

Members of the Minnesota legislature,

We are an assemblage of legal scholars and experts who specialize in civil rights and education. We write to express our concern over potential changes to the education clause of the Minnesota Constitution, recently proposed by the Minneapolis Federal Reserve. Although we share your concern over ongoing disparities in Minnesota schools, and would welcome efforts to strengthen education rights in the state, the proposed amendment is unlikely to achieve this aim.

The Federal Reserve proposal eliminates, in its entirety, the existing education clause in the Minnesota Constitution – a provision which dates to the document’s adoption in 1857. In doing so, it removes critically important language that has already been held by the Minnesota Supreme Court to protect students’ civil rights. The proposed new language would not necessarily safeguard these rights. The proposed incorporation of several undefined adjectives like “quality” or “paramount” into the education clause would not, on its own, create new legal protections or requirements that do not already exist in Minnesota law. In addition, the proposed amendment also contains qualifying language that might further narrow the scope of students’ rights below the standard that exists in current law.

The existing Education Clause of the Minnesota Constitution reads as follows:

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 legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.¹

This language has been held to give rise to several major constitutional rights. In *Skeen v. State*, the Minnesota Supreme Court held that this provision created both a fundamental right to education, and a legislative duty to provide an adequate education.²

It is important to note that in this context the term “adequate” has significant legal connotations beyond its plain-language meaning. In a line of precedent stretching back to the landmark Kentucky case *Rose v. Council for Better Education*, state supreme courts have used the notion of “school inadequacy” to examine virtually every aspect of public schooling for failures that would harm students, including funding, employment practices, and segregation.³

Moreover, in the recent statewide school desegregation lawsuit *Cruz-Guzman v. State of Minnesota*, the Minnesota Supreme Court held that it is “self-evident” that a segregated system of schools could not satisfy the education clause’s requirement that a system of schools be

¹ Minn. Const. Art. XIII, § 1.

² *Skeen v. State*, 505 N.W.2d 299, 313 (Minn. 1993).

³ *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 215 (Ky. 1989) (“This decision applies to the entire sweep of the system all its parts and parcels. This decision applies to the statutes creating, implementing and financing the system and to all regulations, etc., pertaining thereto. This decision covers the creation of local school districts, school boards, and the Kentucky Department of Education to the Minimum Foundation Program and Power Equalization Program. It covers school construction and maintenance, teacher certification the whole gamut of the common school system in Kentucky.”).

“general,” “uniform,” “thorough,” and “efficient.”⁴ This holding represents one of the most unqualified restrictions on school segregation that can be found in American law. Notably, in its *Cruz-Guzman* decision, the Minnesota Supreme Court also favorably cited the Kentucky *Rose* case, suggesting that it holds a similarly expansive view of the protections provided by Minnesota’s education clause.⁵

Although the legislature has the ability to strengthen educational rights provided by the state constitution, it should take care to not endanger existing rights. The proposed constitutional amendment does not appear to meet this standard. The proposed amendment would eliminate all of the existing language in the Education Clause, and replace it with the following provision:

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.⁶

At first glance, this amended language appears to preserve the fundamental right and the legislative duty provided by the existing constitutional provision. However, the proposed text qualifies the state's fundamental right with the clause “as measured against uniform achievement standards set forth by the state.” As a result, the proposed amendment may encourage courts to measure rights through the narrow lens of tested academic achievement. The result could be to narrow existing protections, rather than expand them.

The addition of several adjectives – “quality” and “paramount” – has no clear legal effect, as these terms have no preestablished meaning in Minnesota law.

In addition, the proposed education amendment eliminates key phrases from the state constitution. Critically, these include “general and uniform,” as well as “thorough and efficient” – the precise language recently held to bar school segregation in Minnesota. At minimum, this change complicates the landmark anti-segregation finding of the recent *Cruz-Guzman* decision.

Finally, the proposed amendment eliminates all language referring to school funding, removing the provisions that currently require minimum levels of funding for public schools.⁷

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.

⁴ *Cruz-Guzman v. State of Minnesota*, 916 N.W.2d 1, n.6 (Minn. 2018) (“It is self-evident that a segregated system of public schools is not general, uniform, thorough, or efficient.” (internal citations omitted)).

⁵ *Id.* at 12 (“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. *See, e.g., Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212–13 (Ky. 1989).”).

⁶ Minneapolis Federal Reserve, A Constitutional Amendment to Transform Education in Minnesota, <https://www.minneapolisfed.org/article/2020/a-constitutional-amendment-to-transform-education-in-minnesota>.

⁷ *Skeen*, 505 N.W.2d at 315.

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