

**UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND**

A.C., *et al.*  
Plaintiffs,

v.

Gina M. Raimondo, *et al.*  
Defendants.

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:

Case No.: 1:18-cv-00645-WES-PAS

**Motion for Leave to File Amici Curiae Brief by**

**The Campaign for the Civic Mission of the Schools;  
The Center for Information and Research on Civic Learning and Engagement  
(CIRCLE);  
The Lou Frey Institute;  
The Civic Engagement Research Group (CERG);  
Professor Sam Wineburg; and  
Professor David Campbell**

Now comes the The Campaign for the Civic Mission of the Schools; The Center for Information and Research on Civic Learning and Engagement (CIRCLE); The Lou Frey Institute; The Civic Engagement Research Group (CERG); Professor Sam Wineburg; and Professor David Campbell (“Amici”), and seek leave to file an Amici Curiae Brief in the form appended hereto.

*Amici* are four leading national organizations and two university professors involved in research and policy analysis of issues related to civic education and the role of the schools in preparing students for productive citizenship.

*Amici* submit this brief to inform the Court of the consensus of leading scholars, educators, policy makers and research institutes throughout the country regarding the full range of knowledge, skills, experiences, and values that schools need to convey to students in order to prepare them to function productively as civic participants.

Dated: May 24, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed through the ECF system and will be sent electronically to the registered participants identified on the Notice of Electronic Filing (NEF) and that paper copies have been sent to those indicated as non-registered participants (if applicable) on this 24<sup>th</sup> day of May, 2019.

/s/ Gerard P. Cobleigh

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**BRIEF OF AMICI CURIAE THE CAMPAIGN FOR THE CIVIC MISSION OF SCHOOLS, THE CENTER FOR INFORMATION AND RESEARCH ON CIVIC LEARNING AND ENGAGEMENT, THE CIVIC ENGAGEMENT RESEARCH GROUP, THE LOU FREY INSTITUTE, PROFESSOR DAVID CAMPBELL, AND PROFESSOR SAM WINEBURG, IN SUPPORT OF PLAINTIFFS’ MEMORANDUM IN OPPOSITION TO THE JOINT MOTION TO DISMISS**

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## **IDENTITY AND INTERESTS OF *AMICI CURIAE***

*Amici* are four leading national organizations and two university professors involved in research and policy analysis of issues related to civic education and the role of the schools in preparing students for productive citizenship. Specifically, they are:

*The Campaign for the Civic Mission of Schools*, based in Washington, D.C. is a coalition of 60 national organizations that are working together to strengthen and improve civic learning for every student in the nation. The Campaign serves as the public advocacy and policy arm of the national civic learning community. It was a co-author and publisher of the 2011 report, “Guardian of Democracy: The Civic Mission of Schools,” which is widely recognized as the most influential statement of national policy on the role of the schools in preparing students to function productively as civic participants.

*The Center for Information and Research on Civic Learning and Engagement (CIRCLE)*, based at the Jonathan M. Tisch College of Civic Life at Tufts University, conducts research on the civic and political engagement of young Americans. CIRCLE is the leading source in the nation of authoritative research on the civic and political engagement of young Americans, and works nationally with youth-serving organizations to help them understand and assess the impact of their programming, as well as to make the case for policy and infrastructure that supports youth engagement.

*The Civic Engagement Research Group*, at the University of California, Riverside, conducts quantitative and qualitative research focused on understanding the nature of youth civic engagement, the impact of civic learning opportunities and digital media participation on young people’s civic capacities and commitments, and the quantity, quality, and equality of civic opportunities and outcomes in public schools and other contexts.

*The Lou Frey Institute*, based at the University of Central Florida, promotes the development of enlightened, responsible, and actively engaged citizens through research, policy analysis, training and advocacy. The Institute undertakes extensive professional development programs for teacher development in civics and develops civic educational materials for students that encourage thoughtful debate and discussion about current policy issues, and that build civic and political skills.

*Professor David Campbell* is the Packey J. Dee Professor of American Democracy at the University of Notre Dame and chairperson of the political science department. Professor Campbell's research includes a focus on political participation, civic engagement, and political behavior.

*Professor Sam Wineburg* is the Margaret Jacks Professor of Education (and, by courtesy) of History & American Studies at Stanford University and head of Stanford's History Education Group. Professor Wineburg's current scholarship focuses on how today's youth learn about the world through digital media and judge the credibility of digital content.

*Amici* submit this brief to inform the Court of the consensus of leading scholars, educators, policy makers and research institutes throughout the country regarding the full range of knowledge, skills, experiences, and values that schools need to convey to students in order to prepare them to function productively as civic participants.

None of the *amici*, nor any other person, contributed any money to fund preparing or submitting this brief. Each of the *amici* is authorized to file this brief by the procedures of their respective institutions, but the positions taken herein do not necessarily represent the positions of these institutions.

## INTRODUCTION AND SUMMARY OF THE DISCUSSION

A 2016 study reported in *The Washington Post* revealed that 46% of American citizens either “never had” or had “lost faith” in American democracy.<sup>1</sup> Another recent study found that, among the population born after 1980, when asked how “essential” it is for them to live in a democracy, only about 30% gave the question the maximum score of 10, compared to 72% of people born before World War II, who gave the question a maximum score. Among the same post-1980 population, 26% of Americans reported that it is “unimportant” in a democracy for people to “choose their leaders in free elections.”<sup>2</sup> These studies, and many others like them,<sup>3</sup> are a stark indication of the growing culture of political apathy and increasing erosion of trust and confidence in America’s leaders and political institutions, especially among the nation’s youth.<sup>4</sup>

Given these growing trends, it is unsurprising that political participation is suffering. Voting, once considered a primary civic duty, is viewed as a choice by America’s youth,<sup>5</sup> with consistently lower voting rates among the youngest segment of the voting population.<sup>6</sup> Volunteerism and membership in community organizations, once fundamental expressions of civic involvement, have likewise diminished, along with compliance with civic obligations, such

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<sup>1</sup> Nathaniel Persily & Jon Cohen, Opinion, *Americans Are Losing Faith in Democracy—And in Each Other*, Wash. Post (Oct. 14, 2016), [https://www.washingtonpost.com/opinions/americans-are-losing-faith-in-democracy--and-in-each-other/2016/10/14/b35234ea-90c6-11e6-9c52-0b10449e33c4\\_story.html?utm\\_term=.308071988730](https://www.washingtonpost.com/opinions/americans-are-losing-faith-in-democracy--and-in-each-other/2016/10/14/b35234ea-90c6-11e6-9c52-0b10449e33c4_story.html?utm_term=.308071988730).

<sup>2</sup> Reoberto Stefan Fao & Yascha Mounk, *The Democratic Disconnect*, 27 J. Democracy 5, 7-8 (2016).

<sup>3</sup> See generally *id.*; see also generally Reoberto Stefan Fao & Yascha Mounk, *The Signs of Deconsolidation*, 28 J. Democracy 5 (2017).

<sup>4</sup> See Meira Levinson, *No Citizen Left Behind* 27-28 (2012).

<sup>5</sup> See Ariel Edwards-Levy, *Millennials Really Don’t Think Everybody Should Vote*, Huffington Post (Nov. 21, 2014), [http://www.huffingtonpost.com/2014/11/21/young-voters\\_n\\_6200852.html](http://www.huffingtonpost.com/2014/11/21/young-voters_n_6200852.html).

<sup>6</sup> See Thom File, *Young-Adult Voting: An Analysis of Presidential Elections, 1964–2012*, U.S. Census Bureau 2 (2014), <https://www.census.gov/prod/2014pubs/p20-573.pdf>.

as serving jury duty.<sup>7</sup> But, “in a representative democracy, government is only as good as the citizens who elect its leaders, demand action on pressing issues, hold public officials accountable, and take action to help solve problems in their communities.”<sup>8</sup>

These troubling trends coincide with low levels of basic civic knowledge among American students. For instance, according to the federal government’s own educational report card, the National Assessment of Educational Progress (“NAEP”), the most recent civics exam assessment reported that only 23% of a national sample of eighth graders scored at or above a “proficient” level.<sup>9</sup> The same test found that less than one-third of students could identify the historical purpose of the Declaration of Independence.<sup>10</sup>

This dismal state of civic education is a far cry from that envisioned and advanced by America’s founders, who recognized the centrality of education to the preservation and proper functioning of our democratic society, and who understood that to enhance and safeguard our young democracy, all citizens would need to acquire the knowledge and skills to make informed, intelligent decisions.<sup>11</sup> To achieve these purposes, America’s first public schools were conceived with a mission to educate all students, regardless of class, religion, or ethnicity, to become capable civic participants.<sup>12</sup>

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<sup>7</sup> See Megan O’Neil, *American’s Engagement with Organizations Wanes, Report Says*, The Chron. of Philanthropy (Dec. 17, 2014), <https://www.philanthropy.com/article/Americans-Engagement-With/152055>; Bob Egelko, *Many Snub Call to Serve Jury Duty*, S.F. Chron., May 13, 2015, at D1.

<sup>8</sup> Campaign for the Civic Mission of Schools, *Guardian of Democracy: The Civic Mission of Schools* 15 (Jonathan Gould *et al.*, eds., 2011).

<sup>9</sup> National Assessment of Educational Progress, *The Nation’s Report Card, 2014 Civics Assessment*, [https://www.nationsreportcard.gov/hgc\\_2014/#civics/achievement](https://www.nationsreportcard.gov/hgc_2014/#civics/achievement).

<sup>10</sup> Campaign for the Civic Mission of Schools, *supra* note 8, at 14.

<sup>11</sup> See Theda Skocpol *et al.*, *How Americans Became Civic, in Civic Engagement in American Democracy* 27, 43 (Theda Skocpol & Morris P. Fiorina eds., 1999).

<sup>12</sup> Campaign for the Civic Mission of Schools, *supra* note 8, at 11; see Lawrence A. Cremin, *American Education: The National Experience, 1783–1876* 138 (1980).

Although this civic mission persisted through the 19th and much of the 20th centuries, more recently, schools have steadily shifted focus to preparation for job placement, and educational policy reforms incentivize proficiency in math and English, leaving instruction in courses that support civic education, such as social studies, to fall by the wayside—particularly in schools with limited resources.<sup>13</sup> But the necessity for civic education is arguably greater today than ever before. “Americans who are not properly educated about roles as citizens are less likely to be civically engaged . . . less likely to vote . . . less likely to engage in political discourse . . . and less likely to engage in community improvement projects.”<sup>14</sup> What is more, the proliferation of the internet and new forms of social media communications, like Facebook and Twitter, have given rise to superficial, one-sided, and false outlets of information, which feed vitriolic discussion of issues and exacerbate the political gridlock and extreme polarization that has become all too familiar within our contemporary political system.<sup>15</sup>

In light of the continuing challenges facing America’s democratic systems, schools—despite the recent decline in their commitment to preparing students for civic participation—remain the best forum to promote and foster civic learning for the next generation of citizens. Schools continue to be the main institutional setting in our society in which young people from diverse and political backgrounds can come together at a formative age in a venue where rational discussion and tolerance for differing views can be prized and rewarded.

Simply put, civic learning is the mechanism by which individuals learn the tools and values of American democracy that are essential to successfully navigating the challenges that continue to arise from our increasingly pluralistic and complex society.

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<sup>13</sup> See Subhi Godsay *et al.*, *State Civic Education Requirements 2* (Ctr. for Info. & Res. on Civic Learning & Engagement, Fact Sheet, Sept. 2012), <http://files.eric.ed.gov/fulltext/ED536256.pdf>.

<sup>14</sup> Campaign for the Civic Mission of Schools, *supra* note 8, at 12.

<sup>15</sup> See *id.*



*Amici* organizations have extensively studied the civic education necessary to prepare students to become capable citizens who can function productively in the political process. Scholars, educators, and policymakers alike nearly universally agree about the fundamental aspects of a civic education, which can be grouped into the following four categories: civic knowledge; civic skills; civic experiences; and civic values.

To summarize, the baseline civic knowledge for effective preparation requires a working understanding of government, history, law, and democracy,<sup>16</sup> but, in addition, a range of knowledge in subjects such as history, economics, and science is “foundational to understanding political and social issues in an ever-evolving world.”<sup>17</sup> In turn, this civic knowledge translates into enhanced civic engagement.<sup>18</sup> The skills students require for civic engagement begin with basic verbal and cognitive skills that provide the intellectual tools to understand complex issues.<sup>19</sup> Continued development of these verbal and cognitive skills allows students to understand the information they receive and analyze its meaning critically, and to express their opinions persuasively.<sup>20</sup> Creating civic experiences for students, such as opportunities for volunteerism and community service, enhance civic participation later in life, and helps to inculcate civic values, such as tolerance and respect for others.<sup>21</sup> And learning to appreciate each

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<sup>16</sup> Campaign for the Civic Mission of Schools, *supra* note 8, at 16-17.

<sup>17</sup> See Ann Newman, *Realizing Educational Rights: Advancing School Reform Through Courts and Communities* 37 (2013).

<sup>18</sup> Campaign for the Civic Mission of Schools, *supra* note 8, at 16 (citing Michael X. Delli Carpini & Scott Keeter, *What Americans Know about Politics and Why It Matters* (1996)); Henry Milner, *The Informed Political Participation of Young Canadians and Americans* (Ctr. for Info. & Res. on Civic Learning & Engagement (CIRCLE), Working Paper No. 60, 2006), <http://www.civicyouth.org/PopUps/WorkingPapers/WP60Milner.pdf>.

<sup>19</sup> See Danielle Allen, *Education and Equality* 40-41 (2016).

<sup>20</sup> *Id.*

<sup>21</sup> See Joseph E. Kahne & Susan E. Spote, *Developing Citizens: The Impact of Civic Learning Opportunities on Students' Commitment to Civic Participation*, 45 *Am. Educ. Res. J.* 738, 757

other's differences and instilling shared democratic values, such as respect for rule of law and concern for the rights and welfare of others, is paramount to creating an environment for productive civic participation. Each of these categories is discussed in detail below.

## DISCUSSION

### I. Civic Knowledge

Students require a broad range of general knowledge to understand and evaluate the wide range of issues that citizens of a democracy need to consider. While “[d]emocratic citizenship is all but impossible if citizens fail to understand basic concepts such as separation of powers, federalism, individual rights, and the role of government,”<sup>22</sup> in our increasingly culturally diverse and multifaceted environment, instruction in disciplines such as history, economics, world languages, science, and the arts go far towards producing “complete citizens who can think for themselves, criticize tradition, and understand the significance of another person’s sufferings and achievements.”<sup>23</sup> This knowledge is critical not just to enable students to participate in basic political processes, such as voting and jury service, but to become responsible citizens who appreciate the contributions, achievements, and struggles of the subgroups within our nation as well as outside it—a key to successful deliberation that is essential to a thriving democracy.<sup>24</sup>

Deficiencies in civic knowledge are endemic nationally. The U.S. Department of Education succinctly described the thrust of the issue:

Unfortunately, civic 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

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(2008); Peter Levine, *The Future of Democracy: Developing the Next Generation of American Citizens* 134 (2007).

<sup>22</sup> Campaign for the Civic Mission of Schools, *supra* note 8, at 16.

<sup>23</sup> See Martha Nussbaum, *Not for Profit: Why Democracy Needs the Humanities 2* (2010).

<sup>24</sup> *Id.* at 81.

citizenship as a distraction from preparing students for college-level mathematics, English and other core subjects.<sup>25</sup>

The relegation of courses that impart civic knowledge to a lower tier of curricula stems from a federal education policy that promotes teaching focused on standardized testing of basic literacy and mathematics over the teaching of civics-related courses like history, social studies, economics, and even science.<sup>26</sup> This prioritization on strictly defined English and mathematics courses has led to a decrease in time devoted to civics-centered instruction. For example, in a comprehensive study conducted to assess the educational impact of the No Child Left Behind Act (“NCLB”), 33% of school districts reported that they had to reduce instructional time for social studies “somewhat/to a great extent” in order to make more instructional time for English and math.<sup>27</sup> And 29% of school districts in the same survey reported “somewhat/to a great extent” reducing instruction time in science to make more time for English and math.<sup>28</sup>

These policies disproportionately affect large school districts and school districts in communities with constrained resources. In particular, while the same study reported that a sizeable 71% of all school districts participating reduced instructional time in other subjects to make more time for English and math as a result of the statutory scheme of NCLB, a whopping 90% of large school districts were compelled to make adjustments to their courses of instruction, whereas 70% of smaller school districts were forced to implement these same changes.<sup>29</sup> To

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<sup>25</sup> U.S. Dep’t of Educ., *Advancing Civic Learning and Engagement in Democracy: A Road Map and Call to Action 1* (2012).

<sup>26</sup> The No Child Left Behind Act and its successor, the Every Student Succeeds Act, require that schools teach English and mathematics to certain standards, measured by standardized tests, but have no equivalent requirements for civics-related subjects. *See* 20 U.S.C. § 6311(b)(1)(C). As a result, schools use their limited resources to teach the two subjects required by law. Center on Education Policy, *From the Capital to the Classroom: Year 4 of the No Child Left Behind Act*, Table 4-D at 96 (2006).

<sup>27</sup> Center on Education Policy, *supra* note 26, Table 4-D at 96.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at Table 4-C, at 96.

further illustrate the disparity, school districts with a higher percentage of students eligible for reduced-price or free lunch programs reported being much more likely to mandate a specified amount of time for reading instruction, thereby effectively reducing instruction time in other areas supporting civic-related knowledge.<sup>30</sup>

This decreased emphasis on civics-related education in public schools corresponds with a drastic deficiency in civic knowledge among students. In 2014, an assessment of eighth graders across the country known as the Nation’s Report Card found that only 23% of eighth graders performed at or above the “proficient” level in civics.<sup>31</sup> To achieve a “proficient” level in the civics assessment, a student is required to “understand and be able to explain purposes [the] government should serve;” “understand differences between government and civil society and the importance of the rule of law;” “understand the separation and sharing of powers among the branches of government and between federal and state governments;” and “explain how citizens influence government.”<sup>32</sup> In other words, 77% of eighth graders participating in the civic assessment failed to display even a baseline understanding of fundamental civic knowledge. Even more troubling, just as schools with limited resources are cutting instruction time in subjects other than English and math, the students enrolled at these schools were far less likely to be graded “proficient” in the 2014 civics assessment.<sup>33</sup>

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<sup>30</sup> *Id.* at Figure 4-A, at 97. According to the Center on Education Policy’s data, 97% of school districts in which 76–100% of enrolled students are eligible for free or reduced-price lunch programs have mandatory amounts of time for reading/language arts instruction in elementary school, whereas mandatory reading/language arts instruction periods for elementary school exist in only 55% school districts in which only 1–10% of students enrolled are eligible for such programs.

<sup>31</sup> National Assessment of Educational Progress, *supra* note 9.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* Students who were eligible for the National School Lunch Program (“NSLP”) scored significantly lower than their higher socio-economic status peers. Thirty-one percent of students who were not eligible for the NSLP scored at “Proficient” on the 2014 Civics Assessment, and

In the face of country-wide reductions in civics-related courses of instruction, national social studies organizations, comprised of more than 3,000 social studies professionals, university scholars, and district and state administrators, have banded together to craft standards for civic knowledge to emphasize higher-order thinking and critical analytic skills necessary for students to understand contemporary civic issues.<sup>34</sup> The College, Career, and Civic Life (C3) Framework for Social Studies Standards was developed by 15 national organizations, including *amicus*, Campaign for the Civic Mission of Schools, as guiding principles for school districts to use when developing civic education curricula.<sup>35</sup> The framework sets goals for all 12th graders to be able to: analyze the citizen's role in American government, explain the system of government under the U.S. constitution, and evaluate those institutions' and systems' effectiveness, as well as participate in deliberative processes.<sup>36</sup>

In short, without a working knowledge of fundamental areas of civic study about our representative system and processes of government, students will lack the necessary context to understand how to function in our democratic system, and without the broader areas of learning, such as world history, science, and economics, students are ill-equipped to understand or assess issues of public policy, critically analyze one-sided or false information, or intelligently engage with others who share different political and social views.<sup>37</sup>

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3% achieved a score of “advanced,” while only 10% of students eligible for NSLP scored “Proficient,” and less than 1% attained a score of “Advanced.” *Id.*

<sup>34</sup> National Council for the Social Studies, *College Career, and Civic Life (C3) Framework for Social Studies State Standards*, <https://www.socialstudies.org/c3>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Campaign for the Civic Mission of Schools, *supra* note 8, at 16; Nussbaum, *supra* note 23, at 81; Benjamin R. Barber, *Strong Democracy: Participatory Democracy for a New Age* 178-98 (1984).

As former Supreme Court Associate Justice Sandra Day O’Conner wrote, “[t]he better educated our citizens are, the better equipped they will be to preserve the system of government we have. And we have to start with the education of our nation’s young people. Knowledge about our government is not handed down through the gene pool. Every generation has to learn it, and we have some work to do.”<sup>38</sup>

Civic knowledge, in turn, inspires civic activity, as students who are more knowledgeable about the government are more likely to vote, discuss politics, contact the government and take part in other civic activities.<sup>39</sup>

## **II. Civic Skills**

The civic skills necessary for effective citizenship include: deliberating with people of varying viewpoints on controversial topics; participating in effective methods of civic engagement, such as voting and volunteering; analyzing media to sort biased or false information from fact-based information; and utilizing the internet in a socially responsible and civic-minded way.

Decreased levels of civic knowledge are giving rise to a generation unsure of and apathetic about the practice of civic skills. The waning of democratic participation in America is all too familiar. Voter turnout has declined since the 1960s,<sup>40</sup> with the lowest voting rates among the youngest generation.<sup>41</sup> But while American students’ civic skills remain underdeveloped, the world around them grows ever more complex. To keep pace, schools must teach students the skills to apply civic knowledge in a productive way, primarily through the development of students’ cognitive, analytical, and communication skills.

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<sup>38</sup> Campaign for the Civic Mission of Schools, *supra* note 8, at 10.

<sup>39</sup> *Id.* at 16; Milner, *supra* note 18.

<sup>40</sup> File, *supra* note 6, at 2.

<sup>41</sup> Edwards-Levy, *supra* note 5.

Effective democratic participation is, by and large, an exercise in interpersonal communication and decision-making. Therefore, to cultivate a generation of strong democratic participants, schools must impart skills that allow students to communicate information to one another effectively, and present varying perspectives persuasively. The National Assessment of Educational Progress, which publishes the Nation's Report Card, has identified the most important skills to prepare students for civic participation—they are the verbal and cognitive skills that enable students to identify, describe, and analyze information and arguments, as well as evaluate, take, and defend positions on public policy issues.<sup>42</sup> These skills, including verbal cognitive functions and analytical reasoning, must be taught in the unique context of civics because “[t]he verbal work involved in civic agency extends well beyond our usual focus on deliberation to include also adversarial and prophetic speech.”<sup>43</sup> Promoting civic deliberation and even adversarial discussion between students with divergent viewpoints creates valuable opportunities for students to disagree productively, and learn critical civic skills through exploration of various “cross-cutting ideas.”<sup>44</sup>

Furthermore, failure to provide these critical skills to all students throughout all public schools will only deepen existing divides in the proficiency and use of civic skills between disparate socioeconomic and minority groups.<sup>45</sup> For instance, a national study conducted by

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<sup>42</sup> Nat'l Assessment Governing Bd., *Civics Framework for the National Assessment of Educational Progress* (2014), <https://nagb.gov/naep-frameworks/civics/2014-civics-framework.html>.

<sup>43</sup> Allen, *supra* note 19, at 40-41.

<sup>44</sup> Diana Mutz, *Hearing the Other Side: Deliberative versus Participation Democracy* (2006). The more students are exposed to varying ideas and practice engaging with peers in school, the more tolerant they will be of opposing viewpoints and aware of the rationales behind those viewpoints in the future.

<sup>45</sup> Robert Putnam, *Our Kids: The American Dream in Crisis* 212 (2015) (young people from high income backgrounds, in contrast with their poorer counterparts, are “more likely to use the

*amicus*, CIRCLE, concluded that “[s]tudents who are more academically successful and those with parents of higher socioeconomic status receive more classroom-based civic learning opportunities,” and that schools, “rather than helping to equalize the capacity and commitments needed for democratic participation, appear to be exacerbating this inequality by providing more preparation for those who are already likely to attain a disproportionate amount of civic and political voice.”<sup>46</sup> Thus, denying already disadvantaged segments of our populations’ youth with equal access to civic learning opportunities effectively denies students who arguably need a greater political voice, from learning the essential skills to become meaningful civic participants as compared to their more privileged peers.

But today’s youth, who will become the next generation of civic participants, face even bigger obstacles when exercising civic skills, as the primacy of the internet to gather information has led to the proliferation of less-than-credible and unabashedly biased news sources.<sup>47</sup> As it stands, the population at large, and students in particular, are ill-equipped to sift through information on the internet effectively. For example, analyses from a nationally representative sample of young people ages 15 to 27 found that judgments regarding the accuracy of simulated posts, intended to replicate political messages found on social media, were far more likely to be based on whether a post aligned with the individual’s viewpoint rather than on whether the post

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Internet for jobs, education, political and social engagement, health, and news gathering and less for entertainment or recreation”).

<sup>46</sup> See Joseph Kahne & Ellen Middaugh, *Democracy for Some: The Civic Opportunity Gap in High School* 18 (CIRCLE, Working Paper No. 59, 2008).

<sup>47</sup> Campaign for the Civic Mission of Schools, *supra* note 8, at 12. The Campaign for the Civic Mission of Schools (which was previously co-chaired by former Supreme Court Associate Justice, Sandra Day O’Connor) reports that the central role of the internet in public discourse today has led to the rise of particularly partisan, one-sided information outlets, which, in turn, feed volatile discussion of issues and perpetuate political polarization.



was actually accurate.<sup>48</sup> Another study conducted by *amicus* Sam Wineburg and others at Stanford University also found that, when presented with various online sources, students failed to discern the more reliable fact source or critically analyze the information they saw.<sup>49</sup>

Most American students will use the internet for their entire lives, and for many children, schools provide the only opportunity to develop skills to effectively evaluate and navigate the flood of competing information they will encounter. But, with the right civic education, the power of the internet for civic engagement could be significant. With proper training, the internet allows enterprising young people to research important political issues, organize around those issues, and voice their opinions in a productive, meaningful, and responsible way. A recent study reported that, over a two-year period, school-based efforts to promote “digital engagement literacies,” which the study defined as capacities to create and share media that provides information and perspectives on civic and political issues, make it more likely that young people will express their civic and political voices by creating and sharing information and perspectives on social issues during their free time.<sup>50</sup> Expanding the civic education curriculum, and providing access to that curriculum, will inevitably lead to more informed, more

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<sup>48</sup> Joseph Kahne & Benjamin Bowyer, *Educating for Democracy in a Partisan Age: Confronting the Challenges of Motivated Reasoning and Misinformation*, 54 *Am. Educ. Res. J.* 3 (2017).

<sup>49</sup> Sam Wineburg *et al.*, *Evaluating Information: The Cornerstone of Civic Online Reasoning* (2016), <http://purl.stanford.edu/fv751yt5934>. This study found, for example, that middle school students struggled with discerning advertisements and paid content from more traditional news articles and less biased information sources. *Id.* at 10. More than 80% of the sample of middle school students in the study believed an advertisement, marked with the words “sponsored content,” was a news article. *Id.*

<sup>50</sup> Joseph Kahne & Benjamin Bowyer, *Can Media Literacy Education Increase Digital Engagement in Politics?*, 44 *Learning, Media & Tech.* 211 (2019), <https://doi.org/10.1080/17439884.2019.1601108>.

civically active students.<sup>51</sup> This is a best case scenario for civic education in America—the development of an engaged, critically analytical generation of young voters who have the knowledge and skills to fulfill their civic responsibilities, as well as the desire and values to do so in a meaningful and responsible way.

### III. Civic Experience

Students require exposure to experiences that show them how politics and government actually work and how civic participation can influence social and political outcomes. In 1916, education reformer John Dewey wrote that America’s schools needed to “give[] individuals a personal interest in social relationships and control, and the habits of mind which secure social changes without introducing disorder.”<sup>52</sup> The need for children to learn essential democratic skills through their experiences in school remains perhaps even more true over 100 years later. In the 21st century, organizations such as churches, fraternal organizations, and unions, which have traditionally provided children and their families with firsthand exposure to democratic structures, are all in decline.<sup>53</sup> The gap must be filled by schools.

There are three different types of civic experiences that schools can offer to facilitate civic participation and cultivate civic-minded attitudes: extracurricular activities; community service; and governance. These three varieties of civic experiences are discussed below.

One of the primary ways that students gain experience to prepare them for citizenship is through extracurricular activities. Extracurricular activities first emerged in schools at the

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<sup>51</sup> See Meira Levinson, *The Civic Empowerment Gap: Defining the Problem and Locating Solutions*, in *Handbook of Research on Civic Engagement in Youth* 331-37 (Lonnie Sherrod *et al.*, eds., 2009).

<sup>52</sup> John Dewey, *Democracy and Education: An Introduction to the Philosophy of Education* 60 (reprint 2015) (1916).

<sup>53</sup> Peter Levine, *Education for a Civil Society*, in *Making Civics Count: Citizenship Education for a New Generation* 37, 43 (David E. Campbell *et al.*, eds., 2012).

beginning of the 20th century, and were intended to “diffuse among all classes . . . ‘soft skills’—strong work habits, self-discipline, teamwork, leadership, and a sense of civic engagement.”<sup>54</sup>

Extracurricular activities have accomplished their goals: consistent involvement in extracurricular activities is positively correlated with a number of favorable outcomes, including better educational attainment and earnings.<sup>55</sup>

Numerous studies also show that participation in extracurricular activities makes students more likely to vote and engage in volunteering.<sup>56</sup> Leading researchers, Reuben J. Thomas and Daniel A. McFarland, have identified three reasons why extracurricular activities and voting are positively correlated. First, extracurricular activities teach students “collective efficacy,” which is defined as “the perception that the members can work together to affect their environment.”<sup>57</sup> Regardless of whether the activity itself has any political content, “[a]ny activity that improves students’ sense of being able to make a difference can increase their likelihood of voting.”<sup>58</sup> Second, extracurricular activities connect students to like-minded peers; these relationships can be sources of subtle social influence, or even direct political recruitment, which might result in a

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<sup>54</sup> Putnam, *supra* note 45, at 174.

<sup>55</sup> *Id.* at 174-76; see Gregory J. Palardy, *High School Socioeconomic Segregation and Student Attainment*, 50 Am. Educ. Res. J. 714, 723 (2013) (for students with low socioeconomic status, participation in extracurricular activities is predictive of academic engagement).

<sup>56</sup> See Margo Gardner, Jodie Roth & Jeanne Brooks-Gunn, *Adolescents’ Participation in Organized Activities and Developmental Success 2 and 8 Years After High School: Do Sponsorship, Duration, and Intensity Matter?*, 44 Dev. Psychol. 814, 822 (2008); Daniel Hart *et al.*, *High School Community Service as a Predictor of Adult Voting and Volunteering*, 44 Am. Educ. Res. J. 197, 213 (2007); Reuben J. Thomas & Daniel A. McFarland, *Joining Young, Voting Young: The Effects of Youth Voluntary Associations on Early Adult Voting* (CIRCLE, Working Paper No. 73, 2010), <https://files.eric.ed.gov/fulltext/ED512250.pdf>.

<sup>57</sup> Thomas & McFarland, *supra* note 56, at 6.

<sup>58</sup> *Id.* Indeed, the authors found that participation in high school performing arts was the highest performing category of activities. *Id.* at 18.

greater likelihood of voting.<sup>59</sup> Finally, by exposing students to different cultures, extracurricular activities can alter a student's political and civic values and how that student views political processes and events.<sup>60</sup>

Similar to extracurricular activities, involvement in community service is positively correlated with voting and volunteering.<sup>61</sup> The reasons for this are similar: community service allows participants to become personally involved with political issues to which they otherwise would not have any firsthand exposure; provides a network of like-minded people with whom the participant can discuss civic issues; and exposes people to social problems about which they were previously unaware.<sup>62</sup>

While community service is an important component of civic growth regardless of whether it arises in an academic setting, integration of community service projects into classroom instruction can be particularly useful in imparting civic skills.<sup>63</sup> This strategy is typically referred to as "service learning."<sup>64</sup> Studies have shown that service learning is predictive of adult voting, regardless of the frequency of the service or whether it is voluntary or

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<sup>59</sup> *Id.* at 6. Unlike with the "collective efficacy" rationale, the "social influence" rationale may only work if the extracurricular activity contains political content, or if the activity connects students to other politically motivated students. *Id.* at 6-7.

<sup>60</sup> *Id.* at 7.

<sup>61</sup> Hart *et al.*, *supra* note 56; Daniel A. McFarland & Reuben J. Thomas, *Bowling Young: How Youth Voluntary Associations Influence Adult Political Participation*, 71 *Am. Soc. Rev.* 401 (2006).

<sup>62</sup> Hart *et al.*, *supra* note 56, at 199.

<sup>63</sup> See Todd Clark *et al.*, *Service Learning as Civic Participation*, 36 *Theory Into Prac.* 164, 168-69 (1997).

<sup>64</sup> See Shelley Billig, Sue Root & Dan Jesse, *The Impact of Participation in Service-Learning on High School Students' Civic Engagement* (CIRCLE, Working Paper No. 33, 2005), <https://digitalcommons.unomaha.edu/cgi/viewcontent.cgi?article=1002&context=slcek12>; Clark *et al.*, *supra* note 63.

mandated.<sup>65</sup> Such a conclusion confirms that students gain important social identity and civic skills from any exposure to community service during adolescence.<sup>66</sup>

Additionally, participation in the most conspicuous demonstration of democratic values at the school level—student government—is a strong predictor of lifelong civic participation.<sup>67</sup> Student government and related public-oriented associations need not, however, be expressly political to foster students’ “ongoing civic and political participation.”<sup>68</sup> As with extracurricular activities and community service, this type of experience is significant because it encourages students to work together to achieve common purposes and take responsibility for their communities.<sup>69</sup> Notably, participation in activities that “are a means to a specific end,” such as school government, are more strongly correlated to students’ continued civic participation later in life than are activities that have “self-gratification as a main purpose.”<sup>70</sup>

A number of school and state-sponsored civic projects illustrate the positive impact that investing in civics-building has on developing students to become capable and engaged citizens. For example, in Hudson, Massachusetts, a school-wide effort to engage students in school governance and service learning led to qualitative gains in measures of community service and political knowledge, especially among disenfranchised youth and other groups of students who

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<sup>65</sup> Billig, Root & Jesse, *supra* note 64, at 23; Hart *et al.*, *supra* note 56, at 213. Of course, frequent service is associated with more positive outcomes, but this ultimately does not change the fact that any service at all is, itself, indicative of an increased likelihood to engage in civic participation in adulthood. See Hart *et al.*, *supra* note 56, at 200.

<sup>66</sup> See Hart *et al.*, *supra* note 56, at 213-14.

<sup>67</sup> Michelle L. Frisco, Chandra Muller & Kyle Dodson, *Participation in Voluntary Youth-Serving Organizations and Early Adult Voting Behavior*, 85 Soc. Sci. Q. 660, 663 (2004); James Youniss *et al.*, *The Role of Community Service in Identity Development: Normative, Unconventional, and Deviant Orientations*, 14 J. Adolescent Res. 248, 260 (1999).

<sup>68</sup> Veronica Terriquez, *Training Young Activists: Grassroots Organizing and Youths’ Civic and Political Trajectories*, 58 Soc. Persp. 223, 224-25 (2015).

<sup>69</sup> Hart *et al.*, *supra* note 56, at 214.

<sup>70</sup> Frisco, Muller & Dodson, *supra* note 67, at 663.

initially scored lower than their counterpart groups on these civic measures.<sup>71</sup> In another instance, the city of Hampton, Virginia created a board of youth commissioners, as well as a number of city-wide and school-directed service learning initiatives; several years later, youth turnout in the 2004 presidential election was 80% in Hampton, compared to 43% statewide.<sup>72</sup> Finally, an anonymized county-wide service learning initiative referred to as the Madison County Youth Service League, led to qualitative gains in civic knowledge and “sense of civic efficacy—that [students] could make a difference in their community.”<sup>73</sup>

Despite the demonstrated importance of civic experiences to the development of students as capable participants in American democracy, involvement in these programs—particularly in poor communities and communities of color—lags well behind what is needed to afford every student the chance to gain these vital civic experiences.<sup>74</sup> There are a number of reasons this problem occurs. A primary, overarching cause is that schools assign an effective second-class status designation to programs that provide civic experience. In times of resource constraint, these programs are the first to be eliminated.<sup>75</sup> This phenomenon is particularly acute in districts

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<sup>71</sup> Hugh McIntosh, Sheldon Berman & James Youniss, *A Five-Year Evaluation of a Comprehensive High School Civic Engagement Initiative* (CIRCLE, Working Paper No. 70, 2010).

<sup>72</sup> Peter Levine, *We Are the Ones We Have Been Waiting For: The Promise of Civic Renewal in America* 122 (2013).

<sup>73</sup> Joel Westheimer & Joseph Kahne, *Educating the “Good” Citizen: Political Choices and Pedagogical Goals*, 37 *PS: Pol. Sci. & Pol.* 241, 244-45 (2004). As indicated above, while there were statistically significant gains in particular areas of study, this particular program did not change the students’ interest in political engagement. *Id.*

<sup>74</sup> Putnam, *supra* note 45, at 176 (“[E]very study confirms a substantial class gap in extracurricular participation . . . .”); *see, e.g.*, Brian Knop & Julie Siebens, *A Child’s Day: Parental Interaction, School Engagement, and Extracurricular Activities: 2014*, U.S. Census Bureau 5 (2018), <https://www.census.gov/content/dam/Census/library/publications/2018/demo/P70-159.pdf> (“Children in poverty were less likely to participate in [extracurricular] activities than those not in poverty.”).

<sup>75</sup> *See* June Kronholtz, *Academic Value of Non-Academics: The Case for Keeping Extracurriculars*, *Educ. Next*, Winter 2012, at 8.

populated by students living in poverty and students of color.<sup>76</sup> In addition, schools sometimes engage in conduct that disproportionately affects low-income students and students of color. For example, some schools charge students a fee to participate in extracurricular activities.<sup>77</sup> This requirement imposes constraints on families with less ability to make the necessary material support, and whose children are consequently less likely to participate in these activities.<sup>78</sup>

While a number of courts have struck down extracurricular activity fees as incompatible with the right to free education,<sup>79</sup> this “pay-to-play” structure nevertheless persists in school districts around the country.<sup>80</sup> In other instances, schools impose minimum GPA requirements to participate in extracurricular activities or reserve the right to remove students from these activities as punishment for infractions, both of which disproportionately impact students of color.<sup>81</sup> Given these and other economic and logistical obstacles that some schools impose on

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<sup>76</sup> See Elizabeth Stearns & Elizabeth J. Glennie, *Opportunities to Participate: Extracurricular Activities' Distribution Across and Academic Correlates in High School*, 39 Soc. Sci. Res. 296 (2010).

<sup>77</sup> See Stephanie Simon, *Public Schools Charge Kids for Basics, Frills*, Wall St. J. (May 25, 2011), <https://www.wsj.com/articles/SB10001424052748703864204576313572363698678>; see also Kate I. Rausch, Note, *Pay-to-play: A Risky and Largely Unregulated Solution to Save High School Athletic Programs from Elimination*, 39 Suffolk U. L. Rev. 583 (2006).

<sup>78</sup> Elliot B. Weininger, Annette Lareau & Dalton Conley, *What Money Doesn't Buy: Class Resources and Children's Participation in Organized Extracurricular Activities*, 94 Soc. Forces 479, 498 (2015).

<sup>79</sup> E.g., *Gannon v. State*, 390 P.3d 461, 492 (Kan. 2017); *Hartzell v. Connell*, 679 P.2d 35, 39 (Cal. 1984).

<sup>80</sup> See Stephanie Simon, *Public Schools Charge Kids for Basics, Frills*, Wall St. J., May 25, 2011, available at <http://www.wsj.com/articles/SB10001424052748703864204576313572363698678>. See generally Note, *Pay-to-Play: A Risky and Largely Unregulated Solution to Save High School Athletic Programs From Elimination*, 39 Suffolk L. Rev. 583 (2005–06).

<sup>81</sup> See Russell J. Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 Urban Rev. 317, 318-19 (2002) (noting the disproportionality in punishment by socioeconomic and minority status); Edward J. Smith & Shaun R. Harper, *Disproportionate Impact of K-12 School Suspension and Expulsion on Black Students in Southern States* 1 (2015) (“On average, Blacks were 24% of students in the 3,022 districts we analyzed, but rates at which they were suspended and expelled are disproportionately high.”).

participation in extracurricular activities, student bodies with higher concentrations of students of color and students from single-parent households are less likely to participate in these activities.<sup>82</sup>

Providing equal access to and encouraging participation in myriad types of civic experiences has proven and sustained effects on lifelong civic engagement. These experiences are vital to ensure that all students have the opportunity to exercise civic skills and gain the know-how and confidence to participate in the political process and become capable citizens.

#### **IV. Civic Values**

According to the Supreme Court, public schools are “the primary vehicle for transmitting ‘the values on which our society rests.’”<sup>83</sup> These values include character traits such as responsibility, honesty, work ethic, and self-discipline, and democratic values like tolerance, equality, due process, respect for the rule of law, and support for the fundamental political institutions of our society. Students whose schools do not train them in these basic values are fundamentally ill-equipped to participate in our democratic society.

Consistent with this view, recently, the U.S. Department of Education’s National Assessment Governing Board, tasked with its congressional mandate to survey American student achievement, announced that it is “indispensable for the nation’s well-being” that citizens are “inclined to participate thoughtfully in public affairs and civic life.”<sup>84</sup> Traits that help

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<sup>82</sup> See Amy F. Feldman & Jennifer L. Matjasko, *The Role of School-Based Extracurricular Activities in Adolescent Development: A Comprehensive Review and Future Directions*, 75 REV. EDUC. RES. 159, 200 (2005).

<sup>83</sup> *Plyler v. Doe*, 457 U.S. 202, 221 (1982) (quoting *Ambach v. Norwick*, 441 U.S. 68, 76 (1979)).

<sup>84</sup> Nat’l Assessment Governing Bd., *supra* note 42, at 34.



accomplish this goal include “public spiritedness, civility, respect for law, critical-mindedness, and a willingness to listen, negotiate, and compromise.”<sup>85</sup>

Most Americans agree that schools are crucial training grounds for preparing children to become democratic citizens.<sup>86</sup> The values necessary for participation in American democracy include:

[L]oyalty to the nation, acceptance of the Declaration of Independence and Constitution as venerable founding documents, appreciation that in American constitutionalism rights sometimes trump majority rule and majority rule is supposed to trump intensive desire, belief in the rule of law as the proper grounding for a legal system, belief in equal opportunity as the proper grounding for a social system, willingness to adhere to the discipline implied by rotation in office through an electoral system, and . . . economic and social values such as work ethic, self-reliance, and trustworthiness.<sup>87</sup>

Taken together, these basic character and democratic values outline the contours of “democratic virtue,” defined as “the ability to deliberate, and hence to participate in conscious social reproduction.”<sup>88</sup> In other words, while these values have inherent importance, they are additionally critical because students will be unable to meaningfully participate in our democratic institutions without them. Civic scholars have also responded to concerns that schools may be overstepping their boundaries, noting that instruction in tolerance, deliberation,

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<sup>85</sup> *Id.*; see also Betty Preus et al., *Listening to the Voices of Civically Engaged High School Students*, 100 High Sch. J. 66, 75 (2016) (linking positive values with civic engagement).

<sup>86</sup> Jennifer Hochschild & Nathan Scovronick, *Democratic Education and the American Dream, in Rediscovering the Democratic Purposes of Education* 209, 212 (Lorrain M. McDonnell, P. Michael Timpane & Roger Benjamin eds., 2000).

<sup>87</sup> *Id.*; see also Stephen Macedo, *Diversity and Distrust: Civic Education in a Multi-Cultural Democracy* 234 (2000) (discussing tolerance as a civic value); Jeffrey S. Dill, *Preparing for Public Life: School Sector and the Educational Context of Lasting Citizen Formation*, 87 Soc. Forces 1265, 1270 (2009) (discussing the civic values that are “generally understood to represent the knowledge, attitudes and behaviors necessary for participation in a democratic society”).

<sup>88</sup> Amy Gutmann, *Democratic Education* 46 (1987).

and other values is “perfectly compatible with unswerving belief in the correctness of one’s own way of life,” regardless of a student’s or family’s privately held values.<sup>89</sup>

Instilling values such as trust, solidarity, and caring is relevant to students’ participation in community activities,<sup>90</sup> and schools are a necessary component of inculcating these values.<sup>91</sup> Students whose teachers practice and encourage these traits in a school environment are more likely to trust and participate in community institutions.<sup>92</sup> For example, one study found that adolescents’ civic commitments and trust in democratic institutions were predicted in part by whether their teachers encouraged civic values in the classroom, *i.e.*, “insisted on tolerance and respect and encouraged an open exchange of views between students.”<sup>93</sup>

For the most part, however, schools have largely failed to achieve this purpose. While some values-based programs, such as those designed to help elementary schools “foster positive students behaviors [and] reduce negative behaviors,”<sup>94</sup> have been adopted, scholars agree that they have been narrow, superficial, and ineffective.<sup>95</sup> To effectively communicate and impart these principles, schools must foster a supportive environment that demonstrates to students how

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<sup>89</sup> William A. Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State* 253 (1991).

<sup>90</sup> Connie Flanagan & Leslie Gallay, *Adolescent Development of Trust* (CIRCLE, Working Paper No. 61, 2008), <https://civicyouth.org/PopUps/WorkingPapers/WP61Flanagan.pdf>.

<sup>91</sup> See *supra* notes 83-84 and accompanying text.

<sup>92</sup> Flanagan & Gallay, *supra* note 90, at 16; see Campaign for the Civic Mission of Schools, *supra* note 8, at 17.

<sup>93</sup> *Id.*; see also Constance A. Flanagan *et al.*, *School and Community Climates and Civic Commitments: Patterns for Ethnic Minority and Majority Students*, 99 J. EDUC. PSYCHOL. 421, 423 (2007).

<sup>94</sup> Nat’l Ctr. for Educ. Res., U.S. Dep’t of Educ., *Efficacy of Schoolwide Programs to Promote Social and Character Development and Reduce Problem Behavior in Elementary School Children* xxv (2010).

<sup>95</sup> Paul Tough, *How Children Succeed: Grit, Curiosity, and the Hidden Power of Character* 60 (2012); see Michael Davis, *What’s Wrong with Character Education?*, 110 Am. J. Educ. 32 (2003); see also Alfie Kohn, *How Not to Teach Values: A Critical Look at Character Education*, 78 Phi Delta Kappan 428 (1997).

these values are relevant and applicable in their everyday lives and throughout their lifetime. The few successful values-based programs—such as Roxbury Prep’s interactive and reflective approach for combating bullying—have taken this approach, and it has paid dividends.<sup>96</sup>

Schools that effectively impart bedrock civic principles, such as respect for the rule of law and due process, enable students to understand the fundamental democratic framework in which they will one day participate, just as instilling values such as tolerance, respect for others, and equality, go far towards developing students into citizens who are equipped to civically engage in our complex and diverse society.

### CONCLUSION

Thomas Jefferson said, “[e]ducate and inform the whole mass of people . . . . They are the only sure reliance for the preservation of liberty.” It is axiomatic that our democratic system of government depends on an engaged, educated, and capable citizenry. Each aspect of a civic education is essential to prepare students to meaningfully participate as citizens in the democratic system upon which America was founded. *Amici* believe that affording *all* students this civic education is necessary to ensure a flourishing democracy for generations to come.

For the foregoing reasons, *amici* urge the court to deny defendants’ joint motion to dismiss, and ultimately rule on behalf of plaintiffs.

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<sup>96</sup> See Scott Seider, *Character Compass: How Powerful School Culture Can Point Students Toward Success* 126-29 (2012) (discussing Roxbury Prep’s interactive and reflective approach for combating bullying).

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