

20-02082

IN THE
United States Court of Appeals
FOR THE FIRST CIRCUIT

A.C., a minor, by her parent and guardian ad litem, TORRENCE S. WAITHE; A.C.C., a minor, by her parent and guardian ad litem, NICOLAS CAHUEC; A.F., minor, by his parent and guardian ad litem, ALETHA FORCIER; R.F., a minor, by her parent and guardian ad litem, ALETHA FORCIER; I.M., a minor, by his parents and guardians ad litem JESSICA THIGPEN and ANTHONY THIGPEN; L.M., a minor, by her parents and guardians ad litem JESSICA THIGPEN and ANTHONY THIGPEN; K.N.M.R., a minor, by her parent and guardian ad litem, MARISOL RIVERA PITRE. J.R.H., a minor, by her parents and guardians ad litem, MOIRA HINDERER and HILLARY RESER; M.S., a minor, by his parent and guardian ad litem, MARK SANTOW; M.M.S., a minor, by his parent and guardian ad litem, AMIE TAY; M.S., a minor, by her parents and guardians ad litem, MARUTH SOK and LAP MEAS; A.W., a minor, by her parent and guardian ad litem, CHANDA WOMACK; J.W., a minor, by her parent and guardian ad litem, CHANDA WOMACK; N.X., a minor, by her parents and guardians ad litem, YOUA YANG and KAO XIONG,

Plaintiffs-Appellants,

—v.—

(Caption continued on inside cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

**BRIEF FOR AMICI CURIAE
PROFESSORS DANIELLE ALLEN AND MEIRA LEVINSON
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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Defendants-Appellees.

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TABLE OF AUTHORITIES

Cases

Campbell Cty. Sch. Dist. v. State,
907 P.2d 1238 (Wyo. 2001).....9

Conn. Coal for Justice Educ. Funding, Inc. v. Rell,
990 A.2d 206 (Conn. 2010)9

Edgewood Indep. Sch. Dist. v. Kirby,
777 S.W.2d 391 (Tex. 1989).....9

Plyler v. Doe,
457 U.S. 202 (1982).....9

Robinson v. Cahill,
303 A. 2d 273 (N.J. 1973)9

Rose v. Council for Better Educ.,
790 S.W.2d 186 (Ky. 1989).....9

Other Authorities

Abby Budiman, Luis Noe-Bustamante and Mark Hugo Lopez, Naturalized Citizens Make Up Record One-in-Ten U.S. Eligible Voters in 2020, Pew Research Center (Feb. 26, 2020)..... 19

Corporation for National and Community Service and National Conference on Citizenship (2010)15

Danielle Allen, *Education and Equality* (2016) 6, 7, 8, 9

Daron Acemoglu and James Robinson, The Rise and Fall of General Laws of Capitalism (August 2014)11

David E. Campbell, *What is Education’s Impact On Civic and Social Engagement?* (2006), <http://www.oecd.org/education/innovation-education/37425694.pdf>16

Jens Manuel Krogstad and Mark Hugo Lopez, Black voter turnout fell in 2016, even as a record number of Americans cast ballots, Pew Research Center (May 12, 2017), available at: <https://www.pewresearch.org/fact-tank/2017/05/12/black-voter-turnout-fell-in-2016-even-as-a-record-number-of-americans-cast-ballots/>.....18

Kimberly Adams, What Federal Funding for Civics Reveals About American

Political Discourse, Marketplace (Nov. 6, 2019),
<https://www.marketplace.org/2019/11/06/what-federal-funding-for-civics-reveals-about-american-political-discourse/>.....4

Laura S. Hamilton, Julia H. Kaufman, Lynn Hu, Preparing Children and Youth for Civic Life in the Era of Truth Decay: Insights from the American Teacher Panel (2020),
https://www.rand.org/pubs/research_reports/RRA112-6.html..... 10, 11, 20

Meira Levinson, *No Citizen Left Behind* (2012)..... 8, 12, 13, 21, 24

Meira Levinson, *Nurturing Engaged Citizens in a Divided Democracy*, October 31, 2018, https://docs.google.com/presentation/d/1Us_oZ--AnzDoI6nbcP51ucz1IRRboas3WP0bR4jPUIE/edit#slide=id.g3db5a1298a_0_107..... 19, 20

Michael A. Rebell, *Flunking Democracy* (2018)6

Michael Hansen, Elizabeth Levesque, Jon Valant, Diana Quintero, The 2018 Brown Center Report on American Education: How Well are American Students Learning? (June 2018),
https://www.brookings.edu/wp-content/uploads/2018/06/2018-Brown-Center-Report-on-American-Education_FINAL1.pdf10

Orrin G. Hatch, We Must Fix Civics Education to Protect American Democracy, USA Today (Oct. 30, 2020),
<https://www.usatoday.com/story/opinion/2020/10/30/orrin-hatch-fix-civics-education-protect-american-democracy-column/6067447002/>.....4

Peter Levine & Kei Kawashima-Ginsberg, Civic Education and Deeper Learning (2015), <https://files.eric.ed.gov/fulltext/ED559676.pdf>.....23

Pew Research Center, Civic Engagement (April 25, 2013),
<https://www.pewresearch.org/internet/2013/04/25/civic-engagement/>.....15

Pew Research Center, Political Engagement, Knowledge, and the Midterms (April 26, 2018),
<https://www.pewresearch.org/politics/2018/04/26/10-political-engagement-knowledge-and-the-midterms/>14

The Commission on the Practice of Democratic Citizenship, *Our Common Purpose: Reinventing American Democracy for the 21st Century*, Recommendation 6.5-Invest in Civic Education (2020)23

The Nation’s Report Card, *NAEP Report Card: Civics Achievement-Level Results*, 201818

U.S. Department of Education, Advancing Civic Learning and
Engagement in Democracy: A Road Map and Call to Action (2012).....10

United States Elections Project, Voter Turnout Demographics (accessed
Jan. 28, 2018) [http://www.electproject.org/home/voter-
turnout/demographics](http://www.electproject.org/home/voter-
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STATEMENT OF THE IDENTITY OF THE AMICI CURIAE, THEIR INTEREST IN THE CASE, AND THE SOURCE OF THEIR AUTHORITY TO FILE AN AMICUS BRIEF

Amici Danielle Allen and Meira Levinson are professors at Harvard University. Professors Allen and Levinson have analyzed the impact of civics education on individuals' ability to participate effectively as citizens in democratic society. Accordingly, these scholars are highly qualified to address the issues in this appeal as amici. All parties have consented to Professors Allen and Levinson filing this brief with the Court.

Professor Allen currently serves in Harvard University's Department of Government as the James Bryant Conant University Professor—one of only 25 current faculty members to receive the honor of being named University Professor, the highest professorial post at the University. In addition to exploring other aspects of democratic theory, Professor Allen has focused on the impact of education on citizenship, and her book *Education and Equality* explains how civics education plays an essential role in promoting political equality. Professor Allen also serves as the principal investigator for the Democratic Knowledge Project, a research lab that seeks to identify, strengthen, and disseminate the knowledge, skills, and capabilities that democratic citizens need to successfully participate in their democracy. In 2015, Professor Allen was appointed Director of the Edmond J. Safra Center for Ethics, a research center at Harvard University that seeks to

advance teaching and research on ethical issues in public life and foster sound norms of ethical reasoning and civic discussion. From 2018 to 2020, Professor Allen served as co-chair of the Commission on the Practice of Democratic Citizenship, a two-year bipartisan effort launched to explore how best to respond to the weaknesses and vulnerabilities in American political and civic life and to enable Americans to participate as effective citizens. Among its 31 recommendations, the Commission proposed that education policy should invest in civics education to impart students with the skills necessary to participate as citizens.

Professor Levinson serves as Professor of Education at Harvard University's Graduate School of Education and is on the Faculty Committee of the Edmond J. Safra Center for Ethics. Her work focuses on the intersection of civics education, youth empowerment, racial justice, and educational ethics. Professor Levinson has authored six books, including *No Citizen Left Behind*, in which she describes the existence of a "civic empowerment gap"—the result of an education system in which disadvantaged students in less affluent schools are denied the opportunity to develop the skills necessary to engage meaningfully in civic life as adults. Professor Levinson further describes how the students who end up on the disadvantaged side of the civic empowerment gap as adults are most often students who are ethnic minorities, immigrants, or of limited means. She also explores how

reforming civics education can help remedy this disparity. Professor Levinson has deep experience developing policy and practice initiatives in civics, having helped develop and pilot Boston Public Schools’ eighth grade “Civics in Action” course and Facing History’s “Choices in Little Rock” curriculum. She was also one of the civics writers for the “College, Career, and Civic Life (C3) Framework for Social Studies State Standards” and helped to develop youthinfront.org, an online learning initiative designed to support student activists and adult allies. Prior to accepting her position at the Harvard Graduate School of Education, Professor Levinson spent eight years as an eighth grade teacher in public schools in Boston and Atlanta, where she taught history, humanities, and civics.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), Professors Allen and Levinson state that (i) neither party’s counsel authored this brief in whole or in part; (ii) neither a party nor a party’s counsel contributed money that was intended to fund preparing or submitting this brief; and (iii) no person—other than the amici curiae or their counsel—contributed money that was intended to fund preparing or submitting this brief.

SUMMARY OF ARGUMENT

Robust civics education is essential to preparing students today to be effective citizens when they are adults. Civics education in public schools, however, has been neglected. The imbalance in resources the federal government

spends on different types of education shows the disparity: while the federal government today spends approximately \$54 per student annually to further education in science, technology, engineering, and math (“STEM”) learning, spending for civics per student is a mere five cents.¹ The lack of robust civics education in public schools has contributed to a “civic empowerment gap” in which disadvantaged students in less affluent schools are denied the opportunity to develop the skills necessary to engage meaningfully in civic life as adults.

Individuals’ civic empowerment is greater when they understand the political structures, institutions, and mechanisms of their democratic society. Neglecting civics education effectively denies disadvantaged students in less affluent schools—most often, students who are ethnic minorities, immigrants, or of limited means—the opportunity to develop the skills necessary to participate in government and civic life when they become adults. Empirical data support the existence of the civic empowerment gap, and demonstrate the link between education and civic engagement. Further, the civic empowerment gap is

¹ See, e.g., Kimberly Adams, What Federal Funding for Civics Reveals About American Political Discourse, Marketplace (Nov. 6, 2019), <https://www.marketplace.org/2019/11/06/what-federal-funding-for-civics-reveals-about-american-political-discourse/>; Orrin G. Hatch, We Must Fix Civics Education to Protect American Democracy, USA Today (Oct. 30, 2020), <https://www.usatoday.com/story/opinion/2020/10/30/orrin-hatch-fix-civics-education-protect-american-democracy-column/6067447002/>.

exacerbated by these students' life experiences, which frequently lead them to feel devalued by public officials and institutions and mistrustful of the viability of efforts to effect change through the political process.

Robust civics education can help to close the civic empowerment gap in two significant ways. *First*, education in civics can help equip students with the tools of "participatory readiness" that they need to become effective citizens as adults. *Second*, civics instruction can help students develop a sense of political efficacy by providing them historical and contemporary examples of when disadvantaged groups were able to use the political process to effect positive change and by supporting their development of student-led civic projects.

The civic empowerment gap represents an impediment to achieving political equality among all citizens. Providing students with the civics education necessary to help close this gap will help shift American civic life closer to the ideal embodied in the Constitution in which all citizens are granted an equal voice and an equal opportunity to participate in their democratic society.

ARGUMENT

I. The Lack Of Robust Education In Civics Has Contributed To A "Civic Empowerment Gap" Whereby Marginalized Students Are Denied The Basic Skills Necessary To Become Effective Citizens

It is essential that each student receive, as a core component of his or her education, a solid foundation in civics if that student is to be afforded a real and

equal opportunity to engage capably as a citizen later in life. Indeed, the highest courts in at least thirty-two states have explicitly stated that preparation for capable citizenship is the primary purpose or a primary purpose of the public education clause in the state’s constitution; the other eighteen state highest courts have not considered the issue.² As Professor Allen describes in *Education and Equality*, proper civics instruction has the goal of imparting students with “participatory readiness,” a concept that “rests on three developmental pillars: verbal empowerment, democratic knowledge, and a rich understanding of the strategies and tactics that undergird efficacy.”³ Providing students with these essential skills affords them the ability to engage fully as citizens upon reaching adulthood. Unfortunately, notwithstanding the importance of civics education in developing students’ later ability to participate as citizens, contemporary education policy has failed to include adequate instruction in civics. This neglect of civics instruction has contributed to a “civic empowerment gap”—the result of disadvantaged students in less affluent schools being denied the opportunity to develop the skills necessary to participate in government and engage meaningfully as adult citizens.

² See Michael A. Rebell, *Flunking Democracy*, 56-7 (2018).

³ Danielle Allen, *Education and Equality*, 40 (2016).

A. The Three Components Of “Participatory Readiness” Are Essential For Students To Develop Into Effective Citizens

Participatory readiness rests on verbal empowerment, democratic knowledge, and a full understanding of efficacy as it relates to political activities.⁴ *First*, verbal empowerment is essential in any democratic government, as ideas are exchanged through language. Even if data is involved in diagnosing or analyzing a civic issue, conversation is necessary to clarify the meaning of that data. Effective verbal communication skills are essential to engaging in the process of diagnosing the current situation and discussing a prescription for a response.⁵ Verbal skills are also necessary to engage in the process of persuading others. Literacy and investment in English-language arts are a foundation for this element of civic education, but civic education requires further extension through experiences of debate, discussion, and oral argument, as well as opinion writing. *Second*, democratic knowledge refers to the multiple bodies of knowledge citizens need to understand and participate in the life of their democracy: this includes core disciplinary knowledge about political institutions and U.S. history and also the knowledge and skills that support citizens’ ability to associate with one another and form the bonds with their fellow citizens, both those who are similar and those

⁴ *Id.*

⁵ *Id.*

with different perspectives.⁶ *Finally*, efficacy involves tactical and strategic understanding of the mechanics of political action such that citizens understand how to use the levers of change to promote their objectives.⁷ Each of these three components must be developed to prepare students to function as civic and political actors as adults.⁸

In the end, students' education in civics must prepare them for participation in civic life by developing their skills in making arguments and respecting others' viewpoints, their awareness of the role and functioning of civic and political institutions, and their understanding of political and social movements in history that have effectuated change. Exposing students to policy-oriented debates, collective action, and a constructive means to debate contentious issues is paramount.⁹ By developing these skills, students can realize their "civic agency," that is, their ability to engage in civic life.¹⁰

⁶ *Id.* at 41–42.

⁷ *Id.* at 42–43.

⁸ *Id.* at 43.

⁹ Meira Levinson, *No Citizen Left Behind*, 57 (2012).

¹⁰ Allen, *supra*, at 36–37.

B. Notwithstanding The Importance Of Providing Students With The Tools To Become Effective Citizens, Civics Education Is Being Neglected

While the United States Supreme Court and various state high courts have recognized that education is foundational for preparing young people to become good citizens,¹¹ contemporary framings of the purpose behind public education neglect civics. Professor Allen describes two models of education in her work.¹² The first relates to preparation for the workforce; the second prepares citizens for civic engagement.¹³ Both components are essential, yet contemporary education policy is predominantly focused on the first model, emphasizing the need to disseminate the skills that will prepare students to best compete in an economy that is increasingly global and technical in nature. This results in an education policy that prioritizes STEM education while neglecting civics instruction. As recognized by the U.S. Department of Education in 2012, too many schools treat civics education as supplemental rather than core:

¹¹ See *Plyler v. Doe*, 457 U.S. 202, 221-23 (1982); *Robinson v. Cahill*, 303 A.2d 273, 295 (N.J. 1973); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 395–96 (Tex. 1989); *Campbell Cty. Sch. Dist. v. State*, 907 P.2d 1238, 1259 (Wyo. 2001); *Conn. Coal for Justice Educ. Funding, Inc. v. Rell*, 990 A.2d 206, 253 (Conn. 2010); *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 212 (Ky. 1989).

¹² Allen, *supra*, at 17.

¹³ *Id.*

[C]ivic learning and democratic engagements are add-ons rather than essential parts of the core academic mission in too many schools and on too many college campuses today. Many elementary and secondary schools are pushing civics and service-learning to the sidelines, mistakenly treating education for citizenship as a distraction from preparing students for college-level mathematics, English, and other core subjects.¹⁴

Unsurprisingly, while reading and math scores have improved in recent years, there has not been a commensurate increase in eighth-grade civics knowledge.¹⁵

The neglect of civics education is felt throughout the education system at all levels of instruction. A recent RAND report finds that only one in five social studies teachers in U.S. public schools reported feeling very well prepared to support students' civic learning.¹⁶ Between one-third and one-half of both elementary and secondary school teachers who taught social studies reported that they had not received any training in civics education.¹⁷ The RAND study also

¹⁴ U.S. Department of Education, *Advancing Civic Learning and Engagement in Democracy: A Road Map and Call to Action 1* (2012).

¹⁵ See Michael Hansen, Elizabeth Levesque, Jon Valant, Diana Quintero, *The 2018 Brown Center Report on American Education: How Well are American Students Learning?* (June 2018), https://www.brookings.edu/wp-content/uploads/2018/06/2018-Brown-Center-Report-on-American-Education_FINAL1.pdf.

¹⁶ Laura S. Hamilton, Julia H. Kaufman, Lynn Hu, *Preparing Children and Youth for Civic Life in the Era of Truth Decay: Insights from the American Teacher Panel* (2020), https://www.rand.org/pubs/research_reports/RRA112-6.html.

¹⁷ *Id.*

reveals that teachers felt pressure to focus on subjects other than civics, which hindered their attention to their students' civic development, and that most teachers agreed that they needed better resources for civic instruction and community partnerships that would help develop their students' civic engagement.¹⁸

Students need support and education for both technical and civic development. A narrow approach to promoting primarily technical education at the expense of civics instruction exacerbates the civic empowerment gap. Without sufficient education in the functioning of democratic institutions and effective means for political participation, students are left unprepared for later civic engagement. While those prioritizing job training in education view equipping students with the tools necessary in today's economy to be a means for improving students' economic prospects, civics education should not be sidelined as unnecessary or irrelevant to students' future lives. A better balance is needed—one that recognizes that civic engagement and economic prospects are often interrelated. “[I]t is the institutions and the political equilibrium of a society that determines how technology evolves, how markets function, and how the gains from various different economic arrangements are distributed.”¹⁹ Accordingly,

¹⁸ *Id.*

¹⁹ Daron Acemoglu and James Robinson, *The Rise and Fall of General Laws of Capitalism 1* (August 2014).

education in both areas is necessary, and relegating civic learning and democratic engagements to mere “add-ons” disempowers students, particularly those who already face additional challenges in society.

C. The Neglect Of Civics Education Has Contributed To A “Civic Empowerment Gap” In Which Certain Students Are Left Unable To Develop The Skills Needed To Participate In Government And Meaningfully Engage As Citizens

The failure of a state to provide *all* resident students with a robust civics education denies certain students—most often, students who are ethnic minorities, immigrants, or economically disadvantaged—the ability to actualize their potential to exercise fundamental political rights as citizens of the United States. The result is what Professor Levinson defined in her seminal work *Leave No Citizen Behind* as the “civic empowerment gap.” By denying citizens sufficient education regarding civic institutions, politics, and the means of participating in government, schools are failing to equip the next generation with the tools necessary to engage fully as citizens.

1. Neglect Of Civics Education Has Contributed To A “Civic Empowerment Gap”

The basic theory behind the civic empowerment gap is simple: “People’s capacities for civic empowerment are simply greater if they know about political structures and institutions as well as contemporary politics than if they don’t.”²⁰

²⁰ Levinson, *supra*, at 33.

The people who possess the knowledge and skills to engage in political activities possess more confidence than those who do not, which enables them to enjoy more effective civic engagement than those who are denied access to such knowledge and skills.²¹ Because knowledge is such an important aspect of later civic engagement, schools' failure to focus on civics is a fundamental source of this empowerment gap.²² Further, this absence of civic knowledge has a significant impact on people's engagement in the political sphere and, accordingly, prevents our democracy from reaching its full potential.²³

Empirical studies establish the validity of the intuitive theory underlying the civic empowerment gap, as an individual's overall level of education is widely recognized as having a strong correlation with multiple forms of civic engagement. Voting rates, for example, have for decades been directly correlated with level of education, even though the ballot should be equally accessible to all citizens regardless of schooling. In the 2018 midterm elections, fewer than 30 percent of eligible voters with less than a high school diploma voted, compared to approximately 40 percent of those who graduated high school and about 60 percent

²¹ *Id.*

²² *Id.* at 51.

²³ *Id.* at 33–34.

of voters with at least some college education—twice the representation of high school dropouts.²⁴

Individuals' level of education are also correlated with other measures of civic knowledge, skills, and behaviors or dispositions in the political sphere. One striking 2018 Pew study found that, while two-thirds of those who have a postgraduate degree and 57 percent of college graduates say they talk about politics at least weekly, only 43 percent of those with a high school diploma or less have such conversations.²⁵ The study also found that “[c]ivic knowledge varies across levels of education: 45% of those with a postgraduate degree have a high level of civic knowledge compared with 34% of college graduates, 23% of those with some college experience and just 12% of those with no college experience. Nearly half (49%) of those with no college experience score low on the index of civic knowledge.”²⁶

Similarly, as an individual's level of education increases, there is a corresponding increase in both (i) involvement with civic groups and activities;

²⁴ United States Elections Project, Voter Turnout Demographics (accessed Jan. 28, 2021) <http://www.electproject.org/home/voter-turnout/demographics>.

²⁵ Pew Research Center, Political Engagement, Knowledge, and the Midterms (April 26, 2018), <https://www.pewresearch.org/politics/2018/04/26/10-political-engagement-knowledge-and-the-midterms/>.

²⁶ *Id.*

and (ii) involvement in communication and ability to speak out in public regarding political issues in non-Internet forums and online.²⁷ The Pew study described above demonstrates a substantial difference in political participation depending on level of education. For example, only 21 percent of those with less than a high school education are likely to communicate and speak out publicly about political issues in the offline context versus 50 percent of college graduates.²⁸ Similarly, the percentage of U.S. residents over 18 who participate in civic activities such as contacting an elected official, attending a public meeting, boycotting, attending a rally, or demonstrating support for a party or candidate increases dramatically as education level increases. While only 9 percent of surveyed respondents with an education level less than a high school diploma engaged in such activities, 42 percent of respondents with a bachelor's degree or higher did so.²⁹

Although statisticians and political scientists are often quick to note that correlation does not equate to causation, the data comparing education levels with civic engagement cannot be so easily discounted. To the contrary, work by political scientist David Campbell employs statistical analysis to illustrate a

²⁷ Pew Research Center, Civic Engagement (April 25, 2013), <https://www.pewresearch.org/internet/2013/04/25/civic-engagement/>.

²⁸ *Id.*

²⁹ Corporation for National and Community Service and National Conference on Citizenship (2010).

probable causal link between education and various forms of civic engagement, including voter turnout, group memberships, tolerance, and the acquisition of political knowledge.³⁰ Specifically, Campbell's work analyzes prior empirical studies, including two natural experiment analyses that examine the introduction of compulsory education laws, and finds evidence that a formal education has a causal relationship with civic engagement. Campbell goes on to show that the link between education and civic engagement cannot be explained by the lurking variable of socioeconomic status.³¹ Nor does civics education take place entirely at home; rather, "[w]hile the home is an important environment for democratic education, what happens at home also complements what happens at school."³² As Campbell's work shows, it is reasonable to conclude that classroom education affects civic engagement in measurable ways.

³⁰ See David E. Campbell, *What is Education's Impact On Civic and Social Engagement?* 34-7 (2006), <http://www.oecd.org/education/innovation-education/37425694.pdf>.

³¹ *Id.* at 57 (empirically testing educational factors that might have an impact on civic and social engagement using the 1999 IEA Civic Education Study and finding that civic and social engagement of young people is not solely a function of socioeconomic status).

³² *Id.* at 95.

2. Students Who Are Ethnic Minorities, Immigrants, Or From Low-Income Families Are Disproportionately Represented On The Disadvantaged Side Of The Civic Empowerment Gap

The students most likely to suffer as a result of the civic empowerment gap are ethnic minorities, immigrants, or economically disadvantaged. A disproportionate number of these students attend schools that do not have sufficient resources to provide students with strong civics instruction. Education policy, reinforced by standardized testing, forces these schools to prioritize reading and math, often at the expense of civics. As a result, the students who need the most help in learning how to engage in civic life and advocate for positive change in their communities are hindered in obtaining the skills necessary to meaningfully participate in government and exercise their rights as citizens.

As described above, core disciplinary knowledge about political institutions is essential to impart students with “participatory readiness.” Assessing students’ knowledge of U.S. political institutions reveals that students overall possess low levels of civic knowledge and skills, with racial minorities at a significant disadvantage. As of 2018, only 24 percent of eighth-grade students overall in the United States performed at or above a proficient level, with 73 percent performing at least at a basic level, on the National Assessment of Educational Progress

(“NAEP”) Civics assessment.³³ Broken down by race, the data present an even more troubling picture. About 31 percent of White eighth graders, and 43 percent of Asian eighth graders, scored proficient or advanced on the NAEP Civics Assessment; only 17 percent of Whites and 12 percent of Asians scored below basic. By contrast, only ten percent of Black students and 13 percent of Hispanic students performed at a proficient or advanced level, while 48 and 39 percent, respectively, scored at a below basic level.³⁴

Analyzing voter participation rates provides further evidence of the civic empowerment gap’s disproportionate effect on minorities. Overall voter turnout in the presidential election in 2016 was 61.4 percent. Broken down by race, Whites voted at an above-average percentage (65.3 percent), while black (59.6 percent), Asian (49.3 percent), and Hispanic (47.6 percent) citizens all voted at rates less than average.³⁵ In addition, while 62 percent of U.S.-born eligible voters cast a

³³ The Nation’s Report Card, *NAEP Report Card: Civics Achievement-Level Results*, 2018.

³⁴ *Id.*

³⁵ Jens Manuel Krogstad and Mark Hugo Lopez, *Black voter turnout fell in 2016, even as a record number of Americans cast ballots*, Pew Research Center (May 12, 2017), available at: <https://www.pewresearch.org/fact-tank/2017/05/12/black-voter-turnout-fell-in-2016-even-as-a-record-number-of-americans-cast-ballots/>

ballot in the presidential election in 2016, only 54 percent of foreign-born eligible voters did.³⁶

In addition to ethnicity and immigration status, household income and wealth are directly correlated with civic participation. Studies have shown that, as household income increases, there is a correlated increase in involvement with civic groups and activities and involvement in communication and ability to speak out in public regarding political issues both online as well as offline.³⁷ These differences are stark. For example, 42% of people whose annual household income is less than \$10,000 per year are likely to get directly involved with a civic group or activity, whereas 68% of those with a household income of \$150,000 or more are likely to become directly involved with civic groups and activities. Additionally, 29% of those with an annual household income of less than \$10,000 per year are likely to communicate and speak out publicly about political issues, in the offline context. On the other hand, 61% of people with an annual household

³⁶ Abby Budiman, Luis Noe-Bustamante and Mark Hugo Lopez, *Naturalized Citizens Make Up Record One-in-Ten U.S. Eligible Voters in 2020*, Pew Research Center (Feb. 26, 2020).

³⁷ Meira Levinson, *Nurturing Engaged Citizens in a Divided Democracy*, October 31, 2018, http://www.nhcss.org/uploads/1/0/6/5/106566355/nh_civics_keynote.pdf.

income of \$150,000 or more are likely to participate in communication or speak out in a public setting about political issues.³⁸

These findings are confirmed by the recent RAND study described above analyzing the extent to which education prepares students for civic life. Specifically, survey responses received from 820 social studies teachers across the country indicated that teachers working in schools that serve higher percentages of students of color and low-income students reported less school-wide emphasis on student participation in school governance and less school-wide emphasis on discussion of controversial issues in the classroom.³⁹ These data provide direct evidence of the neglect of civics education disproportionately impacting minority and economically disadvantaged students.

3. Feelings Of Disaffection With The Political System Further Exacerbate The Civic Empowerment Gap

Further underpinning the outsized effect of the civic empowerment gap on ethnic minorities, immigrants, and the economically disadvantaged are feelings of disaffection with the political system, which itself is a direct outgrowth of the educational and political systems not delivering equal opportunity to those citizens

³⁸ *Id.*

³⁹ Hamilton, Kaufman, and Hu, *supra*.

who come from disadvantaged backgrounds.⁴⁰ It is especially important that schools attended predominantly by students of color, immigrants, and economically disadvantaged students provide a robust and quality civics education, lest pre-existing reasons to distrust in civic institutions, stemming from legacies of historical discrimination and continued racism and bias, be affirmed. Unless students are equipped with a robust understanding of our democratic institutions and experiences of effective engagement as citizens, their interest in participating in civic life or their belief that engaging in the political sphere will result in any meaningful change is likely to be negatively impacted.

The civic empowerment gap represents a fundamental threat to the ideal of all citizens having equal political rights. By failing to impart sufficient instruction in civics and democratic participation to all students, the education system creates a class of citizens who, by virtue of attending a school where insufficient resources are devoted to civics instruction, are less equipped to engage in democratic activity or with democratic institutions when they reach adulthood. Those students falling on the disadvantaged side of the gap are disproportionately students of color, immigrants, and economically disadvantaged, who already face additional challenges in society. Further, by neglecting civics instruction, schools fail to

⁴⁰ Levinson, *supra*, note 9, at 37–38.

address of disempowerment in relation to the government and the political process that many students in these groups feel as a consequence of their life experiences.

II. Improving Civics Education In Public Schools Will Help Close The Civic Empowerment Gap By Providing Students With The Tools Necessary To Engage Effectively As Citizens

As described above, our constitutional democracy requires its citizens to have the verbal skills necessary to articulate ideas and participate in debate, the commitment to the democratic system and to fellow citizens necessary to sustain democratic institutions, and the knowledge of how to use the levers of the democratic system to institute change. Investing in civics education will provide students with the knowledge, skills, and habits that allow them to participate fully in the democratic process as adults. The most promising civics education offers a consistent and coherent curriculum across the K-12 grade-span with students building their knowledge and skills on what was learned previously. The ideal curriculum connects core disciplinary knowledge of the legislative process (*e.g.*, “how a bill becomes a law”) to broader topics such as U.S. history, how to use communication to bridge differences and collaborate effectively, and media literacy. In addition, effective civics learning also incorporates hands-on experience in democracy itself with programs that include civics projects, service

learning, student government, debate training, and participatory budgeting.⁴¹

Providing students with a robust education in civics would help close the civic empowerment gap that currently persists for two reasons:

First, imparting students with the three tools of “participatory readiness” Professor Allen describes provides students with the potential to be more engaged citizens as adults. Civic participation—whether as voters, jurors, or individuals working to make changes in their communities—requires a working knowledge of our democratic institutions and political functions. Robust civics education would provide this prerequisite knowledge. Participatory readiness demands not just broader exposure to certain categories of content, but also deeper “efforts to master . . . critical thinking and problem solving, collaboration, effective communication, [and] self-directed learning.”⁴² Effective citizens must be capable, for example, of judging how the government is meeting its responsibilities and, if the government is not, how to change direction via discussion, debate, and collaborative action among citizens. Robust civics education is necessary to provide these skills.

⁴¹ See The Commission on the Practice of Democratic Citizenship, *Our Common Purpose: Reinventing American Democracy for the 21st Century*, Recommendation 6.5-Invest in Civic Education (2020).

⁴² Peter Levine & Kei Kawashima-Ginsberg, Civic Education and Deeper Learning 1-2 (2015), <https://files.eric.ed.gov/fulltext/ED559676.pdf>.

Second, in addition to providing students with the skills necessary to engage in civic life, a civics education focused on participatory readiness will help build both internal and external efficacy, and provide a basis for historically disadvantaged groups to reconnect to political life and civic institutions. Learning about those social movements in history where disadvantaged communities have organized and engaged in civic life to promote the cause of equality and the positive change those movements have effected can counteract the sense of disempowerment many students have developed as a result of their life experience or the experiences of others in their communities.

To impart the requisite tools necessary for students to engage fully as citizens, civics education must take a significant place in the public school curriculum, akin to that enjoyed by reading and math today. “[I]t is absurd to think that by offering civics education only a few times over the course of a child’s education, we will reliably enable and encourage students to become active, engaged citizens.”⁴³ Closing the civic empowerment gap requires that civics education begin in elementary schools and be a regular part of education through twelfth grade and beyond.⁴⁴ The broader education system in the United States is

⁴³ Levinson, *supra*, note 9, at 53.

⁴⁴ *Id.*

inadequate in this regard, and schools are failing to make ready those that should be equally prepared to contribute to our democracy.

CONCLUSION

For these reasons, Professors Allen and Levinson respectfully request that the Court reverse the district court's ruling.

Dated: February 1, 2021

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CERTIFICATES

Nicholas L. Ingros, attorney for Amici Curiae Professors Danielle Allen and Meira Levinson hereby certify as follows:

1. This document complies with the word limit of Federal Rule of Appellate Procedure 29(a)(5) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 5,524 words.
2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14 point Times New Roman font.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: February 1, 2021
New York, New York

/s/ Nicholas L. Ingros

Nicholas L. Ingros
Attorney for Amici Curiae
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Professor Meira Levinson

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Brief of Amici Curiae Professor Danielle Allen and Professor Meira Levinson was filed electronically with the Court via the Court's CM/ECF system and service was made on all counsel of record via the Court's CM/ECF system.

Dated: February 1, 2021

/s/ William T. Russell, Jr.

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