

Twin Cities Campus

*The Law School
Walter F. Mondale Hall*

*Myron Orfield
Earl R. Larson Professor of
Civil Rights & Civil Liberties
229–19th Avenue South
Minneapolis, MN 55455*

██████████
██████████
orfield@██████████
[http //www.law.umn.edu/metro](http://www.law.umn.edu/metro)

March 5, 2020

President Neel Kashkari
Federal Reserve Bank of Minneapolis
90 Hennepin Ave
Minneapolis, MN 55401

Dear President Kashkari,

Thank you for meeting with me at the Federal Reserve Bank of Minneapolis on February 21, to discuss the Federal Reserve’s recent proposal for revisions to the Minnesota constitution’s education clause.¹ I am reaching out to memorialize that meeting and respectfully resubmit my requests for information about the Federal Reserve proposal.

At that meeting, I had hoped to discuss several legal and practical concerns that my Institute had raised with the Federal Reserve proposal. These concerns were laid out in our memorandum of January 10, of which you received a copy.² They include the following:

- **The proposed elimination of the constitutional language requiring “general and uniform” public schools.** This would effectively reverse the Minnesota Supreme Court’s landmark findings in *Skeen v. State* and *Cruz-Guzman v. State*.³ Those findings created a fundamental right to an education, created a legislative duty to provide an adequate education, and barred racial and economic segregation.
- **The lack of judicially enforceable standards or requirements in the proposed amendment.** In practical terms, the proposed amendment appears to only require that children receive an education that meets “uniform achievement standards set forth by the state.” My Institute remains concerned that, rather than strengthening education standards, this formulation would leave them to the discretion of the legislature and executive branch.

¹ Federal Reserve Bank of Minneapolis, A Constitutional Amendment to Transform Education in Minnesota, <https://www.minneapolisfed.org/article/2020/a-constitutional-amendment-to-transform-education-in-minnesota>.

² A copy of that memorandum follows this letter.

³ *Cruz-Guzman v. State*, 916 NW.2d 1 (2018); *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993).

- **The elimination of constitutional references to a public school system, and their replacement with references to a “quality public education.”** Combined with the elimination of the uniformity requirement, this change may permit the state to substantially increase the role of public-private educational systems within its borders, such as fully chartered school systems or school vouchers.
- **The tying of constitutional educational adequacy to achievement standards, rather than broad civic and educational principles.** This arrangement may permit the creation separate-but-equal educational plans, which could conceivably remain constitutional so long as achievement standards were satisfied.
- **The suggestion the new educational amendment would permit far-reaching litigation against the state’s schools and school policies.** Although litigation plays an important role in vindicating fundamental constitutional rights, the proposed amendment may also produce litigation over relatively minor details of school policy. The day-to-day details of school operation and policy planning are properly left to the legislative and executive branch, not the courts.

In addition, I had several questions about the process of developing the proposed amendment. It is unclear from public records which experts or organizations were consulted during the creation of the Federal Reserve proposal. It is also unclear whether the Federal Reserve currently possesses background information or memoranda explaining how the proposed amendment would operate as a legal mechanism. Such information, particularly focused on questions of legal and judicial interpretation of the proposed language, would bring great clarity to the Federal Reserve’s proposal.

Unfortunately, our February 21 meeting produced little clarity.

In that meeting, you repeatedly characterized our earlier memo as “garbage” and dismissed its concerns as being unworthy of answer. In a followup letter, delivered March 2, you stated that the memo “draw[s] hyperbolic conclusions and demand[s] that we respond to your wild assertions.”⁴ The letter states that while you “value and encourage a wide range of views,” you “expect those views to be respectful of others and grounded in research and analysis,” and “[my] approach fell far short of the mark.”⁵

I respectfully disagree that our views were not grounded in research or presented respectfully. The concerns raised in our memo were raised by scholars and researchers deeply familiar with current Minnesota education law, and its operation in the courts. Indeed, these concerns are shared by numerous other scholars in the state and around the nation.

In our meeting, you also suggested that my Institute’s interest in the proposed amendment indicated personal character failings and was representative of self-aggrandizing behavior. In your March 2 letter, you state that my “condescending views as to who qualifies as a constitutional scholar appear to be grounded in racism.”⁶ You

⁴ Letter from Neel Kashkari, President of the Federal Reserve Bank of Minneapolis, to Myron Orfield, Director of the Institute on Metropolitan Opportunity (Mar. 2, 2020). A copy of the March 2 letter follows this letter.

⁵ *Id.*

⁶ *Id.*

continued, stating that my “lack of preparation, seriousness or respect for others simply does not meet the standards of those who would seek to advise the Federal Reserve.”⁷

Here too, I respectfully disagree. In our February 21 meeting, I was permitted little opportunity to speak, and my requests for additional documentation or information about the education clause proposal were flatly denied. I again maintain that my Institute’s concerns, which were not addressed or discussed in any fashion in that meeting or subsequent March 2 letter, are well-grounded.

I especially reject the notion that my constitutional or legal views are rooted in racist sentiment of any sort. Scholars and experts may disagree about matters of legal interpretation, of course. However, my colleagues and I have studied the issues underlying this proposed amendment for years, and worked at great length with the specific constitutional provision you propose to replace. I am more than happy to engage in cordial and collegial discussion of these legal interpretations with any expert or scholar, even if we disagree. However, I feel confident that the legal interpretations offered by my colleagues and I are at least colorable, and would be seriously considered in a court of law.

I will close by reiterating the concerns raised in our memo of January 10, which remain largely undiscussed nearly a month later. To this day, neither my Institute nor I have been able to receive a full explanation, from a legal scholar, of how the Federal Reserve envisions its proposed amendment operating in a real-world setting. In addition, neither my Institute nor I have received access to any information about the provenance of this proposal. In particular, I resubmit my requests from our earlier meeting:

1. A list of non-Federal Reserve individuals or entities consulted during the development of the proposed amendment.
2. Copies of any background memoranda or legal analysis produced during this process.

I remain hopeful that such information will be made available in the near future.

Sincerely,

/s Myron Orfield

Myron Orfield
Earl R. Larson Professor of Civil Rights and
Civil Liberties and Director of the Institute
on Metropolitan Opportunity

⁷ *Id.*