NO. A16-1265

State of Minnesota

In Supreme Court

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

Plaintiffs-Petitioners-Cross-Respondents,

vs.

State of Minnesota, et al.,

Defendants-Respondents-Cross-Appellants,

and

Higher Ground Academy, et al.,

Intervenors.

COMBINED RESPONSE AND REPLY BRIEF OF PLAINTIFFS-PETITIONERS-CROSS RESPONDENTS

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I. RESPONDENTS IGNORE THE UNIQUE NATURE OF THE EDUCATION CLAUSE'S MANDATE, WHICH DOES NOT COMMIT TO THE LEGISLATURE EXCLUSIVE AUTHORITY TO JUDGE WHETHER IT HAS COMPLIED WITH ITS OWN DUTY

A. *Skeen* Established that the Constitution Mandates that the Legislature Provide a General and Uniform System of Education Meeting a Baseline of Adequacy, and that Review of this Mandate is Justiciable

Respondents ("the State") focus their political question argument on the premise that Plaintiffs are asking the Court to do the job of crafting educational policy, which is a job that the Constitution committed to the Legislature. The State's argument is based on both a misrepresentation of what Plaintiffs are asking for and continued inattention to the unique nature of the mandate contained in the Education Clause.

The Constitution says that no branch of the government shall exercise any of the ***powers*** belonging to a separate branch. Minn. Const. art. III, § 1. But as *Skeen* recognized, the Education Clause does not merely grant ***power*** to the Legislature, it explicitly imposes a ***mandate***. 505 N.W.2d 299, 313 (Minn. 1993). Nowhere in its brief does the State attempt to address the nature of this mandate, or the traditional role of the courts in interpreting the Constitution and determining whether it has been violated. (*See* Pet. Br. at 32-35; Br. of Amicus Educ. Law Center at 6-11.)

Instead of addressing the justiciability of whether that mandate has been met, the State attempts to argue that the Constitution commits anything having to do with education to the Legislature alone, and suggests that this is confirmed by the framers' decision to keep "this language general, leaving its contours to be prescribed by law." (Res. Br. at 11.) But Plaintiffs are not asking the court to supply the "minutia of legislation" that the State argues was left to the Legislature. Plaintiffs are asking the court to find that the Legislature has not complied with its ***mandate***.

The State tries to divert attention away from this mandate by arguing that it contains the phrase "general and uniform system" instead of the word "adequate." Yet in determining the meaning of the "general and uniform system" mandated by the Constitution, *Skeen* determined that such a system requires a baseline of adequacy that must be met. The State's argument that this Court was not asked to determine whether the Education Clause "guarantees education of a certain quality" (Res. Br. at 18) ignores that *Skeen* did require an interpretation of the Clause's meaning. (*See* Pet. Br. at 12-16.)

This Court found in *Skeen*, "The Minnesota Constitution of 1857 created the fundamental right to education by providing, in Article VIII, Section 1, that it is the 'duty of the legislature to establish a general and uniform system of public schools.'" 505 N.W.2d at 315. This Court then added that "the right of the people

of Minnesota to an education is sui generis and that there is a fundamental right, under the Education Clause, to a 'general and uniform system of education' which provides an ***adequate education*** to all students in Minnesota." *Id*. (emphasis added.) The Education Clause, according to this Court, thus mandates a "baseline level of adequacy and uniformity." *Id*. In the course of its decision, this Court cited with approval decisions that delineated the contours of this baseline. *Id*. at 310-11 (citing *Board of Educ. of Sauk Centre v. Moore*, 17 Minn. 412, 416, 17 Gil. 391, 394 (1871)); *Pauley v. Kelly*, 162 W.Va. 672, 255 S.E.2d 859, 877 (W. Va. 1979); and *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989).

The short answer to the State's argument is that this Court in *Skeen* has already established the baseline of adequacy against which to determine whether the Legislature has met its mandate, and by making such a determination, the Court has already treated the issue as justiciable.

B. Even Absent the Issue of Adequacy, Plaintiffs have Alleged that a Racially Segregated Education Violates the Constitutional Mandate as a Matter of Law, Which Is a Justiciable Claim

Moreover, Plaintiffs have pled a justiciable claim under the Education Clause based on their allegations of racial and socioeconomic segregation. (Pet. Br. at 26-30.) Even were the Court to overrule *Skeen* by holding that the Education Clause does not ensure even a baseline of adequacy for public

education, Plaintiffs have still alleged that their segregated education is unconstitutional.

The State argues that Plaintiffs are "recasting" their Complaint or changing their claim of an inadequate education to a claim that a segregated education cannot, by definition, be uniform. The State is wrong. Plaintiffs are doing no such thing. Unlike the plaintiffs in *Skeen* who conceded that the education they received was "adequate," Plaintiffs have never conceded in this case that the system of education they receive is either adequate or uniform. To the contrary, the Complaint specifically and repeatedly alleges that such an education is ***unequal***. (Add. at 47 ¶ 2; 77 ¶ 69; 79 ¶ 75; 80 ¶ 76.) "Equal" and "uniform" are undeniably synonyms. *Cf. Uniform*, Thesaurus.com, http://www.thesaurus.com/browse/uniform/2 (last visited July 17, 2017). The State is drawing a distinction without a difference.

The State is also asking this Court to disregard well-established law that a complaint is not to be dismissed for failure to state a claim "unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of the claim." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 601-02 (Minn. 2014), quoting *Dennis v. Village of Tonka Bay*, 151 F.2d

411, 412 (8th Cir. 1945).[1] "All assumptions and inferences must favor the party against whom the dismissal is sought." *St. James Capital Corp. v. Pallet Recycling Assoc. of No. Am., Inc.*, 589 N.W.2d 511, 514 (Minn. Ct. App. 1999). When a complaint raises constitutional claims, as Plaintiffs do here, the standard for dismissal is even more stringent. *Elzie v. Comm'r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980). This Court requires that "When constitutional violations are alleged, the defendant must demonstrate the ***complete*** frivolity of the complaint before dismissal under Rule 12.02 is proper." *Id*. at 33 (emphasis in original).

The State is asking for dismissal of a claim of racial and socioeconomic segregation brought under the Education Clause because Plaintiffs have alleged that such segregation is unequal and inadequate, but have not used the specific words that segregated education is also not uniform. In fact, an unequal segregated education is by definition not uniform. This is a quibble that flies in

[1] In *Walsh v. U.S. Bank*, the Court specifically declined to follow the heightened pleading and plausibility standards adopted by the United States Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). 851 N.W.2d at 601.

the face of how this Court has required complaints to be construed on motions to dismiss, particularly for constitutional claims. [2]

The State also argues that the Complaint should be dismissed because it alleges that a segregated education is not adequate, and courts are neither able nor permitted by the Education Clause to define an adequate education, rendering the discrimination claim non-justiciable. This meritless and unsupported argument essentially reads the explicit allegations of racial and socioeconomic segregation out of the Complaint. Yet any review of the

[2] The State cites two inapposite cases, *Lee v. Peoples Co-op. Sales Agency*, 276 N.W. 214 (Minn. 1937) and *N. States Power Co. v. Federal Transit Admin.*, 358 F.3d 1050 (8th Cir. 2004) in support of its argument that Plaintiffs are somehow changing or shifting their position on appeal. *Lee* involved a plaintiff that sought to introduce an entirely new theory of contract liability based on separate evidence after losing a jury trial. *N. States Power* was similarly "late into the litigation," albeit at summary judgment, when the plaintiff sought to introduce claims based on an entirely new legal standard. 358 F.3d at 1057. Unlike those cases, Plaintiffs here allege violations of a fundamental constitutional right and the State seeks to dismiss that claim on the pleadings, before any development of the case before the trial court.

Complaint makes plain that this lawsuit is about such segregation and its manifestations and effects.[3]

Because the State's motion is based only on the Complaint, it cannot dispute Plaintiffs' allegations that the public schools in Minneapolis and St. Paul are segregated by race and socioeconomic status, that this segregation was caused by discriminatory intent on behalf of the State, and that this segregation has serious and widespread disparate impact. (*See* Add. 38.) The Complaint consistently alleges that such segregation has violated Plaintiffs' fundamental constitutional rights as outlined in *Skeen*.

The Complaint alleges that Plaintiffs' segregated education is "unequal and constitutionally infirm." (Add. 77 at ¶ 69.) The next sentence of the

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[3] The State also seriously mischaracterizes Professor Jim Hilbert's article, *Restoring the Promise of Brown: Using State Constitutional Law to Challenge School Segregation*, 46 J.L. & Educ. 1 (Winter 2017) ("Hilbert"). (Res. Br. at 26.) In trying to portray Professor Hilbert as skeptical of state adequacy claims based on segregation, the State fails to mention strong statements to the contrary: "Because segregated schools are inadequate, the right to an adequate education surely includes one free from segregation." (Hilbert at 41.) "[I]t makes sense to use educational adequacy principles to address the harm of segregation that *Brown* recognized over sixty years ago. Segregated schools undermine educational adequacy certainly as much as inadequate funding." (*Id*. at 35.) "Backed by state constitutional law that provides broad remedial power to enforce an affirmative right to an adequate education, plaintiffs could adopt the power of educational adequacy litigation to remedy school segregation, much as they already have done so to reform school finance." (*Id*. at 41.) The article strongly supports the Plaintiffs' claims in this case and their justiciability, as the State well knows, but fails to acknowledge.

Complaint states that "[a] segregated education is *per se* an inadequate education under the Education Clause of the Minnesota State Constitution." (*Id.*) The State is asking this Court to dismiss the entire lawsuit because of the word "inadequate." The State appears to be asking this Court to take the unprecedented position that a segregated unequal education can be adequate under the Education Clause of the Minnesota Constitution, or at least that courts of Minnesota lack the power to find it inadequate. The Court should decline the invitation.[4]

II. THE STATE MISREPRESENTS THE ACTUAL RELIEF SOUGHT BY PLAINTIFFS IN AN ATTEMPT TO RENDER CLAIMS OF RACIAL SEGREGATION NON-JUSTICIABLE

In arguing that Plaintiffs are asking the courts to make education policy, the State invents forms of relief that nowhere appear in the Complaint, and suggests that Plaintiffs are seeking a court order instituting a busing scheme or the "change of district boundaries within the State." (Res. Br. at 3.) Knowing that

[4] The State's reliance on *Paynter v. State*, 797 N.E.2d 1225 (N.Y. Ct. App. 2003), is misplaced. *Paynter* does not hold that allegations of racial segregation are non-justiciable political questions. It held that the State of New York was not responsible for the segregation. It did *not* involve an allegation that the State failed to comply with a constitutional mandate under its Education Clause. The court found that plaintiffs failed to state a claim because they did not allege that their segregation-related educational failure was *caused* by the state. *Id.* at 1229 ("[A]llegations of academic failure alone, *without allegations that the State somehow fails in its obligation to provide minimally acceptable educational services*, are insufficient to state a cause of action under the Education Article." (emphasis added)). That is certainly not the case here.

the Complaint does not actually ask the court to institute any specific policy, the State disregards that Rule 12 prohibits a court from considering materials outside the pleadings and requires a court to review allegations in the light most favorable to the plaintiffs.

The State tries to support its position by pointing instead to statements in a newspaper article. (*Id.* at 3 n.1.) Plaintiffs, however, have consistently acknowledged that it is not the court's function to dictate to the Legislature the manner with which it must correct its constitutional violations, but only to determine whether the Legislature has corrected those violations after being ordered to do so. (Add. 82-83; *id.* at 22-23 ¶ 8; Dkt. # 71 (Pltfs. Mem.) at 29-30; Sept. 28, 2016 Res. Br. at 3.) Asking for an order that Defendants must provide Plaintiffs with an adequate and desegregated education is not the same as asking for an order that tells the State how it must accomplish that.

The State tries to dress up Plaintiffs' requested relief with jargon, suggesting (without any support from the Complaint itself) that Plaintiffs are seeking an order for "intra-district demographic balancing." (Res. Br. at 27.) But even *Brown v. Board of Education* did not dictate to state governments how constitutionally mandated desegregation must occur. *See* 349 U.S. 294, 299 (1955) ("Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility

for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles.").

III. THE STATE IGNORES THE JUDICIAL STANDARDS ESTABLISHED IN *SKEEN* AND CASES FROM OTHER JURISDICTIONS

As in *Skeen*, the majority of other state supreme courts to consider the issue have confirmed that there are judicially manageable standards of adequacy to determine whether a state has complied with its educational mandate. Rather than confront the merits of these cases, the State ignores or dismisses them out of hand. Not only do these cases provide important and unrebutted guidance on justiciability, but the State's authority on the issue breaks down when examined in the context of the specific language of Minnesota's mandate.

A. The State Continues to Make No Effort to Acknowledge or Engage the Majority of State Supreme Court Decisions Finding Adequacy Justiciable

Plaintiffs noted in their opening brief that a "clear majority" of courts addressing similar adequacy claims under state education clauses have found the issue to be justiciable. (Pet. Br. at 41-43.) Rather than directly addressing any of these cases, the State attempts to dismiss them out of hand as falling into one of two purportedly distinguishable categories.

First, the State attempts to distinguish, without discussion, opinions supporting justiciability from eleven states (it does not actually identify any of the cases by name or citation) because they are "financing" cases. But this facile observation is undermined by the State's reliance on cases ***against*** justiciability, which are also financing cases. *Campaign for Quality Educ. v. State*, 209 Cal. Rptr. 3d 888, 903 (Cal. Ct. App. 2016) (Siggins, J., concurring); *Bonner ex rel. Bonner v. Daniels*, 907 N.E.2d 516 (Ind. 2009); *Neb. Coal. for Educ. Equity and Adequacy v. Heineman*, 731 N.W.2d 164 (Neb. 2007); *Okla. Educ. Ass'n v. State ex. rel. Okla. Legislature*, 158 P.3d 1058 (Okla. 2007); *Marrero ex rel. Tabalas v. Commonwealth*, 739 A.2d 110 (Pa. 1999). The State cannot argue in good faith that the reasoning affirming justiciability in school financing cases is somehow irrelevant, while simultaneously arguing that reasoning denying justiciability in school financing cases should be persuasive, especially when the school financing cases finding justiciability clearly exceed those finding non-justiciability.

Moreover, the State does not offer so much as a sentence to explain why it believes reasoning about justiciability in school financing cases is materially distinguishable from the present case. The justiciability question centers on whether courts have authority to decide claims that a state has failed to comply with a constitutional duty imposed by an education clause, and specifically whether such a mandate requires a baseline of adequacy. Whether the source of

that inadequacy is insufficient funding, racial segregation, or general legislative neglect should be of no difference.

Indeed, the Kansas Supreme Court recently addressed and disposed of this purported distinction in *Gannon v. State*, 390 P.3d 461 (Kan. 2017) ("*Gannon IV*"), noting that while equity of school funding and adequacy of public education are distinct requirements in the Kansas Constitution, "they do not exist in isolation from each other, so that a particular cure of equity infirmities may affect adequacy of the overall education funding system." *Gannon IV*, 390 P.3d at 503 (reviewing court's prior *Gannon* holdings). Adequacy of education can be measured by conventional outputs, such as test scores and graduation rates, and this provides a valuable yardstick for funding equity. *Id*. at 488-89.

Moreover, school financing cases arguably present ***more*** of a justiciability concern than an adequacy challenge based on segregation, which has been held unconstitutional by the United States Supreme Court since 1954. If financing cases are justiciable, as even the State concedes, *a fortiori* so are claims of segregation.

The State's attempt to distinguish, again, without discussion, cases that "do not appear to even address the merits of the justiciability argument at all," (Res. Br. at 16-17) is similarly ineffective. The State's claim that these cases do not address justiciability is often simply wrong. Most glaringly, the State claims that

"Kentucky" only addressed the issue in dissent. Although it is understandable that the State would rather the Court not pay attention to *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989), a landmark adequacy case the State nowhere mentions by name, any reading of that case demonstrates that justiciability was a central focus of the majority opinion. The Kentucky Supreme Court explicitly rejected the argument that "the General Assembly has sole and exclusive authority to determine whether the system of common schools is constitutionally 'efficient' and that a Court may not substitute its judgment for that of the General Assembly." *Id.* at 209. Indeed, the court frankly declared that "[t]o allow the General Assembly ... to decide whether its [own] actions are constitutional is literally unthinkable." *Id.*

The State appears to believe that, because the majority does not use the word "justiciable," it therefore has not addressed the issue. Yet, as even the State acknowledges, the dissent specifically does argue that the majority was wrong because, in the dissenting judge's view, the issue was not "justiciable." *Id.* at 223 (Leibson, J., dissenting). The State's attempt to portray the majority opinion as silent on the issue despite the dissent's disagreement strains credulity.

Moreover, it is absurd to suggest that a case in which a state supreme court exercises its judicial authority over a claim fails to provide guidance on whether that court has judicial authority over that claim. Any state supreme court has the

ability to raise issues of jurisdiction *sua sponte*, and cannot rule upon a controversy over which it has no jurisdiction. A case in which neither a defendant nor the supreme court itself raises the issue of justiciability is, by its nature, informative on the merits of justiciability.

The *Rose* case is not the only example of the State's surprisingly careless distinction, which appears to be entirely based on a Ctrl-f search for the word "justiciable" rather than actual analysis of the case holdings. For example, the State is wrong about Idaho. *See Idaho Sch. for Equal Educ. Opportunity v. Evans*, 850 P.2d 724, 734 (Id. 1993) (although it did not use the word "justiciability," the court rejected the argument "that the other branches of government be allowed to interpret the constitution for us. That would be an abject abdication of our role in the American system of government."). The State is wrong about Massachusetts. *See McDuffy v. Sec'y of the Exec. Office of Educ.*, 615 N.E.2d 516, 554–55 (Mass. 1993) (citing *Marbury v. Madison,* 5 U.S. (1 Cranch) 137 (1803), for proposition that courts "have the duty ... to adjudicate a claim that a law and the actions undertaken pursuant to that law conflict with [or fall short of] the requirements of the Constitution. 'This,' in the words of Mr. Chief Justice Marshall, 'is of the very essence of judicial duty."'). The State is wrong about New Hampshire. *See Claremont Sch. Dist. v. Governor*, 635 A.2d 1375, 1381 (N.H. 1993) (concluding that "any citizen" has standing to "enforce the State's duty" to

provide an adequate education under the constitution). The State is wrong about New Jersey. *See Abbott v. Burke*, 693 A.2d 417, 428–29 (N.J. 1997) (court did not use the word "justiciable," but still concluded that the court's "function" was to ensure that legislative efforts to comply with a constitutional duty "comport[] with the constitutional guarantee of a thorough and efficient education for all New Jersey school children.").[5]

Despite the State's attempt to dismiss these cases without discussion, they all provide helpful guidance to the Court regarding how other state supreme courts have found manageable justiciable standards for a qualitative baseline of education. As the Texas Supreme Court said in *Neeley v. West Orange–Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 778 (Tex. 2005):

> These standards import a wide spectrum of considerations and are admittedly imprecise, but they are not without content. At one extreme, no one would dispute that a public education system limited to teaching first-grade reading would be inadequate, or that a system without resources to accomplish its purposes would be inefficient and unsuitable. At the other, few would insist that merely to be adequate, public education must teach all students multiple languages or nuclear biophysics, or that to be efficient, available resources must be unlimited. In between, there is much else on which reasonable minds should come together, and much over which they may differ. The judiciary is well-accustomed to applying substantive standards the crux of which is reasonableness.

[5] Even more glaringly, although the State claims Wisconsin has not "address[ed] the merits of the justiciability argument at all," (Res. Br. at 16-17), the supreme court in *Vincent v. Voight*, 614 N.W.2d 388 (Wis. 2000) explicitly cited *Baker v. Carr*, 369 U.S. 186 (1962) in its holding that a constitutional challenge to the state's school finance system "presents a justiciable issue." *Id.* at 396 n.2.

Plaintiffs do not pretend that all minds will readily agree on the solutions to the constitutional violations they have identified, but such questions should not be removed from judicial review just because they are difficult or controversial.

B. The State's Citation to Cases Involving Education Clauses that Do Not Contain a Similar Mandate to Minnesota's Constitution Are Unhelpful

While the State makes no meaningful attempt to distinguish the cases that have found educational adequacy to be justiciable, a review of the cases on which it relies for the opposite conclusion demonstrates that non-justiciability is often the result of significant differences in the language used in each state constitution. These constitutional differences negate the persuasiveness of cases that conclude adequacy is non-justiciable because, unlike Minnesota's Constitution, educational adequacy is not an affirmative duty imposed on the state defendants.

For example, the State cites the Indiana Supreme Court's ruling in *Bonner ex rel. Bonner v. Daniels*, 907 N.E.2d 516 (Ind. 2009). Although the court declined to read the Indiana Constitution as imposing a duty to achieve any standard of educational quality, that decision does nothing to lessen the Minnesota Supreme Court's contrary conclusion in *Skeen* about very dissimilar language in this state's Constitution. Specifically, the Indiana Constitution, seeks to "encourage ... moral, intellectual, scientific, and agricultural improvement," which was interpreted by

the Indiana Supreme Court as merely aspirational or hortatory, and therefore lacked any affirmative duty to which the government could be held. *See Bonner*, 907 N.E.2d at 520-22.

The same is true of *Campaign for Quality*, the California court of appeals case relied upon heavily by the State in its brief.[6] (*See* Res. Br. at 15, 17, 20.) Citing *Bonner* with approval, the California court of appeals acknowledged that California's Constitution contained the same "general and aspirational" language as Indiana's Constitution, instructing the legislature to "encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." 209 Cal. Rptr. at 896-97.

Minnesota's Education Clause, however, imposes a clear duty on the Legislature, in *Skeen*'s words a mandate, to create a "general and uniform system of education," and is not merely hortatory or based on an aspirational goal. *See Skeen*, 505 N.W.2d at 313. The Kansas Supreme Court observed this important distinction in *Gannon I*, and noted that the difference between the Kansas Constitution (which imposed an affirmative duty similar to that in Minnesota's Constitution) and the hortatory language in the Indiana Constitution rendered

[6] Unlike most of the cases cited by both Plaintiffs and the State, *Campaign for Quality* is not a state supreme court case, but rather is a 2-1 court of appeals decision that produced three separate opinions. The California Supreme Court ultimately declined to review the decision, despite two lengthy dissenting opinions of the decision to deny review. *See* 209 Cal. Rptr. 3d at 919.

Bonner unhelpful as a guide for Kansas courts. *See Gannon v State*, 319 P.3d 1196, 1223 (Kan. 2014). For the same reason, the Kansas Supreme Court rejected another decision cited by the State here, *King v. State*, 818 N.W.2d 1, 33 (Iowa 2012).

In *King*, the Iowa Supreme Court ruled that an equal protection claim had been properly dismissed under that state's constitution because the complaint did not allege affirmative actions constituting disparate treatment. But the Iowa Constitution, unlike the Kansas or Minnesota Constitution, does not place an affirmative duty on the state to provide either an adequate or a uniform education. *See* 818 N.W.2d at 33. Indeed, unlike most state education clauses, Iowa's Constitution "does not mandate free public schools. Nor does the Education Clause require that the state's public education be 'adequate,' 'efficient,' 'quality,' 'thorough,' or 'uniform.' Our founders did not make these choices." *Id.* at 20-21. Instead, Iowa's Constitution places aspirational goals on its legislature to "encourage" education by all suitable means, and is primarily a funding provision. *Id.* at 13-14. Therefore, like *Bonner* and *Campaign for Quality* , *King* provides no guidance for the justiciability of questions regarding a government's affirmative duty to provide an adequate education.

Similarly, in *Heineman*, 731 N.W.2d 164 (Neb. 2007), also cited by the State, the court found the issue of adequacy non-justiciable where the constitution

required nothing more than that "[t]he Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years." *Id.* at 169. In *Oklahoma Educ. Ass'n*, 158 P.3d 1058 (Okla. 2007), the Oklahoma Supreme Court declined to review adequacy in light of the requirement that the Legislature only "establish and maintain a system of free public schools." *Id.* at 1064. In short, none of these cases required interpretation of language establishing the fundamental right and legislative mandate, as declared in *Skeen* "to a 'general and uniform system of education' which provides an adequate education to all students in Minnesota." 505 N.W.2d at 315.

Having identified these important distinctions, however, Plaintiffs do not simply pretend, as the State does in its own brief, that there is no contrary authority articulating other outcomes on justiciability. Although a majority of cases that have considered the justiciability of adequacy claims have held those claims to be justiciable, not all have. *See Neeley*, 176 S.W.3d at 780 ("A few state supreme courts have refused to adjudicate constitutional challenges to public school finance on the ground that the issues were nonjusticiable political questions, but many others have rejected the argument." (footnotes listing cases omitted)); *see also Gannon IV*, 390 at 473 (noting the majority of state supreme courts ruling in favor of justiciability). Almost all of the cases on which the State

relies have explicitly rejected arguments that education is a constitutional right under their state's Education Clause. (*See* Br. of Concerned Law Profs. at 11.)

But this Court has already declared in *Skeen* that education is a fundamental right under the Minnesota Constitution. Although the Constitution does not itself define the scope of a "general and uniform system of education," such a system must have some substantive component for it to be meaningfully enforceable by the citizens who possess it. In asking the Court to follow these other state decisions declining the responsibility to review the basic adequacy of education provided to their citizens, the State is not only asking the Court to ignore the discussion of adequacy in *Skeen*, but also to abdicate any responsibility for protecting the fundamental right to education that Minnesota citizens enjoy, despite "well-settled principles of law [that establish] allegations of constitutional infirmities deserve a judicial forum." *Elzie*, 298 N.W.2d at 32.

IV. THE STATE HAS NEVER ARGUED THAT PLAINTIFFS' EQUAL PROTECTION AND DUE PROCESS CLAIMS SHOULD HAVE BEEN DISMISSED BECAUSE THEY ARE NOT DISCRIMINATION CLAIMS, AND THIS ARGUMENT IS UNSUPPORTED BY CASE LAW

The court of appeals' decision rests on the erroneous premise that Plaintiffs' equal protection and due process claims allege only that segregated schools are inadequate under the Education Clause, which the court believes does not guarantee any basic level of adequacy. A segregated education therefore

cannot violate that clause. Plaintiffs disagree with both the premise and the conclusion.

As *amici* point out, even if the Court concludes that standards for educational adequacy are committed to the discretion of the Legislature, the Constitution cannot grant the Legislature "discretion to reach beyond the bounds of federal constitutionality" by sanctioning segregation. (Br. of Concerned Law Professors at 18.)

The Complaint, however, explicitly alleges that Plaintiffs "are receiving a segregated education" that "is unequal and constitutionally infirm" under *Brown v. Board of Education*. (Add. 77 at ¶¶ 68-69.) Although Plaintiffs believe that this segregated education violates the Education Clause, Plaintiffs also allege that it "***further*** constitutes an infringement of the right of the plaintiffs to the equal protection of the laws under the Equal Protection Clause of the Minnesota State Constitution, as well as an infringement of the right of the plaintiffs to due process of law under the Due Process Clause of the Minnesota Constitution." (*Id.* at ¶ 69, emphasis added.)

A. No Authority Supports the State's Argument that Plaintiffs' Due Process and Equal Protection Claims Could Be Dismissed for Failure to Plead the Claims on Behalf of a Suspect Class

In the span of four pages in its brief, the State attempts to re-write the history of due process and equal protection jurisprudence—without citation to

any case analyzing claims under either provision—by arguing that Plaintiffs' claims should have been dismissed at the pleading stage because Plaintiffs' allegations were not made on behalf of a suspect class.[7] (Res. Br. at 21-24.) The State's argument completely misrepresents the role that suspect classification has under the Equal Protection and Due Process Clauses.

Pleading that a constitutional violation harms a suspect class is simply one way to obtain strict scrutiny review. If a suspect class is not affected, a claim still may be reviewed under the strict scrutiny standard if it implicates a fundamental right. And even if neither a suspect class nor a fundamental right is affected, Equal Protection and Due Process claims will not be dismissed—they will merely be reviewed under the more relaxed standard of rational basis review.

Plaintiffs' equal protection claim does not need to be pled on behalf of a suspect class to be justiciable. Despite the State's argument that, because Plaintiffs did not identify any suspect classification in the Complaint, this is not a "true" discrimination claim, ***all*** equal protection claims are, by definition, discrimination claims.

[7] To the extent the State attempts to imply that Plaintiffs' proposed class of all schoolchildren in Minneapolis and St Paul, "regardless of race or income," (Res. Br. at 22) is somehow at odds with a claim under the Due Process or Equal Protection Clauses, that is an argument to be made at the class certification stage and does not support dismissal on the pleadings.

The Minnesota Constitution states that "[n]o member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Minn. Const. art. I, § 2. Minnesota's Equal Protection Clause is analyzed under the same principles as its federal counterpart, and both provisions "begin with the mandate that all similarly situated individuals shall be treated alike, but only 'invidious discrimination' is deemed constitutionally offensive." *Kolton v. Cnty. of Anoka*, 645 N.W.2d 403, 411 (Minn. 2002) (internal quotation omitted). "If a constitutional challenge involves neither a suspect classification nor a fundamental right, we review the challenge under a rational basis standard under both the state and federal constitutions." *Id.*; *see also* Erwin Chemerinsky, Constitutional Law 714 (4th ed. 2013) ("Rational basis review is the *minimum* level of scrutiny that all laws challenged under equal protection must meet." (emphasis added)). As this Court observed in *Skeen*, invasion of the fundamental right to an adequate education requires strict scrutiny. 505 N.W.2d at 312-14. There is no need to plead a protected class.

Minnesota's Due Process Clause is similarly coextensive with its federal counterpart, and "substantive due process protects individuals from certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them." *In re Linehan*, 594 N.W.2d 867, 872 (Minn.

1999) (internal quotation omitted). Like an equal protection challenge, an alleged violation of substantive due process requires strict scrutiny if a suspect classification or a fundamental right is at issue, but a court still must apply rational basis review if neither a suspect classification is employed nor a fundamental right is impinged. *See Lukkason v. 1993 Chevrolet Extended Cab Pickup*, 590 N.W.2d 803, 806 (Minn. Ct. App. 1999).

The State cites no precedent for the proposition that, if an equal protection or due process challenge involves no suspect classification, it is "not a discrimination case." Nor is there any precedent for the proposition that an equal protection or due process claim is properly dismissed at the pleading stage if the plaintiff does not claim to be a member of a suspect class.[8] To the contrary, state and federal jurisprudence on such claims establishes that suspect classification is merely one of two circumstances in which the courts will strictly scrutinize state action. As the district court acknowledged, Plaintiffs have pled a violation of their fundamental right to education, the other circumstance in which strict scrutiny applies, and in order to defeat this claim, the State must prove that a

[8] The only "authority" the State cites is the district court's separate and distinct analysis of Plaintiffs' Minnesota Human Rights Act claim, which has no bearing on the justiciability of Plaintiffs' equal protection and due process claims. Moreover, the State inappropriately suggests that Plaintiffs have somehow conceded part of their suit by not appealing the dismissal of the MHRA claim, ignoring the procedural reality that Plaintiffs have not had a right to appeal that claim because of the interlocutory nature of the State's own appeal.

system of schools segregated by race and socioeconomic status serves a compelling government interest.

Even if Plaintiffs' claims were not analyzed under the strict scrutiny applied to violations of fundamental rights, however, the State must still, ***at a minimum***, show that Plaintiffs' allegations of racial and socioeconomic segregation survive rational basis review. *See, e.g.*, *Skeen*, 505 N.W.2d at 314-16. Under no circumstance does the absence of a protected class lead to the ***dismissal*** of a due process or equal protection claim on a Rule 12.02 motion. In fact, as noted, courts may only dismiss allegations of constitutional violations if completely frivolous. *Elzie v. Comm'r of Pub. Safety*, 298 N.W.2d at 33.

B. Plaintiffs Are Not Barred from Responding to a Position of the Court of Appeals that the State Itself Never Advanced

The State attempts to foreclose Plaintiffs' argument about the equal protection and due process claims by suggesting that Plaintiffs are raising new theories not litigated below. (Res. Br. at 6-7, 23, citing *Thiele v. Stich*, 425 N.W.2d 580 (Minn. 1988)). Yet the State never argued before the district court that Plaintiffs' equal protection claims were non-justiciable because they were not "true" discrimination claims—and in fact, devoted only a footnote to the issue of justiciability. (*See* Dkt. # 56 (Defs. Mem.) at 15 n.9.) Nor did the State make this argument before the court of appeals. (*See* Sept. 2, 2016 App. Br. at 11-17.)

The State now claims that Plaintiffs should have anticipated this argument because it stated in its opening brief that "all of [Plaintiffs'] claims are based on an alleged right to an 'adequate education,'" (Res. Br. 23) but this is insufficient to assign error to the district court's ruling on two separate constitutional claims, especially when the State offered no more than a footnote regarding justiciability before the district court. This Court has explained that "[a]n assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived." *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971).

Considering that the argument about Plaintiffs' equal protection and due process claims not being a "true" or "traditional" segregation or discrimination claim was never identified prior to the court of appeals decision, Plaintiffs have every right to respond before this Court.

V. THE STATE'S SPEECH AND DEBATE CLAUSE ARGUMENT IS UNSUPPORTED BY MINNESOTA LAW, CONTRARY TO THE LANGUAGE OF THE CONSTITUTION, AND REFUTED BY SENATE COUNSEL'S OWN ANALYSIS OF LEGISLATIVE IMMUNITY

The district court dismissed the Governor and two individual legislators from suit under the Speech and Debate Clause of the Minnesota Constitution, but concluded that there was no federal or state authority that supported extending immunity to the Legislature as a whole. (Add. 25.) The State argues that, if the Court reverses the court of appeals' decision, the Court should still

dismiss the Legislature from suit under the Speech and Debate clause of the Minnesota Constitution. But the State's alternative argument is not only unsupported by Minnesota law—including the language of the Constitution itself—it is also contradicted by the assessment of the Minnesota Senate's own Counsel, which has explicitly advised the Senate that legislative immunity does not exist for the Legislature as a body. Moreover, the justifications behind Speech and Debate Clause immunity do not apply to the Legislature as a whole, and this argument is ultimately nothing more than a recasting of the State's justiciability arguments.

A. The State's Immunity Argument Is Unsupported by Minnesota or Federal Law

The Minnesota Constitution provides that "[t]he members of each house" of the Legislature shall be privileged from arrest, and "[f]or any speech or debate in either house they shall not be questioned in any other place." Minn. Const. art. IV, § 10. This privilege, by the express terms of the Constitution, applies to members of the Legislature (*i.e.*, "they"), not the legislative body itself (*i.e.*, "it"). *See Maron v. Silver*, 14 N.Y.3d 230, 257, 925 N.E.2d 899, 912 (N.Y. 2010) (noting similarly worded clause in New York constitution "applies to only 'members' and to 'any speech or debate in either house.' Nowhere does the Clause state that such immunity applies to either house of the Legislature as a whole").

As the district court noted, no Minnesota court has ever extended this immunity to the Legislature as a whole to excuse it from suit. Moreover, "Absolute privilege is not lightly granted and applies only in limited circumstances." *Zutz v. Nelson*, 788 N.W.2d 58, 62 (Minn. 2010). The United States Supreme Court has counseled against extending the federal Speech or Debate Clause "beyond its intended scope, its literal language, and its history, to include all things in any way related to the legislative process." *United States v. Brewster*, 408 U.S. 501, 509 (1972).

The State tries to argue that there is support for its broad request of immunity in the United States Supreme Court's decision in *Supreme Court of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 734 (1980), which was cited by the Kansas Supreme Court. But this Supreme Court case did not expressly address the question of whether the Speech and Debate Clause applied to the Legislature as a body as well as to its members individually, and the State identifies no other federal case in the past 35 years that has cited the case for such a broad proposition.

The Supreme Court did not undertake any specific analysis of the scope or language of the Speech and Debate Clause in *Supreme Court of Virginia.* The Supreme Court concluded in that case that the issuance of the Virginia State Bar Code was a legislative act rather than a judicial one, and therefore the issuance of

the code was immune from challenge under the Speech and Debate Clause rather than judicial immunity under § 1983. 446 U.S. at 731. No general or specific reference in that case extends the immunity afforded the Virginia Supreme Court and its Chief Justice to the Virginia Legislature. The case provides no authority for interpreting the Minnesota Constitution contrary to its express terms.

B. The State's Argument Is Contrary to the Analysis and Advice of the Senate Counsel

Contrary to the State's argument that this Court should extend legislative immunity to the Legislature as a whole, even though the language of the Constitution does not support such an extension, the Senate Counsel, Research and Fiscal Analysis Office, has specifically advised the Legislature that such immunity is not available.

In a memorandum on legislative immunity available on the Senate's website, Senate Counsel noted that immunity is personal to each member of the Legislature but not available to the body as a whole. (*See* Peter S. Wattson & Eric S. Silvia, Senate Counsel, Research, and Fiscal Analysis: State of Minnesota, Legislative Immunity (2016), http://www.senate.leg.state.mn.us/departments/scr/treatise/Immunity/legimm.pdf). In Section II.C, under the heading "Legislative Immunity is Personal," the memorandum states:

> Legislative immunity is personal and belongs to each individual member. It may be asserted or waived as each individual legislator chooses. *Marylanders for Fair Representation v. Schaefer*, 144 F.R.D. 292, 299 (D. Md. 1992). ... It cannot be asserted by the chair of a committee to strike submission of an affidavit by the ranking minority member of the committee concerning the operations of the committee. *Office of Governor of State v. Winner*, 858 [N.Y.S.2d] 871 ([N.Y.] 2008). **It does not belong to the body as a whole.** *Maron v. Silver*, 14 N.Y.3d 230, 925 N.E.2d 899, 899 N.Y.S.2d 97 (2010); *Pataki v. N.Y. State Assembly*, 190 Misc.2d 716, 729; 738 N.Y.S.2d 512, 523 (2002).

(*Id.* at 34, emphasis added).

The Senate Counsel's analysis is consistent with the language of the Speech and Debate Clause, which specifically attaches to individual members. Indeed, the notion that the privilege can be asserted or waived by each individual legislator would be completely undermined if the legislative body itself were able to assert or waive the privilege *en masse* on behalf of all its members. This is precisely what the New York court rejected in *Office of Governor of State v. Winner*, cited by the Senate Counsel, where a legislative committee chair attempted to assert the privilege on behalf of another senator in an attempt to prevent that senator from discussing his impressions of legislative intentions behind the committee's actions. 585 N.Y.S.2d at 872-73.

C. Justification for Speech and Debate Clause Immunity Does Not Apply in this Case

While the Speech and Debate Clause provides absolute immunity from claims of libel or slander for statements made by members of the Legislature in the discharge of their official duties, *see, e.g., Zutz*, 788 N.W.2d at 62, such protection is directed specifically at statements made by those officials, and depends on factors such as whether the statements made were integral to performance of the official's functions. *See Board of Regents of Univ. of Minn. v. Reid*, 522 N.W.2d 344, 347 (Minn. Ct. App. 1994). No federal or Minnesota case stands for the proposition that the Speech and Debate Clause broadly extends to excuse those officials from any suit brought for their failure to do their job. The Speech and Debate Clause was enacted to protect legislative independence, not legislative inaction.

The State argues that *Orta Rivera v. Congress of U.S. of Am.*, 338 F. Supp. 2d 272 (D.P.R. 2004) demonstrates that the Speech and Debate Clause applies when a plaintiff alleges that a legislative body has failed to comply with its duty. (Res. Br. at 32-33.) But *Orta Rivera* did not conclude that the Speech and Debate Clause excused Congress from judicial review of whether or not it had performed a constitutionally mandated duty. Instead, the court in *Orta Rivera* held that the plaintiff in that case lacked standing to assert his claims. 338 F. Supp. 2d at 279.

The State here has raised no claim that Plaintiffs lack standing to assert their claims.

Orta Rivera is not apposite to Plaintiffs' claims in this case. Unlike in that case, the claims before this Court involve consideration of whether Plaintiffs' fundamental constitutional rights have been violated by the Legislature's failure to comply with its explicit duty under the Minnesota Constitution. Unlike the plaintiff in *Orta Rivera*, Plaintiffs are seeking an order compelling the Legislature to fulfill its constitutionally mandated responsibility. *See, e.g.*, *Rose,* 790 S.W.2d at 212 ("We do not instruct the General Assembly to enact any specific legislation. We do not direct the members of the General Assembly to raise taxes. It is their decision how best to achieve efficiency. We only decide the nature of the constitutional mandate."); *Gannon IV*, 390 P.3d at 469 (retaining jurisdiction and providing the legislature an opportunity to decide how "to cure constitutional infirmities recognized by this court").

None of the cases cited by the State in support of its Speech and Debate Clause argument deal with a legislature's failure to comply with a constitutional

mandate.[9] By arguing that Speech and Debate immunity protects the Legislature from judicial scrutiny of that mandate, the State essentially contends that, although the Minnesota Constitution imposes an affirmative duty on the Legislature to act, the Constitution somehow simultaneously excuses the Legislature from being held accountable for its failure to act. In this regard, the State's argument does not fall under the normal justification for Speech and Debate Clause immunity, but instead shifts the issue to whether separation-of-powers principles prevent Minnesota courts from reviewing the constitutionality of legislative conduct.

[9] It is worth noting that many other states have considered similar constitutional claims stemming from a state's affirmative duty to provide an adequate education and have held legislatures accountable. These cases demonstrate that the doctrine of separation of powers is not a barrier that renders legislatures immune from accountability under constitutional provisions for education. *See, e.g.*, *Bismarck Pub. Sch. Dist. No. 1 v. State*, 511 N.W.2d 247 (N.D. 1994) (allowing suit against the legislature, the Speaker of the House, and the President of the Senate); *Idaho Schs. for Equal Educational Opportunity v. Evans*, 850 P.2d 724 (Id. 1993) (holding the legislature, the Speaker of the House, and the President of the Senate accountable); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989) (adjudicating education clause against entire legislative body of Kentucky); *La. Ass'n of Educators v. Edwards*, 521 So. 2d 390 (La. 1988) (allowing suit against the state legislature); *W. Va. Educ. Ass'n v. Legislature of State of W. Va.*, 369 S.E.2d 454 (W. Va. 1988) (permitting claims to be raised against the legislature, the Speaker of the House, and the President of the Senate). The State will argue that these cases are of limited value because they contain no explicit holding regarding legislative immunity; the value of the State's own citations are equally limited because they contain no explicit holding regarding a legislature's affirmative constitutional duty.

VI. THE STATE HAS IDENTIFIED NO INDISPENSABLE PARTY UNDER MINN. R. CIV. P. 19, WHICH IS THE ONLY JOINDER RULE APPLICABLE TO PLAINTIFFS' CLAIMS

The State continues to misrepresent the specific relief Plaintiffs seek in this case, arguing (without any record that would support such an argument on a rule 12 motion) that only school districts can relieve Plaintiffs of their segregated and inadequate education. The district court recognized that Plaintiffs are seeking remedies from Defendants, not individual school districts, based on an affirmative constitutional duty imposed on Defendants, not individual school districts. The district court therefore correctly determined that individual school districts are not necessary parties to the case, and the mere possibility that non-parties will be affected by a court's decision does not deprive the court of jurisdiction. (Add. 19.)

A trial court's determination that a complaint does not omit a necessary party is reviewed only for abuse of discretion. *Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 716 N.W.2d 366, 378 (Minn. Ct. App. 2006). The State attempts to recast this as an issue to be reviewed *de novo* by reducing its Rule 19 argument to a mere footnote (Res. Br. at 39 n.19) and focusing instead on the jurisdictional requirements of the Declaratory Judgment Act—a statute that Plaintiffs do not invoke in the Complaint. The Complaint does not seek a declaration of Plaintiffs' rights in order to resolve some potential dispute between the parties. Plaintiffs

have alleged an actual injury caused by the State's ongoing constitutional violation and have asked the court for injunctive and equitable relief. The State's attempt to re-plead Plaintiffs' Complaint for them is inappropriate and contrary to the legal standard for a motion to dismiss.

A. The Court Did Not Abuse its Discretion in Determining that School Districts Are Not Necessary Parties Under Minn. R. Civ. P. 19.01

Individual school districts are not parties to the lawsuit because they do not owe a constitutional duty to provide an adequate education. That duty belongs to the Legislature. Plaintiffs do not seek any relief from the school districts themselves, nor do Plaintiffs seek a declaration regarding individual actions taken by the school districts.

As the district court correctly noted, the State's arguments are entirely rebutted by the *Skeen* case itself, in which 52 school districts sought declaratory and injunctive relief against the State that would necessarily impact all districts in the state when they alleged that the education finance system was unconstitutional. The relief sought by the plaintiffs in *Skeen* had no less impact on other school districts than the relief sought by Plaintiffs in the present case, yet a majority of school districts throughout the state were still absent in that case. Although 24 additional school districts intervened in *Skeen*, the three largest

metropolitan school districts did not, as well as rural districts constituting more than half the school districts in the state. 505 N.W.2d at 302.

The State attempts to distinguish *Skeen* from the present case by noting that the school districts in *Skeen* were plaintiffs that were challenging statutes that impacted statewide school policy. (Res. Br. at 37.) But the State again mischaracterizes the allegations in the present case, contrary to the judicial standard for a motion to dismiss, by falsely stating that Plaintiffs are challenging school district decisions rather than challenging Defendants' failure to establish a uniform statewide system that provides Plaintiffs with an adequate education.

Moreover, under Rule 19.02, a party is only indispensable when joinder of that party is "not feasible." *See* Minn. R. Civ. P. 19.02 ("***If a person as described in Rule 19.01 cannot be made a party***, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable." (Emphasis added)). The State has never affirmatively stated or shown that joinder of the purportedly "necessary" school districts is infeasible—arguing only that, ***if*** the Rule 19.02 factors are met, dismissal is required. (*See Res.* Br. at 39 n.19; Appellant's Sept. 2, 2016 Br. at 21 n.8; Dkt. # 56 (Defs. Mem.) at 3-4.) The State's failure to offer any argument under Rule 19.02 renders this issue a useless exercise under a deferential abuse of discretion standard.

The district court did not abuse its discretion by rejecting the State's "*it's-not-our-fault-blame-the-school-districts*" defense.

B. The Declaratory Judgment Act Has No Bearing on the Claims in this Case

Instead of advancing their argument under Rule 19.02, the State focuses its argument on Minn. Stat. § 555.11, where it claims joinder requirements are broader than under Rule 19. But fatal to this argument is that ***Plaintiffs have alleged no claim under the Declaratory Judgment Act***, and that statute bears no relationship to the court's subject matter jurisdiction in this case. The State's attempt to impose an un-pleaded statute on Plaintiffs' claims runs entirely contrary to the standard of review for a Rule 12.02 motion, in which all reasonable inferences must be read in favor of the non-moving party. *Abbariao v. Hamline Univ. Sch. of Law*, 258 N.W.2d 108, 111 (Minn. 1977).

Plaintiffs allege in the Complaint that the Defendants have failed to comply with their affirmative duty under the Minnesota Constitution, and ask the district court to issue an injunction ordering Defendants to comply with that affirmative duty. (Add. 79 – 83.) The authority granting the court power to make such a determination and issue such an injunction is not the declaratory judgment statute, which is mentioned nowhere in Plaintiffs' Complaint, but the court's own inherent authority to remedy the infringement of a constitutional

right. *See, e.g.*, *State v. C.A.*, 304 N.W.2d 353, 355-56 (Minn. 1981) (recognizing the court's inherent power to remedy serious infringements of constitutional rights).

Indeed, Minnesota courts have been "declaring" acts invalid or repugnant to the Constitution long before the Declaratory Judgment Act was first enacted in 1933. *See, e.g.*, *Ames v. Lake Superior & M.R. Co.*, 21 Minn. 241 (1875) ("There is no longer any doubt of the authority and duty of the court ... to declare such acts invalid, if repugnant to the constitution."); *see generally Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). The Declaratory Judgment Act does not somehow limit a court's long-recognized subject matter jurisdiction to declare constitutional violations and remedy infringement of constitutional rights.

The Declaratory Judgment Act is intended to provide recourse for individuals seeking to determine "rights and liabilities pertaining to an actual controversy before it leads to repudiation of obligations, invasion of rights, and the commission of wrongs." *Culligan Soft Water Serv. of Inglewood, Inc. v. Culligan Intern. Co.*, 288 N.W.2d 213, 215-16 (Minn. 1979). Such recourse is not needed here because the children attending public schools in Minneapolis and Saint Paul have already suffered and continue to suffer a concrete injury from an actual wrong.

The purpose of this lawsuit is not simply to seek a declaration of what rights Plaintiffs might enjoy. Such a declaration is unnecessary, as *Skeen* already

makes clear that Plaintiffs have a constitutional right to an adequate education in Minnesota. Instead, the purpose of this lawsuit is to correct an actual ongoing injury suffered by children throughout the Minneapolis and Saint Paul public school districts as a result of the State's failure to provide the adequate education that the Constitution requires it to provide. The Declaratory Judgment Act is irrelevant to this actual injury, and therefore cannot deprive the court of jurisdiction.

CONCLUSION

Plaintiffs have alleged that they are receiving an education segregated by race and socioeconomic status, which is inadequate as a matter of law and inadequate by any reasonably objective standard, in violation of the Education, Equal Protection, and Due Process Clauses of the Minnesota Constitution. These allegations require Minnesota courts to evaluate state action and inaction in relation to a fundamental constitutional right, arising from a ***mandate*** imposed on the Legislature. Such issues are not only justiciable, but require judicial action in order to ensure that Plaintiffs' constitutional rights not be hollowed out and ignored by the very branch of government subject to the unique constitutional duty imposed in the Education Clause.

Contrary to the argument of the State, the Legislature cannot claim immunity as a legislative body, because the Constitution grants immunity only

to individual members, and does not exempt the Legislature as a whole from review of whether it has complied with its constitutional duty. Moreover, because the Constitution places this obligation on the Legislature itself, the Legislature is responsible for establishing a uniform system that provides Minnesota's children with an adequate education. It cannot merely delegate that responsibility to individual school districts and then blame the school districts when schools prove inadequate. Therefore the State's argument that school districts are the proper defendants to this suit and that their absence requires dismissal of the case must be rejected.

Plaintiffs respectfully request that this Court reverse and vacate the decision of the court of appeals and remand this case to the district court for further proceedings and a speedy trial, inasmuch as the incidence of an inadequate education falls entirely on the children receiving it and causes cumulative damage and injury that are invariably irremediable.

Dated: July 20, 2017.

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CERTIFICATION OF LENGTH

I hereby certify that this brief conforms to the requirements of applicable rules, is produced with a proportional 13pt font, and the length of this document is 9,477 words. This document was prepared using Microsoft Word 2010.

s/ Daniel R. Shulman

GP:4815-4027-9883 v3