



**Statement by the
NAACP Minnesota/Dakotas Area State Conference
on the Proposed Amendment to the Minnesota Constitution**

Before the House Education Policy Committee

March 8, 2021

The NAACP has significant concerns regarding the proposed amendment to the Education Clause of the Minnesota Constitution as written. The proposed amendment raises significant concerns and diverts limited political resources in a direction unlikely to address the current issues in Minnesota schools.

As a preliminary matter, the NAACP recognizes that the *purpose* of the proposed amendment is an extremely important one. The proposed amendment is intended to address what the Federal Reserve identified as significant “achievement gaps” between white students and students of color. The Federal Reserve is correct in its findings that the disparities (and the failure overall to ensure proper education of students of color) are an urgent crisis for our state. We also agree with their observation that the State of Minnesota has done little to nothing that has been effective in addressing the achievement gaps to date.

The *proposed solution* to the identified problem, however, raises numerous significant concerns. The idea of amending the constitution is problematic because there are more reliable ways to address the achievement gaps. Funding, meaningful desegregation, early childhood education, and a more fully prepared and diverse teaching force all have proven track records in improving educational outcomes (and other important results) for students of color. There is little to no evidence, on the other hand, that amending the constitution would make any impact. The two examples of states amending their constitution cited by the Federal Reserve are not compelling both because the data from those two examples is weak and because there are so many more examples of states amending their constitution that were not part of the study, rendering the two examples relied upon as anecdotal at best.

The most troubling aspect, however, is the actual language of the proposed amendment. While concerning, amending the constitution on its own is not necessarily harmful (other than the opportunity cost of pursuing a less reliable policy initiative than the options listed above). But the language of the proposed amendment raises issues that are explained in more detail below. Most notably, the proposed amendment would remove the uniformity clause, which has been the basis of key rulings in desegregation and funding cases from the Minnesota Supreme Court. The clause has also been a bulwark against legal challenges that would undermine public education both here and in other states.

Areas of Agreement – Diagnosis of the Problem

The Federal Reserve conducted a study in October 2019 on “Minnesota’s education achievement gaps,” in which it concluded that significant achievement gaps existed in student performance on standardized tests, graduation rates, and indicators of college readiness.¹ The study further concluded that Minnesota has had significant achievement gaps for “decades” and that its gaps are among the worst in the nation.²

There is no question that the diagnosis of the problem by the Federal Reserve is largely correct. Certainly, the NAACP shares the view that the state’s achievement gaps are a serious and long-lasting problem requiring immediate attention. We also share the view that there are policies that have proven to address such gaps, but the examples provided by the Federal Reserve are not the most proven strategies. Meaningful integration, or what the NAACP recognizes as “an inclusive learning

¹ Federal Reserve Bank of Minneapolis, A Statewide Crisis: Minnesota’s Education Achievement Gaps, October 11, 2019 (authored by Rob Grunewald, Economist, and Anusha Nath, Research Economist).

² See *id.* at (Minnesota “has among the worst track records in the nation.”).

environment,” particularly if fully funded and fully implemented on a broad scale, e.g.), fully funding special education, ELL programming, increasing the diversity of the teaching force, and early education are proven models for addressing the achievement gaps. Amending state constitutional language and hoping for subsequent litigation to enforce the new language is nothing more than wishful thinking.

Areas of Concern – Amending the Constitution Generally

In January of last year, the Federal Reserve published a report by two of its economists on state constitutional law (hereafter “Federal Reserve Report”).³ In that analysis, the authors suggest that there is some significance to the fact that “[m]ost education clauses have been amended several times over the past century” and that Minnesota has never amended its Education Clause.⁴ The authors make the rather unusual argument that there is relevance to the age of the constitutional provisions of the Education Clause, recommending that we “amend the 1857 language to better reflect the preferences and needs of citizens in 2020.”⁵

The Federal Reserve Report also argues that “Constitutional language matters.”⁶ But our laws are not merely the result of the plain text of the constitution. Interpretation of those laws by courts can also be a source of how we understand constitutional provisions. Yet the Federal Reserve Report relies entirely on the state constitutional text and cites no case law whatsoever. As the Minnesota Supreme Court has made clear, interpretation of constitutional law requires more than just reading the constitutional text. The classic example, of course, is *Skeen vs. State*, where the Minnesota Supreme Court found that education is a fundamental right even though it was not explicitly written in the text of the constitution.⁷

Furthermore, using only the examples of Florida and Louisiana, despite previously arguing about how many states have amended their education clauses, the authors argue that amending the constitution can be “drivers of change.”⁸ Importantly, in a footnote, they acknowledge that, “[t]he changes documented in this section are illustrative and should not be interpreted as causal.”⁹ In other words, any changes documented are just as likely to be the result of something other than amending the constitution.

³ Federal Reserve Bank of Minneapolis, Education Clauses in State Constitutions Across the United States, Executive Summary, January 8, 2020 (authored by Scott Dallman, Research Analyst, and Anusha Nath, Research Economist). (“This article documents the variation in strength of education clauses in state constitutions across the United States.”).

⁴ *Id.*

⁵ *Id.* at 12.

⁶ *Id.* at executive summary.

⁷ The Minnesota Supreme Court found such a right, in part, “because of [education’s] overall importance to the state” in addition to the language of the constitution. *Skeen v. State*, 505 N.W.2d 299, 313 (Minn. 1993).

⁸ Federal Reserve Bank of Minneapolis, Education Clauses in State Constitutions Across the United States, Executive Summary, page 6, January 8, 2020.

⁹ *Id.* at page 7, footnote 8.

Concerns about the potential effectiveness of amending the constitution must be weighed against the time and costs necessary to do so. Instead of all this work to amend the constitution, why not just push for changes that more reliably would address the problem (like meaningful integration and funding, as mentioned above)? In order to amend the constitution, the proposed amendment must pass both the House and the Senate.¹⁰ If the proposed amendment receives a majority vote in both legislative bodies, it is then placed on the ballot and must be ratified by a majority of the voters at a general election.¹¹ Setting aside the challenges for getting approval in the House and Senate (particularly given the opposition by legal scholars, the teacher's union, home schoolers, and the school districts), the campaign necessary for getting voter approval will be costly. And there is no guarantee that the proposed amendment will pass all three stages, even if there is considerable effort and resources put into each stage.

Areas of Disagreement – The Specific Language of the Amendment (particularly the removal of the Uniformity Clause)

On its website, the Federal Reserve stated that it had “looked at education provisions in constitutions across the country and taken the strongest elements from them.”¹² There is no case law explaining how such phrases have been interpreted by courts, and some of the phrases appear to be novel phrases constructed from whole cloth.

This is where the NAACP is the most concerned about the proposed amendment. Undoing the current language of the Education Clause raises significant worries. At a starting point, there is a risk of unintended consequences. Borrowing language from different clauses and putting them together invites a range of interpretations that are very hard to predict. For example, much of the proposed amendment is derived and justified by Florida, but the Florida Supreme Court ruled in 2019 that its education clause does not “provide sufficiently manageable standards to overcome the political question and separation of powers concerns” and is therefore non-justiciable (that is, not reviewable by the courts). *Citizens for Strong Sch., Inc. v. Fla. State Bd. of Educ.*, 262 So. 3d 127, 129 (Fla. 2019).¹³

One other concern is the lack of legal analysis when arguing that the term “adequacy” is an insufficient goal for our educational system. On its website, the Federal Reserve argues that “Our Supreme Court interpreted this language to mean that students have a fundamental right to an *adequate* education system. No parent aspires for their child to have an *adequate* education.”¹⁴ But there is an extensive body of case law defining an “adequate education.” Approximately twenty states have provided a wide range of broad interpretations of this term of art over the past several decades. For example, the

¹⁰ Minnesota Constitution, Article IX, § 1.

¹¹ Id.

¹² <https://www.minneapolisfed.org/policy/education-achievement-gaps/why-a-constitutional-amendment>.

¹³ One provision in Florida’s constitution that the Federal Reserve notably did not include in its proposed amendment concerns class sizes. In 2002, Florida amended its constitution to set limits on the number of students in core classes in public schools. See Florida Constitution, Article IX, § 1 (setting the limit on K-3 classes, for example, at 18 students).

¹⁴ <https://www.minneapolisfed.org/policy/education-achievement-gaps/why-a-constitutional-amendment> (emphasis in original).

relatively well-known *Rose* decision from Kentucky struck down the entire state educational system because it failed to fulfill its constitutional obligation of an adequate education. *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (Ky. 1989). That court went even further and provided a detailed list of what is required. *Id.* (using the term “efficient” from the Kentucky Constitution, the court explained that “an efficient system of education must have as its goal to provide each and every child with at least the seven following capacities . . .”). Importantly, the Minnesota Supreme Court has favorably cited the *Rose* decision suggesting that its definition of an “adequate education” would apply in Minnesota.¹⁵

In addition to a general lack of legal analysis, some of the specific language that the proposed amendment would take out is particularly troubling. The proposed amendment specifically removes the uniformity clause: “. . . it is the duty of the legislature to establish a general and uniform system of public schools.” Note that the title of the clause is “Uniform System of Public Schools.”¹⁶

By removing this language, the proposed amendment could undermine a current desegregation case. In *Cruz-Guzman*, the Minnesota Supreme Court recently made a strong statement about segregated schools using the current constitutional language. See *Cruz-Guzman v. State*, 916 N.W.2d 1, 10 n.6 (Minn. 2018) (relying on both of the sentences of the current provision, including the uniformity clause, in stating, “It is self-evident that a segregated system of public schools is not ‘general,’ ‘uniform,’ ‘thorough,’ or ‘efficient.’”). The proposed amendment removes the language upon which the *Cruz-Guzman* court relies.

The proposed amendment raises significant legal issues that experts worry would undermine educational rights for Minnesota children. As “legal scholars and experts who specialize in civil rights and education” from across the country recently concluded:

As a result of the above-described shortcomings, our analysis indicates that the Federal Reserve’s proposed amendment to the Minnesota education clause threatens to reduce, rather than increase, the rights of Minnesota students.¹⁷

About the NAACP

The NAACP is the nation's oldest, largest, and most widely recognized grassroots-based civil rights organization. Its more than half-million members and supporters throughout the United States and the world are dedicated advocates for civil rights in their communities through organizing and litigation. The Minnesota\Dakotas Area Conference NAACP is the regional association of NAACP branches located in Minnesota and North and South Dakota. The Minnesota branches are located in St. Paul, Minneapolis, Duluth, Rochester, Mankato, and St. Cloud and meet quarterly.

¹⁵ The Minnesota Supreme Court cited the *Rose* case when it stated, “The judiciary is well equipped to assess whether constitutional requirements have been met and whether appellants' fundamental right to an adequate education has been violated.” *Cruz-Guzman v. State*, 916 N.W.2d 1, 12 (Minn. 2018).

¹⁶ Minnesota Constitution, Article XIII, § 1.

¹⁷ Letter from legal scholars and Experts to the Minnesota Legislature, February 22, 2022 (incorporated into this statement and attached).