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No. A22-0118

STATE OF MINNESOTA
IN SUPREME COURT

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

Plaintiffs-Petitioners,

vs.

State of Minnesota, et al.,

Defendants-Respondents,

and

Higher Ground Academy, et al.

Intervenors-Respondents.

BRIEF OF *AMICI CURIAE*

MINNESOTA LAW PROFESSORS

Will Stancil (#0397860)
[redacted]
Minneapolis, MN 55403
[redacted]

Attorney for Amici Curiae
Minnesota Law Professors

SHULMAN & BUSKE PLLC
Daniel R. Shulman (#100651)
126 N 3rd St., Suite 402
Minneapolis, Minnesota 55401

Attorney for Plaintiffs-Petitioners

LATHROP GPM LLP
Richard C. Landon (#0392306)
500 IDS Center, 80 S Eighth St.
Minneapolis, Minnesota 55402

Attorney for Plaintiffs-Petitioners

OFFICE OF THE ATTORNEY GENERAL
Kevin A. Finnerty (#0325995)
445 Minnesota Street, Suite 1800
St. Paul, Minnesota 55101-2134

Attorney for Defendants-Respondents

TAFT, STETTINIUS & HOLLISTER LLP
Jack Y. Perry (#209272)
Brayanna J. Bergstrom (#0401770)
2200 IDS Center, 80 S Eight St.
Minneapolis, Minnesota 55402

Attorneys for Intervenors-Respondents

JOHN CAIRNS LAW, P.A.
John Cairns (#14096)
2751 Hennepin Ave., Box 280
Minneapolis, Minnesota 55408

Attorney for Intervenor Respondents

Nekima Levy-Armstrong (#335101)
1011 W Broadway Ave., Suite 100
Minneapolis, Minnesota 55411

Attorney for Intervenors-Respondents

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STATEMENT OF INTEREST OF *AMICI CURIAE*

A group of Minnesota law professors submits this brief as *amici curiae*.[1] The *amici curiae* are composed of scholars and attorneys who write and teach about constitutional law, civil rights, and subjects related to this case.

1. Marie Failinger is the Judge Edward J. Devitt Professor of Law at Mitchell Hamline School of Law and a former Associate Dean and interim Dean at Hamline University School of Law.
2. Jim Hilbert is Vice Dean and Professor of Law at Mitchell Hamline School of Law, Ad Hoc Counsel for the Minnesota State NAACP, and former chair of the Education Committee of the Saint Paul NAACP.
3. Peter B. Knapp is Professor of Law and former interim President and Dean at the Mitchell Hamline School of Law.
4. Myron Orfield is the Earl R. Larson Professor of Civil Rights and Civil Liberties Law at the University of Minnesota Law School, and executive director of the Institute on Metropolitan Opportunity.
5. Mehmet Konar-Steenberg is Professor of Law and former Associate Dean at Mitchell Hamline School of Law.
6. Dr. Charles Reid is Professor of Law at the University of St. Thomas.

[1] The brief was prepared by *amici curiae* and counsel. No monetary contribution was provided for preparation or submission of the brief. Institutional affiliations of *amici curiae* are included for identification purposes only.

7. Christopher Roberts is Associate Professor of Law at the University of Minnesota Law School, and an affiliated faculty member at the University of Minnesota Department of Sociology.
8. Mike Steenson is the Bell Distinguished Professor at Mitchell Hamline School of Law and a member of the American Law Institute.
9. Dr. T. Anansi Wilson is Associate Professor of Law and founding director of the Center for the Study of Black Life and the Law at Mitchell Hamline School of Law.

These scholars recognize that the present matter will resolve important questions about the scope of the Education Clause of the Minnesota Constitution, Article XIII, Section 1. The *amici curiae* believe it is essential to the resolution of this matter to recognize the full set of legislative obligations created by the text and history of the Education Clause, which afford Minnesotan families and schoolchildren unique protections beyond those found in other state and federal constitutional provisions.

OPENING STATEMENT

School segregation hurts students in many ways. This case will decide whether, under the wrong circumstances, those harms are invisible to the Minnesota Constitution.

One way segregation hurts students is by creating bad schools. Voluminous social science research, a century of lived experience, and the near-unanimous consensus of scholars and educators is that racially segregated education results in less learning, reduced achievement later in life, and greater difficulty obtaining the basic social and emotional skills necessary to live and work in a diverse, multiracial society. The Education Clause of the Minnesota Constitution, Article XIII, Section 1, imposes on the state legislature a duty to ensure that Minnesota schools do not become constitutionally inadequate. *Skeen v. State*, 505 N.W.2d 299, 308-12 (1993).

Another way segregation hurts students is by subjecting them to unfair or unequal treatment by the state. Since the civil rights era, American law has recognized that the government should aspire to treat people in separate groups equally, and should not impinge upon their fundamental rights. To do otherwise risks a multitude of practical and moral injuries. Minnesota's equal protection jurisprudence places limitations on when and how the state government can treat different groups differently, in K-12 education or any other context. Its due process jurisprudence bars the state from burdening the rights of residents. The Education Clause creates a fundamental right to an adequate education in Minnesota, which can form the basis for due process and equal protection claims. *Id.* at 313.

The *Cruz-Guzman* plaintiffs challenge Minnesota school segregation and all the multifarious injuries it is causing, raising claims under the Education Clause, equal protection, and due process. But the lower courts, in addressing these claims, incorrectly muddled together these bodies of law. In doing so, they erroneously trimmed away many of the protections of the Education Clause by subjecting them to equal-protection-like standards, leading to the present appeal.

Traditional constitutional civil rights claims promote different interests, require different legal standards, and produce different remedies than Education Clause claims. This remains true even when claims are rooted in the same underlying condition, such as racial segregation in Minnesota schools. Blending together these two separate bodies of law has the unintended effect of circumscribing the rights and protections available to Minnesotan families and schoolchildren.

Amici urge the Court to resolve the matter before it in the simplest, most straightforward way: by holding that the Education Clause is an educational mandate to the legislature, one that is violated when schools are constitutionally deficient. Plaintiffs wishing to prove a violation of the Education Clause should not need to show intent or causation, because to do so would reduce and complicate the legislature's mandate, raising consideration of factors outside the actual condition of Minnesota's public education system. The requirements of the Education Clause should not change regardless of whether plaintiffs' claims turn on school segregation, or some other failing of public schools.

This conclusion would provide clear standards to policymakers, simplify the process of adjudicating Education Clause claims, and produce the broadest set of realistically enforceable rights for Minnesotan families and schoolchildren.

ARGUMENT

I. Traditional civil rights claims promote different interests, require different standards, and produce different remedies than the Education Clause.

The American legal system has spent decades fighting against entrenched school segregation. However, the questions confronting the Court at this stage in *Cruz-Guzman* have rarely been faced by any court, a product of plaintiffs' novel argument under the Minnesota Constitution's Education Clause.

Historically, most legal battles against school segregation have been fought in federal courts, relying on the U.S. Constitution's equal protection jurisprudence. Indeed, *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954), is the starting point of both modern equal protection jurisprudence and modern school desegregation law.

Because of this, a tendency has emerged to evaluate school segregation through the elements of equal protection claims – such as intent and causation. But the close association between school desegregation and equal protection is, in a sense, a historical accident. Although segregation often does entail discriminatory treatment by the state, the near-exclusive use of equal protection as the vehicle to attack harmful educational segregation reflects the legal environment of the mid-20th century. During that period, school segregation was most overt in the South, where state courts were generally hostile to civil rights claims. After *Brown*, federal plaintiffs seeking to redress injustices in their schools

mostly stuck to the tried-and-true pathway of relying on Fourteenth Amendment protections.[2] That history has meant that the judiciary's relationship to school segregation has been shaped by the underlying interests of equal protection law.

Equal protection rights, whether in the Fifth Amendment, the Fourteenth Amendment, or in state constitutions, are all rooted in the observation that when government treats similarly situated groups differently, there is an inherent risk of harmful injustice or unfairness. Rather than merely contributing to some unfair or unequal outcome, equal protection law begins with the notion that – at least in some circumstances – it is the differential treatment itself that is unjust. The origins of this idea can be identified in *Brown* itself, in which Justice Warren wrote that, although racially segregated school systems might be in every material sense equalized, "[t]o separate [children] from others of similar age and qualification solely because of their race generates a feeling of inferiority . . . in a way unlikely to ever be undone." *Id.* at 495.

In subsequent years, the judiciary's view of school segregation was further shaped by equal protection principles. The key concepts were developed piecemeal, rather than appearing fully formed in any single case. In *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 17-18 (1971), the Supreme Court first mentioned the notion of *de facto* segregation, outside the scope of equal protection law. In *Keyes v. Denver Sch. Dist. No.*

[2] Although civil rights plaintiffs made effort to incorporate due process claims into federal school litigation, these were quickly cut short when the U.S. Supreme Court held that there is no federal fundamental right to an education. *San Antonio Ind. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973). As a result, equal protection has remained the sole basis of federal desegregation efforts.

1, 413 U.S. 189, 208 (1973), the Court focused on how intentional violations of equal protection through school segregation can be proven, without explicitly addressing *de facto* segregation. Three years later, in *Washington v. Davis*, 426 U.S. 229, 240 (1976), the Court made clear that equal protection claims required a showing of discriminatory intent.

The specific equal protection standards raised in these federal decisions are of lesser importance here, since the Minnesota Constitution may envision different standards.[3] Instead, what is important to note is that most school segregation decisions are framed around the particular interests protected by traditional civil rights law: guarding against unfair and unequal treatment by government. The various standards applied to segregation claims flow from that underlying interest. This includes the insight that the risks and harms of discriminatory treatment may be magnified when it falls on a class that has been historically stigmatized. Likewise, it includes the common equal protection principle that harms are greater when unequal treatment is the result of an explicit intent to discriminate, especially if that intent is malign. And because the Fourteenth Amendment protects only against state action, there must be a clear nexus between a specific state action and disparate treatment.

But the Minnesota Constitution's Education Clause promotes a dramatically different set of interests. The stated purpose of the Education Clause is to reinforce "the

[3] For instance, unlike the U.S. Constitution, equal protection under the Minnesota Constitution applies a higher standard of scrutiny to statutes that create disparate treatment along racial lines, regardless of discriminatory intent. *Fletcher Properties v. City of Minneapolis*, 947 N.W.2d 1, 23-24 (2020). In addition, the Minnesota Constitution's fundamental right to education gives rise to due process claims that would be foreclosed in federal court. *Skeen v. State*, 505 N.W.2d 299, 313 (1993).

intelligence of the people" and thereby "the stability of a republican form of government." Minn. Const. Article XIII, Section 1; s*ee also Bd. of Educ. of Sauk Ctr. v. Moore*, 17 Minn. 412, 416 (1871) (stating that the purpose of the Education Clause is "to ensure a regular method throughout the state, whereby all may be enabled to acquire an education which will fit them to discharged intelligently their duties as citizens"). This Court has been unequivocal for over a century that the Education Clause functions as a "mandate to the legislature." *Cruz-Guzman*, 916 N.W.2d 1, 9 (2018) (citing *Associated Schs. of Independent Dist. No. 63 v. Sch. Dist. No. 82*, 122 Minn. 254, 258 (1913); *State ex rel. Smith v. City of St. Paul*, 128 Minn. 82, 85 (1914)). At the risk of stating the obvious, the Education Clause is about education, not sweeping principles of just governance. This sharply distinguishes it from more traditional civil rights.

Violations of the Education Clause are pleaded differently than violations of broader civil rights protections. In one previous case, a Minnesota court laid out some of these distinctions. In *Forslund v. State of Minnesota*, 924 N.W.2d 25, 29 (2019), a set of plaintiffs argued that Minnesota's teacher tenure statutes violated the state constitution's Education Clause, by "burdening" Education Clause rights to an adequate education. An appellate panel held that the plaintiffs did not state a claim under the Education Clause, explicitly distinguishing *Forslund* from *Cruz-Guzman*. *Id.* at 33. The court of appeals grounded its conclusion in a discussion of positive and negative rights. *Id.* at 33-34. In its view, the Education Clause protected the positive right of Minnesota students to receive an education that passed constitutional muster, while the "the negative rights guaranteed by other provisions of the United States and Minnesota Constitutions" – due process and equal

protection – were the right "to have the government *not* do something." *Id.* The court of appeals noted that the *Cruz-Guzman* plaintiffs had only complained of an inadequate and unconstitutional system, which did not meet the positive standard laid out in the state constitution, and had avoided prescribing any particular remedy. *Id.*(citing *Cruz-Guzman*, 916 N.W.2d at 6). By contrast, the *Forslund* plaintiffs had sought a specific remedy, effectively alleging that specific statutes and rules in Minnesota were infringing on students' rights. *Id.* In the court's judgement, this latter approach, without a clear showing of the resulting inadequacy of the system, was not a colorable Education Clause claim.

Without endorsing the court of appeals' precise theoretical framework of positive and negative rights, the *Forslund* opinion identifies a critical practical distinction in the two bodies of law, traceable to the different interests they protect. Equal protection claims target an unconstitutional government act, while Education Clause claims must target an unconstitutional existing condition. Because they sought protection from a specific government policy they asserted was harmful, rather than remediation of an ongoing condition of inadequacy, the *Forslund* plaintiffs were stating something closer to a traditional equal protection or due process claim.

This conceptual distinction extends to the remedies available under these two sources of law. Because equal protection protects the individual's right to be unburdened by discriminatory treatment from the state, the U.S. Supreme Court has held that "constitutionally required end," in school segregation cases, is "the abolition of the system of segregation *and its effects*." *Green v. Cty. Sch. Bd. of New Kent Cty.*, 391 U.S. 430 (1968) (emphasis added). This is the reasoning that led to the Supreme Court's famous

declaration that the vestiges of unconstitutional school segregation – including unequal academic performance, unequal facilities, and unequal teaching forces – must be removed "root and branch." *Id.* at 437-38. The process of integration *and* remediation is a significant reason why many segregated school systems remained under court orders for decades, as the judges overseeing those orders worked – sometimes for 40 years or more – to eliminate generational inequities dating back to Jim Crow. In short, equal protection remedies for school segregation are sometimes backwards-looking: historic discrimination, now outlawed, continues to require present-day remediation.

By contrast, claims under Minnesota's Education Clause would not necessarily entail this kind of backwards-looking corrective program. The Education Clause, standing alone, does not provide an individual right to have historic injuries remediated.[4] Instead, the Education Clause imposes on the legislature a duty to restore the system to a constitutional standard. Once it has done so, the legislature's ongoing obligation under the Education Clause is seemingly satisfied. While restoring a school system to constitutional adequacy is often no minor undertaking, it is an undertaking that is complete when adequacy is achieved in the present day, requiring no searching analysis of past inequities.

[4] Of course, this Court has recognized the Education Clause gives rise to an individual fundamental right to an adequate education. *Skeen v. State*, 505 N.W.2d 299, 313 (1993). That fundamental right can be used in equal protection and due process claims, and the *Cruz-Guzman* plaintiffs have made such claims. If these claims prevail, a more elaborate remedial program might be envisioned. However, this question is not before the Court in the present proceeding, which focuses on the direct requirements the Education Clause imposes on the state.

Examples of Education Clause remedies can be found in other states. All 50 state constitutions include some form of education clause, and although there are few instances of these provisions being used to challenge educational segregation, challenges to school adequacy and school funding have been relatively common. Although remedies in school funding cases vary in size and scope, they generally entail laying out a minimum standard and requiring that standard to be met. The minimum standard can include any aspect of education, including funding or academic performance. *See, e.g.*, *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 212 (Ky. 1989) (describing seven qualitative criteria which must be met to provide an adequate education). Typically, much leeway is given to the legislature in devising the system within the constitutional parameters. *See, e.g.*, *DeRolph v. State*, 677 N.E.2d 733 (Ohio 1997) (finding a violation of the state education clause but prescribing no specific remedy). In the present case, no more elaborate approach is required from the courts: minimum standards could be set forth beyond which Minnesota schools are deemed unconstitutionally *de facto* segregated, leaving the legislature primarily responsible for deciding how to best meet those standards.

II. The analyses of the lower courts inappropriately conflated equal protection and Education Clause principles, circumscribing Minnesotans' constitutional rights.

Both the District Court and Court of Appeals have erroneously collapsed the standards for an Education Clause claim into the standards of for an equal protection claim. In doing so, they have unduly circumscribed the rights of Minnesota families and schoolchildren, limiting their access to the Education Clause, at least in the context of racial segregation.

In its December 2021 order denying summary judgement to plaintiffs, the District Court effectively subsumed plaintiffs' Education Clause claim into equal protection reasoning. It did so through a somewhat circuitous path. The District Court correctly ascertained that a violation of the Education Clause does not, itself, require any showing of discriminatory intent. But the court nonetheless argued that any remedy to racial segregation would be race-conscious, and therefore violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.[5] Thus, unless the plaintiffs' complained-of violation was also a violation of the U.S. Constitution's equal protection rights, it could not be considered. In short, the only Education Clause claims that could survive would be those that looked exactly like federal equal protection claims, effectively merging the two constitutional protections, at least in this instance.

The District Court also adds a causation requirement to the plaintiffs' Education Clause claims. It relies on several pieces of authority while doing so. First, it cites education adequacy cases in New York State, *Maisto v. State*, 196 A.D.3d 104 (2021), and *New York Civil Liberties Union v. State*, 4 N.Y.3d 175 (2005), in which the highest New York court

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[5] The District Court repeatedly discusses *de jure* segregation, but when referring to the target of the plaintiffs' complaint, avoids mentioning *de jure* segregation's universally-acknowledged counterpart: *de facto* segregation. Instead, the court adopts the terminology "racial imbalance." This choice is strange. Some degree of demographic imbalance is inevitable in a diverse society, and while scholars and lawyers can debate the precise line at which imbalance becomes segregation, the plaintiffs in this case are clearly not demanding an end to all demographic unevenness in schools, but only the extreme manifestations, where racial and economic groups have become segregated. One unfortunate implication of this rhetorical choice is to suggest that true segregation cannot exist without segregative intent, a position completely out of step with both scholarly and legal consensus.

held that even "gross educational inadequacies" are sufficient to bring a state Education Clause action, absent a clear showing from the plaintiff of particular polices that caused those inadequacies. Second, the District Court it directly analogized the *Cruz-Guzman* claims to tort claims, arguing that "it is not fair to exact damages from a tortfeasor unless they are to blame; i.e. they caused the injury."

Both of these rationales for adding a causation requirement to the Education Clause collapse the distinction between the Education Clause and other constitutional protections. In this regard, the New York approach differs from the Minnesota approach. New York places onus on plaintiffs to show *why* schools are inadequate – even after conceding that inadequacies exist. But in its previous consideration of *Cruz-Guzman*, the Minnesota Supreme Court stated unequivocally that it falls to the courts themselves to vindicate the rights of Minnesotans:

> If the Legislature's actions do not meet a baseline level, they will not provide an adequate education. 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 whether constitutional requirements have been met and whether appellants' fundamental right to an adequate education has been violated. *Cruz-Guzman*, 916 N.W.2d 1, 12 (2018) (internal citations omitted).

The District Court's comparison to the need to show causality in tort law is also ill-considered. The comparison relies on a U.S. Supreme Court case in which students were found to have been unconstitutionally suspended from school without procedural due process. *Carey v. Piphus*, 435 U.S. 247, 254-5 (1978). However, due process is a broad constitutional protection against government abuse, not an affirmative government duty. Notions of "fairness" are appropriate in cases when plaintiffs are complaining injury from

a particular party. But the *Cruz-Guzman* plaintiffs are not claiming that they were injured by Minnesota; they are asserting that Minnesota has failed to meet an obligation it has set forth for itself in its governing charter.

Following the District Court decision, the Court of Appeals held that a "racially imbalanced" school system in which the imbalance is caused by *de facto* segregation does not constitute a *per se* violation of the Education Clause. The Court of Appeals provides less elaborate rationale for its decision, admitting that it is reluctant to "extend[] existing law" and raising the prudential principle. However, it too leans on equal protection jurisprudence, citing both *Brown* and *Milliken v. Bradley,* 418 U.S. 717 (1974), as evidence that segregation, in the context of constitutional law, means *de jure* segregation. As discussed above, however, these are federal equal protection cases. Here as well, the protections of the Education Clause have been trimmed into the shape of an equal protection claim.

III. Requiring the *Cruz-Guzman* plaintiffs to show intent or causation would frustrate the purposes of the Education Clause and limit the rights of Minnesotans.

It is conceivable, even likely, that racial segregation in Minnesota's system of public schools might give rise to both traditional civil rights violations and Education Clause violations, as the plaintiffs in *Cruz-Guzman* have argued. However, this should not be taken to mean these sets of claims can be understood as analogous to each other. Instead, the interests of Minnesotans are best served by maintaining a clean division between these bodies of law. The Court should hold that *Cruz-Guzman* plaintiffs can demonstrate an

Education Clause violation without any showing of segregative intent, and without showing that any specific state policy resulted in unconstitutional school segregation.

As noted by the District Court and Court of Appeals, this is an area of law in which prior decisions provide limited guidance. One reason it is difficult to find outside guidance is because most modern school segregation jurisprudence focuses heavily on remedy. The equal protection harms of school segregation have been well-established since *Brown*. As such, courts have tended to concentrate their efforts on establishing the federal constitutional boundaries of desegregation programs. *See, e.g.*, *Parents Involved in Community Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (discussing limitations on the use of explicit racial categorization in voluntary integration programs without proof of past intentional discrimination); *Freeman v. Pitts*, 503 U.S. 467 (1992) (considering whether a federal district court could relinquish supervision of a *de jure* segregated district that had not yet achieved full integration); *Board of Educ. v. Dowell*, 498 U.S. 237 (1991) (determining what sort of judicial declaration is necessary to terminate a judicial desegregation decree); *Milliken v. Bradley*, 418 U.S. 717 (1974) (preventing federal district courts from imposing multi-district desegregation remedies absent evidence of intentional discrimination in each district); *Swann v. Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1 (1971) (addressing several questions about permissible federal desegregation remedies and the standard of integration that must be achieved).

This extensive body of law has surprisingly little to say about the questions before the Court today, for the simple reason that in *Cruz-Guzman*, no remedy has been proposed. Plaintiffs have consistently maintained that even if they prevail on their Education Clause

claim, the onus of eliminating the constitutional violation, and the discretion to choose how to do so, remains with the legislature.[6] In previous hearings of this case, this Court has also recognized the initial resolution of an Education Clause claim does not require any sort of judicially-imposed remedy. *Cruz-Guzman*, 916, N.W.2d 1, 9 ("To resolve this question, the judiciary is not required to devise particular educational policies to remedy constitutional violations, and we do not read appellants' complaint as a request that the judiciary do so.").

A few roughly analogous state-law claims exist, although there is a great deal of variation in how states interpret their respective education clauses. The state-law case that provides the most practical guidance is probably the landmark decision in *Sheff v. O'Neill*, 238 Conn. 1 (1996). In *Sheff*, plaintiffs challenged ongoing racial segregation in the schools of Hartford, Connecticut. The *Sheff* plaintiffs relied on Connecticut's right to "substantially equal educational opportunity" – somewhat different than the protections at issue in *Cruz-Guzman*. However, the *Sheff* court interpreted this right as creating an "affirmative constitutional obligation," directly analogous to the affirmative duty in the Minnesota Education Clause. Turning to the questions of causation and intent, the court held that the state's affirmative obligation superseded these requirements:

> [U]nder our law, which imposes an affirmative constitutional obligation on the legislature to provide a substantially equal educational opportunity for all

[6] Although some potential remedies were discussed in a conciliation process, these represented one possible choice out of a vast number of responses, all of which remain available to the legislature. Moreover, those conciliation remedies were to be voluntarily adopted, and were race-neutral, placing them beyond the ambit of most existing desegregation law, which focuses on compulsory court orders and race-conscious remedies.

> public schoolchildren, the state action doctrine is not a defense to the plaintiffs' claims of constitutional deprivation. . . . The fact that the legislature did not affirmatively create or intend to create the conditions that have led to the racial and ethnic isolation in the Hartford public school system does not, in and of itself, relieve the defendants of their affirmative obligation to provide the plaintiffs with a more effective remedy for their constitutional grievances. *Id.* at 23-24.[7]

The *Sheff* court continued on to conclude "in order to provide an adequate an adequate or proper education, our children must be educated in a nonsegregated environment." *Id.* at 53.

A recent Minnesota equal protection case also provides some persuasive guidance on the question of intent. In that case, *Fletcher Properties v. City of Minneapolis*, 947 N.W.2d 1 (Minn. 2020), the Court described a novel standard for evaluating equal protection challenges:

> [T]he principle we apply in analyzing laws subject to rational basis review under the Minnesota Constitution is the same principle applied to such laws under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
>
> But under our precedent, this rule is subject to an important exception: under the equal protection guarantee of the Minnesota Constitution, we hold lawmakers to a higher standard of evidence when a statutory classification demonstrably and adversely affects one race differently than other races, even if the lawmakers' purpose in enacting the law was not to affect any race differently. 947 N.W.2d at 19.

This principle represents a narrow but stark departure from the U.S. Constitution's equal protection jurisprudence, essentially substituting in a "disparate impact" standard and

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[7] *See also*, *id.* at 33 ("Sound principles of public policy support our conclusion that the legislature's affirmative constitutional responsibility for the education of all public schoolchildren encompasses responsibility for segregation to which the legislature has contributed, even unintentionally.").

eliminating the Fourteenth Amendment's intent requirement. In other words, in Minnesota, it partially reverts *Washington v. Davis*, 426 U.S. 229 (1976).[8]

It would be odd indeed if Minnesota explicitly loosened intent requirements in equal protection jurisprudence, but retained them in Education Clause jurisprudence. Such an outcome would lead to the strange and impractical result that *de facto* segregation would merit heightened scrutiny in an equal protection claim, but only *de jure* segregation would violate the Education Clause. *Fletcher* demonstrates that state constitutional law need not adhere rigidly to federal precedent, particularly when important interests are at play.

Admittedly, however, none of these previous decisions precisely mirror the claims in *Cruz-Guzman*. In light of that, *amici* urge the Court to decide in the manner that best upholds the fundamental purpose of the Education Clause.

Requiring a demonstration of *de jure* segregation to prove a constitutional violation would defeat the purpose of the Clause: to require the Minnesota legislature to provide K-12 schooling that passes constitutional muster. To the students in Minnesota schools, the precise mechanism by which their school has become deficient is irrelevant. If racially and economically segregated schools are producing poor academic, social, and economic outcomes, the state constitution's mandate that all students are "enabled to acquire an education" is frustrated. *Bd. of Educ. of Sauk Ctr.,* 17 Minn. at 416. It matters little whether

[8] Somewhat strangely, despite extensive discussion of discriminatory intent and federal equal protection law, no lower court has yet raised the fact that intent works differently in Minnesota. (The oversight is particularly ironic given that *Cruz-Guzman*, as a case alleging a racially disparate impact, appears to fall into the narrow exception described in *Fletcher*.)

this deficiency was the product of some far-away official's discriminatory intent. Indeed, for students in deficient schools, the intent of state policymakers is likely unknown – perhaps even unknowable. Those policymakers could be unavailable, retired, or have since died. It would seem bizarre if the daily, ongoing constitutional adequacy of Minnesota schools turned on abstract and potentially unanswerable questions about long-past policy decisions.

Likewise, it would frustrate the mandate of the Education Clause if the Minnesota legislature could shirk its obligation by pleading its lack of ill intent, or even ignorance of current conditions. The legislature's duty to Minnesota students, firmly established in *Skeen* and reaffirmed in earlier proceedings in *Cruz-Guzman*, surely cannot blink into and out of existence, depending on the mental state of policymakers.

Or, put as bluntly as possible: if legislators or other officials did not intend to create inadequate schools, so what? The schools are still inadequate, and the constitution says they can't be.

Similar reasoning applies to the second certified question in this case, on whether causation is a necessary element of an Education Clause claim. If students are languishing in constitutionally deficient schools, by reason of segregation or any other condition, is the state's duty to fix the problem contingent on whether the state can be specifically shown to have *caused* the problem? If the Court were to answer "yes," the legislature and other state entities could plausibly avoid Education Clause obligations by simply refusing to engage in any education policymaking at all. The affirmative mandate described in Article XIII of

the constitution would be nullified – the legislature's duties negated by the legislature's refusal to acknowledge those duties. This, too, defies common sense.

It is worth considering why, as a practical matter, causation is an important part of traditional civil rights claims. Equal protection and due process bind all government bodies in the United States. Prospective plaintiffs can bring these constitutional claims against any local, state, or federal agency, citing virtually any rule, policy, or outcome. But this vast scope of potential claims necessarily contains a tradeoff: in order to assure that every government body isn't liable for every constitutional violation, plaintiffs must clearly establish the culpability of the defendant, by linking the violation to specific acts by the defendant.

This sharply contrasts with the Education Clause. The obligations of the Education Clause are directed at a single entity: the Minnesota state legislature. This, too, creates a tradeoff for plaintiffs. On one hand, the text of the Clause appears to make the legislature strictly liable for the constitutional deficiency of Minnesota public schools, effectively eliminating the need for a showing of causation. On the other hand, this *prevents* prospective plaintiffs from bringing Education Clause claims against any other body. And while plaintiffs can insist that the legislature meet its constitutional obligation to Minnesotans, the exact means by which that obligation is met remains inevitably at the discretion of the legislature. Education Clause plaintiffs, unlike traditional civil rights plaintiffs, cannot take precise aim at specific offending policies that they dislike.

It is possible to imagine an Education Clause written differently, so that the plain meaning supports intent- or causation-based limitations on its legislative mandate. Instead

of the current statement that "it is the duty of the legislature to establish a general and uniform system of public schools," the provision could be rephrased to create a restriction: "the legislature *shall not prevent* the establishment of a general and uniform system of public schools." Such a construction might allow the legislature to argue, as a colorable defense, that it had not intended – or did not cause – the constitutional inadequacy of Minnesota schools. The existing language, however, provides no such escape.

Intent and causation are important considerations when the law asks who is to blame for a particular circumstance. But the duties imposed on the Minnesota legislature by the state constitution have nothing to do with blame. The question in an Education Clause claim is not whether the legislature is at fault, but whether the legislature has met its obligations. If Minnesota schools are segregated, it has not.

CONCLUSION

School segregation produces many victims. It is a quirk of history that most of those victims have been forced to rely on equal protection law to seek redress. Funneling desegregation litigation through that comparatively narrow legal pathway has limited the circumstances in which effective remedies are available, even in cases where the ongoing harms of segregation remain perfectly clear. In most segregation lawsuits to date, plaintiffs who were unable to show that the harms were the result of a specific segregative intent, or could not identify policies which had caused segregation, were simply out of luck.

But this need not be the case in Minnesota. The Minnesota Constitution – unlike the U.S. Constitution – directly imposes criteria on the state public education system: that the system be "general and uniform," 'thorough and efficient," and "adequate." We urge the

Court to protect the rights of Minnesotans by reaffirming the plain reading of the Education Clause, as a protection against educational inadequacy, regardless of how that inadequacy came into existence. Therefore, we urge the court to find the condition of segregation, whether *de jure* or *de facto*, sufficient to establish a violation of the Education Clause.

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By: /s Will Stancil
Will Stancil (#0397860)
Minneapolis, Minnesota 55403

Attorney for Amici Curiae

CERTIFICATE OF BRIEF LENGTH

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Date: February 2, 2023

By: /s Will Stancil

Will Stancil (#0397860)
[redacted]
Minneapolis, Minnesota 55403
[redacted]
[redacted]

Attorney for Amici Curiae