NO. A16-1265

State of Minnesota

In Supreme Court

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

Petitioners,

vs.

State of Minnesota, et al.,

Respondents,

and

Higher Ground Academy, et al.,

Intervenors.

BRIEF OF AMICI CURIAE TIFFINI FLYNN FORSLUND, JUSTINA PERSON, BONNIE DOMINGUEZ, AND ROXANNE DRAUGHN

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IDENTIFICATION OF AMICI CURIAE

Tiffini Flynn Forslund, Justina Person, Bonnie Dominguez, and Roxanne Draughn (the "*Forslund* Plaintiffs") are Plaintiffs/Appellants in *Tiffini Flynn Forslund, et al. v. State of Minnesota, et al.*, which is currently before the Minnesota Court of Appeals and challenges the constitutionality of Minnesota's teacher tenure laws, as codified in the Continuing Contract Law, Minn. Stat. § 122A.40, and the Tenure Act, Minn. Stat. § 122A.41 (the "Tenure Laws"). All are mothers of children who attend (or have attended) public schools across the state of Minnesota. The *Forslund* Plaintiffs allege that their children have each been assigned to chronically ineffective teachers afforded ironclad job security under the Tenure Laws, and face a substantially increased risk of being assigned to chronically ineffective teachers, thus jeopardizing their children's fundamental right to an adequate education, as guaranteed by Article XIII, section 1 of the Minnesota Constitution (the "Education Clause").

The *Forslund* litigation considers issues distinct from those under review in this case. The *Forslund* Plaintiffs allege (1) that the State is failing its constitutional duty to maintain an education system that provides an adequate education to all students; (2) the Tenure Laws impede the State from performing its constitutional duty to provide an adequate education to all students, thus burdening students' fundamental right to an adequate education; and (3) legislatively defined metrics already exist to determine whether the Challenged Statutes operate as the *Forslund* Plaintiffs allege, providing ironclad job security to chronically ineffective teachers. Despite these distinctions, the Attorney General has taken the position the Court of Appeals' opinion in this matter

decides the *Forslund* litigation *in absentia* by holding that "the Education Clause … does not establish a constitutional claim related to educational quality." The Attorney General's position is wrong; nonetheless, this Court's decision in *Cruz-Guzman* potentially impacts the *Forslund* litigation depending on how broadly this Court interprets the holding of the Court of Appeals.

ARGUMENT

Education is unique among rights afforded by the Minnesota Constitution because the Education Clause is the only instance when the Constitution places an affirmative duty on the State. *Skeen v. State*, 505 N.W.2d 299, 313 (Minn. 1993). For this reason, it is the State's "constitutional duty" to provide an education system that "generate[s] an adequate level of education which meets all state standards" for "all students." *Id.* at 315, 320. This constitutional duty, in turn, creates a correlative "fundamental right, under the Education Clause, to a 'general and uniform system of education' which provides an adequate education to all students in Minnesota." *Id.* at 315. Students may invoke this fundamental right to an "adequate education" to challenge State action—and, specifically, State law—that impedes the State's constitutional duty to provide an adequate education to all students. *See Skeen*, 505 N.W.2d at 313, 315; *Brewer v. Hoxie Sch. Dist. No. 46 of Lawrence Cty., Ark.*, 238 F.2d 91, 100 (8th Cir. 1956) ("The existence of a Constitutional duty presupposes a correlative Constitutional right in the person for whom the duty is to be exercised."); *see also Seattle Sch. Dist. No. 1 of King Cty. v. State*, 585 P.2d 71, 91 (Wash. 1978) ("By imposing upon the State a Paramount duty to make ample provision for the education of all children residing within the State's

borders, the constitution has created a 'duty' that is supreme, preeminent or dominant. Flowing from this constitutionally imposed 'duty' is its jural correlative, a correspondent 'right' permitting control of another's conduct. Therefore, all children residing within the borders of the State possess a 'right,' arising from the constitutionally imposed 'duty' of the State, to have the State make ample provision for their education.").

In *Cruz-Guzman*, the Court of Appeals dismissed claims that the State permits "educational and social policies" resulting in segregation and, consequently, "an inadequate education" in violation of the Education Clause. *Cruz-Guzman v. State*, 892 N.W.2d 533, 535 (Minn. Ct. App. 2017). The Court of Appeals determined that the nature of the plaintiffs' allegations and the relief requested would necessarily require a court to define the meaning of an "adequate" education within the context of the plaintiffs' challenge, and to define "the attendant qualitative standard" by which to measure adequacy. *Id.* at 538. This endeavor would require "the judiciary to establish educational policy," thus rendering the plaintiffs' claims "a nonjusticiable political question." *Id.* at 538-40.

The *Forslund* Plaintiffs' own case involves an Education Clause challenge distinct from that at issue here. Nonetheless, the Attorney General has invoked the Court of Appeals' decision here to create a *de facto* rule that claims involving the right to an adequate education are nonjusticiable *per se*, arguing that "the Education Clause … does not establish a constitutional claim related to educational quality." But this goes too far. In *Cruz-Guzman*, the Court of Appeals only examined "the constitutional underpinnings of ***respondents'*** asserted right to an adequate education," determining that the political

question doctrine barred review because "***respondents'*** inadequate-education claims inevitably require[d the Court] to define the relevant qualitative standard." *Id.* at 537-40 (emphasis added). But the Court of Appeals necessarily stopped short of saying all Education Clause claims predicated on students' right to an "adequate education" are nonjusticiable: Indeed, it stated that when judicially discoverable and manageable standards exist for measuring an Education Clause challenge a court "would have no difficulty concluding that th[e] case presents a justiciable controversy." *Id.* at 540.

Moreover, and also in the *Forslund* Plaintiffs' own case, the Attorney General has invoked the Court of Appeals' decision here to argue that Minnesota's students are not entitled to education of a certain quality. Again, this is not correct. In *Skeen*, this Court expressly held that "there is a fundamental right, under the Education Clause, to a 'general and uniform system of education' which provides an *adequate education* to all students." *Skeen*, 505 N.W.2d at 312 (emphasis added). The *Skeen* Court reiterated this constitutional guarantee multiple times, and the *Skeen* plaintiffs' concession that the existing public school system provided an adequate education meeting all state standards was integral to its determination that the Education Clause claim at issue failed. *Id.* at 312, 318. The *Skeen* decision cannot be disregarded: It supersedes all prior Education Clause jurisprudence and sets the course for Education Clause jurisprudence to follow. Only this Court may narrow the scope of students' fundamental right to an "adequate education." Until such time, the Attorney General (and the Court of Appeals) must accept *Skeen's* holding that the Education Clause guarantees a school system that "provides an

adequate education to all students in Minnesota." *Id.* at 315. Anything else is a radical departure from traditional notions of judicial authority.

The Attorney General's *de facto* bar directly contradicts this Court's determination that "there is a fundamental right, under the Education Clause, to a 'general and uniform system of education' which provides an *adequate education* to all students." *Skeen*, 505 N.W.2d at 312 (emphasis added). Where, as in the *Forslund* Plaintiffs' action, the Education Clause claims at issue do *not* require a court to "establish[] the appropriate qualitative standard" by which to measure the baseline qualitative "adequacy" of public education across the state (because measurable standards already exist in law), the political question doctrine cannot apply. *Cruz-Guzman*, 892 N.W.2d at 539; *see id.* ("Unless one of these formulations [of a political question] is inextricable from the case at bar, there should be no dismissal for non-justiciability on the ground of a political question's presence." (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). Stated differently, when a plaintiff wields the Education Clause as a shield to protect her children from laws *impeding* the State's "constitutional duty" to provide "an adequate education to all students" (and thus *burdening* students' correlative "fundamental right" to "an adequate education"), a justiciable controversy exists and the court must assess the merits. *Skeen*, 505 N.W.2d at 315, 320; *see State v. Fairmont Creamery Co.*, 202 N.W. 714, 719 (Minn. 1925) ("The Legislature does not define the constitutional limits of its legislative powers, nor ultimately can it decide them. … If the Legislature transgresses its constitutional limits the courts must say so, for they must ascertain and apply the law, and a statute not within constitutional limits is not law.").

Plaintiffs should be able to turn to the court system for protection against State laws burdening students' fundamental right to an adequate education. It is a foundational precept of constitutional law. *Cf. DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 196 (1989); *Harris v. McRae*, 448 U.S. 297, 317-18 (1980).

CONCLUSION

The claims in the *Forslund* litigation stand on different footing than those at issue in this case. Nonetheless, the Attorney General has invoked the Court of Appeals' decision here to create an insurmountable bar to any kind of claim seeking to vindicate students' "fundamental right, under the Education Clause, to a 'general and uniform system of education' which provides an adequate education to all students in Minnesota." *Skeen*, 505 N.W.2d at 315. This Court should correct this unfounded and overreaching bar to the judicial system.

The *Forslund* Plaintiffs respectfully submit that the Court of Appeals' decision should be reversed, and that this Court should re-affirm the State's constitutional duty to provide an adequate education to all students and hold that State action which impedes the State's constitutional duty to provide an adequate education to all students burdens students' correlative fundamental right to an adequate education, creating a justiciable controversy not immune from review by the political question doctrine.

Dated: June 2, 2017

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CERTIFICATION OF LENGTH

I hereby certify that this Brief of Amici Curiae conforms to the requirements of applicable rules, is produced with a proportional 13-point font, and the length of this document is 2,318 words. This document was prepared using Microsoft Word 2010.

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