Case No. A19-1762

STATE OF MINNESOTA
COURT OF APPEALS

St. Cloud Educational Rights Advocacy
Council, Inc.,

Appellant,

v.

Tim Walz, Governor, et al.,

Respondents.

APPELLANT'S BRIEF
AND ADDENDUM

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ISSUES PRESENTED

Whether Minnesota's school funding system violates the Minnesota Constitution when it fails to provide enough funding to afford an education that meets state mandatory standards to lower-income students, students with disabilities and English-language learners.

> Skeen v. State, 505 N.W.2d 299, 313 (Minn. 1993) ("education is a fundamental right under the state constitution, not only because of its overall importance to the state but also because of the explicit language used to describe this constitutional mandate"; constitution requires state to provide enough funds to afford each student with an education that meets state standards)
>
> Cruz-Guzman v. State, 916 N.W.2d 1 (Minn. 2018). (constitution requires "funding to each student in the state in an amount sufficient to generate an adequate level of education which meets all state standards")

Whether the District Court defied Cruz-Guzman and Skeen by conferring immunity on the legislative and executive branches from judicial review of a school funding system that fails to provide funding necessary to afford an education that meets state standards to students of poverty, students with disabilities and English-language learners.

> Cruz-Guzman, supra (We therefore hold that the protections of the Speech or Debate Clause do not extend to claims that the Legislature has violated its duty under the Education Clause or has violated the Equal Protection or Due Process Clauses.) 916 N.W2d at 8.

Whether the District Court improperly failed to accept allegations of the complaint as required by Rule 12.

> Elzie v. Commissioner of Public Safety, 298 N.W.2d 29 (Minn. 1980); 614 Co. v. Minneapolis Community Development Agency, 547 N.W.2d 400 (Minn. Ct. App. 1996)(When constitutional violations are alleged, defendant must demonstrate complete frivolity of complaint before dismissal for failure to state a claim upon which relief can be granted is proper.).

Whether District Court erred by disregarding Minnesota standing principles and wrongly disregarded proof that plaintiff organization adequately represents its members' constitutional right to challenge Minnesota's unconstitutional school funding system.

Snyder's Drug Stores, Inc. v. Minnesota State Bd. of Pharmacy, 221 N.W.2d 162 (1974) (A person whose legitimate interest is injured in fact should have standing unless a legislative intent is discernible that the interest he asserts is not to be protected).

Connecticut Coalition for Justice in Education Funding, Inc. v. Rell, 327 Conn. 650 (2018) (fact that parent members voluntarily joined group knowing that it had publicly advocated in favor of specific public-school funding policies provided sufficient evidence that group represents their views).

Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Brock, 477 U.S. 274, 275–76 (1986) (the doctrine of associational standing recognizes that the primary reason people join an organization is often to create an effective vehicle for vindicating interests that they share with others).

Whether the Court violated Rule 19 and Cruz-Guzman by finding that the Court lacked jurisdiction to remedy an unconstitutional funding system because plaintiffs failed to sue the school district victimized by that funding system.

Whether the Court should have granted preliminary relief requiring defendants to address undisputed funding deficiencies in the next legislative session.

In the Alternative: After concluding that the Court lacked jurisdiction both on Standing and Rule 19 grounds, whether the Court erred in proceeding to purport to decide the merits of the case over which it found it lacked jurisdiction.

Minn. R. Civ. P. 41.02 (a dismissal …other than a dismissal for lack of jurisdiction… or for failure to join a party indispensable pursuant to Rule 19, operates as an adjudication upon the merits)

Sundberg v. Abbott, 423 N.W.2d 686, 688 (Minn.App.1988)

In re Estate of Jotham, 722 N.W.2d 447, 451 (Minn. 2006) (standing is

jurisdictional)

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In 1988, a consortium of about 25% of Minnesota school districts brought an equity-based school funding suit, Skeen v. State, asserting that Minnesota's constitutional education clause demands that all school districts deserve equal funding, and that consequently, reliance on property tax based "excess levies" providing superior access to supplemental funding to districts like Edina and Minnetonka deprived the Skeen districts of an equal opportunity to this funding[1]. However, in 1989, Kentucky's Supreme Court in Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, announced an alternative constitutional funding test, one that required Kentucky to provide enough funding to afford all students with an adequate education. See also Abbott v. Burke, 119 N.J. 287, 575 A.2d 359 (1990). Minnesota and intervenor districts advocated against application of an equal funding test and supported an adequacy foundation for Minnesota's education clause. Minnesota's brief argued for funding based on actually producing the desired educational results, telling the Court:

> "The plain meaning of the Education Clause … is that the system of public schools must be similarly available to all students similarly situated, it must be a complete system, and it must properly produce the desired effects[2]."

[1] Jack Y. Perry, Financing Education in Minnesota: Equity and Constitutionality Questions Raised by State Referendum Levy, 8 Law & Ineq. 229 (1990).
[2] Quoted portions of the State's brief and reply are provided as exhibits.

Thus, the Minnesota defendants advocated that adequate funding meant the amount needed to produce an adequate education for all students. The Minnesota defendants further argued that the Court should defer to the legislature to establish state standards, but that once having established those standards, the state's funding obligation was to provide enough funding to meet state education standards. Minnesota pointed to a stipulation entered in the trial court establishing that Minnesota's current funding system met all state standards:

> All parties agree that….all of the plaintiff districts meet or exceed all educational requirements for themselves and their students established by the Minnesota Legislature, the State Board of Education, and the Commissioner and the Department of Education…..The parties agree that for purposes of this litigation all school districts in Minnesota meet state requirements set forth in statutes, rules and policies. Von Korff Skeen-Brief-Declaration Exhibit 1.

This stipulation became the foundation for the Minnesota Supreme Court's ultimate constitutional funding standard. The Supreme Court resolved the constitutional issues presented by deciding (a) that the Minnesota Constitution affords a fundamental enforceable right to sufficient funding, (b) that Minnesota satisfies its constitutional funding obligation if it provides "funding to each student in the state in an amount sufficient to generate an adequate level of education which meets all state standards." Skeen v. State at 315-316.

Unfortunately, Minnesota' mandatory standards at the time were not rigorous. Complaint ¶4. Accordingly, the state specifically committed that the legislature was

developing rigorous standards which would assure that all students would be held to high achievement-based standards, instead of undemanding input-based standards. As promised, during the next decade, the State began to create a robust and rigorous set of state education standards which obligates each district to comply with proficiency and programmatic standards far more demanding than existed when Skeen was decided. ¶¶4, 14, 15. (Complaint paragraph numbers are hereafter designated by ¶) These standards raised the cost of education for all students, but disproportionately raised the cost for districts like Minneapolis and St. Cloud with high percentages of low-income students, students of color, and English-language learners. ¶¶ 16-20. It would be necessary to redesign Minnesota's school funding system to fund the new state standards.

In 2004, Governor Pawlenty appointed a blue-ribbon task force to do just that. ¶¶6-12. Task Force recommendations called for "full dollar cost" funding for students with educational disadvantages – the very standard set by Skeen. However, the Governor apparently worried about the additional overall cost of providing an education that meets all state standards, and he disbanded the Task Force. As a consequence, districts like St. Cloud continued without sufficient funding to meet state standards. ¶¶ 72-77. The consequences of this funding shortfall are grave: each group's funding shortfall –English-language learners, low-income students, students with disabilities, and students of color -- compounds the shortfalls of the others. The shortfall in special education alone removes $13 million annually from the general funds of the St. Cloud

District. These shortfalls threaten the future of the local economy, ¶78, and cause advantaged students to migrate out of the district leading to racial and class isolation. ¶ 138; Dahlgren Affidavit p. 2; Putnam affidavit. They make neighborhoods and the district less attractive and lower home values. ¶79. Most significantly, they fail our children by depriving them of the education the constitution and laws require. ¶ 79.

The Attorney General defends this destructive system by reinterpreting the Supreme Court's requirement to provide enough funding for "each student", asserting that it requires enough funding only for advantaged students. Under this reinterpretation, the "extra cost" of meeting state standards for students with disabilities, "students of poverty" and English-language learners is allegedly not constitutionally required, but entirely discretionary. Defendants Memorandum in Support of Dismissal, p 1. This funding practice prevents St. Cloud from providing an education that meets state standards to low-income students, to English-language learners and other students with higher educational needs. The Attorney General thus disclaims the obligation to provide enough funding for at nearly 3/4 of St. Cloud District's enrolled students[3]. Statewide, the State's policy adversely impacts over 330,000 free and reduced lunch eligible students. That is the state's sole substantive defense: that it can require St. Cloud to educate all

[3] The District enrollment is 62% free and reduced lunch, 24% English-language learners, and 20% students with disabilities, and 15% have dyslexia, but the four groups overlap.

students in accord with state standards, even though the state provides grossly inadequate funding to do that, because the funding required is an "extra cost."

The courts have jurisdiction to determine whether this reinterpretation of the Skeen standard is wrong. Brief Infra Part V. Excluding 333,000 students, 6100 in St. Cloud, from a standard that calls for enough funding for "each student" defies plain language and contradicts the basic purpose of the education clause. The current system must be repaired so that educators can have the resources they need to confront the crisis that is Minnesota's worst-in-the-nation achievement gap.

The Supreme Court has already rejected Attorney General's efforts to render the education clause unenforceable in the Courts. The Cruz-Guzman Court repeated its holding in Skeen that the state must provide "enough funding" to afford "each student" with an education that "meets all state standards."

> We declared that the Education Clause "requires the state to provide enough funds to ensure that each student receives an adequate education and that the funds are distributed in a uniform manner." *Id.* at 318. We concluded that "[b]ecause the [then-existing] system provide[d] uniform funding to each student in the state in an amount sufficient to generate an **adequate level of education which meets all state standards**, the state ha[d] satisfied its constitutionally-imposed duty of creating a 'general and uniform system of education.' (emphasis added). See Cruz-Guzman v. State, 916 N.W.2d 1 (2018).

The Complaint merely seeks to implement Skeen and Cruz-Guzman. The State's contention that the State is immune from that claim is a flagrant defiance of two Supreme Court decisions. Over the last two decades, the State of Minnesota passed an

extraordinarily rigorous and demanding set of mandatory state standards applicable to all but a small subset of students. Complaint ¶¶ 14, 15. St. Cloud is accountable for meeting those state standards, and its students have a constitutional right to receive that education, but the state's funding system fails to provide enough funding to meet state standards for nearly three-quarters of district students. The complaint provides detailed and documented factual assertions, taken from the state's own statistics, proving that the state's funding shortfalls are preventing the St. Cloud District from closing the achievement gap. The consequences of underfunding are documented in the complaint and in detailed documented affidavits from experienced St. Cloud educational leaders. The affidavits are listed in a Record index, and will provide the Court with exceptional and authoritative insight into the funding's system's impact on the achievement gap.

Since the Supreme Court has held twice that the courts have jurisdiction to declare the state's obligation to provide enough funding to meet all state standards, it follows that the courts have jurisdiction to determine unconstitutional a system which ignores the cost of meeting state standards for disadvantaged students. The position taken by the Attorney General, and adopted by the District Court essentially overrules Skeen and Cruz-Guzman from the district court bench.

The state's current funding approach is the direct cause of the achievement gap, ¶¶ 20-22, 25, 26, 33, 35, 70,77, and Minnesota must take strong measures to address that gap. The Minnesota Department of Education explains:

> "Our population is aging. Seventy percent (70%) of jobs will require more than a high school diploma. We don't have an adequate number of qualified candidates to fill many good-paying jobs. The fastest growing segment of our future workforce is students of color, and they currently have the state's lowest graduation rate. Minnesota has one of the worst black-white achievement gaps in the country." (MDE World's Best Workforce website publication). See also "A Statewide Crisis, Minnesota's Education Achievement Gaps", Fed Reserve Report, October 2019.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The state's failure to fund the cost of meeting state education standards negatively impacts all districts, but it disproportionately impacts urban core districts like Minneapolis, St. Paul and St. Cloud. ¶¶37, 138. Over the last two decades, students with higher educational costs have become concentrated in the St. Cloud District: its demographic composition now mirrors that of Minneapolis and St. Paul. ¶¶ 30, 139. The proportion of disadvantaged students in St. Cloud District is far higher than in the surrounding contiguous districts, leading to a growing racial and economic isolation similar to that addressed in Cruz-Guzman v. State. 505 at 315–16. ¶¶ 29, 30, Table 1. Exhibit 04, A, B. Since 1992, the poverty rate in the district's enrollment has risen from 22% to 61%. (Welter-Declaration). Table-A below compares enrollment for English language, special education, and for free and reduced lunch (FRL) students between St. Cloud and surrounding districts. It shows a vast difference in demographic composition, even more stark than exists in the metropolitan districts.

Our complaint alleges that Minnesota is providing grossly insufficient funding to the St. Cloud District making it impossible to afford an education that meets state standards to all students, but especially so to those with educational disadvantages – lower-income students, English-language learners, students of color and students with disabilities. ¶¶1, 18, 20, 21(special education); 22, 24, 31, 33, 89, 94, 108-115 (dyslexia education, 122-129 (Ell education), 134-137 (professional development), ¶ 94 (Compensatory education for lower-income students).

	St. cloud		7 Total	
ADM	10,292		18,468	100%
ELL	2,466	24.00%	268	1.5%
SPED	2,078	20.20%	3,021	16.4%
FRL	6,316	61.40%	4,235	22.9%
Homeless	260	2.50%	85	0.5%
White	4,663	45.30%	16,654	90.2%
Black	3,954	38.40%	328	1.8%

Table A Demographic Comparison
St. Cloud and Seven Contiguous Districts[4]

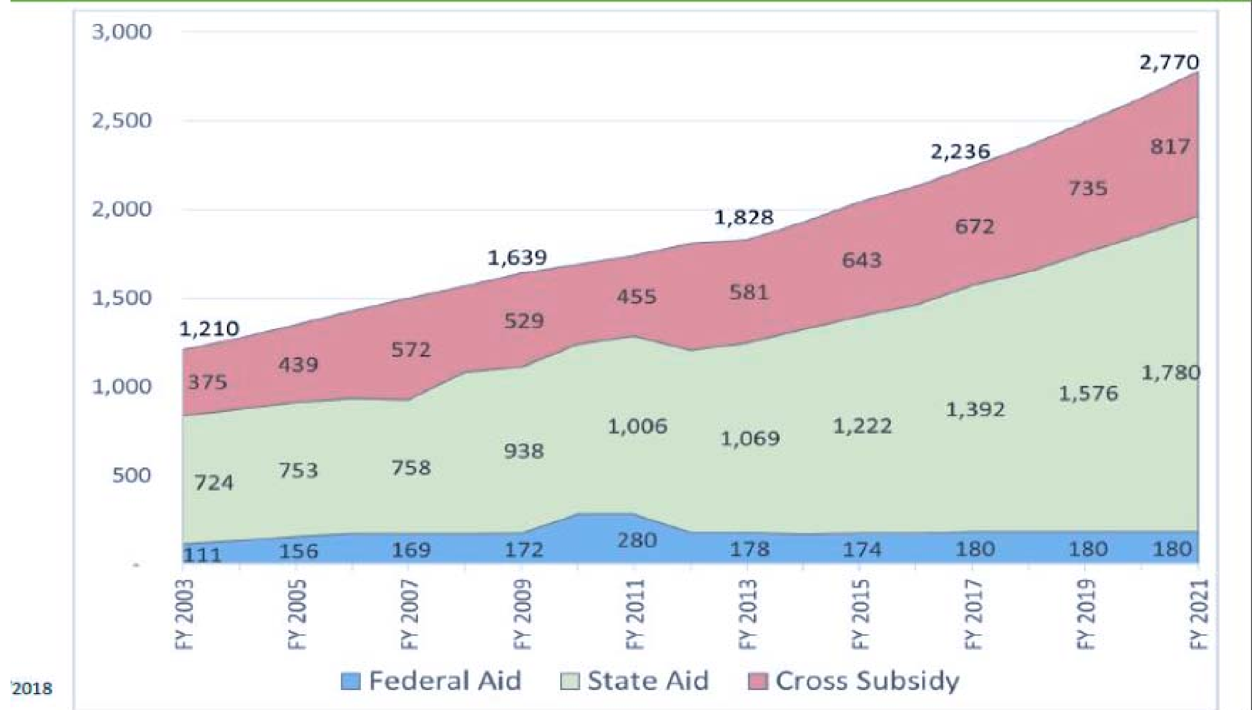
Neither legislative nor executive branch track the cost of providing an education that meets state standards, except for state-mandated special education. Minnesota Department of Education (MDE) reports the difference between state-mandated

[4] ADM=Average Daily Membership. ELL=English-language learners; SPED=special education

allowable special education costs and revenue[5] in an official special education cross-subsidy report. The growing deficit has catastrophic consequences. In the last legislative session, the legislature prepared a report for legislators "School Districts Grapple with Growing Special Education Deficits (Exhibit 01-G), and the record index references numerous other descriptions of the destructive consequences of the special education funding shortfalls, but neither governor nor legislature have taken meaningful remedial action.

Table-B below is an MDE chart tracking the difference between state-mandated statewide special education expenditures and total special education revenues provided to districts. It shows that since 2003, the shortfall in funding to meet the special education state standard has grown from $375 million to $735 million. All districts are reporting significant fiscal challenges as a result of this growing deficit, see exhibit 01-H (MinnPost, "We Cannot Sustain This") but the total state deficit is irrationally distributed, causing significant harm to some districts, but devastating harm to others. See Superintendent Watkins affidavit.

[5] Minn. Stat. §127.065.



Allocation of this funding deficit among districts is completely irrational. Table-C[6], below, exhibit 6 in the District Court, compares the cross subsidy (that is the funding deficit) per student in St. Cloud and six neighboring districts. The St. Cloud deficit per student is derived by dividing the total SPED funding deficit inflicted on the St. Cloud District ($13 million) by the enrollment of all students in the District (10,000). Table C shows that the District must remove $1282 per-student out of general education revenues

[6] Table-C displays numbers higher than the Complaint, because the new cross-subsidy report was issued after the Complaint was served.

available to all students in order to cover state-mandated special education expenses for students with disabilities. However, a large majority of St. Cloud District students are in the lower-income and English language learner categories which are themselves underfunded by the state: The District must rob from underfunded student programs to pay for another underfunded program.

In comparison, St. Cloud's neighboring districts have special education deficits per-student one-half that of St. Cloud's, even though they have one-fifth the non-white percentages of St. Cloud, one-twelfth the English language learner percentages and one-third the poverty rates of St. Cloud. The third column of Table-C compares the unfunded cost per special education student and that column shows the same huge disparities. The District Judge found that these differences don't amount to constitutional violations, because poverty is not a protected class. However, as discussed below, Skeen held that funding needed to meet all state standards is a fundamental right, and hence the differential funding of that fundamental right is clearly subject to strict scrutiny and cannot be constitutionally justified. Brief, Part IV-B

	Cross	Subsidy
District	/Student	/Sped Student
Annandale	$670	$3,742
Foley	$495	$3,590
Paynesville	$592	$3,800
Rocori	$494	$4,486
Sartell	$589	$3,808
Sauk Rapids	$539	$2,988
St. Cloud	**$1,282**	**$6,579**

These funding deficits impair the ability of school districts across Minnesota to meet state standards for all students, but especially for districts like St. Cloud. The Minnesota Legislature's own publication describes the crushing impact of these deficits when inflicted on districts:

> The [unfunded] balance is paid for through the district's general education budget, often at the expense of cutting teachers, class offerings, arts programs and extracurricular activities. "We're making a choice right now, and we're diminishing the quality which every child and every community deserves by doing that," said Carlton Jenkins, superintendent of Robbinsdale Area Schools. Minnesota House of Representatives. Exhibit 01-G.

This differential deficit not only impairs St. Cloud's ability to meet state standards for its students with educational disadvantages, it inflicts a competitive disadvantage that contributes to racial and economic isolation of the kind for which Cruz-Guzman v. State

provides a judicial remedy. ¶148, 149. As a consequence of these challenges, the District faces increasing difficulties in keeping advantaged students in the district, because many families don't want to send their children to a school with large numbers of disadvantaged students who are not meeting state standards, where the schools may be under pressure to cut programs for advantaged students in order to cover the special education and other mandate deficits. See Watkins Affidavit. ¶ 79. The state is replicating exactly the economic social pressures in the St. Cloud area that it perpetrated in Minneapolis and St. Paul decades ago. ¶138.

The Office of Management and Budget exclaims:

> There is significant variation among school districts in the amount of unreserved general fund revenue per student needed to cover unfunded special education costs. **All else equal, districts having relatively large special education cross-subsidies per student are at a competitive disadvantage compared with other districts in providing regular education programs**[7]. (emphasis added)

The State's failure to comply with the constitutional "enough funding" – "all state standards" mandate is the direct and proximate cause of the achievement gap in Minnesota and the St. Cloud District. ¶¶2, 18. For example on the National Assessment of Educational Progress (NAEP) Minnesota has the highest black-white gap for 10th graders in the nation, 43 points. Complaint ¶ 68. Minnesota black 10th graders have an average NAEP math score of 259, which is insignificantly different from the NAEP

[7] http://education.state.mn.us/MDE/SchSup/SchFin/SpecEd/

average math scores of white 4th graders. Id. Similar gaps exist in reading, and large gaps separate the performance of students based on economic status. ¶69. Examples of the gaps caused in St. Cloud include:

- **Income based gap: Twenty percentage point proficiency gap**: The percentage rates of white free and reduced lunch (FRL) eligible students who are proficient in math, science, and reading are each twenty points lower than proficiency rates for non FRL white students in math, science and reading respectively. Complaint ¶37 Table-C.

- **Race based gap: Thirty percentage point proficiency gap**: Comparing native English speakers by race, the proficiency rate gaps between white and black St. Cloud District students are 36 percentage points for math, 32 points for science and 29 percentage points for reading. Complaint ¶ 75. Similar gaps exist for Minneapolis and St. Paul.

To provide an education that meets state standards to students with educational disadvantages costs far more than for more advantaged students, ¶¶11, 16-19, 20, what the Attorney General describes as an "extra cost." St. Cloud's $13 million special education deficit directly undermines its ability to meet the needs of non-disabled students with educational disadvantages, because the state forces the district to cover that deficit by pulling funds out of the revenues otherwise available to non-disabled students, most of whom themselves have high educational needs for which state funding is already inadequate. Complaint ¶ 21.

The Complaint thus alleges two major constitutional harms, both recognized by Supreme Court precedent:

- That state funding is inadequate to provide the educational services necessary to provide students with an education that meets all state standards, a direct violation of Skeen v. State.

- That inadequate funding triggers racial and economic segregation of the very kind which the Supreme Court has determined affords a constitutional cause of action in the Cruz-Guzman case. Complaint ¶ 148, 149.

Although District teachers and leadership supply heroic efforts to provide an adequate education, the State's failure to provide enough funds for students with higher educational needs is preventing the district from closing the achievement gaps based on race, economic status and native language. ¶¶3, 20. The affidavits of educational leaders --Superintendent Watkins, Director of Bilingual Education Frankenfield, Principal Flynn, and Executive Director of Teaching and Learning Posch -- eloquently describe the District's inability to meet the needs of students with educational disadvantages and the crushing impact of the special education deficit.

This brings us to the Court's finding that Plaintiff lacks standing to represent the interests of its members who are parents of students, educators, school board members, homeowners, and organizational leaders active in meeting unmet needs of students which the district cannot meet because of state funding shortfalls. The Complaint contained compelling allegations that plaintiff's members are directly injured by the funding system, and that they have deep and abiding concrete interests adjudicating these claims. The St. Cloud school district finds itself with a large achievement gap affecting a growing number of its students. ¶¶ 72-75. Only 25% of the St. Cloud District's free and

reduced lunch graders test proficient on the high school MCA-III reading test for the last grade for which the test is given. ¶ 86. One in six students who enroll in the Minnesota University system must enroll in remedial courses compromising the student's ability to pay for and complete post-secondary education. ¶¶ 84-87. Closing racial and ethnic gaps is not only key to fulfilling the potential of people of color; it is also crucial to the well-being of our nation. ¶ 78.

The state's failure to fund, and the district's consequent inability to provide, an adequate education to disadvantaged students has grave consequences to the students themselves, their parents, and the community, including plaintiff's members. ¶¶ 78-79. They include depressed housing values, diminished economic development, and out-migration of advantaged families from the community and its schools. Id., ¶ 79. Plaintiff's members experience concrete injuries as a result of these funding problems. The record is filled with examples. See Mohs, Putnam, and Johnson declarations. Members are leaders of organizations which raise funds, provide volunteers and implement a variety of education programs to supplement the education of students in ways that the District cannot afford. Members -- black, white, and immigrant -- have an interest in their children attending schools in which all students are thriving and having their needs met. Minneapolis and St. Paul have been stricken by a massive enrollment

decline[8] that results from their inability adequately to provide an education that meets state standards to disadvantaged students. SCERAC's members have a compelling interest in heading off that same phenomenon in St. Cloud. See Putnam affidavit.

The District Court seemed incorrectly to imply that the plaintiff's members are late-comers to the battle for adequate education for the disadvantaged. In fact, it would be hard to find a group of citizens more active -- and exceptionally dedicated to the cause of providing an education that meets all state standards -- than the SCERAC membership. For over a decade, these educators, school board members, parents and advocates had been engaged in attempting to compensate for the state's shortfalls in funding. A number of SCERAC members are founders and leaders of the LEAF foundation which raises money to supplement the district's activities budget, to provide assistance to homeless students and their families, and to provide academic scholarships to needy students. LEAF originated because the District's activities budget is substantially lower than the state average as a result of funding shortfalls. ¶¶ 39,45.

Other member parents and school board members formed a volunteer lobbying team to urge the legislature and governor to meet its constitutional responsibilities. Many were involved in the 2007 statewide push to fix the special education deficit. Other members formed "Partners for Student Success" to coordinate community efforts to assist

[8] https://www.twincities.com/2018/12/04/enrollment-falls-again-in-st-paul-public-schools-and-district-officials-are-concerned/

the district with the educational needs of students. See affidavits of Bruce Mohs, Pat Welter and Aric Putnam. Members of SCERAC include parents of children directly impacted by the district's funding shortfalls including immigrants and English-language learners, students with dyslexia, a former Minneapolis school board member whose profession is educational reform, a charter school principal, and numerous education professionals

Instead of challenging the standing of plaintiff's members themselves, the Attorney General offered evidence outside the record, submitting the bylaws of the plaintiff, (incorrectly) claiming that this proved as a fact that the members lacked the ability to influence the board of directors, because the voting members of the corporation were members of the board. In so doing, the defendants converted their motion to dismiss into a motion for summary judgment under Rule 12.02, and plaintiff responded with affidavits proving, the contrary, that plaintiff's members were indeed actively involved in every aspect of the plaintiff organization. However, the District Judge disregarded those affidavits, essentially granting the state summary judgment by judicial fiat in violation of plaintiff's right to respond to evidentiary submissions under Rule 12.02. Organizing in the corporate form is a routine and honored mechanism of advocating for the common interests of members, and these members joined precisely because they knew that plaintiff would advocate for the constitutional rights recognized

in Skeen. See Connecticut Coalition for Justice in Education Funding, Inc. v. Rell, 327 Conn. 650 (2018).

ARGUMENT

I. Separation of Powers Does not Prohibit the Court from Determining the Constitutionality of Defendants' Funding Practices.

Defendants advanced several versions of separation of powers arguments rejected in both Skeen and Cruz-Guzman. Whether framed as legislative immunity, separation of powers, political question, or some other technical label, these argument all amounts to the same thing: the contention that if the Court finds that Minnesota's education funding system violates a fundamental constitution right or equal protection, then the Court should not even provide declaratory relief, because it might lead to a constitutional crisis, in which the courts would be compelled to hold the other branches in contempt of Court.

On the contrary, the Supreme Court has twice held that the funding of an adequate education is a fundamental enforceable right, and has held that an adequate education is determined by state education standards. That is, the state must provide a district with enough funding to afford "each student" with an "education that meets all state standards." Skeen, Cruz-Guzman, supra. The Court has already rejected the Attorney General's separation of powers arguments in Cruz-Guzman. Responding to the Attorney General's separation of powers argument, the Cruz-Guzman Court admonished the state that "[in Skeen] We declared that the Education Clause "requires the state to provide **enough funds** to ensure that **each student** receives an **adequate education"** (emphasis

added). Cruz-Guzman v. State, 916 N.W.2d 1 (Minn. 2018). Putting technical arguments aside, the State's position is plainly incompatible with the Skeen decision itself. The Skeen court held that the constitution requires the state to provide "enough funds to ensure that each student receives an education that meets state all standards." The Skeen Court recognized the judiciary's power to require the state to provide enough funds in Skeen: the contention that adjudicating the funding requirement is beyond the Court's power was rejected once again, in Cruz-Guzman.

The issue presented here requires only an elemental application of Marbury v. Madison: it is a judicial function to determine what the constitution means. The Court has already found that the judiciary has the power to determine that the constitution requires the state to provide enough funding to afford an education to each student that meets state standards. It clearly follows that the Court has power to determine that providing enough funding for "each student" includes students of poverty, students with disabilities, and English-language learners. Marbury v. Madison, 5 U.S. 137 (1803).

The state's defense here is that when the Court guaranteed funding to "each student" it actually meant only advantaged students, and adjudicating that contention is surely within the Court's jurisdiction. Surely if the Court can declare that the education clause requires the state to provide enough funds to each student, it falls within the court's jurisdiction to tell the defendants that "each student" actually means each and every student.

The District Court was convinced that it could not address whether the "extra cost" exclusion currently applied by the state is consistent with the Supreme Court's interpretation of the Constitution, because the natural consequence of that decision would be that the State would be forced to appropriate more money to the St. Cloud District. But the constitution is not suspended simply because following the constitution costs money. When the Supreme Court prohibited the State of Texas from refusing to fund education for illegal immigrants, that had significant funding implications for the State of Texas. Plyler v. Doe, 457 U.S. 202 (1982) (affirming district court injunction).

In any event, the resolution of a hypothetical confrontation between judiciary and legislature is premature at this juncture. It assumes, wrongly, that upon a declaration by Court construing the constitutional obligation, the legislature will simply refuse to comply with the constitution and force the judiciary to use the contempt power to convince it to do its duty. It is more probable that if the Court declares that educating the poor and disadvantages is not an "extra cost" exempt from Skeen, the Governor, supported by Attorney General will call for the legislature to do its duty to support the full education of the poor and disabled, and the legislature will proceed to do its constitutional duty. By declining jurisdiction, the Court is actually undermining those in the other branches who wish to comply with the constitution.

Indeed, the history of Minnesota's response to constitutional decisions shows that constitutional court decisions have traditionally been honored by the governor and

legislature. For example, in Van Dusartz v Hatfield, the Minnesota federal District Court issued a preliminary ruling that Minnesota's funding system was likely violative of equal protection under the 14th Amendment because it provided less funding based on wealth. Van Dusartz v. Hatfield, 334 F.Supp. 870 (D. Minn. 1971). Judge Lord's decision represents an example of how a court's constitutional decision fosters constitutional compliance. After issuing a preliminary ruling that Minnesota's system was likely unconstitutional, Judge Lord stayed proceedings so that the legislature would have an opportunity to fix Minnesota's broken system, or instead decide to litigate further.

Instead of appealing or engaging the court in a test of wills, Governor Anderson called a special session for October 30, 1971, just months after the decision issued. The Governor's reaction is widely recognized not as an abdication of power, but rather an action of courageous leadership. At the ensuing special session, the state passed a bipartisan Omnibus Tax Bill, referred to as the 'Minnesota Miracle," which shifted the main source of education funding in the state from local taxes to statewide income and sales taxes, increasing the state's 43% portion of school funding to 93%. Had the federal judge refused to rule on comity grounds, Minnesota leaders would have been denied the opportunity to make extraordinary and beneficial improvements in education. The District Court's order did not violate separation of powers, or principles of federalism, but rather gave the legislators and Governor an opportunity take action in deference to the

constitution. This is exactly what our motion for preliminary relief was designed to accomplish.

Significantly, when Van Dusartz's holding was placed in jeopardy by US Supreme Court appeal of the Texas Rodriguez case, Governor Wendy Anderson filed an amicus brief to the United States Supreme Court**, supporting the equal protection principle** articulated in Van Dusartz. 1972 WL 136435. That Governor saw the constitution as an ally to improve Minnesota for students of poverty. Instead of pulling out all the stops to trample on the constitutional right, the Governor urged the United States Supreme Court to preserve the constitutional decision that led to the legislative Minnesota Miracle. Regrettably the Supreme Court ruled against the 14th amendment claim in Rodrigues, and there followed a gradual withdrawal from the Miracle[9].

Other constitutional cases have stimulated Minnesota to make improvements in education. Booker v. Special School District No. 1, 351 F Supp. 799 (1972) caused Minnesota to implement improved state regulations to combat racial segregation occurring in the metropolitan area. Those regulations were a voluntary response to a declaration of constitutional injustice caused by widespread recognition that the problem required a remedy. The Skeen litigation likewise resulted in reforms to the funding

[9] Thorson & Anderson, The Minnesota Miracle Abandoned? Changes in Minnesota School Funding, Rural Minnesota Journal

system well before the State appealed the trial court's decision[10]. The litigation triggered two separate legislative changes addressing the differences in referendum levy funding. When the Cruz-Guzman plaintiffs commenced their lawsuit, metropolitan school districts organized a "Reimagine Minnesota" initiative, hoping to respond to the concerns expressed in the Complaint voluntarily. Once the Cruz-Guzman decision was issued, no constitutional confrontation ensued: instead, the case was remanded to the District Court, where the state and the non-party school districts are mediating in an attempt to settle the alleged constitutional violation.

Finally, the District Court asserted that it could not provide relief to plaintiff, because courts can only issue injunctions or declaratory relief that can be answered by a "yes-no" question. Even if Courts' power to enforce the constitution is limited to answering yes-no questions – a highly doubtful proposition – most certainly, yes-no questions are central to this case. The central question to be answered, yes or no, in this case is

> "whether the state complies with the constitution, when it refuses to provide funding necessary to afford an education to students with disabilities, English-language learners and students of poverty?"

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[10] Skeen at 307 (Furthermore, various changes enacted by the 1991 legislature addressed the differences in referendum levy funding and have ensured that these disparities will not increase in future years.), 308 (In 1992, however, this program was funded and partially equalized. Act of April 29, 1992)

Once that question is answered, it follows that the state would be required to determine that extra cost, and then appropriate funds to provide the revenues. We asked only that the Governor work with the legislature to restart a process to determine that extra cost, to do it with integrity so that the legislature can act to comply with the constitution. This is exactly what happened in the Van Dusartz case discussed above.

A second yes-no question follows from the first. That, is whether the state complies with the constitution, when it fails to fund the known extra cost to afford an education meeting state standards to students with disabilities, yet requires the school district to cover that deficit by pulling the money out of already insufficient funds for students of poverty, English-language learners, and other students. This second question, does not require a funding study, because the state already knows the amount of the so-called "extra cost," and needs only the answer to the yes-no question, to know what it must do to comply with the constitution.   The question of whether the education of disadvantaged students to state standards is an "extra cost" which need not be funded by the state involves the interpretation of a fundamental right to education. The courthouse should not be closed: the education of hundreds of thousands of Minnesota students hangs in the balance.

II. The Court Failed to Comply with Rule 12's Requirements to Credit Allegations in the Complaint.

A district court may only dismiss a complaint for failure to state a claim upon which relief may be granted, if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded. Finn v. Alliance Bank, 860 N.W.2d 638 (Minn. 2015). The court must acknowledge any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded; Graphic Communications Local 1B v. CVS Caremark Corp., 850 N.W.2d 682 (Minn. 2014).

When a complaint alleges constitutional errors, a motion to dismiss for failure to state a claim upon which relief can be granted should be even more sparingly granted to ensure that courts remain open to protect citizens against possible government overreaching; allegations of constitutional infirmities deserve judicial forum. When constitutional violations are alleged, defendant must demonstrate complete frivolity of complaint before dismissal for failure to state a claim upon which relief can be granted is proper. Elzie v. Commissioner of Public Safety, 298 N.W.2d 29 (Minn. 1980); 614 Co. v. Minneapolis Community Development Agency, 547 N.W.2d 400 (Minn. Ct. App. 1996).

There are sound principled reasons for the rule articulated in Elzie. The constitution is the bedrock of our liberty, the fundamental law of the land. Its principles are designed to prevent the deterioration of fundamental rights, out of convenience or

popular pressure. Without access to the courts, it becomes possible for one branch of government to distort or ignore altogether an inconvenient constitutional duty, and then assert that enforcement of the Constitution is barred by a procedural barrier unrelated to the merits.

The constitutional argument here is far from being frivolous: the state's educational funding system operates on the principle that it need not provide an education that meets state standards for students who form nearly three quarters of the St. Cloud District's enrollment, and similar portions of the enrollment of Minneapolis and St. Paul. Two Supreme Court cases have held that the constitution guarantees funding to provide an education that meets state standards to "each student," and thus the contention that "each student" essentially means each advantaged student is a matter of high importance to the State, and to the parents, children, community leaders, school board members and educators who are united as members of the plaintiff organization.

The Court's decision does not apply the Rule 12 standard at all, but instead is written as if it was the Court's mission to make sure that these constitutional claims never receive a judicial forum. For example, the District Court inexplicably asserts that "Plaintiff does not allege in its Amended Complaint that the financing system is actually resulting in an inadequate education." Yet, nine paragraphs of the complaint directly allege exactly that very thing. Here are three examples:

¶ 20 ("To meet the constitutional requirement of providing those students an education that meets state standards, the School District must have substantially greater funding than the state provides");

¶22 ("Each of these districts has staggering shortfalls in the funding necessary to serve students seeking to overcome educational disadvantages;

¶ 24 (enumerating specific funding needs "to accomplish state standards for students with educational disadvantages… "Minnesota's system provides grossly inadequate ….to meet the needs of students with educational disadvantages, especially in the case of districts serving a disproportionate number of those students, including the St. Cloud District."

The erroneous belief that plaintiff had failed to allege that students are deprived of an adequate education led the Court to the erroneous conclusion that the system is not unconstitutional, because it is causing no harm. It led to the erroneous conclusion that plaintiff's members are not injured, because supposedly no constitutional harm was alleged. When the Court wrongly found that the complaint fails to allege that students are receiving an inadequate education, it might as well have torn up the complaint and tossed the pieces in the trash. It is analogous to a court dismissing a negligence complaint because the court overlooked the allegation of negligence and proximate cause. Once the Court missed this central allegation, it was impossible for the court to arrive at an appropriate conclusion.

Skeen chose to equate a Minnesota adequate education with an education that meets all state standards rather than fashion a judicial definition of adequacy. Paragraphs 21, 25, 26, 33, 35, 70 contain clear and unequivocal assertions that the current funding

system is responsible for the state's failure to provide an education that meets all state standards. Another example is Paragraph 77 which states:

> As a direct consequence of Minnesota's funding gap for school districts serving larger numbers of students with higher educational needs, the St. Cloud District is unable to provide an education to those students which meets all state standards in violation of those students' right to an education which meets all state standards.

Furthermore, plaintiff provided multiple affidavits proving that inadequate funding prevents the district from providing an adequate education from educational administrators Watkins, Flynn, Posch, Frankenfield, and Welter. In fact, the State's own brief admits that the state is failing to fund the "extra cost" of providing an education that meets state standards to students of poverty, students with disabilities, and English-language learners. That admission itself establishes causation.

The findings of the Governor's Blue-Ribbon Task Force, incorporated into the complaint, offer further powerful support for plaintiff's contention that a cost-based funding system is necessary to deliver students an education that meets all state standards to students with educational disadvantages. Complaint ¶¶ 6-13. Minnesota has been confronting the nation's worst achievement gap for decades, and throughout that period, the state has concocted one band-aid approach after another, instead of implementing Task Force recommendations. On October 11, 2019, the Minneapolis Branch of the Federal Reserve Board issued another in a string of widespread warnings that Minnesota

education is in crisis[11]. Every year, thousands of Minnesota students are graduating unprepared, having failed to receive the education that the constitution requires. And yet, the state has refused to follow the recommendation of its own blue-ribbon task force: to provide adequate funding and use that funding to implement strategies that are proven to work. SCERAC's claims deserve a fair hearing, one that is based not on hostility to constitutional enforcement, but upon application of the letter and spirit of the Supreme Court's decision and of the constitution.

III. The Court Violated Skeen and Cruz-Guzman in Conferring Immunity Upon a State Funding System that Fails to Fund the Cost of Providing an Education that Meets All State Standards for "Students of Poverty," Students with Disabilities, and English-language learners.

In 1993, the Minnesota Supreme Court issued its pivotal decision, Skeen v. State, recognizing that Minnesota's education clause creates a fundamental educational "right of the people," enforceable in the courts, and that this right is triggered when the funding system is called into question as failing to provide adequate funding to meet all state standards. The Court held:

> "education is a fundamental right under the state constitution, not only because of its overall importance to the state but also because of the explicit language used to describe this constitutional mandate." See Skeen v. State, 505 N.W.2d 299, 313 (Minn. 1993).

[11] https://www.minneapolisfed.org/news-and-events/news-releases/addressing-a-statewide-crisis-minnesotas-education-achievement-gaps

As explained in the argument summary, the parties in Skeen took starkly different positions as to how the equal protection and education clauses impact the state's obligation to fund public education. The Skeen plaintiffs urged that students and school districts were entitled to funding equality, so that all students could receive the same educational inputs. The state argued against that position, contending that "The trial court erroneously decided to base its decision on inputs rather than upon analysis of whether students are learning what they should be learning." State's Skeen Reply Brief.

The state instead urged the Court to find that a thorough and efficient system of education was one that funded the education that the state-mandated school districts to deliver, that is, the education that was required by state standards. It argued that the Court should find that schools and students were entitled to enough funding to meet all state-required education standards, and referred the court to a stipulation by the parties that defined those mandates as "state requirements set forth in statutes, rules and policies." The Supreme Court accepted the state's invitation to connect constitutional adequacy of funding to state-mandated education standards. A thorough and efficient education system must provide districts with "enough funding" to afford "each student" with an education that "meets all standards," the Court held, but districts were free to raise their own funds to provide an education that went beyond those state standards. Significantly, the state told the Supreme Court that the legislature was dissatisfied with the current input-based standards, and that the legislature was embarking on a reform of

Minnesota's education standards to focus on what students learned, so that there would soon be more rigorous proficiency-based standards.

As to the mandated standards, Skeen v. State rejected the suggestion that the legislature should be free to ignore the constitution. The Court found that the Education Clause is *sui generis*, a special clause granting a fundamental enforceable right and rejected the claim that enforcement of the Education Clause is a non-justiciable political question. "This case asks the judiciary to make the same type of determination we have made repeatedly: whether the Legislature has satisfied its constitutional obligation under the Education Clause," the court held:

> the Education Clause not only contains language such as "shall" but in fact places a "duty" on the legislature to establish a "general and uniform system" of public schools. This is the only place in the constitution where the phrase "it is the duty of the legislature" is used. This, combined with the sweeping magnitude of the opening sentence of the Education Clause—"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"—provides further support for holding education to be a fundamental right. 916 N.W.2d at 6.

Despite this clear holding, the Attorney General tried again to challenge the justiciability of education clause claims in Cruz-Guzman v State. As of 2016, Minnesota's public education system was persistently failing to deliver an adequate education to students with educational disadvantages: students of color, lower-income

students, English-language learners. The state's achievement gap had become a national embarrassment, especially in urban core districts.

Although Governor Pawlenty's finance task force had warned that continued failure to fund the "full dollar cost" of meeting state standards for educationally disadvantaged students would continue Minnesota's terrible achievement gap indefinitely, in Cruz-Guzman v. State, six Twin Cities residents instead claimed that disadvantaged students were being denied an adequate education because of de facto racial and economic segregation. Their suit demanded that the State force local districts to radically alter the delivery of education in the metropolitan area. Their complaint urged that the State should alter attendance boundaries of schools and even districts, change district administration of English language learner education and special education programs, alter district disciplinary practices, and prevent districts from constructing schools in locations that furthered economic and racial isolation. Cruz-Guzman Complaint ¶48[12].

The Cruz-Guzman Complaint thus sought to extend the Skeen "enough funding" decision to overturn practices that plaintiffs alleged were fostering racial and economic isolation in housing and public schools, which they contended were a major cause of the inadequate education that students in Minneapolis. In response the State defendants sought to relitigate Skeen and overturn the enforceability of education clause claims.

[12] https://www.gpmlaw.com/portalresource/Cruz-complaint.pdf

They argued that Skeen's determination that education clause claims were justiciable was wrong and actually convinced a panel of the Court of Appeals to hold that violations of Skeen were a political question. See Cruz-Guzman v. State, 892 N.W.2d 533 (Minn. Ct. App. 2017), rev'd, 916 N.W.2d 1 (Minn. 2018). Faced with a panel decision inconsistent with the Skeen decision, the Supreme Court accepted review. The state cross appealed to argue that education clause claims were barred by legislative immunity. It also argued that the Court lacked jurisdiction, because plaintiffs had failed to join the districts that would be impacted by plaintiffs' effort to change the boundaries, the delivery of instruction, the disciplinary practices and school construction plans of absent districts. Although the Supreme Court had already rejected these arguments, they were accepted nonetheless by the District Court.

In its Cruz-Guzman decision, the Supreme Court emphatically rejected the Attorney General's position. The Supreme Court reaffirmed its funding interpretation in stating:

> We declared that the Education Clause "requires the state to provide **enough funds** to ensure that **each student** receives an **adequate education"** (emphasis added)

The Court continued restating Skeen's all state standards:

> We concluded that "[b]ecause the [then-existing] system provide[d] uniform funding to each student in the state in an amount sufficient to generate an adequate level of education which meets all state standards, the state ha[d] satisfied its constitutionally-imposed duty of creating a 'general and uniform system of education.' " *Id.* at 315. The fundamental right recognized in Skeen was not merely a right to anything that might be

> labeled as "education," but rather, a right to a general and uniform system of education that is thorough and efficient, that is supported by sufficient and uniform funding, and that provides an adequate education to all students in Minnesota.

It is significant that the Supreme Court specifically emphasized its commitment to the Skeen **funding** decision in a case involving an integration claim. Surely, the Supreme Court would be surprised to learn that despite this reaffirmation, the State still claims that the funding obligation does not extend to "each student," and that the district Court was convinced at the state's urging, to find that plaintiffs may not seek enforcement of the Skeen "enough funding" to "meet all state standards."

The Cruz-Guzman Court emphatically rejected the Attorney General's argument that enforcement of the constitution was a political question:

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

The Cruz-Guzman plaintiffs were contending that they could fix education by changing attendance boundaries, disciplinary and educational practices, but the Court emphasized

what Skeen actually holds: that the state has an enforceable obligation to provide enough funds to ensure that each student receives an adequate education.

The Attorney General specifically advanced legislative immunity as a defense to Education Clause claims in its Cruz-Guzman cross-appeal. The issue was addressed emphatically in Cruz-Guzman in rejecting the State's cross-appeal in that case. The Supreme Court stated:

> We decline to interpret one provision in the constitution—the Speech or Debate Clause—to immunize the Legislature from meeting its obligation under more specific constitutional provisions—the Education, Equal Protection, and Due Process Clauses. Moreover, none of the cases that the House and Senate cite in support of their claims of legislative immunity involves a legislature's failure to comply with an express constitutional mandate. **We therefore hold that the protections of the Speech or Debate Clause do not extend to claims that the Legislature has violated its duty under the Education Clause** or has violated the Equal Protection or Due Process Clauses. 916 N.W2d at 8. (Emphasis added).

The District Court's assertion that the Governor can borrow immunity that the legislature defies logic. The Governor lacks legislative immunity except when he exerts his legislative powers, primarily when he vetoes legislation. There is no principled basis for contending that when he exercises legislative powers, the Governor should have a legislative super-power that the legislature lacks. The immunity and justiciability defenses presented to the District Court here are repackaged defenses already rejected by the Supreme Court in Cruz-Guzman when it held:

> We hold that separation-of-powers principles do not prevent the judiciary from ruling on whether the Legislature has violated its duty under the

> Education Clause or violated the Equal Protection or Due Process Clauses of the Minnesota Constitution. We also hold that the district court did not err when it denied the State's motion seeking to dismiss the complaint based on legislative immunity and the failure to join necessary parties.

Cruz-Guzman held that plaintiffs could sue the state massively to overturn local district administrative practices (Cruz-Guzman Complaint ¶48) despite their vehement opposition, yet the District Court held that plaintiff could not sue the state to provide funds that St. Cloud District desperately needs and wants.

The upshot of the District Court's decision is to accept the Attorney General's attempt once again to render the education clause meaningless. The Attorney General convinced the District court sub silentio to reverse every holding of the two central education clause decisions of the Supreme Court. In contravention of those decisions, the District Court:

> (1) held that the judiciary could not enforce the education clause, because the legislature could not be ordered to comply with the Skeen requirement, tantamount to asserting that the Supreme Court had erred in holding that education clause claims are justiciable;
>
> (2) held, contrary to the Cruz-Guzman decision, that legislative immunity not only protects the legislature, but it actually protects the Governor as well; and
>
> (3) held that the plaintiffs had an obligation to join the School district, but proceeded to ignore Rule 19's requirement that the Court afford the plaintiff an opportunity to join the district.

In the following subsections, we raise three fundamental problems with the Court's rationale.

(A) The District Court's finding that plaintiff's complaint seeks relief that intrudes on the prerogatives of the legislature is barred by Skeen and Cruz-Guzman.

The District Court thought that Skeen and Cruz-Guzman's holdings that the education clause is enforceable should not apply because the consequence of the plaintiff's position is that legislature would be forced to appropriate money. But Skeen's decision is directly about the obligation to provide "enough funding" to provide "each student" with an "education that meets all state standards." Stating that the court cannot issue an order that will cause the legislature to appropriate enough funds for each student to meet all state standards is simply a device to overrule Skeen and Cruz-Guzman from the District Court bench.

Moreover, as discussed above, it is premature for the court to assume that the legislature and governor might defy the court's declaration of the constitution's meaning. At this stage, the District Court need only find that the current funding violates the all state standards mandate, hardly an intrusive decision. In fact, we asked that the Court order the legislature to implement an appropriate process to determine the amount of funding necessary to provide each student with an education that meets state standards so that answer could be used by the Governor and legislature to apply the constitutional standard in the next budget year.

Requiring the other two branches to determine the full dollar cost of meeting state standards simply forces the two branches to do their job. As to special education the

State has already determined that the annual St. Cloud District shortfall there is $13-million, a deficit which diminishes the District's ability to meet state standards for other disadvantaged students. If the Court declares that Skeen must be complied with, there would be no constitutional crisis, or test of wills, unless in the next legislative session, the legislature and Governor decided to flaunt the constitution.

(B) The District Court erred in holding that Skeen does not apply because economically poor students are not a suspect class.

The Attorney General advised the district court that Minnesota's funding system is predicated on the position that the constitution does not require the state to fund the "extra cost" of providing an education that meets state standards to students with disabilities, English-language learners, and "students of poverty. Possibly the District court believed the Attorney General's position was partly justified because the federal Supreme Court has determined that education is not a suspect class for equal protection purposes. That overlooks the Skeen court's actual holding. The exact holding of Skeen is that economic and wealth-based distinctions are not suspect, but only if they do not interfere with the fundamental right to an education that meets all state standards. Skeen at 312-214.

Skeen held strict scrutiny applies to judicial review of any challenged funding statute that impinges on the fundamental right to education. Skeen at 315. As the Skeen court explained:

> Nevertheless, the absence of a suspect class does not necessarily affect the strict scrutiny test because strict scrutiny applies if there is either a fundamental right or a suspect class. Skeen at 314.

Refusing to fund an education that meets state standards for economically disadvantaged students is a violation of equal protection, (and a violation of the fundamental right) because economically disadvantaged students have a fundamental right to an education that meets all state standards, and here, the state admits that it has disclaimed the obligation to provide enough funding to meet state standards for those students, violating their right to equal access to an education that meets all state standards.

This error permeates the District Court's entire decision that the equal protection claims must be dismissed. In Minnesota all students have a fundamental right to an education that meets all state standards. When any group, whether students with dyslexia, English-language learners, students of color, or low income students are deprived of the right that the legislature itself has decreed, because of a refusal to provide enough funding, that is a violation of equal protection, because all students groups have a fundamental right to an education that meets state standards. Skeen, supra. See also Lau v. Nichols, 414 U.S. 563 (1974); (English-language learners right to education); Plyler vs. Doe (457 U.S. 202 (1982) (undocumented children); Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley, 458 U.S. 176 (1982) (students with disabilities). To be clear, the adequate education to which these students are entitled are established by state standards, by students' 14th amendment rights and by federal law.

Skeen and Cruz-Guzman establish the constitutional right to enough funding to meet those state standards, and the state's practice of calling the cost necessary to meet those standards an "extra cost" which need not be funded patently violates Skeen and Cruz-Guzman.

(C) The District Court's Determination that the case should be dismissed because Plaintiff failed to sue the district, contradicts Cruz-Guzman.

The Attorney General convinced the District Court that the plaintiff's failure to sue the St. Cloud District deprived the Court of jurisdiction. That holding is inexplicable, in light of Cruz-Guzman. In the first place, under Rule 19, failure to join a person necessary to the litigation is not grounds for dismissal, unless the absent party is outside the Court's jurisdiction. In any event, the argument for joining the District was far weaker than the argument that Cruz-Guzman plaintiffs should have joined the metropolitan area districts, and the Supreme Court rejected that claim.

In Cruz-Guzman the plaintiffs were asking for an order that would force the state radically to alter the fundamental structure of absent school districts and to implement relief that those districts did not favor and indeed would even force the districts to cancel their strategic plains. (See Addendum). In the SCERAC case, multiple St. Cloud district leaders submitted testimony **in support of SCERAC's position**. The plaintiff's complaint actually supported the District's own strategic efforts to close the achievement gap. The plaintiff was merely seeking adequate funding so that the District could fulfill its strategic objectives to provide an education that meets state standards. If the District

Court's decision were affirmed, that would create a non-sensical difference in the courts' approach to adequate funding claims as compared to claims to overturn the administrative and educational practices of school districts sought in Cruz-Guzman. In any event, under Rule 19, the remedy for failure to join is to require joinder.

IV. The Court has a Duty to Instruct the Legislative and Executive Branches that the Public Education Budget Must Comply with the Constitution.

In the District Court, the Attorney General asserted that the current Minnesota funding system is constitutional because the Skeen decision requiring enough funds to afford "each student" with an education that "meets all state standards, does not require the state to provide:

> "funding to help offset **the extra cost** of educating certain categories of students, including English-language learners, students of poverty and students receiving special education services." Memorandum, p 1.

The state's "extra cost" disclaimer for disadvantaged students is contrary to the plain language of Skeen, contrary to the purpose of the constitution itself, and contradicted by the state standards themselves. And, it defies simple common sense. Minnesota's education laws and standards are designed purposely to assure that districts deliver an education that meets all state standards for students regardless of race, economic background or national origin. The Skeen decision was predicated on the Court's acceptance of the state's own argument, that the education clause must produce educated students and educational results, not merely educational inputs. A system that refuses to

fund the necessary costs of providing an education that meets state standards, is dysfunctional, and cannot possibly be described as thorough and efficient.

The entire structure of Minnesota's educational standards is built upon the principle that students who come to school with disadvantages must be educated to the same rigorous standards as advantaged students. That education cannot be supplied without funding what the state describes as "extra costs." ¶16, 19, 71. For purposes of the motions those facts are admitted: but they are not just admitted, they are supported in the record by Governor Pawlenty's School Finance Task Force report, by detailed citation to scholarly articles on the subject, and by the testimony of Superintendent Watkins, who brings to the case, long years of experience managing school budgets in Duluth, St. Cloud, Sauk Rapids, and Elk River.

Minnesota law and policy are permeated with recognition that state standards require all students to achieve educational proficiency. The legislature has commanded throughout statutory education standards that Minnesota must supply the education that the Attorney General now calls "extra." For example, Minnesota's world's best workforce establishes five statutory goals

1. All children are ready to start kindergarten.

2. All third-graders can read at grade level.

3. All achievement gaps between students are closed.

4. All students are ready for career and/or postsecondary education.

5. All students graduate from high school.

Minn. Stat § 120B.11.

None of the Minnesota state standards contain exemptions or qualifications for educationally disadvantaged students, with the exception a very small subset of students with profound disabilities. The complaint lists a full panoply of state standards describing students as unacceptably not proficient, if they fail to meet state proficiency standards. ¶14, 15 and footnote 2. The Department of Education regularly releases the proficiency scores of all schools and districts to great fan-fair, so that the public and media can annually subject the schools with large proportions of students with disadvantages to annual scrutiny, if not criticism. These scores are posted on real estate websites, so that home buyers can choose among the supposedly good schools, as measured by the percentage of students who are receiving an education that meets state standards. As the complaint explains, the release of these scores depresses real estate values in the neighborhoods with lower published results and creates higher values in the others. The large losses of enrollment in St. Paul affords irrefutable proof of the injury resulting from failure to meet state standards.

The Attorney General's justification for the current funding system is completely unsupported and contrary to the entire structure of Minnesota state education standards. The record establishes conclusively that statistically, students in these demographic groups, come to school with disadvantages that must be overcome by providing more

resources and those resources cost way more than the state is currently providing[13]. It establishes that children with higher educational needs are fully capable of achieving high performance standards, Complaint ¶¶ 70, 87, 88, but require significantly greater educational support to attain high standards, than students who come to school with educational advantages. Complaint ¶¶ 16, 19.[14] The cost of providing an education that meets all state standards is significantly higher, because state standards require increased rigor, and those standards were applied to students who in the past had been left behind without consequence.

The characterization of funding to provide what the state calls "students of poverty", English-language learners and students receiving special education services as an "extra cost" is itself a gross misuse of the English language. Plaintiff is not suing to force the state to fund the "extra cost" of anything. The suit asks merely that the state provide the actual cost of the educational services necessary to meet state standards for

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[13]"… rising numbers of lower-income students requires additional educational services and additional school support services, including school readiness, health, counseling and academic advising, as well as "(1) earlier-in-the-life-of-a-student instruction primarily in the form of greater individualized instruction in the primary grades (kindergarten through 3rd grade) and (2) extended school day, school year, and school career exposure to systematic instruction." Governor's School Finance Task Force" Complaint ¶¶ 9, 11. To meet their educational needs, school funding must "take into account the added costs included with relevant characteristics of each student (e.g., disabilities, poverty, school readiness, English-language learners, and student mobility)." Task Force, Complaint ¶ 11.

[14] Citing Fordham Foundation, "Fund the Child," and Garcia, "Inequalities at the Starting Gate."

students who are entitled to those services under statute and the constitution. All we are asking is that the state be required to fund the full necessary cost of meeting all state standards. The idea that districts should be required to meet state standards for all students, but that they should not receive the so-called "extra cost" of providing that state- required education is the very antithesis of a through and efficient system. No business, no government agency can deliver a product, or a service lower than cost persistently, as the District is being asked to do.

The state's position is at war as well with the original intent of the education clause of the constitution. The authors of the Minnesota Constitution crafted a constitutional mandate designed to assure that our educational system would meet the very challenges Minnesota faces today[15]. The Minnesota Constitution's Education Clause was drafted under the influence of the common school movement, inspired by Horace Mann and others. Mann's thesis was that "public education had the power to become a stabilizing as well as an equalizing force in American society" . . . and that "Education . . . is the great equalizer of the conditions of men—the balance-wheel of the social machinery." Minnesota's constitution grew out of a movement to assure that immigrants,

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[15] Von Korff, Minnesota's Education System is Unconstitutional, Mitchell Hamline Law Review: Vol. 44: Iss. 2, Article 7, p 689 and FN 49-51.

the poor, and even former slaves would be afforded the education required to participate in the economy and civic society[16].

V. Plaintiff Has Standing to Represent the Interests of its Members Who Joined the Organization Expressly for the Purpose of Advancing their Longstanding Interest in Attaining an Adequate Education in the St. Cloud District.

Defendants' standing argument went down the wrong path when they seized on a much-cited Supreme Court standing decision involving an organization that sought to represent involuntary apple-grower members whose membership was required by state law. Hunt v. Washington State Apple Advert. Comm'n, 432 U.S. 333 (1977). Hunt has dubiously become the poster-child for federal defendants who hope to close the courthouse doors to federal litigation, and the Court and defendants' application of Hunt here is doubly erroneous. First, the members of SCERAC joined precisely because they wanted to be represented by the corporation, and the corporation, in turn, has committed to the fiduciary obligation to represent the declared interests. Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Brock, 477 U.S. 274, 275–76 (1986) (the doctrine of associational standing recognizes that the primary reason people join an organization is often to create an effective vehicle for vindicating interests that they share with others). Second, the Minnesota Supreme Court has expressly disclaimed federal

[16] Black, The Constitutional Compromise to Guarantee Education, 70 STAN. L. REV. 735, 777 (2018). The congress demanded that southern states adopt education clauses similar to that adopted in the recently freed states in order to guarantee equal education to slaves and their descendants.

standing principles and their use as a device to close the courthouse doors to constitutional challenges. Snyder's Drug Stores, Inc. v. Minnesota State Bd. of Pharmacy, 221 N.W.2d 162 (1974).

The defendants submitted by-laws of plaintiff and asserted that since SCERAC's Board selects future board members, it follows that plaintiff will not adequately represent its injured members. By submitting evidence outside the pleadings, the defendants converted this issue into a motion for summary judgment under Rule 12.02. Plaintiff responded with affidavits demonstrating that the membership of plaintiff is directly and actively involved in the organization. Yet, the Court improperly ruled that these affidavits could not be considered, because they supposedly present facts not found in the pleadings.

Plaintiff regards its undertaking in the Complaint to represent its members as creating a fiduciary duty to those members. Accordingly, it has adopted the following practices:

- Members have input into legal filings before they are submitted; they engage in regular correspondence with counsel and board, and members participate in membership meetings to advise on the course of the litigation
- Members receive frequent reports on the litigation and provide input on strategy
- Members joined SCERAC knowing the precise purpose of the litigation and after the leadership undertook to represent their interests

SCERAC members include a District School superintendent, a dozen school board members, active leadership of an education foundation, a former Minneapolis school board member whose career involves advocacy of school reform. They include founders of Partners for Student Success, a charter school principal and retired district educators. These members are far more active, involved and connected to this litigation that would be a typical member of NAACP, ACLU, or Sierra Club. Without disparaging those organizations in any way, the involvement of plaintiff's members, as alleged in the complaint and proven in affidavits, is far superior to organizations that routinely receive unquestioning standing to represent members who may have never cast a vote.

The Attorney General's assertion that the plaintiff will not represent its members is illogical, and without any factual basis. The position plaintiff is taking is implementing a common interest of the members who have individual longstanding stakes in the improvement of education in St. Cloud. See Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Brock, 477 U.S. 274, 275–76 (1986). Indeed, the doctrine of associational standing recognizes that the primary reason people join an organization is often to create an effective vehicle for vindicating interests that they share with others. Id. Members joined knowing the composition of the Board, and the Board itself is composed of members with the same injury, the same purpose, and the same background in advocacy for children as the rest of the members. The fact that members joined the organization knowing the composition of the board of directors, its expressed mission,

and its plan to undertake this litigation, is compelling proof that the organization is representing its interest. Connecticut Coalition for Justice in Education Funding, Inc. v. Rell, 327 Conn. 650 (2018) (fact that non-voting parent members voluntarily joined group knowing that it had publicly advocated in favor of specific public school funding policies provided sufficient evidence that group represents their views public school funding policies provided sufficient evidence that group represents their views).

These members have stature in the community; they are connected to the major organizations speaking to the needs of children--a President of the NAACP, a former school superintendent, the owner of a Somali-centered education program, the principal of a charter school, activist parents with children in the school district. Many are witnesses in the case. Six of them are on the Board of Directors. Ten have been elected at large to the school board, and two currently serve. This litigation was expressly brought on behalf of the members, and that implies a fiduciary duty to represent those members' interest. It is beyond imagination that the plaintiff board could ignore the interests of its members given the express undertaking.

VI. A Preliminary Order Should Issue to Provide Data Necessary to Determine the Funding Required to Meet All State Standards.

We asked the District Court to order modest preliminary relief because Minnesota has failed for at least two decades to provide the funding necessary to meet state standards for students of poverty, students with disabilities and English-language

learners. The relief that we sought would have started the state down the path towards complying with the constitution in a way that respects the roles of the other two branches. In 2004, Governor Pawlenty began to implement Skeen's "all state standards" requirement with a task force of experts. ¶¶ 6-13. We asked the Court to order the Governor and legislature to develop data to determine the cost of meeting state standards—cancellation of that work denied data needed by the legislature to comply with Skeen. Finishing that work, using expertise and data, would develop the information that the Governor, legislature and courts need to submit and adopt budget in compliance with the constitution.

The Court wrongly concluded that this relief could not be granted because it would change the "status quo," but that approach is neither technically correct nor equitable. The status quo is the Skeen decision's constitutional requirement that the state provide enough funding to afford each student with an education that meets all state standards. Calling continued violation of that requirement the "status quo" is tantamount to saying, "since we've been violating the constitution for so long, we should be able to keep on violating it." The Skeen decision created a new status quo. The Governor's commencement of a process to reform Minnesota's funding system in compliance with Skeen was the status quo. The decision to keep the legislature and the courts from having the information necessary to implement Skeen is not 'status quo,' but rather an effort to avoid constitutional compliance. See North Star State Bank of Roseville v. North Star

Bank Minnesota, 361 N.W.2d 889 (1985) (A court has the power to shape injunctive relief in a manner which protects the basic rights of the parties even if in some cases it requires disturbing the status quo.) By requiring cost information, the Court avoids further years of delay causing harm to children should a final decision vindicate plaintiff's position.

The District Court's balancing of harms fails to recognize the human cost of the State's failure to fund the full cost of meeting state standards for low income students and others. According to MDE's "Minnesota Report Card," 323,000 students are free and reduced lunch eligible. These are the students for whom the defendants disclaim an obligation to provide enough funding to meet all state standards. That student population is disproportionally composed of students of color and English-language learners, and the state's practice prevents closing the achievement gap for these students. Fifty-eight percent of 10th grade Minnesota free and reduced lunch students score below the proficiency cutoff for reading, the grade for which Minnesota delivers standardized reading tests. That's twenty percentage points higher than for students not free and reduced lunch qualified. The number of low-income students failing to read proficiently is 64,000 greater than it would be if the achievement gap were closed. Every year that we delay, we start thousands of students down the path of reading failure, because the state has put off, for fifteen years already, providing enough funding to meet state standards for these students.

The court should have balanced harms by assessing the harm to children, the tens of thousands of students failing to master reading on the one hand, versus the relatively small cost of providing the legislature, the court, school boards and superintendents, with the information that they need to do their respective duties. The damage to students occurring each year that the costing information is delayed is irreparable, and the state has no plan to repair those damages.

These harms are inflicted on educators as well. In support of preliminary relief, we provided unrebutted testimony from District educational professionals regarding the devastating impact of the state's funding practices on their ability to accomplish the mission that they are assigned by law to complete. SCERAC urges this Court to read that testimony, because it speaks more eloquently that a mere legal brief can. Superintendent Watkins testified that

> "Minnesota's school funding system does not provide sufficient funding for the St. Cloud district to deliver an education that meets state standards for the students described in the Complaint as students with educational disadvantages. The [$13 million] deficit in special education is the clearest example of this underfunding. That deficit throughout my career as superintendent has compromised the ability of districts to deliver an education that meets state standards. Watkins Report Page 2 (emphasis added).

Watkins continues:

> Fully funding special education would be the easiest first step in providing the district with the funding that it needs to meet state standards. If that new funding were targeted to enhanced efforts to meet the needs of educationally disadvantaged students it could make a tremendous impact

> on the district's ability to meet state standards for those students. Watkins p. 10.

Principal Flynn leads a school with large population of students with high educational needs. However, the school also has a magnet Chinese immersion program that attracts more advantaged students. She describes the stark difference in educational needs of the two groups of students, and explains why the school district cannot afford to implement services necessary to provide the higher need students what they deserve. Many of them start out behind and never catch up:

> When students are behind in literacy, math, science and other critical areas, it limits their ability to take advantage of the core classroom instruction. When children are persistently behind, year after year, it can be demoralizing and make them feel that school is a place where they fail, instead of a place where they are on the road to success.

As a leader, Flynn wants to implement practices that will close the achievement gap but lack of resources stands in the way:

> While the District tries to stretch its budget for schools like ours, we don't have anywhere near the resources we need to implement a program that achieves the objectives that state standards set for us. Our ability even to conceive of a fully effective program to meet state standards for at-risk children is limited by the fact that we know that there is simply not enough resources – staff, training, instructional time, professional development time, curriculum development time, mentoring, observation and reflection time to put together a system that actually does what we need to do. Instead, we are reduced to asking, what incremental changes can we make within the inadequate budget available to us.

Director of multi-lingual education, Frankenfield described the challenges faced by the district in educating large numbers of "Students with Limited or Interrupted Education[17]" (SLIFE). She explains that SLIFE students represent over 20% of ELs at the secondary level in St. Cloud Area Schools, and including students grades 3-6, this percent would be over 35% of our total EL population. "The state's funding for EL education is insufficient for all EL programs but critically insufficient for our SLIFE students…."

> it is my opinion that there is a disconnect between current state funding for English learner programming and what is required to deliver successful pathways to career and college readiness for English learners and all subsets of English Learners in St. Cloud Area Schools

District educational leaders, Flynn, Posch, and retired principal Welter, provide detailed testimony on what the district must do in order to provide an education that meets state standards.

The district court found that it lacked jurisdiction for multiple reasons -- standing, Rule 19, and legislative immunity, nonetheless, the court purported to apply Dahlberg factors to Plaintiff's motion for preliminary relief. Yet, if the Court lacked jurisdiction, then surely it lacked jurisdiction even to consider the motion for preliminary injunction. The Court's preliminary injunction order is colored, of course, by the belief that plaintiff

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[17] https://education.mn.gov/MDE/dse/el/slif/

cannot prevail on jurisdictional grounds. If this court reverses on those jurisdictional grounds, it should vacate the order denying preliminary relief.

CONCLUSION

Plaintiff requests that the Court grant the following relief:

(a) The Court should find that defendants' refusal to fund the additional cost of providing an education that meets state standards to students of poverty, English-language learners and students with disabilities violates the constitution as interpreted by Cruz-Guzman and Skeen, and remand with instructions to accept jurisdiction over the issues in the complaint

(c) The Court should reverse the Court's finding that Plaintiff lacks standing to represent the interests of its members;

(d) The Court should reverse the District Court's dismissal on Rule 19 grounds as inconsistent with Cruz-Guzman, and with Rule 19's procedure governing absent parties subject to the Court's jurisdiction.

(e) The Court should vacate the District Court's denial of preliminary relief. Alternatively, if this Court determines that the District Court actually lacked jurisdiction – a conclusion with which we disagree of course-- the Court should vacate the District Court's ruling on the merits, because the Court then will have had no jurisdiction to issue that decision. Minn. R. Civ. P. 41.02 (a dismissal …other than a dismissal for lack of jurisdiction… or for failure to join a party indispensable pursuant to Rule 19, operates as

an adjudication upon the merits); Sundberg v. Abbott, 423 N.W.2d 686, 688 (Minn.App.1988); In re Estate of Jotham, 722 N.W.2d 447, 451 (Minn. 2006) (standing is jurisdictional).

Dated: December 2, 2019

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Case No. A19-1762

STATE OF MINNESOTA
COURT OF APPEALS

St. Cloud Educational Rights Advocacy Council, Inc.,

Appellant,

v.

Tim Walz, Governor, et al,

Respondents.

CERTIFICATION OF LENGTH OF DOCUMENT

I hereby certify that this document conforms to the requirements of the applicable rules, is produced with a proportional font of Times New Roman, and the length of this document is 13,991words. This Brief was prepared using Microsoft Word 2016.

Dated: December 2, 2019

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Record Index
Plaintiff's Motion Exhibits and Affidavits Submitted to District Court

1. Excerpts from Skeen Briefing, Von Korff taken from the State Law Library's collection of Minnesota appellate briefs, a three-volume set covering the portion of 505 NW2d containing the Supreme Court filings in Skeen v. State

   a. Exhibit 1. Copy of the all-state-standards signed by the parties and referred to by the Supreme Court decision at p 302 – 303 as conceding that "all plaintiff districts met or exceeded the educational requirements of the state…"

   b. Exhibit 2. Portions of the State's Brief opening Skeen brief: "It is uncontroverted that our public school system fulfills the purposes for which it was established. All parties stipulated, and the court found, that the public school system "meets contemporary standards for the accomplishment of all objectives associated with formal K-12 education" and that all districts meet or exceed all state educational requirements, which apply uniformly to all districts."

   a. Exhibit 3. Portion's of the State's Skeen Reply Brief: "The trial court erroneously decided to base its decision on inputs rather than upon analysis of whether students are learning what they should be learning because it believed that outcomes are not as easily measured as inputs are…. the state is moving rapidly toward being better able to use outcome-based standards to compare districts and students, much the same as inputs measures were used to do such comparisons in the past

2. Motion for Preliminary Injunction
   a. Exhibit A: Selections from Governor Pawlenty's School Finance Task Force Report Inve$ting in our Future, Seeking a fair, understandable and accountable, twenty-first century education finance system for Minnesota[1]

   b. Affidavit and Report of Bruce Watkins, SCERAC Member, former District 742 Superintendent, (filed with Motion, 3-20-2019) describing impacts of funding shortfalls on District 742

   c. Superintendent Bruce Watkins Testimony Feb 8, 2007 to Senate Finance Committee conveying data on special education funding deficit

3. Report and Affidavit of Kelly Frankenfield, District 742 Director of Multi-Lingual Learning filed April 9, 2019. Describes impact on District of ELL funding shortfalls and

[1] https://www.leg.state.mn.us/edocs/edocs?oclcnumber=56771870

the high cost implications of state requirements for Students with Limited or Interrupted Formal Education

4. Report and Affidavit of Kate Flynn, Principal Madison Elementary, Filed April 22, 2019 Describes challenges of meeting the needs of lower income and ELL students and strategic options that could be provided with proper funding

5. Exhibits Convened with Von Korff April 24, 2019 Affidavit.

    a. 01-A Minnesota Association of School Budget Officers (MASBO) 2017 Submission to legislature showing general fund formula has lost ground to inflation

    b. 01-B MASBO In legislative position statement MASBO Identifies a series of recommendations to help Minnesota reclaim its place as a national leader in education by living up to the promises embedded in the World's Best Workforce legislation.

    c. 01-C MASBO legislative position statement urging that the special education deficit should be eliminated and that doing so would have an equal and compensating benefit to the students whose funding is now cut by the cross subsidy

    d. 01-D 2018 MASBO platform section

    e. 01-E MASBO platform section highlighting impact of special education cross-subsidy on other education programs.

    f. 01-F MASBO platform section—Special education

    g. 01-G Minnesota legislature publication "School Districts Grapple with Growing Special Education Funding Gap

    h. MINNPOST Article "We can't sustain this': special-ed shortfalls strain Minnesota districts as lawmakers struggle to find long term solution[2]" March 29, 2019

    i. Exhibit 02 MDE official Cross subsidy graph, statewide and all districts displaying trends from 2003 through 2021 projection[3]

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[2] https://www.minnpost.com/education/2019/03/we-cant-sustain-this-special-ed-shortfalls-strain-minnesota-districts-as-lawmakers-struggle-to-find-long-term-solution/

[3] Extracted from Special Education Cross-Subsidies Fiscal Year 2017 Fiscal Year 2017 Report to the Legislature As required by Minnesota Statutes, section 127.065 July 2018 which can be retrieved from the URL below. It is the Special Education Growth Chart, taken from page 8. https://www.leg.state.mn.us/docs/2018/mandated/180807.pdf

j. Exhibit 03 Comparison of seven local school districts cross subsidies

a. Exhibit 04-A contains Demographic Data designed to compare the demographics of the St. Cloud District with the twenty largest school districts in terms of enrollment. It shows that among the top twenty districts in enrollment, the St. Cloud District has the highest special education percentage, the second highest English language learner percentage, and the second highest lower income (FRL) percentage, and that And, its non-white percentage is 13 points above the mean for the top twenty districts.

b. Exhibit 04-B Comparison of demographic data 7 neighboring local districts from MDE published statistics. These cross subsidies are taken directly from the Cross-subsidy report cited above. The number of special education students is taken from the demographic data for these districts in the manner described for Exhibit 4.

c. Exhibit 05 (mismarked 03) Governor's School Finance Task Force Report (Inve$ting in our Future[4])

6. Affidavit of Al Dahlgren, current School Board member and SCERAC member. Describes board members interest in preventing the downward spiral (April 25 2019)

7. Affidavit of Pat Welter, SCERAC Member, former District 742 Principal and teacher, Local Education and Activities Foundation (LEAF) board member Retired school administrator and teacher describes her actions with GRIP (Isaiah interfaith partnership) and Partners for Student Success (filed April 29, 2019)

8. Affidavit of Sylvia Johnson, SCERAC member, student with dyslexia, explaining that she overcame dyslexia, but her parents needed to hire outside tutoring at their expense to meet her educational needs. (April 27, 2019)

9. Affidavit of Lori Posch, St. Cloud District Executive Director of Teaching and Learning (May 3, 2019) Testifying that the state has failed to provide sufficient funding to deliver an education that meets state standards and conveying her testimony to legislative education committee to that effect.

10. Affidavit of Bruce Mohs, SCERAC member and board chairman, lifetime professional secondary science educator, and 15-year St. Cloud District school board member and officer. Provides testimony rebutting Defendants' evidentiary submission regarding the role of members in SCERAC and describes the members interests in funding adequacy. (May 6, 2019).

[4] https://www.leg.state.mn.us/edocs/edocs?oclcnumber=56771870

11. Affidavit of Dr. Aric Putnam, SCERAC member and Board vice-chair, parent of St. Cloud District students. Testifies that SCERAC members are engaged and involved in SCERAC's litigation efforts. Describes impacts to SCERAC members of state underfunding. (May 29, 2019).

48. The practices that the defendants have engaged in or permitted and have caused or contributed to the segregation of the Minneapolis and Saint Paul public schools include, *inter alia*, the following:

(a) Defendants have facilitated, approved, and consented to the development and implementation of a "community schools" plan in the Minneapolis and Saint Paul public school districts. The "community schools" plan has forseeably resulted in greater segregation by race and socioeconomic status of the Minneapolis and Saint Paul public schools. In addition, the "community schools" plan, by design and effect, disadvantages students of color and low-income students.

(b) Defendants have drawn district lines contiguous with municipal boundaries and, subsequently, have encouraged and supported consolidation of smaller suburban districts that have excluded and isolated further the Minneapolis and Saint Paul public school districts and their students.

(c) Defendants have neither developed nor implemented and enforced effective rules or an effective plan for desegregation/integration or for remedying the inadequacy of the education being received by the plaintiffs and other Minneapolis and Saint Paul school children, although defendants know and have known for some time of the segregation and resulting inadequacy of education in the Minneapolis and Saint Paul public schools.

(d) Defendants have facilitated, approved of, and consented to the following policies and practices in Minneapolis and Saint Paul public schools that have rendered increasingly difficult the provision of an adequate education to the plaintiffs; segregation of staff by race; misallocation of financial resources; discriminatory

disciplinary procedures; and the improper and abusive use of Special Education services, alternative schools, Limited English Proficiency programs, magnet schools, charter schools, tracking practices, and other similar programs.

(e) Defendants have authorized, approved, and consented to school construction and other capital expenditures and improvements with respect to education that have reinforced and contributed to the entrenchment of existing concentrations of poverty, racial segregation, and the concomitant inadequacy of education in the Minneapolis and Saint Paul public schools.

(f) Although obligated to do so, the defendants have failed to coordinate school desegregation/integration efforts with the housing, social, economic, and infrastructure needs of the metropolitan area.

49. The defendants have also allowed numerous schools in suburban school districts surrounding Minneapolis and Saint Paul to become segregated on the basis of race and socioeconomic status, with the consequences that desegregation of the Minneapolis and Saint Paul public schools has become much more difficult, and cannot effectively be achieved without a remedy embracing the entire Twin Cities metropolitan area.

50. The defendants have allowed the stain and pollution of public school segregation by race and socioeconomic status to spread like a cancer throughout the Twin Cities metropolitan area over the last 20 years.

51. With the knowledge and consent of the defendants, suburban school districts have established and permitted the formation of numerous segregated schools, in which children of color and/or children receiving free or reduced lunch constitute close to or more than 70 percent of the enrollment, including, but not limited to, the following schools:

DENIAL OF DUE PROCESS

77. As set forth more fully hereinabove, the conduct of defendants described hereinabove has caused the plaintiffs to receive an education in the Minneapolis and Saint Paul public schools that is both *per se* and in fact inadequate because it is segregated, and is also in fact inadequate because it is substandard by any reasonably, widely accepted measure, and because it is unequal to the education being provided in surrounding suburban school districts, and thus has caused the unlawful impingement of the plaintiffs' liberty and property interests, thereby denying to the plaintiffs the right to due process, in violation of the Due Process Clause of the Minnesota State Constitution, Article I, Section 7, such that the plaintiffs have been injured and damaged as a direct and proximate result of the conduct of defendants described hereinabove, and are entitled to injunctive and other equitable relief requiring defendants to cease and desist from the conduct described hereinabove, to remedy the denial of due process to the plaintiffs, and to provide the plaintiffs forthwith with a desegregated and adequate education.

VIOLATION OF MINNESOTA HUMAN RIGHTS ACT

78. As set forth more fully hereinabove, the conduct of defendants described hereinabove has caused the plaintiffs to be subjected to unlawful discrimination in education on the basis of race and status with regard to public assistance in violation of the Minnesota Human Rights Act, Minnesota Statutes §§ 363A.01 *et seq.*, and specifically § 363A.13 subd. 1, and plaintiffs are entitled under §§ 363A.29 subd. 3 and 363A.33 subd. 6 of the Minnesota Human Rights Act to an order directing the defendants to cease and desist from the unfair discriminatory practices found to exist and to take such affirmative action as in the judgment of the Court will effectuate the purposes of the Minnesota Human Rights Act, together with all other appropriate relief provided for therein.

MAINTENANCE OF THIS CASE AS A CLASS ACTION

79. This action is appropriate to be maintained as a class action on behalf of children enrolled, or expected to be enrolled during the pendency of this action, in the Minneapolis Public Schools, Special School District No. 1, and the Saint Paul Public Schools, Independent School District 625 because: (a) the class, consisting of thousands of students, is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the class, including, for example, whether the Minneapolis and Saint Paul schools are segregated by race and socioeconomic status, and whether the conduct of defendants has caused or contributed to that segregation; (c) the claims of the representative plaintiffs are typical of the claims of the class; and (d) the representative parties will fairly and adequately protect the interests of the class.

80. This action may also appropriately be maintained as a class action because the defendants have acted and refused to act on grounds generally applicable to the class through defendants' actions and inactions described hereinabove causing and contributing to the segregation by race and socioeconomic status and the denial of an adequate education to students in the Minneapolis and Saint Paul public schools, thereby making appropriate injunctive and declaratory relief with respect to the class as a whole.

PRAYER FOR RELIEF

WHEREFORE the plaintiffs demand judgment against the defendants as follows:

A. Certifying this action as a class action on behalf of a class of children enrolled, or expected to be enrolled during the pendency of this action, in the Minneapolis Public Schools, Special School District No. 1, and the Saint Paul Public Schools, Independent School District 625, and appointing the plaintiffs named herein as class representatives;