Id.* (emphasis and bracketed information added). And, as summarized therein,

> <u>Twin Cities charter schools [(inclusive of several, like FAA and HGA, from the complaint-identified 35 SOC and/or FRL "hyper-segregated" charter</u>

> schools in Minneapolis and St. Paul)] dominated the list of public schools who are having the highest impact for low-income students, based on the Minneapolis Star Tribune's 2014 "Beating the Odds" list which was published today. Nine out of 10 schools cited for the highest Math scores are charter schools and eight out of 10 of the highest Reading scores are charter schools.

Doc.65, Ex. 18 (emphasis and bracketed information added).

G. MANY ATTRIBUTE THESE CHARTER SCHOOLS' ABOVE-DISCUSSED ACADEMIC SUCCESSES TO THEIR "'CULTURALLY-AFFIRMING' ENVIRONMENTS IN WHICH TO LEARN"

As it relates to the above-discussed objectively-proven academic successes at several of the complaint-identified 35 SOC and/or FRL "hyper-segregated" charter schools in Minneapolis and St. Paul, including at FAA and HGA, many charter school "[a]dvocates say that [their] success is due to [their] unique and culturally sensitive education strategies" — *i.e.*, "'culturally-affirming' environments in which to learn." Doc.64, Ex. 11 at 8 (emphasis and bracketed information added).[7] These charter school proponents explain this position as follows:

> They deny that charter schools targeting specific races or ethnicities are illegal or unjust. Rather, they say, these schools provide students with "culturally affirming" environments in which to learn.
>
> Bill Wilson[8] founded one such "culturally affirming" charter in St. Paul – known as [HGA]. Though [HGA's] student body is more than 90 percent East

[7] *See also* Rafiq R. Kalam Id-Din II, "Black Teachers Matter. School Integration Doesn't," *Star Tribune*, May 4, 2017; The Editorial Board, "A Misguided Attack on Charter Schools," *NY Times*, October 13, 2016.

[8] Besides "found[ing]" HGA in 1998 (Belcamino, Kristi, "St. Paul civil rights leader and education Bill Wilson dies at 79," *Twin Cities Pioneer Press*, Dec. 29, 2019), Wilson, who died on December 28, 2019, was "a civil rights activist, educator and the first African American elected to the St. Paul City Council" (*id.*). Wilson also "serv[ed] as

> African immigrant and low-income, it's one of the highest performing schools in the region. Advocates say the school's success is due to its unique, and culturally sensitive education strategies.[9] "I know people who brought this lawsuit against the [S]tate use the word 'desegregation' but let's find the intentional action," Wilson says. "I won't call this segregation, I won't call it racial isolation, because it's not true."
>
> "It's false analysis that's being applied to culturally specific charter schools, that tends to consider those schools to be segregated," testified N[e]kima Levy [Armstrong (Armstrong)],[10] the [former] president of the Minneapolis NAACP chapter. "That flies in the face of civil-rights history and also the fact that we have historically black colleges and universities [(HBCUs)] around the country that are specifically designed to affirm, enrich, and enhance the educational experiences of African Americans who we know have faced historical discrimination throughout our time in this country."[11]
>
> Darrick Hamilton, an urban policy professor at the New School, says his research suggests there certainly could be instances where predominantly black schools may be better learning environments for black students. Quoting W.E.B. Du Bois, he says, "The Negro needs neither segregated schools nor mixed schools. What he needs is Education."

Commissioner of the Department of Human Rights under Gov. Wendell Anderson and Gov. Rudy Perpich." *Id.*

[9] *See, e.g.*, Doc.65, Ex. 20 at 1 ("Charter schools, which are publicly financed but independently run, were conceived as a way to improve academic performance. But for immigrant families, they have also become havens where their children are shielded from the American youth culture that pervades large district schools" (emphasis added)).

[10] Besides being the former "president of the Minneapolis NAACP chapter" (*Twin Cities Business*, https://tcbmag.com/tcb-100-people/nekima-levy-pounds/), Armstrong is a "former University of St. Thomas law professor" and "[d]uring a tense summer of civil unrest, [she] was regarded by public safety officials as one of the few Black community leaders with standing to calm tensions" (*id*).

[11] *See, e.g.*, Doc.65, Ex. 21 at 1 (with regard to HBCUs, "their outcomes are clear: despite enrolling approximately nine percent of all African American students attending four-year institutions, they produce [(1)] 16 percent of all African American bachelor's degrees and [(2)] 27% of African American bachelor's degrees in STEM fields" (emphasis and bracketed information added)).

Id. at 7-8 (emphasis and bracketed information added).

H. BY AND THROUGH — IN PART — THE AG, MDE'S THREE-STEP ATTACK DURING AND WITHIN THIS LITIGATION ON "THE [LEGISLATURE'S] EXEMPTION OF CHARTER SCHOOLS FROM PARTICULAR DESEGREGATION EFFORTS"

First, strategically-coordinated with Appellants' November 5, 2015 filing of their constitutional claims against the State, MDE contemporaneously initiated an administrative rulemaking proceeding to, among other things, otherwise eliminate by administrative rule "the [Legislature's] exemption of charter schools from particular desegregation efforts." *See* above n.6. But, on March 21, 2016, Chief Administrative Law Judge (ALJ) Tammy L. Pust adopted ALJ Ann C. O'Reilly's March 11, 2016 93-page single-spaced report (Report), which disapproved of MDE's proposed administrative rule as *ultra vires* because, among other things, the 2013 AIM Act intentionally "exempted" charter schools therefrom. Doc.220, Ex. 33; Doc.358 at xxxiv-xxxv. And, per Minn.R. 1400.2240, subp. 8, MDE thus withdrew its proposed administrative rule. *See* https://education.mn.gov/MDE/ContentArchive/PROD046651.

Second, despite (1) the ALJ ruling against MDE's proposed administrative rule, (2) MDE's resulting withdrawal of its proposed administrative rule and (3) the AG's corresponding indisputable obligation, as counsel to the Legislature, to defend "the [Legislature's] exemption of charter schools from particular desegregation efforts" (*In re Lord*, 97 N.W.2d 287 (Minn. 1959)), the AG did not do so. Instead, besides its finding that — as represented therein by the AG — "[t]he state actor Defendants took no position at [Appellants' 2016] motion to dismiss [Intervenors] stage" (Ints.Add.48 (bracketed

information added)), the district court found the AG to have, as follows, (1) not even "responded except [on behalf of MDE]" to defend the constitutionality of this "exemption" and (2) only defended the constitutionality of this "exemption" on behalf of MDE "tepidly nearly to a fault":

> At this [Intervenors' 2019 motion for summary judgment on their counter-claim as to the constitutionality of the "exemption"] stage, no state Defendant has responded except [MDE]. Its brief contains no case law. Instead, it recites current statutory law (the legislature has exempted charter schools from the [2013] AIM Act); it recites current regulatory law (the regulatory exemption exists in the absence of the legislature affirmatively electing otherwise); it observes that the legislature could proceed differently in the future; and it notes that "no one has made the argument to date" that the charter school exemption violates the Minnesota Constitution. [Doc.280] at 6. [MDE] Commissioner [Casselius] describes her position as "[t]he Commissioner does not object" to the Court finding the exemption constitutional. [*Id.*] at 2. This position is tepid nearly to a fault.

Id. 48-49 (emphasis and bracketed information added).

Third, following 18 months of good faith mediation amongst all of the parties before two mediators retained by the AG, Intervenors were involuntarily removed therefrom (Doc.334) and the AG, exclusively on behalf of MDE and directly against Intervenors, separately negotiated a settlement agreement of this litigation with Appellants (*id*.) to, among other things, effectively eliminate "the [Legislature's] exemption of charter schools from particular desegregation effort" (HF2471; SF2465). But, presumably because it directly contravened the Legislature's intention to "exempt" charter schools from its 2013 AIM Act (Doc.220; Doc.358 at xxxiv-xxv), MDE's AG-negotiated settlement agreement of this litigation with Appellants was opposed by Intervenors and did not even get a substantive hearing before the Legislature (Doc.334).

I. THE SUPREME COURT'S "JUSTICIABILITY" RULING

1. The "justiciability" of Appellants' Education Clause claim

With regard to the "justiciability" of Appellants' Education Clause claim (*Cruz-Guzman*, 916 N.W.2d at 7-10), the Supreme Court ruled, in full, as follows:

> The presence of a justiciable controversy is "essential to our exercise of jurisdiction." *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 308 (Minn. 2017) (citation omitted) (internal quotation marks omitted). Justiciability is separate and distinct from the merits of the case. *See McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 341 (Minn. 2011). The State argues that [A]ppellants' claims present a political question that is not justiciable — that is, not "appropriate or suitable for adjudication by a court." *Justiciability, Black's Law Dictionary* (10th ed. 2014). Justiciability is a question of law that we review de novo. *McCaughtry*, 808 N.W.2d at 337. In addition, the interpretation of the constitution is a purely legal issue that we review de novo. *Ninetieth Minn. State Senate v. Dayton*, 903 N.W.2d 609, 617 (Minn. 2017).
>
> The complaint specifies that [A]ppellants brought this lawsuit under the Education Clause of the Minnesota Constitution, which provides:
>
> > The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.
>
> *8 Minn. Const. art. XIII, § 1. Appellants assert that **the Legislature** has violated the duty imposed upon it by the Education Clause.
>
> Although we have not had many occasions to interpret or apply the Education Clause, we have consistently adjudicated claims asserting violations of the Clause. In the earliest case, decided almost 150 years ago, we stated that the object of the constitutional clause on education "is to ensure 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. v. Moore*, 17 Minn. 412, 416 (1871).

In another early case, we held that the education system **provided by the Legislature** did not violate the Education Clause when it [(1)] "afford[ed] upon like terms the means for obtaining a common-school education to all resident scholars of the requisite age" and [(2)] "ha[d] a general and uniform application to the entire state, so that the same grade or class of public schools [could] be enjoyed by all localities similarly situated." *Curryer v. Merrill,* 25 Minn. 1, 6 (1878).

In our most recent case involving the Education Clause, decided 25 years ago, we held that because [(1)] the plaintiffs were "unable to establish that the basic system [was] inadequate" and [(2)] "the existing system continue[d] to meet the basic educational needs of all districts," there was no "constitutional violation of the state constitutional provisions which require the state to establish a `general and uniform system of public schools' which will secure a `thorough and efficient system of public schools.'" *Skeen v. State,* 505 N.W.2d 299, 312 (Minn. 1993). In all of these cases, we resolved Education Clause claims; we did not dismiss these claims as nonjusticiable.

Here, the court of appeals focused on our refusal in those previous cases to "engage in educational-policy determinations" and held that [A]ppellants' Education Clause claims present a nonjusticiable political question. *Cruz-Guzman*, 892 N.W.2d at 540.[4] We have defined a political question as "a matter which is to be exercised by the people in their primary political capacity," or a matter that "has been specifically delegated to some other department or particular officer of the government, with discretionary power to act." *In re McConaughy,* 106 Minn. 392, 119 N.W. 408, 417 (1909). Under separation-of-powers principles, the judiciary cannot "exercise any of the powers properly belonging" to the Legislature unless "expressly provided" in the Minnesota Constitution. Minn. Const. art. III, § 1.

There is no dispute that the Minnesota Constitution **assigns to the Legislature** responsibility for establishing a public school system. Minn. Const. art. XIII, § 1; *see Bd. of Educ. of Minneapolis v. Erickson,* 209 Minn. 39, 295 N.W. 302, 303 (1940) ("By our constitution the mandate of establishing a general and uniform system of public schools was **directed to the legislature**."). To be sure, we have long held that matters of educational policy are matters that fall within legislative authority. *9 *Curryer*, 25 Minn. at 5. However, we have also explained that the Education Clause constitutes "a **mandate to the Legislature**," "not a grant of power." *Associated Schs. of Indep. Dist. No. 63 v. Sch. Dist. No. 83,* 122 Minn. 254, 142 N.W. 325, 327 (1913); *see also State ex rel. Smith v. City of St. Paul,* 128 Minn. 82, 150 N.W. 389, 391 (1914) (describing the provisions of the Education Clause as

"mandates" that prescribe a "specified duty"). In fact, the Education Clause is the only section of the Minnesota Constitution that imposes **an explicit "duty" on the Legislature**. *See Skeen*, 505 N.W.2d at 313.

Although specific determinations of educational policy are **matters for the Legislature**, it does not follow that the judiciary cannot adjudicate whether the Legislature has satisfied its constitutional duty under the Education Clause. Deciding that [A]ppellants' claims are not justiciable would effectively hold that the judiciary cannot rule on the Legislature's noncompliance with a constitutional mandate, which would leave Education Clause claims without a remedy. Such a result is incompatible with the principle that where there is a right, there is a remedy. *See State v. Lindquist*, 869 N.W.2d 863, 873 (Minn. 2015) ("The right to a remedy for wrongs is `[a] fundamental concept of our legal system and a right guaranteed by our state constitution.'" (alteration in original) (quoting *Anderson v. Stream*, 295 N.W.2d 595, 600 (Minn. 1980))); *cf. Associated Schs. of Indep. Dist. No. 63*, 142 N.W. at 328 ("The creation of the obligation carries with it by necessary implication the right to its enforcement").

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 [A]ppellants 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, [A]ppellants' 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 [(1)] "thorough and efficient," Minn. Const. art. XIII, § 1, and [(2)] "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 [A]ppellants' 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. We conclude that the courts are the appropriate domain for such determinations and that [A]ppellants' Education Clause claims are therefore justiciable.

Our conclusion rests upon a firm foundation. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60 (1803) ("It is, emphatically, the province and duty of the judicial department, to say what the law is."). It is well within the province of the judiciary to adjudicate claims of constitutional violations. *See, e.g., Holmberg v.* *10 *Holmberg*, 588 N.W.2d 720, 726 (Minn. 1999). Although the Legislature is one of our co-equal branches of government, the legislative branch is "subject to the limitations imposed by the constitution; and, whenever it has clearly transcended those limitations," we have held that "it is the duty of the judiciary to so declare." *Rippe v. Becker*, 56 Minn. 100, 57 N.W. 331, 336 (1894).

In other words, although the constitution assigns to the Legislature the duty of establishing "a general and uniform system of public schools," Minn. Const. art. XIII, § 1, the interpretation of the constitution's language "is a judicial, not a legislative, question," *Schowalter v. State*, 822 N.W.2d 292, 301 (Minn. 2012). *See also Rhodes v. Walsh*, 55 Minn. 542, 57 N.W. 212, 213 (1893) (explaining that "the meaning or interpretation of a constitutional provision ... is for the judiciary to determine," even when the issue implicates privileges claimed by members of the Legislature).

This case asks the judiciary to make the same type of determination we have made repeatedly: whether **the Legislature** has satisfied its constitutional obligation under the Education Clause. *See Skeen*, 505 N.W.2d at 312; *State ex rel. Klimek v. Sch. Dist. No. 70*, 204 Minn. 279, 283 N.W. 397, 398-99 (1939); *Curryer*, 25 Minn. at 6; *Bd. of Educ. of Sauk Ctr.*, 17 Minn. at 416. We agree with the district court that "there is no breach of the separation of powers for the [judiciary] to determine the basic issue of whether **the Legislature** is meeting the affirmative duty that the Minnesota Constitution places on it."[5]

Accordingly, we hold that [A]ppellants' constitutional claims under the Education Clause do not present a political question and are therefore justiciable.

> [4] The court of appeals concluded that this case presents a nonjusticiable political question based on the Supreme Court's analysis in *Baker v. Carr*, which identified six circumstances that federal courts should examine in deciding whether a case presents a political question. 369 U.S. 186, 217, 82 S.Ct. 691,

> 7 L.Ed.2d 663 (1962). The court of appeals held that the claims here "are so enmeshed with political elements that they present a nonjusticiable political question." *Cruz-Guzman,* 892 N.W.2d at 540. We have not adopted the Supreme Court's analysis in Baker v. Carr to resolve whether a case presents a political question, and we decline to do so here.
>
> [5] The State cites to decisions of other state supreme courts, which it describes as "dismiss[ing] similar complaints on justiciability grounds." See, e.g., *Comm. for Educ. Rights v. Edgar,* 174 Ill.2d 1, 220 Ill.Dec. 166, 672 N.E.2d 1178, 1190-93 (1996); *Neb. Coal. for Educ. Equity & Adequacy v. Heineman,* 273 Neb. 531, 731 N.W.2d 164, 176-83 (2007); *Okla. Educ. Ass'n v. State ex rel. Okla. Legislature,* 158 P.3d 1058, 1065-66 (Okla. 2007); *Marrero ex rel. Tabalas v. Commonwealth,* 559 Pa. 14, 739 A.2d 110, 113-14 (1999). As [A]ppellants note, these cases are distinguishable because there are "significant differences in the language used in each state constitution." For example, the Nebraska Constitution simply provides that "it shall be the duty of the Legislature to pass suitable laws ... to encourage schools and the means of instruction." Neb. Const. art. I, § 4 (emphasis added).

Id. (emphasis and bracketed information added).

2. <u>The "justiciability" of Appellants' Equal Protection and Due Process Clauses claims</u>

With regard to the "justiciability" of Appellants' Equal Protection and Due Process Clauses claims (*id.* at 10-12), the Supreme Court ruled, in full, as follows:

> <u>Appellants assert that students are "confined to schools that are separate and segregated," that "such schools are separate and unequal," and that the State "ha[s] engaged in or permitted" practices that "have caused or contributed to the segregation of the Minneapolis and Saint Paul public schools</u>." The complaint contains numerous facts that specifically support [A]ppellants' claims of segregation. Claims based on racial segregation in education are indisputably justiciable. *See Brown v. Bd. of Educ.,* 347 U.S. 483, 495, 74 S.Ct. 686, 98 L.Ed. 873 (1954).[6]
>
> *11 Appellants further allege that they have been denied equal protection of the law and due process because the State has impinged on their <u>fundamental</u>

right to an adequate education. Appellants argue that these claims are justiciable based on *Skeen*, 505 N.W.2d 299, in which we held that students have a fundamental right to an adequate education under the Minnesota Constitution. In [A]ppellants' view, their complaint simply asks the judiciary to rule on whether the State has impinged upon that fundamental right.

The State [(1)] emphasizes that the Education Clause does not "include a qualitative component," and [(2)] argues that even if there were an adequacy requirement, defining the applicable qualitative standard would be a matter for **the Legislature**, not the judiciary. The State maintains that the Minnesota Constitution "provides no principled basis for a judicial definition of [a] high quality" education. Therefore, the State contends that the relief requested by [A]ppellants would impermissibly require the judiciary to establish educational policy. The court of appeals agreed, concluding that even if students in Minnesota have a constitutional right to an adequate education, resolving [A]ppellants' claims would require the judiciary "to define the qualitative standard," which it viewed as a policy matter "entrusted to the elected representatives in our legislature and local branches of government." *Cruz-Guzman*, 892 N.W.2d at 538, 541.

We held in *Skeen* that "education *is* a fundamental right under the state constitution, not only [(1)] because of its overall importance to the state but also [(2)] because of the explicit language used to describe this constitutional mandate." 505 N.W.2d at 313. We specifically stated 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." *Id.* at 315. We declared that the Education Clause "requires the state to provide enough funds to ensure that each student receives an adequate education and that the funds are distributed in a uniform manner." *Id.* at 318. We concluded that[,] "[b]ecause the [then-existing] system provide[d] uniform funding to each student in the state in an amount sufficient to generate an adequate level of education which meets all state standards, the state ha[d] satisfied its constitutionally-imposed duty of creating a `general and uniform system of education.'" *Id.* at 315.[7] The fundamental right recognized in *Skeen* was not merely [(1)] a right to anything that might be labeled as "education," but rather, [(2)] a right to a general and uniform system of education [(a)] that is thorough and efficient, [(b)] that is supported by sufficient and uniform funding, and [(c)] that provides an adequate education to all students in Minnesota.

The dissent states that "nowhere in the plain language of the state constitution do the words `adequate education' appear." Although that exact phrase does

not *12 appear, the opening words of the Education Clause focus on "the intelligence of the people." Minn. Const. art. XIII, § 1. The framers could not have intended for **the Legislature** to create a system of schools that was "general and uniform" and "thorough and efficient" but that produced a wholly inadequate education. *Id.* Long before *Skeen,* we recognized that the people of Minnesota have a right to "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 (emphasis added). An 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.

Of course, some level of qualitative assessment is necessary to determine whether the State is meeting its obligation to provide an adequate education. This assessment is an intrinsic part of our power to interpret the meaning of the constitution's language. *See Schowalter,* 822 N.W.2d at 301. The very act of [(1)] defining the terms used in the Education Clause and [(2)] determining whether the constitutional requirements have been met inevitably requires a measure of qualitative assessment. *See Pauley v. Kelly,* 162 W.Va. 672, 255 S.E.2d 859, 874-77 (1979) (defining "thorough," "efficient," and "education" to determine compliance with state constitutional requirements).

We cannot fulfill our duty to adjudicate claims of constitutional violations by unquestioningly accepting that whatever the Legislature has chosen to do fulfills the Legislature's duty to provide an adequate education. If **the Legislature's** actions do not meet a baseline level, they will not provide an adequate education. *Skeen,* 505 N.W.2d at 315; *cf. Sheff v. O'Neill,* 238 Conn. 1, 678 A.2d 1267, 1292 (1996) (stating that "it logically follows that the education guaranteed in the state constitution must be, at the very least, within the context of its contemporary meaning, an adequate education" and that the government "may not herd children in an open field to hear lectures by illiterates" to fulfill its duty to provide an education (citation omitted) (internal quotation marks omitted)).

We will not shy away from our proper role to provide remedies for violations of fundamental rights merely because education is a complex area. The judiciary is well equipped to assess [(1)] whether constitutional requirements have been met and [(2)] whether [A]ppellants' fundamental right to an adequate education has been violated. *See, e.g., Rose v. Council for Better Educ., Inc.,* 790 S.W.2d 186, 212-13 (Ky. 1989); *Pauley,* 255 S.E.2d at 877-78. Although the Legislature plays a crucial role in education, it is ultimately

the judiciary's responsibility to determine [(1)] what our constitution requires and [(2)] whether **the Legislature** has fulfilled its constitutional duty.

For these reasons, we conclude that [A]ppellants' claims alleging violations of the Equal Protection and Due Process Clauses of the Minnesota Constitution are justiciable.

[6] The dissent concedes that a claim of segregated schools is justiciable, but maintains that [A]ppellants' claims are not "traditional" segregation claims and therefore the claims are not justiciable. It is self-evident that a segregated system of public schools is not "general," "uniform," "thorough," or "efficient." Minn. Const. art. XIII, § 1. Regardless of whether the context is a "traditional" segregation claim or a different type of claim, courts are well equipped to decide whether a school system is segregated, and have made such determinations since *Brown*, 347 U.S. at 495, 74 S.Ct. 686.

[7] The dissent concludes that "the references to an 'adequate education' in *Skeen* are dicta." We disagree. This discussion of adequacy was not dicta; it was a necessary step in the court's analysis. The court considered the challenge to the financing of the education system only "[o]nce [the] baseline level of adequacy and uniformity ha[d] been established." *Skeen*, 505 N.W.2d at 315. Furthermore, when we have expressed an opinion in a decision, that opinion should not be lightly disregarded, especially when the court does not characterize it as superfluous to the ultimate holding. *State v. Heinonen*, 909 N.W.2d 584, 589 n.4 (Minn. 2018).

Id. (underlining and bracketed information added).

J. THIS COURT'S "CAUSATION" RULING

With regard to the requirements for an Education Clause claim (*Forslund II*, 924 N.W.2d at 33-35), this Court ruled, in full, as follows:

The "object" of the [Education] [C]lause "is to ensure 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." *Cruz-Guzman*, 916 N.W.2d at 8 (quoting *Bd. of Educ. of Sauk Ctr. v. Moore*, 17 Minn. 412, 416 (1871)). "[T]he Education Clause is the only

section of the Minnesota Constitution that imposes an explicit 'duty' on **the Legislature**." *Id.* at 9 (citing *Skeen*, 505 N.W.2d at 313). 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 *34 *not* do something. *See Jackson v. City of Joliet*, 715 F.2d 1200, 1203 (7th Cir.1983); *see generally* Scott R. Bauries, *The Education Duty*, 47 Wake Forest L. Rev. 705, 709 (2012) (discussing differences between positive and negative rights).

Although the supreme court has not explicitly identified the elements of a claim for violation of the Education Clause, we derive guidance from *Cruz-Guzman* and *Skeen*. In *Cruz-Guzman*, the supreme court suggested the viability of a civil claim asserting that the legislature had failed to meet its obligation to provide an adequate education. *Cruz-Guzman*, 916 N.W.2d at 11-12.[10] The plaintiffs in *Cruz-Guzman* attributed the inadequate education alleged in that case to certain causes but stressed to the supreme court that they were not asking the court to institute any particular remedy. *See id.* at 6 (noting that plaintiffs highlighted several practices alleged to contribute to inadequate education—[(1)] boundaries of school districts, [(2)] formation of segregated charter schools, [(3)] failure to use desegregation funds for proper purpose, etc.), 9 (describing nature of claims and requests for relief). The supreme court relied on that feature of the claims in *Cruz-Guzman* to conclude that the claims only required the "judiciary to answer a yes or no question—whether the Legislature has violated its constitutional duty." *Id.* at 9. The court further reasoned: "If **the Legislature's** actions do not meet a baseline level, they will not provide an adequate education." *Id.* at 12.

In *Skeen*, the supreme court rejected a claim that the school-finance system violated the Education Clause because "plaintiffs [were] unable to establish that the basic system [was] inadequate." 505 N.W.2d at 312. The court emphasized the concession in that case that "all plaintiff districts met or exceeded the educational requirements of the state" and rejected the plaintiff-districts' attempts to rely on a relative-harm analysis. *Id.* at 302-03, 312. The court explained:

> Any inequities which exist do not rise to the level of a constitutional violation of the state constitutional provisions which require the state to establish a "general and uniform system of public schools" which will secure a "thorough and efficient system of public schools," especially when the

> existing system continues to meet the basic educational needs of all districts.

Id. at 312.

Based on the supreme court's analyses in *Cruz-Guzman* and *Skeen*, and given the positive nature of the right created by the Education Clause, we conclude that, 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. Presumably, a number of variables influence whether education is adequate. Such variables might include the financing system challenged in Skeen, the numerous policies alleged to result in continued segregation in *Cruz-Guzman*, or the challenged statutes alleged in this case to result in the retention of ineffective teachers. When an Education Clause claim is based on one or more of these variables, a plaintiff needs to prove facts to establish that those variables are actually resulting in an inadequate education. In other words, a plaintiff cannot sustain a claim that the [S]tate is providing a constitutionally inadequate education without proving that the [S]tate is in fact *35 providing a constitutionally inadequate education.

In this case, appellants allege a different sort of claim. Although the amended complaint nominally alleges the deprivation of the right to a uniform and thorough education, appellants' theory of liability—as alleged in the amended complaint and more thoroughly outlined in briefing—is that the challenged statutes "impinge on" or "burden" their children's right to an adequate education. Appellants assert that they need not prove that the [S]tate has actually failed to provide an adequate education. More specifically, they assert that they need not allege that teaching is so ineffective as to render the education system constitutionally inadequate. Instead, they assert, they need only allege that effective teaching is essential to an adequate education and that their children run the risk of encountering ineffective teaching because of the challenged statutes.[11] We disagree.

Appellants' assertions in this regard seemingly attempt to import a concept of government interference that is applied in the context of negative constitutional rights. *See, e.g., In re Welfare of S.L.J.*, 263 N.W.2d 412, 417 (Minn. 1978) (explaining that government power to regulate must not unduly infringe a protected freedom). They essentially ask this [C]ourt to transform the right to a baseline level of education, recognized in *Cruz-Guzman* and *Skeen*, into a right to be free from any alleged government interference in obtaining an adequate education. This negative-rights analysis does not comport with the supreme court's characterization of the adequate-education right in *Cruz-Guzman* and *Skeen*, and appellants cite no other authority

> supporting the viability of such a claim. "[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court." *Terrault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987). Accordingly, in the absence of any authority supporting appellants' theory under the Education Clause, we conclude that appellants fail to state a claim upon which relief can be granted, and we affirm the district court's dismissal of appellants' Education Clause claims on the merits.
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> [10] Although the merits were not before the supreme court in *Cruz-Guzman*, the supreme court addressed the nature of a viable Education Clause claim in its discussion of justiciability. *See* 916 N.W.2d at 11-12.
>
> [11] In their supplemental brief, appellants assert that, to prevail on their Education Clause claims, they need only "prove that effective teaching *is* part of the fundamental right to a baseline level, adequate education." The courts, they assert, need only answer "yes" or "no" to the question whether effective teaching is part of an adequate education; they need not "answer what quality of education is constitutionally required because [appellants] do *not* invoke a novel right to effective teaching." Thus, appellants argue that they need not establish what an adequate education requires with respect to teaching or whether the obligation to provide an adequate education has been met.

(Bold, underlining and bracketed information added).

K. APPELLANTS' ARGUMENTS BELOW (1) AGAINST *FORSLUND II* AND (2) IN SUPPORT OF THEIR ALLEGED SHOWING OF "CAUSATION"

Despite Intervenors' extensive (1) briefing (Doc.358 at 11-14) and (2) oral argument (Doc.380 at T.28-39, 45-48) reliance on *Forslund II* below, Appellants all but ignored *Forslund II* below. While they made literally no mention of *Forslund II* in their briefs below (Docs.346, 363), Appellants conclusorily argued at the hearing that "counsel for the charters has mischaracterized" *Forslund II* (Doc.380 at T.39). But Appellants' only argued support for Intervenors' alleged "mischaracteriz[ation]" of *Forslund II* was their

proclamation — without more — that "the prayer for relief [in *Forslund II*] . . . is far different from this case" because, here, "the Court is not being asked to make educational policy, despite what is being said." *Id*. at T.11-12 (emphasis and bracketed information added).

In "response . . . to the State's argument that [Appellants] failed to present any evidence of a causal link [as required by *Forslund II*] between [(1)] segregation and [(2)] an academically inadequate education assuming, as the State does, that [Appellants] must prove that racial imbalance necessarily results in an academically inadequate education" (Appells.Add.20 §II(C)(iv) (emphasis and bracketed information added) (citing Doc.355 at 17)), Appellants had only one argument. Their exclusive argument was their proclamation — without more — "that segregation itself creates an inadequate education." *Id.* (citing Doc.363 at 6).

L. THE DISTRICT COURT'S "PARTIAL SUMMARY JUDGMENT" RULING

1. The district court's three-part ruling as to "causation"

First, the district court recognized that "[*Forslund II*] held that 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. 924 N.W.2d at 34-35. [*Forslund II*] further concluded that[,] where the claim is based on more than one variable, a plaintiff needs to prove facts to establish that those variables are actually resulting in an inadequate education. *Id*." Appells.Add.15-16 §II(C)(i) (emphasis and bracketed information added).

And the district court identified 10 complaint-identified "variables" – *i.e.*, "policies or practices." *Id.*5-6 §I(B) ¶20(a)-(j).

Second, the district court found that Appellants' Education Clause claim argument was, nevertheless, expressly premised upon there being no "causation" requirement. *Id.*7 §I(B) ¶24 (Appellants "assert that a causal link between challenged state actions and targeted schools' racial imbalance need not be proven to establish liability under the Education Clause and present no evidence related to causation"). The district court explained that (1) "[Appellants] d[id] not address the issue of causation in their initial memorandum" (*id.*10 §II(B)(i) (emphasis and bracketed information added)(citing Doc.346 at 38-39; Doc.1 at 3-4 ¶6)) and (2) "[i]n [Appellants'] reply brief, they argue[d] that[,] since segregation *is* the Education Clause violation, they have established injury and 'no further inquiry' regarding causation is necessary. [Doc.363 at] 6" (*id.* (underlining and bracketed information added)).

Third, even "accepting the premise built into [Appellants'] motion" (*id.* 20 §II(C)(iv) (bracketed information added)), which "is that the injury, the inadequacy, *is* the racial imbalance" (*id.*), and thus "does not trigger the need to prove such [causal] link between [(1)] racial imbalance and [(2)] poor test outcomes" (*id.* (emphasis and bracketed information added)), "th[e] [district] court conclude[d] that an Education Clause violation must establish that any challenged state action(s) must directly cause the racially-imbalanced school environment" (*id.*23 §II(C)(iv) (emphasis and bracketed information added)). Indeed, beyond having to require such proof of "causation" because it was bound

by its "published opinion[]" in *Forslund II* (*State v. Derek Chauvin*, 955 N.W.2d at 689 (this Court's "published opinions are binding on . . . the district courts")), the district court also did so because of both "[(1)] the bedrock role that causation plays in our legal system and [(2)] given the need to direct our best efforts where they will make a difference because we know there is a causal link" (Appells.Add.23 §II(C)(iv) (bracketed information added)).

2. The district court's three-part ruling as to intentional (or *de jure)* segregation

First, the district court found that Appellants' Education Clause claim argument was expressly premised upon there being, due to footnote 6 from *Cruz-Guzman*, 916 N.W.2d at 10 n.6 (Appells.Add.9-10 §II(B)(i)(citing Doc.346 at 38-39; Doc.1 at 3-4 ¶6)), no required showing of intentional (or *de jure*) segregation (*id*.6 §I(B) ¶21).

Second, the district court held, however, that there is a required showing of intentional (or *de jure*) segregation for an Education Clause claim because, without it, the State would have to violate the Equal Protection Clause. *Id*.17-18 §II(C)(ii). In thereby also rejecting Appellants' above-discussed only argument below against *Forslund II* (Doc.380 at T.11-12), the district court explained, as follows, its ruling:

> It does not matter that [Appellants] insist that they are not asking this Court to impose any remedy but merely asking the Court to declare a violation has occurred, enjoin it, and direct [the State] to "comply." ([Doc.346] at p. 50). As stated above, [Appellants] argue that racial imbalance alone establishes an Education Clause violation. Therefore, whether explicitly or implicitly, [Appellants] are asking this Court to order [the State] to eliminate the challenged racial imbalances. This Court has concluded that it cannot issue such an order in the absence of *de jure* segregation; because without *de jure* segregation, a race-conscious remedy would place [the State] squarely in front of the propeller blade of an Equal Protection claim.

Appells.Add.18 §II(C)(ii) (emphasis and bracketed information added). The district court added that there is a "strong possibility that requiring proof of intent will end these proceedings given the profound difficulty in successfully proving intent." *Id.*25 §II(D) (emphasis and bracketed information added).

Third, consistent with its recognition of "the profound difficulty in successfully proving intent" (*id.*), the district court held that, for purposes of their partial summary judgment motion, Appellants did not satisfy their required showing of intentional (or *de jure*) segregation (*id.*16-20 §II(C)(ii)). The district court found, more specifically, that "[t]he only evidence of intent relates to [(1)] [MDE's] revisions to the state's desegregation rule in 1999 and within that evidence, [(2)] evidence related to the charter school exemption and [(3)] a 1995 waiver received by the Minneapolis schools. *See supra* at 6, Finding No. 21." *Id.*19§ii(C)(iii) (bracketed information added). And, in dismissing such as "not resounding evidence of segregative intent" (*id.*), the district court explained that (1)"the 1999 rule had to be approved by an [ALJ] who did so finding that [MDE's] motivation in proposing the proposed rule scheme was its desire to comply with existing federal standards" (*id.* (emphasis added) (quoting Doc.291, Ex.69 at Finding No. 17)) and (2) "even [Appellants] concede that one of the targeted state actors, Assistant Attorney General [Cindy] Lavorato, was advising against a draft of the new rule that prohibited and sought to remedy *de facto* segregation because she believed that it would run afoul of the Equal Protection clause of the 14th Amendment" (*id.* (emphasis and bracketed information added) (citing Doc.346 at 28-29)).

ARGUMENT

I. THE STANDARD OF REVIEW IS *DE NOVO*

On appeal from summary judgment, the standard of review is *de novo*. *Visser v. State Farm Mut. Auto. Ins. Co.*, 938 N.W.2d 830, 832 (Minn. 2020). And, because they are questions of law, a certified question is, as well, reviewed *de novo*. *Fedziuk v. Comm'r of Pub. Safety*, 696 N.W.2d 340, 344 (Minn. 2005).

II. APPELLANTS MUST PROVE "CAUSATION"

A. This Court is bound by *Forslund II*

On appeal, Appellants admitted that, "[i]n deciding *Forslund* [*II*], th[is] [C]ourt . . . purported to be construing and applying the Supreme Court's decision in *Cruz-Guzman*. [924 N.W.2d] at 28." Appells.Br. at 42 (emphasis and bracketed information added). Also on appeal, Appellants admitted that this Court therein "h[e]ld[] that [the *Forslund II* plaintiffs] had to prove they were actually receiving an inadequate education because of the tenure statutes. [*Forslund II*, 924 N.W.2d] at 34-35." *Id.* (emphasis and bracketed information added).

Consistent with Appellants' above-stated admissions, this Court, in discussing Appellants' very same "certain causes" (or "several practices") now before it, both (1) recognized the "causation" requirement for an Education Clause claim and (2) rejected any exception thereto. *Forslund II*, 924 N.W.2d at 33-35. Thus, even without Appellants' above-stated admissions, *Forslund II* is determinative because "[t]his [C]ourt has . . . stated that its published opinions are binding on this [C]ourt" (*State v. Derek Chauvin*, 955 N.W.2d at 689 (emphasis and bracketed information added)), and "a precedential opinion

of this [C]ourt has immediate precedential effect, which is not limited by the availability or grant of further appellate review" (*id.* at 695 (emphasis and bracketed information added)).

Forslund II is, moreover, no outlier. Rather, other than the inapposite *Sheff v. O'Neill*, 678 A.2d 1267 (Conn. 1996),[12] every other state appellate court decision has likewise required such a showing of "causation" for a claim under its state's Education Clause. *See, e.g., Maisto v. State,* 149 N.Y.S.3d 599, 604-05 (N.Y. Sup. Ct., 3rd App. Div. 2021) ("'a causal link between [(1)] the present funding system and [(2)] any proven failure to provide a sound basic education' must be shown" (emphasis and bracketed information added)); *Campaign for Fiscal Equity, Inc. v. State*, 655 N.E.2d 661, 667 (N.Y. App. 1995) (same); *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 2018 WL 2090329, at *4 (Pa. Commw. Ct. May 7, 2018) (overruling preliminary objections to the pleadings and explaining that "[t]he Supreme Court was clearly able to discern from the petition for review the nature and extent of Petitioners' claims, notably including the alleged causal link between [(1)] the alleged constitutional defects to the 'current funding

[12] *Sheff* recognized that Connecticut's Education Clause's "constitutional right . . . necessitated providing students with [racially and ethnically] integrated educations." Doc.64 at 4 (emphasis and bracketed information added). But Connecticut's Education Clause has, unlike Minnesota's Education Clause, what the Connecticut Supreme Court described as a "highly unusual provision in article first, § 20, that prohibits segregation not only indirectly, by forbidding discrimination, but directly, by the use of the term 'segregation.' The section provides in relevant part: 'No person shall be denied the equal protection of the law *nor be subjected to segregation* or discrimination . . . because of race [or] . . . ancestry.'" *Sheff*, 678 A.2d at 1281-82 (underlining and bracketed information added).

scheme' and [(2)] the harm averred by Petitioners" (emphasis and bracketed information added)); *Davis v. State*, 804 N.W.2d 618, 641 (S.D. 2011) ("[w]e are unable to conclude that [(1)] the education funding system (as it existed at the time of trial) fails to correlate to [(2)] actual costs or with adequate student achievement to the point of declaring the system unconstitutional" (emphasis and bracketed information added)). Indeed, in a strikingly similar Education Clause claim brought against the State of New York based on "an abundance of terrible educational results" allegedly "caus[ed] . . . [by] the demographic composition of the school district in which they reside," the claim was similarly dismissed due to its lack of proof of causation. *Paynter v. State*, 100 N.Y.2d 434, 440-43 (N.Y. App. 2003).

B. Each of Appellants' three contrary arguments fails

Ignoring *State v. Derek Chauvin*, 955 N.W.2d at 689 and 695, Appellants argued that this Court erred in *Forslund II*. Appells.Br. at 42-43. Yet, in their conclusory one-paragraph argument therefore (*id.*), Appellants merely raised, as discussed below, three demonstrably false arguments (*id.*).

1. *Cruz-Guzman* is not inapposite

Appellants first argued that *Cruz-Guzman* is inapposite because it "does not identify causation as a requirement of an Education Clause claim." *Id.* This was demonstrably false.

Consistent with this Court's *Forslund II* decision, which expressly "deriv[ed] guidance from *Cruz-Guzman* and *Skeen*" (*Forslund II*, 924 N.W.2d at 34 (emphasis and bracketed information added)) and was "[b]ased on the Supreme Court's analyses in *Cruz-*

Guzman and *Skeen*" (*id*. (emphasis and bracketed information added)), the Supreme Court in *Cruz-Guzman,* 916 N.W.2d at 5-6, among other things, described Appellants' complaint-identified "several practices . . . as contributing to [(1)] school segregation and [(2)] inadequate educational outcomes" (emphasis and bracketed information added). And the dissent in *Cruz-Guzman,* 916 N.W.2d at 20 n.7 (Anderson, J. and Gildea, C.J., dissenting), among other things, likewise described the first two of Appellants' complaint-identified "several practices" — *i.e.,* the Legislature's "parent choice" policy — as "causally related to the alleged inadequacy asserted in their claims." (Emphasis added).

2. *Forslund II* is not factually distinguishable

Consistent with their above-discussed only argument below against *Forslund II* (Doc.380 at T.11-12), Appellants next argued that *Forslund II* is factually distinguishable because "the *Forslund* plaintiffs did not contend that they were actually receiving an inadequate education" (Appells.Br. at 42). This, too, was demonstrably false.

This Court recognized in *Forslund II,* 924 N.W.2d at 35, that, though the *Forslund II* plaintiffs' "theory of liability . . . is that the challenged statutes 'impinge on' or 'burden' their children's right to an adequate education," their "amended complaint nominally alleges the deprivation of the right to a uniform and thorough education." (Emphasis added). Worse yet for Appellants, the *Forslund II* plaintiffs' argument "that, to prevail on their Education Clause claims, they need only 'prove that effective teaching *is* part of the fundamental right to a baseline level, adequate education'" (*id.* at 35 n.11) is — even down to their italicization of "is" — strikingly similar to Appellants' argument that, "since

segregation *is* the Education Clause violation, they have established injury and 'no further inquiry' regarding causation is necessary" (Appells.Add.10 §II(B)(i) (quoting Doc.363 at 6)).

3. The Supreme Court's footnote 6 is unavailing

Appellants finally argued that, with regard to their complaint-identified "[public] schools [in Minneapolis and St. Paul] segregated by race and SES" (Appells.Br. at 42 (bracketed information added)), "[t]he Minnesota Supreme Court said such schools were self-evidently not general, uniform, thorough, or efficient" (*id.* (emphasis added) (citing *Cruz-Guzman*, 916 N.W.2d at 10 n.6)). This was, as well, demonstrably false.

Both (1) quoting from Minn.Const. art XIII §1 and (2) citing to *Brown*, 347 U.S. at 495, the Supreme Court in its ruling on the "justiciability" of Appellants' Equal Protection and Due Process Clauses claims plainly and unambiguously noted that "[i]t is self-evident that a segregated system of public schools is not 'general,' 'uniform,'' 'through' or 'efficient.'" *Cruz-Guzman*, 916 N.W.2d at 10 n.6 (emphasis added). But the Supreme Court did not even arguably rule therein that the "[public] schools [in Minneapolis and St. Paul] segregated by race and SES" constituted such "a segregated system of public schools." Indeed the Supreme Court could not have made such a complex, fact-intensive ruling on its Rule 12.02(e) review. This is because such "a motion to dismiss … serves an extremely limited function" as "[t]he only factual information presented is that which is disclosed by the pleadings as a whole." *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963) (emphasis and bracketed information added)).

Moreover, given the required showing of intentional (or *de jure*) segregation for such a finding of "segregation" under the Equal Protection Clause (*In re Contest of Gen. Election Held on November 4, 2008, for Purpose of Electing a U.S. Senator from State of Minnesota,* 767 N.W.2d 453, 464 (Minn. 2009)), the Supreme Court would not have implicitly eliminated this required showing for purposes of an Education Clause claim in a footnote in its "justiciability" analysis under the Equal Protection and Due Process Clauses. Rather, when it pronounces such dramatic changes in constitutional law, the Supreme Court does so explicitly and with the requisite explanation therefore. *See, e.g., Women of State of Minn. by Doe v. Gomez,* 542 N.W.2d 17, 26-32 (Minn. 1995) (extending the right of privacy to cover the right to abortion funding for those on public assistance)*; Friedman v. Comm'r of Pub. Safety*, 473 N.W.2d 828, 829-35 (Minn. 1991) (extending the right to counsel under the Minnesota Constitution beyond that required under federal law based on Minnesota's long tradition of expansive protection of fair trial rights). This is especially true given the Supreme Court's otherwise meticulous and thorough review therein of its very limited Education Clause jurisprudence. *Cruz-Guzman,* 916 N.W.2d at 8-10.

Appellants' reading of the Supreme Court's footnote 6 to its *Cruz-Guzman* decision is, as discussed below, otherwise irreconcilable with the Supreme Court's ruling in *Cruz-Guzman,* 916 N.W.2d at 9 and 12. Appellants' reading of the Supreme Court's footnote 6 to its *Cruz-Guzman* decision further contravenes, as also discussed below, both (1) the district court's ruling below (Appells.Add.17-18 §II(C)(ii)) and (2) this Court's ruling in *Forslund II,* 924 N.W.2d at 35.

a. Without the "causation" requirement, Appellants ask this Court to decide "educational policy" in contravention of *Cruz-Guzman*

"Parent choice" authorizes parents — notably, those parents with SOC and/or FRL in public schools in Minneapolis and St. Paul — to choose, for example, "culturally-affirming" charter schools, such as FAA in Minneapolis and HGA in St. Paul. And, because many parents with SOC and/or FRL in public schools in Minneapolis and St. Paul have, in fact, chosen these "culturally-affirming" charter schools, such as FAA and HGA, due to their "cultural affirmance," these schools have, as illustrated by FAA and HGA, higher percentages of SOC and/or FRL relative to demographically "comparably-situated" district schools in Minneapolis and St. Paul, respectively.

Yet, despite (1) the demonstrated popularity of "parent choice," especially amongst parents with SOC and/or FRL in public schools in Minneapolis and St. Paul, and (2) the above demonstrated academic success at several of these "culturally-affirming" charter schools in Minneapolis and St. Paul, such as FAA and HGA, Appellants' Education Clause claim, as advocated for with their partial summary judgment motion, asks for the Education Clause to be interpreted so as to require (1) the Legislature's racial and socioeconomic "integration" policy as most recently iterated in its 2013 AIM Act, which intentionally "exempted" charter schools therefrom (Doc.220, Ex. 33; Doc.358 at xxxiv-xxxv), to *per se* trump (or invalidate) (2) the Legislature's "parent choice" policy (Doc.347, Ex. 1 at 27-33). And, to try to punctuate the righteousness of their educational policy preference, Appellants' experts Myron Orfield (Orfield) and Will Stancil (Stancil) have uber-

aggressively labeled any opponents thereto, including (1) Intervenors, (2) Intervenors' counsel and (3) Intervenors' consulting experts, as "neo-segregationists." *Id.* at 29-33. Indeed, because they — in the late 1990's — dared to disagree with Appellants' educational policy preference for the Legislature's racial and socioeconomic "integration" policy over the Legislature's "parent choice" policy, Orfield and Stancil audaciously add to their broad list of "neo-segregationists" MDE's former (1995-99) MDE Commissioner Bob Wedl (*id.*) and MDE's legal counsel during his tenure as MDE's commissioner — *e.g.*, (1) former Attorney General Skip Humphrey (Humphrey) (*id.* at 27), (2) former Deputy Attorney General Lee Sheehy (*id.* at 61) and (3) former Assistant Attorney General Cindy Lavorato (*id*. at 30-31).

Appellants' dispositive motion ask ignores, therefore, not only (1) the Supreme Court's above-discussed repeated insistence that the district court is not being asked to make "specific determinations of educational policy" or "devise particular educational policies" but also (2) the wishes of the very same parents with SOC and/or FRL in public schools in Minneapolis and St. Paul that they purport to be trying to protect. And, from these parents' perspective, Appellants' ask perpetuates the fundamental mistake of largely white elites of — yet again — thinking that they know better than the parents with SOC and/or FRL in public schools in Minneapolis and St. Paul about what they want and need for improving their children's education.

Indeed, because the racial and socioeconomic "balance" which they seek to have enshrined as a constitutionally-prescribed "fundamental right" is undermined by the

Legislature's "parent choice" policy, Appellants' dispositive motion would, if successful, have to eliminate the Legislature's "parent choice" policy. And this would effectively ban "many of [the charter schools in Minneapolis and St. Paul that] are based on themes that naturally draw students of a certain racial or ethnic heritage" — *i.e.,* "culturally-affirming" charter schools such as FAA and HGA. Doc.32, Ex. 4 at 18-19 (bracketed information added). Intervenors' reasonable fear was succinctly explained, as follows, 12 years ago:

> In fact, the entire "choice movement," which actually had its origins in the State of Minnesota, would have to be revamped or even scrapped, because giving parents a choice often means that racial balance is disrupted or even thwarted. Is this policy outcome we, in this state, agree with? Will this actually help the underserved students who are being bused?[13] These are matters on which reasonable people can surely differ.

Id. at 19 (emphasis and bracketed information added).

b. Without the "causation" requirement, Appellants ask this Court to avoid the *Cruz-Guzman*-recognized "necess[ity]" for, "[o]f course, some level of qualitative assessment"

The Supreme Court's "justiciability" ruling recognized that, "[o]f course, some level of qualitative assessment is necessary to determine whether the State is meeting its obligation to provide an adequate education" (*Cruz-Guzman,* 916 N.W.2d at 12 (emphasis and bracketed information added)), adding that "[t]he very act of [(1)] defining the terms used in the Education Clause and [(2)] determining whether the constitutional requirements

[13] Doc.64, Ex. 11 at 1 (Appellants "seek[] a metro-wide integration plan to satisfy what they argue is the [S]tate's constitutional obligation to prevent segregated schooling" by race and SES (emphasis added)). This same situation is repeating itself under Connecticut's ongoing desegregation order. Kersten, Katherine, "Busing Redux?" *Thinking Minnesota* (Winter 2019) at 30-31.

have been met inevitably requires a measure of qualitative assessment" (*id.* (emphasis and bracketed information added)). The dissent similarly described this "Herculean task to the parties and the district court" as the "district court . . . be[ing] asked to pass judgment on plans, perhaps many plans, extending over many years, to assure that an 'adequate' education is provided to students." *Id.* at 22 (Anderson, J. and Gildea, C.J., dissenting). (emphasis and bracketed information added)).

Based, nevertheless, on the very same complaint-identified numeric racial and/or socioeconomic "imbalance" which was before the Supreme Court when it so ruled, Appellants boldly ask this Court to circumvent the district court's required "qualitative assessment." There is, however, no way to avoid any such "qualitative assessment" without contravening *Cruz-Guzman*.

c. Without the "causation" requirement, this Court would be necessarily adopting "a race-conscious remedy [which] would place [the State] squarely in front of the propeller blade of an Equal Protection claim"

While (1) the district court concluded that proof of intentional (or *de jure*) segregation for an Education Clause claim is required to avoid the State being put "squarely in front of the propeller blade of an Equal Protection claim" (Appells.Add.18 §II(C)(ii)) and (2) Appellants disagree with but fail to explain how this conclusion is not so, this Court's "causation" requirement does — at least in part — avoid the same. And, by avoiding this Equal Protection Clause issue through its enforcement of its "causation" requirement in *Forslund II*, 924 N.W.2d at 33-35, this Court would, therefore, avoid

running afoul of its below-discussed prohibition in *Forslund II*, 924 N.W.2d at 35 on "extending existing law."

d. This Court is also bound by its "published opinion[]" in *Forslund II* that "'[t]he task of extending existing law falls to the supreme court or the legislature, but *it does not fall to this* [*C*]*ourt*'"

With regard to the *Forslund II* plaintiffs' "ask [of] this [C]ourt to transform the right to a baseline level of education, recognized in *Cruz-Guzman* and *Skeen*, into a right to be free from any alleged government interference in obtaining an adequate education" (*Forslund II*, 924 N.W.2d at 35 (bracketed information added)), this Court ruled that "'the task of extending existing law falls to the supreme court or the legislature, but it does not fall to this [C]ourt'" (*id.* (emphasis and bracketed information added) (quoting *Terrault*, 413 N.W.2d at 286)). Despite this ruling, Appellants similarly ask this Court to "extend[] existing law" by both (1) eliminating this Court's recognition in *Forslund II*, 924 N.W.2d at 33-35 of the "causation" requirement for an Education Clause claim and (2) "transform[ing] the right to a baseline level of education, recognized in *Cruz-Guzman* and *Skeen*, into a right to [a racially and socioeconomically 'balanced' education]." But, even if it was otherwise inclined to do so (which is belied by the rest of its *Forslund II* ruling), this Court is, nevertheless, bound by its "published opinion[]" in *Forslund II* to not do so. *State v. Chauvin*, 955 N.W.2d at 689 and 695.

III. APPELLANTS' FAILED TO PROVE "CAUSATION"

A. Appellants' factual support for their "causation" showing

Even though (1) "the Education Clause . . . imposes an explicit 'duty' on the Legislature" (*Cruz-Guzman,* 916 N.W.2d at 9 (emphasis added)) and (2) the first two of Appellants' complaint-identified "several practices . . . contributing to [(a)] school segregation and [(b)] inadequate educational outcomes" were with regard to the Legislature's "parent choice" policy (*id.* at 5-6 (emphasis and bracketed information); *id.* at 20 n.7 (Anderson, J. and Gildea, C.J., dissenting)), Appellants' only identified "practices" herein purportedly supporting their partial summary judgment motion were with regard to two of MDE's long-ago actions — *i.e.,* "[(1)] [MDE's 1999] enact[ment] [of] the new desegregation rule and [(2)] [MDE's 1996 and 2011, respectively] granting [of] waivers to allow Minneapolis and St. Paul to return to neighborhood schools" (Appells.Br. at 52 (bracketed information added)). Yet, even though (1) MDE's "new desegregation rule" in 1999 had to be authorized by the Legislature in order to be valid (Doc.220, Ex. 33 at 1-3) and (2) the Legislature's 2013 AIM Act intentionally "exempted" the charter schools therefrom (Doc.220, Ex. 33; Doc.358 at xxxiv-xxxv), Appellants' conspicuously ignore the relevance of the Legislature's role therein. In other words, Appellants curiously seek to prove the legislative branch's violation of its "duty" under the Education Clause based on the long ago actions of the executive branch. And the AG's inexplicable failure to emphasize this fundamental disconnect underscores — yet again — the "directly adverse conflict of interest" between its clients — *i.e.,* the Legislature and MDE.

Moreover, because "the premise built into [their] motion" is "that segregation itself creates an inadequate education" (Appells.Add.20 §II(C)(iv) (bracketed information added) (citing Doc.363 at 6)), Appellants did not even try to argue that their complaint-identified "several practices" actually caused "inadequate educational outcomes" as required in *Forslund II,* 924 N.W.2d at 34.

B. There are five preclusive disputed material facts

1. Appellants' lack of the requisite "causal" proof on summary judgment of their complaint-alleged "several practices . . . contributing to [(1)] school segregation and [(2)] inadequate educational outcomes"

a. No such "causal" proof of "school segregation"

Though they described the racial and socioeconomic demographics of the complaint-identified 35 SOC and/or FRL "hyper-segregated" charter schools in Minneapolis and St. Paul, including FAA and HGA (Doc.1 at 13-15 ¶29), and the complaint-identified 58 SOC and/or FRL "segregated" district schools in Minneapolis (*id.* at 7-8 ¶23) and St. Paul (*id*. at 9-10 ¶25), Appellants did not even try to prove that these demographics were "caused" by (1) one or more of the complaint-identified "certain causes" (or "several practices") (*Forslund II,* 924 N.W.2d at 34; *Cruz-Guzman*, 916 N.W.2d at 5-6) *vis-à-vis* (2) the district court-identified "many potential alternative or contributory causal agents" (Appells.Add.22 §II(C)(3) (emphasis added)). Indeed, underscoring the need for such a "causal" showing, the district court found that

"[Appellants] themselves, in their expert submissions,[14] discuss some of the intransigent contributors to racially-imbalanced schools, including [(1)] housing and [(2)] poverty patterns, and [(3)] in the case of charter school enrollment and open enrollment, the fact that parents opt into these schools, eliminating the control of the [S]tate to determine the racial make-up of the student applicant pool." *Id*. (emphasis and bracketed information added). The district court explained as follows:

> In short, there is no consensus on what causes non-diverse, racially-imbalanced schools. Most would likely agree that the "cause" is a Hydra-headed monster that includes the actions and decision of [the State] as well as actions and decisions beyond [the State's] control.

Id. (emphasis and bracketed information added).

b. No such "causal" proof of "inadequate educational outcomes"

Though they generally described the "inadequate educational outcomes" in the "Minneapolis and St. Paul public schools" (Doc.1 at 16-21 ¶¶36-47), Appellants did not even try to prove that the alleged level of racial and/or socioeconomic "segregation" at these particular schools "caused" them to have "inadequate educational outcomes." And the need for such "causal" proof is supported by (1) Intervenors' above-discussed proof that "all-minority schools can succeed" and (2) the opinion of highly-reputed education researcher David Armor (Armor) from George Mason University. Doc.256, Ex. C. Armor opined, in relevant part, as follows:

> There is a lack of consensus in social science research on whether racial diversity has a [(1)] positive, [(2)] educationally significant, and

[14] Docs.280-94; Doc.346 at 4; Docs.347-48.

> [(3)] consistent impact on academic outcomes for SOC in regular K-12 public schools. More specifically, there is no consensus on whether school desegregation can significantly close the achievement gap between white and SOC.

Id. at 1 (emphasis and bracketed information added). With regard to "the impact of racial diversity in charter schools," Armor further opined as follows:

> The findings of desegregation studies, as discussed in the previous section, apply to students in charter schools. There is no reason to expect that simply desegregating charter schools (while keeping the same programs) would increase SOC academic outcomes or reduce achievement gaps.
>
> * * *
>
> While not all charter schools actually produce such high outcomes, the important lesson of the KIPP and NYC charter studies is that high concentrations of SOC are not a barrier to high achievement. In fact, since the successful charters in these studies generally have instructional programs with longer school days and more class time in academic topics, they may be a more cost effective way to reduce the SOC-white gaps by focusing resources on disadvantaged students instead of on all students.

Id. at 4-5 (emphasis added); *see also id*., Ex. D at 12-14.

2. Appellants' requisite "causal" proof of the complaint-alleged "several practices . . . contributing to [(1)] school segregation and [(2)] inadequate educational outcomes" would otherwise have to factor in the charter schools' unique statutory protections *vis-à-vis* the district schools

The charter schools are, unlike the district schools, each separately formed and run corporate non-profits with independent boards and "authorizers." Minn.Stat. § 124E.06-.07. And, unlike the district schools which are subject to MDE's district-wide enforcement and accountability and not individually subject to school-by-school enforcement and accountability, each of the charter schools is individually subject to, among other things, statutory protections. Minn.Stat § 124E.05, subd. 5, .06 and .10, subds. 1(a)(7), 3(b) and

4(b). Stated otherwise, each of the charter schools is, as illustrated by FAA and HGA, required to enter into performance contracts with their required MDE-approved authorizer. *See, e.g.*, Doc.256-59, Exhs. F-J. And, per these required authorizer contracts, each of the charter schools is, as illustrated by FAA and HGA, regularly subject to (1) performance reviews (*id.*) and (2) meaningful accountability (*id.*), including — most notably — the ultimate sanction of closure.

Moreover, unlike the district schools' students and their parents' lack thereof, the charter schools' students and their parents, as well as their authorizers, have meaningful administrative and/or judicial remedies to enforce the above-discussed protections for these charter schools. These enforcement options include (1) the filing of a complaint with the charter school's authorizer, who has the authority to unilaterally terminate the charter school if the school fails "to demonstrate satisfactory academic achievement for all students" (Minn.Stat. § 124E.10, subd. 4(b)(1)); and (2) the filing of a complaint with the MDE Commissioner, who has the authority to terminate a charter school if the school has a history of "failure to meet pupil performance requirements, consistent with state law" (*id.*, subd. 4(c)(1)).

3. Appellants' lack of the requisite "causal" proof of the Legislature's "parent choice" policy "<u>contributing to</u> [(1)] school segregation and [(2)] inadequate educational outcomes"

a. <u>No such "causal" proof of "school segregation"</u>

As it relates to the "causal link" between (1) "the exemption of charter schools from particular desegregation efforts" and (2) the "current racial imbalance" at these "exempt"

charter schools, the district court previously found "caus[ation]" to be materially in dispute. Ints.Add.43; Doc.358 at 13 (bracketed information added). And Appellants did not even try then or since to prove that (1) the Legislature's "parent choice" policy *vis-à-vis* (2) the district court-identified "many potential alternative or contributory causal agents" such as "housing and poverty patterns" (Appells.Add.22 §II(C)(iii)) "contribut[ed] to" (or "caused") increased "school segregation" (or "imbalance").

b. No such "causal" proof of "inadequate educational outcomes"

Appellants did not even try then or since to prove that (1) the Legislature's "parent choice" policy *vis-à-vis* (2) the district court-identified "many potential alternatives or contributory causal agents" such as "housing and poverty patterns" (*id.*) "contribut[ed] to" (or "caused") increased "inadequate educational outcomes."

4. Appellants' discovery answers admitted to their lack of the requisite "causal" proof between "[(1)] school segregation and [(2)] inadequate educational outcomes" because they declined to acknowledge, let alone "control[] and isolate[]," contributing "factors and variables other than segregation by race and socioeconomics"

Appellants were asked to "[i]dentify and explain in detail and with specificity how the above-identified factors and variables other than segregation by race and socioeconomics were controlled and/or isolated so that they could evaluate and determine the impact of just 'segregation by race and socioeconomics' on the 'achievement gap' for these groups of students." Doc.220, Ex. 34 at 17 (Interr.10 (emphasis added)). But, because they had refused to acknowledge, let alone "identif[y]," such "factors and variables other than segregation by race or socio-economics" (*id.* at 8-9 (Interr.2(c)-(d))), Appellants

refused to "explain in detail and with specificity how" these unacknowledged and unidentified other "factors and variables . . . were . . . evaluate[d]" (*id.* at 17-18 (Interr.11)).

5. Appellants' discovery answers otherwise conceded that their requisite showing of a "causal link" between (1) "poverty rates between white and black students' schools" and (2) the "achievement gap" was nothing more than a "correlate[ion]," "impli[cation]" or "suggest[ion]"

Appellants merely identified the alleged "single most powerful correlat[ion]," "impli[cation]" or "suggest[ion]" between (1) "poverty rates between white and black students' schools" and (2) the "achievement gap." *Id.* at 18 (Interr.11 (emphasis and bracketed information added)). But, in describing this "correlate[ion]" between (1) "poverty rates between white and black students' schools" and (2) the "achievement gap" to be the "single most powerful," Appellants implicitly acknowledged the existence of "correlat[ions]" between other factors and the "achievement gap." *Id.* Moreover, Appellants' express "impli[cation]" to be drawn from the alleged "correlation" is simply "that high-poverty schools are, **on average**, much less effective than lower-poverty schools." *Id.* (emphasis added). And Appellants' express "suggest[ion]" from this "correlat[ion]" is notably just "that strategies that reduce the differential exposure of black, Hispanic, and white students to poor classmates **may** lead to meaningful reductions in academic achievement gaps." *Id.* (emphasis added).

Confirming the same, the University of Minnesota's recent "achievement gap" analysis "look[ed] at a variety of factors that might explain the[] success" of the "states that are performing well on 8th-grade reading and math tests," including "[(1)] demographics,

[(2)] school funding, and [(3)] strength of teacher unions," "without finding a firm determining factor." Doc.259, Ex. N at 25 (bracketed information added); *id*. at 25-27 (analysis of each of these three "factors"). And the analysis "[u]ltimately . . . look[ed] at public policies, which seem to have made the difference" in the states that were successful in reducing the achievement gap. *Id*. at 25 (emphasis added); *id*. at 27-28 (highlighting the apparently successful "public policies" adopted by Texas, Georgia, Massachusetts and New Jersey). Notably, despite Appellants' exclusive "causal" reliance on racial and/or socioeconomic "segregation" (or "imbalance"), none of these "difference"-making "public policies" included the requirement for racial and/or socioeconomic "integration" (or "balance"). *Id*. at 27-28.

C. Appellants' two other preclusive problems

1. Appellants' contradictory definitions of racial and/or socioeconomic "segregation" (or "imbalance")

Appellants' partial summary judgment motion seeks to render constitutionally infirm public schools in Minneapolis and St. Paul which are racially and/or socioeconomic "segregated" (or "imbalanced") using a definition therefor — *i.e.,* "a school with less than 20% or more than 60% [SOC] or students eligible for [FRL]" (Doc.346 at 17 ¶(3) (bracketed information added)) — which contravenes their own prior unretracted definitions thereof (Doc.256, Ex. A at T.92-94). That is, when previously asked by the district court to "define[] what constitutes a segregated [(or 'imbalanced')] school" (*id.* at T.93 (bracketed information added)), Appellants explained that "obviously it's got to be **significantly disproportionate to the makeup of the community**" (*id.* at T.93-94

(emphasis added)). And, as an illustration of what they meant by "significantly disproportionate to the makeup of the community," Appellants directed this Court to the 1968 Minneapolis desegregation case wherein "the remedy there, which the State said it would make sure Minneapolis complied with, was basically that the population of the schools should be **within plus or minus of 15 percent representing the demography of the city**." *Id.* at T.92-93 (emphasis added); Doc.346 at 15 ¶ 15 ("no school could have a percentage of minority students **15 percent greater than the district-wide average**" (emphasis added)). Inexplicably, however, Appellants' definition of racial and/or socioeconomic "segregation" (or "imbalance") for their partial summary judgment motion, which is taken from their "class" definition (Doc.239 at 17 ¶3), is instead tied to the SOC and/or FRL demographics of the individual school without regard for whether such demographics are (1) "significantly disproportionate to the make up of the community" (Doc.256, Ex. A at T.92-93 (emphasis added)), (2) "within plus or minus of 15 percent representing the demography of the city" (*id*. at T.92-93 (emphasis added)) or (3) "15 percent greater than the district-wide average" (Doc.346 at 15 ¶15 (emphasis added)). Thus, while the district court found "that [they] have offered three variant definitions" (Appells.Add.24 n.16 §II(D) (emphasis and bracketed information added)), which is, by itself, a bar to their dispositive motion, Appellants actually "offered [four] variant definitions."

2. Appellants' premature filing of their partial summary judgment motion

Appellants' partial summary judgment motion was otherwise supported by their two expert opinions and exhibits thereto. Docs.280-94; Doc.346 at 4; Docs.347-48. But, per the district court's then-applicable (but since indefinitely stayed (Doc.381)) June 15, 2021 Amended Scheduling Order, the parties' fact discovery was not to be closed until over six months later on February 18, 2022 (Doc.336 at 2 ¶E1), and their expert discovery was not to end until nearly six weeks later still on April 1, 2022 (*id.* at 2 ¶F4). As confirmed by the district court, "[the State] and []Intervenors both filed the required affidavit pursuant to Minn.R.Civ.P. 56.04." Appells.Add.20 n.15 §II(C)(iv) (bracketed information added). And, "[s]ince [Appellants'] motion is supported by expert submissions, it is proper for the Court to allow [the State and Intervenors] to support counterarguments with expert testimony." *Id.*20 §II(C)(iii) (bracketed information added).

CONCLUSION

For each of the above-discussed several reasons, this Court must affirm the district court's denial of Appellants' partial summary judgment motion.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for Intervenor-Respondents certify that this brief complies with the requirements of Minn. R. App. P. 132.01 in that it is printed in 13-point, proportionately-spaced typeface utilizing Microsoft Word 2007 and contains 13,990 words, including headings, footnotes and quotations.

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CERTIFICATION

In compliance with this Court's March 20, 2020 Order, no paper copies of this brief will be filed with the Court. I hereby certify that, should the Court request a paper copy of this brief, the content of the accompanying paper brief will be identical to the electronic version filed and served, except for any binding, colored cover, or colored back.

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