No. A17-0033

State of Minnesota

In Court of Appeals

Tiffini Flynn Forslund, et al.,

Plaintiffs-Appellants,

vs.

State of Minnesota, et al.,

Defendants-Respondents.

BRIEF OF *AMICUS CURIAE* FREEDOM FOUNDATION OF MINNESOTA IN SUPPORT OF APPELLANTS TIFFINI FLYNN FORSLUND, ET AL.

FISHMAN HAYGOOD, L.L.P.
James R. Swanson (LA #18455)
Alysson L. Mills (LA #32904)
Jesse C. Stewart (LA #36282, PHV)
201 St. Charles Avenue, Suite 4600
New Orleans, LA 70170-4600
(504) 586-5252

BASSFORD REMELE, P.A.
Lewis A. Remele, Jr. (#90724)
Frederick E. Finch (#29191)
Kate L. Homolka (#395229)
100 South Fifth Street, Suite 1500
Minneapolis, MN 55402-1254
(612) 333-3000

NEKIMA LEVY-POUNDS (#335101)
2901 Lyndale Avenue North
Minneapolis, MN 55411
(612) 210-3731

Counsel for Plaintiffs-Appellants Tiffini Flynn Forslund, et al.

OFFICE OF THE ATTORNEY GENERAL
STATE OF MINNESOTA
Alethea M. Huyser (#389270)
Andrew H. Tweeten (#395190)
445 Minnesota Street, Suite 1100
St. Paul, MN 55101-2128
(651) 757-1243

Counsel for Defendants-Respondents State of Minnesota, et al.

SUBBARAMAN PLLC
Mahesha P. Subbaraman (#392486)
222 South Ninth Street, Suite 1600
Minneapolis, MN 55402-3389
(612) 315-9210

Counsel for Amicus Curiae Freedom Foundation of Minnesota

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Amicus Identity, Interest, & Authority to File[1]

A. Identity of the Freedom Foundation of Minnesota

The Freedom Foundation is an "independent, non-profit educational and research organization" dedicated to advancing "individual freedom, personal responsibility, economic freedom, and limited government."[2]

B. The Freedom Foundation's Interest in *Forslund*

The Freedom Foundation's interest in *Forslund* is public in nature. This appeal concerns the Minnesota Constitution's guarantee of "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. To this end, the Freedom Foundation believes that parents with children who are attending (or have attended) Minnesota public schools should be able to challenge Minnesota's teacher-tenure laws insofar as these laws prevent children from receiving the kind of uniform education that the Minnesota Constitution guarantees.

C. The Freedom Foundation's Authority to File in *Forslund*

On February 1, 2017, this Court granted the Freedom Foundation's request for leave to file an amicus brief in *Forslund*.

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[1] Amicus certifies under Minn. R. Civ. App. P. 129.03 that: (1) no counsel for a party authored this brief in whole or in part; and (2) no person or entity has made a monetary contribution to the preparation or submission of this brief other than Amicus, its members, and its counsel.

[2] *Mission,* FREEDOM FOUND. OF MINN., http://freedomfoundation.publishpath.com/about-us (last visited March 30, 2017).

Argument

I. In deciding justiciability and standing, courts must consider whether the legal right at issue calls for breathing space.

The principles of justiciability and standing each play a key role in our limited system of government. Justiciability establishes that courts only have the power to hear "genuine conflict[s]" that are resolvable through a court judgment. *Izaak Walton League of Am. Endowment, Inc. v. State Dep't of Nat. Res.*, 252 N.W.2d 852, 854 (Minn. 1977). This ensures that courts do not issue "advisory opinions" or otherwise overstep their bounds. *Id.* Standing then establishes that courts can only hear those genuine conflicts where the parties involved have a "sufficient stake" in the conflict. *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007). This ensures that the "factual and legal issues before the court[] will be vigorously and adequately presented." *Id.*

In the end, by observing the principles of justiciability and standing, courts affirm that they are indeed *courts*, "say[ing] what the law is" and nothing more. *Winters v. Kiffmeyer*, 650 N.W.2d 167, 171 (Minn. 2002). But application of these principles is not a one-size-fits-all proposition. Courts must calibrate their review of justiciability and standing in every case based on the specific nature of the rights asserted by the parties. *See, e.g.*, *State ex rel. Humphrey v. Phillip Morris, Inc.*, 551 N.W.2d 490, 493–98 (Minn. 1996). Courts otherwise risk throwing out lawsuits that they should be deciding, which amounts to an abandonment of their core function: to enable "every individual to claim the protection of the laws whenever he receives an injury." *Marbury v. Madison*, 5 U.S. 137, 163 (1803).

The above reality especially matters when it comes to constitutional protections. These protections "command[] the performance of no act by the legislature, but declare[] that if the[] [legislature] do[es] act, that action shall be in a certain manner, and within prescribed boundaries." *Bd. of Supervisors v. Heenan*, 2 Minn. 330, 332 (1858). Hence, "should a law violate any of the restrictions in the constitution … as by restraining the liberty of the press, denying the right of trial by jury, introducing slavery, or otherwise, it would be void." *Id.* at 333. It is then "the duty of courts to be watchful for the constitutional rights of the citizen"—and to recognize that "illegitimate and unconstitutional practices [often] get their first footing … by silent approaches and slight deviations from legal modes of procedure." *Boyd v. United States*, 116 U.S. 616, 635 (1886).

For this reason, courts have repeatedly recognized the need to broaden their view of justiciability and standing when fundamental constitutional rights are at stake. Consider free speech, "a fundamental right secured by the First Amendment of the United States Constitution and Article I, Section 3 of the Minnesota Constitution." *State v. Fingal*, 666 N.W.2d 420, 426 (Minn. App. 2003) (Minge, J., concurring). Respect for this right has led the U.S. Supreme Court to recalibrate its "traditional rules of standing" to permit "attacks on overly broad statutes [that censor speech] with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity." *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973) (punctuation omitted); *see also Dunham v. Roer*, 708 N.W.2d 552, 563 (Minn. App. 2006) (applying *Broadrick*).

This recalibration empowers courts to hear free-speech claims even when the litigant's own free-speech rights have not yet been violated by a challenged speech restriction. *See id.* What matters is that the speech restriction's "very existence may cause others not before the court to refrain from constitutionally protected speech or expression." *Broadrick*, 413 U.S. at 612. The Supreme Court has similarly found that litigants have "standing to challenge a statute on the ground that it delegates overly broad [speech] licensing discretion to an administrative office … whether or not [the litigant has] applied for a license." *Freedman v. Maryland*, 380 U.S. 51, 56 (1965); *see City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 755–56 (1988) (collecting cases in which the Supreme Court has found standing to challenge speech-licensing laws "without the necessity of first applying for, and being denied, a license").

The reason why the U.S. Supreme Court has taken this broader view of standing in free-speech cases is because the right at stake demands nothing less. "It has long been recognized that the First Amendment needs breathing space" given the inestimable value of free speech in our society. *Broadrick*, 413 U.S. at 611. Indeed, our nation's future "depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection." *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (internal punctuation omitted); *see also, e.g., N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) ("[A] profound national commitment [exists in America] to the principle that debate on public issues should be uninhibited, robust, and wide-open….").

What is true of free speech is also true of other fundamental rights: these rights also come with breathing space that must be factored into any analysis of justiciability and standing. Consider the right to vote—another right that is "fundamental under both the U.S. Constitution and the Minnesota Constitution." *Kahn v. Griffin*, 701 N.W.2d 815, 830 (Minn. 2005). The Supreme Court has observed that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). This has led the Court to adopt the "one-person, one-vote rule," which lends significant breathing space to this right. *Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 (2016).

Enforcement of this rule subsequently calls for a broadened view of justiciability and standing. For instance, the principle of standing usually forbids courts from hearing "generalized grievance[s]"—i.e., complaints about harms that are "shared in substantially equal measure by all or a large class of citizens." *Warth v. Seldin*, 422 U.S. 490, 500 (1975). But violations of the one-person, one-vote rule by definition entail the same harm (i.e., vote dilution) being shared in equal measure by a large class of citizens. This has led the Supreme Court to conclude that in one-person, one-vote cases, it is not necessary for a litigant to establish that their individual vote has been diluted more than others in order for the litigant to challenge a redistricting scheme. *See Baker v. Carr*, 369 U.S. 186, 204–08 (1962). The litigant only needs to establish that they live in a location that puts them "in a position of constitutionally unjustifiable inequality *vis-a-vis* voters in irrationally favored [locations]." *Id.* at 207–08.

Through this conclusion, the Supreme Court has affirmed that analysis of standing and justiciability in one-person, one-vote cases turns on the "substance" of the right at stake. *Id.* at 207. At bottom, the right to vote is about "maintaining the effectiveness of [one's] vote[]." *Id.* at 208. This entitles voters "to a hearing and to … [a judicial] decision" to protect this right against a multitude of threats, including false vote tallies, attempts to stuff the ballot box, and improper redistricting. *Id.* The Minnesota Supreme Court has analyzed standing to enforce state open-meeting laws in similar, bottom-line terms: since a "right to attend open public meetings ha[s] been given to the general public" and since "the basic purpose of the law [is] to have an informed public," the general public "should have standing to enforce th[is] right." *Channel 10, Inc. v. Indep. Sch. Dist. No. 709*, 215 N.W.2d 814, 821 (Minn. 1974).

Courts thus commit a profound error when they dismiss cases for lack of justiciability or standing without accounting for the core nature of the right involved—especially when the right is a fundamental one that calls for breathing space. While courts are not "roving commissions assigned to pass judgment on the validity of the Nation's laws," *Broadrick*, 413 U.S. at 611, courts must hold in equal regard their duty to hear "bona fide controvers[ies] as to whether some action … exceeds constitutional authority." *Baker*, 369 U.S. at 217. The Education Clause of the Minnesota Constitution is no exception. This provision ordains a fundamental right to education, and courts "have no more right to decline the exercise of jurisdiction" that necessarily follows this fact "than to usurp [jurisdiction] which is not given." *Cohens v. Virginia*, 19 U.S. 264, 404 (1821).

II. The Education Clause of the Minnesota Constitution ordains a fundamental right to education that calls for breathing space.

Article XIII, § 1 of the Minnesota Constitution states: "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 Minnesota Supreme Court has construed this language—otherwise known as the Education Clause—to mean that "education is a fundamental right under the state constitution." *Skeen v. State,* 505 N.W.2d 299, 313 (Minn. 1993); *see also In re Explusion of NYB*, 750 N.W.2d 318, 327 (Minn. App. 2008) ("Education is a fundamental right in Minnesota…."). As a result, the Education Clause sets the Minnesota Constitution apart from the U.S. Constitution, which has no similar textual guarantee. *Kahn,* 701 N.W.2d at 830.

The Education Clause also stands apart within the Minnesota Constitution. "This is the only place in the [C]onstitution where the phrase 'it is the duty of the legislature' is used." *Skeen*, 505 N.W.2d at 313. As such, it is apparent that the Education Clause entails a significant "restriction[] upon the power" of the legislature. *Heenan*, 2 Minn. at 332; *see also Rice v. Connolly*, 488 N.W.2d 241, 248 (Minn. 1992) ("[P]rovisions in state constitutions are expressions of limitations on the powers of government…."). Close examination of the Clause's text, history, and purpose, in turn, reveals that this provision calls for breathing space in the same manner as the right to speech and the right to vote. Courts must therefore recalibrate their view of justiciability and standing based on this reality when deciding cases under the Education Clause.

A. The Education Clause's express textual goal—to ensure an educated citizenry—calls for breathing space.

Unlike most provisions in the Minnesota Constitution, the Education Clause has an expressly-stated goal. Under the Clause, the legislature must establish "a general and uniform system of public schools" because the "**stability of a republican form of government depend[s] mainly upon the intelligence of the people**." Minn. Const. art. XIII, § 1. No other fundamental right in the Minnesota Constitution is described like this. For example, when it comes to the fundamental right to speech, Article I, § 3 just declares that "liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right."

The Education Clause could have been written quite differently. Consider Article VIII, § 3 of the Oregon Constitution, which resembles the Education Clause in terms of mandating that Oregon's "Legislative Assembly shall provide by law for the establishment of a uniform, and general system of Common schools." *Cf. Skeen*, 505 N.W.2d at 308 (acknowledging the "additional insight" that education provisions in other state constitutions can provide in reading the Education Clause). But this is all that Article VIII, § 3 of the Oregon Constitution says—there is no further statement rooting Oregon's school-provision mandate in the need to achieve an educated citizenry. The Education Clause's distinct statement of purpose therefore deserves close attention as a matter of constitutional interpretation. *See Rice*, 488 N.W.2d at 247 (provisions in the Minnesota Constitution must be "construed as a whole").

The Minnesota Supreme Court conceded as much in the decades following ratification of the Minnesota Constitution. In 1871, the Court construed the Education Clause as follows: "The object [of this provision] is to insure a regular method throughout the state whereby all [persons] may be enabled to acquire an education which will fit them to discharge intelligently their duties as citizens of the republic." *Bd. of Educ. of Sauk Centre v. Moore*, 17 Minn. 412, 416 (1871). The Court then made this point again in *Associated Schools of Independent District No. 63 v. School District No. 83*, 142 N.W. 325, 327 (Minn. 1913) (quoting *Moore* verbatim). And in recent decades, the Court has reaffirmed this point. *See Skeen*, 505 N.W.2d at 310 (quoting *Moore* and describing the Court's analysis in *Moore* as "summarizing the purposes behind" the Education Clause).

For its part, the legislature has also acknowledged that the object of its duty under the Education Clause is to produce an educated citizenry. This may be seen in the early history of education funding in Minnesota. "[W]hen it was found that over 98 percent of all instruction given in the State was given to the elementary or common-school grades, the justice of giving State aid in the education of this large percent of its future citizens was recognized and soon crystallized into law."[3] The legislature has since seen fit to expressly mandate that: "The mission of public education in Minnesota … is to ensure individual academic achievement, **an informed**

[3] Jennie C. Crays (President of the Minneapolis Board of Education, c. 1898), *The Origin Growth, & Present Condition of the Public Schools of Minnesota* 143, 148 in THE HISTORY OF EDUCATION IN MINNESOTA (John N. Greer, ed., Washington, D.C., U.S. Gov't Printing Office 1902).

citizenry, and a highly productive work force." Act of June 4, 1991, ch. 265, art. 7, § 1, 1991 Minn. Laws 943, 1082 (codified at Minn. Stat. § 120.0111 (1991)) (re-codified at Minn. Stat. § 120A.03 (2016)).

What all of this ultimately means is that the Education Clause "needs breathing space." *Broadrick*, 413 U.S. at 611. This is because the Clause's express goal of producing an educated citizenry puts it on par with the right to speech (and its well-known need for breathing space). There are two separate, but equally important reasons for this:

First, free speech and education go hand-in-hand in terms of guaranteeing "[t]he stability of a republican form of government." Minn. Const. art. XIII, § 1. Free speech is "indispensable to the effective and intelligent use of the processes of popular government." *Thornhill v. Alabama*, 310 U.S. 88, 103 (1940). "[E]ducation is [likewise] necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence." *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972). Hence, since "it is doubtful that any child may reasonably be expected to succeed" as a citizen in our society "if he is denied the opportunity of an education," the right to education—no less than the right to speech—needs breathing space to ensure its efficacy. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

Second, free speech and education are time-sensitive in nature. When it comes to free speech, "[a] delay of even a day or two may be of crucial importance" insofar as the public tends to immediately need "facts and ideas on important issues before them." *Carroll v. President & Comm'rs of*

Princess Anne, 393 U.S. 175, 182 (1968) (citation omitted). Hence, the U.S. Supreme Court has found that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976). Yet, the exact same thing may be said about the loss of educational rights.

The following observation by the president of the Minneapolis Board of Education in 1898 helps to illuminate why this is true: "But alas, how few of the children of the state ever reach even the high school, much less the university. Then how necessary is it that the lower grades should be thoroughly equipped for doing the most possible for the child in the limited time that he is able to attend school."[4] In short, time is of the essence when it comes to the education of a child. "Children go to school for a finite number of years. They have but one chance to receive a constitutionally adequate education. That right, once lost, cannot be reclaimed. The loss of that right will have irreparable consequences…." *Abbott v. Burke*, 20 A.3d 1018, 1107 (N.J. 2011). And there lies the need for breathing room when it comes to judicial observance of this right.

B. The Education Clause's express textual mandate—that the legislature must establish a "uniform" system of public schools—calls for breathing space.

The Education Clause contains not only an express statement of purpose but also an express mandate: "**[I]t is the duty of the legislature to establish a general and uniform system of public schools**." As noted

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[4] Crays, *supra* note 3, at 151.

above, "[t]his is the only place in the [Minnesota] [C]onstitution where the phrase 'it is the duty of the legislature' is used." *Skeen*, 505 N.W.2d at 313. And that phrase matters because it establishes that the Education Clause is "not a grant of power to the legislature, for all the powers there mentioned would have existed without such grant." *Associated Sch.*, 142 N.W. at 327. Rather, the Education Clause is "a mandate to the legislature prescribing as a duty the exercise of [its] inherent power." *Id.*

The language that really merits close attention in the Education Clause, however, is the term "uniform." The presence of this term is both common and unique. It is common because the term "uniform" appears in other key provisions of the Minnesota Constitution—most notably, Article X, § 1, which mandates that "[t]axes shall be uniform upon the same class of subjects." It is unique because other states that use this term in their educational mandates do so far more equivocally. For example, consider Article X, § 3 of the Wisconsin Constitution, which states that: "The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable."

These textual observations afford another reason why the Education Clause calls for breathing space. By requiring the legislature to establish "uniform" schools—without further qualification—the Clause enacts a standard that courts can enforce. The Minnesota Supreme Court affirmed this point as early as 1878 in *Curryer v. Merrill,* 25 Minn. 1 (1878). At issue was a claim that the exemption of special school districts from a textbook law violated the Education Clause's rule of uniformity. *See id.* at 6. This

led the Court to state the following standard for applying the Clause's rule of uniformity: the test is whether "the [school] system which is adopted is made to have a general and uniform application to the entire state, so that **the same grade or class of public schools may be enjoyed by all localities similarly situated**." *Id.* (bold added). And based on this test, the Court upheld the exemption at issue because the exemption did not treat schools of the same class differently. *See id.* The exemption instead treated schools of two different classes differently (i.e., special districts and general schools), and nothing about the Clause barred the legislature from creating two different classes of schools. *See id.*

Another early Education Clause case that showcases the vitality of the Clause's rule of uniformity is *State ex rel. Board of Christian Service v. School Board of Consolidated School District No. 3,* 287 N.W. 625 (Minn. 1939). The question presented was "[whether] children living at the home [of a charity] have a residence within … [a] school district sufficient to justify" enrollment. *Id.* at 626. To answer this question, the Minnesota Supreme Court had to define what "resides" meant under state school-enrollment laws. *Id.* The Court found that the Education Clause settled the matter: "The legislature must be deemed to have intended to carry out the beneficent purpose of the constitutional mandate and therefore to have used the word 'resides' in its broadest sense and with a view to providing a free education for every child in the state." *Id.* at 627.

And then there is *Skeen v. State*, in which the Minnesota Supreme Court found that the Education Clause establishes a fundamental right to

education. 505 N.W.2d at 313. In doing so, the Court observed that "this fundamental right does not extend to the funding of the education system," because the Minnesota Constitution distinguishes "between the establishment of a *general and uniform system* of public schools and the *financing* of those schools." *Id.* at 315. But the Court refused to remove the rule of uniformity from this picture completely, recognizing instead that "there is a fundamental right to the basic level of funding needed to achieve a general and uniform education system." *Id.* at 315–16; *see also Oliver Iron Mining Co. v. Indep. Sch. Dist. No. 35*, 193 N.W. 949, 952 (Minn. 1923) ("The Constitution lays the duty upon the legislature to establish a general and uniform system of public schools. Such a system cannot exist without proper school houses and equipment.").

The Minnesota Supreme Court has thus tacitly acknowledged the breathing space that the Education Clause requires. The same kind of acknowledgment may be seen in the U.S. Supreme Court's voting rights jurisprudence. On the one hand, the Court has found that certain voter dilution claims will not fly (e.g. challenges to political gerrymandering). *See Vieth v. Jubelirer*, 541 U.S. 267, 306 (2004) (plurality op.). On the other hand, the Court has remained sensitive to the importance of the right at stake and the need for exceptions to address new threats. *See Vieth,* 541 U.S. at 315 (Kennedy, J., concurring) (indicating political gerrymander claims may in fact be justiciable when the gerrymander impairs First Amendment interests); *see Shapiro v. McManus,* 136 S. Ct. 450, 456 (2015) (letting a claim based on Justice Kennedy's *Vieth* concurrence proceed on the merits). The Education Clause merits the same treatment.

III. In rejecting Plaintiffs' Education Clause claim for lack of justiciability and standing, the district court failed to consider the breathing space that the Education Clause requires.

The Plaintiffs in this case are "mothers of children who attend (and have attended) public schools across Minnesota." (Appellants' Br. 11.) The Plaintiffs contend that Minnesota's teacher-tenure, teacher-discharge, and last-in-first-out laws (Minn. Stat. §§ 122A.40, 122A.41) have deprived their children of a "uniform system of public schools," as guaranteed by the Education Clause. (*See* Appellants' Br. 1, 6–11.) The Plaintiffs base this contention on the "ironclad job security" that Minnesota's teacher-tenure laws afford to ineffective teachers. (*Id.* at 8–10.) Plaintiffs' children have subsequently been deprived of a uniform education because they have been both subjected to ineffective teachers and forced to "attend [public] schools employing a disproportionate share of such teachers." (*Id.* at 11.) The Plaintiffs thus want Minnesota's teacher-tenure laws to be declared unconstitutional and permanently enjoined. (*See id.* at 19.)

The district court rejected the Plaintiffs' Education Clause claim under the principles of justiciability and standing.[5] (*See* Appellants' Add. 68–75.) On justiciability, the district court held that the Education Clause claim raised a political question that the court was powerless to decide. (*See id.* at 73–75.) Explaining that "cases challenging educational policies and the methods by which they are achieved are legislative questions that

[5] The district court also alternatively rejected the Plaintiffs' Education Clause claim on the merits—i.e., for failure to state a claim. (*See* Appellants' Add. 76–81.) This amicus brief, however, is only concerned with the district court's analysis of justiciability and standing.

are not justiciable," the district court reduced the Plaintiffs' Education Clause claim to a mere complaint about "the wisdom of the legislative policy" and a "quest for a … more-perfect education." (*Id.* at 75.)

As for standing, the district court found that the Plaintiffs failed to satisfy the requirements of federal standing rules in terms of showing a sufficient injury-in-fact, causation, and redressability. (*See id.* at 70–73.) The district court found that injury-in-fact and causation were missing because the Plaintiffs did not define what an ineffective teacher was or identify any such teacher who had injured their children as a direct result of Minnesota's teacher-tenure laws. (*See id.* at 70–72.) The district court then found that redressability was missing since the Plaintiffs conceded that "eliminating teacher tenure will not ensure that their children never again receive a teacher they consider 'ineffective.'" (*Id.* at 73.)

To put this in concrete terms, the district court seemed to fault the Plaintiffs here for not alleging that, for example, their children failed a standardized math test because they were taught by a teacher who knew nothing about math due to Minnesota's teacher-tenure laws—and striking down these laws would serve to ensure these harms never happen again. (*See id.* at 70–73.) And there lies the central problem with the district court's analysis of the Plaintiffs' Education Clause claim as a matter of standing. The district court's demand for specifics does not comport with the essential nature of the right that the Plaintiffs are asserting—a fundamental right to education—or with the breathing space that this right inherently demands. *See supra* Parts I & II.

Such breathing space means that Plaintiffs should not have to spell out in exacting detail the injuries that their children have suffered due to ineffective, tenured teachers. *See Baker*, 369 U.S. at 204–08. The Plaintiffs have alleged as a fact that their children "attend schools employing a disproportionate share of [ineffective] teachers." (Appellant's Br. 11.) That should be enough to establish standing—at least for purposes of the pleading stage—in the same way that a voter may establish standing through the simple allegation that they live in a location that puts them "in a position of constitutionally unjustifiable inequality *vis-a-vis* voters in irrationally favored [locations]." *Baker*, 369 U.S. at 207–08.[6] Otherwise, fundamental rights, be it the right to vote or the right to education, stand to be impaired through "ingrained structural inequality" without any possibility for judicial relief. *Evenwel,* 136 S. Ct. at 1123.

The district court's standing analysis further loses sight of the fact that the "primary goal of the standing requirement [under Minnesota law] is to ensure that the factual and legal issues before the court[] will be vigorously and adequately presented." *Lorix*, 736 N.W.2d at 624. Applied here, that principle affirms the Plaintiffs' standing given that they are *the parents of Minnesota schoolchildren*—the very people who are meant to benefit from the Education Clause's guarantee of a "uniform system of

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[6] Comparing Plaintiffs' Education Clause claim to a vote-dilution claim also reveals why the district court's redressability analysis should be rejected. *See Baker*, 369 U.S. at 208 ("It would not be necessary to decide whether appellants' allegations of impairment of their votes … will, ultimately, entitle them to any relief, in order to hold that they have standing to seek it. If such impairment does produce a legally cognizable injury, they are among those who have sustained it.").

public schools," as even the legislature admits. *See* Minn. Stat. § 120A.03 ("The public schools of this state shall serve the needs of the students by cooperating with the students' parents…."); *cf., Channel 10*, 215 N.W.2d at 821 (observing the general public's standing to enforce open meeting laws insofar as these laws are meant to benefit the public).

The district court's justiciability analysis is equally problematic. In deeming this case to be a political "quest" for a better education, the court failed to reckon with actual nature of Plaintiffs' Education Clause claim. This claim does not seek to build a school, promote a particular course of instruction, or increase school funding. This claim seeks an evaluation of whether the legislature's enactment of teacher-tenure laws violates the Education Clause by keeping "the same grade or class of public schools … [from] be[ing] enjoyed by all localities similarly situated." *Curryer*, 25 Minn. at 5. That claim belongs in court. *Id.* at 3 ("To the judiciary belongs the … duty of passing upon the validity of legislative enactments, as being within or without the boundaries [of law]….").

Plaintiffs' Education Clause claim is thus readily distinguishable from the Education Clause claim at issue in *Cruz-Guzman v. State*, No. A16-1265, slip op. (Minn. App. Mar. 13, 2017). This Court concluded that *Cruz-Guzman* was not justiciable because it raised a loaded political question: what is "an adequate level of education" under the Minnesota Constitution. *See id.* at 14. But the Education Clause claim at issue here is not about educational *sufficiency*—it is about educational *uniformity*, and uniformity is a standard that courts know how to apply, as the Minnesota

Supreme Court's tax uniformity cases prove. *See, e.g.*, *In re Cold Spring Granite Co.*, 136 N.W.2d 782, 787–88 (Minn. 1965) (explaining the rules that govern how courts are to review uniformity of taxation).

Ample basis thus exists for this Court to reverse the district court's analysis of justiciability and standing in this case. Plaintiffs' Education Clause claim also is not precluded by the fact that past court decisions have spoken approvingly of Minnesota's teacher-tenure laws. *See, e.g.*, *McSherry v. City of St. Paul*, 277 N.W. 541, 544 (Minn. 1938) (finding that the teacher-tenure laws were enacted for the "benefit and the advantage of the school system"). To the contrary, "the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist." *United States v. Carolene Prods. Co.*, 304 U.S. 144, 153 (1938). The Plaintiffs maintain that they can muster the facts needed to make such a showing. (*See* Appellant's Br. 6–13.) They deserve the chance to try.

Conclusion

"[E]ducation of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto." *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). For this reason, the Plaintiffs in this case have challenged Minnesota's teacher-tenure laws as depriving their children of a "uniform system of public schools" insofar as these laws concentrate ineffective teachers in the schools that their children attend. The fundamental duty of Minnesota courts in the face of such a challenge is to hear it. "[I]t must be remembered that the people act through the

courts, as well as through the executive or the legislature." *In re McConaughy*, 119 N.W. 408, 417 (Minn. 1909). And that is especially true when a fundamental right is at stake, like the right to education. The Court should observe that reality here and reverse the district court's rejection of this case on justiciability and standing grounds.

Respectfully submitted,

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SUBBARAMAN PLLC

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

Mahesha P. Subbaraman (#392486)
SUBBARAMAN PLLC
222 South Ninth Street, Suite 1600
Minneapolis, MN 55402-3389
(612) 315-9210
mps@subblaw.com

Counsel for Amicus Curiae
Freedom Foundation of Minnesota

Certification of Brief Length

The undersigned counsel certifies that this *amicus curiae* brief conforms to the requirements of Minn. R. App. P. 132.01 in that it is printed using 13–point, proportionally-spaced fonts. The length of this document is 5,334 words (including headings, footnotes, and quotations) according to the Word Count feature of the word-processing software used to prepare this brief (Microsoft Word 2010).

Respectfully submitted,

Dated: March 30, 2017

SUBBARAMAN PLLC

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

Mahesha P. Subbaraman (#392486)
SUBBARAMAN PLLC
222 South Ninth Street, Suite 1600
Minneapolis, MN 55402-3389
(612) 315-9210
mps@subblaw.com

Counsel for Amicus Curiae
Freedom Foundation of Minnesota