Answering the tough questions about the amendment

Limits to a fundamental right

*Is the right to a quality public education a “positive right” because the government is providing a public education to students? Can any limits be put on this right?*

Courts do not view rights as either “positive” or “negative.” Minnesota’s current education clause creates a positive duty for the legislature to establish a general and uniform system of education. The proposed amendment strengthens the fundamental right that already exists under the Minnesota Constitution. The amendment will provide a floor for public education rights, not a ceiling. However, limits can be imposed by the legislature, if they make sense for students. This is similar to other rights, such as the right to an attorney, which the government provides through the public defender’s office, subject to certain limitations, such as the type of case and the defendant’s income.

Commitment to public education

*Will this proposal lead to vouchers for private schools?*

No. We use the word “public” three times in three sentences. This amendment supports public schools. Our proposed language is much stronger in supporting public schools over private schools or vouchers than the current constitution because it makes ensuring quality public schools a paramount duty of the state: The state would have no higher duty than supporting public schools if this amendment is adopted.

*Will this defund public schools?*

No. If public education is a “paramount duty” of the state, the question of financing is encompassed. It’s impossible to ensure quality schools without funding them. It’s absurd to think this language would gut public school funding.

*Will the elimination of the uniformity clause in the constitution lead to a voucher system in Minnesota?*

No. The elimination of the uniformity clause will have no effect on the prospects for an educational voucher system. The current uniformity provision does not limit the Legislature’s ability to enact a voucher system. Bills to enact voucher programs in Minnesota have been introduced in the past, and the Legislature could pass a bill to enact an educational voucher system now under the current constitutional language. The proposed amendment does not change that, but also does not mean a voucher system will be enacted.
Minnesota’s uniformity clause has not been challenged through a voucher system; however, several other states have upheld their state’s educational voucher systems, despite challenges related to their state’s uniformity provisions. In one state, Florida, the voucher program was struck down as a violation of the state’s uniformity provision. However, many other states have upheld voucher and other similar programs despite challenges to their uniformity provisions. These states include Wisconsin, Indiana, and Nevada. In Minnesota, the meaning of the word “uniform” has been analyzed by the Minnesota Supreme Court in other educational contexts. Similar to the states that have upheld their voucher systems, this state’s highest court has held that the uniformity clause is not a restriction on legislative power. Keeping the word “uniform” in the education clause does not necessarily mean a voucher system would be found unconstitutional.

The legal system

*Don’t courts lack the expertise or willingness to get involved in education? Won’t they just punt to the Legislature?*

No. Courts have punted to the Legislature in Minnesota because that is what the current Minnesota constitution requires: It only gives the Legislature a role in education. In contrast, the proposed amendment gives all three branches of government a role in ensuring that all children get a quality public education. If the Legislature and others don’t take needed action, courts can handle the most complex civil rights issues.

*Won’t only children of rich parents have access to the legal system?*

No. The most important civil rights cases in American history have often been brought by families of limited means and influence seeking redress in the courts. The courts are there to protect everyone’s rights, and a single civil rights case brought by one family can drive changes that help all families.

*Will the amendment lead to more litigation?*

Not necessarily. In other states, strong education amendments have not led to more litigation because the executive and legislative branches recognized their obligations and responded with action. Establishing a clear, fundamental right to quality public education will motivate policymakers to put children first. Litigation will be the last resort. If litigation drives meaningful changes that help children receive a quality education, it will be well worth the costs.

*Will this politicize the judiciary?*

At least since 1993, when Justice Page joined the Minnesota Supreme Court, Minnesota courts have handled the most sensitive political matters and have maintained their independence from politics. For example, in a unanimous 2009 decision, the Minnesota Supreme Court decided the outcome of the 2008 U.S. Senate election, and the courts were viewed by most people to have reached their decision fairly. During this period and before, there have been attempts to politicize the judiciary. While there are no guarantees, our history is that politicization hasn’t taken root even though numerous sensitive political issues have come before the courts.
Standards

Who will set the standards?

The people of Minnesota, through their elected representatives, will set the standards. We have standards today, but we don’t meet them for many individual students. We’re not proposing what the standards should be, and we’re not proposing to set the standards. We think the state should be held accountable for meeting its own standards, and this amendment would do that.

Do standards just mean more testing?

No. We share the concern that for too long testing has been used only to identify failure, not to help individual children succeed. Standards should help identify how well a child is learning and what he or she needs to advance academically, socially, and emotionally. Simply testing children and teaching to the test does not prepare children to participate in our economy, democracy, and society. There’s an opportunity for progress to be made simply by shifting the focus from group failure to helping each individual child progress.

The time is now

Should we focus on more of what we know works, rather than get distracted by this amendment?

Everyone has their preferred solution. An inability to reach political consensus around one specific solution or another is why nothing has changed: The various interest groups are entrenched. This amendment can support all solutions that truly work for children and will give a sense of urgency to them. This amendment literally puts children first and is flexible to allow for different solutions for different children. Children in Minneapolis likely need different solutions than children in Bemidji or Rochester.

Isn’t this risky because it has never been tried before?

That is incorrect. Many other states have amended the education provisions of their constitutions to improve quality, and students have benefited. Minnesota is a laggard with an 1857 education provision.

Won’t the constitutional process take too long to create change? Wouldn’t the Legislature move more quickly?

No. We’ve had decades of incremental reforms that have led to no improvement—if anything our education disparities are getting worse. If we keep repeating the same behavior, why should we expect any different results? Constitutional changes in other states have motivated policymakers to follow with bold action. That’s been missing in Minnesota.