No. A17-0033

STATE OF MINNESOTA

IN COURT OF APPEALS

Tiffini Flynn Forslund, et al.,
Appellants,

vs.

State of Minnesota, et al.,
Respondents.

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LEGAL ISSUES

I. Does the Education Clause of the Minnesota Constitution, art. XIII, § 1, provide for a particular quality of education?

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Authority:
Minn. Const., art. XIII, § 1
Cruz-Guzman v. State, —N.W.2d—, 2017 WL 957726 (Minn. App. 2017)
Skeen v. State, 505 N.W.2d 299 (Minn. 1993)

II. Is Appellants' challenge to state laws governing teacher hiring practices justiciable where the claims require the Court to decide political questions regarding what constitutes an "adequate" education?

The district court held that Appellants' claims involved political questions that are not justiciable.

Authority:
Minn. Const., art. XIII, § 1
Curryer v. Merrill, 25 Minn. 1, 2, 7 (1878)
Cruz-Guzman v. State, —N.W.2d—, 2017 WL 957726 (Minn. App. 2017)
Baker v. Carr, 369 U.S. 186 (1962)

III. Do Appellants lack standing, where their alleged harm is not definite and concrete, is not fairly traceable to the State Defendants or Minn. Stat. §§ 122A.40 and 122A.41, and is not redressable?

The district court held that Appellants lacked standing to assert their claims because they had not identified a concrete harm that was fairly traceable to the State Defendants and the court lacked the ability to redress the alleged harm.

Authority:
Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)
Clapper v. Amnesty Int'l USA, 133 S. Ct. 1138 (2013)
McSherry v. City of St. Paul, 277 N.W. 541 (Minn. 1938)

IV. Assuming Appellants' claims are justiciable:

i. Do Appellants' facial challenges to Minnesota's teacher tenure and continuing contract laws, Minn. Stat. §§ 122A.40, 122A.41, fail because the laws are not unconstitutional in all applications?

The district court held that Appellants' facial challenges necessarily failed because, by their plain language, the challenged laws did not operate unconstitutionally in all applications.

Authority:
McCaughtry v. City of Red Wing, 831 N.W.2d 518 (Minn. 2013)
John Doe No. 1 v. Reed, 561 U.S. 186 (2010)
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Minn. Stat. § 122A.40
Minn. Stat. § 122A.41

ii. Do Minnesota's teacher tenure and continuing contract laws, Minn. Stat. §§ 122A.40, 122A.41, violate the Education Clause of the Minnesota Constitution?

The district court held that, even if Appellants' Education Clause claims were justiciable, Appellants' Education Clause claims necessarily failed as a matter of law.

Authority:
Minn. Const., art. XIII, § 1
Skeen v. State, 505 N.W.2d 299 (Minn. 1993)
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McSherry v. City of St. Paul 277 N.W. 541 (Minn. 1938)
Minn. Stat. § 122A.40
Minn. Stat. § 122A.41

iii. Have Appellants alleged facts to support a viable claim that Minnesota's teacher tenure and continuing contract laws, Minn. Stat. §§ 122A.40, 122A.41, violate the Equal Protection Clause of the Minnesota Constitution?

The district court held that Appellants had not pled a viable claim under the Equal Protection Clause of the Minnesota Constitution.

Authority:
Minn. Const. art. I, § 2

Skeen v. State, 505 N.W.2d 299 (Minn. 1993)
Odunlade v. City of Minneapolis, 823 N.W.2d 638 (Minn. 2012)
Minn. Stat. § 122A.40
Minn. Stat. § 122A.41

iv. Are the State of Minnesota, Governor Mark Dayton, and the Minnesota Department of Education proper Defendants in this case?

The district court did not address this issue.

Authority:
Clark v. Pawlenty, 755 N.W.2d 293 (Minn. 2008)
Meriwether Minn. Land & Timber, LLC v. State, 818 N.W.2d 557 (Minn. App. 2012)
Quinones v. City of Evanston, 58 F.3d 275 (7th Cir. 1995)

v. Where Appellants have not included all persons who may be affected by declaratory relief, does Appellants' claim under the Declaratory Judgements Act necessarily fail?

The district court did not address this issue.

Authority:
Unbank Co., LLP v. Merwin Drug Co., Inc., 677 N.W.2d 105 (Minn. App. 2004)
Minn. Stat. § 555.11

V. Where Appellants did not file a motion seeking leave to amend, did the district court err in not providing Appellants an opportunity to amend their complaint a second time?

The issue was not raised below, and therefore was not addressed by the district court.

Authority:
St. James Capitol Corp. v. Pallet Recycling Assoc. of N.A., Inc., 589 N.W.2d 511 (Minn. App. 1999)
Gomez v. Wells Fargo Bank, N.A., 676 F.3d 655 (8th Cir. 2012)

STATEMENT OF CASE AND FACTS

Plaintiffs-Appellants ("Appellants") commenced this suit alleging that the named Defendants denied them an adequate education, a right that Appellants allege is fundamental under the Education Clause of the Minnesota Constitution, Article XIII, Section 1. Am. Compl. at ¶ 23, Doc. ID# 9. In essence, Appellants claim that Minnesota's long-standing teacher tenure and continuing contract laws, Minn. Stat. §§ 122A.40–.41 (collectively, the "challenged laws"), cause school districts to retain "ineffective teachers." *Id.* Appellants further allege that ineffective teachers necessarily provide children an inadequate education in violation of the Education Clause, Equal Protection Clause, and Due Process Clause of the Minnesota Constitution. *Id.* at ¶ 25.

Appellants' Amended Complaint named the following State Defendants: State of Minnesota; Governor Mark Dayton; the Minnesota Department of Education ("MDE"); MDE Commissioner Brenda Cassellius (hereinafter, collectively, "Respondents"). The Amended Complaint also named the following School District Defendants: St Paul Public Schools, Independent School District 625; Anoka-Hennepin School District 11; Duluth Public Schools, Independent School District 709; West St. Paul-Mendota Heights Eagan Area Schools, Independent School District 197.

I. BACKGROUND ON MINNESOTA TEACHER TENURE LAWS.

A. History of Teacher Tenure in Minnesota.

Minnesota adopted its first teacher tenure law in 1927.[1] Act of March 14, 1927, ch. 36, 1927 Minn. Laws 42–44. Historical accounts indicate that teacher tenure was enacted because local officials had been saving money by replacing more expensive, experienced teachers with less-experienced ones and terminating teachers for a variety of reasons unrelated to job performance, such as local politics and political patronage. *See, e.g.*, *McSherry v. City of St. Paul*, 277 N.W. 541, 543 (Minn. 1938) ("It was thought that for the good of the schools and the general public the profession [of teaching] should be made independent of personal or political influence, and made free from the malignant power of spoils and patronage.").

Tenure laws are designed to protect students and improve the quality of student education through the development of a professional teaching staff. *Id.* at 544 ("[T]he [tenure] movement itself has for its basis the public interest, in that most advantages go to the youth of the land and to the schools themselves rather than the interest of teachers as such."). Thus, teacher tenure was adopted so that "better talent would be attracted to the profession." *Id.*

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[1] Minnesota's first tenure law applied only to teachers in so-called "cities of the first class"—i.e., Minneapolis, St. Paul, and Duluth. Minn. Stat. § 2935-1 *et seq.* (Mason 1927). Approximately ten years later, continuing contracts were extended to teachers in other districts. Minn. Stat. § 2903 (Mason 1938). Although Minnesota law continues to maintain two separate statutory provisions for tenure and continuing contracts, the provisions at issue in this case are now largely similar. As such, State Defendants refer to both as "tenure" laws.

Tenure is not and has never been a guarantee of future employment. Rather, the teacher tenure laws provide a legal framework for teacher employment decisions made by local school districts, require that employment decisions be merit-based, and guarantee certain procedural due process protections for teachers. *See, e.g.*, Minn. Stat. §§ 122A.40–.41. Minnesota law expressly allows districts to terminate or remove any teacher for cause, including for poor teaching. Minn. Stat. §§ 122A.40, subds 9, 13 (allowing discharge for inefficiency in teaching); 122A.41, subd. 6 (same).

As the Minnesota Supreme Court explained:

> Plainly, the legislative purposes sought were stability, certainty, and permanency of employment on the part of those who had shown by educational attainment and by probationary trial their fitness for the teaching profession. By statutory direction and limitation there is provided means of prevention of *arbitrary* demotion or discharges by school authorities. The history behind the act justifies the view that the vicissitudes to which teachers had in the past been subjected were to be done away with or at least minimalized. It was enacted for the *benefit and advantage of the school system* by providing such machinery as would tend to minimize the part that malice, political, or partisan trends, or caprice might play. It established *merit* as the essential basis for the *right* of permanent employment. On the other hand, it is equally clear the act does not impair *discretionary* power of school authorities to make the best selections consonant with the public good . . . . The right to demote or discharge provides remedies for safeguarding the future against incompetence, insubordination, and other grounds stated in the act.

McSherry, 277 N.W. at 544 (italics in original).

More recently, in 1992, the Minnesota Supreme Court explained that "[t]eachers, whose primary task is to impart knowledge to students through personal interaction, are given the security of tenure to assure their academic freedom and to protect them from arbitrary demotions and discharges unrelated to their ability to perform their prescribed

duties." *Frye v. Indep. Sch. Dist. No.* 625, 494 N.W.2d 466, 467 (Minn. 1992). The Supreme Court has described tenure laws as "wise legislation, promotive of the best interests, not only of teachers affected, but of the schools as well." *Oxman v. Indep. Sch. Dist. of Duluth*, 227 N.W. 351 (Minn. 1929).

B. The Current Statutory Framework for Tenure in Minnesota.

As it relates to primary and secondary public school teachers, the statutes governing teacher tenure currently set forth the following basic framework:

- New teachers are considered probationary employees for at least three years. During that time, they must receive at least three evaluations in each school year by a peer review committee. Probationary teachers can be discharged, demoted, or have their contracts non-renewed, and they have no rights of appeal should that occur. Minn. Stat. §§ 122A.40, subd. 5; 122A.41, subd. 2.

- A teacher who is reemployed after the a continuous three-year probationary period "shall continue in service and hold their respective position during good behavior and efficient and competent service and must not be discharged or demoted except for cause after a hearing." Minn. Stat. §§ 122A.40, subd. 7; 122A.41, subd. 4.

- Teachers who are tenured can be terminated for cause, including for (1) inefficiency or gross inefficiency in teaching; (2) neglect or willful neglect of duty or persistent violation of school laws, rules, regulations, or directives; (3) conduct unbecoming a teacher, insubordination, immoral conduct, conviction of a felony; (4) failure without justifiable cause to teach; (5) other good and sufficient grounds render the teacher unfit to perform the teachers duties. *See* Minn. Stat. §§ 122A.40, subds. 9, 13; 122A.41, subd. 6.

Individual employment decisions on teacher probation, tenure, and dismissal are made at the district level, and the details about the implementation of these provisions is negotiated as part of collecting bargaining agreements. Minn. Stat. §§ 122A.40, 122A.41.

After a teacher obtains tenure, the schools continue to provide development and evaluation. For example, school districts must implement teacher evaluation and peer review processes in order to "develop, improve, and support qualified teachers and effective teaching practices." Minn. Stat. §§ 122A.40, subd. 8(b); 122A.41, subd. (5)(b). In addition, districts must address any teacher not meeting professional standards through a teacher improvement plan with established goals and timelines. *Id.* at subd. 8(b)(12). If a teacher fails to make adequate progress while on an improvement plan, discipline is required, including possible termination, discharge, or nonrenewal. Minn. Stat. §§ 122A.40, subd. 8(13); 122A.41, subd. 5(13). Further, unless unavoidable, a student must not be taught in two consecutive years by a teacher who is on an improvement plan. Minn. Stat. §§ 122A.40, subd. 8(d); 122A.41, subd. 5(d).

Tenure laws also include reduction-in-force provisions. These provisions set forth default procedures to be followed if constraints, such as budget or lower student enrollment, require a decrease in teacher staffing. Minnesota law provides that "[i]n the event it becomes necessary to discontinue one or more positions . . . teachers must be discontinued in any department in the inverse order in which they were employed." Minn. Stat. § 122A.41, subd. 14; *see also* Minn. Stat. § 122A.40, subds. 10–11. But Minnesota law does not mandate that such a system be used. Rather, it expressly allows school boards and teacher representatives "in the district [to] negotiate a plan providing otherwise." Minn. Stat. § 122A.41, subd. 14; *see also* Minn. Stat. § 122A.40, subd. 10.

Appellants' concerns relate to areas subject to ongoing policymaking by the Minnesota Legislature. For example, in its 2015–2016 legislative session, the 89th

Minnesota Legislature passed several laws germane to the allegations in Appellants' Amended Complaint. *See, e.g.*, Act of June 1, 2016, ch. 189, 2016 Minn. Laws 1, art. 24, §§ 6–7 (to be codified at Minn. Stat. §§ 122A.40, subd. 8; 122A.41, subd. 5.); *id.* at art. 25, §§ 9–12.

C. Public Reports on Student Achievement in Minnesota.

Publicly-available governmental reports on student achievement indicate that Minnesota students perform well compared to students in other states. According to the National Assessment for Education Progress ("NAEP")—a federal effort to assess students across the country by comparing reading and math scores at grades four and eight—Minnesota student test scores are generally high compared to other states. In the 2015 NAEP Report Card, Minnesota students rank second and third nationally on mathematics scores at the fourth and eighth grade levels, respectively. Excerpts from NAEP Report Card, Ex. 2 to Huyser Aff. in Supp. of State's Defs.' Mot. to Dismiss, Doc. ID# 49.

II. ALLEGATIONS IN APPELLANTS' AMENDED COMPLAINT.

A. Appellants' Allegations of Harm.

Appellants allege that they are the parents of children who attend public schools in Minnesota. Am. Compl. at ¶¶ 27–31, Doc. ID# 9. Appellants allege that the challenged laws put their chidlren at "risk" of being assigned a so-called "ineffective teacher." *Id.* But Appellants never define what constitutes an "ineffective teacher" and do not allege that their children have actually been assigned a teacher they would deem "ineffective." *See generally id.*

Appellants also do not allege facts or allegations about how their children have specifically been harmed. The complaint does include general allegations about various schools in Minnesota, as well as aggregated school performance data. *See id*. at ¶¶ 119–198. Appellants acknowledged at oral argument that their children do not actually attend any of the elementary schools specifically identified in the Amended Complaint. Tr. at 62:19–63:23, Doc. ID# 100.

B. Allegations Against State Defendants.

Appellants sue the State of Minnesota based on its "plenary responsibility for educating all Minnesota public school students" and allege that the remaining State Defendants have some general oversight over education. Am. Compl. at ¶¶ 32–35, Doc. ID# 9.. Appellants do not allege that any of their children attend a school run by a State entity. *See generally id.* Minnesota also does not have a statewide school board, and control over employment decisions at Minnesota schools rests with the local school districts. *See supra* I.B. The Amended Complaint does not contend that any named State Defendant has legal authority to hire, fire, supervise, or assign individual teachers. *See generally* Am. Compl., Doc. ID# 9.

As such, Appellants' allegations against the State Defendants are limited to a facial challenge to the statute itself, and are not and cannot be based on the implementation of the statute.

III. THE DISTRICT COURT DECISION.

The State Defendants and the School District Defendants all brought motions to dismiss the Amended Complaint. Defendants argued that Appellants lacked standing,

that the Court lacked jurisdiction to decide the issue, and that Appellants' claims under the Education Clause, Equal Protection Clause, and Due Process Clause all failed as a matter of law.

After taking the matter under advisement following a full day of oral argument, the district court dismissed the Amended Complaint in its entirety and with prejudice. Appellants' Add. (hereinafter "Add.") at 50. The court found that Appellants' claims raised questions of education policy that are legislative in nature and therefore not justiciable. Add. 73–75. The court also found that Appellants lack standing because: (1) the harms Appellants allege are not cognizable; (2) the harms are not fairly traceable to the State Defendants, who do not decide which teachers to hire and retain, or to the challenged laws, which actually provide for discipline and termination of teachers who are inefficient; and (3) the court lacked the ability to redress Appellants' alleged harms because Appellants acknowledged that their children could still be taught by a teacher they deem "ineffective" even if the challenged laws were enjoined. Add. 69–73.

In the alternative, the district court found that Appellants fail to state any viable claim under the Minnesota Constitution. The court dismissed the Education Clause claims because Appellants' allegations do not allege a violation of the constitutionally-guaranteed "general and uniform" system of education. Add. 77–81. The district court also rejected Appellants' claims that their education is constitutionally inadequate, holding that inadequacy has never been discussed outside the funding context and, in any event, Appellants have not alleged facts showing their children's education was inadequate. *Id.* The court dismissed Appellants' Equal Protection claim—which it

construed as a facial challenge because of the relief sought—on the basis that the challenged statutes do not discriminate on their face. Add. 83–88. Alternatively, the court held that, even if Appellants had pled a proper as-applied claim under either the Equal Protection or Due Process clause, such claims would also fail as a matter of law. Add. 83–90.

Although Appellants allege error because the district court did not *sua sponte* provide for the further amendment of their Complaint, Appellants never filed a motion seeking leave to file a second amended complaint. As such, the Court had no opportunity to address such a motion.

Appellants appeal the district court's order dismissing their Amended Complaint. On appeal, Appellants expressly state that they abandon the following claims: (1) Equal Protection claims based on suspect class; (2) Procedural Due Process; and (3) the as-applied claims asserted against the local school districts. Appellants' Br. (hereinafter "Br.") at 11, n. 3.

SCOPE OF REVIEW

The Court reviews an order granting a motion to dismiss de novo. *Bodah v. Lakeville Motor Express*, 663 N.W.2d 550, 553 (Minn. 2003). On a motion to dismiss for lack of subject matter jurisdiction, the court analyzes whether it has the authority to consider an action. *See Irwin v. Goodno*, 686 N.W.2d 878, 880 (Minn. App. 2004). "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Minn. R. Civ. P. 12.08(c). "Standing is a jurisdictional doctrine, and the lack of standing bars

consideration of the claim by the court." *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011); *see also* Minn. R. Civ. P. 12.08(c). Likewise, courts have no subject matter jurisdiction to adjudicate claims that present nonjusticiable political questions. *See In re McConaughy*, 119 N.W. 408, 417 (Minn. 1909); *Farrington v. City of Richfield*, 488 N.W.2d 13, 16 n.2 (Minn. App. 1992).

On a motion to dismiss under Rule 12.02(e), the only question before the court is "whether the complaint sets forth a legally sufficient claim for relief." *Elize v. Comm'r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980); *Zutz v. Nelson*, 788 N.W.2d 58, 61 (Minn. 2010). A legal conclusion in the complaint is not binding, and a plaintiff must provide more than mere labels and conclusions to survive a motion to dismiss. *Bahr v. Capella University*, 788 N.W.2d 76, 80 (Minn. 2010). On a motion to dismiss, a court may consider materials that are part of the public record as well as materials that are necessarily embraced by the pleadings without converting the motion to summary judgment. *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999).

ARGUMENT

I. *CRUZ-GUZMAN V. STATE* IS BINDING PRECEDENT AND WHOLLY DISPOSITIVE OF THIS CASE.

The foundation for each of Appellants' claims is their contention that the Education Clause of the Minnesota Constitution provides for a so-called "right to an adequate education," *i.e.*, a qualitative standard for education. Am. Compl. at ¶ 23,

Doc. ID# 9; *see also* Br.at i, 4–5, 10–11, 13–24, 30–32, 35–38, 43.[2] The district court dismissed Appellants' claims because, among other things, the Education Clause does not provide such a right and, even if it did, such claims would be non-justiciable political questions. Add. at 68–88.

Subsequent to the district court order, this Court issued a decision in *Cruz-Guzman v. State* and held that: (1) the plain language of the Education Clause does not establish a qualitative educational standard; and (2) development of a "qualitative educational standard" is a nonjusticiable political question because it entails "a task for the legislature, not the judiciary." —N.W.2d—, 2017 WL 957726 (Minn. App. 2017). For the reasons discussed below, *Cruz-Guzman* is not only consistent with the district court's decision; it is also binding precedent that is wholly dispositive of Appellants' claims.

A. Minnesota's Education Clause Does Not Create a Qualitative Standard.

In *Cruz-Guzman*, the question of whether "there is a right to an 'adequate' education under the Education Clause" was a "question of first impression." *Id.* at *4; *see also* Add. at 79–80 (recognizing same). This Court in *Cruz-Guzman*, like the district court in this case, concluded the Education Clause does not provide a constitutional right to an education of a certain quality.

The Education Clause, article XIII, section 1, reads as follows:

[2] Appellants have conceded that all of their claims are based on the Education Clause. *See* Br. at 11, n.3 (conceding procedural due process claims and any claims based on a suspect class).

> **Uniform system of public schools**. The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.

Looking to the language of the clause, *Cruz-Guzman* recognized that the "word 'adequate' does not appear in Minnesota's Education Clause." 2017 WL 957726, at *4; *see also* Add. at 79 ("The plain language of the Education Clause does not contain the word adequacy.") The Court concluded that "[t]he clause does not state that the legislature must provide an education that meets a certain qualitative standard" nor does it "set forth [any] relevant qualitative standard." *Cruz-Guzman*, 2017 WL 957726, at *4.

Appellants argue that *Cruz-Guzman* is limited to justiciability, Br. at 28, but the Court's interpretation of the Education Clause was a necessary prerequisite to the decision in the case. *Id.* (explaining that "an examination of the constitutional underpinnings of respondents' asserted right to an adequate education informs our de novo analysis regarding the justifiability issue, which is properly before this court.") The court found no support, in either the plain language of the Minnesota Constitution or in Minnesota case law, for a constitutionally-based qualitative educational requirement. *Id.*

Appellants' attempt to rely on the Minnesota Supreme Court's decision in *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993), is also foreclosed by the Court's analysis in *Cruz-Guzman.* *Cruz-Guzman* expressly rejected the argument that *Skeen* established or recognized a constitutional right to an "adequate" education. 2017 WL 957726, at *6–7. The Court explained: "*Skeen* involved a challenge to the state's education-finance

system. The supreme court was not asked to determine, and did not determine, whether the Education Clause guarantees an education of a certain quality." *Id.* at *7; *see also* Add. at 79–80 (recognizing the same).[3]

In short, for the same reasons recognized by the district court in this case, the Court in *Cruz-Guzman* found that the language of the Educational Clause of the Minnesota Constitution does not establish a constitutional claim related to educational quality. *Cruz-Guzman* is binding precedent and is controlling of this case.

B. Appellants' Claims Involve Political Questions and Are Not Justiciable.

Establishing a "qualitative educational standard" is "a task for the legislature and not the judiciary" and therefore "present[s] a nonjusticiable political question." *Cruz-Guzman*, 2017 WL 957726, at *7.[4] As such, Appellants claims that they failed to receive

[3] Furthermore, the test Appellants attempt to extract from *Skeen* is both very broad and without any support in Minnesota case law. Essentially, under the analysis articulated by Appellants, if just one student's education is below Appellants' "adequate" standard, the Legislature has failed to provide a "general and uniform system" and therefore violated the Education Clause. *See* Br. at 33. *Skeen* was decided 24 years ago, yet Appellants fail to cite a single Minnesota case even considering a claim under such a standard.

In any event, the district court held that, even if *Skeen* had established a right to a certain quality of education, Appellants failed to plead facts showing that the challenged statues deprived their children of an "adequate" education. *See infra* at II.C.3 (analyzing this alternative theory).

[4] Appellants incorrectly argue that *Cruz-Guzman* is distinguishable because the plaintiffs in that case sought to challenge educational policies, whereas Appellants challenge education laws. Br. at 28. This misses the point. *Cruz-Guzman* is binding because the Court held that the Education Clause does not provide a justiciable right related to educational quality under which the Appellants can sue. As such, it is legally irrelevant which particular law or policy Appellants claim is in violation of a non-existent and non-justiciable right.

an adequate education which they allege is guaranteed by the Education Clause are not justiciable.

"What is generally meant, when it is said that a question is political, and not judicial, is that it is a matter which is to be exercised by the people in their primary political capacity or that it has been specifically delegated to some other department or particular officer of the government, with discretionary power to act." *Id.* at *5 (quoting *In re McConaughy*, 119 N.W. 408, 417 (Minn. 1909)). "When it comes to education, the Minnesota courts have long recognized that cases challenging education policies and methods by which they are achieved are legislative questions that are not justiciable by the Courts." Add. at 73–74 (citing *Assoc. Schs. of Ind. Dist. No. 63 v. Sch. Dist. No. 83*, 142 N.W.2d 325 (Minn. 1913); *Skeen*, 505 N.W.2d at 308–19 (Minn. 1993); *Alisides v. Brown Inst. Ltd.*, 592 N.W.2d 468, 473 (Minn. App. 1999)).

The Minnesota Constitution commits matters of education policy, including details regarding the type and quality of educators, to the legislative branch. Minn. Const., art. XIII, § 1. "The public policy of a state is for the legislature to determine and not the courts." *Mattson v. Flynn*, 13 N.W.2d 11, 16 (Minn. 1944). Because Appellants' concerns relate to the wisdom of legislative policy and not the scope of its constitutional powers, the district court properly held that the appropriate mechanism to address their objections is through the legislative process, not the courts. *Curryer v. Merrill*, 25 Minn. 1, 2, 7 (Minn. 1878).

In analyzing the justiciabilty of the same claim in *Cruz-Guzman*, the Court turned to the standard articulated by the United States Supreme Court in *Baker v. Carr*:

> It is apparent that formulations may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of power. Prominent on the surface of any case held to involve a political question is found [(1)] a textually demonstrable constitutional commitment of the issue to a coordinate political department; [(2)] a lack of judicially discoverable and manageable standards for resolving it; [(3)] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial determination; [(4)] impossibility of the court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; [(5)] an unusual need for unquestioning adherence to a political question already made; ***or*** [(6)] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

2017 WL 957726, at *5 (*quoting Baker*, 369 U.S. 186, 217 (1962))(emphasis added). The Court concluded that a constitutional claim related to educational quality—the same claim Appellants assert here—met the three indicia of a political question and therefore was not justiciable.

1. Under the Minnesota Constitution, education policy is textually committed to legislative discretion.

The text of the Minnesota Constitution plainly commits authority over education policy to the Minnesota legislature; it provides that "it is ***the duty of the legislature*** to establish a general and uniform system of public schools" and to provide financially "to secure a thorough and efficient system of public schools . . . ." Minn. Const. art. XIII, § 1 (emphasis added); *Cruz-Guzman*, 2017 WL 957726, at *5. The "method by which these objectives were to be accomplished was left to legislative determination." *Bd. of Educ. v. Erickson*, 295 N.W. 302, 304 (Minn. 1940). *See also Assoc. Schs.*, 142 N.W. at 327 (requirement that local districts expand subject matter topics offered is "a legislative and not a judicial question, a question of legislative policy and not of legislative power").

No branch of government "can legally exercise the powers which in the constitutional distribution are granted to any of the others. A grant to one is a denial to the others." *In re McConaughy*, 119 N.W. at 417; *see also Arrowhead Bus Serv., Inc. v. Black & White Duluth Cab Co., Inc.*, 32 N.W.2d 590, 592 (Minn. 1948); *Smith v. Holm*, 19 N.W.2d 914, 916 (Minn. 1945). Thus, even if the Education Clause did imply a qualitative standard for education, the plain language of the Minnesota Constitution charges the legislature and not the judiciary with determining an appropriate way to meet that requirement. *Cruz-Guzman*, 2017 WL 957726, at *5.

In *Skeen v. State*, the Minnesota Supreme Court adhered to these fundamental separation of powers principles. 505 N.W.2d at 308–18 ("[W]e do not mean to suggest that it would be impossible to devise a fairer or more efficient system of educational funding. Instead, we believe that any attempt to devise such a system is a matter best left to the legislative determination.") Appellants do not allege that the Minnesota legislature lacks the authority to set standards for teachers, they merely oppose the policy choices they have made in doing so. Like *Cruz-Guzman*, *Skeen* appropriately recognized that the Minnesota Constitution does not authorize the Court to weigh in on such disputes.

2. Analysis and evaluation of education quality inherently involves matters of nonjudicial policymaking.

As *Cruz-Guzman* recognized, determining what is an appropriate or adequate education and how best to achieve it would entail "'an initial policy determination of the kind clearly for nonjudicial discretion.'" *Cruz-Guzman*, 2017 WL 957726, at *6 (quoting *Baker*, 369 U.S. at 217). The Court in *Cruz-Guzman* relied on prior decisions in *Curryer*

v. Merrill and *Alsides v. Brown Inst., Ltd.*, both of which are especially apropos to the fact of this case. *Id.*

In *Curryer*, the Court was asked to strike down a statute governing the provision of textbooks. The Court "unequivocally stated that 'the course of instruction to be pursued in [the public school system] is entirely under legislative control." *Id.* (quoting *Curryer*, 25 Minn. at 7.) Statutes governing the provision of teachers also concern "the course of instruction" to be pursued in the public school system, and are not justiciable for the same reason. *Id.*

Alsides also concerned issues of instruction of schools in the context of a tort claim, specifically claims that a private school failed to provide adequate instruction and education. *Id.* The Court "rejected, on public policy grounds," claims that "would require the court to engage in a 'comprehensive review of a myriad of educational and pedagogical factors, as well as administrative policies.'" *Alsides*, 592 N.W.2d at 473 (citation omitted). Appellants' claims in this case likewise ask the Court to evaluate thorny issues such as teacher effectiveness and educational adequacy, which inherently involve legislative policy determinations, not justiciable legal standards.

3. The courts lack judicially discoverable and manageable standards to resolve Appellants' education adequacy claims.

The Court in *Cruz-Guzman* could "not ascertain[] any judicially discoverable and manageable standards for resolving respondents' inadequate-education claims." *Cruz-Guzman*, 2017 WL 957726, at *6. Appellants assert the same claims as the plaintiffs in

Cruz-Guzman, and the claims face the same problem here. The Court is without law or standards to guide an inquiry into educational quality and teacher efficacy.

In an attempt to save their claim, Appellants erroneously suggest that the Court could adjudicate the case without defining the "contours" of an inadequate education claim. *See* Br. at 29. As the Court explained in *Cruz-Guzman*, "[j]udicial action must be governed by *standard*, by *rule*." *Cruz-Guzman*, 2017 WL 957726, at *6 (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004)). Thus, if a right to provide an adequate education did exist, a court could not decide that claim without "defin[ing] 'adequate' and the attendant qualitative standard." *Id.* at *4–5.

Appellants also point to language in *Skeen* and argue it already established a judicial standard for their claim. Br. at 18–20. Appellants failed to make this argument to the district court and, as such, it is waived. *Thiele v. Stitch*, 425 N.W.2d 580, 582 (Minn. 1988). Furthermore, as discussed *supra* at I.A, *Skeen* plainly did not adopt such a rule. *Skeen* was a funding case, and the language Appellants rely on was used only to evaluate the sufficiency of state funding.

In any event, the standard Appellants propose is unworkable for a number of reasons. The Court in *Cruz-Guzman* explicitly discussed the very same language in *Skeen* Appellants rely on, and rejected it as judicially unmanageable. *Cruz-Guzman*, 2017 WL 957726, at *7. Among other things, the Court explained that the Minnesota Supreme Court did not identify specific state standards and did not conclude that those standards emanated from the Minnesota Constitution. *Id.* The rule advocated by Appellants would effectively imbue every state statute and regulation related to education

with constitutional significance. *Skeen* plainly did not adopt such a broad rule—indeed, educational adequacy was not even a disputed issue in *Skeen*—and Appellants do not cite any case since *Skeen* was decided in 1993 in support of their interpretation.

In sum, Appellants ask the Court to decide issues that by the plain language of the Minnesota Constitution are committed to the legislature.[5] As such, the district court properly dismissed Appellants' claims in their entirety and with prejudice for lack of jurisdiction.

II. ALTERNATIVELY, APPELLANTS' CLAIMS FAIL FOR SEVERAL ADDITIONAL AND INDEPENDENT REASONS.

A. The District Court Properly Found That Appellants Have Not Established Standing.

Standing is a constitutional doctrine that defines the Court's ability to redress an injury through coercive relief. *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 321 (Minn. App. 2007) (citation omitted). To satisfy standing, a plaintiff must, generally speaking, demonstrate that he has suffered an "injury-in-fact," that the injury is "fairly traceable" to the actions of the defendant, and that the injury will likely be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992);

[5] *See also Comm. for Educ. Rights v. Edgar*, 672 N.E.2d 1178, 1191 (Ill. 1996) (discussing the policy reasons for why education policy should be decided by political branches of government, including that it ensures citizens are able to participate in the process.); *Cruz-Guzman*, 2017 WL 957726, at *3 n.2 (collecting cases from other states that have likewise concluded that similar claims are not justiciable).

accord Hanson v. Woolston, 701 N.W.2d 257, 262 (Minn. App. 2005); *Riehm v. Comm'r of Public Safety*, 745 N.W.2d 869, 873 (Minn. App. 2008).[6]

1. Appellants' hypothetical injuries are not cognizable grounds to prove standing.

A plaintiff first must have suffered an "injury-in-fact," which is an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. *Lujan*, 504 U.S. at 560; *accord Hanson*, 701 N.W.2d at 262.

The Amended Complaint contains no allegations of an actual concrete harm to any Appellant caused by a State Defendant. *See generally* Am. Compl., Doc. ID# 9. Rather, the Amended Complaint cites aggregate, district-wide data and simply alleges that Appellants are "at risk" of a school district assigning them an "ineffective teacher," without identifying what an ineffective teacher is. *Id*. at ¶¶ 27–30. This alleged harm is not traceable to the State Defendants, *infra* at II.A.2, and is insufficient to establish an injury-in-fact.

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[6] Appellants' suggestion that ripeness is alone sufficient to establish standing is incorrect as a matter of law. *McCaughtry v. City of Red Wing* ("*McCaughtry I*"), 808 N.W.2d 331, 337 (Minn. 2011) ("Nonetheless, like every other action, a declaratory judgment action must present an actual, justiciable controversy."). "The question of standing 'involves both constitutional limitations on . . . jurisdiction and prudential limitations on its exercise.'" As a prudential concern, ripeness is necessary, but not sufficient alone to gain standing to bring suit under Article VI of the Minnesota Constitution. *Bennett v. Spear*, 520 U.S. 154, 162 (1997). The cases cited by Appellants do not reach a contrary conclusion. In any event, Appellants did not raise this argument before the district court and, as such, it is waived and not appropriately before the Court. *Thiele*, 425 N.W.2d at 582.

The Amended Complaint does not assert any specific harm to a student as a result of a particular teacher. Appellants' evidence of aggregate harm based on district-wide test scores and other measures are not sufficiently particularized, nor directed at the State Defendants, to create constitutional standing to sue. *Lujan*, 504 U.S. at 560 n.1. (for alleged harm to be particularized, it "must affect [the plaintiff] in a personal and individual way"). And the contention that Appellants are "at risk" of being assigned an "ineffective teacher" is a speculative injury that is contingent, not concrete or actual. *See Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1147 (2013) ("[W]e have repeatedly reiterated that 'threated injury must be certainly impending to constitute injury in fact, and that [a]llegations of possible future injury are not sufficient") (internal quotation marks omitted); *see also Valley Forge Christian Coll. v. Americans United for Separation of Church and State*, 454 U.S. 464, 471 (1982). Appellants fail to present a present, particular, and concrete injury and consequently do not have standing to bring this suit.

2. Appellants fail to sufficiently plead a link between the challenged statutes and their alleged injury.

Second, "there must be a causal connection between the injury and the conduct complained of" and the injury must be fairly traceable "to the challenged action of the defendant" and not the result of "the independent action of some third party not before the court." *Lujan*, 504 U.S. at 560; *accord Hanson*, 701 N.W.2d at 262; *Riehm*, 745 N.W.2d at 873. Where the chain of causation between the government's conduct and the asserted injury is "attenuated" or "speculative," a plaintiff lacks standing. *Allen v.*

Wright, 468 U.S. 737, 758–59 (1984), *overruled on other grounds by Lexmark Int'l, Inc. v. Static Control Components*, 134 S.Ct. 1377 (2014). An alleged injury is not fairly traceable to a challenged statute if other factors caused the asserted injury. *See Clapper*, 133 S. Ct. at 1149.

As the district court recognized, Add. at 71, Appellants' Amended Complaint does not contain any allegations of harm traceable to the State Defendants. Appellants simply do not allege that they suffered harm as a result of actions taken by the Department of Education, its Commissioner, Governor Mark Dayton, or the State of Minnesota.[7]

While Appellants alleged that their harms are a result of Minnesota's tenure and continuing contract laws, the harms Appellants allege are not fairly traceable to these statutes because the challenged statutes expressly provide school districts discretion on teacher personnel decisions. Minn. Stat. §§ 122A.40, subd. 9, 13; 122A.41, subd. 9. The statutes are silent as to local decisions about which teachers to hire and how to assign them. *Id.* The law also charges school districts with the discretion to determine which teachers to tenure and which to fire for cause—which necessarily includes the ability to not hire or dismiss underperforming teachers—and gives districts authority to negotiate their own reduction-in-force criteria. *Id.*

In short, state law does not mandate teacher employment decisions; it simply creates a process to ensure that teacher performance drives dismissal decisions. *McSherry*, 277 N.W. at 543–44 ("it is . . . clear that the [tenure] act does not impair the

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[7] Further, as indicated *infra* at II.E, most of these entities are not proper parties to this case.

discretionary power of the school authorities to make the best selections consonant with the public good" and that the districts retain the "right to demote or discharge" teachers). Although Appellants try to brand the statute by repeatedly calling it "ironclad job security," the language of challenged laws plainly and on its face provides for teacher dismissal for performance- or disciplinary-based reasons.

Further, while Appellants may disagree with personnel decisions made by certain districts, Appellants have chosen not to pursue such claims. Indeed, Appellants conceded as much in their original briefing on the motion to dismiss. Pls' Mem. in Opp. to Mot. to Dismiss at 35 (admitting that the only causal connection between their alleged injury and the Challenged Statutes is in their enforcement by individual schools and districts), Doc. ID# 67.

3. The relief sought would not cure Appellants' asserted injury.

The third prerequisite to standing is that it "must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561; *accord Hanson*, 701 N.W.2d at 262; *Riehm*, 745 N.W.2d at 873. The district court properly concluded that "a decision by the Court to strike [the challenged laws] would not redress the harms." Add. at 72.

As Appellants themselves conceded, there is no guarantee that, absent the challenged laws, Appellants would never again receive an "ineffective teacher" and would enjoy improved academic performance, either individually or on a district-wide basis. Am. Compl. at ¶ 201, Doc. ID# 9; Tr. at 77:22–78:22, Doc. ID# 100. Even if the remedy sought is granted, Appellants admit that any hope at redressing their alleged

harms attendant to "ineffective teachers" is contingent on school leaders' employment and dismissal decisions. Pls.' Mem. in Opp. to Mot. to Dismiss at 35, Doc. ID# 67.

History reveals that concerns about ineffective teachers predate the Challenged Statutes. As the Minnesota Supreme Court explained, tenure laws were developed precisely because then-existing teacher hiring practices "had not resulted in the elimination of poor, incompetent, and inefficient teachers . . . and that not infrequently the best teachers were discharged for inadequate reasons." *McSherry*, 277 N.W. at 543. Tenure is a merit-based system designed to actually improve and protect the quality and professionalism of Minnesota's teachers. *Id.* at 543–44.[8]

Appellants' alleged harms are not redressed by the injunction they seek.

B. Appellants Cannot Establish That The Challenged Laws Are Unconstitutional In All Applications And Their Claims Therefore Fail.

On appeal against the State Defendants, Appellants can assert only facial claims for two reasons. First, State Defendants do not implement the challenged laws, and therefore lack authority to grant any relief predicated on how the statutes are implemented as it relates to specific teachers.[9]

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[8] This debate over redressibility highlights the extent to which this case involves questions of educational policy. The *amici* in support of Appellants submitted briefs detailing at length their opinion on whether better teachers are attracted and retained by tenure-based systems versus systems without those due process protections. This analysis does not involve considering facts against a set legal standard; it involves weighing competing policy arguments with different benefits and costs to determine what is best for Minnesota. In short, it is an inherently legislative function. *Supra* at I.B.

[9] In their Amended Complaint, Appellants alleged some "as-applied" claims, but the challenged laws are technically not "applied" to Appellants because they are not teachers. Presumably, they intended to assert claims based on how the laws are implemented.

Second, as the district court recognized, Appellants do not seek individual relief, but rather ask solely that the challenged laws be enjoined in their entirety. Am. Compl. at ¶ 74, Doc. ID# 9; Tr. at 63:9–23, Doc. ID# 100. Appellants' claims are defined by the relief they seek. *John Doe No. 1 v. Reed*, 561 U.S. 186 (2010) ("The label is not what matters. The important point is that plaintiffs' claim and the relief that follow . . . reach beyond the particular circumstances of the plaintiffs."). Because the relief sought is an invalidation of the statute in all applications, Appellants are asserting facial claims. *Id.*; *see also City of Chicago v. Morales*, 527 U.S. 41, 55, n.22 (1999) (explaining that plaintiff asserting a facial challenge must meet a heightened standard because he "seeks to vindicate not only his own rights, but also those of others . . . .").[10]

To prevail on a facial claim, Appellants must carry the "heavy burden of proving that the [challenged laws are] unconstitutional in all applications." *McCaughtry v. City of Red Wing* ("*McCaughtry II*"), 831 N.W.2d 518, 522 (Minn. 2013); *accord United States v. Salerno*, 481 U.S. 739, 745 (1987) (a facial challenge is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid"). In other words, Appellants would have to show that the harms they allege *inevitably* result from the statutes themselves. *Id; see also Vegara v. State*, 209 Cal.Rptr.3d 532, 554–558 (Cal. Ct. App. 2016) (holding that similar constitutional challenge to California tenure laws failed because the laws provided for

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[10] Appellants argue that this standard doesn't apply to a disparate impact challenge to a facially neutral law under the Equal Protection clause. Br. at 40–41, n.10. As explained *infra* at II.D.2, Appellants do not allege a disparate impact claim.

school district discretion and therefore did not inevitably cause the harms the plaintiffs alleged).

Appellants cannot show that the laws are unconstitutional in all applications because the laws *on their face* provide for dismissal of ineffective and underperforming teachers. Minn. Stat. §§ 122A.40, subds. 9, 13; 122A.41, subd. 5; *see also* Minn. Stat. §§ 122A.40, subd. 8; 122A.41, subd. 5 (requiring districts to conduct regular teacher evaluations, identify underperforming teachers, and to remedy performance issues including with dismissal if appropriate).

Indeed, Appellants admit that, even under their own theory of constitutionality, the law is not unconstitutional in all applications, stating: "the Challenged Statutes are not unconstitutional as they related to effective teachers." Br. at 36. This, by definition, fails to meet the requirement that a law be unconstitutional in all applications before it is enjoined. *McCaughtry II*, 31 N.W.2d at 522; *Salerno*, 481 U.S. at 745. If Appellants succeeded on their facial claim and the statutes were enjoined, these effective teachers would lose their due process protections even though Appellants admit that the statute as applied to them is constitutional. *See Wash. St. Grange v. Wash. St. Republican Party*, 552 U.S. 442, 449 (2008) (explaining that "a facial challenge must fail where the statute has a "'plainly legitimate sweep'").

In addition, Appellants' attempt to introduce allegations about how schools apply and implement the statutes must be rejected as irrelevant and inappropriate as to a facial claim. *See, e.g.*, Br. at 37. By Appellants' own admission, the challenged statutes are

implemented by local school districts and not State Defendants.[11] As such, arguments and concerns about whether a district decides to "initiate discharge proceedings" or allows a teacher to "occupy classrooms…during the pendency of their discharge proceedings," Br. at 37, allege injuries not properly directed at the State Defendants. *See Wash. St. Grange*, 552 U.S. at 450 ("In determining whether a law is facially invalid, we must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases.")

In sum, Appellants cannot show under their constitutional analysis that the Challenged Statues always operate unconstitutionally. In fact, the opposite is true: school and district leaders often fire ineffective teachers, refuse to grant tenure, or implement layoffs on their own terms. State Defs.' Mem. in Supp. of Mot. to Dismiss at 5, Doc. ID# 45. The District Court properly concluded that "[n]othing on the face of the Challenged Statutes . . . infringes a student's right to education . . . ." Add. at 83. That holding should be upheld, and Appellants claims against the State Defendants dismissed in their entirety.

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[11] For example, Appellants concede that school districts exercise discretion in deciding whether to grant tenure under the challenged laws. Am. Compl. at ¶¶ 75; 78, 79, Doc. ID# 9. Appellants recognize that school leaders may terminate a teacher after tenure is granted. *Id.* at ¶ 83. Appellants concede that "school and district leaders" administer dismissal provisions, *Id.* at ¶ 89, and that districts and administrators initiate dismissal provisions, and may do so based on ineffective classroom instruction, *id.* at ¶ 92. Appellants also recognize that administrators decide the student class to which a teacher is assigned. *Id.* at ¶ 97.

C. Appellants' Education Clause Claims Fails As a Matter of Law.

The district court also correctly concluded that Appellants failed to state a claim under the Education Clause because the "essence of Plaintiffs' claims is not that Minnesota lacks a 'general and uniform' system of education, but rather, a disagreement with the *type* of general and uniform system chosen by the legislature." Add. at 81. In addition, the district court properly determined that Appellants failed to plead causation, a necessary element of their claims. Finally, even under Appellants own proposed standard, Appellants' Education Clause claims would fail because they have received an education that is "adequate" as that terms is used in *Skeen v. State*.

1. Appellants have not pled a viable claim under the Education Clause.

From the beginning, the Minnesota Supreme Court has interpreted the phrase "general and uniform" in the Education Clause to speak only to the legislative obligation to ensure a system of public schools. In *Curryer*, for example, the plaintiff challenged a statute that regulated textbook purchases for public schools but exempted certain districts. 25 Minn. at 5–6. The Court rejected the argument that the Education Clause compelled uniformity and that the financial burden on some students in affected districts may hamper their education, stating:

> The rule of uniformity . . . has reference to the system which it may provide, and not to the district organizations that may be established under it.

Id. at 6;[12] *see also State ex rel. Klimek v. Otter Tail Cnty.*, 283 N.W. 397, 398 (Minn. 1939) ("The legislature has complied with the mandate of the constitution by enacting the laws under which our present school system is organized."); *Melby v. Hellie*, 80 N.W.2d 849, 852 (Minn. 1957) (holding the Education Clause does not require "'general and uniform' in Access and Quality").

More recently, in *Skeen*, the Minnesota Supreme Court reaffirmed that "uniform" does not mean "identical" or even "nearly identical," and "merely applies to the general system, not to specific . . . disparities." 505 N.W.2d at 310–11. The Supreme Court stated that "the 'uniform' language is complied with if the state requires and provides for a minimum of educational opportunities in the district and permits the districts to exercise local control over what they desire, and can furnish, over the minimum." *Id.* at 310 (citation omitted).

Here, the challenged laws are part of a general system that has been in place since the 1920s, and they apply uniformly to public schools. Indeed, the Minnesota Supreme Court has recognized that the legislature created tenure to replace local hiring practices that had failed to ensure a workforce of professional and quality teachers. *McSherry*, 277 N.W. at 543–44. Because the teacher tenure laws are part of a general and uniform system developed by the legislature, Appellants have failed to state a cognizable constitutional challenge to the tenure laws under the Education Clause.

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[12] The early Supreme Court opinion in *Curryer* gives a clear understanding of the constitutional intent at the time the Education Clause was drafted. *See State v. Hamm*, 423 N.W.2d 379, 383 (Minn. 1988) (stating that an 1869 court decision interpreting the constitution gives a "clear understanding" of the constitutional intent in 1857).

2. Appellants' claims also fail because they did not allege facts showing causation.

The district court found that the Education Clause claims also failed because Appellants had not pled causation, stating: "Nowhere does Plaintiffs' Amended Complaint allege that Minnesota's system of education fails to meet these basic [educational] requirements, much less that teacher tenure laws are causing the system to fall short." Add. at 80.

Appellants offer two misguided arguments in response. First, they argue they need not plead facts showing causation because causation is not an issue for a motion to dismiss. Br. at 37–38. Appellants are mistaken. In a constitutional case, as in all cases, a plaintiff must allege sufficient facts to show causation. *See, e.g.*, *Minn. Majority v. Mansky*, 708 F.3d 1051, 1060 (8th Cir. 2013) ("EIW has failed to allege that Minnesota caused selective enforcement of the facially neutral statute and Policy, and has therefore failed to state an equal protection claim.").

Second, Appellants attempt to show causation by pointing to the allegation that the tenure laws "protect ineffective teachers with the consequence that many children are denied their fundamental right to a uniform and thorough education." Br. at 38 (quoting Am. Compl. at ¶ 23, Doc. ID# 9). This conclusory allegation does not set forth any facts showing that Appellants personally suffered or will suffer harm as a result of the tenure laws. Appellants' failure to plead such facts is fatal to their claims.

3. Appellants' claims also fail under their proposed *Skeen* standard.

Relying on the decision in *Skeen v. State,* Appellants allege that they have a constitutional right to an adequate education. For the reasons discussed *supra* at I.A, no such right exists.

But even if *Skeen* were read to imply a basic concept of adequacy into the plain language of the Education Clause, and even if that concept was found to apply outside the funding context, Appellants' Amended Complaint does not allege the sorts of harms that would fall below that threshold. In *Skeen*, the Minnesota Supreme Court collected language from other states who had already addressed funding disparity issues. *Id.* at 310–11. For example, *Skeen* cites a decision from Oregon, which interpreted the requirement of uniformity to mean that "the state requires and provides for a minimum of educational opportunities in the district and permits the districts to exercise local control over what they desire, and can furnish, over the minimum." *Id.* at 310 (citing *Olsen v. State*, 554 P.2d 139, 148 (Or. 1976)). Wisconsin defined uniform as referring to "such items as minimum standards for teacher certification, minimum number of school days, and standard school curriculum." *Id.* (citing *Kukor v. Grover*, 436 N.W.2d 568, 577–78 (Wis. 1989)). A case cited out of West Virginia included a few more specifics, suggesting that education should include basics such literacy; the ability to add, subtract, multiply and divide; and knowledge of government necessary to be an informed citizen, among other things. *Id.* at 310–11 (citing *Pauley v. Kelly*, 255 S.E.2d 859, 877 (W. Va. 1979)).

Appellants' Amended Complaint does not allege that Minnesota's system of education fails to meet these basic requirements, much less that the challenged laws are causing the system to fall short. To the contrary, Minnesota's system of education generally ranks as one of the best in the country. *Supra* at Statement of Case and Facts, I.C. Appellants concede that Minnesota schools do have effective teachers. Br. at 36–37. Appellants do not provide any factual allegations of how their individual educations failed to meet these concepts of adequacy.

Furthermore, Appellants certainly cannot show that challenge laws would lead to an "inadequate" education in all applications. *McCaughtry II*, 831 N.W.2d at 522. The plain language of the challenged provisions simply does not obligate school districts to provide a constitutionally inadequate education, and it plainly gives school districts the discretion not to hire and retain ineffective teachers. Minn. Stat. §§ 122A.40, 122A.41.

For the first time on appeal, Appellants argue that the *Skeen* defines adequacy s a requirement that for all students, schools must "meet all state standards." This argument fails for all the reasons suggested *supra* at I.A and I.B. In any event, Appellants' facial claim to the challenged laws necessarily fails under this proposed standard because the challenged laws *are part of the state's education standards* and as such must facially meet their own standard.

D. Appellants' Equal Protection Claim Fails As a Matter of Law.

The Equal Protection Clause 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. Statutes challenged on equal protection grounds are presumed valid, and the duty is on the challenging party to prove its invalidity beyond a reasonable doubt. *Skeen*, 505 N.W.2d at 312. Generally, as long as a statute is rationally related to a legitimate government purpose, it will be upheld under the Equal Protection Clause, Minn. Const. art. I, § 2; *Skeen*, 505 N.W.2d at 312.

Only where a statute disadvantages a suspect class or impinges upon a fundamental right will courts apply strict scrutiny, under which the state must prove the statute is necessary to a compelling government interest. *Id.* Here, the district court correctly determined that Appellants' claims do not involve a fundamental right,[13] the challenged laws are facially neutral, that the challenged laws survive rational basis review, and Appellants otherwise failed to state an Equal Protection claim.

1. Appellants' claims do not involve a fundamental right.

"[F]undamental rights are [t]hose which have their origin in the express terms of the Constitution or which are necessarily to be implied from those terms." *Skeen*, 505 N.W.2d at 313 (citation omitted). Appellants argue that the teacher tenure laws impinge on a fundamental right by protecting ineffective teachers. This misstates the rights secured by the Education Clause. While there is a fundamental right in Minnesota to a "general and uniform system of education," the Supreme Court has never recognized as

[13] Appellants' Amended Complaint also asserted an Equal Protection claim based on suspect class. Am. Compl. at ¶¶ 249–269, Doc. ID# 9. Appellants have chosen not to appeal the district court's dismissal of those claims. Br. at 11, n. 3. Appellants' brief refers at one point to "a class of students whose fundamental right to education is burdened by being assigned to ineffective teachers." Br. at 40. The Amended Complaint did not assert any claim based on such a class.

fundamental students' individual rights to be taught entirely only by certain teachers.[14] *See supra* at I.A and I.B.

Furthermore, to be subject to strict scrutiny, a law must "directly and substantially interfere[] with a fundamental right." *Gluba ex rel. Gluba v. Bitzan & Ohren Masonry*, 735 N.W.2d 713, 720–21 (Minn. 2007). Here, the connection between laws that provide due process protections to teachers and the alleged harm to student academic outcomes is too attenuated and indirect to trigger strict scrutiny.

2. Appellants' Equal Protection claims also fail because they cannot show disparate impact.

Appellants argue on appeal that their equal protection claim is a "disparate impact" claim. Br. at 40 ("Here, 'disparate impact' is precisely what Plaintiffs allege . . .") To establish a claim based on disparate impact, "a plaintiff must show (1) that a state action impacts his suspect class more than others and (2) that the state actor intended to discriminate against the suspect class." *Odunlade v. City of Minneapolis*, 823 N.W.2d 638, 648 (Minn. 2012). Appellants fail under both prongs.

First, as discussed above, Appellants cannot pursue a disparate impact claims because they have disavowed their claims based on suspect class. Br. at 11, n.3. Further,

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[14] Education is not recognized as a fundamental right under the U.S. Constitution. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973). While a right to education is fundamental under the Minnesota Constitution, case law primarily discusses it solely within the context of student expulsion. *See Zellman ex rel MZ v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999) ("[j]udicial intervention in public school systems requires restraint." (citation omitted)). Appellants acknowledge that they currently attend school, and as such do not allege they have suffered "total exclusion" from their public education. *See* Am. Compl. ¶¶ 27–30, Doc. ID# 9.

Appellants' Amended Complaint did not allege a "suspect class" claim based on student-teacher assignments, and in any event, this would not constitute a suspect class. *See, e.g.*, *Com'r of Human Services v. Buchmann*, 830 N.W.2d 895, 905 (Minn. App. 2013) (rejecting disparate impact claim because "rural Minnesotans are not a suspect class"). Absent a suspect class, a disparate impact claim necessarily fails as a matter of law. *Odunlade*, 823 N.W.2d at 648 (rejecting disparate impact claim because "relators have not alleged that they are members of a suspect class").

Second, a disparate impact challenge to a facially neutral law requires proof of discriminatory intent. The Amended Complaint contains no allegations that the Minnesota Legislature intended to discriminate against students, nor would there be basis to so allege. The challenged laws have a well-established legitimate purpose that supports its constitutionality—Minnesota Supreme Court precedent establishes that the challenged laws were passed to improve student education by ensuring teachers were selected based on a merit-based system. *Infra* at II.D.3. Where there are legitimate reasons to adopt and maintain a statute, courts "will not infer a discriminatory purpose." *McClesky v. Kemp*, 481 U.S. 279, 298–99 (1987).

3. Teacher tenure laws satisfy rational basis review.

Because no fundamental right is involved, the teacher tenure laws must only be rationally related to a legitimate government purpose. *Skeen*, 505 N.W.2d at 312. Minnesota precedent establishes that tenure laws meet that standard.

The Minnesota Supreme Court long ago concluded that teacher tenure laws are "wise legislation, promotive of the best interests, not only of the teachers affected, but of

the schools as well." *Oxman*, 227 N.W. at 352. The Supreme Court has repeatedly stated that "the legislative purposes sought [by teacher tenure laws] were stability, certainty, and permanency of employment on the part of those who had shown by educational attainment and by probationary trial their fitness for the teaching profession." *Berland v. Special Sch. Dist. No. 1, Minneapolis*, 314 N.W.2d 909, 811–12 (Minn. 1981) (quoting *McSherry*, 277 N.W. at 544). The challenged tenure laws promote this legitimate purpose by: (1) allowing teacher dismissal only for cause and after a hearing, following a three-year probationary period, (2) giving teachers due process rights in the event of a discharge or demotion, and (3) laying off teachers in the order of least to most senior, unless the school district and teachers' representative agree otherwise. Thus, the tenure laws are rationally related to a legitimate purpose.

In their attempt to cast the tenure laws as constitutionally infirm, Appellants mischaracterize the tenure laws as reflecting a "legislative preference for providing job security to chronically ineffective teachers." Br. at 37. But the tenure laws actually establish inefficiency as a ground for termination. *See* Minn. Stat. §§ 122A.40, subds. 9, 13; 122A.41, subd. 6. The tenure laws were designed to promote the stable employment of fit teachers, not protect ineffective teachers. *McSherry*, 277 N.W. at 544.

Appellants also argue that the district court erred by applying the federal rational basis standard instead of Minnesota's. "The key distinction between the federal and Minnesota tests is that under the Minnesota test we have been unwilling to hypothesize a rational basis to justify a classification, as the more deferential federal standard requires." *State v. Garcia*, 683 N.W.2d 294, 299 (Minn. 2004) (quotation omitted). "Instead, we

have required a reasonable connection between the actual, and not just the theoretical, effect of the challenged classification and the statutory goals." *Id.* Here, the legitimate purpose of teacher tenure is actual and recognized as legitimate in binding Supreme Court decisions. Accordingly, the teacher tenure laws survive rational basis review under both the state and federal standards.

E. Certain State Defendants Are Not Proper Parties.

Improper party defendants to Appellants' suit must be dismissed. The District Court did not address this issue in its Order.

"A person aggrieved by the application of a legal rule does not sue the rule *maker*—Congress, the President, the United States, a state, a state's legislature, the judge who announced the principle of common law. He sues the person whose acts hurt him." *Quinones v. City of Evanston*, 58 F.3d 275, 277 (7th Cir. 1995) (emphasis in original); accord *Travis v. Reno*, 163 F.3d 1000, 1007 (7th Cir. 1998). Minnesota courts have held it is necessary to name the actual party against whom the requested relief could be ordered. *See, e.g.*, *Meriwether Minn. Land & Timber, LLC v. State*, 818 N.W.2d 557, 573 (Minn. App. 2012) (questioning viability of action against the "State of Minnesota" because "the state can provide no relief other than that provided by the commissioner . . . ."); *Benson v. Alverson*, No. A11-0811, 2012 WL 171399, at *2 (Minn. App. Jan. 23, 2012) (in marriage license dispute local registrar is the proper party defendant, not the State of Minnesota), rev. denied, No. A11-0811 (Minn. April 17, 2012); *Clark v. Pawlenty*, 755 N.W.2d 293, 299 (Minn. 2008) (dismissing Governor of Minnesota because he "cannot implement any of the relief that petitioners request").

Appellants seek declaratory relief, which if granted, must be implemented by an individual. *See, e.g.*, Minn. Stat. § 555.13 (definition of person in Declaratory Judgments Act does not include "state"); Minn. Stat. § 645.27 (holding that State is not bound by statute unless it is explicitly named). For all these reasons, if any facial claim survives this appeal, the Commissioner is the only proper State Defendant, not the "State of Minnesota," the Department, or the Governor.

Claims against the Governor also fail because he is immune from suit for his legislative acts. *See Inter Faculty Org. v. Carlson*, 478 N.W.2d 192, 194 (Minn. 1991) (citing Minn. Const. art. IV, § 23); *Advanced Auto Transport, Inc. v. Pawlenty*, 2010 WL 2265159, at *3 n.7 (D. Minn. June 2, 2010) (The "governor cannot be sued for signing a bill into law under the doctrine of absolute legislative immunity."); *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 503 (1975) (holding that "the Speech or Debate Clause is an absolute bar to interference.").

F. Appellants' Request for Declaratory Relief Must Be Denied Because All Interested Persons and Parties Have Not Been Joined.

Appellants' request for declaratory relief necessarily fails because all interested persons and parties have not been joined. While the District Court did not reach this issue, it is an alternative basis for dismissal of Appellants' Amended Complaint. When the District Court raised this issue at oral argument, Appellants admitted they "do see the problem" with focusing claims only on certain school districts. Tr. at 108:11–110:2, Doc. ID# 100. Despite this revelation at argument, Appellants elect to double down on this error on appeal by abandoning all claims against all school districts. Br. at 12 n.4.

"When declaratory relief is sought, all persons shall be made parties who have or claim any interest which could be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." Minn. Stat. § 555.11; *Frisk v. Bd. of Ed. of Duluth*, 75 N.W.2d 504, 514 (Minn. 1956). The failure to join an interested party is a "fatal defect." *Unbank Co., LLP v. Merwin Drug Co., Inc.*, 677 N.W.2d 105, 107 (Minn. App. 2004). The declaratory relief sought by Appellants would directly affect, and could adversely impact, the rights of many nonparty school districts and teachers. As such, there is no subject matter jurisdiction to declare such relief absent the participation of all interested parties. *Id.* at 107.

III. THE DISTRICT COURT PROPERLY DISMISSED THE AMENDED COMPLAINT WITHOUT ALLOWING APPELLANTS TO AMEND.

Appellants argue that the district court abused its discretion by not allowing them to further amend their Amended Complaint. However, Appellants never moved to amend their complaint. "A district court does not abuse its discretion in failing to invite an amended complaint when plaintiff has not moved to amend and submitted a proposed amended pleading." *Gomez v. Wells Fargo Bank, N.A.,* 676 F.3d 655, 665 (8th Cir. 2012); *see also St. James Capitol Corp. v. Pallet Recycling Assoc. of N.A., Inc.*, 589 N.W.2d 511, 517 (Minn. App. 1999) ("The district court properly denied appellants' request for leave to amend their complaint because appellants failed to bring such a motion before the court.").

Moreover, a "plaintiff may not amend the complaint if the proposed amendment would be futile because it would serve no useful purpose." *U.S. Bank Nat'l Assoc. v.*

RBP Realty, LLC, 888 N.W.2d 699, 705 (Minn. 2016). Here, any amendment would have been futile because of the jurisdictional defects discussed in this brief.

CONCLUSION

For all the reasons stated herein, Respondents respectfully request the Court affirm the district court's decision granting Respondents Motion to Dismiss and dismissing Appellants' Amended Complaint in its entirety and with prejudice.

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Respectfully submitted,

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