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,

v.

State of Minnesota, *et al.*,
Defendants-Respondents,

Higher Ground Academy, *et al.*,
Intervenors.

BRIEF OF *AMICI CURIAE* EDUCATION LAW CENTER AND THE CONSTITUTIONAL AND EDUCATION LAW SCHOLARS IN SUPPORT OF PLAINTIFFS-PETITIONERS

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STATEMENT OF INTERESTS OF *AMICI CURIAE*[1]

The Education Law Center ("ELC") is a non-profit organization that advocates, on behalf of public school children, for access to fair and adequate educational opportunity under state and federal laws through policy initiatives, research, public education, and legal action. ELC represented the plaintiff school children in the landmark case *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990), which presented a threshold justiciability issue similar to that presented by this case. The New Jersey Supreme Court held in *Abbott* that the plaintiffs' claims were justiciable, and, following a ruling on the merits, ELC secured a series of remedial measures to ensure disadvantaged school children a constitutional education. ELC continues to advocate for effective implementation of the *Abbott* remedies, which the New Jersey Supreme Court has recently found to have "enabled children in [urban] districts to show measurable educational improvement." *Abbott v. Burke*, 971 A.2d 989, 995 (N.J. 2009) (internal citation omitted).

In states across the nation, ELC also broadly advances children's opportunities to learn and assists those who promote such opportunities. ELC provides research and analyses related to education cost and fair school funding,

[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus curiae* or their counsel made a monetary contribution to the preparation or submission of this brief.

high quality preschool, and other proven educational programs; assistance to parent and community organizations, school districts, and states in gaining the expertise needed to narrow and close achievement gaps for disadvantaged children; and support for litigation and other efforts to bridge resource gaps in the nation's high-need schools. As part of its work, ELC has participated as *amicus curiae* in state educational opportunity cases in California, Colorado, Connecticut, Indiana, Maryland, Pennsylvania, Oregon, South Carolina, and Texas.

The Constitutional and Education Law Scholars (the "Education Law Scholars," together with ELC, the "*amici curiae*") are scholars of constitutional and education law who believe strongly in upholding a proper role for courts in enforcing constitutional rights, particularly where majoritarian democratic processes may have caused violations of the rights of disfavored minorities. At the same time, the Education Law Scholars recognize that the scope of judicial review is subject to important limitations that protect the constitutional separation of powers and ensure that courts do not improperly intrude on other branches' choices, and instead allow for judicial review of the acts of legislatures, elected officials, and local administrators only where doing so is appropriate to protect and vindicate the constitutional rights of the actual litigants before a court. The Education Law Scholars have been immersed in the study of these core principles of judicial review through their scholarship and teaching—particularly as these

principles relate to constitutional guarantees concerning education—and seek to assist this Court by explaining, in a historical, legal, and social science context, how these principles apply to the issues presented by this appeal.

INTRODUCTION

This case presents a justiciable controversy. Both this Court in *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993), and its peer state Supreme Courts around the nation have held repeatedly that where, as here, a state constitution requires that the Legislature create and maintain a "general and uniform system of education," it is the judiciary's proper role to adjudicate a dispute challenging whether the Legislature has carried out that duty. In particular, a claim that an education system is segregated by race is justiciable because, as state supreme courts have long and properly recognized, education clauses in a state constitution not only prohibit intentional segregation that is unlawful under *Brown v. Board of Education*, 347 U.S. 483 (1954), but also protect students against the negative effects of segregation when they are unintentional. Segregated schools are unequal schools and therefore do not provide a "general and uniform," "thorough and efficient" system of education, as required by the Minnesota State Constitution.

The Court of Appeals erroneously ruled that the Minnesota Constitution entrusts solely the Legislature with providing the education expressly assured to Minnesota public school children by the Constitution, such that the Legislature's

actions (or lack of actions) should not be subject to any judicial review outside the context of challenges to public school funding. The Education Clause, however, provides that it is the Legislature's "duty" to provide for a "general and uniform" system of education and that the Legislature "shall" provide for a "thorough and efficient" system of education. The Clause thus does not, on its face, afford the Legislature unreviewable and unfettered discretion in the execution of its duty. Nor have the majority of other state Supreme Courts interpreted similar constitutional provisions to give a legislature such unreviewable authority. Indeed, in *Skeen*, this Court acknowledged that the guarantee in the Education Clause of a "general and uniform" system of education was not "described" in historical materials and, prior to *Skeen*, had not been construed by the Court. 505 N.W.2d at 309-10. The Court nevertheless did not shirk its duty to adjudicate a lawsuit challenging the adequacy of school financing but *decided* the issue, even though the Court acknowledged that the lawsuit presented "underlying policy issues." *Id.* at 302.

This case is no different. There is no principled basis for treating a challenge to school segregation differently than a challenge to school financing. The Education Clause does not single out one or the other for special treatment, but is phrased in broad terms. Moreover, as in most lawsuits challenging compliance with a constitutional standard, it is a court's proper role to apply and, in the context

of individual cases such as this one, give meaning to the standard—and that is exactly what this Court did in *Skeen*. That is not making "policy," as the Court of Appeals stated, but judging.

There is a rich body of case law to look to for guidance in carrying out this judicial duty. The particularized factual context of the intense segregation of school children in the Minneapolis and St. Paul schools will also guide the District Court in applying the standards set out in the Education Clause and embodied in related legal principles. As *amici curiae* show below, a robust body of research shows that segregated schools—especially hyper-segregated schools as alleged by Plaintiffs in their Complaint—severely disadvantage minority and economically disadvantaged students, in terms of academic performance and other crucial measures of achievement. This is not a one-sided issue, either. Integrated schools with diverse student bodies have been shown to provide educational and other benefits to *all* students—white students and minorities alike—which are essential for productive participation in today's more diverse civil life, workplaces, and global economy.

While it is for courts to determine how to apply the Education Clause in the context of specific cases, such as this one, overwhelming social science research findings illustrate that there is not, contrary to the Court of Appeals' statements, any shortage of metrics by which to determine whether the Legislature has

properly executed its constitutionally mandated duty to provide for a "general and uniform," "thorough and efficient" system of education.

ARGUMENT

I. A CHALLENGE TO THE ADEQUACY OF EDUCATION UNDER THE MINNESOTA CONSTITUTION IS JUSTICIABLE

A. The Court of Appeals' Decision Does Not Comport with Core Constitutional Principles

The modern concept of justiciability is rooted in the longstanding Anglo-American principle that "where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded." *Marbury v. Madison*, 1 Cranch 137, 178 (1803). As the Supreme Court has explained, "injury to a legally protected right" is the "touchstone to justiciability." *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 140 (1950) (plurality opinion).

While this principle applies to all legal rights, *see, e.g.*, *Davis v. Passman*, 442 U.S. 228, 245 (1979), it has particular force when the right is enshrined in a constitution. The Supreme Court has recognized, since the founding of the Republic, that courts not only have the power to decide whether a constitutionally prescribed right has been violated but that it is "the very essence of judicial duty" to do so. *Marbury*, 1 Cranch at 178-79; *see also, e.g.*, *Wesberry v. Sanders*, 376 U.S. 1, 4-5 (1964) (case justiciable when "State has abridged the right to vote for members of Congress guaranteed them by the United States Constitution"); *United States v. Windsor*, 133 S. Ct. 2675, 2716 (2013) (Alito, J., dissenting) ("[I]f the

Constitution contain[s] a provision guaranteeing [a right] . . . it [is] our duty to enforce that right."). To hold otherwise would "subvert the very foundation of all written constitutions." *Marbury*, 1 Cranch at 178.

Consistent with these foundational principles of our democracy, state appellate courts have held repeatedly that when a constitution guarantees its citizens a particular right, the judiciary may—and, indeed, must—adjudicate a legal challenge seeking to vindicate it. In *New York County Lawyers' Association v. State of New York*, for example, the New York appellate court ruled that a legal challenge to the State's system for appointing counsel in criminal proceedings, as required by the Sixth Amendment of the U.S. Constitution, presented a justiciable controversy because the suit sought to ensure that the system's "processes do not cause systemic violations of constitutional guarantees." 294 A.D.2d 69, 73 (N.Y. App. Div. 2002). Likewise, in *Harrison v. Monroe County*, the Missouri Supreme Court concluded that a tax payer's legal challenge to a statute which heightened court costs in civil cases presented a justiciable controversy because the individual sought to vindicate his right under the Missouri Constitution to the administration of justice "without sale, denial or delay." 716 S.W.2d 263, 267 (Mo. 1986) (en banc).

Legal challenges to a state constitution's guarantee of a "general and uniform" education system should not be treated any differently. Many courts,

including this Court, have previously recognized this and have held that the judiciary has the duty to adjudicate lawsuits questioning whether a state legislature has carried out its duty in accordance with a constitutionally prescribed standard governing the provision of public education. Indeed, dozens of other state high courts have reaffirmed their judiciary's role in vindicating constitutional education guarantees to children.[2] The Kentucky Supreme Court summarized this widely adopted rule aptly: "Courts may, should, and have involved themselves in defining the standards of a constitutionally mandated educational system." *Rose v. Council for Better Educ., Inc.,* 790 S.W.2d 186, 210 (Ky. 1989).

Consistent with a court's general obligation to enforce constitutional rights, these decisions make it clear that courts have the "final obligation to guard,

[2] The following state high courts have held that lawsuits challenging whether education has been provided in accordance with a constitutionally enshrined standard are justiciable: Arkansas, *Lake View Sch. Dist. No. 25 v. Huckabee*, 91 S.W.3d 472 (Ark. 2002); Colorado, *Lobato v. State*, 218 P.3d 358 (Colo. 2009); Connecticut, *Conn. Coal. for Justice in Educ. Funding, Inc. v. Rell*, 990 A.2d 206 (Conn. 2010); Idaho, *Idaho Schs. for Equal Educ. Opportunity v. State*, 976 P.2d 913 (Idaho 1998); Kansas, *Gannon v. State*, 319 P.3d 1196 (Kan. 2014); Kentucky, *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989); Maryland, *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 458 A.2d 758 (Md. 1983); Massachusetts, *McDuffy v. Sec'y of the Exec. Office of Educ.*, 615 N.E.2d 516 (Mass. 1993); Montana, *Columbia Falls Elementary Sch. Dist. No. 6 v. State*, 109 P.3d 257 (Mont. 2005); New Hampshire, *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353 (N.H. 1997) (Claremont II); New Jersey, *Abbott v. Burke,* 20 A.3d 1018 (N.J. 2011); New York, *Hussein v. State*, 19 N.Y.3d 899 (2012); North Carolina, *Leandro v. State*, 488 S.E.2d 249 (N.C. 1997); Ohio, *DeRolph v. State*, 677 N.E.2d 733 (Ohio 1997); Tennessee, *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139 (Tenn. 1993); Texas, *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746 (Tex. 2005); Vermont, *Brigham v. State*, 889 A.2d 715 (Vt. 2005); Washington, *McCleary v. State*, 269 P.3d 227 (Wash. 2012); West Virginia, *Pauley v. Kelly*, 255 S.E.2d 859 (W.Va. 1979); Wisconsin, *Vincent v. Voight*, 614 N.W.2d 388 (Wisc. 2000); and Wyoming, *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238 (Wyo. 1995).

enforce, and protect" their states' constitutional education requirements. *Columbia Falls Elementary Sch. Dist. No. 6 v. State,* 109 P.3d 257, 261 (Mont. 2005). To find otherwise, "would be a complete abrogation of our judicial responsibility" and would do a "severe disservice to the people." *Lake View Sch. Dist. No. 25 v. Huckabee*, 91 S.W.3d 472, 484 (Ark. 2002). As New York's highest court has held, courts carrying out this judicial responsibility is the only way to ensure that "the Legislature . . . fulfill[s] [its] constitutional mandate" to provide a sound education. *Hussein v. State*, 19 N.Y.3d 899, 904 (2012).

Courts have also properly rejected the notion that the judiciary should abdicate its responsibility when a constitutional provision directs a legislature to provide for education of a certain standard or quality. *See, e.g.*, *Columbia Falls,* 109 P.3d at 260. That is not a "constitutional commitment of the issue" to the legislature's discretion, as the Court of Appeals held here, but an express *directive* to the legislature, subject to judicial review to determine whether the legislature has comported with that directive. This Court made that much clear in *Skeen*, where it observed that "this [Education] Clause places a duty on the legislature to establish a general and uniform system of public education" and then adjudicated a challenge to the execution of that legislative duty. 505 N.W.2d at 308.

Faced with similar provisions, state high courts have similarly recognized once "the [l]egislature has acted . . . [to] execute[]" its duty pursuant to a

constitutional provision addressing public education, "courts can determine whether that enactment fulfills the Legislature's constitutional responsibility." *Columbia Falls*, 109 P.3d at 309 (citing *City of Boerne v. Flores,* 521 U.S. 507 (1997)). When the "question becomes whether the legislature has actually performed its duty" under an education clause, it "is left to the courts to answer." *Gannon v. State*, 319 P.3d 1196, 1226 (Kan. 2014). The separation-of-powers principle *demands* that courts hear public-education challenges; it is not a reason to abdicate that judicial duty. "To allow the General Assembly . . . to decide whether its [own] actions are constitutional," the Kentucky Supreme Court held, "is literally unthinkable." *Rose*, 790 S.W.2d at 209.

The Court of Appeals deviated from this significant body of case law, and the underlying legal principles, when it ruled that a determination of Plaintiffs' claims "would require us to first determine the applicable standard" and that this exercise "rests in educational policy and is entrusted to the legislature, not the judicial branch." *Cruz-Guzman v. State*, 892 N.W.2d 533, 539 (Minn. Ct. App. 2017). That rationale is unsupported and confuses the issue of justiciability with the *merits* of Plaintiffs' claims. The Minnesota Constitution provides a standard under which to adjudicate Plaintiffs' claims: it does not call upon courts to make policy, but *sets* Minnesota policy by establishing the right of all Minnesota children to be educated in a "general and uniform" and a "thorough and efficient"

system of public schools. *See* James E. Ryan, *Sheff, Segregation, and School Finance Litigation*, 74 N.Y.U. L. Rev. 529, 548-50 (1999) (debunking arguments that courts are engaging in unwarranted policymaking when they enforce constitutional educational rights). A court may ultimately determine that the Legislature has not violated the constitutionally prescribed standard or that there is insufficient evidence of a violation. That determination, however, does not render the issue incapable of resolution by the judicial branch.

The Court of Appeals here abdicated its judicial duty, and established a dangerous precedent by which Minnesota's Legislature is free to ignore its constitutional directives without review or restraint, even when the Minnesota Constitution expressly makes it the Legislature's "duty" to act. That is contrary to this Court's decision in *Skeen* and inconsistent with fundamental principles of constitutional law.

B. The Constitutional Right to Education Includes the Right to Integrated Education

None of this is to suggest that a lawsuit challenging *any* aspect of that state's education system presents a justiciable controversy. Such a holding would upset Minnesota's (and indeed, the U.S.) constitutional system by authorizing an overbroad expansion of the judiciary's powers into matters reserved for the Legislature. Rather, for a claim brought under a provision addressing public education, such as Article XIII, Section 1 of the Minnesota Constitution, to be

justiciable, that claim must allege the deprivation of a right provided by that provision. The right to an education system free of segregation is one such right.

Courts have recognized that when students are guaranteed access to a public education by a state constitution's education clause, a legal claim that a system is segregated presents a justiciable controversy. For example, in *Sheff v. O'Neill*, the Connecticut Supreme Court confronted a claim that the state's education system deprived certain students of their constitutional right to "free public elementary and secondary schools in the state" when there was evidence that the state "perpetuated the racial and ethnic segregation that exists between Hartford and the surrounding suburban public school districts." 678 A.2d 1267, 1271 (Conn. 1996). Although Connecticut's constitution provided that the "general assembly shall implement [the right to free public education] by appropriate legislation," the court rejected the defendants' argument that this insulated the legislature's conduct from review. *Id.* at 1276. "Just as the legislature has a constitutional duty to fulfill its affirmative obligation to the children who attend the state's public elementary and secondary schools," the court explained, "so the judiciary has a constitutional duty to review whether the legislature has fulfilled its obligation." *Id.*

The Connecticut Supreme Court's decision in *Sheff* is in accord with decisions reached by other state supreme courts. The New Jersey Supreme Court has repeatedly held justiciable claims of segregation in the provision of education

in violation of the New Jersey Constitution, even where the allegations in support of those claims were predicated upon *de facto*, rather than *de jure*, segregation. *See Jenkins v. Morris Tp. School Dist.*, 279 A.2d 619, 627 (N.J. 1971); *Booker v. Bd. of Ed. of City of Plainfield, Union Cnty.*, 212 A.2d 1, 6 (N.J. 1965); *see also In re Petition for Authorization to Conduct a Referendum on the Withdrawal of N. Haledon School Dist. from the Passaic Cnty. Manchester Reg'l High School*, 854 A.2d 327 (N.J. 2004). Likewise, the California Supreme Court has held justiciable claims of *de facto* segregation in violation of the California Constitution. *See Crawford v. Bd. of Education*, 551 P.2d 28, 39 (Cal. 1976) (In Bank) ("Given the fundamental importance of education, particularly to minority children, and the distinctive racial harm traditionally inflicted by segregated education, a school board bears an obligation, under . . . the California Constitution, mandating the equal protection of the laws, to attempt to alleviate segregated education and its harmful consequences, even if such segregation results from the application of a facially neutral state policy.").

The Complaint here alleges that public education in Minneapolis and surrounding areas is unlawfully segregated by both race and socioeconomic status, in violation of Minnesota's constitutional guarantee to a "general and uniform system of education." On the threshold question of justiciability, this case is no different in principle than the educational segregation challenges addressed by the

Supreme Courts of Connecticut, New Jersey, and California. In each case, those lawsuits presented a justiciable controversy regarding a fundamental right to an education free of segregation. The Minnesota courts should determine whether the Minnesota Constitution enshrines this same right, and not refuse to confront this issue by deeming it a "political question" beyond the reach of the judiciary.

II. SEGREGATED SCHOOLS FAIL TO PROVIDE AN ADEQUATE EDUCATION AND HARM STUDENTS

As shown above, segregated schools should not, as a legal matter, be deemed to comport with the standards set forth in the Education Clause of the Minnesota Constitution. But, as in any lawsuit, the factual context of the issues here will guide courts in applying and refining the standards in the Education Clause. The effects of segregation are measurable and the District Court will have no shortage of metrics by which to determine whether the Legislature has properly executed its duty to provide for a "general and uniform," "thorough and efficient" system of public education. *See* James E. Ryan, *Sheff, Segregation, and School Finance Litigation*, 74 N.Y.U. L. Rev. 529, 555-60 (1999) (racial and socioeconomic integration provide measureable benefits for students, which can be used as guides for courts in adjudicating disputes to enforce educational rights provided by state constitutions).

There is a strong correlation between segregation and depressed academic achievement. Racial segregation also has a negative effect on many other

components of a student's education and well-being, including quality of teachers, breadth and depth of curriculum, availability of guidance counsels and other in-school supports, and access to social and professional networks. Racial integration, on the other hand, provides measurably positive educational benefits, including higher academic attainment, better problem solving skills, and cultural competency skills necessary for success in an increasingly diverse job market. *See, e.g.*, Nat'l Acad. of Educ., *Race-Conscious Policies for Assigning Students to Schools: Social Science Research and Supreme Court Cases* 32 (Robert L. Linn & Kevin G. Welner, eds., 2007).

As all of this shows, courts will have no shortage of data and other facts to guide adjudication of claims challenging whether the Legislature has carried out its constitutionally mandated duty to provide an adequate public education to Minnesota children.

A. Segregated Schools Cause Lower Educational Achievement

In 1966, pursuant to the Civil Rights Act of 1964, the U.S. Commissioner of Education published a study led by James S. Coleman of John Hopkins University concerning the availability of equal education opportunities for individuals in public educational institutions. James S. Coleman, *Equality of Educational Opportunity* iii (1996) (hereafter Coleman, *Educational Opportunity*). One of the purposes of the study was "to attempt to discern possible relationships between

students' achievement, on the one hand, and the kinds of schools they attend on the other." *Id.* at iv. The report concluded that racial segregation was pervasive, specifically: "Two-thirds of black students attended schools that were 90 to 100 percent black; 80 percent of white students attended schools that were 90 to 100 percent white." Sean F. Reardon, *School Segregation and Racial Academic Achievement Gaps*, 2 Russell Sage Found. J. Soc. Sci. 34, 35 (2016) (hereafter Reardon, *Achievement Gaps*) (citing Coleman*, Educational Opportunity*).

That level of segregation, comparable to the "hyper-segregation" alleged in the Complaint here, profoundly affects academic achievement of all students, with achievement escalating in direct proportion to the population of white students in schools. *See* Coleman, *Educational Opportunity* at 307. This achievement deficit was also specifically "not accounted for by better facilities and curriculum." *Id.* Ruling out these effects, Coleman came to the following conclusion:

> The higher achievement of all racial and ethnic groups in schools with greater proportions of white students is largely, perhaps wholly, related to effects associated with the student body's educational background and aspirations. This means that the apparent beneficial effect of a student body with a high proportion of white students comes not from racial composition per se, but from the better educational background and higher educational aspirations that are, on the average found among white students.

Id.

Later studies have supported Coleman's conclusions and found that "both the racial and socioeconomic composition of schools are strongly related to student

outcomes." Reardon, *Achievement Gaps* at 35. For example, a recent, massive study analyzed more than 100 million test scores from 2009 to 2012 of public school children, grades three through eight, in over 300 metropolitan areas to determine whether it is "the racial or socioeconomic composition of schools that drives the persistent association between segregation and achievement inequality." *Id.* The resulting data show "an association between racial school segregation and achievement gaps, net of many socioeconomic differences between white and minority families" which is "driven by the strong association between racial segregation per se and racial differences in school poverty." *Id.* at 50. The study concludes that "[r]educing school segregation—in particular, reducing racial disparities in exposure to poor schoolmates—may therefore be an effective means of improving the equality of students' access to high-quality educational opportunities." *Id.* at 51.

A study by the National Center for Education Statistics similarly shows the severity of lower achievement among students in high poverty schools. For example, in 2007 the average reading and math scores for fourth and eighth grade students in schools where fifty-one to seventy-five percent of students were eligible for free or reduced-price lunches was roughly two grade levels lower than students in schools where only eleven to twenty-five percent of students were eligible for discounted lunches. *See* Nat'l Ctr. For Educ. Stat., *The Condition Of*

Education App. A, at 153 tbl. A-12-2, 157 tbl.A-13-2 (2009), *available at* https://nces.ed.gov/pubs2009/2009081.pdf; Christopher Lubienski & Sarah Theule Lubienski, *Charter, Private, Public Schools and Academic Achievement: New Evidence from NAEP Mathematics Data*, Nat'l Ctr. for the Study of Privatization in Educ., 5 (2006), *available at* http://www.ncspe.org/publications_files/OP111.pdf.

Integrated schools help to remedy these inequalities and increase educational attainment. In the country's predominantly poor and minority schools, an average of only four out of ten students graduate on time. For example, during the 2004-2005 academic year, in Baltimore City's high poverty and minority school system, only one-third of students graduated on time. *See* Derek Black, *Middle-Income Peers as Educational Resources and the Constitutional Right to Equal Access*, 53 B.C. L. Rev. 373, 407 (2012) (hereafter Black, *Middle-Income Peers*). In a three-decade study of dropout rates in Ohio, however, both minority *and* white student high school dropout rates decreased under desegregation. *See* Roslyn Arlin Mickelson & Mokubung Nkomo, *Integrated Schooling, Life Course Outcomes, and Social Cohesion in Multiethnic Democratic Studies*, Review of Research in Education, Ch. 10 at 17 (2011) (hereafter Mickelson & Nkomo, *Integrated Schooling*). Students, especially underserved minority youth, are also more likely

to attend college if they were educated in a racial and socioeconomically diverse environment. *Id*. at 18.

B. Segregated Schools Inhibit Students' Access to Educational Resources

Segregation also inhibits students' access to educational resources. For example, teachers in high-poverty, high-minority schools have lower qualifications and less experience as compared to teachers in middle- or high-income schools. A 2004 study by the U.S. Department of Education found that in high-poverty schools where at least 75 percent of students were low-income, there were three times as many uncertified or out-of-field teachers both in English and science as there were at schools with lower poverty rates. Nat'l Ctr. for Educ. Stat., *The Condition of Education* 73 (2004), *available at* https://nces.ed.gov/pubs2004/2004077.pdf.

Predominantly poor and minority schools also have difficulty remedying this problem. High quality teachers are not generally drawn to impoverished schools because they know these schools present greater educational challenges, such as higher student, faculty, and administrative turnover, weaker parental support, limited resources, and increased potential for disruption and disciplinary issues. *See id.* And, when a high poverty and minority school is able to attract qualified teachers, it has difficulty retaining them. The most qualified teachers often leave these schools once they acquire experience. *See* Black, *Middle-Income Peers*, at

405; *see also* Wendy Parker, *Desegregating Teachers*, 86 Wash. U. L. Rev. 8, 38 (2008). For example, among the highest poverty schools in the Charlotte-Mecklenburg system in North Carolina, overall five-year teacher turnover rates were as high as 31% in 2000. *See* Julius L. Chambers et al., *The Socioeconomic Composition of the Public Schools: A Crucial Consideration in Student Assignment Policy*, UNC Center for Civil Rights, at 6 (2005) (hereafter *The Socioeconomic Composition of the Public Schools*). These departures deprive students of continuity and often force schools to hire less qualified and experienced replacements. *See* Black, *Middle-Income Peers*, at 405.

Increasing teacher compensation is not effective, or often even available, to address this problem. Very few predominantly poor and minority schools have the financial resources to offer higher salaries to recruit new teachers. *Id.* at 406. In any event, increased compensation alone will not attract highly qualified teachers, as they are often deterred by the greater educational challenges presented in high-poverty schools. *Id.*

Segregated minority schools are also more likely to have a limited academic curriculum, which adversely influences students' chances of attending college. Success on the SAT is one of the most important factors in college admissions. *See* Roslyn Arlin Mickelson, *Segregation and the SAT*, 67 Ohio St. L.J. 157, 158 (2006). And enrollment in advanced courses and SAT preparatory classes are two

important influences on SAT outcomes. *See id.* at 177. However, these opportunities are less likely to be available to students in segregated schools. A student's ability to take advanced courses depends on her assigned "track level." The available tracks—typically regular, advanced, advanced placement, or international baccalaureate—determine in large part "the scope and breadth of curricular coverage and the rigor of instructional practices." *Id.* at 176-77. "The higher the track, the deeper and more rigorous the curricula, and the more likely the teacher was to be certified, experienced, and teaching a subject in his or her field of expertise." *Id.* at 177.

But school segregation adversely affects future track placement. An eighteen-year, multi-method case study (of North Carolina's Charlotte-Mecklenburg School District, which has available data that are unusually thorough) shows that, all else held equal, the more time a student spends in a segregated school, the less likely she is to be assigned to higher track classes in high school. *Id.* at 178. The study further showed that fewer such high-track classes are available in schools with high-minority populations. *Id.* at 183-84. Less availability of advanced courses deprives minority students of the chance to earn college credit in high school, to appeal to college admissions officers with the difficulty level of their course load, and to learn material in preparation for the

SAT. *Id.* at 184. Indeed, a student's track is one of the most important influences on her SAT outcome. *Id.* at 177.

Enrollment in SAT preparation programs was also shown to positively influence students' SAT test scores. *Id.* at 187. But, critically, *all* opportunities for SAT preparation programs, whether informal extracurricular study sessions with teachers, formal preparation courses offered as elective courses, and private courses offered by a third-party, are less likely to be available in segregated schools. *Id.* at 188. School-sponsored "opportunities to prepare for the SAT varied with the racial composition of the high school, with more and better opportunities at schools with higher percentages of whites in the student body." *Id*. Schools with the lowest concentration of black students had the most opportunities to prepare for the SAT, while schools with a high concentration of black students had the fewest offerings. *Id.*

Segregated schools also inhibit minority students' access to educational and professional networks. Students from segregated schools are less likely to matriculate to college. *See* Black, *Middle-Income Peers*, at 408. In contrast, minority students in desegregated schools "develop higher educational and occupational aspirations that can translate into greater effort and achievement." Derek Black, *The Case for the New Compelling Government Interest: Improving Educational Outcomes*, 80 N.C. L. Rev. 923, 951 (2002) (review of approximately

thirty years of social science research) (hereafter Black, *Improving Educational Outcomes*). For example, students from desegregated schools are more likely to complete "more years of education, earn higher degrees, and major in more varied occupations than graduates of all-black schools." Brief of 553 Social Scientists as *Amici Curiae* Supproting Respondents at 21a, *Parents Involved in Community Schs. v. Seattle Sch. District No. 1*, 551 U.S. 701 (2007) (hereafter Brief of 553 Social Scientists).

Racially isolated schools also provide fewer inroads into the job market than racially diverse schools, *see* Black, *Improving Educational Outcomes*, at 953, and less access to information about professional jobs and college opportunities. Brief of 553 Social Scientists at 21a. A study of black students in Hartford, Connecticut, for example, found that students from desegregated schools were more likely to have white-collar jobs and more years of education. *Id*. at 22a. Other studies have similarly found that school segregation was negatively related to wages. *Id*.

III. INTEGRATED SCHOOLS BENEFIT ALL RACES AND SERVE AS A NECESSARY PART OF AN ADEQUATE EDUCATION

While, as briefly surveyed above, segregated education measurably deprives minority students of educational benefits and attainment, diversity in schools benefits *all* students, not just minority students, and more adequately prepares all students to be successful in an increasingly diverse world. The U.S. Supreme

Court has recognized that diversity is a compelling state interest,[3] and it is widely accepted that cross-cultural competency is best learned through exposure to individuals of other races and ethnicities. The New Jersey Supreme Court's landmark *Booker* decision long ago explained the critical, practical importance of racially and culturally heterogeneous schools:

> In a society such as ours, it is not enough that the 3 R's are being taught properly for there are other vital considerations. The children must learn to respect and live with one another in multi-racial and multi-cultural communities and the earlier they do so the better. It is during their formative school years that firm foundations may be laid for good citizenship and broad participation in the mainstream of affairs. Recognizing this, leading educators stress the democratic and educational advantages of heterogeneous school populations and point to the disadvantages of homogeneous student populations, particularly when they are composed of a racial minority whose separation generates feelings of inferiority.

Booker v. Bd. of Ed. of City of Plainfield, 212 A.2d 1, 6 (N.J. 1965).

Research thoroughly demonstrates that diverse education environments benefit students of all races in many measurable ways, including increased educational achievement, more frequent and harmonious intergroup relationships, and greater occupational attainment and workplace diversity skills. These are

[3] *See Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 783 (2007) (Kennedy, J. concurring) ("Diversity, depending on its meaning and definition, is a compelling educational goal a school district may pursue.").

critical measures of education-related attainment, and they can be readily improved and made more uniform across the body of public school students simply by increasing diversity in public schools.

A. An Adequate Education Is One That Prepares Students for Our Increasingly Diverse World

Today's children will enter adulthood in an era of unprecedented diversity and globalization. In 1968, "80% of U.S. public school students were White, 14% were Black, 5% were Latino/a, and 1% were Asian and American Indian. In 2010, the student population in public schools was 56.1% White, 21.8% Latino/a, 14.1% Black, 4.3% Asian, 0.2% Pacific Islander, 2.7% biracial, and 0.9% American Indian/Alaskan Native." Mickelson & Nkomo, *Integrated Schooling* at 4. Thus, since 1968, the country has changed dramatically, and has become far more diverse. The U.S. Census Bureau projects that by 2020, if not sooner, "more than 50% of youth aged 15 to 19 will be from ethnic and racial minority groups." *Id*.

Simultaneously, increasing globalization requires American businesses, and in turn American employees, to interact more frequently with people of different cultures and ethnicities. *See* Robert A. Garda, Jr., *The White Interest in School Integration*, 63 Fla. L. Rev. 599, 602 (2011). The globalized economy increasingly requires businesses to "connect with international partners to realize competitive advantage." *Id.* at 640. Employees will need to acquire diversity skills to succeed in the new economy. *See* Black, *Improving Educational*

Outcomes, at 953. The United States Supreme Court, in *Grutter v. Bollinger*, recognized that diversity "promotes learning outcomes" and "better prepares students for [this] increasingly diverse workforce and society." 539 U.S. 306, 330 (2003). As the Court noted, the skills necessary to function in our diverse workforce and society, "can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints." *Id*.

Other courts have recognized that an adequate education is one which prepares students for all facets of life beyond high school—higher education, employment, and citizenship. The Kentucky Supreme Court held that a constitutionally adequate education includes the skills, among others, to "function in a complex and rapidly changing civilization" and "to compete favorably with their counterparts in surrounding states, in academics or in the job market." *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (K.Y. 1989). Similarly, in *Campaign for Fiscal Equity, Inc. v. State*, the New York Court of Appeals held that to determine whether the state met its constitutional obligation to provide a "sound basic education" a court must evaluate whether it provided children the skills "necessary to enable them to function as civic participants capable of voting and serving as jurors." 86 N.Y.2d 307, 318 (N.Y. 1995).

Schools intensely segregated by race simply cannot provide an adequate education because they do not accurately reflect the U.S. population and do not

prepare students for our diverse society. Generally, throughout the country, white, black, and Hispanic students attend schools where their race is the majority of the student body. *See* Garda, *The White Interest in School Integration*, at 613. Moreover, most of the 16,000 school districts in the country are greater than ninety percent white or ninety percent minority. *Id.*

B. Diverse Learning Environments Provide Long-Term Benefits

Racially integrated schools also provide many measurable long-term benefits to students, including greater educational attainment, increased cross-racial friendships and intergroup relations, and greater occupational attainment and cross-cultural competency.

Aside from educational attainment, heterogeneous work environments lead "groups to develop more creative solutions to problems, perhaps because their awareness of individual differences blocks the dead end road to unproductive group think." *The Socioeconomic Composition of the Public Schools* at 14. Students in such environments "develop stronger identities and a better understanding of society." *Id.* at 15. Ultimately, diverse education increases students' ability for "conscious, effortful, deep thinking." *Id.*

Children educated in an integrated environment are also less likely to harbor racial bias, and therefore more likely to lead integrated lives as adults. "The more contact between races, the more likely people of different races will become

friends and shed harmful stereotypes, biases, and prejudices." Garda, *The White Interest in School Integration*, at 626. Importantly, researchers agree that primary and secondary education is the "critical time to expose children to different races and ethnicities" because "the attitudes children develop early on can become entrenched, life-long beliefs." *Id.* Teaching racial tolerance to older students, even college-age students, is difficult because they can already be locked into racialized thinking. *Id.*

Diverse schools also measurably promote racial harmony and reduce racial prejudice. For example, children who receive an integrated education are more likely to have friends from other races, work in desegregated work environments, and live in desegregated neighborhoods regardless of their socioeconomic status, test scores, or geography. Brief of 553 Social Scientists at 23a. These individuals are also more likely than their segregated peers to favor integrated schools for their own children and to maintain an increased sense of civic engagement. *Id*.

Research has also consistently found a strong relationship between racial diversity in educational settings and students' ability to obtain employment and succeed in the job market. *See* Black, *Improving Educational Outcomes*, at 960. For example, "integrated education enhances the achievement and attainment necessary for employment" and "broadens the occupational aspirations of disadvantaged minorities." Mickelson & Nkomo, *Integrated Schooling* at 20. In

addition, non-white students who graduate from integrated schools benefit from increased access to social and professional networks. Brief of 553 Social Scientists at 21a.

To succeed in employment, it is imperative that children develop the skills to function effectively in diverse workplaces. Garda, *The White Interest in School Integration*, at 631. The consensus among both large and small businesses is that whites educated in integrated environments will be more productive and effective employees than those educated in segregated environments. *Id.* This consensus is reflected in that over eighty-nine major corporations, including General Motors, filed briefs in *Grutter v. Bollinger* supporting University of Michigan's affirmative action program. *See* Garda, *The White Interest in School Integration*, at 631. Similarly, in *Parents Involved*, "entities representing more than 2,800 companies filed briefs supporting voluntary integration" in public elementary and secondary schools. Garda, *The White Interest in School Integration*, at 631.

Employers in today's economy are also seeking a workforce that has cross-cultural competence and the ability to market products to a multi-cultural consumer base. *Id.* at 632. Lawyers, doctors, and virtually all vocations dependent on clients similarly require individuals to identify, understand, and address the needs of a diverse client base. *Id.* at 636. And increased globalization requires employees to be able to interact with racial and ethnic groups outside the United States. *Id.* at

641. Multiracial education is a strong indicator of cross-cultural competence and adaptability to different cultures. *Id.* at 642. Individuals who have engaged these skills with one culture will be better able to understand and interact with other cultures. *Id.*

Contemporary employees also need to work more productively with their own colleagues in a diverse workplace. *Id.* at 636. These cross-cultural competency skills are best learned through attending integrated schools. *Id.* at 631. Learning in a racially diverse environment makes it "more likely that people will bring fewer racial and ethnic stereotypes into the workplace, and will work more productively with other members of [our] diverse nation." Brief of 553 Social Scientists at 24a. Other means of building interracial competency, such as diversity training, are not nearly as effective as direct contact with people of different races and ethnicities. *See* Garda, *The White Interest in School Integration*, at 628. Similarly, these skills cannot be as effectively passed down from parents to children and parents cannot assume that their anti-prejudice teachings will help their children overcome implicit racial biases or teach them cross-cultural competence. *Id.* at 629.

CONCLUSION

ELC and the Education and Constitutional Law Scholars therefore urge the Court to reverse the Court of Appeals' ruling that Plaintiffs' claims under the

Education Clause of the Minnesota Constitution are not justiciable. The critically important issues raised by this appeal call out for the judiciary to adjudicate them and to enforce the Education Clause.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 132.01, subdivisions 1 and 3, of the Minnesota Rules of Civil Appellate Procedure, I hereby certify that this brief (a) was prepared using Microsoft Office Word 2007, (b) complies with the typeface requirements provided by Rule 132.01, and (c) contains 6,995 words.

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