No. A22-0118

STATE OF MINNESOTA

IN COURT OF APPEALS

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

Appellants,

vs.

State of Minnesota, et al.,

Respondents,

and

Higher Ground Academy, et al.,

Intervenors.

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   a. regardless of the presence of *de jure* segregation or proof of a causal link between the imbalance and the actions of the state, and

   b. even if there is no evidence that the imbalanced school system denies students the opportunity to acquire an adequate education?

The district court answered the question in the negative and denied Appellants' motion for partial summary judgment. It did so without considering the last clause of the issue, that is whether Appellants must show a causal link between any student demographic imbalance and the lack of an opportunity to acquire an adequate education.

Authority: *Skeen v. State*, 505 N.W. 2d 299 (Minn. 1993)
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II. **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 determined there were issues of material fact on the issues of intent and causation. In fact, the district court determined Appellants failed to provide any factual evidence to support a contention that State Respondents caused Appellants not to have the opportunity to receive an adequate education.

Authority: *Forslund v. State*, 924 N.W. 2d 25 (Minn. Ct. App. 2019)
Soucek v. Banham, 503 N.W. 2d 153 (Minn. Ct. App. 1993)

STATEMENT OF THE CASE AND FACTS

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 schools. Doc. ID#1 at 1-2; Addendum ("Add.") 4. 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. ID#1 at 1-2.

After the Supreme 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. ID# 227 at 15; Add. 4.

The parties engaged in a multi-year mediation effort that was unsuccessful. Appellants then brought a motion for partial summary judgment, seeking to have the district court find a violation of the Education Clause and to order the State Respondents "to provide a non-segregated . . . system of public schools in the Minneapolis and St. Paul Public School Districts." Add. 5; Doc. ID#345 at 1-2. 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. Add. 23. Because the district 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," Add. 20 (emphasis in original), the district court 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 any evidence of this causation in support of their motion; they claimed it was unnecessary to do so. Add. 20.

The district court also recognized there existed factual issues precluding partial summary judgment, especially prior to the completion of discovery and the submission of expert reports. Add. 18-20. The district court determined there are genuine issues of material fact regarding Appellants' allegations that State Respondents engaged in intentional discrimination. Add. 20. 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 . . ." Add. 18.

In denying partial summary judgment, the district court found that the State Respondents introduced "countervailing evidence" regarding alleged intentional discrimination. Add. 19. This included evidence related to 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 ID#356, Exs.

4 & 5; Minn. Stat. § 124D.861.[1] When denying Appellants' motion, the district court certified the following question for this Court: "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?" Add. 24 (internal footnote omitted).[2]

ARGUMENT

Appellants' motion was properly denied. Their novel theory lacks any precedent, and genuine issues of material facts regarding the State's efforts to *promote* integration preclude awarding summary judgment in their favor.

Minnesota's Constitution requires the State Legislature to establish a "general and uniform system of public schools" that provides students with the opportunity to receive

[1] The State has appropriated more than $1.9 billion to support school integration since 1988, including nearly $400 million to both Minneapolis and Saint Paul public schools. Minnesota School Finance: A Guide for Legislators at 142-43, available at house.leg.state.mn.us/hrd/pubs/mnschfin.pdf.

[2] Because Appellants had a right to appeal the denial of their motion pursuant to Minn. App. R. 103.03(b), State Respondents, like Appellants, have slightly altered the certified question for this Court to address: Is the Education Clause of the Minnesota Constitution violated by a racially-imbalanced or socio-economically 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, even if there is no evidence that the imbalanced school system denies students the opportunity to acquire an adequate education? (first underlined portion from Appellants; the second, from State Respondents) Because the matter will be remanded for further proceedings, it is appropriate, as a matter of judicial economy, for the Court to decide whether Appellants need to prove that any imbalance denies them the opportunity to receive an adequate education. *See* Section VI, *infra*.

"an adequate education" that allows them "to discharge their duties as citizens intelligently." *Cruz-Guzman v. State of Minn.*, 916 N.W.2d 1, 12 (Minn. 2018).

Appellants do not challenge this framework, but nonetheless claim the system established by the Legislature is constitutionally defective because some schools fail to enroll a particular student demographic profile, regardless of cause and regardless of educational impact. They would graft a new requirement onto the Education Clause: that the Legislature guarantee that every school in the state has a particular mix of students based on race and income. Such a constitutional requirement has no basis in law.

First, as a matter of law, racial or socioeconomic ("SES") imbalance in some schools standing alone, without regard to impact or intent, does not establish a violation of the Education Clause. Appellants' position is not supported by the state Supreme Court opinion in this case; does not lend itself to manageable judicial standards; and would inappropriately and necessarily entangle the Court in educational policy decisions. The district court was also properly worried about enforcing strict demographic requirements because of Equal Protection concerns.

Second, although the district court did not address the issue, at a minimum, Appellants must show that any racial or SES imbalance in Minneapolis and St. Paul schools caused students to be denied the opportunity to receive an adequate education. Appellants presented *no evidence* on the causation fact question. They simply argued, as they do now, that the education they receive is definitionally inadequate, no matter what resources the State provides to them and to school districts and schools throughout the State.

Third, to the extent an Equal Protection-type claim is grafted onto the Education Clause, Appellants must show intent to discriminate. Appellants claim they need not show unlawful intent but repeatedly gloss over the well-established distinction between *de jure* and *de facto* segregation under federal and state Equal Protection law.

Finally, Appellants confuse the roles of intent and causation in this matter. Appellants could prevail if they proved the State intentionally established a *de jure* segregated educational system, which it has not, or if (regardless of intent) it created a system that denied students the opportunity to receive an adequate education. The district court correctly found there are material issues of fact in dispute regarding these issues and held that Appellants failed to satisfy their burden to win a motion for partial summary judgment brought prior to the close of discovery.

The State believes that it has met its constitutional obligation under the Education Clause and is entitled to a trial on the merits.[3] This Court should affirm the denial of summary judgment.

I. STANDARD OF REVIEW.

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 law." *Baker v. Chaplin*, 517 N.W. 2d 911, 914 (Minn. 1994). In doing so, the Court "consider[s] the evidence in the light most favorable to the nonmoving

[3] State Respondents intend to set forth the State's 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.

party." *Molley v. Meier*, 679 N.W. 2d 711, 716 (Minn. 2004). When intent is a material issue and in dispute, summary judgment should be denied. *Soucek v. Banham,* 503 N.W. 2d 153, 160-61 (Minn. Ct. App. 1993).

II. THE EDUCATION CLAUSE AND SUPREME COURT INTERPRETATION THEREOF.

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, SES or disability status, or any other characteristic. *Id*.

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." *Board of Educ. of Town of Sauk Centre v. Moore*, 17 Minn. 412, 416 (1871). The Supreme 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). It has further held, on multiple occasions, that the Legislature has complied with its duty to establish a general and uniform system. *Id*. ("the state has satisfied its constitutionally-imposed duty of creating a 'general and uniform system of

education'"); *State ex. rel. Klimek v. School Dist. No. 70, Otter Tail County*, 283 N.W. 397, 398 (Minn. 1939) ("The legislature has complied with the mandate of the constitution by enacting laws under which our present system is organized.").

The Supreme 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. *Skeen*, 505 N.W. 2d 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 requisite conditions for that particular class or grade.

Id. at 310, *quoting Curryer v. Merrill*, 25 Minn. 1, 6 (1878) (emphasis in original); *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").

No Minnesota case has had occasion to address whether student demographics alone can violate the Education Clause.

III. THE DISTRICT COURT PROPERLY DENIED APPELLANTS' MOTION, WHICH PLACED GREAT WEIGHT ON A SINGLE SUPREME COURT FOOTNOTE.

The district court properly rejected Appellants' contention that they should win their motion as a matter of law based on a single footnote in the Minnesota Supreme Court's earlier opinion in this case. 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." Add. 14.

Appellants contend, based solely on the Supreme Court's footnote, all they need to do to prove their claim is show some schools in Minneapolis and Saint Paul are racially imbalanced. *Cruz-Guzman*, 916 N.W. 2d at 10, n.6 ("a segregated system of public schools is not general, uniform, thorough, or efficient").[4] The language in the body of the opinion giving rise to the footnote states the uncontroversial proposition that "[c]laims based on racial discrimination in education are inherently justiciable." *Id*. at 10. In the accompanying footnote, the Supreme Court noted that a racial segregation claim was justiciable whether it was brought under the Equal Protection Clause or the Education Clause. *Cruz-Guzman*, 916 N.W. 2d at 10 (citing *Brown v. Board of Educ.*, 347 U.S. 483 (1954)).

[4] Appellants would even extend the footnote's alleged power to the mix of the SES status of students even though the footnote only concerned racial segregation. App. Br. at 40 (stating they requested the district "court to grant partial summary judgment not only on the basis of racial segregation, but also on the basis of SES segregation").

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 495. As such, the laws intentionally established a *system* that was not general or uniform. That is not the case here.

Under *Brown* and its progeny, a system that establishes *de jure* segregated schools violates the federal equal protection clause. *Id.* *Brown* did not concern Minnesota's (or any other state's) Education Clause, nor did it implicate unintentional discrimination. Later cases make clear, moreover, that "segregation" claims under *Brown* require proof of intent to discriminate. *Parents Involved in Comm. 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.").

The Minnesota Supreme Court would not have used a single line in a footnote on justiciability to stake out the extraordinary position Appellants claim. Indeed, the last sentence of the Minnesota Supreme Court's footnote re-emphasizes that the 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. Morris Tp. 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." [sic]).[5]

Courts have *not* made the type of determination that Appellants seek. Appellants' motion would take Minnesota to a place no state has ever gone in mandating strict student demographics in all schools. Moreover, Appellants ask the Court to do so by relying on terms such as "general" and uniform." Other states amended or rewrote their constitutions during the 20th Century to specifically attempt to address *de facto* segregation as well as *de jure* segregation. *See* CONN. CONST., Art. First, sec. 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, Sec. 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.)[6] Minnesota has not done so.

Appellants' motion for partial summary judgment sought to bypass the factual complexities of the case; the necessity for expert opinions; and ultimately a trial of its

[5] Appellants state the Minnesota Supreme Court has never held that only *de jure* segregation can violate the Education Clause. App. Br. at 28. It has not had occasion to address the issue. It certainly has not held the opposite, that mere *de facto* segregation or some racial or SES imbalance on its own can violate the Clause either.

[6] Hawaii also amended its constitution to add an anti-segregation provision but solely concerning the military. HAW. CONST., Art. I, Sec. 9.

merits. Appellants simply asserted that because there was some imbalance within the Minneapolis and Saint Paul school districts, they should win their case. Add. 14 ("Plaintiffs argue that the footnoted reference to segregated schools self-evidently not being general, uniform, thorough, or efficient eliminates any requirement to prove intent and *sub silento* eliminates any argument that they establish causation."). Appellants did not even identify what that imbalance was[7] or why it existed. Or make a showing that the imbalance somehow caused certain students not to have the opportunity to receive an adequate education. Therefore, the district court correctly denied Appellants' motion.

The following sections demonstrate the difficulty, if not the impossibility, of establishing a constitutional standard based on numbers alone. It is inconceivable that the Minnesota Supreme Court would have endorsed such a significant new theory in this offhand manner. Yet again at this Court, Appellants rely heavily on the *Cruz-Guzman* footnote to support summary judgment. App. Br. at 2, 22-23, 27-28, 42. There is simply

[7] The district court noted that it did not define "racially-imbalanced" when ruling on Appellants' motion. Add. 24, n.16. It previously certified a class as those students who attend schools in the Minneapolis and Saint Paul public school districts where there are (a) less than 20% and (b) more than 60% of students who are racial minorities or who are eligible for free-or-reduced meals. As Appellants acknowledge, any description of the constitutional right under the Education Clause will have statewide application. Doc. ID#356, Ex. 1 at 5. Therefore, under Appellants' definition and legal theory, all schools in the State with fewer than 20% racial minorities and students eligible for free-or-reduced meals are unconstitutional, no matter what actions the Legislature undertakes to create a system of education and no matter how well those students perform. This would result in large swaths of Greater Minnesota being declared *per se* unconstitutional. Appellants have separately pointed to the 15% and 20% deviations identified in the State's current and former Integration Rule as means of identifying an imbalance, even though those numbers are the product of educational policy, not the Minnesota Constitution. This approach would mandate different constitutionally required demographics in every district.

no precedent allowing student demographics alone, absent intentional and unlawful State action, to establish unconstitutional discrimination.

IV. APPELLANTS' *PER SE* CLAIM BASED ON DEMOGRAPHICS ALONE IS NOT VIABLE.

The text of the Minnesota Constitution does not guarantee (or even mention) a particular demographic mix of students in every school in the state. Moreover, there are no workable standards for incorporating student demographics into the Education Clause. Such a state-wide obligation would be impossible to define, impractical to administer, and would lead to absurd results. Significantly, of necessity, it would involve the courts in educational policy-making, contrary to Supreme Court direction.

A. There is no manageable judicial standard for defining a per se constitutional or unconstitutional "segregated school system."

Notably, Appellants asked the district court to enshrine a particular mix of students as a constitutional requirement under the Education Clause, yet did not provide the district court with any legal or factual basis for determining what particular imbalance is unconstitutional under Minnesota's "general and uniform" obligation. Because they could not. Instead, they offered the court three "yardsticks." Add. 24, n. 16; Doc. ID#346 at 34.[8] Appellants suggested the court could read into the Education Clause a 15% variance from

[8] Appellants' inability to tell the courts what degree of student demographic imbalance is allegedly unconstitutional is likely due to the recognition that demographics vary considerably throughout the State. When considering another fundamental right (voting), the Minnesota Supreme 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 voters living outside metropolitan areas who may not have access to multiple voting locations and multiple delivery options.").

an integration rule repealed 25 years ago, a 20% variance from the current integration rule ("the Achievement and Integration Rule"),[9] or their class definition of any school with less than 20% or more than 60% students of color or in poverty. Appellants offered no proof that these particular numbers have any legal significance.

The alleged satisfactory 20-60% range first appeared in Appellants' responses to interrogatories, not from the text of any state's constitution and not from any ruling in Minnesota or any other jurisdiction. Doc. ID#356, Ex. 2 at 4-6. Appellants acknowledged that the district court adopted the class definition "without approving these parameters as valid criteria in defining 'constitutionally suspect' segregation." Doc. ID# 346 at 33, citing Doc. ID#239 at 10, n.8. Appellants have never explained why this range is necessary to pass constitutional muster. Is a school that has 59% students of color integrated, but not one with 61%?[10] Appellants' theory also means that any school in the State with less than 20% students of color or students on free-or-reduced meals is *per se* inadequate, no matter how that compares to the district's population; no matter how well the school is staffed; no matter how fine their buildings and resources may be; and no matter how well their students perform.

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[9] The current Achievement and Integration Rule was approved in 1999 following formal rulemaking procedures at the Minnesota Office of Administrative Hearings, despite opposition by individuals and entities making arguments similar to those made now by Appellants.

[10] The student body in South High School in Minneapolis is 39% white, 32% African-American, 7% Native American, 5% Asian-American, and 16% Latinx. See South High School Profile, available at https://south.mpls.k12.mn.us/uploads/school-profile_10.pdf.

Appellants alternatively suggested that the district court could establish a constitutional standard using "identifiability" measures from the current or former integration rules. Under these measures, "identifiability" is triggered if the percentage of students at an individual school who are of color or eligible for free-or-reduced meals differs from the district average by more than 20% (current rule) or 15% (former rule). Doc. ID#346 at 34. These measures are equally inappropriate, as neither was adopted as a *constitutional* threshold. Rather, they were selected as an educational policy response to address matters about which the Education Clause is silent. The Achievement and Integration Rule and its substantive provisions confirm that the State has not acted with segregative intent, but they were never intended to be enshrined in the constitution.

Now, before this Court, Appellants simply assert there "is undeniably racial and SES segregation, or imbalance," according to "the State's" definition. App. Br. at 48. As such, they appear to be focused on the Achievement and Integration Rule.[11] As noted, *supra,* however, the Rule was not intended to be enshrined in the Minnesota Constitution. Indeed, there is no constitutional requirement for Minnesota to have an integration rule at all. Minnesota's policy choice to adopt the Achievement and Integration Rule cannot be

[11] Appellants highlight that the district court stated, "the existence of this racial make-up and imbalance is not disputed." Add. 5. Any imbalance can only refer to the one defined by the Achievement and Integration Rule, given that the Education Clause does not mention student demographics or balances; because Appellants have yet to tell any court what "yardstick" should be considered in determining any constitutionally impermissible demographic balance throughout the State of Minnesota; and the district court stated it did not define "racially-imbalanced" when considering Appellants' motion. Add. 24. It also cannot concern any SES imbalance because the Achievement and Integration Rule does not address this.

weaponized to support a systemwide constitutional violation. The Minnesota Legislature chose to go above and beyond what the constitution requires and mandate that school districts address particular racial imbalances.

Minnesota's Achievement and Integration Rule is intended to *promote* integrative efforts, not unlike the ways identified in the Justice Kennedy concurrence in *Parents Involved* or the legislative bill introduced as a possible means of resolving this case, but not to be a strict mandate *requiring* specific student demographics at every district or school in the State.[12] Appellants repeatedly confound the former and the latter concepts – correctly noting the State "may employ," "encourage", or "consider" ways to address *de facto* segregation, App. Br. at 35 & 39, but seeking to hold the State to "the imposition of a strict numerical definition" of student demographics because the Education Clause includes the phrase "general and uniform." *Id*. at 19.

Appellants also ask this Court to consider SES imbalance as a constitutional requirement but cannot even rely on Minnesota's integration policy because the Achievement and Integration Rules does not address SES. Any SES "imbalance" they perceive must be based on the allegedly acceptable 20-60% range they identified in their responses to interrogatories. Doc. ID#356, Ex. 2 at 4-6. Appellants failed to provide an explanation why this "yardstick" is an appropriate measure or constitutionally required.

[12] It should be remembered that Justice Kennedy, cited repeatedly by Appellants, voted to strike down the districts' plans as unconstitutional. 551 U.S. at 794 ("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 duty to desegregate; those that were *de facto* segregated did not.").

Moreover, it relies on the federal free-or-reduced meal program that is frequently criticized as being an inaccurate measure of poverty and does not consider other key indicators of SES such as parental education and occupations. Will Huntsberry, True or False? Free and Reduced-Priced Lunch = Poor (January 30, 2015), available at https://www.npr.org/sections/ed/2015/01/30/379330001/true-or-false-free-and-reduced-price-lunch-poor (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").

Finally, Appellants must prove that the Legislature has not met its obligation to establish a general and uniform *system*. Appellants fail to argue, let alone provide evidence, how many individual schools must be racially or socio-economically imbalanced (however that term is defined) for the *system* to fall constitutionally short of the "general and uniform" requirement.

B. Appellants' per se position creates administrative impossibility and produces absurd results.

Although Appellants assert claims only on behalf of certain Minneapolis Public School and Saint Paul Public School students, they acknowledge any constitutional right applies statewide. Doc. ID#356, Ex. 1 at 5; *see also Sauk Centre*, 17 Minn. at 416 (recognizing the constitutional duty to have a "regular method" must apply "throughout the state"). Appellants fail to explain how their "yardsticks" would apply in Greater

Minnesota where the demographics of many districts are substantially different than those of Minneapolis and St. Paul.[13]

Appellants also ask the Court to declare the *system* unconstitutional, but based only on the demographics of certain individual schools. The potential implication of Appellants' request is constant reassignment of students based on the shifting racial and SES composition of all schools in the state. Such a duty would be unmanageable and educationally harmful to students.

C. A per se rule would mire the courts in educational policy.

The Supreme Court has made clear that courts should not determine educational policy. *Cruz-Guzman*, 916 N.W. 2d at 9 ("specific determinations of educational policy are matters for the Legislature"). Yet this is what Appellants are asking the Court to do. As set forth below, the State has a clear, consistent policy of encouraging and supporting integration. The State, however, has made numerous other policy choices that would be blunted if Appellants prevail.

The State has a long-standing policy of encouraging integration in its schools. The State has voluntarily enacted the Achievement and Integration Rule that requires identified school districts to address demographic imbalances and funds those efforts as a matter of

[13] Using Appellants' measures also would lead to absurd results. If the Court adopted the Achievement and Integration policy standard, depending on district demographics, a school in Greater Minnesota might be deemed *constitutionally* "segregated" with 30% students of color, while a school in St. Paul with 80% would not be. And using the class definition, entire districts in Greater Minnesota would be considered *constitutionally* "segregated" because the enrollment of every one of their schools is more than 80% white, reflecting the population of the region.

educational policy. The State, however, is not constitutionally required to guarantee a particular mix of students.

The State has determined that integration may be a valid way to support student success. The State encourages integrative choices through its Achievement and Integration Rule and subsidizes these choices with added funding. Minn. Stat. §§ 124D.861 (Achievement and Integration policy), 124D.862 (Achievement and Integration funding)[14]; 124D.87 (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. ID#356, Ex. 4 at 4 ("the issues of school desegregation and integration have been a part of Minnesota education policy for decades."). The State, however, has determined that other educational strategies may also be effective. Every student is different and what works for some may not work for all.

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.[15] Moreover, under the existing system of public education,

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[14] The State has appropriated $1.9 billion in integration funding since 1988, and approximately $167 million for the upcoming 2022-23 biennium. *See* Laws of Minn. 2020, H.F.2, ch. 13, art. 2, sec. 4 (2022-23 appropriation).

[15] Appellants do not appear to contend in their appeal, as they did before the district court, that the exemption of charter schools from the Achievement and Integration Rule is unconstitutional. 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.

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* Minneapolis Public Schools, Explore MPS, available at https://exploremps.org/Content/designs/Enroll/images/EnglishGuidebook.pdf at 12-15; Saint Paul Public Schools, School Selection Guide, available at https://www.spps.org/Page/43752 at 23-31. Many families make this choice. Other families choose schools closer to home to facilitate their involvement. 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*, Minneapolis Public Schools, Comprehensive District Design, available at *https://accountability.mpls.k12.mn.us/ comprehensive_district_design_cdd*. Appellants' asserted rule would require the State to block this plan because some schools may not meet Appellants' ideal demographic distribution. Appellants' position would elevate their preferred educational strategy above all other strategies.

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, as well as under the U.S. and Minnesota constitutions. *See generally Brown*, 347 U.S. 483. Rather, the State asks the Court to refrain from making policy choices among competing lawful policies. *See Fletcher Properties, 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.[16]

Minnesota's system of education is neither perfect nor unlawful. The constitution requires the State to establish a public school system that sets a baseline floor for educating schoolchildren. Should it do more? Most would say so, while disagreeing about what that

[16] Note that, if perfectly balanced to reflect the demographics of the district, no school in either the Minneapolis or St. Paul school districts would meet the class definition in this lawsuit (all would exceed 60% students of color or in poverty). If this is deemed constitutionally "segregated" under the Education Clause, presumably it would require overturning the Legislature's decision to establish the Minneapolis and St. Paul school districts as coterminous with their city boundaries. These decisions were made well over 100 years ago, when they could not have been related to student race. *See generally Jackson v. Bd. of Educ. of City of Minneapolis*, 127 N.W. 569 (Minn. 1910); *State ex rel. Smith v. City of St. Paul*, 150 N.W. 389, 392 (Minn. 1914) ("no constitutional provision stands in the way of the right of the Legislature to place the public schools and libraries of a district coterminous with a municipality"). In both cases, moreover, the Minnesota Supreme Court affirmed that this structure was consistent with the "uniformity" requirement of the Education Clause. *E.g.*, 127 N.W. at 570; 150 N.W. at 391. Appellants would have the Court overturn these century-old decisions on the basis of arbitrary numbers without proof of discriminatory conduct or proof that the system denies students the opportunity to receive an adequate education.

"more" should be. This case, however, does not concern what the State could or should do. As the Supreme Court directed, these policy choices must be left to the Legislature, not the courts. The case is limited to what the State is constitutionally required to do. Appellants asked the district court to exceed this limited role and impose educational policies far beyond anything those required by the constitution. The district court properly denied Appellants' partial summary judgment motion.

V. THE DISTRICT COURT WAS PROPERLY CONCERNED ABOUT ENFORCING STRICT STUDENT DEMOGRAPHIC REQUIREMENTS.

The district court correctly concluded that Appellants sought to draw an impermissible line in the sand. According to Appellants, some sort of imbalance is unconstitutional. In other words, there are definite (but yet unknown) demographics that are constitutional and others that are not. As a consequence, the State would need to establish and maintain specific racial and SES balances, regardless of student and parental desires. The district court correctly held that this – in the absence of intentional discrimination – would violate federal law.[17]

The district court correctly observed that requiring individual students to attend specific schools as a result of mandatory demographic counting would raise federal Equal Protection concerns, at least to the extent the requirement is based on a student's race.

[17] Appellants argue this is no different than what the State already does under its Achievement and Integration Rule. They are wrong. The 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."

Add. 18 ("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 in front of the propeller blade of an Equal Protection claim."); *see also Parents Involved*, 551 U.S. at 721 (plurality opinion) ("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'") (citing *Milliken v. Bradley*, 433 U.S. 267, 280 n.14 (1977)).

Appellants now argue the relief could have focused on SES balances instead of race, but they also argued for racial balances to the district court, and they repeatedly highlighted (which they do again to this Court) on the Supreme Court's footnote, which focused solely on race. *Cruz-Guzman*, 916 N.W. 2d at 10 ("Claims based on *racial* segregation in education are indisputably justiciable.") (emphasis added). In any case, Appellants have not proven that some SES imbalance denies anyone the opportunity to acquire an adequate education.

VI. APPELLANTS MUST PROVE INADEQUACY AND CAUSATION.

The district court decided Appellants' motion without considering whether they are required to demonstrate that racial or SES imbalance denies students the opportunity to receive an adequate education. Appellants largely ignore this requirement with their appeal. Case law demonstrates this is necessary in order for Appellants to prevail.

As this Court explained in *Forslund v. State*, 924 N.W. 2d 25, 34-35 (Minn. Ct. App. 2019):

> 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.

Appellants have *alleged* that some racial/SES imbalance denies students the opportunity to receive an adequate education, but this is insufficient for them to prevail. Appellants must prove that the State's system does not provide such an opportunity and that some *specific imbalance* was the cause of that failure. Despite Appellants' effort to distinguish this case from *Forslund* ("Whereas the *Forslund* plaintiffs did not contend that they were actually receiving an inadequate education, the *Cruz-Guzman* plaintiffs do…", App. Br. at 42; "Here, Plaintiffs claim that the racial and SES segregation at the schools constitutes an inadequate education…," *id.*), mere allegations are not enough. They cannot prevail without *proving* that they have been denied the opportunity to acquire an inadequate education. *Forslund*, 924 N.W. 2d at 34-35.[18]

Minnesota's Education Clause exists so that students may "discharge their duties as citizens intelligently." *Cruz-Guzman,* 916 N.W. 2d at 12. Appellants' motion and this

[18] The *Forslund* approach is consistent with the Supreme Court's approach in *Skeen*. There, certain school districts challenged the funding mechanisms established by the State. The Court first recognized "that the 'general and uniform' requirement [did not mandate] full equalization of local referendum levels." *Skeen*, 505 N.W. 2d at 312. Moreover, because the parties agreed that children had the opportunity to receive an adequate education, despite any funding disparities, the court held that the "system of educational financing of public education [did] not violate the 'general and uniform system of public schools' of the Education Clause of the Minnesota Constitution." *Id*.

appeal does not address the adequacy of the educational system. Instead, it seeks to have this Court mandate some student demographics without any concern whether students in an "imbalanced" school actually have the opportunity to acquire an adequate education. In other words, without even attempting to show educational inadequacy, Appellants ask this Court to recognize the sort of freestanding anti-segregation provision that exists in the constitutions of Connecticut and New Jersey but not in Minnesota's or that of most states.

Ultimately, Appellants must prove (1) they have not received an opportunity to acquire an adequate education; *and* (2) specific student demographics are the cause of this failure. Appellants did not even attempt to show *either* of these components, thereby precluding an award of summary judgment. *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 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 breakdowns of the district.").[19]

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

The district court correctly noted Appellants did not offer any evidence that student demographics have any effect on whether students receive the opportunity to acquire an

[19] Appellants merely assert that causation is proven definitionally. App. Br. at 48. They also point to certain test results without showing any causal link. *Id*. at 9-11. Moreover, Appellants acknowledge that the Minnesota Constitution only requires schoolchildren to be provided with an opportunity to obtain an adequate education and that the State is not required to guarantee specific outcomes. Doc. ID# 356, Ex. 1 at 3-4.

adequate education. Add. 20. They acknowledge as much to this Court, as they assert: "The segregation numbers speak for themselves. [Appellants] submit the very existence of racial and SES segregation establishes that the schools and the education they provide are *definitionally inadequate*…" App. Br. at 48 (emphasis added). For the reasons described, *supra*, this is insufficient.

Instead of addressing educational adequacy, Appellants argue 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. at 49 *et. seq*. These arguments concern alleged discriminatory intent and therefore primarily concern Appellants' Equal Protection claim. But Appellants did not move for partial summary judgment on their Equal Protection claim. App. Br. at 4 ("The Education Clause is the only clause at issue in this appeal.").

Alternatively, the evidence could be considered in connection with a contention that the State has established a *de jure* segregated system, which the Minnesota Supreme Court has also concluded would violate the Education Clause.[20] *Cruz-Guzman*, 916 N.W. 2d 10,

[20] State Respondents agree with Appellants and the district court that the Education Clause does not contain an intent requirement. The Legislature has a duty to establish a *system* that provides children with the opportunity to obtain an adequate education. Therefore, even if the Legislature has good motives, it fails to comply with the Education Clause if it fails in its duty. But the Supreme Court has repeatedly held the Legislature has fulfilled its duty. *Skeen*, 505 N.W. 2d at 315 (Minn. 1993); *State ex. rel. Klimek*, 283 N.W. at 398.

Alternatively, State Respondents readily concede that, if Appellants prove intentional discrimination on the basis of race, that action would violate the state constitution, whether under the Equal Protection Clause, the Education Clause, or both. But Appellants have not and cannot show unlawful intent, and the State, not surprisingly, unequivocally denies that it has engaged in such behavior. *See, e.g.*, Doc. ID#356, Ex. 4 (Footnote Continued on Next Page.)

n.6. But the district court properly concluded the evidence falls far short of establishing as a matter of law that the State has established *de jure* segregated system. Add. 18 ("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 ID#356, Ex. 4 at 4 ("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).

Appellants have not demonstrated that the State Respondents have acted with unlawful, discriminatory intent as a matter of law. 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. *Molley*, 679 N.W. 2d at 716. Second, MDE sought to make 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.[21]

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at 4 ("Minnesota has never engaged in the type of intentional segregation declared unlawful by the United States Supreme Court in *Brown v. the [sic] Board of Education* in 1954[.]").

The Education Clause does not exist as a vehicle to ignore the well-established distinction between *de jure* and *de facto* segregation and claim victory. Appellants must prove either that the State unlawfully discriminated against them *or* that, regardless of intent, student demographics caused them not to have the opportunity to receive an adequate education. They have done neither, so the district court properly denied awarding summary judgment.

[21] Minnesota's Office of Administrative Hearings does not always approve MDE's proposed rules. In 2016, OAH disapproved MDE's attempt to revise the Achievement and (Footnote Continued on Next Page.)

In 1999, the Office of Administrative Hearings rejected any assertion that MDE's proposed Rule violated any applicable laws. Then, as now, individuals affiliated with Appellants urged adoption of a different rule. In rejecting these comments and approving MDE's proposed 1999 Rule, the ALJ 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."

- The Department 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).

- The Department 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. ID#356, Ex. 5 at 6-7, 20.

The State also has voluntarily and affirmatively pursued integration as a matter of public policy since the early 1970s, initially through administrative rules and, since 2013, also in statute. *See, e.g.*,

- Minn. Stat. § 124D.861, subd. 1(a): "The "Achievement and Integration for Minnesota" program is established to pursue racial and economic integration and

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Integration Rule because, among other reasons, MDE sought to subject charter schools to the rule. Doc. ID#356, Ex. 4 at 61-65.

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. 5: "The commissioner shall evaluate the efficacy of district plans in reducing the disparities in student academic performance among the specified categories of students within the district, and in realizing racial and economic integration."

- Since 1988, the Legislature has appropriated more than $1.9 billion to support school integration, including approximately $167 million for the upcoming 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. Minnesota School Finance: A Guide for Legislators at 142-43, available at house.leg.state.mn.us/hrd/pubs/mnschfin.pdf.

Finally, the decisions by the Minneapolis and St. Paul school districts to return to a model of neighborhood schools[22] are another example of educational policy with which Appellants disagree, not evidence of an unlawful and unconstitutional education system. The Legislature has fulfilled its duties under the Education Clause and established a general and uniform system that allows local school districts to make decisions in the best interests of their students.

The Minneapolis and St. Paul school districts should be permitted to use their expertise in the field of education at the local level to determine the manner that will best enable them to educate their students. After all, the purpose of the Education Clause is to

[22] The Minneapolis and Saint Paul school districts have continued to make changes throughout the course of this litigation. *See, e.g.*, Minneapolis Comprehensive District Redesign, *supra;* Envision SPPS at https://www.spps.org/site/default.aspx?PageType=3&DomainID=4&ModuleInstanceID=32741&ViewID=6446EE88-D30C-497E-9316-3F8874B3E108&RenderLoc=0&FlexDataID=146822&PageID=1.

provide students with the opportunity to receive an adequate education, not to mandate specific student demographics within schools or classrooms.

When the facts put forth as proof of discriminatory intent are considered in the light most favorable to the State, together with the State's affirmative evidence, the Court should readily affirm that Appellants repeatedly infer discriminatory motives when the State actors may simply have had differing opinions about educational policy, parental choice, and future U.S. Supreme Court rulings concerning race-conscious actions regarding schools.[23] Because intent is an issue of fact, resolving any applicable disputes is not appropriate at the summary judgment stage. *Soucek,* 503 N.W. 2d at 160-61.[24]

VIII. THE DISTRICT COURT CORRECTLY HELD THAT THE STATE RESPONDENTS HAVE THE RIGHT TO CONDUCT ADDITIONAL DISCOVERY.

In their opposition to Appellants' motion, the State Respondents submitted an affidavit, consistent with Minn. R. Civ. P. 56.04, that indicated the necessary discovery that should occur before Appellants' motion was granted. Add. 20.

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[23] 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. ID#356, Ex. 5 at 20.

[24] 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.

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 as required by the Minnesota Constitution. 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.[25]

CONCLUSION

For the above-stated reasons, the Court should affirm the denial of Appellants' Motion for Partial Summary Judgment. Appellants have not demonstrated the absence of disputed material facts or that they are entitled to judgment as a matter of law.

Dated: May 25, 2022

Respectfully submitted,

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[25] The district court referred to certain submissions by Appellants as having come from "experts." Add. 20. In fact, at the time of Appellants' motion through the present, no party has identified any experts consistent with Minn. R. Civ. P. 26.01(b). Pursuant to the scheduling order in place, the deadline for doing so has not passed, so no party has yet identified a single expert or produced a single expert report.