

No. 20-2082

IN THE
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 ADVANCEMENT PROJECT AND NAACP IN
SUPPORT OF PLAINTIFFS-APPELLANTS**

Caption continued on inside cover

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the *amici curiae* state 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.

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RULE 29(A)(4)(E) STATEMENT

No part of this brief was authored, in whole or in part, by counsel for any party. No person, including but not limited to any party or party's counsel, other than *amici* contributed any money intended to fund the preparation or submission of this brief.

IDENTITY AND INTEREST OF AMICI CURIAE¹

Advancement Project is a national multi-racial civil rights organization with a long history of racial justice work in the field of education. Rooted in the great human rights struggles for equality and justice, Advancement Project exists to fulfill the United States’ promise of a caring, inclusive, and just democracy. For over twenty years, Advancement Project’s areas of work have included quality education for all, the school-to-prison pipeline, and voting rights.

The National Association for the Advancement of Colored People (“Association”) was established in 1909 to ensure the political, educational, social, and economic equality of all citizens. Examples of the Association’s work include challenges to separate but equal; the Department of Education’s abandoning civil rights enforcement policies without public notice; the Department of Education’s Final Rule compelling public school districts to divert essential CARES Act funds for the benefit of private schools or face unlawful limitations on the way that those funds can be spent in public schools; school funding and racial segregation under State constitutions; and school board selection schemes that violate Black voters’ rights. The Association has also worked with states and districts to implement the

¹ This brief is filed with the consent of the parties pursuant to Federal Appellate Rule 29(a)(2).

Every Student Succeeds Act, P. L. 114-95, and to provide quality, equitable, online alternatives for students in the COVID context of school re-openings.

SUMMARY OF ARGUMENT

The right to an education is inextricably bound up with the right to vote, a fundamental right that is itself “preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). Any infringement on that right “must be carefully and meticulously scrutinized.” *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). Moreover, the connection between the right to vote and a quality education broadly affects a person’s ability to fulfill their civic duty to participate in the democratic process. Without a civics education, we lack the ability to freely and fully operate in society.

At the same time, at every level our governments have become more complex, and engaging with them more challenging. Today we are confronted daily with vast amounts of information, some reliable and some not. If “government of the people, by the people, for the people”² is to work and thrive, “the people” must have the tools to make their voices and their views heard by government. This is especially critical for communities of color.

Our public education system exists in large part to prepare children to become effective citizens. Historically, education — in particular public education — has been the gateway to social and economic mobility and civic engagement for generations of immigrants as well as native-born Americans. But in many places, it

² Abraham Lincoln, Gettysburg Address (Nov. 19, 1863).

has failed, and continues to fail, Black and Latinx children, perpetuating a history of disenfranchisement that continues to embarrass the United States to this day. Rhode Island is one of those places.

As shown more fully below, Rhode Island is not providing adequate preparation for civic participation to its Black and Latinx students. As a result, those students are being denied the opportunity to develop the critical knowledge and cognitive skills necessary to sort through inaccurate and unreliable information sources and effectively engage with government to secure the rights and privileges of citizenship guaranteed by the Constitution for themselves and their communities.

Unequal access to a quality civics education, and the resulting unequal access to meaningful participation in public policy, is a racial justice issue. Remediating that inequality is an essential step toward securing our participatory democracy for *all* of the people for generations to come.

The Supreme Court recognized in *Brown v. Board of Education* that adequate educational opportunities are essential to racial equity, a proposition it has since reaffirmed and never abandoned. This Court should hold, consistent with *Brown* and its legacy, that Rhode Island's failure to provide adequate civics education to its Black and Latinx students violates their constitutional rights, and remand this case to the District Court for further appropriate proceedings.

ARGUMENT

I. A Population Prepared for Meaningful Civic Involvement Is Vital to the Health of Our Democracy

This case presents an opportunity to ameliorate a longstanding and pernicious harm to our democracy: the denial to substantial segments of the population, and particularly to Black and Latinx students, of adequate preparation for civic involvement and equal participation in our political system. While plaintiffs-appellants in this case request relief in the relatively narrow form of an adequate education in civics,³ they seek it to vindicate a more essential — and, importantly, well-established — right “to participate effectively and intelligently in our open political system,” *Plyler v. Doe*, 457 U.S. 202, 221 (1982). Such participation depends upon the development of skills and knowledge that Rhode Island’s schools have thus far failed to provide to the appellants. Students need to learn the basics of our democratic political processes, as well as the critical reasoning skills necessary to understand and weigh the credibility of information, to be capable of participating

³ The Complaint makes clear that the right to adequate preparation for civic participation is broader than a narrowly defined class in civics. Rather, it consists of the following elements: (i) civic knowledge (Compl. ¶¶ 54-74); (ii) civic skills (Compl. ¶¶ 75-85); (iii) civic experiences (Compl. ¶¶ 86-93); (iv) civic values (Compl. ¶¶ 94-96); and (v) civic integration (Compl. ¶¶ 97-115). These elements encompass education about our system of government, verbal and cognitive skills, firsthand experience in civic activities, the cultivation of democratic values, and support for English Language Learners.

in our political system, especially in a digital world overtaken with unfiltered content.

Without these critical reasoning skills, Rhode Island's Black and Latinx students, including the appellants, will be unable to participate effectively in our political system by, among other things, casting an informed vote, meaningfully participating in public policy dialogue, interacting with our government as effective citizens, and, generally, enabling "the preservation of a democratic system of government." *Id.* The failure to develop such skills in substantial segments of our population is a long-running problem and has contributed to the historical disenfranchisement of Black and Latinx communities to which fewer educational resources are committed. Our modern political and information ecosystems, and the recognition of the pernicious effects of systemic racism and disenfranchisement, underscore the urgency of remedying that failure now.

The District Court, even as it dismissed the complaint below, provided a thorough and persuasive summary of the importance of civics education in the United States. As Judge Smith correctly noted, recent assaults on our political system cry out for a greater focus and attention on civics education as a means to facilitate meaningful non-violent participation in our democracy. Judge Smith described in detail the "impending threats to democracy in the United States and around the world," App'x 70, the erosion of democratic norms, widening political

polarization, and how these trends can be reduced by an increased focus on civic preparation, *id.* at 70-76. The District Court concluded, starkly:

This is what it all comes down to: we may choose to survive as a country by respecting our Constitution, the laws and norms of political and civic behavior, and by educating our children on civics, the rule of law, and what it really means to be an American, and what America means. Or, we may ignore these things at our and their peril.

Id. at 81. The “peril” of which the District Court wrote has been on full display in the months since, culminating in a misinformation-fueled violent attack on the U.S. Capitol on January 6, 2021.

Moreover, as shown below, lack of adequate civics education is particularly damaging to Black and Latinx students and their communities, as it virtually guarantees their future inability to make their and their communities’ voices heard in the policy-making process, leaving them in the hands of others who may not have their best interests at heart. That is not government “of the people, by the people, for the people.”

The Court now has an opportunity to acknowledge the inextricable link between providing students with an adequate civics education and preparing youth to exercise their right to participate “effectively and intelligently in our political system.” *Plyler*, 457 U.S. at 221. Such action is especially needed to address the disparate impact on Black and Latinx students in Rhode Island.

II. Denying Adequate Civics Education Contradicts Well-Established Judicial Precedent and Federal Statutes Intended to Remediate Racial Inequity in the United States

Lack of access to adequate education — and to adequate civics education in particular — is fundamentally an issue of racial inequity. In *Brown*, the Supreme Court recognized the “detrimental effect” of unequal educational opportunities on the progress and development of schoolchildren of color as compared to their peers who had access to more opportunities and benefits. 347 U.S. 483, 494 (1954). In *Plyler*, the Court reemphasized and expanded on the principle that denying educational opportunities to some “disfavored group” carried “significant social costs borne by our Nation.” 457 U.S. at 221-22. The *Plyler* Court recognized that denying an adequate education to racial minorities conflicted with the foundational principles of our Constitution. In addition to recognizing the Constitutional right “to participate effectively and intelligently in our political system,” the *Plyler* Court stated that “imposing disabilities” on a specific demographic group of children by denying them an adequate education “pose[d] an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit.” *Id.* at 220-22.

The connection between educational access and political engagement is also demonstrated by the extreme efforts taken by state and local governments to *deprive*

people of color of educational opportunities throughout our country's history. *See Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 387-88, 390 (1978) (Marshall, J., concurring in part and dissenting in part); *South Carolina v. Katzenbach*, 383 U.S. 301, 310-13, 311 n.10 (1966); *Brown*, 347 U.S. at 490. The *Brown* Court emphasized that for years the education of Black children was “almost nonexistent” and “forbidden by law” in many states. *Brown*, 347 U.S. at 490. Similarly, in *Katzenbach*, the Court described how states took advantage of this lack of access to education as a way to prevent Black people from voting by enacting literacy tests for voter registration. 383 U.S. at 310-11. That sorry history led to laws and policies intended to address obstacles to equal education and political participation, later upheld by the Supreme Court. *See, e.g., Katzenbach*, 383 U.S. at 337; *Brown*, 347 U.S. at 495.

Such laws specifically targeted racial segregation and discrimination in education. *See* Titles IV and VI of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241; Equal Education Opportunities Act of 1974, Pub. L. No. 93-380, 88 Stat. 484. Similarly, the Elementary and Secondary Education Act of 1965 (“ESEA”), Pub. L. No. 89-10, 79 Stat. 27, was enacted in part to further the principle that “schools receiving federal assistance must meet uniform national standards for desegregation.” *United States v. Jefferson Cnty. Bd. of Educ.*, 372 F.2d 836, 851

(5th Cir. 1966).⁴ The principle that access to education is fundamentally an issue of racial justice is well established, both in Supreme Court decisions and in decades of policy pronouncements by Congress.

III. Inequitable Access to Civics Education for Black and Latinx Students Reduces Their Ability to Navigate Modern Society and Participate in Civic Life

A. Importance of Civics Education in a Changing Information Environment

A meaningful civics education prepares students to be active participants in modern society and to contribute to American democracy. Indeed, Rhode Island acknowledges the importance of civics education. The Rhode Island Grade Span Expectations (*i.e.*, instructional standards identifying concepts and skills expected of students at each grade level) contain standards for Civics and Government that include benchmarks such as comparing a rule to a law (Grades 3-4),⁵ understanding

⁴ Subsequent reauthorizations of the ESEA further embodied this principle. For example, the No Child Left Behind Act of 2001 (“NCLB”) identified as one of its statutory purposes “closing the achievement gap between high- and low-performing children, especially the achievement gaps between minority and nonminority students.” Pub. L. No. 107-110, § 1001(3), 115 Stat. 1425, 1440. Both the NCLB and the 2015 Every Student Succeeds Act (“ESSA”) have required, in effect, that states “ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.” *Id.* at § 1111, 115 Stat. at 1454; *see also* ESSA, Pub. L. No. 114-95, § 1005, 129 Stat. 1802, 1843 (similar).

⁵ Rhode Island Grade Span Expectations (GSEs) for Social Studies: Grades K-4, at 1, https://www.ride.ri.gov/Portals/0/Uploads/Documents/Instruction-and-Assessment-World-Class-Standards/Social-Studies/RI_SS_GSEs_gss-ES_K-4.pdf.

the obligations and rights of citizenship at the state and national level (Grades 7-8),⁶ and interacting with political institutions and/or political parties to evaluate how they shape the public agenda (high school)⁷. Although Rhode Island appears to recognize the importance of civic preparation in its Social Studies standards, it does not monitor or enforce these standards. *See* Compl. at ¶¶ 59, 62-64, 67.

In an era increasingly dominated by online content, studies show that “civic online reasoning,” meaning the “the ability to effectively search for, evaluate, and verify social and political information online,” has become a prerequisite for meaningful civic engagement. Joel Breakstone et al., *Students’ Civic Online Reasoning: A National Portrait* 5 (2019).⁸

Americans — especially younger Americans — receive information regarding politics and current events from an ever broadening and fragmented ecosystem of sources. Increasing numbers of Americans use digital sources, including social media, as their primary news source. *See, e.g.*, Elisa Shearer, *Social*

⁶ Rhode Island Grade Span Expectations (GSEs) for Social Studies: Grades 5-8, at 2-3, https://www.ride.ri.gov/Portals/0/Uploads/Documents/Instruction-and-Assessment-World-Class-Standards/Social-Studies/RI_SS_GSEs_gss-MS_5-8.pdf.

⁷ Rhode Island Grade Span Expectations (GSEs) for Social Studies: Grades 9-12, Extended Learning, at 7, https://www.ride.ri.gov/Portals/0/Uploads/Documents/Instruction-and-Assessment-World-Class-Standards/Social-Studies/RI_SS_GSEs_gss-HS_9-12.pdf.

⁸ <https://stacks.stanford.edu/file/gf151tb4868/Civic%20Online%20Reasoning%20National%20Portrait.pdf>.

Media Outpaces Print Newspapers in the U.S. as a News Source, Pew Research Center (Dec. 10, 2018) (finding, for example, that for 18- to 29-year-old Americans “social media is the most popular news platform”).⁹ This trend toward increased reliance on social media as a primary information source is especially pronounced among Black students. Black youths have higher-than-median screen time¹⁰ and are more likely than others to use Twitter as a news source.¹¹

While increased use of social media lowers barriers to access, a growing body of evidence indicates that it carries a cost in reliability and accuracy. *See, e.g.,* Amy Mitchell et al., *Americans Who Mainly Get Their News on Social Media Are Less Engaged, Less Knowledgeable*, Pew Research Center (July 30, 2020).¹² A recent analysis of 126,000 Twitter stories from approximately 3 million users from 2006 to 2017 concluded that fake news and false rumors (and especially false political news) reach more people, penetrate deeper into the social network, and spread much faster

⁹ <https://www.pewresearch.org/fact-tank/2018/12/10/social-media-outpaces-print-newspapers-in-the-u-s-as-a-news-source/>.

¹⁰ *See* Matthew A. Christensen et al., *Direct Measurements of Smartphone Screen-Time: Relationships with Demographics and Sleep*, PLOS ONE (Nov. 9, 2016), <https://doi.org/10.1371/journal.pone.0165331>.

¹¹ *See* Knight Foundation, *Young Adults’ News Behaviors and Beliefs 6* (2019), https://kf-site-production.s3.amazonaws.com/media_elements/files/000/000/372/original/YoungAdultsNewsBehaviorsAndBeliefs_Report.pdf.

¹² <https://www.journalism.org/2020/07/30/americans-who-mainly-get-their-news-on-social-media-are-less-engaged-less-knowledgeable/>.

than accurate stories. See Soroush Vosoughi et al., *The Spread of True and False News Online*, 359 *Sci.* 1146, 1146-48 (2018).¹³ Moreover, weak analytical skills enhance susceptibility to fake news more than partisanship does. See Gordon Pennycook & David G. Rand, *Lazy, Not Biased: Susceptibility to Partisan Fake News Is Better Explained by Lack of Reasoning Than by Motivated Reasoning*, 188 *Cognition* 39 (2019).¹⁴

In this media environment, Black and Latinx students are again at a profound disadvantage. A 2018-19 Stanford University study examined 3,446 students' ability to evaluate digital sources on the open internet. Breakstone, *supra*, at 3.¹⁵ The study evaluated students' civic online reasoning and their ability to reason through fake news. *Id.* at 4-5. The study found that Black students underperformed other groups in assessing the truth behind the information presented. *Id.* at 26 ("Race/ethnicity was also a significant factor in our model. Even after adjusting for all other variables, Black/African American students in our sample had lower composite scores than students who were Asian/Pacific Islander (-.14 points), Hispanic (-.11 points), multiracial (-.08 points), or White (-.12 points)."). The study

¹³ <https://science.sciencemag.org/content/359/6380/1146/tab-pdf>.

¹⁴ <https://www.sciencedirect.com/science/article/abs/pii/S001002771830163X>.

¹⁵ <https://stacks.stanford.edu/file/gf151tb4868/Civic%20Online%20Reasoning%20National%20Portrait.pdf>.

also concluded that “when it comes to evaluating the quality of digital sources, those most affected are students who have been underserved by our nation’s schools Equitable access to civic life depends on providing these students with the support they need to develop the skills of digital evaluation.” *Id.* at 27.

Black and Latinx students are thus particularly vulnerable to a media environment dominated by misinformation and disproportionately lack the skills needed to effectively deal with it. Failure to address that deficit effectively precludes their future meaningful participation in the political and policy-making process.

B. Rhode Island is Not Providing an Adequate Civics Education to Black and Latinx Students

Despite the increasing need for civics education to enable citizens to confront today’s information and political challenges, Rhode Island is not providing an adequate civics education to Black and Latinx students. Data show that Rhode Island students of color compare poorly to their White peers in reading and math. *See infra* Section IV. While Rhode Island does not collect statewide civics education data, logic suggests that a similar trend would exist for civics. This is especially likely given that fewer civics education opportunities are offered at Rhode Island schools with larger populations of students of color. For instance, as the Complaint shows, Rhode Island has failed to live up to its own civics standards in schools having significant Black and Latinx student populations. *See Compl.* ¶¶ 55, 93, 112-15. Black and Latinx students are denied civics education in their curriculum, *id.*

¶¶ 55, 67, technology resources sufficient to provide media/internet literacy, *id.* ¶ 83, and co-curricular and extracurricular opportunities that would prepare students for meaningful engagement with civic institutions, *id.* ¶¶ 88-90. In stark contrast, such resources — like an elective in “Democracy” and substantial digital learning programming — are available at affluent schools like North Kingstown High School, where Black and Latinx students make up only 4% of the student body. *Id.* ¶¶ 112-15.

The experience of Black and Latinx students is not unique to Rhode Island. A RAND Corporation study found that “[e]mphasis on some civic education instructional approaches and topics — such as media literacy and distinguishing facts from opinions — was reportedly lower in schools serving majorities of students of color or low-income students.” Laura S. Hamilton et al., *Preparing Children and Youth for Civic Life in the Era of Truth Decay*, at xxiii (2020).¹⁶ Furthermore, the study reports that “promising practices” that help students develop civic skills, including discussion of controversial current events, service learning, and student participation in school governance, are less common in schools with higher percentages of students of color and low-income students. *Id.* at xvii, 39, 96-97. That Rhode Island’s failure is shared by other states does not, however, excuse it.

¹⁶ https://www.rand.org/pubs/research_reports/RRA112-6.html.

This disparity in educational opportunity has consequences. Numerous studies have shown that Black and Latinx students have lower levels of civic skills and civic awareness than do White students. A 2014 study based on data from the Nation's Report Card showed generally low proficiency levels in civics, with Black and Latinx eighth grade students scoring, on average, 27 points and 23 points lower, respectively, when compared to their White counterparts. National Center for Education Statistics, *The Nation's Report Card: Civics Assessment* (2014).¹⁷ Things have not improved since, with a 2018 study showing the same demographic groups scoring 27 points and 21 points lower, respectively, as compared to White students. National Center for Education Statistics, *The Nation's Report Card: Civics Assessment* (2018).¹⁸

As in other states, Rhode Island's failure to provide students with a meaningful opportunity to obtain an adequate civics education has had a particularly negative impact on the very students who have historically lacked access to education and faced obstacles to democratic participation. Without relief from the Court, this pattern will continue with detrimental effects for our democracy.

¹⁷ https://www.nationsreportcard.gov/hgc_2014/#civics/groups.

¹⁸ <https://www.nationsreportcard.gov/highlights/civics/2018/>.

C. Implications for Civic Involvement

The disparity in the level of civic preparation available to Black and Latinx students has disturbing implications for their long-term civic involvement. A study using panel survey data from the National Education Longitudinal Studies¹⁹ found a direct relationship between years of civics education and future civic involvement. The study found that a full-year civics course had better results than a half-year course. Nathan Manning & Kathy Edwards, *Does Civic Education for Young People Increase Political Participation? A Systematic Review*, 66 *Educ. Rev.* 22, 38 (2013) (citing a study by Jennifer Bachner²⁰ on the effect of civics education on later voting behavior). Bachner's study "found a statistically significant positive relationship between undertaking more civics coursework and likelihood of voting" in 1992, 1993-94, and 1998-2000. *Id.* During those years, Bachner's study found that students who had completed one year of civics coursework, compared to those who had not completed any, were between 4.5-5.5% more likely to vote. *Id.*

As one study that included Providence, Rhode Island participants concluded, "[d]isparities in civic education may be leading to differences in civic engagement

¹⁹ The data covered the years 1992, 1993-94, 1996, 1998-2000, 2004, and 2004-06.

²⁰ Jennifer Bachner, *From Classroom to Voting Booth: The Effect of High School Civic Education on Turnout* (May 23, 2010), https://web.archive.org/web/20101229203726/https://gov.harvard.edu/files/uploads/CivEdTurnout_1.pdf.

into young adulthood.” Joshua Littenberg-Tobias & Alison K. Cohen, *Diverging Paths: Understanding Racial Differences in Civic Engagement Among White, African American, and Latino/a Adolescents Using Structural Equation Modeling*, 75 Am. J. Cmty. Psych. 102, 102 (2016) (“the Littenberg study”). The study was aimed at assessing whether existing models of youth civic engagement were unchanged when taking into consideration the youths’ racial or ethnic background. *Id.* at 105. According to U.S. Census Bureau data from 2014 analyzed by the Littenberg study’s authors, White young adults were more than twice as likely as Black young adults and three times as likely as Latinx young adults to have contacted a public official in the year prior. *Id.* The Littenberg study expressed that, “[i]ncreased civic knowledge may . . . promote increased civic engagement” because “[c]ivic knowledgeable adults are more likely to grasp political issues” and may possess “skills that allow [them] to become active members of their community.” *Id.* at 104 (collecting studies).

The Littenberg study noted that because “civics curricula . . . are overwhelmingly created by White . . . educators,” these tend to favor “modes of discourse and knowledge that are favored by those groups.” *Id.* The result is that “students may learn about the framers of the Constitution, but not about how to fix problems in their community” because the curricula being taught to them does not reflect their everyday reality. *Id.* Ultimately, the Littenberg study concluded that

“pathways to civic engagement vary by racial/ethnic background and that models of civic engagement structured around White experiences may not be as applicable to youth of color.” *Id.* at 113. These observations illustrate the challenges to remedying the problem, the distinctly racial element to it, and the self-reinforcing nature of the challenge. Without focused attention to providing Black and Latinx students meaningful civics education, they are not only hampered in engaging with government, but the educational system is also deprived of potential resources for teaching such engagement to future generations of Black and Latinx students.

Thus, the absence of adequate civic preparation for Black and Latinx students negatively affects their subsequent involvement in the policy process and our society as a whole. Without adequate civic skills, Black and Latinx citizens are less likely to run for office. Studies show that the existence of racially diverse legislators “leads to greater substantive representation of Black [and Latinx] constituents.” John D. Griffin, *When and Why Minority Legislators Matter*, 17 *Ann. Rev. of Pol. Sci.* 327, 329 (2014). When Black and Latinx legislators hold office, they frequently “champion issues that are priorities for their communities, such as those related to education, health care, economic development, and employment.” *Id.* at 330 (citing Kathleen A. Bratton, *The Effect of Legislative Diversity on Agenda Setting: Evidence from Six State Legislatures*, 30 *Am. Pol. Rsch.* 115 (2002)). Conversely, White

legislators often support a set of legislative priorities that diverge from minorities' critical concerns. *Id.* at 329-30.

Inadequate civic preparation among Black and Latinx communities also undermines their ability to take effective action in public policy decision-making. See Ashley Jeffrey & Scott Sargrad, *Strengthening Democracy with a Modern Civics Education*, Ctr. for Am. Progress (Dec. 14, 2019) (finding that excluding communities of color from “civics education — combined with other structural barriers such as voter suppression, voter disenfranchisement, and . . . distrust of government — can lead to decreased civic participation”).²¹ In an increasingly complex administrative state, communities often must dive into a byzantine policy-making process to defend their interests: reviewing complex documents, procuring the support of experts and consultants, attending and speaking at poorly publicized public meetings, filing comments within specific deadlines, interacting with specialized media outlets, and following up with elected and appointed officials over long periods of time. See Okhumode H. Yakubu, *Delivering Environmental Justice Through Environmental Impact Assessment in the United States: The Challenges of Public Participation*, 9 *Challenges* 9, 12 (Feb. 28, 2018) (“[P]roblems associated with [public participation], include cultural/language

²¹ <https://www.americanprogress.org/issues/education-k-12/reports/2019/12/14/478750/strengthening-democracy-modern-civics-education/>.

barrier[s], public cynicism or distrust of the planning process, lack of interest in the process, inaccessibility to meeting locations, insufficient and untimely disseminated information, and planning unawareness or incomprehensibility.”²²

To provide just one example, Black and Latinx communities often face a disproportionate burden from environmental pollution. *Environmental Justice*, EPA.gov (noting that “whether by conscious design or institutional neglect, communities of color in urban ghettos, in rural ‘poverty pockets’, or on economically impoverished Native-American reservations face some of the worst environmental devastation in the nation” (citation omitted)).²³ Taking effective action to address these disproportionate impacts requires precisely the set of civic skills at issue in this litigation.

IV. Denial of Civics Education Exacerbates Longstanding Racial Inequities in Education, Both Nationally and in Rhode Island

Rhode Island’s failure to provide adequate civics education to its Black and Latinx students does not occur in a vacuum; it compounds longstanding inequities in access to education for people of color, inequities that disenfranchise and disempower Black and Latinx communities. As discussed above, increased reliance on social media and other unfiltered content in the 21st century renders a bad

²² <https://www.mdpi.com/2078-1547/9/1/9>.

²³ <https://www.epa.gov/environmentaljustice> (last visited Jan. 30, 2021).

situation worse. Deprived of the tools to assess an increasingly chaotic and unrestrained information environment, Rhode Island's students are unable to meaningfully participate in public discourse. This deprivation of skills reinforces other longstanding barriers to educational access that disparately impact Black and Latinx students; specifically, inadequate instruction in reading and writing and disparate disciplinary practices that disproportionately limit their time in the classroom.

A. Black and Latinx Students Are Already at An Educational Disadvantage Nationally and in Rhode Island

It is a common misconception that the nation's educational system provides equal opportunity for each student and any shortage of success on the part of students of color is a direct result of their lack of effort or intelligence. Linda Darling-Hammond, *Unequal Opportunity: Race and Education* (Mar. 1, 1998).²⁴ To the contrary, the educational system has long failed students of color in the United States. *See, e.g., Carter v. Sch. Bd. of Arlington Cnty.*, 182 F.2d 531, 532-34 (4th Cir. 1950) (outlining differences in the quality of facilities and educational curricula during segregation between all-White and all-Black schools in Arlington County, Virginia); *Debra P. v. Turlington*, 644 F.2d 397, 408 (5th Cir. 1981) (holding the

²⁴ <https://www.brookings.edu/articles/unequal-opportunity-race-and-education/>.

“State [of Florida] may not deprive its high school seniors of the economic and educational benefits of a high school diploma” until certain remedial actions regarding a literacy aptitude test were addressed because administration of the test violated the Equal Protection and Due Process Clauses); *Hampton v. Jefferson Cnty. Bd. of Educ.*, 102 F. Supp. 2d 358, 360, 377-81 (W.D. Ky. 2000) (concluding that the use of racial quotas at local magnet schools, which had the effect of denying enrollment to otherwise qualified Black students, violated the Equal Protection Clause). This failure manifests itself in, among other things, racial disparities in national literacy rates, disparate school discipline and dropout rates, and interactions with the juvenile and criminal justice systems. These disparities inevitably limit future successful democratic engagement by students of color. *School Climate and Discipline: Know the Data*, U.S. Dep’t of Educ. (“Various data sources show clearly that students with disabilities and students of color are disproportionately impacted by . . . practices” including suspensions and expulsions from school).²⁵

Rhode Island’s reliance on property values for school funding virtually ensures that students of color are more likely to attend underfunded schools. See Eli Sherman, *12 Things to Know About How RI Might Fund Public Schools in the Future*, WPRI.com (Jan. 28, 2020, 6:36 PM) (“A big part of the current funding

²⁵ <https://www2.ed.gov/policy/gen/guid/school-discipline/data.html> (last visited Jan. 30, 2021).

formula is based on the personal income and property value of each community[.]”²⁶ Even within districts, residential segregation leads to schools receiving drastically different financial support. Erika Emery, *Redlining and Its Influence on Educational Opportunities in the School System: A Collaborative Auto-Ethnography* (May 23, 2016) (Ph.D. dissertation, California State University).²⁷ Disparities exist, *inter alia*, in funding, literacy rates, and discipline.

1. National Racial Disparities in Education

In the United States, the literacy rate varies significantly depending upon racial and socioeconomic factors, and literacy levels among people of color remain lower than among their White counterparts. Editorial, *Crisis Point: The State of Literacy in America*, Resilient Educator.²⁸ According to 2015 research from the National Assessment of Educational Progress, 46% of White students are at or above proficiency for reading while only 17% of Black students and 25% of Latinx students are at proficiency. *Id.* In fact, research indicates that Black and Latinx students are two to three years behind in learning compared to White students in their same age range. *Id.* This deficit is not just a literacy issue; it is an economic,

²⁶ <https://www.wpri.com/news/education/12-things-to-know-about-how-ri-might-fund-public-schools-in-the-future/>.

²⁷ <http://dspace.calstate.edu/bitstream/handle/10211.3/180032/Erika.EmeryDissertation.pdf?sequence=4>.

²⁸ <https://resilienteducator.com/news/illiteracy-in-america/> (last visited February 1, 2021).

racial, and educational opportunity issue that worsens from generation to generation.

Id.

The differences in literacy rates also correlate with differences in instruction time provided to Black and Latinx students compared to White students. According to a report by the U.S. Government Accountability Office (“GAO”) on students during the 2013-14 school year, Black students in K-12 public schools are disproportionately disciplined (and subsequently, removed from the classroom) in comparison to their White counterparts. U.S. Gov’t Accountability Off., GAO-18-258, *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities* (2018).²⁹ Across the nation, of the approximately 49 million students enrolled in public schools, Black students are three times more likely to be suspended and expelled (and thus three times more likely to lose valuable classroom instruction as a result of disparate discipline practices) compared to White students. *School Climate and Discipline: Know the Data, supra*. Black students represent 39% of school suspensions despite only accounting for 15.5% of all public school students. *K-12 Education, supra*, at 12-13. In fact, Black students lose 103 days of instruction per 100 students enrolled compared to the 21 days their White peers lose

²⁹ <https://www.gao.gov/assets/700/690828.pdf>.

due to out-of-school suspensions. Brenda Alvarez, NEA, *School Suspensions Lead to Stark Losses in Instructional Time* (Nov. 19, 2020).³⁰

The disproportionate denial of access to education for students of color, whether caused by inadequate instruction or disparate disciplinary practices, correlates with negative academic outcomes. Daniel J. Losen & Paul Martinez, *Lost Opportunities: How Disparate School Discipline Continues to Drive Difference in the Opportunity to Learn* (2020).³¹ The consequent skills deficit reinforces historic disenfranchisement of those students and, when they become adults, their communities.

2. Rhode Island Racial Disparities in Education

Rhode Island was one of the first states to outlaw school segregation in 1866, nearly a century before *Brown v. Board of Education*. Kelton Ellis, *Small State, Big Gaps: Segregation in Rhode Island's Public Schools*, The College Hill Independent (Nov. 4, 2016).³² Nonetheless, school segregation and unequal access to education remains a defining characteristic of public education in the State. *Id.* As a result,

³⁰ <https://www.nea.org/advocating-for-change/new-from-nea/school-suspensions-lead-stark-losses-instructional-time>.

³¹ <https://www.civilrightsproject.ucla.edu/research/k-12-education/school-discipline/lost-opportunities-how-disparate-school-discipline-continues-to-drive-differences-in-the-opportunity-to-learn/Lost-Opportunities-REPORT-v14.pdf>.

³² <https://www.theindy.org/976>.

Rhode Island’s students of color do not enjoy the same level of access or opportunity to a quality education as do White students.

- a. *Historically, educational outcomes for Black and Latinx students in Rhode Island and Providence have been poor.*

As it has nationally, school segregation in Rhode Island has persisted, typically following residential patterns. *Loving Cities Index: Providence, RI*, Schott Foundation (2020).³³ In Providence, for example, schools were segregated until 1967, when the Providence school board ordered desegregation. *Id.* The largest city in the state, Providence experienced steady population declines after the Second World War, when “white flight,” or the movement of White populations from the city to the suburbs, was at its peak. Emilio Abeyta, *School Desegregation in Providence, Rhode Island*, 1 (1977).³⁴ Rhode Island in the 1960s was known “as the Mississippi of New England.” *Id.* at 6 (citation omitted). Segregation in Providence was characterized by “residential patterns which created pockets of minorities; zoning according to racial neighborhoods; the replacement and renovation of schools on the same sites to contain minority enrollment; and a blatantly discriminatory policy allowing whites to transfer out of predominantly minority schools.” *Id.* (citation omitted). “The result was racially identifiable schools . . . known as the

³³ <https://lovingcities.schottfoundation.org/cities/providence-ri/>.

³⁴ <https://files.eric.ed.gov/fulltext/ED166339.pdf>.

‘poor’ schools with ‘undesirable student bodies.’” *Id.* (citation omitted). The School Desegregation Report identified persistent significant problems, including the underrepresentation of minority teachers in the school system, the tendency towards resegregation within classrooms, the lack of racial balance in schools because of shifting population and enrollment patterns, and the disproportionate busing of Black students compared to their White peers. *Id.* at 21-23.

b. *Rhode Island and Providence educational outcomes for Black and Latinx students are inferior to White students.*

The state of education in Rhode Island today is not much improved. Rhode Island boasts some of the country’s most segregated schools and ranks sixth highest in the U.S. for segregation of its Latinx students. Ellis, *supra*. This segregation persists notwithstanding considerable diversity — in 2019, 55% of public-school students were White, 9% were Black, 3% were Asian, 1% Native American, 5% were Multi-racial, and 27% identified as Hispanic (Latinx). Rhode Island KIDS COUNT, *2020 Rhode Island Kids Count Factbook* 134 (2020).³⁵ Demographic changes in the last half of the 20th century drove exponential growth in the Latinx population of Rhode Island — the majority of students of color in the state are now Latinx. *Id.*

³⁵ <http://www.rikidscount.org/Portals/0/Uploads/Documents/Factbook%202020/RIKCFactbook2020.pdf>.

Unfortunately, these demographic shifts have done little to improve the quality of education that students of color receive in Rhode Island, which is still disproportionately inferior to that of White students. Disparities in the quality of education and discipline provided to students of color are directly correlated with disparities in performance. Notably, Native American, Black, and Latinx children are less likely to meet expectations in third grade reading and math than White or Asian children; Native American, Black, and Latinx children are less likely to graduate from high school within four years or to immediately enroll in college than White or Asian students; and Native American, Latinx, and Black students are more likely to be disciplined in school, a factor that studies have shown contributes to gaps in school achievement and dropout rates. *Id.* at 20. Data also show that these disparities continue after school as well — in 2015, 18.5% of Latinx youth aged 16 to 24 were not in school and not working, nearly triple that of their White peers. *Id.* at 166.

The disproportionately inferior quality of education that students of color receive is also apparent in Providence, where the Providence Public School District (“PPSD”) “has an exceptionally low level of academic instruction, including a lack of quality curriculum and alignment both within schools and across the district.” John Hopkins School of Education, Institute for Education Policy, *Providence*

Public School District: A Review 3 (2019).³⁶ Students of color in Providence “had substantially lower proficiency rates than their more advantaged peers in Providence.” *Id.* at 14.

The study leaves little doubt that the lack of educational opportunity is driving such outcomes. Black and Latinx students were “substantially less likely to reach proficiency in 8th grade [English Language Arts] than they were in either elementary grade” — in other words, their performance gets poorer as they progress through school. *Id.* at 18. This trend is the same in math, where proficiency rates also decrease by grade, with White students having a higher proficiency rate, at 26.4%, than their Black and Latinx peers, who do not even meet a 5% proficiency threshold in 8th grade. *Id.* at 24. Such relative decline over time strongly suggests that the

³⁶ <https://jscholarship.library.jhu.edu/bitstream/handle/1774.2/62961/ppsd-revised-final.pdf>. This report was conducted by the Johns Hopkins School of Education at the request of the Rhode Island Department of Education Commissioner, with the support of both the mayor of Providence and Rhode Island Governor Gina Raimondo, one of the appellees in this case. It served as the basis for the state of Rhode Island to take over the PPSD entirely. Linda Borg, *State Takeover of Providence Schools Starts Nov. 1, Will Last 15 Years*, Providence Journal (Oct. 17, 2019, 7:48 AM), <https://www.providencejournal.com/news/20191015/state-takeover-of-providence-schools-starts-nov-1-will-last-5-years>. This strategy has “often failed to improve educational outcomes and historically disempowered majority Black and Brown communities,” and “ultimately reveal[s] a ‘flaw in the structure of our American democracy that is only familiar to poor communities of color.’” Alina Kulman & Sara Van Horn, *We’re Not Gonna Take It: Contesting the State Takeover of the Providence Public School District*, The College Hill Independent (Sept. 13, 2019), <https://www.theindy.org/1752>.

schools are failing to connect with Black and Latinx students in the same way as they do with other students.

Rhode Island's failure to provide adequate civic preparation for Black and Latinx students both reinforces and is reinforced by its longstanding failure to provide an adequate education to Black and Latinx students generally.

CONCLUSION

Our government, in order to fulfill the promise of being “of the people, for the people, by the people,” only works for *all of the people* when all understand our government's structures and functions, have the skills to discern truth from lies, and have the training to participate meaningfully in the political and policy-making process. Denying to historically disenfranchised communities of color the education and training necessary to do so — as Rhode Island does today — traps them in their disenfranchisement. That is a racial justice issue, and a Constitutional issue. For these reasons, and those set forth in the Appellants' brief, this Court should reverse the District Court and remand this action to the District Court for further appropriate proceedings.

Respectfully submitted,

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s/ Saul P. Morgenstern

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CERTIFICATE OF COMPLIANCE

According to the word-processing system used to prepare the foregoing filing, the brief complies with Federal Rule of Appellate Procedure 29(a)(4) because it contains 6,494 words, excluding the portions exempted by Rule 32(f).

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February, 2021, a copy of the foregoing brief was filed electronically and is available for viewing and downloading on the Court's CM/ECF system, and service was made on all counsel of record via the Court's CM/ECF system.

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