A17-0033

STATE OF MINNESOTA
IN COURT OF APPEALS

Tiffini Flynn Forslund, et al.,

Plaintiffs-Appellants,

v.

State of Minnesota, et al.,

Defendants-Respondents.

APPELLANTS' SUPPLEMENTAL BRIEF

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Pursuant to this Court's August 24, 2018 Order, Plaintiffs-Appellants ("Plaintiffs") respectfully submit this Supplemental Brief in further support of their appeal of the district court's order and judgment dismissing Plaintiffs' constitutional challenge to Minn. Stat. §§ 122A.40 and 122A.41 (the "Tenure Laws").

ARGUMENT

I. *CRUZ-GUZMAN* ESTABLISHES THAT PLAINTIFFS' CLAIMS ARE JUSTICIABLE

Plaintiffs allege that the State has burdened their children's fundamental right to an adequate education—and therefore failed its constitutional duty to provide all children an adequate education—because the Tenure Laws grant job security to ineffective, inadequate teachers. In its unpublished September 5, 2017 opinion, this Court expressly adhered to the analysis of its prior decision in *Cruz-Guzman v. State*, 892 N.W.2d 533 (Minn. Ct. App. 2017), *rev'd* 916 N.W.2d 1 (Minn. 2018), and affirmed the district court's dismissal of Plaintiffs' claims exclusively on the basis that they "present nonjusticiable political questions because they are based on a right to an education of a certain quality." *Forslund v. State*, No. A17-0033, 2017 WL 3864082, at *4 (Minn. Ct. App. Sept. 5, 2017), *review granted in part* (Nov. 14, 2017).

The Supreme Court's July 25, 2018 *Cruz-Guzman* decision removes any doubt that Plaintiffs' claims are justiciable and not insulated from review by the political question doctrine. The Supreme Court's *Cruz-Guzman* analysis applies with equal weight here:

> Although specific determinations of educational policy are matters for the Legislature, it does not follow that the judiciary cannot adjudicate whether the Legislature has satisfied its constitutional duty under the

> Education Clause. Deciding that appellants' claims are not justiciable would effectively hold that the judiciary cannot rule on the Legislature's noncompliance with a constitutional mandate, which would leave Education Clause claims without a remedy. Such a result is incompatible with the principle that where there is a right, there is a remedy.
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> …
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> In essence, appellants' claims ask the judiciary to answer a yes or no question—whether the Legislature has violated its constitutional duty to provide "a general and uniform system of public schools" that is "thorough and efficient," Minn. Const. art. XIII, § 1, and "ensure[s] a regular method throughout the state, whereby all 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 Town of Sauk Ctr. v. Moore*, 17 Minn. 412, 416 (Minn. 1871). To resolve this question, the judiciary is not required to devise particular educational policies to remedy constitutional violations, and we do not read appellants' complaint as a request that the judiciary do so. Rather, the judiciary is asked to determine whether the Legislature has violated its constitutional duty under the Education Clause. We conclude that the courts are the appropriate domain for such determinations and that appellants' Education Clause claims are therefore justiciable.

Cruz-Guzman v. State, 916 N.W.2d 1, 9 (Minn. 2018).

On the issue of justiciability there is no distinction between the *Cruz-Guzman* claims and those under review here: In each case parents allege that state action results in a deprivation of their children's fundamental right to an adequate education. As in *Cruz-Guzman*, "[t]his case asks the judiciary to make the same type of determination [it has] made repeatedly: whether the Legislature has satisfied its constitutional obligation under the Education Clause." *See id.* at 10. *Cruz-Guzman* dictates that Plaintiffs' claims are justiciable, and the State's political question defense must be rejected.

II. *CRUZ-GUZMAN* AFFIRMS THAT STUDENTS' RIGHT TO AN "ADEQUATE EDUCATION" EMBODIES A QUALITATIVE ELEMENT

The Court's September 5 opinion further questioned whether "the Education

Clause includes an adequacy requirement based on a qualitative standard." *Forslund,* 2017 WL 3864082, at *3. Here, again, the Supreme Court's *Cruz-Guzman* opinion settles any dispute on this score:

> The fundamental right recognized in *Skeen* was not merely a right to anything that might be labeled as "education," but rather, a right to a general and uniform system of education that is thorough and efficient, that is supported by sufficient and uniform funding, and that provides an adequate education to all students in Minnesota.
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> …
>
> An education that does not equip Minnesotans to discharge their duties as citizens intelligently cannot fulfill the Legislature's duty to provide an adequate education under the Education Clause.
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> …
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> If the Legislature's actions do not meet a baseline level, they will not provide an adequate education.

Cruz-Guzman, 916 N.W.2d at 11-12 (citing *Skeen v. State*, 505 N.W.2d 299, 315 (Minn. 1993); *Sheff v. O'Neill*, 678 A.2d 1267, 1292 (Conn. 1996)).

As in *Cruz-Guzman*, Plaintiffs allege that the State has failed its constitutional duty to provide all students a "baseline level," "adequate education." *See id.* Specifically, Plaintiffs allege that inadequate teachers cannot provide an adequate education, and yet the State has enacted statutes—the Tenure Laws—that keep ineffective, inadequate teachers in the classroom at the expense of (*i.e.*, "burdening" or "impinging") students' fundamental right to an adequate education. As in *Cruz-Guzman*, "The judiciary is well equipped to assess whether constitutional requirements have been met [here], and whether appellants' fundamental right to an adequate education has been violated" by laws preferencing ineffective teachers' job security over students' fundamental right to an

education that equips them "to discharge their duties as citizens intelligently." *See id.*

Plaintiffs' challenge to the Tenure Laws is firmly grounded in their fundamental right to a "baseline level," "adequate education," and the State's arguments that the Education Clause does not ensure public education of a certain quality must also be rejected.

III. *CRUZ-GUZMAN* ESTABLISHES THAT INDIVIDUAL SCHOOL DISTRICTS ARE NOT REQUIRED TO ADDRESS PLAINTIFFS' CLAIMS

As an alternative basis for dismissal, the State has argued that Plaintiffs' claims fail because Plaintiffs have pursued their constitutional challenge against the State only, and have not joined all Minnesota school districts and teachers. Respondents' Brief 40-41. The Court did not reach this issue, but the Supreme Court's *Cruz-Guzman* decision puts it to bed:

> [T]he district court concluded that the school districts and charter schools are not necessary parties because appellants are seeking "remedies from the State, not individual school districts or charter schools." We agree that the relief appellants are seeking from the State does not require the joinder of school districts and charter schools. The State's argument regarding potential impacts on school districts … prematurely speculates about hypothetical remedies. Even if the school districts … might eventually be affected by actions potentially taken by the State in response to this litigation, those possible effects are not enough to require that the school districts and charter schools be joined as necessary parties.

Cruz-Guzman, 916 N.W.2d at 14 (footnote omitted).

Here, again, the State's argument that the Declaratory Judgment Act and Minnesota Rule of Civil Procedure 19 compel joinder of all school districts and teachers must be rejected.

IV. ALL REMAINING ISSUES MUST BE DECIDED IN PLAINTIFFS' FAVOR BECAUSE PLAINTIFFS' CLAIMS ARE WELL-PLEADED AND PLAINTIFFS ARE THE PROPER PARTIES TO PURSUE THEM

After the Supreme Court's *Cruz-Guzman* decision, the only issues remaining before this Court are (1) whether Plaintiffs have standing to pursue their facial constitutional challenge to the Tenure Laws; and (2) whether Plaintiffs' Education and Equal Protection Clause claims are well-pleaded. The district court ruled against Plaintiffs on each of these issues; this Court did not address them in its September 5 opinion.

These issues are fully briefed in Plaintiffs' prior papers, and consistent with the Court's August 24 Order Plaintiffs will not repeat their arguments here. Suffice for now to say that Plaintiffs, as parents of public school children who allege they are harmed by the Tenure Laws, unquestionably have standing to raise their children's constitutional claims. *See McKee v. Likins*, 261 N.W.2d 566, 570 n.1 (Minn. 1977) ("standing … is concerned with 'who' may bring a suit"). Likewise, Plaintiffs' Education and Equal Protection Clause claims are properly pleaded because they allege that the Tenure Laws are laws of universal application protecting all ineffective, inadequate teachers, and that, as a result, children assigned to ineffective teachers are deprived of their fundamental right to a "baseline level," "adequate education." These allegations satisfy Minnesota's "preference for non-technical, broad-brush pleadings" *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 604 (Minn. 2014), particularly given the wide-berth afforded constitutional claims, *see Schocker v. State Dep't of Human Rights*, 477 N.W.2d 767, 769 (Minn. Ct. App. 1991) ("In addition, where the complaint alleges constitutional violations, a rule 12

motion is subject to increased scrutiny to protect the public from 'possible government overreaching.' Thus, when the plaintiff alleges a constitutional error, a rule 12 dismissal is proper only when the defendant 'demonstrate[s] the complete frivolity of the complaint.' (quoting *Elzie v. Comm'r of Pub. Safety*, 298 N.W.2d 29, 32-33 (Minn. 1980)).

V. PLAINTIFFS' CONSTITUTIONAL CLAIMS FOLLOW A WELL-ESTABLISHED BLUEPRINT AND DESERVE A JUDICIAL FORUM

Skeen held, and *Cruz-Guzman* expressly affirmed, 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 in Minnesota." *Skeen*, 505 N.W.2d at 315; *see Cruz-Guzman*, 916 N.W.2d at 12 ("An education that does not equip Minnesotans to discharge their duties as citizens intelligently cannot fulfill the Legislature's duty to provide an adequate education under the Education Clause."). The core of Plaintiffs' Complaint is their allegation that effective teaching is embodied in students' fundamental right to a "baseline level," "adequate education." After *Cruz-Guzman*, this allegation is uncontroversial: "the government 'may not herd children in an open field to hear lectures by illiterates' to fulfill its duty to provide an education." *Cruz-Guzman*, 916 N.W.2d at 12 (quoting *Sheff*, 678 A.2d at 1292.)

Still, to prevail Plaintiffs must prove that effective teaching *is* part of the fundamental right to a "baseline level," "adequate education." *See id.* Plaintiffs accept this burden, and will present evidence showing that effective teaching benefits students and, conversely, ineffective teaching causes enduring harm. Upon seeing the evidence the

Court will decide if it agrees and rule accordingly. In doing so, the Court will exercise its unique judicial (not legislative) role, just as it does when it decides whether the fundamental right to privacy includes accessing contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965), or the fundamental right to free speech includes burning a flag, *Texas v. Johnson*, 491 U.S. 397 (1989), or the fundamental right to travel includes welfare benefits upon arrival in a new state, *Shapiro v. Thompson*, 394 U.S. 618 (1969).

This threshold question—whether effective teaching is part of the fundamental right to a "baseline level," "adequate education"—is answered "yes" or "no." This question does not force the Court to answer "what quality of teaching is constitutionally required" because Plaintiffs do *not* invoke a novel right to "effective teaching." *See Forslund*, 2017 WL 3864082, at *3. Just as the plaintiffs in *Griswold*, *Johnson*, and *Shapiro* invoked already-recognized fundamental rights to challenge burdensome laws in new contexts, Plaintiffs invoke the already-recognized fundamental right to a "baseline level," "adequate education" to challenge Tenure Laws protecting ineffective teachers. Stated differently, if the Court simply agrees (as it must) that an adequate education means more than providing "lectures by illiterates," *Cruz-Guzman*, 916 N.W.2d at 12 (quotation marks omitted), it may also agree that the Tenure Laws *burden* or *impair* this right *regardless* what benchmarks distinguish an effective teacher from an ineffective teacher.

The question here is whether effective teaching is embodied in the Constitution's guarantee of "an adequate education." This question may be answered "yes" or "no" without determining what effective teaching means, or even passing judgment on the

Legislature's measures of effectiveness. If the Court answers "yes," it should remand to judge the merits of Plaintiffs' claims that the Tenure Laws burden students' fundamental right to a "baseline level," "adequate education" by providing job security to ineffective, inadequate teachers, and do not otherwise "serve a compelling governmental interest." *Skeen*, 505 N.W.2d at 315.

CONCLUSION

For these reasons, and those stated in their Opening Brief and Reply Brief, Plaintiffs respectfully reiterate their request that the district court's order and judgment be reversed, and that this matter be remanded for consideration of the merits of Plaintiffs' claims.

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CERTIFICATION OF LENGTH

I hereby certify that this Appellants' Supplemental Brief conforms to the requirements of applicable rules, is produced with a proportional 13-point font, and the length of this document is 8 pages (2,002 words), consistent with the Court's August 24, 2018 Order. This document was prepared using Microsoft Word 2010.

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