



THE CASE FOR A CONSTITUTIONAL CHANGE TO TRANSFORM BLACK EDUCATION IN MINNESOTA

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INTRODUCTION

Although elected officials and community leaders regularly celebrate Minnesota’s recognition as a leader in public education,^[1] these awards and statements hide the true picture.^[2] In reality, Minnesota’s public schools, even in “progressive” Minneapolis, continually fail Black, Brown, and Indigenous children.^[3] Too often these troubling disparities are explained away by supposed personal failings of students and their families.^[4] However, such an explanation fails to place responsibility where it belongs: on the long-term failure of government actors to address educational inequity within Minnesota’s public education system. This Post argues Minnesotans should adopt a recently proposed constitutional amendment to protect young, Black Minnesotans’ right to a quality public education.^[5]

I. EDUCATIONAL (IN)ADEQUACY IN MINNESOTA

Often, Minnesotans are quick to distance the state from the American legacy of slavery and racism,^[6] arguing that as a Northern territory Minnesota holds moral superiority over Southern states and territories.^[7] However, as in the South, Minnesota’s cities and towns similarly enacted laws and ordinances suppressing Black Americans’ political and financial power throughout the country’s history.^[8] This disenfranchisement of Black Americans also occurred in local education policies, both preceding and following the American Civil War.^[9] For example, in St. Paul, despite ordinances enacted in 1850 requiring local leaders to provide “ample means for the education of *all* the children in town,” Black children were routinely turned away from the city’s public schools throughout the 19th century.^[10] Naturally, relics of Minnesota’s shameful past linger within the state’s policy decisions today.^[11] This reality becomes abundantly clear upon review of the state’s poor student performance results for Black students.^[12] Last year, Minnesota’s persistently dismal educational outcomes for Black students prompted one local philanthropy to launch an advertising campaign proclaiming: “Minnesota schools are **worst in the nation** for our children of color.”^[13]

II. PAST EFFORTS TO ADDRESS EDUCATIONAL INADEQUACY IN MINNESOTA HAVE FAILED TO SYSTEMICALLY IMPROVE BLACK EDUCATION

To address the deficient state of Black education in Minnesota, civil rights advocates have turned to the state’s courts.^[14] In the state’s first major educational adequacy lawsuit, *Skeen v. State*, the state Supreme Court held the Education Clause did not simply provide a permissible grant of power to the

legislature, but rather, established a mandate to deliver “general and uniform” education across the state.^[15] Highlighting how education is a “fundamental right” under the Minnesota Constitution, in *Skeen* the Court expanded the plain language of the Education Clause and called on the state legislature to provide “an *adequate* education to all students in Minnesota.”^[16] Notably, in *Skeen*, the Court declined to establish a bright-line standard to define educational adequacy.^[17] Since *Skeen*, the Court has declined to further elucidate what an “adequate” education requires when resolving subsequent educational adequacy disputes.^[18] Despite the expanded adequacy language adopted by the Court in *Skeen*, post-*Skeen* litigation outcomes suggest the Court’s adequacy requirement does not impose a high bar.^[19] Thus, although an alleged violation of the state’s Education Clause is a justiciable issue for Minnesota courts,^[20] no recent educational adequacy lawsuit has succeeded in improving outcomes for the state’s students.^[21]

III. THE MINNESOTA CONSTITUTION’S EDUCATION CLAUSE SHOULD GUARANTEE THE RIGHT TO A QUALITY PUBLIC EDUCATION

Neither the U.S. Constitution,^[22] federal statute,^[23] nor U.S. Supreme Court precedent^[24] guarantee the right to education for American students. However, Minnesota’s state constitution, like all other states, outlines a positive and enforceable right to education for every citizen.^[25] A new advocacy campaign from the Federal Reserve Bank of Minneapolis and former state Supreme Court Justice Alan Page contends to remedy persistent educational disparities in the state, Minnesota should amend its Education Clause to strengthen the language and more clearly protect all students’ right to a quality education.^[26] Arguing “[c]onstitutional language matters,” supporters of the proposal believe Minnesota should amend its Education Clause “to reflect the changing preferences of [its] citizens.”^[27] However the Page Amendment, as the proposal is commonly referenced, does not merely reflect changing “preferences.” Rather, the change can also ensure Black students’ educational *needs* are met across the state, as it begins to repair the harms of the state’s long history of racism in education.

The proposed amendment would replace Article XIII, Section 1 of Minnesota’s Constitution in its entirety. If ratified, the Education Clause would state:

All children have a fundamental right to a quality public education that fully prepares them with the skills necessary for participation in the economy, our democracy, and society, as measured against uniform achievement standards set forth by the state. It is a paramount duty of the state to ensure quality public schools that fulfill this fundamental right.^[28]

Although critics portray the proposal as an imprudent and unprecedented solution,^[29] in reality, Minnesota’s failure to update, or even propose an update to, its Education Clause places Minnesota among the minority of states in the country.^[30] As a result, Black students in Minnesota have the same education rights as their ancestors had when the Minnesota Constitution was first adopted in 1857.^[31]

The Page Amendment is an attainable remedy. To date, the state has approved over 100 amendments to the Minnesota Constitution on matters ranging from the structure of the state’s judiciary to the preservation of the state’s “hunting and fishing heritage.”^[32] Since 1898, amending the Minnesota Constitution has required two steps: (1) approval by majority of both chambers of the legislature, during a single legislative session, and (2) ratification by a majority of voters in a statewide election.^[33] As a first step in the legislative process, a bipartisan-supported bill on the matter was introduced in the House with HF 874.^[34]

For now, in education policy circles in Minnesota, all eyes are on the state Capitol to see if legislators will take further action on the Page Amendment this term. The imperative to do so is plain. As Justice Page declared in his dissent in *Skeen* nearly 30 years ago: “[t]he State’s duty toward its children is not satisfied unless it provides equal educational opportunities for all children.”^[35] Today Minnesota’s Education Clause fails to redeem the legacy of racism still plaguing the state’s public education system. This is a matter of social injustice. Given the critical role education plays in facilitating financial security, political agency, and health and happiness,^[36] Minnesotans should adopt the Page Amendment to protect Black children’s equal right to a quality education.

[1] See Ryan Sjoberg, *Proposed Amendment Aims to Close Achievement Gaps in Education*, KEYC News Now (Feb. 20, 2020), <https://www.keyc.com/2020/02/21/proposed-amendment-aims-close-achievement-gaps-education/> [<https://perma.cc/3XHP-6MK7>] (noting “Minnesota has been a fixture [among] the top 15 to 20” public school system according to the U.S. News & World Report’s analysis).

[2] Sjoberg, *supra* note 1 (“For Caucasians and affluent students, [Minnesota’s public education] system works well, but for minorities and disadvantaged families . . . not so much.”).

[3] Nekima Levy Armstrong, *Research Shows Progressive Places, Like Minneapolis, Have the Worst Achievement Gaps*, StarTribune (Jan. 24, 2020), <https://www.startribune.com/research-shows-progressive-places-like-minneapolis-have-the-worst-achievement-gaps/567277792/> [<https://perma.cc/JW99-4AQ5>].

[4] See, e.g., dknsspo, Comment to Armstrong *supra* note 3 (“To stellarone Jan 26th — I do not think we can ‘force’ parents to become competent, any more than we realistically expect the public schools to make up the deficits of kids who lack competent adults in their lives, it is far less likely the kids will become academically proficient . . .”).

[5] See generally *A Constitutional Amendment to Transform Education in Minnesota*, Fed. Res. Bank of Minneapolis (Jan. 8, 2020), <https://www.minneapolisfed.org/article/2020/a-constitutional-amendment-to-transform-education-in-minnesota> [<https://perma.cc/2C4W-EMQ6>].

[6] See Armstrong, *supra* note 3.

[7] See Taiyon J. Coleman, *Disparate Impacts: Moving to Minnesota to Live Just Enough for the City*, in *A Good Time for the Truth* (Sun Yung Shin, ed., 2016) (narrating her conversations with Minnesotans about “The South”). *But see*, e.g., William D. Green, *Race and Segregation in St. Paul’s Public Schools 1846–69*, at 55 *Minn. Hist. Mag.* 139, 142 (1996) (explaining that the Old Northwest territory—modern Ohio, Indiana, Illinois, Michigan, Wisconsin, and the northeast portion of Minnesota—enacted “black laws” as early as 1807 to discourage free Blacks from immigrating to the region).

[8] See, e.g., William D. Green, *Degrees of Freedom: The Origins of Civil Rights in Minnesota, 1865–1912* 9 (2015) (explaining how local ordinances in early Minnesota towns barred Blacks from participating in civic activities like voting, serving on a jury, and even participating in local town hall meetings). *But see* Green, *supra* note 7, at 124 (describing superficial examples of Black inclusion in civic engagement, like how mayors in Minneapolis and St. Paul appointed Black men to serve on the city’s police force for the first time in 1895 and 1881, respectively).

[9] See Green, *supra* note 7, at 10.

[10] See *id.* at 10, 71–80 (emphasis added).

[11] See UnBoundEdu, *An Argument Between Racist and Anti-Racist Ideas*, YouTube, at 07:57–09:10 (Aug. 12, 2019), https://www.youtube.com/watch?v=W7zGTx89Ar4&feature=emb_title [<https://perma.cc/CUY5-VW2C>] (featuring a keynote speech from Professor Ibram X. Kendi explaining how racist policies in education are connected to the country’s history of racism and to the “normalization” of racist ideas over time).

[12] For example, a recent national study on adjusted cohort graduation rates (ACGR), placed Minnesota’s high school graduation rate among Black students as the worst state in the nation. See *Table 1. Public High School 4-Year Adjusted Cohort Graduation Rate (ACGR), by Race/Ethnicity and Selected Demographic Characteristics for the United States, the 50 States, the District of Columbia, and Puerto Rico: School Year 2017–18*, NCES, https://nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2017-18.asp [<https://perma.cc/KH77-UKYE>]; see also *Fast Facts*, NCES, <https://nces.ed.gov/fastfacts/display.asp?id=805> [<https://perma.cc/3XNJ-YXSZ>] (defining the ACGR as “the percentage of public high school freshmen who graduate with a regular diploma within 4 years of starting ninth grade.”).

[13] See Erin Golden, *Low Graduation Rate Prompts Ads Branding Minnesota as ‘Worst’ for Students of Color*, *StarTribune* (Aug. 3, 2019), <https://www.startribune.com/low-graduation-rate-prompts-ads-branding-minnesota-as-worst-for-students-of-color/516783681/> [<https://perma.cc/HR3K-3ZM9>] (emphasis in original).

[14] See, e.g., *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993) (asserting educational inadequacy due to the state’s school finance system); *Forslund v. State*, 924 N.W.2d 25 (Minn. Ct. App. 2019) (asserting educational inadequacy due to local teacher layoff policies); *Cruz-Guzman v. State*, 916 N.W.2d 1 (Minn. 2018) (asserting educational inadequacy due to school segregation).

[15] *Skeen*, 505 N.W.2d at 299.

[16] *Id.* at 313–15.

[17] *Id.*

[18] See, e.g., *Forslund*, 924 N.W.2d 25.

[19] See *id.* at 35 (explaining plaintiffs only alleged state policies created an increased risk that students may not receive an adequate education); *Skeen*, 505 N.W.2d at 315 (explaining plaintiffs did not establish that the state’s funding formula was inadequate).

[20] See *St. Cloud Educ. Rights Advocacy Council v. Walz*, No. A19-1762, 2020 WL 6554658, at *5 (Minn. Ct. App. Nov. 9, 2020) (citing *Cruz-Guzman*, 916 N.W.2d at 9).

[21] See *Forslund*, 924 N.W.2d 25 (finding for the state); *Skeen*, 505 N.W.2d at 315 (finding for the state).

[22] See Scott Dallman & Anusha Nath, *Education Clauses in State Constitutions Across the United States*, Fed. Res. Bank of Minneapolis (Jan. 8, 2020), <https://www.minneapolisfed.org/~media/assets/articles/2020/education-clauses-in-state->

constitutions-across-the-united-states/education-clauses-in-state-constitutions-across-the-united-states.pdf?la=en [https://perma.cc/NL6V-W923].

[23] See Alia Wong, *The Students Suing for a Constitutional Right to Education*, *The Atlantic* (Nov. 28, 2018), <https://www.theatlantic.com/education/archive/2018/11/lawsuit-constitutional-right-education/576901/> [https://perma.cc/ZV87-EX77].

[24] See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973) (holding the U.S. Constitution provided no fundamental right to education).

[25] Minn. Const. art. XIII, § 1.

[26] Dallman & Nath, *supra* note 22.

[27] *Id.*

[28] *Closing Minnesota's Achievement Gaps: Why a Constitutional Amendment?*, Fed. Res. Bank of Minneapolis, <https://www.minneapolisfed.org/policy/education-achievement-gaps/why-a-constitutional-amendment> [https://perma.cc/Y3NS-94VV].

[29] See Rilyn Eischens, *Some Prominent Minnesotans Want to Amend the State Constitution for Education*, *Minn. Reformer* (Jan. 14, 2020), <https://minnesotareformer.com/briefs/some-prominent-minnesotans-want-to-amend-the-state-constitution-for-education-how-do-you-do-it/> [https://perma.cc/8X7W-MARE] (explaining that critics oppose the change because it would “bring lawsuits and expensive attorney fees, shift power from parents, teachers and locally accountable and elected public officials to unelected courts and justices.”).

[30] Dallman & Nath, *supra* note 22, at 4, fig.1 & 12 (“[M]ost states across the country have amended the education clause of their state constitutions over time to reflect the changing preferences of their citizens. Between 1990 and 2018, there were 312 proposed amendments on ballots across the country, and 193 passed.”).

[31] See *id.* at 11.

[32] See *State Constitutional Amendments Considered*, Minn. Legis. Reference Libr., <https://www.lrl.mn.gov/mngov/constitutionalamendments> [https://perma.cc/9768-H46B].

[33] *Id.*

[34] *HF 874*, Minn. Off. of the Revisor of Stat., <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF0874&ssn=0&y=2021> [https://perma.cc/EB7M-VFLN].

[35] *Skeen v. State*, 505 N.W.2d 299, 320 (Minn. 1993) (Page, J., dissenting).

[36] *Increasing Graduation Rates in Our Nation's Public High Schools*, ODPHP (July 27, 2017), <https://health.gov/news-archive/blog/2017/07/increasing-graduation-rates-in-our-nations-public-high-schools/index.html> [https://perma.cc/9QEN-SMPC] (“High school graduates have less chance of being in prison, greater financial stability as adults, and fewer health problems.”)

