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Members of the Minnesota Legislature,

As you know, Neel Kashkari, President of the Minneapolis Federal Reserve Bank, and I have proposed amending Article XIII, Section 1, of the Minnesota Constitution to make a quality public education a civil right for all children. Section 1 has been interpreted to provide a "fundamental right . . . to a 'general and uniform system of education' which provides an adequate education to all students in Minnesota." *Skeen v. State*, 505 N.W.2d 299, 315 (Minn. 1993). But providing access to an adequate education system is not the equivalent of having a civil right to a quality public education. For far too long our adequate education system has persistently, consistently, and systematically denied equal educational opportunity to Black, Brown, Indigenous, disabled, and poor children across Minnesota.

To break that cycle of denial our system of education must change. By making education a civil right, Minnesota will be in the position to educate children "one school at a time, one classroom at a time, one child at a time" and give all children the opportunity to achieve their full potential. Our proposed amendment would declare that all children have a fundamental right to a quality public education and would make it a paramount duty of the state to ensure quality public schools that fulfill this fundamental right.

You recently received a letter from a group of law professors opposing the amendment of Minnesota's education clause. Except for one individual from Minnesota, the signatories are out-of-state law professors who do not appear to practice law in Minnesota or routinely interpret Minnesota case law.[1] Moreover, they are not Minnesota families and they do not have children enrolled in Minnesota's public schools. Their review of our proposed amendment lacks an in-depth reflection of the current educational disparities in Minnesota and corresponding Minnesota case law.

Section 1 of Article XIII is grounded in 1857 – a time when slavery was still legal in many states. Slavery and segregation were the lens through which the constitutional framers viewed education at the time, and they form the foundation for the disparities we see today. This alone should be sufficient reason to ask voters to amend the constitution, but there are more. To say that we should retain a clearly lower standard, i.e., the right to an "adequate" education system versus the right to a quality public education, under a provision that predates the Civil War

[1] Note, however, that the letter closely tracks a memo written by Professor Myron Orfield and his research fellow in January 2020 (although neither is a signatory), and many of the points have been previously addressed in a Q/A, which may be found at https://www.minneapolisfed.org/policy/education-achievement-gaps/answering-the-tough-questions-about-the-amendment.

suggests that we should never change the law to improve our conditions. Such a view by these academics is short-sighted.

- ***Article XIII, Section 1, is Outdated.*** The hyper-focus by the academics on current and past litigation, including protecting phrases such as "adequacy," "general," "uniform," and "thorough and efficient," ignores the fact that it is this very language and the cases they rely on that have fostered the educational disparities we see in Minnesota. While they do not say this outright, the academics' argument for retaining this language is in reality an argument for maintaining the status quo. Retaining this language will not advance public education in Minnesota, will not fix our disparities, and will do nothing to help children succeed. The language in our proposed amendment puts children first and is flexible to allow for different solutions for different children, which helps all Minnesota children enrolled in the public school system.

- ***Our Proposed Amendment Expands Protections for Minnesota's Children.*** As noted above, the *Skeen* court held that Minnesota's children have a fundamental right to an adequate education system and that the legislature had a duty to provide such a system of public schools. The academics argue that our proposed amendment will not protect a child's fundamental right to education. Nothing could be further from the truth. Our amendment does not eliminate the core obligations imposed by the Minnesota Constitution to establish and maintain a statewide system of public schools. The academics contend that Minnesota's system of public schools would be undermined by the elimination of the "general and uniform" and "thorough and efficient" language in the current constitution. But our amendment mandates "quality public schools" for "all children." This would, by necessity, require not only a statewide system of public schools, as currently mandated, but also that those schools offer a "quality" education, as opposed to an "adequate" one.

- ***New Language Raises the Standard and Doesn't Jeopardize It.*** The academics argue that the terms "quality" and "paramount" have "no clear legal effect, as these terms have no preestablished meaning in Minnesota law." If the lack of "preestablished meaning" renders constitutional terms ineffective, it would seem to follow that the term "adequate" is itself ineffective, since—160 years after the enactment of the current education clause—it scarcely has been defined by Minnesota courts. A constitution, by its nature, uses more general language than specific statutes. Thus, it would be left to the legislature along with educators, families, and their children, in the first instance, to define the contours of a "quality" public education and how the state meets its "paramount" duty to fulfill this fundamental right.

  Phrases such as "quality" and "paramount" will be interpreted and applied according to their plain meaning. We saw this happen most recently in Florida, which in 1998 amended its constitution to make education a "paramount duty" of the state and require a "high quality system of free public schools that allows students to obtain a high quality education." Since then, Florida's elected officials enacted a series of laws consistent with their new constitutional obligations. Other state constitutions with similar phrases include Washington

("paramount duty"), Virginia ("educational program of high quality"), and Illinois ("high-quality public educational institutions and services").

The ordinary meanings of both "quality" and "paramount" are easily ascertainable, and certainly, the Minnesota legislature, executive branch, and judicial system are well-suited to implement and interpret policies based upon these terms.[2] Families ask every day for better outcomes for their children. They do not hesitate in knowing the difference between "adequate" and "quality" as they live the reality of it every day.

Our proposed amendment protects the fundamental right to an education system, expands legal protection by creating an individual right to a quality public education rather than merely an adequate education system, and makes clear that the state would have no higher duty than to ensure that each child's right is fulfilled.

- ***Reliance by Academics on Cruz-Guzman and a State Court Case in Kentucky is Misguided.*** The reference in the academics' letter to *Cruz-Guzman*'s footnote is unrelated to the case's true holding, which simply was that claims alleging that the state has failed to provide students with an adequate education are justiciable. The footnote in *Cruz-Guzman* was not the focus of the decision, has no precedential value, and was not a "landmark anti-segregation finding."[3] As the footnote observed, it may be self-evident that a segregated system of schools cannot satisfy the current requirement for a "general and uniform" or "thorough and efficient" education in Minnesota. However, it is equally self-evident, if not more so, that a segregated system of schools would violate a child's fundamental right to a quality public education that fully prepares the child with the skills necessary for participation in the economy, our democracy, and society, as our proposed amendment would require. Segregated schools are illegal. The U.S. Supreme Court, in *Brown v. Board of Education,* settled that question more than 66 years ago: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." 347 U.S. 483, 495 (1954).[4]

  The academics' reliance on Kentucky case law is likewise misplaced. First, this case is neither binding nor precedential in Minnesota. Second, the language in *Rose v. Council for Better Educ.* interpreting "adequate" has not been adopted by the Minnesota Supreme Court and does not help Minnesota children. The very use of the word "adequate" to describe the right to a public education in Minnesota is one of the driving forces for the need to amend Article XIII, Section 1. The academics' focus on protecting *Skeen* and the pending case *Cruz-Guzman*

[2] To take one example, the term "paramount" appears in over 1,000 Minnesota appellate decisions, including decisions interpreting and applying the use of the term in Minnesota statutes.

[3] To be clear, the Minnesota Supreme Court does not make "findings." It either holds or concludes but does not "find."

[4] This, of course, is a separate issue from Black, Brown, and Indigenous families--by choice--voluntarily making the decision to enroll their children in culturally affirming schools.

places the focus squarely on case law rather than on Minnesota children—case law that, to date, has failed Minnesota's children.

I dissented from the decision in *Skeen* because, by accepting adequacy for some children, we perpetuate disparity for all children. The state's duty toward its children "is not satisfied when some children receive an 'adequate' education while others receive a more-than-adequate education." *Skeen*, 505 N.W.2d at 320 (Page, J., dissenting). By creating a fundamental right to a quality public education for every child, our proposed amendment will move Minnesota children forward.

- ***Funding Will Continue.*** Minnesota schools will continue to be funded under the proposed amendment. It is also self-evident that there cannot be "quality public schools" or "quality public education" without sufficient funding. By making education a "paramount duty," the state will have a funding priority to support public education.

- ***Outcomes are Critical.*** The "uniform achievement standards" language will ensure Minnesota actually achieves a quality education for all public school children. They will also ensure the quality of the education being provided.

The Minnesota Constitution should put children first. The academics give primacy to the status quo and the education system that has allowed some of the worst educational disparities in the country to thrive. We can do better. We must do better. The question we must answer is "do we have the courage to do better."

Sincerely,

Alan C. Page