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.

APPLICATION OF TIFFINI FLYNN FORSLUND, JUSTINA PERSON, BONNIE DOMINGUEZ, AND ROXANNE DRAUGHN AS *AMICUS CURIAE* AND REQUEST FOR LEAVE TO FILE BRIEF

Tiffini Flynn Forslund, Justina Person, Bonnie Dominguez, and Roxanne Draughn (collectively "Applicants") seek leave to appear as *amicus curiae* in this case under Minn. R. Civ. App. P. 129. If permitted, Applicants would file an amicus brief in favor of Petitioners, seeking reversal and clarification of the Court of Appeals' March 13, 2017 decision. That court concluded that Petitioners' claims based on students' right to an education of a certain quality under the Education Clause, article XIII, section 1, of the Minnesota Constitution, are not justiciable.

I. APPLICANTS HAVE A PUBLIC AND PRIVATE INTEREST IN THIS CASE.

Applicants have a public and private interest in this case. Applicants 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. Applicants 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 distinct issues from those at issue in this case. The *Forslund* Applicants 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) defined metrics already exist to determine whether the Challenged Statutes operate as Applicants allege, providing ironclad job security to chronically ineffective teachers. Despite these distinctions, the outcome of this litigation

may have a significant impact on the *Forslund* litigation depending on how broadly this Court interprets the holding of the Court of Appeals.

Applicants believe their participation as *amicus curiae* will assist the Court because they can provide information, insight, and legal analysis regarding the circumstances in which claims predicated on the right to an education of a certain quality under the Education Clause are justiciable. Applicants will not duplicate the arguments of the parties. Rather, Applicants will address broader themes than those generated by the fact-specific arguments in an effort to assist the Court in its review of the issues.

II. APPLICANTS' PARTICIPATION AS A*MICUS CURIAE* IS DESIRABLE.

Applicants' participation as *amicus curiae* is desirable as it will assist the Court in considering the impact its ruling may have on the educational system in Minnesota.

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, "there is a fundamental right, under the Education Clause, to a 'general and uniform system of education' which provides an adequate education to all students in Minnesota." *Id.* at 315. 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.

In this case 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.

In Applicants' own case, the Attorney General has invoked the Court of Appeals' decision to argue that "the Education Clause … does not establish a constitutional claim related to educational quality." But this goes too far. The Court of Appeals 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 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 Applicants' own case, the Attorney General has invoked the Court of Appeals' decision 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). This Court reiterated that 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 this Court's determination that the *Skeen* plaintiffs' Education Clause claim 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 has invoked the Court of Appeals' decision in Applicants' action to create a de facto rule that claims involving the right to an adequate education are nonjusticiable *per se*. But there are different kinds of constitutional challenges under the Education Clause. Where, as in Applicants' action, the Education Clause claims 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 should not 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 v. State*, 505 N.W.2d at 315, 320.

Plaintiffs should be able to turn to the court system for protection against 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).

In sum, although Applicants' claims in the *Forslund* litigation stand on entirely different footing than those at issue in this case, their participation as *amicus curiae* is desirable to assist the Court considering in the implications of any decision it may reach.

III. CONCLUSION

For the foregoing reasons, Applicants respectfully request leave to file a brief as *amicus curiae* in this case.

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