FILED
February 27, 2023
OFFICE OF
APPELLATE COURTS

NO. A22-0118

STATE OF MINNESOTA
IN SUPREME COURT

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

Appellants,

vs.

State of Minnesota, et al.,

State Respondents,

and

Higher Ground Academy, et al.,

Intervenors-Respondents.

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LEGAL ISSUES

I. Is the Education Clause of the Minnesota Constitution violated by a racially imbalanced school system, regardless of the presence of *de jure* segregation or proof of a causal link between the imbalance and the actions of the state?

The court of appeals correctly answered the district court's certified question in the negative.

Authority: Minnesota Constitution, art. XIII, § 1
Cruz-Guzman v. State, 916 N.W.2d 1 (Minn. 2018)
Skeen v. State, 505 N.W.2d 299 (Minn. 1993)
State ex rel. Klimek v. Sch. Dist. No. 70, Otter Tail County, 283 N.W. 397 (Minn. 1939)

II. If Appellants do not prove the presence of a *de jure* segregated system, what must they prove for a court to find an Education Clause violation?

The lower courts did not answer this question because Appellants claimed student demographics alone were sufficient. To the extent this Court agrees that Appellants have not shown a *per se* violation of the Education Clause through demographics, and it agrees to offer guidance to the district court on evaluating Appellants' Education Clause claim, it should reiterate that some sort of "qualitative assessment" is required to show that students are, in fact, being denied the opportunity to acquire an adequate education, or prove that there is unlawful *de jure* segregation.

Authority: *Cruz-Guzman v. State*, 916 N.W.2d 1 (Minn. 2018)
Bd. of Educ. of Sauk Centre v. Moore, 17 Minn. 412 (1871)
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III. Are there genuine issues of material fact that preclude awarding Appellants partial summary judgment prior to the close of discovery and the deadline for expert disclosures?

The district court correctly determined there were genuine issues of material fact that precluded awarding partial summary judgment to Appellants on their Education Clause claim. In fact, the district court noted that Appellants had not even advanced their theory that student demographics denied them the opportunity to receive an adequate education.

Authority: *J.E.B. v. Danks*, 785 N.W.2d 741 (Minn. 2010)
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STATEMENT OF THE CASE

State Respondents are committed to giving Minnesota students of every race, income, religion, and zip code a world-class education and an equal opportunity to succeed. Not only is that what is right for our State's young people, but it is also what is right for our future economy and democracy. State Respondents acknowledge that there are daunting achievement gaps among Minnesota learners.[1] The Governor and legislative leaders have committed to doubling down on previous efforts to address those disparities, including adding billions of dollars in additional funding to support a variety of programs intended to raise the academic performance and well-being of disadvantaged students.[2]

In other words, State Respondents share Appellants' goal of improving the educational outcomes for students of color and those from lower income families. But Appellants' request in this Court is misguided and should be directed to the legislature, where it would compete with the opinions of many other advocates on how to address the achievement gaps. Appellants ask this Court to hold that the Education Clause requires every school within a district to have a racial and socioeconomic makeup that closely

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[1] *See, e.g.*, Rob Grunewald & Anusha Nath, *A Statewide Crisis: Minnesota's Education Achievement Gaps*, FED. RESERVE BANK OF MINNEAPOLIS 3 (2019), https://perma.cc/JG9A-5UTW (noting "no gap between urban and rural school districts on standardized test scores and graduation rates" but "a large variation in achievement gaps" among students of different races, ethnicities, and socioeconomic status).

[2] *See, e.g.*, *One Minnesota Budget*, OFF. OF GOVERNOR TIM WALZ, https://perma.cc/5GUJ-AMGC; Brian Bakst, *Walz Proposes Big Increases in School, Child Care Spending*, MPR NEWS (Jan. 18, 2023), https://perma.cc/9YK6-K799; Becky Z. Dernbach, *Top Minnesota Democrats Pledge 'Substantial Increase' in School Funding*, SAHAN JOURNAL (Nov. 17, 2022), https://perma.cc/2F7T-8MJ8.

mirrors the makeup in the district as a whole. This Court should decline because a) nothing in the text of the Education Clause or the prior rulings of this Court supports it; b) no other state has interpreted similar constitutional language to mandate a particular demographic mix; and c) Appellants have made no effort to prove that the current demographics of schools are denying students the opportunity to receive an adequate education.

Moreover, Appellants ask this Court to declare a constitutional violation not only before a trial on the merits but even before discovery has been completed. None of the experts needed to understand this complex area of the law have opined about the opportunities provided to schoolchildren.

The Court should affirm the rulings of the two lower courts that demographics alone are insufficient to establish a violation of the Education Clause and remand the case to district court.

FACTUAL AND PROCEDURAL HISTORY

A. Minnesota's Current Law Regarding Integration Calls for Reducing Disparities.

The State of Minnesota has sought to reduce racial isolation (*de facto* segregation) for decades, regardless of its cause or effect. It has voluntarily and affirmatively pursued integration as a matter of public policy, initially through administrative rules and, since 2013, also in statute. Since 1988, the legislature has appropriated more than $1.9 billion to support school integration, including approximately $167 million for the FY22-23 biennium. During that time, the legislature appropriated nearly $400 million to both the Minneapolis and Saint Paul school districts to support integration activities, in addition to

desegregation transportation aid. Tim Strom, *Minnesota School Finance: A Guide for Legislators*, MN HOUSE RSCH. 142-43 (Oct. 2022), https://perma.cc/K4J6-QQD3.

Currently, integration efforts are mandated by Section 124D.861, which has been in effect for ten years. It provides:

> The "Achievement and Integration for Minnesota" program is established to pursue racial and economic integration and increase student academic achievement, create equitable educational opportunities, and reduce academic disparities based on students' diverse racial, ethnic, and economic backgrounds in Minnesota public schools.

Minn. Stat. § 124D.861, subd. 1(a) (2022). As part of that program, the commissioner of the Minnesota Department of Education ("MDE") is tasked with evaluating the "efficacy of district plans in reducing the disparities in student academic performance." *Id.*, subd. 5. The law also requires the commissioner to "propose rules relating to desegregation/integration and inclusive education," Minn. Stat. § 124D.896 (2022), and such administrative rules promoting racial integration have been present for decades. Minn. R. ch. 3535 (2021).

In short, the State encourages integrative choices through its Achievement and Integration Rule and subsidizes these choices with added funding. *See* Minn. Stat. § 124D.861 (2022) (Achievement and Integration policy), *id.* § 124D.862 (2022) (Achievement and Integration funding); *id.* § 124D.87 (2022) (Achievement and Integration transportation aid); Minn. R. 3535.0100 (affirming State's commitment to integration; encouraging racially balanced schools and inter-district cooperation); *see also* Doc. 356 at 83 ("[T]he issues of school desegregation and integration have been a part of Minnesota education policy for decades.").

B. The Policy Dispute in 1999 Was Resolved by an Administrative Law Judge.

Appellants ignore the integration efforts described above and focus significant attention on a fight over education policy that happened more than twenty years ago. App. Br. 15-22. That story is incomplete without its ending—resolution in the State's favor by an Administrative Law Judge.

In 1999, the Office of Administrative Hearings approved a new integration rule over the objections of individuals affiliated with Appellants who urged adoption of a different rule. In rejecting these comments and approving MDE's proposed rule, the judge noted the following, among other things:

- MDE satisfied the rulemaking requirement to "seriously consider[ ]" any alternative methods for achieving the purpose of the proposed rule" pursuant to Minn. Stat. § 14.131(4).

- "An agency is entitled to make choices between possible standards as long as the choice it makes is rational. If commentators suggest approaches other than that selected by the agency, it is not the proper role of the Administrative Law Judge to determine which alternative presents the 'best' approach."

- MDE's detailed consideration and ultimate rejection of the 1994 Roundtable proposal "complied with the statutory mandate to consider alternatives and . . . met the requirements of Minn. Stat. § 14.31."

- MDE demonstrated its statutory authority to adopt the proposed rules and fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50(i) and (ii).

- MDE demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50(iii).

Doc. 356 at 178-79, 192.

C. Appellants' Education Clause Claim Lacks Factual Development, Despite Eight Years of Litigation.

Appellants commenced this class action lawsuit in November 2015 on behalf of students who are currently enrolled or who expect to enroll in the Minneapolis and Saint Paul public school districts. Doc. 1 at 1-2; Add. 20. Appellants alleged the State of Minnesota, Minnesota Department of Education, Minnesota Commissioner of Education, Minnesota House of Representatives, and Minnesota Senate (collectively, "State Respondents") denied these students the right "to receive an adequate education" under the Education Clause of the Minnesota Constitution. Doc. 1 at 1-2. Three charter schools, Higher Ground Academy, Friendship Academy of the Arts, and Paladin Career Technical High School, successful intervened as defendants. Doc. 50.

After this Court ruled on justiciability and remanded the case, the district court certified a class of Appellants as all Minneapolis and Saint Paul public school children enrolled "in a school . . . 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 priced meals." Doc. 239 at 17; Add. 20. The parties engaged in written discovery but did not conduct any depositions, other than class depositions. To date, no party has identified any expert witnesses or produced any expert reports. From 2019-2021, the parties engaged in a multi-year mediation effort that was ultimately unsuccessful when the legislature did not pass the parties' agreed-upon bill. Add. 4.

In 2021, Appellants brought a motion for partial summary judgment focused only on their Education Clause claim. Appellants did not bring a motion related to their other

claims. App. Br. 4 ("Only the Education Clause violation is at issue in this appeal."). Appellants focused their argument on the language of a footnote in this Court's 2018 jurisdictional decision, arguing that the text along with the demographic makeup of Twin Cities public schools made out an ipso facto violation of the Constitution.

As part of their response to Appellants' motion, State Respondents submitted an affidavit, consistent with Minn. R. Civ. P. 56.04, that indicated the discovery that needed to occur before the court could rule on the Education Clause claim. Doc. 371 at 20; Add. 36. As explained in that affidavit, the State Respondents plan to produce reports from one or more experts concerning the requirements for providing students with the opportunity to receive an adequate education. They will also produce one or more expert reports to respond to any expert witnesses Appellants identify. The district court correctly noted the State Respondents deserved to have the opportunity to complete discovery, including the exchange of expert reports.[3] Doc. 371 at 20 n.15; Add. 36 n.15.

D. The Lower Courts Rejected Appellants' Interpretation of the Education Clause.

On December 6, 2021, the district court (Fourth Judicial District Judge Susan Robiner) denied Appellants' partial summary judgment motion, rejecting Appellants' argument that racial imbalance alone violates the Education Clause regardless of the State's role (or not) in creating that imbalance. Doc. 371 at 23; Add. 39. Because the district

[3] The district court referred to certain submissions by Appellants as having come from "experts." Doc. 371 at 20; Add. 36. These individuals may eventually be identified as expert witnesses who produce reports for Appellants, but so far no party has identified any experts consistent with Minn. R. Civ. P. 26.01(b), because the deadline for doing so in the scheduling order has not been reached.

court, for purpose of the motion, "accept[ed] the premise built into [Appellants'] motion," *i.e.*, "that the injury, the inadequacy, *is* the racial imbalance," Doc. 371 at 20; Add. 36, it did not consider whether Appellants must also prove that some non-specified imbalance caused students to be denied the opportunity to receive an adequate education. In any case, Appellants did not produce evidence in support of their motion; they claimed it was unnecessary to do so. *Id*.

The district court also recognized there existed genuine, material factual disputes precluding partial summary judgment, especially prior to the completion of discovery and the submission of expert reports. Doc. 371 at 18-20; Add. 34-36. It determined there were genuine issues of material fact regarding Appellants' allegations that State Respondents engaged in intentional discrimination. Doc. 371 at 20; Add. 36. Indeed, the district court found: "The factual record is wholly inadequate to establish *de jure* segregation by Defendants as a matter of undisputed material fact. There is no evidence at all regarding intent *vel non* related to most of the challenged state actions . . ." Doc. 371 at 18; Add. 34.

In denying partial summary judgment, the district court found that the State Respondents introduced "countervailing evidence" regarding alleged intentional discrimination. Doc. 371 at 19; Add. 35. This included evidence related to the MDE's rulemaking efforts in 1999 and 2015-2016, the integration rules the State has adopted, and the significant resources it has devoted to promote integration in Minnesota schools. Doc. 356 at 79-196; Minn. Stat. § 124D.861. Recognizing the importance and novelty of the issue, the district court certified the following question: "Is the Education Clause of the Minnesota Constitution violated by a racially-imbalanced school system, regardless of the

presence of de jure segregation or proof of a causal link between the racial imbalance and the actions of the state?" Doc. 371 at 24; Add. 40 (internal footnote omitted).

On September 26, 2022, the court of appeals answered the certified question in the negative. Add. 16. It did not otherwise rule on Appellants' partial summary judgment motion. This Court accepted Appellants' petition for review.

STANDARD OF REVIEW

Appellants' exclusive claim on appeal involves interpreting the Education Clause of the Minnesota Constitution and this Court considers issues of constitutional interpretation de novo. *Shefa v. Ellison*, 968 N.W.2d 818, 825 (Minn. 2022). It applies the same rules it utilizes when interpreting statutes "to the construction of the Minnesota Constitution." *Id*. (quoting *State v. Schmid*, 859 N.W.2d 816, 820 (Minn. 2015)).

The Court begins its analysis of the Constitution by considering "the text itself." *Schroeder v. Simon*, No. A20-1264, __ N.W.2d __, 2023 WL 2000320, at *3 (Minn. Feb. 15, 2023). The Court first determines "whether the language of the provision is unambiguous," and it will so find when the language "is not susceptible to more than one reasonable interpretation." *Id*. (quoting *Kahn v. Griffin*, 701 N.W.2d 815, 825 (Minn. 2005)). If the language is unambiguous, the Court does "not apply any other rules of construction." *Id*. However, "when the language of a constitutional provision is subject to more than one reasonable interpretation, [the Court tries] to resolve the ambiguity by 'looking to the history and circumstances of the times and the state of things existing when the constitutional provisions were framed and ratified in order to ascertain the mischief

addressed and the remedy sought by the particular provision.'" *Id.* (quoting *Kahn*, 701 N.W.2d at 825).

The presence of a certified question and summary judgment decision also call for de novo review. "On petition for review, the question originally certified is a question of law that [this Court] review[s] de novo." *Hoffman v. N. States Power Co*., 764 N.W.2d 34, 42 (Minn. 2009). When reviewing an order that denied summary judgment, this Court should "determine if there are genuine issues of material fact in dispute and whether the trial court erred in its application of the law." *Baker v. Chaplin*, 517 N.W.2d 911, 914 (Minn. 1994). In doing so, the Court consider "the evidence in the light most favorable to the nonmoving party" and does "not weigh facts or make credibility determinations." *Kenneh v. Homeward Bound, Inc*., 944 N.W.2d 222, 228 (Minn. 2020). When reasonable persons can reach different conclusions based on the evidence presented, "summary judgment must be denied." *Id.*

ARGUMENT

Minnesota's Constitution requires the legislature to establish a "general and uniform system of education" that provides students with the opportunity to receive "an adequate education" that allows them "to discharge their duties as citizens intelligently." *Cruz-Guzman v. State*, 916 N.W.2d 1, 11-12 (Minn. 2018). This Court has repeatedly held the legislature has fulfilled its duties under the Education Clause. In this very case, it stated that for the judiciary to answer the yes or no question Appellants pose, "some level of qualitative assessment is necessary to determine whether the State is meeting its obligation to provide an adequate education." *Id.* at 12.

Appellants ask that this Court find a *per se* violation of the Education Clause based solely on student demographics, and to create a constitutional standard that no school should vary more than 20% from the racial or socioeconomic demographic data of the district where it is located. The Court should reject Appellants' proposal and affirm the decisions of the lower courts for three primary reasons.

First, the plain text of the Education Clause does not support Appellants' reading, as it makes no mention of student demographics. Significantly, Appellants fail to explain why the "system" established by the legislature is not "general and uniform." Second, to the extent there is ambiguity about the text of the Education Clause, the constitutional history shows the drafters favored allowing the legislature to fill in the details of the system of public schools. This is exactly what the legislature has done, including by promoting integration. In addition, Appellants' proposed interpretation leads to the type of absurd results and constitutional conflict that this Court avoids.

To the extent this Court is inclined to entertain legal issues beyond the certified question, two are fully briefed and helpful. The first is clarifying that there are two paths by which Appellants may prove a violation of the Education Clause in the district court: proving the State established a *de jure* segregated educational system; or proving the State created a system that denied Appellants the opportunity to receive an adequate education.

The latter path requires Appellants to prove they have been denied the opportunity to receive an adequate education with reference to the instruction and services available.[4]

The last issue remaining, assuming this Court finds no *per se* violation of the Education Clause, is to affirm the denial of summary judgment to Appellants. The district court correctly found there are material issues of fact in dispute precluding a finding of intentional segregation and that no evidence was introduced regarding educational adequacy.

I. THIS COURT HAS REPEATEDLY INTERPRETED THE EDUCATION CLAUSE TO BE FOCUSED ON THE DUTY OF THE LEGISLATURE TO ENACT A STATEWIDE PUBLIC SCHOOL SYSTEM THAT PROVIDES THE OPPORTUNITY FOR STUDENTS TO RECEIVE AN EDUCATION THAT ENABLES THEM TO PERFORM THEIR DUTIES AS CITIZENS.

The Education Clause of the Minnesota Constitution imposes a duty on the legislature to establish a "general and uniform system of public schools." MINN. CONST. art. XIII, § 1. The Clause in its entirety reads as follows:

> 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.

Id. The Clause does not mention the demographic mix of students, whether by race, gender, religion, sexual orientation, socioeconomic or disability status, or any other characteristic. *Id*.

[4] State Respondents intend to propose a set of constitutional requirements for establishing a general and uniform system that provides students with the opportunity to receive an adequate education at the district court over the course of the ongoing litigation.

In applying the Clause, this Court has focused on the legislative duty to create a statewide system with sufficient educational offerings to all students. The Education Clause ensures that there is "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 Centre v. Moore*, 17 Minn. 412, 416 (1871). This Court has held "there is a fundamental right, under the Education Clause, to a 'general and uniform system of education' which provides an *adequate* education to all students in Minnesota." *Skeen v. State*, 505 N.W.2d 299, 315 (Minn. 1993) (emphasis added).

This Court has stated that the phrases "general and uniform" and "thorough and efficient" in the Education Clause should be interpreted as applying to the system as a whole. *Id.* at 310-11. "Construing 'uniform' as meaning 'identical' (or 'nearly identical') would be inconsistent with the plain reading of the Education Clause as well as this court's and other state court's interpretation of similar phrasing." *Id*. at 311. Simply put:

> The rule of uniformity contemplated by this constitutional provision which the legislature is required to observe, has reference to the *system* which it may provide, and not to the district organizations that may be established under it. These may differ in respect to size, grade, corporate powers and franchises, as seem to the legislature best . . . but the principle of uniformity is not violated, if the *system* which is adopted is made to have a general and uniform application to the entire state, so that the same grade or class of public schools may be enjoyed by all localities similarly situated, and having the requisite conditions for that particular class or grade.

Id. at 310 (quoting *Curryer v. Merrill*, 25 Minn. 1, 6 (1878)); *see also Melby v. Hellie*, 80 N.W.2d 849, 852 (Minn. 1957) (rejecting the argument that a "general and uniform system of public schools . . . must mean 'general and uniform' in Access and in Quality").

This Court has never interpreted the Education Clause to require any particular mix of students.

In interpreting the Clause, this Court has also been mindful of separation-of-powers principles. Earlier in this case, this Court concluded it would be appropriate for "the judiciary to answer a yes or no question—whether the Legislature has violated its constitutional duty to provide 'a general and uniform system of public schools' that is 'thorough and efficient' . . . and 'ensures 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 9. It distinguished this sort of determination from "particular educational policies" that belong to the other branches of government. *Id.* at 9-10.

II. APPELLANTS ASK THE COURT TO EXPAND THE EXISTING INTERPRETATION OF THE EDUCATION CLAUSE TO REQUIRE EACH SCHOOL MAINTAIN RACIAL AND SOCIOECONOMIC BALANCES MIRRORING ITS DISTRICT.

Despite this Court's 2018 guidance that educational policy should not be determined in the judicial branch, Appellants' summary judgment motion squarely asked the courts to side with Appellants on a particular question of education policy. As the district court observed, Appellants did not base their Education Clause claim on evidence that they have been denied the opportunity to acquire an adequate academic education. Doc. 371 at 23; Add. 39 ("Plaintiffs have *not* advanced their theory, still present in their pleadings, that racially-imbalanced schools result in such poor academic outcomes that they violate the state's Education Clause."). Rather, they contended there is a *per se* constitutional violation of the Education Clause based solely on various demographic parameters that

Appellants identified, regardless of the quality of teachers those students may have, the funding and support services that may be provided to their schools, and how well those students perform academically. Appellants ask this Court to recognize a *per se* violation of the Constitution based solely on student demographics. This would force the legislature and all education professionals who design and administer Minnesota's complex educational system to prioritize racial and socioeconomic demographic mix over all other policy goals.

Recognizing that they must proffer some test for what level of demographic "imbalance" is unconstitutional, Appellants ask the Court to adopt the following test:

> An individual school is unconstitutionally constituted if either of the following is true:
>
> 1. its percentage of students of color: 1) is 15 (or 20) percent greater than the percentage of those students in the school district; or 2) is greater than 80%; or
> 2. its percentage of students receiving free and reduced price lunch: 1) is 15 (or 20) percent greater than the percentage of those students in the school district; or 2) is greater than 80%.

App. Br. 8 n.3 (offering Appellants' definition of segregation), 46 (asking the Court to hold segregation violates the Clause). Appellants offer no studies or support for these particular percentages having significance to students' learning. *See generally* App. Br. Moreover, Appellants do not identify how many schools must be out of balance, in how many school districts, before the entire State system becomes unconstitutional in their view. Nor do

Appellants suggest how this proposed test should be adjusted over time to account for the likely changes in demographics in our State or changes in data available.[5]

Notably, none of the three amici who submitted briefs in support of Appellants' position adopt any part of the test above. Nor do they offer an alternate test. In fact, at least two amici do not support Appellants' basic argument that *de facto* segregation violates the Education Clause. *See*, *e.g.*, ACLU Br. at 14-15 ("The Court need not go so far as concluding that *de facto* segregation is a *per se* violation of the Education Clause" and stating that "the charter school intervenors in this case" somehow "stand distinct" from other schools despite their percentage of students of color and despite the requirement for a "general and uniform system of public schools"); ELC Br. at 7 (eschewing a *per se* violation based on demographics and entirely adopting the *Forslund v. State* approach requiring Appellants to prove that some imbalance "demonstrate[s] that the legislature *has failed or is failing* to provide an adequate education"); *c.f.* Minn. L. Profs. Br. at 21 ("If racially and economically segregated schools *are producing poor academic, social, and economic outcomes*, the state constitution's mandate . . . is frustrated.") (emphasis added).

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[5] Governor Walz's budget proposal currently includes universal meals in schools. *See* Eder Campuzano, *Free School Meals Would Be Standard In Minnesota Under Proposed Legislation*, STAR TRIBUNE (Jan. 11, 2023), https://perma.cc/SP26-EVAG. A bill to provide free meals has already passed the House. Brian Bakst, *As Hunger Rises in Minnesota, House Passes School Meals For All Bill*, MPR NEWS (Feb. 9, 2023), https://perma.cc/HZ4M-SUK2. If passed it is likely that the State would stop collecting data on the percentage of students qualifying for free and reduced-price meals.

III. APPELLANTS OFFER NO SUPPORT FOR INTERPRETING THE PLAIN TEXT OF THE EDUCATION CLAUSE AS REQUIRING ANY PARTICULAR BALANCE OF STUDENT DEMOGRAPHICS.

A plain reading of the Education Clause does not support Appellants' *per se* claim. As previously noted, the Education Clause does not mention the demographic mix of students, whether by race, gender, religion, sexual orientation, socioeconomic or disability status, or any other characteristic. In addition, the phrase "general and uniform" modifies the word "system," yet Appellants make no effort to discuss the statewide system at all. Finally, Appellants' reading conflicts with this Court's previous interpretations of the Clause.

A. The Language of the Education Clause Is Unambiguous and Its Plain Meaning Does Not Support Requiring Any Specific Student Demographics.

Appellants do not contend, because they cannot, that the Education Clause has anything to say about the demographics of students in schools in the absence of *de jure* segregation. *See Schroeder*, 2023 WL 2000320, at *3 (noting that the constitution did not use the words "one might reasonably expect if the constitutional convention delegates and the voters who approved the constitution" intended that result). Instead, they rely on the Clause's phrase "general and uniform" along with a single footnote from this Court's earlier opinion to fundamentally change this State's education jurisprudence. They also cite decisions from other states whose constitutions differ from Minnesota's. Appellants have not met their burden to establish the plain language of the Education Clause mandates any specific student demographics. *See Sheridan v. Comm'r of Revenue*, 963 N.W.2d 712, 716 (Minn. 2021) (noting heavy burden on party challenging constitutionality).

Again, the Clause states:

> 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.

MINN. CONST. art. XIII, § 1.

Critically, the word that follows "general and uniform" is "system." As this Court made clear in *Skeen*, "system" refers to statewide characteristics of the education program, not anything on the district or smaller level. 505 N.W.2d at 310. That description aligns with the dictionary definition of "system," which is "a regularly interacting or interdependent group of items forming a unified whole" or "a group of devices or artificial objects or an organization forming a network especially for distributing something or serving a common purpose." *See System*, MERRIAM-WEBSTER, https://perma.cc/2S7T-FLGA.

This Court has previously acknowledged that districts may vary in what they offer students. In *Klimek* it held the "general and uniform" provision of the Education Clause was not violated because some school districts offered students free transportation and others did not. *State ex rel. Klimek v. Sch. Dist. No. 70, Otter Tail Cnty.*, 283 N.W. 397, 398 (Minn. 1939). In that case, an eight-year-old boy had to choose between walking 4 ½ miles along a road or 2 ½ miles through fields in order to get to school in northwest Minnesota because his school district did not provide free transportation. *Id*. Nevertheless, this Court held that the State had established a constitutional educational system and that how that system was executed at individual school districts could differ. *Id*. at 399.

Despite the Clause's focus on the "system," Appellants focus exclusively on two school districts—Minneapolis and Saint Paul. App. Br. 8-12. Appellants do not explain how the statewide public school system that the legislature has a duty to establish is violated if certain schools in Minneapolis and St. Paul do not adhere to the many "yardsticks" they provide to evaluate constitutional compliance. Appellants ignore the impact of their arguments on all schools outside the Twin Cities altogether. Indeed, Appellants seek to impose a *non-uniform* reading of the "general and uniform system of public schools" when they propose the Court should develop a district-by-district criteria for the allowable proportion of students of color or those receiving free or reduced priced meals.

B. There Is No Indication That This Court Intended to Dramatically Change Education Clause Jurisprudence with Its Earlier Footnote.

Appellants rely on a single sentence in a footnote of the earlier opinion in this case to support their *per se* theory. App. Br. 41-44. But that footnote cannot bear the weight that Appellants place on it.

Because this Court's previous opinion arose from the Rule 12 context, it was not limited to Appellants' Education Clause claim, and instead addressed all their claims, including those arising out of the Equal Protection and Due Process clauses. The language giving rise to the footnote appears in the Equal Protection and Due Process section of the opinion and states the uncontroversial proposition that "[c]laims based on racial segregation in education are indisputably justiciable." *Cruz-Guzman*, 916 N.W.2d at 10. In the accompanying footnote, this Court noted that a racial segregation claim was

justiciable whether it was brought under the Equal Protection Clause or the Education Clause. *Id.* at 10 n.6 (citing *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954)). In that context, the opinion commented that "a *segregated* system of public schools is not 'general,' 'uniform,' 'thorough,' or 'efficient.'" *Id.* (emphasis added).

The citation to *Brown* informs the meaning of "segregated" used in the footnote. In *Brown*, the Supreme Court's use of the term "segregated" referred to laws that *prohibited* children of color from attending schools attended by white students. 347 U.S. at 487-88. As such, the laws intentionally established a *system* that was not general or uniform. That is not the case here. Indeed, the opposite is true. Minn. Stat. § 124D.855 (2022) (Minnesota "does not condone separating school children of different socioeconomic, demographic, ethnic, or racial backgrounds into distinct public schools").

Under *Brown* and its progeny, a system that establishes *de jure* segregated schools violates the federal Equal Protection clause. *Brown*, 347 U.S. at 495. Later cases make clear, moreover, that "segregation" claims under *Brown* require the segregation result directly from state action. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 736 (2007) (plurality opinion) ("The distinction between segregation by state action and racial imbalance caused by other factors has been central in our jurisprudence in this area for generations."); *Freeman v. Pitts*, 503 U.S. 467, 495 (1992) ("Where resegregation is a product not of state action but of private choices, it does not have constitutional implications."). *Brown* did not concern Minnesota's (or any other state's) Education Clause, nor did it implicate the type of segregation Appellants complain of in this lawsuit.

The State has no reason to believe this Court would have used a single line in a footnote on justiciability to stake out the extraordinary position Appellants claim.[6] Indeed, the last sentence of the footnote re-emphasizes that this Court was not breaking new ground. It says that "courts are well equipped to decide whether a school system is segregated, and have made such determinations since *Brown*, 347 U.S. at 495." *Cruz-Guzman*, 916 N.W.2d at 10 n.6; *see also Jenkins v. Twp. of Morris School Dist.*, 279 A.2d 619, 627 (N.J. 1971) ("Brown itself did not deal with the latter or De facto type of segregation and the very recent Supreme Court decisions in sweeping furtherance of Brown may be fairly viewed as confined to situations where there had been De jure segregation through dual public school systems.").

C. No Other State Has Interpreted Similar Constitutional Language to Mandate Particular Demographics.

In support of their contention that racial isolation alone (without *de jure* segregation) is sufficient to find an Education Clause violation, Appellants (and certain amici) rely on cases from Connecticut, New Jersey, and California, as well as some older U.S. Supreme

[6] As the district court accurately summarized: "[T]o state the obvious, the footnote was contained in a justiciability analysis in an opinion that never addressed the substantive elements of an Education Clause claim and was never asked to." Doc. 371 at 14; Add. 30. In answering the certified question, the court of appeals acknowledged that "*de jure* segregation of the type described in *Brown* [*v. Board of Education*] would be a *per se* violation of the Education Clause of the Minnesota Constitution" but correctly concluded that "[a] racial imbalance due to *de facto* segregation is beyond the scope of footnote 6 of [this Court's] prior opinion" so that "a racial imbalance among schools within a school district or school system due to *de facto* segregation would not be a *per se* violation of the Education Clause. " Add. 14-15.

Court cases.[7] App. Br. 37, 49; ACLU Br. 11; Minn. L. Profs. Br. 19-20; ELC Br. 4, 11-12. Those cases either rely on express constitutional mandates of integration or have very distinguishable facts.

The Connecticut and New Jersey cases do not support mandating strict demographic balances in Minnesota schools. Connecticut and New Jersey amended or rewrote their constitutions during the 20th Century to specifically address *de facto* segregation as well as *de jure* segregation. *See* CONN. CONST. art. I, § 20 ("No person shall be denied the equal protection of the law *nor be subjected to segregation* or discrimination in the exercise and enjoyment of his civil or political rights because of religion, race, color, ancestry or national origin.") (emphasis added); N.J. CONST. art. I, § 5 ("No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of civil or military right, *nor be segregated in the militia or public schools*, because of religious principles, race, color, ancestry or national origin.") (Emphasis added.).[8]

In the cited cases, the supreme courts in those states considered those anti-segregation provisions when evaluating their school systems. *Sheff*, 678 A.2d at 1281-82 ("For Connecticut schoolchildren, the scope of the state's constitutional obligation to provide a substantially equal educational opportunity is informed and amplified by *the highly unusual provision* . . . that prohibits segregation not only indirectly, by forbidding

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[7] None of the cited cases required balance based on socioeconomic status. *See generally Sheff v. O'Neill*, 678 A.2d 1267 (Conn. 1996); *Crawford v. Bd. of Educ.*, 551 P.2d 28 (Cal. 1976); *Booker v. Bd. of Ed. of Plainfield*, 212 A.2d 1 (N.J. 1965)

[8] Hawaii also amended its constitution to add an anti-segregation provision but it solely concerns the military. HAW. CONST., art. I, § 9.

discrimination, but directly, by use of the term 'segregation.'") (emphasis added); *Booker*, 212 A.2d at 8 (citing to the state's anti-segregation provision in its constitution to support "New Jersey's strong policy against racial discrimination and segregation in the public schools").[9] Minnesota's Constitution has no comparable anti-segregation language.

In addition, the United States Supreme Court has recently rejected the interpretation Appellants (App. Br. 36-37) wish to give to its older opinions. *See Parents Involved*, 551 U.S. at 721 n.10 (majority opinion) (rejecting dicta from *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971), and the "equitable considerations" of *Bustop, Inc. v. L.A. Bd. of Educ.*, 439 U.S. 1380 (1978)).[10]

The cases Appellants cite to support their reading of the Education Clause are not persuasive because they either interpret different constitutional language or have been interpreted as not supporting Appellants' position. In sum, the plain language of the

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[9] The 1976 case from California cited by Appellants was based on the "state['s] equal protection principles" and followed "a lengthy trial." *Crawford*, 551 P.2d at 31. Even while affirming judgment for the plaintiffs in that case, the court stated it did "not believe such racial or ethnic balance or even approximate racial or ethnic balance is required as a matter of constitutional law." *Id*. at 43. In any case, the ruling prompted "an amendment to the Due Process and Equal Protection Clauses of the [California] Constitution" that "conform[ed] the power of state courts to order busing to that exercised by the federal courts under the Fourteenth Amendment." *Crawford v. Bd. of Educ. of City of L.A.*, 458 U.S. 527, 531-32 (1982). In the subsequent U.S. Supreme Court case, the court rejected a challenge to the amendment and "[t]he benefit it [sought] to confer—neighborhood schooling." *Id*. at 537.

[10] In his *Parents Involved* dissent, Justice Stevens explained the difference between the cases cited by Appellants and more recent decisions: "The Court has changed significantly since it decided [*Swann, Bustop*, and] *School Comm. of Boston* in 1968." 551 U.S. at 803 (Stevens, J., dissenting).

Education Clause does not support an interpretation that schools must have a particular demographic mix to be constitutional.

IV. To the Extent the Language of the Education Clause Is Ambiguous, Appellants' Reading Contradicts the Historical Context and Creates Absurd Results and Constitutional Conflict.

If this Court concludes there are multiple reasonable interpretations of "general and uniform" with respect to student demographics, it must employ its tools of constitutional interpretation, starting with the historical evidence of intent behind the Clause. *See Schroeder*, 2023 WL 2000320, at *3.

A. The Drafters of Minnesota's Constitution Intentionally Left the Details to the Legislature.

The history of Minnesota's Constitution involves two drafts, one from a Democratic convention and the other from a Republican convention. *Id.* at *6 n.8. In *Skeen*, this Court noted that neither of the proposed drafts of the Constitution contained the phrase "general and uniform" and that none of the proposals described the phrase "general and uniform system." 505 N.W.2d at 309.

That said, there is abundant evidence that after attendees offered very specific, and conflicting, language about educational systems, the drafters deliberately kept the language of the Education Clause general, leaving the details of the statewide education system to the legislature. For example, convention attendees had proposed to enumerate the subjects that should be taught in the public schools ("Agriculture, Arts, Science, Commerce, Trade, Manufactories, and Natural History of the Country"). *Id.* (quoting *The Debates and Proceedings of the Minnesota Constitutional Convention* 437-38 (Saint Paul, Earle S.

Goodrich 1857) [hereinafter *Democratic Debates*].) Other proposals had specified how many months per year school must be in session and that instruction must be in English. *Debates and Proceedings of the Constitutional Convention for the Territory of Minnesota* 231-32 (Saint Paul, George W. Moore 1858) [hereinafter *Republican Debates*]. Attendees debated whether the system should be the "common school system," "district schools" or the "graded system"—which referred to how to organize children of varying ages and ability levels into classrooms and school buildings. *E.g.*, *id.* at 231, 238.

After hearing many conflicting proposals, attendees eventually determined that the details of the system were better left to the legislature. *Id.* at 233 (by Mr. Sheldon: "It seems to me that we are, in [the Education] article, going too much into the minutia of legislation. A general provision should be adopted, but we need not mention [the type of school system]. Let that matter be left to the Legislature."); *id.* at 233–34 (by Mr. Balcombe: "I am inclined to believe we had better make one or two general provisions in the Constitution, and leave the minutia to the first Legislature."); *id.* at 244 (By Mr. Coggswell: "Now the question has been asked, and properly asked, by my friend from Winona (Mr. Balcombe) are we to go on and devise and perfect a school system. I, for one, would like to have that question answered. (Cries of 'No!' 'No!') That is my idea exactly."). Moreover, the drafters recognized that including detailed requirements in the Constitution made the system difficult to revise.[11] *Id.* at 237; Doc. 58 at 31; *see also Bd.*

[11] Appellants previously contended the judiciary should not rely on the convention debates concerning the Education Clause, in part because of some racist statements that were made at the Convention. Doc. 71 at 13, n.5. But this Court has repeatedly recognized that (Footnote Continued on Next Page.)

of Educ. of Minneapolis v. Erickson, 295 N.W. 302, 303–04 (Minn. 1940) (stating method by which system would be established "was left to legislative determination").

A historian of the Minnesota Constitution summarized the debates regarding the Education Clause as follows:

> The Republican wing had entertained and discussed a long committee report outlining a complete school system. It had become very evident in the course of their debates that they would be unable to agree upon even the fundamentals of the system to be embodied in the constitution. They accepted, therefore, a proposal to eliminate from their article on this subject all matters which could safely be left to the legislature . . . .

William Anderson & Albert J. Lobb, *A History of the Constitution of Minnesota* 124 (1921).

After setting aside the effort to dictate how the education system would be set up, the drafters still spent significant time talking about financing the system. Many attendees noted that the public schools should be free to all children. *Democratic Debates* 460-61. They debated whether the "School Lands," which would be sold for the benefit of the public schools, would generate funds only for the townships or localities in which they were located or whether all the funds would be pooled and apportioned equitably to school children around the state. *E.g., id.* at 451; *Republican Debates* 242-45 (Mr. Galbraith: "The land which has been given by Congress for the benefit of the schools of the future State of Minnesota, is an inheritance for every child in the Territory, and the nearer equal we make the distribution of that fund to every child, the nearer we come to fulfilling the

constitutional history may aid its analysis, despite the imperfections of those who created history. *Schroeder*, 2023 WL 2000320, at *6-7; *Shefa*, 968 N.W.2d at 825; *Skeen*, 505 N.W.2d at 308-09.

conditions on which we received the grant.”). Given the drafters’ decision to forego any language on how children were to be organized into schools, compared with their extensive debate on financing, in comparison it is more likely that “general and uniform” refer to the attempt to provide roughly equal financing of education on a statewide basis than to anything about the demographic makeup of students.

As such, the unambiguous intent of the drafters of the Minnesota Constitution was to leave the specifics of a “general and uniform system of public schools” to the legislature to determine. To the extent that racial and socioeconomic integration is part of that general and uniform system, it is because the legislature has passed laws to that effect, including requiring MDE to propose integrative rules to promote a reduction in racial isolation. *See, e.g.*, Minn. Stat. §§ 124D.861; 124D.862; 124D.896 (2022). Leaving the specifics of integration to the legislature makes sense given that establishing our statewide education system involves evaluating and prioritizing many competing policy concerns with a constrained budget.

B. Appellants’ Interpretation of the Clause Is Absurd and Creates Other Constitutional Conflicts.

In addition to the historical context of the Education Clause, this Court can employ other tools of construction if it finds the Clause ambiguous. Here, Appellants’ proposed interpretation of the Education Clause leads to absurd and unworkable results, and creates conflict with other constitutional principles, both of which militate against it. *See Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 278 (Minn. 2000) (describing canon of construction “to avoid absurd results or unjust consequences”).

1. Appellants' test for "segregated" schools leads to absurd results.

As set forth in Section II, Appellants seek to enshrine a particular mix of students as a constitutional requirement under the Education Clause.[12] Appellants offer no proof that these particular numbers have any legal or pedagogical significance. Instead, Appellants appropriated the 15 and 20% racial variation standards from the former and current integration rules developed by State Respondents. These measures are inappropriate to use here, as neither was adopted as a *constitutional* threshold. Minnesota's policy choice to adopt the Achievement and Integration Rule should not be weaponized to support a systemwide constitutional violation.

The socioeconomic "test" similarly lacks any foundation. Appellants concede they use the federal free or reduced priced meal program as a "proxy" for socioeconomic status. The proxy is imperfect because that program is frequently criticized as being an inaccurate measure of poverty and does not consider other key indicators of socioeconomic status such as single-parent households and parental education and occupations. *See*, *e.g.,* Will Huntsberry, *True or False? Free and Reduced-Priced Lunch = Poor*, NPR

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[12] Appellants have proposed different tests for what level of racial balance is constitutional during this litigation. In district court they offered the court three "yardsticks." Add. 24, n.16; Doc. 346 at 34. One of which defined as unconstitutional any school with less than 20% or more than 60% students of color or in poverty. Appellants' inability to consistently tell the courts what degree of student demographic imbalance is allegedly unconstitutional evinces the difficulty of the courts establishing a standard. Indeed, demographics vary considerably throughout the state. When considering another fundamental right (voting), this Court has recognized that one's place of residence may have an impact on how that right is exercised. *DSCC v. Simon*, 950 N.W.2d 280, 293 (Minn. 2020) ("We recognize that there may be challenges for some voters in delivering a marked ballot, particularly for voters living outside metropolitan areas who may not have access to multiple voting locations and multiple delivery options.").

(January 30, 2015), https://perma.cc/9M4Y-VLFC (noting the meal program can be over- and under-inclusive because "not all those who meet the poverty guidelines actually apply for the lunch program[;] [o]thers who don't qualify game the system"; and some schools give free meals to all students to "reduce paperwork").

But no matter where a court sets a proposed test for the constitutional demographic makeup of a student body, absurdity will follow. For example, in Appellants' current iteration of the test, any school with greater than 80% students of color would be unconstitutional. But why is a school that has 79% students of color appropriately integrated, but one with 81% is unconstitutional? That is especially true in Saint Paul, where the district as a whole has 79% students of color. App. Br. 8. Appellants' proposed test means that each school has only *one percent* wiggle room from the district-wide numbers before it falls off the cliff of constitutionality.

Setting a percentage cap also creates problems if the demographics of any school district shift such that the district contains more than 80% students of color or 80% receiving free or reduced-price lunch. At that point, would Appellants have the courts declare every school in that future district unconstitutional? Appellants also fail to explain (let alone prove) why a constitutional violation occurs when a school has 80% or more students of color, but, a violation does not occur with 80% or more white students, as exists in many corners of the State.

Appellants also use a narrow and binary view of racial integration – students are either counted as white or non-white. A more holistic view of the student body of South High School in Minneapolis, for example, would reflect that during the 2021-22 academic

year it was 39% white, 32% African-American, 7% Native American, 5% Asian-American, and 16% Latinx. *See Profile for Year 2021-2022*, SOUTH HIGH SCHOOL, https://perma.cc/K9AJ-X6JK. The school is integrated by any reasonable measure, but not under the 20-60% "yardstick" Appellants suggested the district court should use.

More fundamentally, Appellants' interpretation of the Education Clause ignores all common sense measures of whether children are receiving an education. It means that any school in the State with more than 80% students of color or students on free-or-reduced meals is *per se* inadequate, no matter how many high-performing teachers and paraprofessionals are present, no matter how fine their buildings and resources may be, and no matter how well their students perform academically. Doc. 356 at 7 (admitting the right to education in Minnesota applies equally to all students in the State); *see also Sauk Centre*, 17 Minn. at 416 (recognizing the constitutional duty to have a "regular method" must apply "throughout the state"). It is absurd to label a school where children are learning and thriving as constitutionally inadequate, just because those children do not fit Appellants' concept of the appropriate demographic mix.

2. Appellants' interpretation creates conflict with both the Minnesota and Federal Constitutions.

In interpreting ambiguous text, this Court avoids conflict with other constitutional mandates. *Accord State v. Irby,* 848 N.W.2d 515, 521-22 (Minn. 2014) (noting the Court will interpret ambiguous statutes "to avoid a constitutional confrontation" and "to avoid potential separation of powers problems"). Yet Appellants' proposed interpretation

conflicts with the separation-of-powers principles in the Minnesota Constitution, and with the equal protection principles in the federal Constitution.

This Court has made clear that courts should steer clear of educational policy. *Cruz-Guzman*, 916 N.W.2d at 9 ("specific determinations of educational policy are matters for the Legislature"). Nevertheless, Appellants ask this Court to wade into hotly contested education policy by establish constitutional mandates for the percentage of students of color that should be in each school as well as the percentage of students who receive free and reduced-price lunch. Not only is that a significant step, but it has a ripple effect on other educational policy.

For example, the legislature has promoted parental choice as an important strategy to promote student success. Minnesota was the first state to allow open enrollment and teacher-led charter schools.[13] Moreover, under the existing system of public education, every child in Minneapolis and Saint Paul has the opportunity to attend a citywide or area magnet school that is open to students from neighborhoods throughout their school district. *See English Guidebook,* MINNEAPOLIS PUB. SCHS. 12-15, https://perma.cc/DFE9-5RS4; *School Selection Guide*, SAINT PAUL PUB. SCHS. 23-31, https://perma.cc/4X7T-BX2L. Many families make this choice. Other families choose schools closer to home to facilitate

[13] Appellants complain that charter schools are not subject to the Achievement and Integration Rule. The legislature has the right and ability, but not the constitutional obligation, to subject charter schools to the Achievement and Integration Rule or other integrative efforts at any time, should it so choose. As such, the legislature's decision not to require charter schools to abide by the Achievement and Integration Rule is constitutional, just as it would be if one day the legislature decided the opposite.

their involvement and strengthen their bonds in the local community. Appellants would deny these parents the right to decide what is best for their children.

Appellants' *per se* rule also would undermine the legislative policy promoting local control of education. The legislature has determined that educational decisions are best left to locally elected school boards, who are closest to the children they serve. The Minneapolis School Board, for example, engaged its community over the last several years to develop its Comprehensive District Redesign. The plan sets new boundaries and pathways that district educators and the elected board believe best serve Minneapolis students, while reducing isolation on the basis of race and poverty. *See generally Comprehensive District Design*, MINNEAPOLIS PUB. SCHS., https://perma.cc/325S-VB2V. Appellants' asserted rule would require the State to block this plan because some schools may not meet Appellants' ideal demographic distribution.

In addition, there are many proposals for what will truly move the needle in terms of reducing the achievement gaps in Minnesota. Proposals include increasing opportunities for early childhood education,[14] hiring more teachers (and especially teachers of color),[15] attracting and retaining high-quality teachers to focus on the most challenged students by increasing teacher pay or other means,[16] ensuring more culturally-inclusive instruction and

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[14] Ciresi Walburn Found. Br. at 6.

[15] *Id.* at 7.

[16] Andy Porter, *Rethinking the Achievement Gap*, PENN GRADUATE SCH. OF EDUC, https://perma.cc/VGH3-M327, Michael Hobbs, *Can Teacher Bonuses Help Close the Achievement Gap?*, UNIV. N.C. SCH. OF EDUC. (Oct. 2, 2019), https://perma.cc/CAX4-FHXW.

using data-driven teaching methods,[17] providing more mental health and other "wrap-around" services (like free meals),[18] and more. But if this Court were to establish a demographic makeup that schools must meet to be constitutional, that would necessarily push all these other priorities aside. The funds needed to track the demographic data, and move children among schools to achieve the mandated balance, would reduce or eliminate the funds available for other policies.

To be clear, the State is not arguing that any policy may operate in a manner that is intentionally discriminatory. Both traditional public schools and charter schools are prohibited from intentional discrimination under the Minnesota Human Rights Act ("MHRA"), Minn. Stat. §§ 363A.13, subd. 2; Minn. Stat. § 124E.03, subd. 4 (2022), as well as under the U.S. and Minnesota Constitutions. *See generally Brown*, 347 U.S. 483; *Cruz-Guzman*, 916 N.W.2d at 10 n.6. The State simply asks the Court to refrain from making policy choices among competing lawful policies. *See Fletcher Props., Inc. v. City of Minneapolis*, 947 N.W.2d 1, 11 (Minn. 2020) ("Legislators—as the elected representatives of the people—and legislative bodies are generally institutionally better positioned than courts to sort out conflicting interests and evidence surrounding complex public policy issues."). By declaring that a particular demographic mix of students is required in every school in the state, the Court would be elevating that policy over many others, and infringing on the authority of the legislature.

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[17] *Regional Centers of Excellence*, MINN. DEP'T OF EDUC, https://perma.cc/F98H-QLTG; Grunewald, *supra* note 1; Intervenors Br. 13.

[18] *Regional Centers of Excellence*, *supra* note 17; Grunewald, *supra* note 1.

Appellants' interpretation of the Education Clause also creates conflict with the U.S. Constitution. Appellants maintain that the demographic makeup of some schools is unconstitutional. To remedy that, the State would need to establish and maintain specific racial balances, regardless of student and parental desires. The district court correctly held that this—in the absence of intentional discrimination—would raise significant federal Equal Protection concerns, at least to the extent the requirement is based on a student's race. Doc. 371 at 18; Add. 34 ("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 Defendants squarely in front of the propeller blade of an Equal Protection claim."); *see also Parents Involved*, 551 U.S. at 721 ("We have emphasized that the harm being remedied by mandatory desegregation plans is the harm that is traceable to segregation, and that 'the Constitution is not violated by racial imbalance in the schools, without more.'") (quoting *Milliken v. Bradley*, 433 U.S. 267, 280 n.14 (1977)).[19]

Appellants now argue the relief could have focused on socioeconomic status instead of race, App. Br. at 38, but they argued for racial balances to the district court, and they repeatedly highlighted (which they do again to this Court) this Court's footnote 6, which

[19] Justice Kennedy's concurring opinion in *Parents Involved,* which is cited repeatedly by Appellants and certain amici, struck down the districts' integrative plans as unconstitutional. 551 U.S. at 794 (Kennedy, J., concurring) ("Our cases recognized a fundamental difference between school districts that had engaged in *de jure* segregation and those whose segregation was the result of other factors. School districts that had engaged in *de jur*e segregation had an affirmative constitutional duty to desegregate; those that were *de facto* segregated did not."). Justice Kennedy drew a careful line between requiring specific student demographics, which was unconstitutional, and promoting voluntary efforts at integration, which is constitutional.

focused solely on race.[20] *Cruz-Guzman*, 916 N.W.2d at 10 ("Claims based on *racial* segregation in education are indisputably justiciable.") (emphasis added).

V. TO PROVE A VIOLATION OF THE EDUCATION CLAUSE, APPELLANTS MUST PROVE THE STATEWIDE SYSTEM DENIES THEM THE OPPORTUNITY TO ACQUIRE AN ADEQUATE EDUCATION OR THE PRESENCE OF *DE JURE* SEGREGATION.

Appellants brought their motion in the district court shortly after the legislature failed to pass the bill to which Appellants and MDE had agreed in mediation. Appellants did so well before the close of discovery. Most notably, they did so before any party had identified a single expert witness or produced a single expert report. In other words, the district court has not had the opportunity to consider whether racial or socioeconomic imbalance is actually denying students the opportunity to receive an adequate education. Appellants now ask this Court for guidance on what they must prove if their Education Clause claim is remanded.

As this Court has observed: "*Of 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 added). Following that decision, the court of appeals explained in *Forslund v. State*:

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[20] Appellants also note that the proposed bill that attempted to resolve this lawsuit "does not require race-based student assignment." App. Br. at 40. This is true and intentional. Similarly, Minnesota's Achievement and Integration Rule requires certain districts having an imbalance as defined by the rule to develop a plan to seek to change certain student demographics. It does not require any district or school to achieve a specific racial balance and does not mandate that schools or districts dictate where individual students may or may not attend school on account of their race in order to maintain some "balance." In contrast, Appellants *per se*, race-focused Education Clause claim does require specific balancing—be it within 15 or 20% deviations or a maximum of 79% students of color within the student body.

> When an Education Clause claim is based on [the sorts of variables identified in *Skeen* and *Cruz-Guzman*], 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 state is providing a constitutionally inadequate education without proving that the state is in fact providing an inadequate education.

924 N.W.2d 25, 34-35 (Minn. Ct. App. 2019).

Absent proving intentional discrimination that created a *de jure* segregated public school system, Appellants must prove (1) they have not received an opportunity to acquire an adequate education; and (2) that some aspect of the statewide **system** of public schools is responsible for this lack of opportunity (here, Appellants have pleaded it is how the system does or does not address demographics).[21] To date, Appellants have not even attempted to show *either* of these components, thereby precluding an award of summary judgment.[22] *Cf. Parents Involved*, 551 U.S. at 727 (plurality opinion) ("The districts offer no evidence that the level of racial diversity necessary to achieve the asserted educational

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[21] Appellants and amici devote considerable briefing to whether causation should be required to prove a violation of the Education Clause. State Respondents generally agree that neither traditional notions of causation nor intent are well suited to this unique constitutional claim, but that liability should at least be limited to issues over which the legislature has control. Usual principles of standing, which require that the plaintiffs' injury is traceable to an action of defendant(s) and redressable by defendant(s), should suffice. *See Garcia-Mendoza v. 2003 Chevy Tahoe*, 852 N.W.2d 659, 663 (Minn. 2014); *Forslund*, 924 N.W.2d at 32.

[22] That said, neither State Respondents nor the lower courts stated that proving *de jure* segregation was the only way to prove an Education Clause violation. *But see* App. Br. 2, 25, ACLU Br. 3. The court recognized in bringing their motion Appellants were "asking the Court to find an Education Clause violation based on the presence of racial imbalance *alone*," Appellants had "*not* advanced their theory, still present in their pleadings, that racially-imbalanced schools result in such poor academic outcomes that they violate the state's Education Clause." Doc. 371 at 17, 23; Add. 33, 39.

benefits happens to coincide with the racial demographics of the respective school districts . . . . Indeed, in its brief Seattle simply assumes that the educational benefits track the racial breakdown of the district.”).

The constitutional parameters of a system that provides students the opportunity to receive an adequate education remain to be determined. *Cruz-Guzman*, 916 N.W.2d at 22 (Anderson, J., dissenting) (noting “the Herculean task” of “design[ing] a system of ‘adequate’ education” has been left “to the parties and the district court”). Appellants’ Education Clause claim has not been dismissed, but they cannot prevail without showing they have been denied the opportunity to receive an adequate education and that something about the statewide system of education is to blame.

VI. INTENTIONAL DISCRIMINATION AND CAUSATION ARE DISPUTED QUESTIONS OF MATERIAL FACT PRECLUDING SUMMARY JUDGMENT.

If this Court declines to find that schools must have a particular racial makeup to be constitutional, then it should affirm the district court’s denial of summary judgment on Appellants’ Education Clause claim as Appellants’ have not carried their summary judgment burden to show the lack of educational opportunity or *de jure* segregation.

Although the bulk of their brief is focused on demographics constituting a *per se* violation of the Education Clause, as was their argument below, Add. 36, Appellants now contend “that de facto segregation coupled with poor academic performance by [students

of color] or socioeconomically-disadvantaged students… should be sufficient in and of itself to show a violation of the Education Clause." App. Br. at 24-25.[23]

It would not be proper to award Appellants summary judgment on the record before the Court for at least three reasons. First, at this point, Appellants have not even shown a correlation between schools they believe are "segregated" and poor academic performance because they have relied on district-wide data to show performance problems, not data specific to those attending schools in Appellants' class. Second, as Appellants themselves acknowledge, the Education Clause focuses on the system providing an *opportunity* to acquire an adequate education, which their set of test scores cannot measure. Doc. 356 at 5-6; *see also Sauk Centre,* 17 Minn. at 416 (stating the Education Clause ensures that there is "a regular method throughout the state, whereby all *may be enabled*[24] to acquire an education which will fit them to discharge intelligently their duties as citizens of the republic.") (emphasis and footnote added).

Third and finally, it is premature to award summary judgment before any party has identified experts who could opine as to what those tests are designed for and what they measure. Having received an affidavit consistent with Minn. R. Civ. P. 56.04, the district

[23] There is no context for the test scores on pages 11 and 12 of Appellants' brief, no explanation what they mean, and no correlation to the class members. There is no expert testimony opining what these scores are intended to measure or how, or if, they relate to the legislature's duty to provide students with the opportunity to acquire an adequate education. These issues must first be considered by the trial court.

[24] "Enabled" is defined as "to provide with the means or opportunity." *Enabled*, MERRIAM-WEBSTER, https://perma.cc/NR4D-LARB.

court correctly noted the State Respondents deserved to have the opportunity to complete discovery, including the exchange of expert reports.

With respect to *de jure* segregation, Appellants devote numerous pages of their brief (as they did in the lower courts) arguing that the State "caused" segregation in Minneapolis and St. Paul public schools because (1) the State changed its integration rule over time; and (2) the State allowed Minneapolis and St. Paul to return to a neighborhood schools model. App. Br. 12-24. These arguments concern alleged discriminatory intent and therefore primarily concern Appellants' Equal Protection claim. Appellants did not move for partial summary judgment on their Equal Protection claim. *Id.* at 4 ("Only the Education Clause violation is at issue in this appeal.").

To the extent this evidence is offered in support of a contention that Minnesota has a *de jure* segregated system, the district court properly concluded the evidence falls far short of establishing as a matter of law that the State has created a *de jure* segregated system. Doc. 371 at 18; Add. 34 ("The factual record is wholly inadequate to establish *de jure* segregation by Defendants as a matter of undisputed material fact. There is no evidence at all regarding intent *vel non* related to most of the challenged state actions . . . ."); *see also* Doc. 356 at 83 ("Minnesota has *never* engaged in the type of intentional segregation declared unlawful by the United States Supreme Court in *Brown v. the Board of Education* in 1954[.]") (emphasis added); Minn. Stat. § 124D.855 (Minnesota "does not condone separating school children of different socioeconomic, demographic, ethnic, or racial backgrounds into distinct public schools.").

At this Court again, Appellants fail to prove that the State Respondents have created a system that places children in schools based on their race. First, Appellants err by viewing the evidence they cite from their own perspective and not of that of the nonmovant, as is required on a motion for summary judgment. *Molloy v. Meier*, 679 N.W. 2d 711, 716 (Minn. 2004). For example, the decisions by the Minneapolis and St. Paul school districts to return to a model of neighborhood schools[25] is not evidence of an unlawful and unconstitutional education system, but a policy choice that districts are allowed to make and one with significant support. *See, e.g.*, *Crawford*, 458 U.S. at 543 (recognizing "the educational benefits of neighborhood schooling"). Second, MDE made changes to its integration rule, which *promotes* integration, as circumstances changed over time. In doing so, an administrative law judge received evidence and argument and approved of MDE's changes.[26] Finally, as set forth in the facts section, the State has voluntarily and affirmatively pursued integration as a matter of public policy since the early 1970s and has put nearly two billion dollars behind that effort.

When the facts are considered in the light most favorable to the State Respondents, together with the State Respondents' affirmative evidence, it is evident that Appellants repeatedly infer discriminatory motives when the State actors may simply have had

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[25] The Minneapolis and Saint Paul school districts have continued to make changes throughout the course of this litigation. *See, e.g.*, *Comprehensive District Redesign*, *supra; Envision SPPS*, SAINT PAUL PUB. SCHS., https://perma.cc/86EW-P5GY.

[26] Minnesota's Office of Administrative Hearings does not always approve MDE's proposed rules. In 2016, it disapproved MDE's attempt to revise the Achievement and Integration Rule because, among other reasons, MDE sought to subject charter schools to the rule. Doc. 356 at 140-44; Intervenors Br. 15.

differing opinions about educational policy, parental choice, and (at the time) future U.S. Supreme Court rulings concerning race-conscious actions regarding schools.[27] Resolving any applicable disputes is not appropriate at the summary judgment stage. *See J.E.B. v. Danks*, 785 N.W.2d 741, 749-51 (Minn. 2010) (considering facts related to the good faith, or subjective intent, of a reporter of sexual abuse and holding that summary judgment was not appropriate when viewing "the evidence in the light most favorable to the nonmoving party").[28]

CONCLUSION

The Court should affirm that student demographics alone, in the absence of *de jure* segregation, do not violate the Education Clause of Minnesota's Constitution. It should also affirm the district court's denial of Appellants' motion for partial summary judgment, and send this claim back for the thoughtful development of the record that it merits.

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[27] Much of Appellants' purported proof of intent revolves around 50-60 documents related to rulemaking proceedings. To the extent that history is relevant to the current proceedings, State Respondents note that, faced with similar allegations from opponents of the proposed rule during the 1999 rulemaking process, the ALJ approved the rules as reasonable and necessary in addressing intentional segregation and racial isolation. The ALJ concluded by finding that the State acted with "great sensitivity to the needs of students, parents, and educators." Doc. 356 at 192.

[28] The district court noted that Appellants brought their motion prior to the parties producing expert reports. Because Appellants have not produced any expert report that opines that some specific student demographic data results in the denial of an opportunity to receive an adequate education, the State Respondents have not had the opportunity to produce any expert reports to respond to any expert opinions.

Dated: February 27, 2023

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