

20-2082

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.

GINA M. RAIMONDO, in her official capacity as Governor of the State of Rhode Island; NICHOLAS A. MATTIELLO, in his official capacity as Speaker of the Rhode Island House of Representatives; DOMINICK J. RUGGERIO, in his official capacity as President of the Rhode Island Senate; RHODE ISLAND STATE BOARD OF EDUCATION; COUNCIL ON ELEMENTARY AND SECONDARY EDUCATION; ANGELICA INFANTE-GREEN, in her official capacity as Commissioner of Education of the State of Rhode Island,

Defendants - Appellees.

On appeal from the United States District Court for the District of Rhode Island

**BRIEF OF AMICI CURIAE NATIONAL LEAGUE OF
WOMEN VOTERS, LEAGUE OF WOMEN VOTERS OF**

**RHODE ISLAND AND AMERICAN CIVIL LIBERTIES
UNION OF RHODE ISLAND
IN SUPPORT OF APPELLANTS AND REVERSAL**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel for the National League of Women Voters, the League of Women Voters of Rhode Island, and the American Civil Liberties Union of Rhode Island certifies that each is a not-for-profit corporation, none has a corporate parent, none issues stock, and no publicly held corporation owns 10% or more of any of them, individually or collectively.

February 1, 2021

/s/ Andrew M. Troop

Andrew M. Troop

COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 29(A)

Pursuant to Federal Rule of Appellate Procedure 29(a)(2) and (4), the undersigned confirms that all parties have consented to this filing of this *amicus* brief, no party's counsel authored the brief in whole or in part, and no party, party's counsel, or person contributed money intended to fund preparing or submitting the brief.

February 1, 2021

/s/ Andrew M. Troop

Andrew M. Troop

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IDENTIFICATION AND INTEREST OF *AMICI CURIAE*

The National League of Women Voters (the “LWVUS”) and the League of Women Voters of Rhode Island (the “LWVRI”) (collectively, the “LWV”) are nonpartisan, grassroots organizations that encourage informed and active participation in government, work to increase understanding of major public policy issues, and influence public policy through education and advocacy. The LWVUS was founded in 1920, six months before ratification of the Nineteenth Amendment to the U.S. Constitution, which gave women the right to vote.

One of the LWV’s core activities is to provide voters with access to election information on federal, state, and local races through voter guides and candidate forums and debates through its sister organization, LWV Education Fund. In 2006, the LWV launched the next generation of online voter education with VOTE411.org, a “one-stop-shop” for election-related information, providing nonpartisan, general and state-specific information to the public, including a nationwide polling place locator, absentee ballot information, ballot measure information, etc. Since its inception, VOTE411.org has supplied approximately 40 million people with an expanding range of information about candidates at the state and local levels and up-to-date election rules for all 50 states in every election year. In 2018, VOTE411.org served over 5 million individuals and proved to be one of the most stable and reliable platforms throughout the primary season as well as on Election Day. In addition,

the LWVRI has held forums on corruption and ethics in Rhode Island and on ballot questions for upcoming elections. In 2020 alone, the LWV and their affiliates sponsored more than 12,000 election related activities, including panel discussions, townhalls, forums, rallies, and press conferences.

The American Civil Liberties Union of Rhode Island (“ACLU-RI”) is a non-profit, non-partisan organization with over 5,000 members, dedicated to promoting the principles of liberty and equality embodied in both the United States and Rhode Island Constitutions as well as state and federal civil rights laws. In furtherance of these principles, ACLU-RI has appeared before this Court, both as direct counsel and as amicus curiae, in dozens of cases involving constitutional and statutory civil rights issues, including litigation addressing the fundamental importance of the right to the franchise. *See, e.g., Davidson v. City of Cranston*, 837 F.3d 135 (1st Cir. 2016) (challenging the practice of “prison-based gerrymandering”); *Common Cause Rhode Island v. Gorbea*, 970 F.3d 11 (1st Cir.), *stay denied*, 141 S. Ct. 20 (2020) (upholding waiver of witness/notary requirement to vote by mail ballot during the Covid-19 pandemic). ACLU-RI also has been involved over the years as amicus and counsel in cases seeking to rectify documented inequities in the provision of public education. *See, e.g., City of Pawtucket v. Sundlun*, 662 A.2d 40 (R.I. 1995) (amicus brief in support of challenge to state’s method of funding public education); *L, S, and A v. R.I. Board of Educ.*, PC 2020-02619 (R.I. Superior Court, Bristol Cty

2020) (challenge to school district’s lack of adequate instructional services to English Language Learners).

Because Rhode Island fails to provide students with a basic civic education, *Amici* have had to divert resources into activities that should be the responsibility of the state, such as providing basic information about voter registration and voting rights, rather than specific information about candidates and current issues. For example, the ACLU-RI has been compelled to publish and widely disseminate “know your rights” voting pamphlets, organize panels and other public events to explain voting issues, and use social media to inform Rhode Islanders of their voting rights. Similarly, LWV has had to produce voter registration training materials for Leagues and other groups interested in registering high school students, and LWV has engaged in direct voter registration efforts targeted to high schools, community colleges, communities of color, and low-income communities. LWVRI has also had to encourage teachers to incorporate civics into their classrooms through the Susan B. Wilson Civic Education Merit Awards.

Amici have a strong interest in ensuring that all students have a meaningful opportunity to obtain an education adequate to prepare them to be capable citizens. A quality public education is a civil right that is essential for a strong, viable, and sustainable democratic society.

PRELIMINARY STATEMENT

Amici respectfully submit this brief in support of the appeal by Plaintiffs/Appellants, students from Rhode Island (the “Students”), from the District Court’s dismissal of their complaint alleging the State of Rhode Island has denied their fundamental right to an education that prepares them to effectively exercise the right to vote, to free speech, and other constitutional rights.

The importance of ensuring that all students receive an education that prepares them to function productively as civic participants in our democracy – including as voters – has never been clearer. Even before the recent attack on the nation’s Capitol, many observers including Chief Justice Roberts proposed civic education as part of the solution to the risks currently facing American democracy.¹ The events of January 6, 2021 underscore the deep misunderstandings that many Americans have about our democratic institutions, the electoral process, and the importance of the rule of law – core elements of a civic education.²

The Supreme Court has long recognized “public schools as a most vital civic institution for the preservation of a democratic system of government, and as the

¹ See, e.g., John G. Roberts, Jr., 2019 Year-End Report on the Federal Judiciary, Dec. 31, 2019 (<https://www.supremecourt.gov/publicinfo/year-end/2019year-endreport.pdf>); Charles Salter, We Americans Risk Losing the Ability to Govern Ourselves. Better Civics Education Can Help, EDUCATION WEEK, Nov. 24, 2020 (available at <https://www.edweek.org/teaching-learning/opinion-we-americans-risk-losing-the-ability-to-govern-ourselves-better-civics-education-can-help/2020/11>).

² See, e.g., Lauren Leader & Mark K. Updegrave, We can’t ignore alarms about the need for civics education any longer, THE HILL, Jan. 12, 2021 (available at <https://thehill.com/opinion/white-house/533642-we-cant-ignore-alarms-about-the-need-for-civics-education-any-longer>).

primary vehicle for transmitting the values on which our society rests.” *Plyler v. Doe*, 457 U.S. 202, 221 (1982) (internal quotation marks and citations omitted). But the Supreme Court “has not yet definitively settled the questions whether a minimally adequate education is a fundamental right and whether a statute alleged to discriminatorily infringe that right should be accorded heightened equal protection review.” *Papasan v. Allain*, 478 U.S. 265, 285 (1986). The Students explicitly request that this court answer those questions in the affirmative, and *Amici* agree.

The failure to provide students with a meaningful opportunity to obtain a civic education that prepares them to be informed, capable voters impinges upon their right to vote. The right to vote is fundamental under the United States Constitution and protection of that right extends beyond mere access to the ballot box.³ Social science research over the last fifty years has shown a powerful and robust causal connection between voter participation and education, particularly civic education. Students who are denied an adequate civic education are much less likely to vote, diluting their political power within our democratic system. For these reasons, among others, an adequate civic education is a fundamental right and its deprivation by the State of Rhode Island requires heightened scrutiny by courts. Significantly, majoritarian political processes are unlikely to address this deficiency in Rhode

³ See *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (“[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”).

Island’s educational system because the denial of the education about which the Students complain is the very cause of their powerlessness to obtain redress through the political process.

Moreover, the expansion of the right to vote – from a privilege afforded only to white male property holders when the Constitution was adopted, to a right that today is widely held and accepted as fundamental to an inclusive democracy – requires a corresponding expansion of the right to education. This Court should recognize the right of all students to an education that prepares them to be capable voters.

ARGUMENT

I. ALL STUDENTS HAVE A FUNDAMENTAL RIGHT TO AN EDUCATION THAT PREPARES THEM TO ENJOY FULL PARTICIPATION IN THE POLITICAL PROCESS

In *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 55 (1973), the Supreme Court held that Texas’s system of funding public schools through local property taxes was rationally related to a legitimate state purpose. In a strong dissent, Justice Marshall argued that the majority should have applied strict scrutiny because “[e]ducation serves the essential function of instilling in our young an understanding of and appreciation for the principles and operation of our governmental processes.... Indeed, it has frequently been suggested that education

is the dominant factor affecting political consciousness and participation.” *Id.* at 113 (footnotes and citations omitted).

Writing for the majority, Justice Powell responded, “We need not dispute” this proposition because “[e]ven if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either right, we have no indication that the present levels of educational expenditures in Texas provide an education that falls short.” *Id.* at 36-37. In other words, “no charge fairly could be made that the [Texas] system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process.” *Id.* at 37. Thus, the Supreme Court left undecided whether the Constitution guarantees all students the right to an education that prepares them to meaningfully exercise other constitutional rights, such as freedom of speech and the right to vote.

Nearly fifty years later, a panel of the United States Court of Appeals for the Sixth Circuit held that “the Constitution provides a fundamental right to a basic minimum education.” *Gary B. v. Whitmer*, 957 F.3d 616, 642 (6th Cir.), *reh'g en banc granted, opinion vacated*, 958 F.3d 1216 (6th Cir. 2020). Although the plaintiffs in *Gary B.* defined a basic minimum education as “one that provides a chance at foundational literacy,” *id.* at 621, the principles underlying the panel’s decision apply equally here.

Specifically, the court in *Gary B.* found that “a basic minimum education ... is fundamental because it is necessary for even the most limited participation in our country’s democracy.” *Id.* at 652. “[A]ccess to literacy is itself fundamental because it is essential to the enjoyment of these other fundamental rights, such as participation in the political process. And ‘the political franchise’ is perhaps the most fundamental of all such rights, because it is the central element of our democracy.” *Id.* at 653 (citing *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 667 (1966); *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)).

The District Court in this case found it “difficult to disagree with the premise that education, and particularly literacy, is critical to participation in democratic society, the exercise of First Amendment rights, as well as to the voting franchise....” *A.C. v. Raimondo*, C.A. No. 18-645 WES, 2020 WL 6042105, at *17 (D.R.I. Oct. 13, 2020). However, the court distinguished *Gary B.* on the grounds that the “imperative[s] for citizen participation in a functioning democracy,” such as voting, taxes, and jury duty “are all indeed ‘inaccessible without a basic level of literacy’ — but they are not wholly inaccessible without civics education.” *Id.*

This was error for two reasons. First, the District Court oversimplified the Students’ demands to one for “civics education.” However, the Complaint alleges that the Students have been denied “a meaningful opportunity to obtain the degree

of education that is necessary to prepare them to be capable voters and jurors, to exercise effectively their right of free speech, and other constitutional rights, to participate effectively and intelligently in our open political system and to function productively as civic participants.” Complaint ¶ 122. Almost by definition, the denial of the basic education necessary to effectively exercise constitutional rights – which includes, but is not limited to, literacy – impinges on those rights.

Second, a law need not make fundamental rights, such as the right to vote, “wholly inaccessible” to constitute unconstitutional infringement. On the contrary, the Supreme Court has held that “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964); see e.g., *Baker v. Carr*, 369 U.S. 186 (1962) (striking down state apportionment statute); *Gray v. Sanders*, 372 U.S. 368 (1963) (striking down county unit system for counting votes).

The same is true in the First Amendment context, where the Supreme Court has struck down laws that do not wholly prohibit – but still impinge upon – the exercise of a fundamental right. See e.g. *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 463 (1958) (holding unconstitutional a requirement that an association produce records including names and addresses of all members and agents because it “may induce members to withdraw from the Association and dissuade others from

joining it”); *Lamont v. Postmaster General of U.S.*, 381 U.S. 301, 307 (1965) (holding unconstitutional a statute requiring the post office to detain and destroy unsealed mail determined to be communist propaganda unless the addressee returned a reply card indicating a desire to receive the mail because it was “almost certain to have a deterrent effect”); *see also NAACP v. Button*, 371 U.S. 415, 433 (1963) (“The threat of sanctions may deter [the exercise of First Amendment freedoms] almost as potently as the actual application of sanctions.”).

II. NEW INSIGHTS AND SOCIETAL UNDERSTANDINGS SUPPORT THE RIGHT TO A BASIC CIVIC EDUCATION

The Supreme Court has described the protections of the Fourteenth Amendment’s Due Process Clause as extending to “those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition, . . . and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted, internal quotation marks omitted). “The identification and protection of fundamental rights . . . requires courts to exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect.... History and tradition guide and discipline this inquiry but do not set its outer boundaries.” *Obergefell v. Hodges*, 576 U.S. 644, 663–64 (2015) (internal citations omitted). Similarly, “the Court has recognized that new insights

and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged.” *Id.* at 673.

Social science research over the last fifty years, as well as *Amici’s* direct experience, show a clear connection between education – particularly civic education – and voter participation that requires application of strict scrutiny to the Students’ claims. Because elected officials generally focus on the interests of *voters* over the interests of nonvoters,⁴ “it is unsurprising that our political process ... would fail to address a lack of access to education that is endemic to a discrete population. The affected group ... is especially vulnerable and faces a built-in disadvantage at seeking political recourse.... This double bind provides increased justification for heightened judicial scrutiny and recognition of the right as fundamental.” *Gary B.*, 957 F.3d at 655-56 (citing *Rodriguez*, 411 U.S. at 28, and *Schuette v. Coal. to Defend Affirmative Action, Integration & Immigrant Rights & Fight for Equal. by Any Means Necessary*, 572 U.S. 291, 334-35 (2014)); see *Plyler*, 457 U.S. at 233 (Blackmun, J., concurring) (a citizen cannot hope to achieve any meaningful degree of political equality if granted “an inferior right of participation in the political process”).⁵

⁴ Paul S. Martin, *Voting’s Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money*, 47 AM. J. POL. SCI. 110, 111 (2003); see also John D. Griffin & Brian Newman, *Are Voters Better Represented?*, 67 J. POL. 1206 (2005) (finding that voter preferences predict roll-call votes in the United States Senate, but nonvoter preferences do not).

⁵ As the court noted in *Gary B.*, “though this [analysis] partakes of both the equal protection and due process inquiries, the Supreme Court endorsed such an approach in *Obergefell*, which discussed the partial convergence

A. Social Science Research Demonstrates A Powerful and Robust Causal Relationship Between Education and Voter Participation

In the almost fifty years since *Rodriguez* was decided, “[t]he relationship between education and voter turnout” has become one of “the most extensively documented correlations in American survey research.”⁶ Researchers have found not only a consistently significant, positive correlation between high school educational attainment and voting, but that the relationship is causal – *i.e.*, controlling for other factors, greater educational attainment causes increased voter participation.⁷

Social science also confirms the undeniable impact of civic education specifically on voter participation. In one study, for example, students who completed a year of American government or civics were 3-6 percentage points more likely to vote than peers without such a course.⁸ This effect is even more pronounced

of the Fourteenth Amendment’s Equal Protection and Due Process Clauses.” *Gary B.*, 957 at 656 n.16 (citing *Obergefell*, 576 U.S. at 672).

⁶ Rachel Milstein Sondheimer & Donald P. Green, *Using Experiments to Estimate the Effects of Education on Voter Turnout*, 54 AMER. J. OF POL. SCI. 174, 174 (2010) (collecting studies); *see also e.g.*, Lucy Caffrey-Maffei, *Education, Self-Importance, and the Propensity for Political Participation in the United States*, PERCEPTIONS, Feb. 2019 (finding that only 43% of those with less than a high school degree voted in the 2000 election compared to 67.8% for those with a high school degree); Eric R. Hansen & Andrew Tyner, *Educational Attainment and Social Norms of Voting*, POL. BEHAVIOR, Oct. 8, 2019 (analyzing data from the 2016 American National Election Study, finding that 37% of those without a high school degree believe voting is a civic duty, whereas almost double those with postgraduate degrees held this view).

⁷ Sondheimer & Green, *supra* n.6 at 185.

⁸ *See* Jennifer Bachner, *From Classroom to Voting Booth: The Effect of High School Civic Education on Turnout*, Sept. 2010 (available at <https://www.yumpu.com/en/document/view/22052026/the-effect-of-high-school-civic-education-on-turnout-harvard->). Various American government and civics curricula have been shown to increase voting. *See* Amy K. Syversten, Michael D. Stout, and Constance A. Flanagan, *Using Elections as Teachable Moments: A Randomized Evaluation of the Student Voices Civic Education Program*, Am. J. of Ed. 116, Nov. 2009 (randomized trial of 1,670 high school students in 80 social studies classrooms found “Student Voices”, an election-based civics program, had “significant effects of the program on students’ self-reported ability to cast an informed vote, knowledge of the voter registration process, belief that their vote matters, communication with

among students who do not discuss politics at home,⁹ because civics courses can serve as the “failsafe” for students who would not otherwise have any political socialization from their family or community. Youth who reported having been encouraged to vote or taught how to register in high school are more likely to vote and participate in other civic activities, more knowledgeable about voting processes, and were more attentive to the 2020 election than other youth.¹⁰ Students who had not received encouragement to vote from teachers in high school were more than twice as likely to agree with the statement “Voting is a waste of time” as those who had been encouraged.¹¹ Similarly, one in four young people whose high school years lacked this form of civic encouragement agreed with the statement “I don’t know enough to vote”; this rate dropped ten percentage points (to 15%) among youth whose high school teachers had offered encouragement to vote.¹²

others at school about politics, sense of civic obligation, and media use and analysis.”); Michael McDevitt & Spiro Kiouisis, *Experiments in Political Socialization: Kids Voting USA as a Model for Civic Education Reform*, Center for Information & Research on Civil Learning and Engagement (hereinafter C.I.R.C.L.E.) Working Paper 49, August 2006, (available at <https://files.eric.ed.gov/fulltext/ED494074.pdf>) (study analyzing effects of Kids Voting USA, a civics curriculum that is interactive and election based, found that KVUSA curriculum increased political discussion in the home, which in turn increased likelihood of voting once student reached voting age, with past participants showing a 73% voting rate); see also C.I.R.C.L.E., *Did Civic Education Laws Affect Youth Turnout in 2012?*, November 28, 2012, <https://circle.tufts.edu/latest-research/did-civic-education-laws-affect-youth-turnout-2012/> (study found voters in the 18-29 age-groups who lived in states that had strengthened civics or government requirements were more likely to vote than those who lived in states that weakened such requirements.).

⁹ Bachner at 1 (finding a 6- to 15-point increase in the probability of voting for those who received a civics course but do not discuss politics at home).

¹⁰ C.I.R.C.L.E., *Poll, Youth Who Learned about Voting in High School More likely to Become Informed and Engaged Voters*, June 30, 2020, <https://circle.tufts.edu/latest-research/youth-who-learned-about-voting-high-school-more-likely-become-informed-and-engaged>.

¹¹ *Id.*

¹² *Id.*; see also Jan Leighley & Jonathan Nagler, *Increase Turnout by Informing Voters About Policy Differences*, STANFORD SOCIAL INNOVATION REVIEW, Mar. 14, 2016 (available at https://ssir.org/articles/entry/increase_turnout_by_informing_voters_about_policy_differences#) (“Individuals

The causal connection between voting and civic education is recognized worldwide. The United Nations’ ACE Electoral Knowledge Network has noted “a general, international consensus on the importance of voter education,”¹³ which “provides the background attitudes, behaviour, and knowledge amongst citizens that stimulate and consolidate democracy.”¹⁴ As the Special Adviser to the United Nation’s Secretary General on Gender Issues and Advancement of Women has written, “In every election, voter and civic education are necessary to ensure that all constituents—men and women alike—understand their rights, their political system, the contests they are being asked to decide, and how and where to vote.”¹⁵ Thus, “[f]or an election to be successful and democratic, voters must understand their rights and responsibilities, and must be sufficiently knowledgeable and well informed to cast ballots that are legally valid and to participate meaningfully in the voting process.”¹⁶

Voters who lack a basic civic education can also be disenfranchised because they fail to properly register or cast a ballot. For example, one study found that in 2008, 21% of people ages 18-29 were unable to vote because they had missed the

with higher levels of education, for example, are more likely to vote than individuals with less education, in part due to higher levels of information about how and where to vote, how elections work, and the candidates and issues in the election at hand.”).

¹³ United Nations’ ACE Electoral Knowledge Network, <https://aceproject.org/ace-en/topics/ve/vec/vec01>.

¹⁴ United Nations’ ACE Electoral Knowledge Network, <https://aceproject.org/ace-en/topics/ve/default>.

¹⁵ United Nations Office of the Special Adviser on Gender Issues and Advancement of Women, WOMEN & ELECTIONS, Ch. 5, p. 56 (2005) (available at <https://www.un.org/womenwatch/osagi/wps/publication/WomenAndElections.pdf>).

¹⁶ *Id.*

registration deadline.¹⁷ Another study conducted in 2020 found that 32% of people aged 18-24 said they did not know if their state allowed online voter registration, and among those who answered yes or no, 25% were wrong.¹⁸ In the 2020 primaries, more than 550,000 absentee ballots were rejected, in most cases because either a required signature was missing or did not match the signature on record, or because the ballot arrived after the deadline.¹⁹ Civic education courses typically teach the basic rules around voter registration and casting a ballot, and would therefore reduce the information gaps that can effectively prevent someone from voting.²⁰

B. Amici Have Direct Knowledge of the Connection Between Civic Education and Voting

Besides these studies, *Amici* have developed direct knowledge of the powerful connection between civic education and voting through their decades of experience encouraging informed voting. In addition to providing election information to tens of millions of voters through the Vote411.org website, LWV holds panels and discussions on civic issues and voter information, provides training materials on voter registration drives for high school students, and conducts public awareness

¹⁷ Surbhi Godsay, *Voter Registration Among Young People in 2008*, C.I.R.C.L.E., November 2010, https://circle.tufts.edu/sites/default/files/2019-12/FS_VoterRegistrationYoungPeople2008_2010.pdf.

¹⁸ C.I.R.C.L.E., *Poll: Young People Believe They Can Lead Change in Unprecedented Election Cycle*, June 30, 2020, <https://circle.tufts.edu/latest-research/poll-young-people-believe-they-can-lead-change-unprecedented-election-cycle>.

¹⁹ Pam Fessler and Elena Moore, *More Than 550,000 Primary Absentee Ballots Rejected In 2020, Far Outpacing 2016*, NPR, August 22, 2020.

²⁰ See Sarah Shapiro and Catherine Brown, *The State of Civics Education*, Center for American Progress, February 21, 2018.

campaigns. These programs and research have shown that nonpartisan voter education can have a direct, positive impact on voter participation. Multiple studies and registration programs have found that educational outreach from nonpartisan groups like the League increases voter turnout, especially among young people.

For example, in 2019, a pilot project between LWVEF and the LWV of New Jersey showed up to a full percent increase in turnout among primary voters who received communications directly from the League – a significant increase in an off-year election. Subsequent programs in the 2019 general and 2020 primary elections showed similar results – with voters targeted in several key states (Texas, Virginia, Colorado) voting at higher relative rates when they were contacted by the League.²¹

In another example from 2018, the LWV of Montgomery County, MD measured the effect on voting behavior of the direct distribution of LWV’s Voters’ Guide to selected voters. The study demonstrated that voters who received an LWV Voters’ Guide are more confident that they have sufficient information about the candidates and are more likely to vote in more of the contests on the ballot when compared to voters in general.

²¹ These analyses, conducted with publicly available voter file data, were completed by comparing the turnout of voters targeted by the League against an identical-looking control group of voters. While they represent relatively small universes of voters and were not conducted as rigorous scientific studies, they do consistently – over three consecutive election cycles – demonstrate that direct voter contact and get-out-the-vote activities are key in buttressing civic education and increasing voters’ access to vital information they need to vote.

III. THE NATION’S STEADY EXPANSION OF THE FRANCHISE REQUIRES EXPANDING ACCESS TO CIVIC EDUCATION

In addition to new insight regarding the connection between education and voter participation, societal understandings have changed since the framing of the Constitution to include a far more inclusive concept of the voting franchise. While the District Court correctly noted that public schools were not established nationwide until the mid-1800s, the Students are also correct that when the Constitution was adopted, the right to vote was limited primarily to white male property owners. *See* Pl. Br. at 42 n.16. The District Court’s analysis of the history and tradition of public education ignores the steady expansion of the right to vote. Given the “fundamentally important value” of education as “the foundation of an informed citizenry that can effectively participate in a republican form of government,” *A.C. v. Raimondo* at *10, the expansion of who is and who should be eligible to participate in our democracy requires a corresponding expansion of the right to a basic civic education.

In addition to the Equal Protection, Due Process, and Privileges and Immunities Clauses of the Fourteenth Amendment, the Fifteenth Amendment explicitly prohibits the “deni[al] or abridge[ment]” of the right to vote “on account of race, color, or previous condition of servitude.” U.S. Const., Amend. 15. Fifty years later, in 1920, the Nineteenth Amendment expanded the franchise to women. U.S. Const., Amend. 19. The Twenty-Fourth Amendment, adopted in 1964, barred

the use of poll taxes for federal elections, *see* U.S. Const., Amend. 24, and the Supreme Court expanded the proscription to state elections in *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666 (1966) (“We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard.”). The Twenty-Sixth Amendment reduced the voting age to 18, U.S. Const., Amend. 26, and the landmark Voting Rights Act, first passed in 1965 and subsequently reauthorized several times, includes myriad provisions aimed at prohibiting restrictions on the franchise.

Who has the right to vote has expanded steadily and significantly since the adoption of the Constitution. Because “some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence,” *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972), it follows that as the universe of citizens eligible to participate in our political system has expanded, the mandate to provide all students with an education necessary to participate effectively and intelligently in that system must similarly expand.

CONCLUSION

For the foregoing reasons as well as the reasons set forth in the Students’ brief, the District Court’s order dismissing the Students’ Complaint should be reversed.

Dated: New York, New York
February 1, 2021

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 32(a)(7)(C) and 28.1(e)(3), the undersigned certifies that this brief complies with the applicable type-volume limitations. This brief was prepared using a proportionally spaced type (Times New Roman, 14 point). Exclusive of the portions exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 4,696 words. This certificate was prepared in reliance on the word-count function of the word-processing system (Microsoft Word) used to prepare this brief.

February 1, 2021

/s/ Andrew M. Troop
Andrew M. Troop

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the CM/ECF system and service was made on all counsel of record via the Court's CM/ECF system.

Dated: February 1, 2021

/s/ Andrew M. Troop
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