

No. 20-2082

United States Court of Appeals
for the First Circuit

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

Plaintiffs-Appellants,

– v. –

(Caption continued on inside cover)

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

**BRIEF OF GENERATION CITIZEN AND MIKVA CHALLENGE AS
AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS' BRIEF
AND REVERSAL**

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February 1, 2021

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.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and 29(a)(4)(A), the *amici curiae* state that they have no parent corporations and no publicly held company owns 10% or more of any *amicus*'s stock.

RULE 29 STATEMENTS

This brief is filed pursuant to the consent of the parties pursuant to Federal Rule of Appellate Procedure 29(a)(4)(D). No part of this brief was authored, in whole or part, by counsel for any party. No person, including but not limited to any party or party's counsel, other than *amici*, its members, or its counsel contributed any money intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

Dated: February 1, 2021

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INTERESTS OF *AMICI CURIAE*

Generation Citizen (“GC”) is a national non-profit organization founded in 2010, dedicated to ensuring that every student in the United States receives a comprehensive, effective civics education. GC promotes informed civic participation by designing a rigorous curriculum primarily for low-income schools and by supporting state policy changes for the adoption of Action Civics education, a student-centered experiential practice in which young people learn about the political process. Since its founding, GC has worked with over 70,000 young people in Massachusetts, New York City, Rhode Island, the San Francisco Bay Area, Central Texas, and Oklahoma.

Mikva Challenge (“MC”) is a civic leadership program founded in 1998 in honor of former White House Counsel, Judge, and U.S. Congressman Abner Mikva and his wife Zoe, a teacher and lifelong education activist. Abner Mikva’s life of public service began with rejection: as a young man seeking to volunteer with a presidential campaign, he was rebuffed by a Chicago committeeman with the words “We don’t want nobody that nobody sent.”¹ Mikva went on to serve at the highest levels of all three branches of federal and state government, including the United State Court of Appeals for the District of Columbia. In honor of the Mikvas’ lifelong dedication to promoting civic participation, MC was founded on the idea that a single

¹ MC, *Abner & Zoe*, <https://mikvachallenge.org/about-us/abner-and-zoe/>.

positive civic experience in youth can form a path to a lifetime of civic engagement. MC currently serves over 100,000 students annually in over 20 states and 46 school districts, mostly from under-resourced and marginalized communities. MC’s mission is to develop young people into active, informed citizens through Action Civics, a term they coined in 2007. Their programming provides educators, counselors, and youth workers with the curriculum, professional development and support needed to engage young people in high quality, student-centered, project-based Action Civics instruction. Late in life, Mikva said “[o]f all the accomplishments in my professional life, what I am most proud of is helping found the Mikva Challenge.”²

As two of the leading organizations championing on-the-ground civics education, GC and MC offer a unique perspective on the effect of civics education on students’ ability to participate effectively in democracy, and the impact that quality civics education has on citizens’ participation in the institutions of democracy. Both organizations offer the Court their perspectives—derived from personal experience—on how disparities in civics education around the country deprive those students who do not receive adequate, participatory civics education of the foundations to advocate for, practice, and safeguard the other civil rights reserved for them under the Constitution of the United States.

² *Id.*

ARGUMENT

Two centuries ago, Thomas Jefferson remarked that “the qualifications of self-government in society are not innate. They are the result of habit and long training.”³ Our society has long recognized an obligation to prepare future generations to practice civics—doing so is inherent to the project of democracy. Too many corners of our society, however, fail in this mission. With public education increasingly stressing core vocational subjects, support for effective civics education is falling by the wayside. Failing to prepare students to participate in democracy threatens democracy itself, and the impacts of this failure are felt most acutely among traditionally marginalized and disenfranchised communities. Plaintiffs-Appellants (“Plaintiffs”) brought this case to highlight and seek redress of Rhode Island’s failure to provide thousands of Rhode Island students with “an education that is adequate to prepare them to function productively as civic participants, capable of voting, serving on a jury, understanding economic, social and political systems sufficiently to make informed choices, and to participate effectively in civic activities.” App. 20-21, ¶ 4.

Amici write in support of Plaintiffs’ efforts, and to add context regarding the crisis in civics education and the role of effective civics education in enabling

³ *Extract of Letter from Thomas Jefferson to Edward Everett dated March 27, 1824*, The Jefferson Monticello Foundation, <https://tjrs.monticello.org/letter/1661>.

citizens to exercise and safeguard their Constitutional rights. *Amici*'s perspective is that of leading civics education organizations, who collectively serve tens of thousands of students annually in some of the most challenged communities in the nation.

The District Court correctly diagnosed the problem, recognizing that “American democracy is in peril.” *Op.* at 5, 6-17. The court also recognized that Rhode Island has assumed an express responsibility for preparing citizens to participate in democracy. *See id.* at 21 (recognizing the state’s responsibility “to promote public schools and ... secure to the people the advantages and opportunities of education.” (quoting R.I. Const. Art. 12 § 1)). And it has done so expressly in recognition that “the diffusion of knowledge” is “essential to the preservation of [the people’s] rights and liberties.” *Id.* Yet Rhode Island—like many other states—is failing to fulfill its obligation to adequately prepare its citizens with the “essential” tools necessary to preserve those “rights and liberties:” a meaningful public civics education.

Plaintiffs’ claims are borne out by the data. In a January 2020 Gallup Poll, 57% of Americans reported being dissatisfied with our system of government.⁴ At the same time, rather than bringing citizens together, American news consumption

⁴ Lydia Saad, *Americans’ Take on the U.S. Is Improved, but Still Mixed*, Gallup (Jan. 27, 2020), <https://news.gallup.com/poll/284033/americans-improved-mixed.aspx>.

is among the most polarized in the world, with widespread concerns regarding the prevalence of “fake news.”⁵ Plaintiffs’ claims are also reflected in our collective national experience. The January 6, 2021 insurrection at the United States Capitol—fueled by citizens angered at elected officials and misled by baseless allegations of “voter fraud”—is but one example. Americans are increasingly uninformed, frustrated and disillusioned.

While the District Court rightly identified and eloquently described the problem of inadequate civics education in America, it wrongly believed itself to be constrained by its reading of prior case law and to be unable to grant the necessary relief. *Amici* submit that the District Court not only erred in that respect, but misapprehended the nature of the problem confronting young people in Rhode Island and around the country. Access to an education that adequately prepares students—particularly disadvantaged, marginalized students—to participate in the democratic process is a necessary predicate to preserving the individual and collective liberties and rights afforded by the federal Constitution.

Plaintiffs and the District Court rightly recognize the urgency of a crisis in civics education in the United States. Students in underprivileged communities lack access to quality civics education in their publicly-funded schools, and the research

⁵ See *Reuters Institute Digital News Report* 15–18, (2020), https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2020-06/DNR_2020_FINAL.pdf.

demonstrates unequivocally that without such instruction, students are far less likely to participate in democracy. This, in turn, perpetuates a cycle of democratic underrepresentation and government-sanctioned disenfranchisement. Students in publicly-funded schools must have the right to equal access to education at least as to the fundamental elements of civics. The District Court’s finding to the contrary was in error and should be reversed.

I. There Is A Crisis In Civics Education In The United States.

More so than at any time in recent memory, there is a civics education crisis in this country. As demonstrated in Robert Putnam’s renowned analysis of the phenomenon, *Bowling Alone*, civic groups and organizations have been in decline throughout the 20th century, leaving Americans increasingly isolated from their government and from each other.⁶ Institutions that had in the past provided students with first- or second-hand exposure to democratic engagement—such as churches, fraternal organizations, or unions—are falling to the wayside.⁷ As recently as 1970, nearly 60% of Americans were active within a religious congregation or union.⁸ By

⁶ Robert Putnam, *Bowling Alone* 43–47 (2000).

⁷ 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).

⁸ Peter Levine & Kei Kawashima-Ginsberg, *The Republic is (Still) at Risk—and Civics is Part of the Solution 2* (2017), <https://www.civxnow.org/sites/default/files/resources/SummitWhitePaper.pdf>.

2012, that number had dropped to just a third.⁹ A recent study found that almost 60% of rural American youths, and nearly one out of every three urban and suburban children, occupied a “civic desert,” a place without adequate opportunities for civic engagement and experience.¹⁰ Schools and the school day remain some of the only places for students to turn to for experiential civics education. Yet they have failed to fill the void.

A. Civics Education Has Steadily Declined In The United States In Recent Years.

The decline in civic knowledge and civics education—the effects of which are already being felt—is not entirely new, but the effects are increasingly acute. The emphasis on civic education in America’s public schools has steadily declined over the past several decades.¹¹ There is only so much time in a school day, and as the focus on testing core subjects and student scores in the STEM fields has increased, social studies and civics programming have been sidelined.¹² Indeed, just 51% of eighth grade students report having taken a course mainly focused on civics and/or

⁹ *Id.*

¹⁰ *Id.* at 2–3.

¹¹ Jonathan Gould et al., *Guardian of Democracy: The Civic Mission of Schools* 14 (2011), http://cdn.annenbergpublicpolicycenter.org/wp-content/uploads/GuardianofDemocracy_report_final-12.pd.

¹² Rebecca Winthrop, *The Need for Civic Education in 21st-Century Schools* 1–3 (2020), https://www.brookings.edu/wp-content/uploads/2020/04/BrookingsPolicy2020_BigIdeas_Winthrop_CivicEducation.pdf.

U.S. government.¹³ The problem is particularly pronounced in school systems with limited funds to allocate.¹⁴ This leaves many students—particularly students of color and low-income students—ill-prepared for thinking about and participating in civic life, whether that be within one’s workplace, a community organization, or a government body.

As a result, American students demonstrate dangerously low levels of aptitude regarding civics. The National Assessment of Educational Progress (“NAEP”) tracks the civics knowledge of students through a national survey every four years. The most recent, 2018 report found that only 23% of eighth graders nationwide were “proficient” in civics, and fewer than half of students met the criteria for a “basic” level of civics knowledge.¹⁵ The Annenberg Public Policy Center at the University of Pennsylvania similarly demonstrates just how much these basic facts elude Americans, despite their centrality to our basic democratic processes. Its 2019 poll

¹³ The Nation’s Report Card (aka “NAEP”), *Results from the 2018 Civics, Geography, and U.S History Assessments* 3 (2018), https://www.nationsreportcard.gov/geography/supporting_files/2018_SS_infographic.pdf.

¹⁴ June Kronholz, *Academic Value of Non-Academics: The Case for Keeping Extracurriculars*, *Educ. Next* (Nov. 16, 2011), <https://www.educationnext.org/academic-value-of-non-academics/>.

¹⁵ NAEP, *supra* note 13, at 3; *see also* NAEP, *How Eighth-Grade Students Performed in Civics* (2018), <https://www.nationsreportcard.gov/highlights/civics/2018/>.

found only 39% of the public could name the three branches of government,¹⁶ while 22% could not name any branches—this was, shockingly, hailed as an improvement.¹⁷

The ability to distinguish fact-based news reporting from mis- and dis-information is an increasingly important civic skill. Nevertheless, recent surveys have found that students from middle school through college demonstrate difficulties in discerning the difference. A 2019 national survey from the Stanford History Education Group, for example, found that two thirds of students could not tell the difference between news stories and ads (even when identified as “Sponsored Content”), while 52% failed at properly assessing the credibility of a grainy Facebook video purporting to show voter fraud.¹⁸ These failures of news evaluation began in the classroom and presciently parallel baseless allegations of voter fraud on the national political stage just a year later.

¹⁶ Elected officials are not exempt. See Savannah Behrmann, *Sen.-elect Tommy Tuberville Botches History Facts, Including Three Branches of Government*, USA TODAY (Nov. 13, 2020), <https://www.usatoday.com/story/news/politics/2020/11/13/alabama-senator-elect-tommy-tuberville-botches-historical-facts/6283806002/>.

¹⁷ *Americans’ Civics Knowledge Increases but Still Has a Long Way to Go*, Annenberg Public Policy Center (Sept. 12, 2019), <https://www.annenbergpublicpolicycenter.org/americans-civics-knowledge-increases-2019-survey/>.

¹⁸ Joel Breakstone et al., *Students’ Civic Online Reasoning: A Nat’l Portrait 3*, 16 (2019), <https://stacks.stanford.edu/file/druid:gf151tb4868/Civic%20Online%20Reasoning%20National%20Portrait.pdf>.

One of the clearest demonstrations of the United States' crisis of civic education manifests in declining civic participation. Even while Americans are increasingly unhappy with their government, their involvement in its decision-making processes is decreasing. Based on 2016 U.S. election results, the United States ranked 30th out of 35 OECD countries in voter turnout for recent elections.¹⁹ Four in ten eligible voters, or nearly 100 million voters, did not cast a ballot during the 2016 presidential election.²⁰ Young people aged 18 to 29, in particular, turned out at damagingly low rates. Just 50% of eligible voters in this age group voted in the 2016 and 2012 presidential elections,²¹ while only 20% voted in the 2014 midterm elections, representing the lowest turnout ever recorded.²² While this

¹⁹ Drew Desilver, *In Past Elections, U.S trailed Most Developed Countries in Voter Turnout*, Pew Research Center (August 2, 2016), <https://www.pewresearch.org/fact-tank/2020/11/03/in-past-elections-u-s-trailed-most-developed-countries-in-voter-turnout/>.

²⁰ Christopher Ingraham, *About 100 Million People Couldn't Be Bothered to Vote This Year*, Wash. Post (Nov. 12, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/11/12/about-100-million-people-couldnt-be-bothered-to-vote-this-year/>; GC, *Education Paves the Road to Sustained Democracy* 4 (2017), <https://generationcitizen.org/wp-content/uploads/2017/01/GC-Educating-for-Citizenship.pdf> [hereinafter *Education Paves the Road to Sustained Democracy*].

²¹ CIRCLE, *Young Voters in the 2016 General Election* 1 (2016), <https://www.pewresearch.org/fact-tank/2020/11/03/in-past-elections-u-s-trailed-most-developed-countries-in-voter-turnout/>; *Education Paves the Road to Sustained Democracy*, *supra* note 20, at 4.

²² CIRCLE, *2014 Youth Turnout and Youth Registration Rates Lowest Ever Recorded* (July 21, 2015), <https://circle.tufts.edu/latest-research/2014-youth-turnout-and-registration-rates-lowest-ever-recorded/>; *Education Paves the Road to Sustained Democracy*, *supra* note 20, at 4.

number may spike in certain cycles (about 36% in the 2018 midterm elections), it remains troubling that 64% or more of eligible youth voters do not even bother to show up to the polls to make their voices heard.²³ Record turnout in the 2020 elections is an encouraging indicator of the effectiveness of concentrated civic engagement efforts, but the U.S. numbers still lag embarrassingly far behind our peers.²⁴

An essential part of the solution to these alarming trends is found in stronger civic education and the teaching of “civic skills.” Civic skills are those core competencies essential for participating in a democracy. They can be grouped broadly into three categories: first is communication, including expressing and understanding facts and opinions (and the difference between the two); second, collaboration, democratic deliberation and collective decision-making; and third, critical analysis of political information. They include a mix of “hard” and “soft” civic skills, from speaking and listening to collaboration and teamwork to interacting

²³ Jordan Misra, *Voter Turnout Rates Among All Voting Age and Major Racial and Ethnic Groups Were Higher Than in 2014*, U.S. Census Bureau (Apr. 23, 2019), <https://www.census.gov/library/stories/2019/04/behind-2018-united-states-midterm-election-turnout.html#:~:text=Voter%20turnout%20went%20up%20more,group%20%E2%80%94%20a%2079%20percent%20jump>.

²⁴ Annabelle Timsit, *2020’s Record Voter Turnout in the US Is Still Lower Than Many Other Countries*, Quartz (Nov. 9 2020), <https://qz.com/1926959/2020-us-record-voter-turnout-is-still-lower-than-other-countries/>.

with people who hold different opinions and beliefs and ultimately being able to apply these skills to communicate with and engage in civic processes.

These skills, however, do not develop in a vacuum. Students need practice in civic participation just as much as they need instruction in civics knowledge. And that practice is sorely lacking in schools across the country. To the extent civic education does exist in schools, it often focuses solely on civic knowledge through rote memorization of historical and governmental facts, such as the state capitals and the branches of government.²⁵ Moreover, such existing educational programs frequently lack the interactive components that research has shown better foster civic skills.²⁶ As just one example, more than half of students in one survey reported they never participate in mock trials or simulations, and less than 20% of teachers organize visits from members of the community or report that their students participate in community projects.²⁷

There are several reasons for this lack of effective and practicable civics education in schools today. For one, civics experiences have a second-class status

²⁵ See Anna Rosefsky Saavedra, *Dry to Dynamic Civic Education Curricula*, in *Making Civics Count: Citizenship Education for a New Generation* 146-150 (David E. Campbell et al., eds., 2012).

²⁶ Rebecca Casciano, *Estimating the Association Between Generation Citizen's Curriculum and Student Civic Skills* 4-5 (2013), https://generationcitizen.org/wp-content/uploads/2016/06/civic_skills_report.pdf.

²⁷ Saavedra, *supra* note 25, at 157.

and are thus some of the first programming to be cut when resources are limited.²⁸ This is particularly the case in districts with low income students and students of color, which experience such budget crises more acutely than other school districts.²⁹ When No Child Left Behind reforms put extraordinary emphasis on math and reading proficiency, schools responded by emphasizing these fields—such that one survey found weekly class time in history and social studies for grade school children dropped nearly fifteen percent, from three hours in 1999–2000 down to 2.6 hours in 2003–04.³⁰ A similar focus on the STEM fields continued through President Obama’s 2013 Educate to Innovate plan.³¹ This adds up to a substantial difference in what a child is exposed to over the course of a school year.

In recent years, states have failed to accept responsibility for providing adequate civics education as part of the academic core curriculum, relegating the issue to extracurricular activities like student government or debate clubs. However, there are often significant disparities in the availability and accessibility of such

²⁸ Kronholz, *supra* note 14, at 8.

²⁹ See Elizabeth Stearns & Elizabeth J. Glennie, *Opportunities to Participate: Extracurricular Activities’ Distribution Across and Academic Correlates in High School*, 39 Soc. Sci. Res. 296, 303 (2010); Victoria Lee & Kristin Blagg, “Equal” K-12 State Funding Cuts Could Disproportionately Harm Low-Income Students, Urban Inst. (July 31, 2020), <https://www.urban.org/urban-wire/equal-k-12-state-funding-cuts-could-disproportionately-harm-low-income-students>.

³⁰ Michael Hansen et al., *2018 Brown Center Report on American Education: Trends In NAEP Math, Reading, and Civics Scores* 9 (2018).

³¹ Winthrop, *supra* note 12, at 3.

programming, which disadvantages low-income students and students of color in particular. Certain school-implemented policies, such as fees for participating in extracurricular activities, disadvantage students whose families are unable to make the material contribution.³² Other schools impose GPA or disciplinary record requirements as a condition for participation in extracurricular activities, which disproportionately affect students of color and those who may benefit from civic experiences the most.³³ By failing to provide equal access to extracurricular programming, school systems contribute to the inability of those students to exercise their Constitutional rights, in particular the right to vote and the right to freedom of expression—basic underpinnings of a functional democracy.

B. The Impact Of Sub-Standard Civics Education Is Disproportionately Felt In Poor And Minority Communities.

The impact of the country’s failure to provide effective civics education to a majority of students is felt nowhere more than among poor and minority communities. Data-based research confirms that students from higher income

³² Elliot B. Weininger et al., *What Money Doesn’t Buy: Class Resources and Children’s Participation in Organized Extracurricular Activities*, 94 Soc. Forces at 479, 498 (2015).

³³ 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); 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.”).

families and white families are more likely to have access to a quality civic education, to vote, and to participate in government organizations as opposed to their less privileged peers.³⁴ These circumstances are created and perpetuated by structural inequality, intergenerational cycles, unequal civics education, lack of civic resources, civic disillusionment, and systemic and structural inequities. As a result, today's low-income students and students of color face particularly significant obstacles to participating fully in American democracy as informed citizens.

Research shows that the gap in student achievement between white and black students is significantly wider in the area of civics literacy than it is in other areas like reading and math.³⁵ For instance, the 2014 NAEP civics survey found that eight grade students whose parents had completed college and did not qualify for free or reduced school meals were more than five times more likely to be “proficient” in civics than those who parents did not hold a high school diploma and who qualified for free or reduced school meals.³⁶ In addition, research indicates that groups—such as low-income, black, or rural students—that score lower on tests of civic knowledge

³⁴ Joseph Kahne & Ellen Middaugh, *Democracy for Some: The Civic Opportunity Gap in High School* 8, 9–10 (2008).

³⁵ Michael Hansen et al., *The 2018 Brown Center Report on American Education: How Well Are American Students Learning?* 3, https://www.brookings.edu/wp-content/uploads/2018/06/2018-Brown-Center-Report-on-American-Education_FINAL1.pdf.

³⁶ Levine & Kawashima-Ginsberg, *supra* note 8, at 7.

have less optimistic views of their civic potential.³⁷ Providing sub-standard civics education to minority and low income communities stifles their aspirations not only for economic advancement, but also to fully participate in the civic life of the nation.

Studies also indicate that fewer civic educational opportunities are afforded to underprivileged communities. The performance gap between black and white students alone is equivalent to a functional difference of multiple years of less academic learning time.³⁸ When compared with average socioeconomic status schools, students in low-income schools, are half as likely to study how laws are made, and 30% less likely to report having experiences with debates or panel discussions in social studies classes.³⁹ Black and Hispanic students are also significantly less likely than white students to report having civic-oriented courses, discussions of current events, or experiences with decision-making and simulations of civic processes.⁴⁰ And even where students do receive comprehensive civics education, such curriculum may be tailored to the experiences of white, middle-class students more so than the experiences of the underserved communities.⁴¹

³⁷ Gould, *supra* note 11, at 13.

³⁸ Hansen, *supra* note 35, at 8.

³⁹ Kahne & Middaugh, *supra* note 34, at 16.

⁴⁰ *Id.* at 13.

⁴¹ GC, *360 Civic Learning: A Toolkit for Supporting Youth Civic Engagement in Underserved Communities* 5 (2019), <https://generationcitizen.org/wp-content/uploads/2019/08/360-Civic-Learning-updated-8.12.19.pdf> [hereinafter *360 Civic Learning*].

Absent the conditions for all people of all backgrounds to participate, a democracy cannot persist. The sustained lack of opportunity and weak results with respect to effective civics knowledge, education, and participation among underprivileged youth leads to generations of Americans being less willing and able to meaningfully participate in government. These groups are less likely to vote and to make demands on government.⁴² In turn, these groups are less likely to receive constituent services and more likely to remain underserved, creating a civic death spiral.

As Plaintiffs argue, education “is required in the performance of our most basic public responsibilities....It is the very foundation of good citizenship.” *Brown v. Board of Education of Topeka*, 347 U.S. 483, 493 (1954); *see also Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972) (“[E]ducation is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence.”). Yet, there are insufficient requirements and resources for civics education nationwide, without which the nation’s youth are ill-equipped to participate in the very basics of citizenship. Public schools fundamentally and systematically fail to provide citizens with access to an effective civics education, saddling many of them with a “handicap ... each and every day of [their] li[ves].” *Plyler v. Doe*, 457 U.S. 202, 222 (1982).

⁴² Kahne & Middaugh, *supra* note 34, at 8.

II. Students Who Receive Quality Civics Instruction Participate More Meaningfully In Democracy.

MC and GC know from their experience that quality civics education substantially enhances students' knowledge, ability and motivation to participate meaningfully in civic life. This benefits not only the students themselves, but society as whole.

A. "Action Civics" Education Seeks To Prepare Students For Meaningful Civic Participation.

What *amici* advocate is civics education that achieves its objectives; that is, civics education that supports the creation of knowledgeable, active, and engaged citizens. As explained above, two essential components of effective civics education are experiential learning and equal opportunity. *Amici* promote effective, experiential and equitable civics education through Action Civics.

Action Civics is a student-centered, experiential practice in which young people learn about the public policy process by taking action on specific issues in their communities. Students follow a process of community examination, issue identification, research, strategizing, taking action, and reflection. An Action Civics program includes the following four elements:

- **Student-led projects:** Young people should be at the center and origin of their projects. They must be involved in the initial creation and encouraged to develop their ideas. By tapping into a young person's expertise, their lived experiences are validated, which helps to empower and give confidence to their voice. In this youth-centered approach,

adults take on a supportive role and are not viewed as gatekeepers of knowledge and power.⁴³

- **Real-world, community-based issues:** By focusing on a community-based issue (either in or outside of school), young people are set up for success to find an effective solution. Their ties to the community provide context that is both relevant and informative of the structures and systems that have influenced their lived experiences. This context helps young people to reimagine and challenge the status quo that allows their community issue to remain unresolved, leading them to develop a sense of civic responsibility.⁴⁴
- **Civic action toward lasting change:** Young people put their plans into action by reaching out to community leaders such as legislators, elected officials, school administrators, etc. They write opinion pieces, create petitions, organize phone banking, use social media strategies, inform policy, etc.⁴⁵
- **Reflection on impact and approach:** Some Action Civics programs have a “Civics Day” for students to present their reflections on their student-led projects.⁴⁶ This element encourages young people to make connections across community contexts. By reflecting on their participation in their student-led projects, they develop civic skills such as

⁴³ 360 *Civic Learning*, *supra* note 41, at 16.

⁴⁴ *Id.*

⁴⁵ GC, *Action Civics in School Districts: Insights & Materials for Administrators* 6 (2017) [hereinafter *Action Civics in School Districts*].

⁴⁶ Rebecca Casciano & Jonathan Davis, *Generation Citizen and Student Efficacy* 16–18 (2013), <https://generationcitizen.org/wp-content/uploads/2016/06/Generation-Citizen-Efficacy-Report.pdf>.

persuasive communication, critical analysis, and group collaboration.⁴⁷

While *amici* do not claim or assert that an Action Civics curriculum is the only way states like Rhode Island could satisfy their obligation to provide adequate civics education, *amici* raise these points to highlight that the State need not write on a *tabula rasa*: frameworks for highly effective civics education are readily available, including in the context of programs that *amici* have developed. Courses that teach components of civic and government content in an action-oriented way allow students to retain the core civic knowledge they traditionally learn, while also teaching them the skills necessary for participation. Students who receive a combination of traditional and interactive civics education score highest on civic assessments and demonstrate high levels of critical thinking and news comprehension.⁴⁸

B. *Amici* Have Seen The Value Of Quality Civics Education In Action.

Both *amici* have developed innovative Action Civics-focused education programs and seen the effect those programs have on students' engagement. MC's programs focus on four main areas: (1) Action Civics curriculum in the classroom, (2) election and campaign experiences, (3) youth-led advocacy, and (4) public

⁴⁷ Casciano, *supra* note 26, at 1, 4–5.

⁴⁸ *Id.* at 4–5.

speaking events. Similarly, GC’s programs focus on providing educators with an equity-centered Action Civics curriculum for the classroom which includes various experiential components and targets schools in underperforming districts. *Amici* have made it their missions to ensure that, at the heart of these programs, the voices and expertise of the youth they serve are amplified.

i. Mikva Challenge

In the classroom, MC provides hands-on experiential lessons in community problem solving, youth leadership, critical analyses of electoral systems and evaluation of the media.⁴⁹ In addition, MC has several extracurricular programs that promote civic engagement. The “Elections in Action” program empowers young people to become engaged in elections on a bipartisan basis through phone banking, door-to-door campaigning, registering voters and assisting with running forums for candidates across the political spectrum.⁵⁰ For graduating high school seniors, there is a “Mikva Summer Fellows” program, which places students as interns in offices of elected officials.⁵¹ Additionally, the “Student Election Judge” program has recruited over 2,000 high school students to serve at polling sites in Chicago and

⁴⁹ MC, *Action Civics Classrooms*, <https://mikvachallenge.org/our-work/programs/action-civics-classrooms/>.

⁵⁰ MC, *Elections & Campaign Experiences*, <https://mikvachallenge.org/our-work/programs/elections-and-campaign-experiences/>.

⁵¹ *Id.*

D.C.⁵² These programs have led 97.6% of participating youth to say that they are “more likely to vote due to participation with Mikva Challenge.”⁵³

One unique program that has been effective in transforming students from apathetic participants to motivated civic contributors is MC’s Project Soapbox. This dynamic event creates a classroom and national platform for students to deliver speeches on issues that are meaningful to their lived experiences. These issues range from climate change to local gang violence. Students are given the opportunity to present their speeches in classrooms and can also choose to participate in citywide competitions. These competitive elements allows students from around the country to debate on issues they would like leaders of the nation to address.⁵⁴ Although the curriculum is designed to primarily emphasize rhetorical skills and democratic orientations, students have reported that the strongest impact the program has had on their lives has been on drastically improving their listening and empathy skills.⁵⁵ MC refers to this [short video clip](#) about Project Soapbox for the Court’s consideration.⁵⁶

⁵² *Id.*

⁵³ Mikva Challenge FY20 Survey Responses (on file with author); *see also* MC, *Impact*, <https://mikvachallenge.org/our-work/impact/>.

⁵⁴ MC, *Project Soapbox*, <https://mikvachallenge.org/our-work/programs/project-soapbox/>.

⁵⁵ Molly Andolina et al., *Speaking with Confidence and Listening with Empathy: The Impact of Project Soapbox in High School Students*, 46 *Theory & Res. in Social Educ.* 374, 375 (2018).

⁵⁶ Video available at: <https://youtu.be/p9vwRKfFgiY>.

Project Soapbox has created and continues to create spaces that both facilitate the development of argumentation skills and motivate students to listen to their peers. The impact this space has had on students was in a 2018 comprehensive alumni assessment.⁵⁷ According to their findings, alumni from Project Soapbox reported limited but significant gains in anticipated political engagement, confidence in their presentation skills, and willingness to engage in political issues in the future.⁵⁸ This research also found that discussion of controversial public issues in the classroom corresponds to democratic development: because students learn to listen to each other solely for the purpose of understanding each other's perspectives,⁵⁹ students developed appreciation for new perspectives, a vital skill for democratic engagement. Additional research has also supported that MC alumni are significantly more civically and politically engaged than their peers nationwide.⁶⁰

These findings are reinforced by the compelling personal experiences of the students who have participated in MC programming. One powerful story is that of Berto Aguayo, a former gang member from Chicago who is now a community organizer and recently ran for alderman. When Berto was a high school student, he

⁵⁷ Andolina, *supra* note 55, at 375.

⁵⁸ *Id.* at 395–96.

⁵⁹ *Id.* at 397, 400.

⁶⁰ MC, *Impact*, <https://mikvachallenge.org/our-work/impact/> (last visited Jan. 29, 2021).

was often in trouble at school and was suspended multiple times.⁶¹ During one such suspension, his principal persuaded Berto to register for MC, which was an extra-curricular program in his school at that time. Berto was assigned to work as an intern in an Alderman's office.⁶² This experience inspired Berto to leave the gang, knowing the consequences and risks of that decision.⁶³ He suffered a brutal beating, but unlike some, he survived.⁶⁴ He went on to graduate from high school and college, spent a semester as an intern in the Capitol Hill office of Senator Dick Durbin, and returned to his Chicago neighborhood to serve as a community organizer, working to improve conditions that had long been ignored by city and state governments in favor of wealthier communities that wielded more political power.⁶⁵ In 2019, he ran for Alderman of the 15th Ward in Chicago through an

⁶¹ See *Aguayo video*, *infra* note 67.

⁶² *Id.*

⁶³ *A Former Gang Member Finds New Power in Politics*, Chicago Community Trust (July 7, 2016), <https://www.cct.org/2016/07/a-former-gang-member-finds-new-power-in-politics/>; Micah Materre, *Former Gang Member Finds Success, Strength in Politics*, WGN9 (June 12, 2015), <https://wgntv.com/news/chicagos-very-own/former-gang-member-finds-success-strength-in-politics/>.

⁶⁴ *Id.*

⁶⁵ *Berto Aguayo*, LinkedIn, <https://www.linkedin.com/public-profile/in/aguayoberto?challengeId=AQF8bCNAPjDnfwAAAXdLKNWw0xTOvQLDaQ13d3d01O6xOgIUxAcVRNfex-QhPOrnvpz7H69O8f3BBfIsTJIxTpjZaAPwZF8QgA&submissionId=5ef2bec2-9786-5e16-939e-825d35e08675> (last visited Jan. 29, 2021).

independent grassroots campaign.⁶⁶ MC refers to this [video about Berto's story](#)⁶⁷ as well as this [video about other MC programming participants](#)⁶⁸ for the Court's consideration.

ii. Generation Citizen

GC's Action Civics curriculum is the heart of their work in classrooms. GC partners with schools and educators to teach a semester-long Action Civics course. The curriculum framework centers around five tasks: (1) students pick an issue that personally affects them, (2) students research a root cause, (3) students put plans into action, (4) students present their action plans to community leaders, and (5) students reflect on their projects.⁶⁹ GC's Action Civics curriculum incorporates the "Hourglass Framework," a heuristic which assists students in breaking down complex issues to construct an action plan for solving them.⁷⁰ The "Hourglass Framework" consists of the following elements: community issues, focus issue, root cause, goal, targets, and tactic. At the end of the semester, students present and reflect on their action projects on Civics Day, an inspiring occasion that capstones the positive impact of GC's programs.⁷¹

⁶⁶ *Id.*

⁶⁷ Video available at: <https://www.youtube.com/watch?v=SoB49kbMMM8> [hereinafter *Aguayo video*].

⁶⁸ Video available at: <https://www.youtube.com/watch?v=IPu9wZNw9YM>.

⁶⁹ *Action Civics in School Districts*, *supra* note 45, at 6.

⁷⁰ *Education Paves the Road to Sustained Democracy*, *supra* note 20, at 3.

⁷¹ GC, *Civics Day*, <https://generationcitizen.org/our-approach/civics-day>.



A study examining the effect that GC’s Action Civics curriculum has had on students found an overall positive impact on civic outcomes, specifically on Action Civics knowledge and civic self-efficacy.⁷³ This is especially noteworthy since GC targets schools with students from low-and-middle income backgrounds, populations who would have otherwise had few civic engagement opportunities.⁷⁴ Even now, during the ongoing COVID-19 pandemic, GC fervently believes that “democracy does not pause” during a crisis. *Amicus* is providing free Action Civic lesson plans to teachers, students, families, and caregivers, templates for lobbying a legislator, resources about the census, lessons on writing an ordinance to better understand local governance, op-ed templates, and historical lessons about the

⁷² *Education Paves the Road to Sustained Democracy*, *supra* note 20, at 3.

⁷³ Parissa J. Ballard et al., *Action Civics for Promoting Civic Development: Main Effects of Program Participation and Differences by Project Characteristics*, 58 *Am. J. Cmty. Psych.* 377, 384 (2016).

⁷⁴ *Id.* at 388.

barriers to voting.⁷⁵ GC is also continuing Civics Day presentations, virtually, and has boosted its student leadership board's youth-led podcast.

C. Objective Research Confirms The Positive Impact Of Civics Education On Students' Civic Engagement

Research into the impact of programs, like Project Soapbox and Civics Day, suggests that *amici's* Action Civics curriculum should be expanded into education practices. Survey data suggests civic knowledge and attitude have a positive, statistically significant independent association with future voting likelihood.⁷⁶ This is reinforced by extensive analysis of the connection between extracurricular programming and civic participation in adulthood.⁷⁷

⁷⁵ GC, *Democracy Doesn't Pause*, <https://generationcitizen.org/democracy-doesnt-pause/>.

⁷⁶ See, e.g., CIRCLE, *Youth Who Learned about Voting in High School More Likely to Informed and Engaged Voters* (Aug. 31, 2020), <https://circle.tufts.edu/latest-research/youth-who-learned-about-voting-high-school-more-likely-become-informed-and-engaged>; Alison K. Cohen & Benjamin W. Chaffee, *The Relationship Between Adolescents' Civic Knowledge, Civic Attitude, and Civic Behavior and Their Self-Reported Future Likelihood of Voting*, 8 Educ. Citizsh Soc. Justice 43 (2013); Eric Hansen & Andrew Tyner, *Educational Attainment and Social Norms of Voting*, Political Behavior (Oct. 8, 2019), <https://link.springer.com/article/10.1007/s11109-019-09571-8>.

⁷⁷ See, e.g., Kari Lorentson, *Revitalizing Young-Adult Citizenship: An Analysis of High-School Predictors on Civic Engagement*, Clocks and Clouds (2016), <http://www.inquiriesjournal.com/print?id=1571>; Joseph E. Kahne & Susan E. Spote, *Developing Citizens: The Impact of Civic Learning Opportunities on Students' Commitment to Civic Participation*, 45 Am. Ed. R. J. 738 (2008); Meira Levinson, *The Civic Achievement Gap*, CIRCLE Working Paper 51 (2007), <https://dash.harvard.edu/bitstream/handle/1/10861134/WP51Levinson.pdf?sequence=1&isAllowed=y>; Daniel Hart et al., *High School Community Service as a Predictor of Adult Voting and Volunteering*, 44 Am. Ed. Research J. 197 (2007);

At a time when civic education legislation seems more crucial than ever before, particularly given the polarization of our democracy, programming from *amici* warrant consideration to become part of a larger mandated Action Civics curriculum nationwide. *Amici*'s impacts are tangible. For instance, alumni from MC's programs have moved on to work in civil service roles like state assistant attorney general, census director, community organizer, and work for various state senators.

While *amici* and other NGOs work hard to support quality civics education, they cannot possibly meet every need. According to the latest figures from the census, in the 2015–2016 school year the total student population was around 49 million, whereas in its most successful year, in 2019–2020, MC was able to reach just around 49,000 nationwide.⁷⁸ Similarly last year, GC was able to work with 21,400 students nationwide; within Rhode Island, specifically, GC worked with 2,400 students, out of a total Rhode Island student population of about 140,000.⁷⁹ There is still much work to do. Although *amici* have made significant strides in

Mary Kirlin, *The Role of Adolescent Extracurricular Activities in Adult Political Participation*, CIRCLE Working Paper 2 (2003), https://circle.tufts.edu/sites/default/files/2019-12/WP02_AdolescentExtracurricularsAdultPoliticalParticipation_2003.pdf (collecting and reviewing of Adult empirical research).

⁷⁸ U.S. Census Bureau, *School Enrollment in the United States: October 2017*, <https://www.census.gov/data/tables/2017/demo/school-enrollment/2017-cps.html>.

⁷⁹ *Rhode Island Department of Elementary and Secondary Education*, <https://www.eride.ri.gov/reports/reports.asp>.

ensuring that students throughout the United States receive an effective Action Civics education, their work does not excuse states and public schools shirking their responsibility to provide educational opportunities essential to students' ability to exercise their Constitutional rights.

As the District Court found: “[W]e 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.” Op. at 17. The benefits of an informed and active citizenry translate directly into improved civil discourse and a healthier democracy. Young people who have had access to adequate Action Civics education develop academic, social, and emotional skills that contribute to enhanced critical thinking, communication, and collaboration with peers from different perspectives.⁸⁰ Although skills like listening and empathy are always seen as being at the forefront of a formal civic education, our political climate shines a light on their necessity. Research indicates that students need to “develop tolerance, cultivate the capacity to engage with people with whom they disagree, and ... hone the ability to work collaboratively with others

⁸⁰ GC, *Civics Education FAQ: An Introduction to Student-Led, Project-Based Civics (Action Civics)* 2-3 (2020).

to reach solutions to common problems,” all of which will lead to a more civil and just American democracy.⁸¹

CONCLUSION

Courts must “consider public education in the light of its full development and its present place in American life.” *Brown*, 347 U.S. at 492-93. Because of the integral role of civics in an educated citizenry, government’s failure to provide access to effective civics education directly impedes Plaintiffs’ Constitutionally protected rights to democratic participation and harms civil space. The District Court’s dismissal should be reversed.

Dated: February 1, 2021

⁸¹ Valerie Strauss, *We Talk a Lot About Civic Education. Here’s How to Get Kids Really Engaged in It.*, Wash. Post (Nov. 5, 2016), <https://www.washingtonpost.com/news/answer-sheet/wp/2016/11/05/we-talk-a-lot-about-civic-education-heres-how-to-get-kids-really-engaged-in-it/>.

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CERTIFICATE OF COMPLIANCE

This brief complies with the length limitations set forth in Federal Rule of Appellate Procedure 29(a)(5) because it contains 6484 words, as counted by Microsoft Word, excluding the items that may be excluded. I further certify that this brief complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5)–(6) because it has been prepared in a proportionately spaced typeface using Times New Roman 14–point font.

Dated: February 1, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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