

No. A17-0033

**STATE OF MINNESOTA
IN COURT OF APPEALS**

Tiffini Flynn Forslund, et al.,

Appellants,

vs.

State of Minnesota, et al.,

Respondents,

St. Paul Public Schools, et al.,

Defendants

**REQUEST OF THE FREEDOM FOUNDATION OF MINNESOTA
FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF**

Mahesha P. Subbaraman
Minnesota Bar License No. 0392486
SUBBARAMAN PLLC
222 S. 9th Street, Suite 1600
Minneapolis, MN 55402-3389
Tel./Fax: (612) 315-9210
mps@subblaw.com

*Attorney for Prospective Amicus Curiae
Freedom Foundation of Minnesota*

In accordance with Minnesota Rule of Civil Appellate Procedure 129.01, the Freedom Foundation of Minnesota (“Freedom Foundation”) respectfully seeks this Court’s permission to file an amicus brief in *Forslund v. State of Minnesota*, No. A17-0033, *appeal filed* (Minn. App. Jan. 9, 2017).

Identity of the Freedom Foundation

The Freedom Foundation is “an independent, non-profit educational and research organization” dedicated to advancing “individual freedom, personal responsibility, economic freedom, and limited government.”¹ To this end, the Foundation generates “in-depth research and important analysis” designed to help state and local officials recognize the impact of their decisions on Minnesota citizens while also giving Minnesota citizens the “knowledge and tools” they need “to keep their officials accountable.”² Examples of the Foundation’s public-policy research include reports on the benefits of a balanced tort liability system, the public health importance of childhood vaccination, and the need to reform Minnesota’s taxpayer-supported colleges and universities.³

Interest of the Freedom Foundation

The Freedom Foundation’s interest in *Forslund* is public in nature. This appeal concerns “the duty of the legislature” under the Minnesota Constitution “to establish a general and uniform system of public schools.” Minn. Const. art. XIII, § 1; *see also Skeen v. State*, 505 N.W.2d 299, 313 (Minn. 1993) (“[T]he

¹ *Mission*, FREEDOM FOUND. OF MINN., <http://freedomfoundation.publishpath.com/about-us> (last visited Jan. 20, 2017).

² *Research*, FREEDOM FOUND. OF MINN., <http://freedomfoundation.publishpath.com/research> (last visited Jan. 20, 2017).

³ *See id.* (listing reports).

Education Clause is a mandate, not simply a grant of power.”). This appeal also concerns the Minnesota Constitution’s due process and equal protection guarantees. *See* Minn. Const. art. I, §§ 2, 7, 8. The effectiveness of these provisions hinges on the ability of Minnesotans to assert them in state courts.

In *Forslund*, the district court rejected the claims of Minnesotans seeking to enforce the above constitutional provisions against state teacher-tenure laws that ultimately deprive low-income and minority Minnesotans of a general and uniform system of public schools. *See Forslund v. State of Minnesota*, No. 62-CV-16-2161, slip op. at 3–4 (Minn. Dist. Ct. Oct. 26, 2016). The district court specifically ruled that the *Forslund* plaintiffs – parents/ guardians of children who attend or have attended Minnesota public schools – lacked standing to assert their claims and that the political-question doctrine also barred judicial review. *See id.* at 20–27. This conclusion renders “fundamental right[s] under the state constitution” into empty promises. *Skeen*, 505 N.W.2d at 313.

The Freedom Foundation is a nonprofit organization dedicated to government accountability. The Foundation thus has a strong public interest in ensuring that state courts remain effective venues for all Minnesotans to enforce their rights under the Minnesota Constitution. That includes the right to “a general and uniform system of public schools” – a right on which “[t]he stability of a republican form of government depend[s].” Minn. Const. art. XIII, § 1.

Position of the Freedom Foundation

The Freedom Foundation supports the Appellants’ position in this appeal. The Foundation accordingly believes that this Court should reverse the district court’s decision to dismiss this case in favor of the Respondents.

Reasons Why a Brief by the Freedom Foundation Is Desirable

An amicus brief by the Freedom Foundation is desirable in *Forslund* because of the Foundation's skill in analyzing the Minnesota Constitution and matters of state public policy. *Cf. Ferguson v. N. States Power Co.*, 239 N.W.2d 190, 194 (Minn. 1976) (finding private amicus briefs helpful in identifying the policy implications of a strict-liability rule for personal injuries from uninsulated high-voltage power lines). This case has major ramifications for the future ability of Minnesotans to enforce state constitutional guarantees in the context of public education. The Foundation therefore respectfully submits that it would be able to provide the Court with helpful "citations to relevant precedent, arguments, and policy considerations not included in the primary briefs." *St. Paul Fire & Marine Ins. Co. v. API, Inc.*, 738 N.W.2d 401, 471 (Minn. App. 2007).

Conclusion

The Freedom Foundation's foregoing request for leave to file an amicus brief in *Forslund v. State of Minnesota*, No. A17-0033 should be granted.

Respectfully submitted,

Dated: January 20, 2017

By: /s/Mahesha P. Subbaraman
Mahesha P. Subbaraman

Mahesha P. Subbaraman (#0392486)
SUBBARAMAN PLLC
222 S. 9th Street, Suite 1600
Minneapolis, MN 55402-3389
Tel./Fax: (612)-315-9210
mps@subblaw.com

Counsel for Prospective Amicus Curiae
Freedom Foundation of Minnesota

