



A Primer on Opportunity Gaps, Achievement Gaps, and the Pursuit of a High-Quality Education

Education Rights Institute, University of Virginia School of Law



SCHOOL of LAW
Education Rights Institute

About the Authors

Kimberly Jenkins Robinson is director of the Education Rights Institute and is a professor at the University of Virginia School of Law as well as a professor at the School of Education and Human Development and the Batten School of Leadership and Public Policy at the University of Virginia. She is one of the nation's leading education law experts and speaks throughout the United States about K–20 educational equity, school funding, education and democracy, equal opportunity, civil rights, Title IX, and federalism. She also serves as director of the Law School's Center for the Study of Race and Law.

Sarah Beach, Ph.D. is an inaugural Education Rights Institute fellow and a research assistant professor of law at the University of Virginia School of Law. Her perspective is informed by her experience as a public elementary, secondary, and university educator and scholar. Her Ph.D. is in Education Research, Statistics, and Evaluation, and her research interests include assessment and accountability for K–12 schools, education policy for equitable student success, and systems thinking with a focus on systemic change.

Helen Min, Ph.D. is an inaugural Education Rights Institute fellow and research assistant professor of law at the University of Virginia School of Law. As an education researcher and former public school teacher, she is interested in mixed-methods research, evaluating trauma-sensitive pedagogy, analyzing social and emotional learning, leading teacher professional development, and developing effective curriculum and instruction with the overarching goal of leveraging findings to support practitioners and policymakers.

Acknowledgments

We at the Education Rights Institute would like to thank our colleague, GeDá Jones Herbert, as well as our research assistants, Sydney Eisenberg, Abigail Jones, Aldebaron Levin, Sally Levin, and Dennis Ting, for their invaluable edits and contributions to this report.

Table of Contents

| | |
|---|-----------|
| Introduction | 3 |
| Definitions..... | 4 |
| <i>Achievement Gaps</i> | <i>4</i> |
| <i>Opportunity Gaps.....</i> | <i>5</i> |
| <i>High-Quality Education.....</i> | <i>6</i> |
| Why Focus on Gaps in Opportunity? | 7 |
| Gaps in Funding, Opportunity, and Outcomes | 8 |
| Meaningfully Addressing Opportunity Gaps | 10 |
| Aims of a High-Quality Education..... | 11 |
| College and Career Readiness | 11 |
| Civic Engagement | 12 |
| Assessing the Role of Law and Policy | 15 |
| Paths Toward Equal Educational Opportunity..... | 15 |
| The Role of the Education Rights Institute..... | 19 |
| Endnotes..... | 20 |

Introduction

Education provides the foundation for our democracy, economy, and society, and yet our nation does not guarantee that students receive equal educational opportunities. In 1973, the United States Supreme Court determined that education was not a fundamental right under the U.S. Constitution in *Rodriguez v. San Antonio Independent School District*.¹ This decision meant that the families challenging the disparities in funding between school districts within the state of Texas could not obtain a remedy in federal court. Established fifty years after *Rodriguez*, the Education Rights Institute (ERI) produces research and supports engagement that aims to ensure each and every student in our nation can enjoy a high-quality education that prepares them to be college and career ready and engaged civic participants.

In many ways, this story begins with Demetrio Rodriguez, a Mexican American parent in the Edgewood Independent School District. He led the lawsuit against the state of Texas on behalf of Mexican American students residing in low-wealth districts, arguing that the state's system of financing public education through heavy reliance on local property taxes resulted in significant funding disparities between school districts. Rodriguez contended that this funding system violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because it resulted in wealth discrimination against students in the low-wealth districts and denied them their fundamental right to education.²

The Supreme Court, in a 5-4 decision, ruled against Rodriguez and the families who brought the suit, holding that wealth was not a suspect classification that required the most demanding level of constitutional scrutiny.³ The Court further decided that the Equal Protection Clause did not provide a fundamental right to education.⁴ This decision continues to have profound impacts on access to a high-quality education throughout our nation because it essentially bars students and their families from challenging substantial and harmful disparities in school funding or other educational resources in federal court. In short, the *Rodriguez* decision told the students and their families, "Our Constitution cannot help you."⁵

In short, the Rodriguez decision told the students and their families, "Our Constitution cannot help you."

The Supreme Court gave several reasons for its decision. It rejected the claim of wealth discrimination because the school funding system did not result in a complete denial of education, and the families had not

demonstrated that the system disadvantaged a clearly defined group of low-income individuals.⁶ Additionally, the Court refused to recognize education as a fundamental right because education was not explicitly or implicitly included in the Constitution. The Court did not want to disrupt the balance between national, state, and local governance of education, nor did it want to substitute its judgment for those of experts or state and local officials. The Court determined that the most lenient form of constitutional review was appropriate given the absence of a fundamental right. The Court found this standard to be met and thus upheld the Texas school funding system.⁷

Despite not requiring the funding system to change, the Supreme Court did acknowledge that our nation may have depended too much and for too long on property taxes to fund schools. It further admitted the need for both greater equality and higher-quality educational opportunities. Nevertheless, the Court decided that only individual states and their elected officials should address these concerns.⁸

“We never truly address the kinds of resource distributions that true equity would require, and [we] certainly have not considered what true redress or repair looks like for long-standing historical and economic harms.”

– Na’ilah Suad Nasir

Five decades following the landmark *Rodriguez* decision, harmful disparities in access to high-quality education among students persist along lines of class, race, neighborhood, and tribe. As Na’ilah Suad Nasir, President of the Spencer Foundation, stated at the October 16, 2023, launch of ERI, “We never truly address the kinds of resource distributions that true equity would require, and [we] certainly have not considered what true redress or repair looks like for long-standing historical and economic harms.”⁹ School funding continues

to be heavily reliant on local property taxes, which means that many schools in rural and urban low-income areas often have fewer resources compared to schools in wealthier neighborhoods.¹⁰ When there is less money to spend on high-quality teachers and school resources, students have fewer high-quality opportunities to learn, which greatly contributes to poorer outcomes in school and life.

This primer will define essential terms in education, explain why it is critical to focus on gaps in opportunity rather than gaps in achievement, and explain how these opportunity gaps have harmed students. The following sections also introduce some of the important components and aims of a high-quality education that ERI will explore in greater depth in forthcoming reports and highlight one of the promising pathways to help close these gaps.

Definitions

Though the United States is among the wealthiest countries in the world, persistent and impactful gaps in the quality of K–12 educational opportunities hinder access to a high-quality education for many students. These disparities in educational opportunities are obstacles to our nation’s ability to establish a thriving democracy, a strong economy, and a just society.¹¹ Below we define three essential terms that we employ in this and forthcoming reports: achievement gaps, opportunity gaps, and high-quality education.

Achievement Gaps

The National Center for Education Statistics defines the educational **achievement gap** as occurring “when one group of students . . . outperforms another group and the difference in average scores for the two groups is statistically significant.”¹² Academic achievement gaps have traditionally leaned heavily on the analysis of test score data to discern trends and disparities

among various student groups. Achievement gaps have been identified between socioeconomic classes, the demographic density of communities, and the racial background of students. For example, one of the strongest predictors of educational success—as measured by test scores, high school graduation, or college attendance and completion—is a student’s socioeconomic background.¹³ Between the 1970s and the 2000s, gaps in achievement grew as the gaps in social class grew, particularly between students from families in the top income brackets when compared to other students.¹⁴ Students with intersectional identities who, for example, were both students of color and experienced poverty, faced additional challenges that hindered their academic performance.¹⁵

Historically, the “gap” in academic performance has compared White and non-White students using such metrics as standardized test scores, graduation rates, and college admissions. Since the 1960s, the National Assessment of Educational Progress (NAEP) has consistently shown that African American, Hispanic/Latinx, and Indigenous students do not score as highly on national tests in math and reading compared to their White and Asian peers.¹⁶ Analysis of U.S. achievement data collected from 2009 to 2019 suggested that key factors influencing these disparities were district-level racial and economic segregation and unequal access to certified teachers.¹⁷ These findings are consistent across other studies investigating achievement.¹⁸

The enduring nature of academic achievement gaps across an array of demographic factors, including socioeconomic background, geography, and race, has led many educators, scholars, and reformers to recognize that the focus on test scores in education law, policy, and accountability has unnecessarily and impactfully narrowed our lens in education for too long. As a result, the more recent focus has shifted to recognizing how gaps in opportunity drive these disparities in academic outcomes.¹⁹

Opportunity Gaps

Opportunity gaps recognize that academic disparities persist due to differences in societal, school, and community factors that generate significant inequalities in educational outcomes.²⁰ These factors include differential educational resources, support, and activities among students, including advanced coursework, experienced teachers, extracurricular activities, and other components that directly impact the quality of education a student receives. Therefore, recognizing the opportunity gaps in education helps ensure that governmental, societal, school, and community systems share in the responsibility of providing each and every student the opportunity for success.²¹

***Recognizing the opportunity gaps
In education helps ensure that
governmental, societal, school, and
community systems share in the
responsibility of providing each and
every student the opportunity for
success.***

Both in- and out-of-school opportunities contribute to the academic success of students. In-school factors that have been shown to correlate with student achievement include: the quality of teachers, rigor of curriculum, student engagement in academic activities, and establishment of a school culture that fosters high

expectations.²² Out-of-school factors that may influence student achievement include: food security, housing, healthcare, poverty, and/or access to basic necessities.²³ These social, economic, political, and cultural factors make up what sociologist Prudence Carter calls the root “ecology of opportunity” that needs to be addressed to resolve symptoms like gaps in test scores, high school graduation rates, and college attendance.²⁴ Furthermore, informal and formal opportunities in early childhood provide critical building blocks for student success, and their absence can hinder a child’s learning readiness.²⁵

While studies indicate that holistic support of students is important for their academic success and overall well-being, it is difficult to determine the exact relationship between all possible external factors and academic outcomes.²⁶ Considering the breadth and complexity of out-of-school factors that may influence academic outcomes, the examination of opportunity gaps here will primarily focus on factors within the realm of the education system.

High-Quality Education

A **high-quality education** encompasses a rigorous and comprehensive educational approach. This includes equitable access to quality resources, well-qualified teachers, a rigorous and inclusive curriculum, and an environment conducive to learning.²⁷ This definition transcends academic outcomes and acknowledges the critical importance of student-centered educational experiences that prepare students to be college and career ready and twenty-first-century global civic participants.²⁸ **College and career readiness** for high school graduates is defined as the ability to succeed in a job or the first year of higher education without requiring remedial assistance.²⁹ We define engaged **civic participants** as those who are “willing, able and equipped” to be critical consumers of knowledge and active contributors to political processes and within their communities.³⁰

A high-quality education includes both the delivery of academic knowledge and the honing of skills that fuel a fulfilling and productive life. Researchers and policymakers acknowledge that essential school and life skills include social and emotional skills like critical thinking, creativity, problem-solving, persistence, and self-control.³¹ However, not all students in our nation can readily access a high-quality education within their local neighborhood schools.³² Many students of color, students from low-income households, and students in many rural and urban communities encounter disproportionate difficulty accessing high-quality schools and teachers compared to their peers.³³ The disparities in access to a high-quality education among students in our nation stem from a myriad of complex underlying reasons that will be discussed in more detail through subsequent reports by ERI.

Why Focus on Gaps in Opportunity?

The framework of the achievement gap, centered predominantly on test score outcomes, is flawed due to its heavy reliance on a singular metric to gauge academic success. Though test scores offer a snapshot of student performance, they are frequently employed as the exclusive and definitive factor in forming generalizations about academic achievement and in crafting policy. It is crucial to acknowledge the limitations of test score metrics, given their narrow scope and the absence of metrics for twenty-first-century skills. Moreover, using test scores as the sole basis for comparing students is unreliable, as it disregards the multifaceted factors influencing test outcomes.

The National Assessment of Educational Progress (NAEP), the longest-standing nationally representative assessment mandated by Congress, tests students for their knowledge and skills in subjects like math, reading, and science.³⁴ These standardized exams provide a single measurement of students' performance at a particular moment and cannot capture students' overall capabilities or their potential for growth. Further, to monitor student achievement over time through comparison of test scores from year-to-year, the NAEP has remained largely unchanged since 2009.³⁵ This means that any curricular changes that have occurred in the past decade are not likely to be reflected on this national exam.³⁶ A recent analysis of many large, urban districts found that the emphasis of what was taught in the classroom in math, which focused on college and career readiness, differed from what was tested by NAEP, making the urban scores look artificially low.³⁷ Though testing data can provide a useful overview of some components of academic outcomes, this is one example of how exams may be limited in their design. Users of test score data will benefit from being mindful of potential discrepancies between tested content and actual classroom learning.

Additionally, certain skills are not only unaccounted for in standardized exams but may also prove challenging to assess through a testing framework. The skills students need for participation in a global society, often referred to as twenty-first-century skills, include social and emotional skills, collaboration, appreciation for diversity, effective communication, leadership, motivation, persistence, creativity, and ethics.³⁸ These skills, however, are not commonly evaluated by standardized tests, nor are the tests designed to measure these nuanced factors. To better understand whether students in our nation are equipped with the skills necessary to engage in a modern and interconnected world, more creative means to gauge these interpersonal and intrapersonal competencies are necessary.

Not only are test-score-based generalizations about academic achievement limited, they also inadequately capture the disparities between students. Indeed, educational disparities in outcomes are most accurately understood through the lens of opportunity gaps. Sean Reardon explains:

We think of those test scores as a measure of opportunity. There's no reason that the children born in one place have different innate capacities than the children born in another place on average. So, the only reason . . . is because they've had different opportunities to develop the kinds of skills and capacities that are measured by our standardized tests.³⁹

As some test makers have acknowledged: opportunity gaps are among the key root causes of gaps in test scores.⁴⁰ Carl Brigham, the creator of the Scholastic Aptitude Test (SAT) originally aimed to use the test as evidence of his perceived superiority of the White race.⁴¹ Brigham later disavowed his own theories and considered it a misconception to believe tests, including the Intelligence Quotient (IQ) test, measured innate intelligence, explaining that “test scores very definitely are a composite including schooling, family background, familiarity with English and everything else, relevant and irrelevant.”⁴² Newer research substantiates the claim that particular student factors that coincide with gaps in opportunity, such as family income, continue to need to be addressed. In sharing with the public a new tool that tracks students’ contextual factors, such as socioeconomic status and post-secondary guidance, NAEP researchers acknowledged the impact that gaps in opportunity have on test scores. For example, they explained that when test scores account for the influence of these factors, the difference in scores between White and Hispanic/Latinx students decreased from twenty-one points to four points.⁴³ This highlights the importance of addressing gaps in opportunities grounded in the context of students’ learning environments in addition to making curricular changes that support learning outcomes.

Focusing on the opportunity gap recognizes the harmful impact of enduring disparities that hinder students from accessing a high-quality education. This approach can support the restructuring and strengthening of our nation’s education system by eliminating the attribution of underachievement on standardized tests solely to students and their families. An emphasis on opportunity gaps shifts the duty for ensuring a high-quality opportunity to learn to a collective responsibility of our nation, including its federal, state, and local governments, and all its residents in collaboration with students and their families.⁴⁴

Gaps in Funding, Opportunity, and Outcomes

Opportunity gaps significantly affect the educational outcomes of students. A notable example of the impact of gaps in opportunity on students is the inequitable funding structure in schools, similar to those challenged in the *Rodriguez* case. While sufficient funding for a high-quality education is a necessary foundation for effective schools, most state funding systems fail to deliver adequate or equitable funding. This greatly contributes to disproportionately negative academic outcomes for students who have fewer and lower quality opportunities in schools due to lack of funding. A study by the Education Trust found that from 2018 through 2020, across our nation, students who attended schools with higher poverty received about \$800 less per student despite strong evidence that schools with more students from low socioeconomic backgrounds need more funding to combat additional challenges that can hinder their academic success. While this amount may seem small, the study explains that \$800 per student would provide sufficient funding for a school with 500 students to invest in evidence-based practices such as high-dosage tutoring that helps close persistent gaps, hire at least three more teachers, or purchase a computer for each student.⁴⁵ Funding also varies geographically. While many states typically allocate more funds to rural schools due to their higher operational costs stemming from transportation and associated expenses and lower income from property taxes, fourteen states provided less funding to rural districts during the 2020–2021 school year.⁴⁶ Most notably, the amount spent on instruction per rural pupil is \$500 below the national average.⁴⁷

Additionally, racial disparities exist in the allocation of school funds. A 2019 report by EdBuild found that school districts primarily serving White students received \$23 billion more in funding compared to districts serving predominantly non-White students, despite having a similar number of students. The average funding divide between White (75% or more white students) and non-White (75%

or more non-White) districts is \$2,200, with White school districts receiving close to \$14,000 per student and non-White districts receiving \$11,682.⁴⁸ These gaps in funding along class, geographic, and racial lines greatly contribute to adverse academic outcomes for students and limit our nation from providing a high-quality education to all students.

Students who had exposure to roughly 10% more spending annually (\$1,000) experienced a 7% rise in college enrollment and an 11% rise in degree attainment.

The implications of the funding opportunity gaps are numerous. One study revealed that students who had exposure to roughly 10% more spending annually (\$1,000) from fourth to seventh grade experienced a 7% rise in college enrollment and an 11% rise in degree attainment.⁴⁹ A study published by the National Bureau of Economic Research found that increasing spending for each student every year throughout their twelve years of public school by 10% results in increased likelihood of high school graduation, an increase in adult wages, and a drop in the chance of being in poverty as an adult for students from low-income families.⁵⁰ Another study found that increasing per-pupil spending by about \$990–\$1,800 led to a 5- to 8-percentage-point increase in the graduation rate from 1990 to 2010.⁵¹ The implications of educational resources provided by funding ripple into students’ opportunities and outcomes post-graduation, influencing their college enrollment, degree completion, adult wages, and poverty rates. The far-reaching implications of inadequate funding, as demonstrated by various studies, underscore the critical role that financial resources play in providing students a high-quality education, which ERI will examine in greater detail in a report later in 2024.

Meaningfully Addressing Opportunity Gaps

A high-quality education ensures that each and every student has equitable opportunities for academic success. Although out-of-school factors, such as food security, housing, healthcare, and poverty, may be beyond the immediate control or influence of education leaders, there are considerable in-school opportunity gaps that can be targeted to achieve a high-quality education for all students. Leading education expert Linda Darling-Hammond shares that the largest gaps in educational opportunity include access to qualified teachers, access to high-level curriculum, access to sufficient school resources, enough social support for student health and well-being, and learning environments that support twenty-first-century skills.⁵² Closing these educational opportunity gaps will require a sustained effort by policymakers and education leaders throughout schools, districts, and states. Subsequent reports by ERI will examine these opportunity gaps in more detail.

Research suggests that supporting more systemic inputs, such as highly qualified and motivated teachers, strong school leadership, and a cohesive plan for improved learning outcomes, can better facilitate student success.⁵³ Thus, it is important to address gaps in educational opportunities by prioritizing systemic reforms that foster sustained positive student outcomes, rather than opting for short-term interventions that yield temporary and limited results.

In New Jersey, a series of significant school funding decisions led to notable increases in opportunities for students through a change in the funding system. A collection of lawsuits known as *Abbott v. Burke* challenged the state's school funding system, arguing that it resulted in inadequate and unequal funding for schools in low-income areas.⁵⁴ The Supreme Court of New Jersey mandated reforms to address disparities in education funding and ensured a more equitable distribution of resources among schools by emphasizing a constitutional obligation to provide a "thorough and efficient" education for all students in the state.⁵⁵ As a result, the state implemented the School Funding Reform Act in 2008, directing more funding to districts with higher levels of need, particularly those serving students in economically disadvantaged communities. Other key rulings addressed the establishment of high-quality preschool programs in some disadvantaged school districts, resources to ensure that students in economically disadvantaged districts had access to the same quality of education as wealthier districts, and the active role of the court in overseeing the state's compliance with the rulings.⁵⁶

Other states and school districts are also actively working to address these educational opportunity gaps. For instance, some districts in California have had notable success in their approach to dismantling opportunity gaps, and their experiences are being studied to learn from their process. The schools in these districts focus on success for each student through equity initiatives, engaged leadership, effective teachers, and collaborative models of deep learning, with assessments and curricula that support that vision.⁵⁷ For example, one district that has made a large-scale effort to promote deeper learning shifted to instruction that promotes more conceptual understanding of core content and increased application of collaborative skills, both among students and teachers. An investment in professional development and an expansion of the curriculum available to students were both necessary to see positive changes in student outcomes in the district.⁵⁸

Sustained federal, state, and local efforts to remedy opportunity gaps require defining the student, community, and societal goals for a high-quality education. Based on broad support among education leaders and scholars as well as within education law and policy, ERI focuses on two key components of a high-quality education: (1) preparing students to be college and career ready and (2) empowering students to be engaged civic participants.⁵⁹

Aims of a High-Quality Education

When a high-quality education equips students to be college and career ready and productive members of society, students graduate ready to contribute to a strong democracy and economy. Participation in schools serves as a model for engagement in society.⁶⁰ Therefore, a high-quality education must promote agency and autonomy, which enable students to strengthen their skills by authentically participating in a community with others.⁶¹ When graduates become economically productive civic participants, this benefits not only the individuals themselves but also their broader communities and the country. In the following sections, college and career readiness and civic engagement will be discussed in more detail, including gaps in opportunities in these areas and the implications of those gaps.

College and Career Readiness

Although preparing students for their next phase of life is one of the stated purposes of our education system, college and career readiness is not always a top requirement for graduation. For students to be college and career ready, students must be able to successfully begin higher education or a job without requiring remedial assistance.⁶²

David Conley, a scholar with over two decades of expertise in college and career readiness, asserts that achieving readiness involves not just acquiring content knowledge, but also mastering the skills of learning, problem-solving, and applying knowledge to new settings.⁶³

One way to be college and career ready is for students to learn alongside other students who have a variety of experiences different from their own, which has been shown to benefit students from all backgrounds.

In higher education and in the workforce, concern is growing about the discrepancy between the expectations of professors and supervisors and the skills students exhibit. Illustratively, although math is one of the core subjects of focus in our public schools, research indicates that students are struggling with the most foundational skills needed for success in college-level math.⁶⁴ Beyond content knowledge, a more notable disparity exists in often overlooked soft skills like critical thinking and communication, which are crucial for problem-solving and highly valued by employers.⁶⁵

Gaps in opportunity increase the likelihood that some students will fall short of expectations for success over others. For example, students whose families were financially in the top 20% in our nation were seven times more likely than students in the bottom 20% to have a score on the SAT

that would allow them access to a top-ranked institution.⁶⁶ Further, even with similar test scores, students from higher-income families were more likely to gain admission.⁶⁷

Once in college, many students struggle to take college-level classes without additional support. In the 2019–2020 school year, more than one out of every seven students needed remedial courses in their first year of college, with even higher percentages among certain racial groups and those attending community college.⁶⁸ This indicates that many students are not receiving the preparation needed for college readiness. In analyzing data from rural school districts, the connection between educational outcomes (i.e., test scores) and college and career readiness (i.e., taking upper-level courses, graduation rates, and students taking the SAT) is “not particularly strong.”⁶⁹ These incongruencies point to a need for measures that can accurately account for college and career readiness. Due to the lack of valid measures, students of marginalized backgrounds along lines of class, race, neighborhood, and tribe may face even greater gaps in opportunities for college and career readiness than are able to be widely documented.

Gaps in the educational opportunities that students need to be college and career ready harm both individuals directly impacted and our communities and nation as a whole. Leading education law scholar Derek Black states:

Racial and socioeconomic school segregation is dragging down public education and society as a whole. Separate and unequal public education perpetuates a system of winners and losers, incentivizing parents who can simply protect their own interests. . . . In the end, public education settles for a few islands of opportunity rather than the common good of all. Yet the so-called winners come up short in important ways, too. They think the islands are offering the maximum chances for success when, in fact, those homogeneous islands are denying students the diverse learning environments that improve critical thinking, civic values, social cohesion, and the skills most valued in higher education and employment.⁷⁰

Addressing gaps in opportunity is crucial not only for low-income communities, communities of color, and particular neighborhoods but also for the strength of our country. The skills necessary to be successful in post-secondary institutions, careers, and beyond are not well developed in isolation. One way to be college and career ready is for students to learn alongside other students who have a variety of experiences different from their own, which has been shown to benefit students from all backgrounds.⁷¹

Civic Engagement

To maintain a robust democracy, residents of our country need literacy skills and civic knowledge to engage in their communities, states, and our nation. *Our Common Purpose: Reinventing American Democracy for the 21st Century*, a report issued by the American Academy of Arts and Sciences, noted, “A constitutional democracy requires its citizens not just to be committed to its success and to one another, but also to develop the knowledge, skills, and habits that allow them to participate fully in the democratic process.”⁷² The full scope of civic participation in the twenty-first century includes engagement with the democratic process, active

community participation, and attention to our interconnected global society.⁷³ This requires students to be able to critically consume knowledge and determine how to communicate what they have learned with others who hold diverse perspectives.⁷⁴ Schools are a central avenue to foster this commitment, and opportunity gaps undermine our nation’s civic education aims for all residents of our land.⁷⁵ Inequitable access to a high-quality education means that the required preparation for civic participation is largely absent for some students.⁷⁶

Many students are not graduating with the civic skills they need despite the importance of civic education in schools. As a publication by the U.S. Department of Education noted:

[U]nfortunately, civic learning and democratic engagement are add-ons rather than essential parts of the core academic mission in too many schools and on too many college campuses today. Many elementary and secondary schools are pushing civics and service-learning to the sidelines, mistakenly treating education for citizenship as a distraction from preparing students for college-level mathematics, English, and other core subjects.⁷⁷

A growing number of district leaders affirm that preparing students to be “engaged citizens” is a challenge in school districts, with seventy-four percent indicating this was a challenging area in 2018.⁷⁸

As a public institution founded to foster civic education and support an informed democracy, public schools hold a substantial responsibility to prioritize civic participation as a significant educational outcome.⁷⁹ An international study including over 90,000 students in nearly thirty countries found that schools achieve the most favorable outcomes in fostering civic participation with a comprehensive approach.⁸⁰ This approach requires instructors to actively teach civic skills and content, cultivate a classroom environment safe for discussions, highlight the significance of the electoral process, and support a school culture of participation. In Chicago, a study of over 4,000 students found that civic instruction that engaged students in this way influenced commitments to civic participation.⁸¹

Civic participation includes making the voices and needs of students known to policymakers and the broader public. Researchers note, “[w]hen youth are given opportunities to use their skills to redress social problems, they can experience themselves as having agency and as being responsible for society’s well-being.”⁸² Conversations with respected adults are important for fostering this identity both for students individually and as a group.⁸³ Additionally, to foster safe climates for civic engagement, teachers must encourage diverse expression in the classroom, allowing students to develop, express, and communicate their political and ideological thoughts with others who agree and disagree with them.⁸⁴

Inequitable opportunities to learn these civic skills exist in our nation today. High school students who were not planning to enroll in post-secondary education reported “significantly fewer opportunities to develop civic and political capacities and commitments” than students who were planning to pursue higher education.⁸⁵ In his book *Flunking Democracy*, Michael Rebell notes:

The ability of the schools to carry out their historical role of civic preparation has been further undermined by the disparities in opportunities for effective civic preparation that are available in many schools; this opportunity gap has resulted in a large “civic empowerment gap” for many students in poverty and students of color.⁸⁶

However, students of color and students from poor families are not the only students who suffer. Using data following the 2016 election, the Center for Information and Research on Civic Learning and Engagement estimated that sixty percent of rural youth live in civic deserts, defined as those places with little to no opportunities to learn about civic engagement and help foster civic skills.⁸⁷ Additional research supports that suburban schools are more likely to offer robust civic education than urban or rural schools.⁸⁸ In turn, rural students may be both less likely to feel responsible for political engagement and less likely to feel they can make a difference through their civic participation.⁸⁹

Gaps in access to a comprehensive approach to civic education have impacts on important indicators of civic participation. For example, there were large racial and geographical gaps in voter turnout in the 2016 election, including in areas throughout Appalachia labeled as voter deserts.⁹⁰ Additionally, students who graduate from high school and go on to at least some college tend to be more likely to volunteer than their peers who do not pursue higher education, with increasing disparities in volunteer rates by educational attainment level in recent years.⁹¹ Lastly, there are connections between income and civic participation, with families with higher incomes being more likely to engage in community work, contact elected officials, and sit on a board.⁹²

Due to the importance of civic engagement for a strong democracy, the report *Our Common Purpose* suggests that federal leaders invest both in civic educators and civic education for students of all ages across our country.⁹³ They also advocate for a federal award program to recognize civic-learning achievements and emphasize that civic learning should be a lifelong commitment with all members of a diverse community. They too affirm the comprehensive approach to civic education, stating:

The American citizen today must be prepared to acknowledge our nation’s mistakes, to recognize that we have grappled over time to improve our imperfect union, to find pride in those struggles, and to recognize that at our best, everyone is included. We suggest that citizens today must be able to deal with ongoing debate and argument, be able to engage in that debate, find compromise, and from it all find their own love of country.⁹⁴

Given the persistence of harmful disparities in opportunities to receive a civic education as well as an education that prepares students to be college and career ready, it is important to understand both the current legal obstacles and opportunities for a high-quality education.

Assessing the Role of Law and Policy

Law and policy provide the ecosystem that creates and tolerates educational opportunity gaps. As former dean and 300th Anniversary University Professor of Harvard Law School, Martha Minow, stated at ERI's launch, "This nation has never lived up to the promise of equal opportunity. And yet it is fundamental to the constitutional vision and indeed the ethical vision of the United States."⁹⁵ It may be tempting to view the enduring opportunity and achievement gaps that characterize our nation's education system as unavoidable and insurmountable. Yet they are neither. Our laws, policies, and practices have created a system of winners and losers in education that has been tolerated for more than two centuries with class, geography, and race serving as key predictors of who is on the winning or losing side of the equation. Our democracy, society, and economy lose when we fail to provide each and every student with a high-quality education.

"This nation has never lived up to the promise of equal opportunity. And yet it is fundamental to the constitutional vision and indeed the ethical vision of the United States."

– Martha Minow

State, local, and federal laws, policies, and practices determine the distribution of educational opportunities. Our nation's approach to education federalism embraces states as the leaders for education with school districts operating as subsidiaries of state law. The federal government historically and currently has played a fairly limited role in education when compared to the states' roles.⁹⁶ This means that states bear the lion's share of responsibility for the disparities in educational opportunities that result in high-quality or excellent schools for some and mediocre or worse schools for others. States also are in control of the fact that the distribution in quality often reflects socioeconomic, geographic, and racial divides.⁹⁷ Our federal government also must share the blame for our current system of education in that it does not demand a more just and beneficial distribution of educational opportunities, although it distributes, and establishes the conditions for, billions of dollars in federal aid.⁹⁸

Fortunately, our state, local, and federal laws, policies, and practices can be reformed to guide us to a time when each and every student enjoys access to a high-quality education that prepares them to be college and career ready and engaged civic participants. While scholars and practitioners debate the best path forward, one of the most comprehensive ways to attain these essential aims is to recognize a federal right to a high-quality education. Therefore, the next section begins to consider what such a right would and would not provide.⁹⁹

Paths Toward Equal Educational Opportunity

Our nation could take a variety of pathways to achieve its goal of equal educational opportunity. No one pathway is likely to fully achieve this goal. One promising route is a federal right to a high-quality education. It has the potential to put our nation on the path to remedying harmful disparities in educational opportunities. Such a right would establish a way for federal leadership to insist that states implement plans to transition from our current subpar and unequal education

system to a more excellent and equitable one, while simultaneously providing federal support to enhance the capacity of states to effectively undertake such a transition.¹⁰⁰ Recognizing a federal right to education should be considered among the potential reforms that advance equal educational opportunity because “the privileged place that rights enjoy in US law and society and their conveyance of political and moral urgency given their potential to trump majority interests offers an important but imperfect vehicle” to aid in strengthening our education system.¹⁰¹

Several pathways exist for recognizing a federal right to a high-quality education. Such a right could be enacted by Congress through its authority under the Spending Clause, which empowers Congress to enact legislation to advance the “general welfare.”¹⁰² The U.S. Supreme Court also could imply a right to education under the Constitution and could even rely on reasons grounded in an originalist approach to the Constitution that looks to the constitutional framers as the primary source for understanding our Constitution. However, it is important to acknowledge that few would contend that our current Court would do so. A constitutional amendment could be adopted that protects a right to education, although this is undoubtedly the most uphill battle for achieving such a right.¹⁰³

While scholars debate the best pathway, what is more important for now is increasing public understanding of the idea that “[r]ecognition of a federal right to education, whether that comes through legislation, judicial decree, [or] ratification, is fundamentally a moral statement about who we are as a people and about ultimately what we value,” as Professor Joshua Weishart explained at the launch of ERI.¹⁰⁴

For the time being, at least, the 1973 *Rodriguez* decision closed the courthouse door to a federal right to education. Many today believe that this decision was correct for a variety of reasons, but particularly because education is not mentioned in our Constitution. Yet, it is critical to increase our public understanding of the fact that those who drafted the Fourteenth Amendment to our Constitution originally “included a commitment to guarantee education as a core aspect of state citizenship.”¹⁰⁵

The Fourteenth Amendment guarantees federal and state citizenship to individuals who are born or naturalized in our nation.¹⁰⁶ Derek Black has written extensively on the history of the passage of the Fourteenth Amendment, and his scholarship confirms that substantive rights are included in the right to citizenship protected by the Fourteenth Amendment. These substantive rights are not only those in the amendment, such as due process, equal protection, and privileges and

“Recognition of a federal right to education, whether that comes through legislation, judicial decree, [or] ratification, is fundamentally a moral statement about who we are as a people and about ultimately what we value.”

– Joshua Weishart

immunities. The right of full citizenship also guarantees education and voting. Indeed, it was voting rather than education that generated substantial controversy, and this led to the passage of the Fifteenth Amendment.¹⁰⁷

Once the Fifteenth Amendment was passed, state constitutional guarantees of education had become a consistent element of state constitutions and thus a separate federal

guarantee of education was seen as unnecessary. As states sought readmission to the Union following the Civil War, Congress included guaranteeing education as one of the initially implicit and then explicitly required conditions, which ensured that education would remain guaranteed in state law. Furthermore, “education was a condition [of readmission] because education was central to a republican form of government.”¹⁰⁸ Article IV of the Constitution states that “the United States shall guarantee to every State in this Union a Republican Form of Government.”¹⁰⁹ This history reveals that the Constitution’s omission of education does not mean that the framers of the Reconstruction Amendments did not intend for our Constitution to guarantee education, as many contend. Nor is the omission of education from our Constitution evidence that the federal government belongs on the sidelines of education. As early as 1787, members of our new federal government expressed the importance of encouraging education as essential for good government in the Northwest Ordinance of 1787, which established the government for the Northwest Territory, the terms for admission of new states, and the rights protected within the territory.¹¹⁰

Since its early role as encourager of education, the federal role in education has expanded exponentially to establish legal requirements for the operation of our schools that advance equal educational opportunity by prohibiting discrimination on the basis of race, national origin, sex, and disability. The federal government also sets conditions for \$92.9 billion in federal financial assistance for K–12 education through such laws as the Elementary and Secondary Education Act, including its current reauthorization as the Every Student Succeeds Act.¹¹¹ Nevertheless, federal education laws and policies, while the supreme law of the land, still rely upon states and localities for implementation because it is states that can exercise their full authority to govern education and localities that deliver education within schools.¹¹²

The harmful educational opportunity gaps that endure 50 years after the *Rodriguez* decision confirm that state rights to education have not been up to the task of ensuring that all students receive a high-quality education. State rights to education vary widely in content and enforceability and leave too many students without access to excellent and equitable schools. Research confirms that school finance reforms can reap impactful benefits for students, such as improvements in student achievement, a rise in adult earnings, and reductions in adult poverty.¹¹³ However, state finance litigation also has regularly struggled to deliver comprehensive reform because the remedies are often resisted and frequently limited.¹¹⁴ Additionally, even in states where additional funding is provided to low-income districts, districts themselves may still distribute more funds to schools with greater wealth.¹¹⁵

A federal right to a high-quality education is a right that could establish a consistent floor of educational opportunities for each and every student in the United States, regardless of race, class, neighborhood, or tribe. State rights to education are inherently limited to the geographic boundaries of the state. Too many of them only guarantee access to schools that are funded inadequately, inequitably, and irrationally because school funding often lacks a link between the aims of the funding, the amount and distribution of funding, and how schools and districts use the funding.¹¹⁶ Even some leading successful state school finance attorneys champion a federal right to a high-quality education.¹¹⁷

Such a right could greatly advance an end to the enduring distribution of educational opportunities that depends on circumstances of birth and may drive school funding to support excellence and equity. At the same time, a federal right to education can be structured to provide states ample authority to engage in the innovation and experimentation that supports a high-quality education system.¹¹⁸ Furthermore, a federal right to a high-quality education is even more urgently needed following the U.S. Supreme Court’s decision in *Students for Fair Admissions v. Presidents & Fellows of Harvard College*, which held that the admissions policies of Harvard University and the University of North Carolina were unconstitutional because, in the Court’s view, the goals of the affirmative action policies could not be measured and lacked clarity, used race in a harmful manner, stereotyped based on race, and did not include a real termination point.¹¹⁹ This decision makes it more challenging to use affirmative action in the admissions of selective colleges and universities and thereby makes that critical pathway to leadership even more difficult to attain for students of color who have been disadvantaged in their educational opportunities and our society due to race.¹²⁰ Additionally, research confirms that students from low-income households and rural communities also face greater challenges when seeking admission to selective universities, and a federal right to a high-quality education would also aid these students by ensuring that they receive the educational opportunities that support their competitiveness in the admissions cycles of selective colleges and universities.¹²¹

In recognition of the benefits of federal involvement in education and the limits of state litigation aiming to enforce state education rights, some advocates have returned to federal court in recent years to seek federal relief for low-quality educational opportunities.¹²² One such effort succeeded. In *Gary B. v. Whitmer*, a three-judge panel of the U.S. Court of Appeals for the Sixth Circuit held that the Constitution’s Due Process Clause guarantee of substantive due process provides students with “a fundamental right to a basic minimum education” that delivers “access to literacy.” The court explained that this “access to a foundational level of literacy” is so critical that it is “implicit in the concept of ordered liberty,” and without it, students are denied the chance for democratic participation.¹²³ As the case was being appealed, the parties settled the case with a promise by Michigan Governor Gretchen Whitmer to provide \$94.4 million to students in Detroit for a literacy program, which was finally authorized by the legislature in 2023.¹²⁴ This case illustrates just how powerful a vehicle a federal right to education could be for students and communities facing gross funding inadequacies and inequities. Unfortunately, the Sixth Circuit, sitting as a full court, vacated the decision, which means that the case lacks binding precedential value.¹²⁵ Nevertheless, the *Gary B.* decision still provides a roadmap for future judges who agree that our Constitution provides a fundamental right to literacy.

Our nation needs a wide array of pathways to achieve equal educational opportunity, and a federal right to education should be considered among the possibilities. Future reports and research from ERI will explore this law and policy reform and other reforms for ensuring that each and every student receives a high-quality education.

The Role of the Education Rights Institute

The Education Rights Institute is committed to research and stakeholder engagement that helps fulfill our nation's unmet goal of equal educational opportunity. ERI produces and supports scholarship, reports, and videos that examine the nature and scope of educational opportunity gaps based on socioeconomic status, race, and geography. ERI also identifies federal resources that educators and policymakers can use to help close these gaps, which helps to enhance the relationship between school districts, states, and the federal government. ERI supports a more impactful relationship between the federal government, school districts, and states by identifying federal laws, policies, and assistance that are under- and ineffectively utilized by school districts. ERI will begin this work by publishing reports and other resources regarding the obligations of school districts under Title VI of the Civil Rights Act of 1964¹²⁶ to aid districts in fulfilling their obligations to deliver education that is free of discrimination based on race, color, and national origin.

ERI also studies and produces scholarship regarding potential reforms at the federal, state, and local levels that can assist in making the longstanding promise of equal educational opportunity a reality. A federal right to a high-quality education is one of the systemic reforms that could advance that goal. Such a right could not only empower students to reach their full potential and strengthen the communities in which they live and work, but also fortify our democracy, economy, and society. Through our work, ERI aims to ensure that each and every student receives the high-quality education that enables them to be college and career ready and engaged civic participants.

Endnotes

¹ 411 U.S. 1, 35 (1973).

² *See id.* at 5, 17.

³ There are three levels of constitutional review, also known as scrutiny, of government actions or classifications: rational basis, intermediate, and strict. Rational basis review, the least rigorous form of review, asks if the government action “rationally furthers a legitimate state purpose or interest.” *Rodriguez*, 411 U.S. at 55. A government action must at least be able to satisfy rational basis review. *See id.* at 17. Intermediate scrutiny applies to classifications based on sex, among other classifications. *See United States v. Virginia*, 518 U.S. 515, 533 (1996) (applying intermediate scrutiny to the Virginia Military Institute’s admissions policy that excluded women); *Clark v. Jeter*, 486 U.S. 456, 461 (1988) (stating that “intermediate scrutiny . . . has been applied to discriminatory classifications based on sex” or legitimacy status). To satisfy intermediate scrutiny, the government must show that its classification is “substantially related” to an important government interest. *Virginia*, 518 U.S. at 533 (internal quotation marks omitted). Strict scrutiny is the most rigorous level of constitutional scrutiny, and it applies when a state classification implicates a “fundamental right” or if the state considers a classification such as national origin or race. *See, e.g., Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206–07 (2023); *Clark*, 486 U.S. at 461; *Rodriguez*, 411 U.S. at 17. Strict scrutiny requires that the challenged classification is “narrowly tailored—meaning necessary” to advance a “compelling government interest[.]” *Students for Fair Admissions, Inc.*, 600 U.S. at 206–07 (internal quotations omitted).

⁴ *Rodriguez*, 411 U.S. at 29–30.

⁵ Kimberly Jenkins Robinson, *The Essential Questions Regarding a Federal Right to Education*, in *A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY 1*, 1 (Kimberly Jenkins Robinson ed., 2019) [hereinafter Robinson, *The Essential Questions*].

⁶ *Rodriguez*, 411 U.S. at 25.

⁷ Texas asserted that its education system supported local control of education, which the Court found satisfied rational basis review. *See id.* at 35, 42, 44, 55.

⁸ *See id.* at 58–59.

⁹ University of Virginia School of Law, *Launch of the Education Rights Institute, Keynote Address with Na’ilah Suad Nasir*, YOUTUBE (Oct. 18, 2023) (keynote address of Na’ilah Suad Nasir), <https://youtu.be/Cy5ZnibMM?si=d5JLKWdlvoubUIJ9>.

¹⁰ DANIEL SHOWALTER, SARA L. HARTMAN, JERRY JOHNSON & BOB KLEIN, *THE RURAL SCH. & CMTY. TR., WHY RURAL MATTERS 2018–2019: THE TIME IS NOW 23* (2019), <https://files.eric.ed.gov/fulltext/ED604580.pdf>.

¹¹ *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (holding that education, “where the state has undertaken to provide it, is a right which must be available to all on equal terms”); Kimberly Jenkins Robinson, *An American Dream Deferred: A Federal Right to Education*, in *A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY 327*, 327–28 (Kimberly Jenkins Robinson ed., 2019) [hereinafter Robinson, *An American Dream Deferred*].

¹² Nat’l Assessment of Educ. Progress, *Achievement Gaps*, NAT’L CTR. FOR EDUC. STAT. (Nov. 9 2023), <https://nces.ed.gov/nationsreportcard/studies/gaps/>.

¹³ Greg J. Duncan, Pamela A. Morris & Chris Rodrigues, *Does Money Really Matter? Estimating Impacts of Family Income on Young Children’s Achievement with Data from Random-Assignment Experiments*, 47 *DEVELOPMENTAL PSYCH.* 1263, 1271–78 (2011) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3208322/>; EMMA GARCÍA, *ECON. POL’Y INST., INEQUALITIES AT THE STARTING GATE: COGNITIVE AND NONCOGNITIVE SKILLS GAPS BETWEEN 2010–2011 KINDERGARTEN CLASSMATES 7–9, 16–19* (2015), <https://files.epi.org/pdf/85032c.pdf>.

¹⁴ Sean F. Reardon, *The Widening Academic Achievement Gap Between the Rich and the Poor: New Evidence and Possible Explanations*, in *WHITHER OPPORTUNITY? RISING INEQUALITY, SCHOOLS, AND CHILDREN’S LIFE CHANCES 91*, 94–100 (Greg J. Duncan & Richard Murnane eds., 2011); Jessica Drescher, Anne Podolsky, Sean F. Reardon & Gabrielle Torrance, *The Geography of Rural Education Opportunity*, 8 *RSF: RUSSELL SAGE FOUND. J. SOC. SCIS.* 123, 141 (2022), <https://www.rsfsjournal.org/content/rsfjss/8/3/123.full-text.pdf>; Showalter et al., *supra* note 10, at 2, 9; *see also* Karen Ramlackhan & Yan Wang, *Urban School District Performance: A Longitudinal Analysis of Achievement*, *URB. EDUC. ONLINE FIRST*, Oct. 29, 2021, at 20.

¹⁵ *See, e.g., Richard Rothstein, Why Children from Lower Socioeconomic Classes, on Average, Have Lower Academic Achievement Than Middle-Class Children*, in *CLOSING THE OPPORTUNITY GAP: WHAT AMERICA MUST*

DO TO GIVE EVERY CHILD AN EVEN CHANCE 61, 72–74 (Prudence L. Carter & Kevin G. Welner eds., 2013); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241, 1244–45 (1991). In addition, parental educational attainment served as a protective factor for Black students in suburban schools but not in urban schools. Shervin Assari, Abbas Mardani, Maryam Maleki, Shanika Boyce & Mohsen Bazargan, *Black-White Achievement Gap: Role of Race, School Urbanity, and Parental Education*, 12 PEDIATRIC HEALTH, MED. & THERAPEUTICS 1, 6–7 (2021), <https://www.dovepress.com/getfile.php?fileID=65411>.

¹⁶ Charisse Cowan Pitre, *Improving African American Student Outcomes: Understanding Educational Achievement and Strategies to Close Opportunity Gaps*, 38 W.J. BLACK STUD. 209, 210 (2014); see also NAEP Data Explorer, NAT'L ASSESSMENT OF EDUC. PROGRESS, <https://www.nationsreportcard.gov/ndecore/xplore/ltt> (last visited Feb. 1, 2024).

¹⁷ Kaylee T. Matheny, Marissa E. Thompson, Carrie Townley-Flores & Sean F. Reardon, *Uneven Progress: Recent Trends in Academic Performance Among U.S. School Districts*, 60 AM. EDUC. RSCH. J. 447, 461–79 (2023).

¹⁸ See, e.g., Sean F. Reardon, Demetra Kalogrides & Kenneth Shores, *The Geography of Racial/Ethnic Test Score Gaps*, 124 AM. J. SOCIO. 1164, 1173–74 (2019); Sean F. Reardon, Erin Fahle, Heewon Jang & Ericka Weathers, *Why School Desegregation Still Matters (A Lot)*, 80 ASCD EDUC. LEADERSHIP, no. 4, 2022, <https://www.ascd.org/el/articles/why-school-desegregation-still-matters-a-lot>.

¹⁹ Kevin G. Welner & Prudence L. Carter, *Achievement Gaps Arise from Opportunity Gaps*, in CLOSING THE OPPORTUNITY GAP: WHAT AMERICA MUST DO TO GIVE EVERY CHILD AN EVEN CHANCE 1, 1–5 (Prudence L. Carter & Kevin G. Welner eds., 2013).

²⁰ Osly J. Flores & Michael G. Gunzenhauser, *Justice in the Gaps: School Leader Dispositions and the Use of Data to Address the Opportunity Gap*, 56 URBAN EDUC. 261, 263 (2018).

²¹ Welner & Carter, *supra* note 19, at 3.

²² See A. WADE BOYKIN & PEDRO NOGUERA, CREATING THE OPPORTUNITY TO LEARN: MOVING FROM RESEARCH TO PRACTICE TO CLOSE THE ACHIEVEMENT GAP 42–138 (2011); Julie Landsman, *Confronting the Racism of Low Expectations*, 62 ASCD EDUC. LEADERSHIP, no. 3, 2004, at 28–33.

²³ Paul E. Barton, *Why Does the Gap Persist?*, 62 ASCD EDUC. LEADERSHIP, no. 3, 2004, at 8–13; Linda Darling-Hammond, *The Anatomy of Inequality: How the Opportunity Gap is Constructed*, in THE FLAT WORLD AND EDUCATION: HOW AMERICA'S COMMITMENT TO EQUITY WILL DETERMINE OUR FUTURE 27, 31–40 (2010); Rothstein, *supra* note 15, at 62–66.

²⁴ University of Virginia School of Law, *Understanding Educational Opportunity Gaps*, YOUTUBE (Oct. 18, 2023) (statement of Prudence Carter), <https://www.youtube.com/watch?v=QRRV27X1Jck>.

²⁵ See ROBERT D. PUTNAM, OUR KIDS: THE AMERICAN DREAM IN CRISIS 46–134 (2015); W. Steven Barnett & Cynthia E. Lamy, *Achievement Gaps Start Early: Preschool Can Help*, in CLOSING THE OPPORTUNITY GAP: WHAT AMERICA MUST DO TO GIVE EVERY CHILD AN EVEN CHANCE 98, 98–105 (Prudence L. Carter & Kevin G. Welner eds., 2013). In a Chicago Longitudinal Study, an ongoing examination of children enrolled in preschool and early childhood services between ages three to nine since 1986 indicated that participants of the program had graduation rates of 9.2 percentage points higher than non-participants. Arthur J. Reynolds, Suh-Ruu Ou & James W. Topitzes, *Paths of Effects of Early Childhood Intervention on Educational Attainment and Delinquency: A Confirmatory Analysis of the Chicago Child-Parent Centers*, 75 CHILD DEV. 1299, 1311 (2004). Further analysis revealed that ninety percent of these positive effects could be attributed to early cognitive development, enhanced family support, and improved school support. This underscores the significance of both in-school and out-of-school opportunities to shaping a students' potential for success. *Id.* at 1304. See also Suh-Ruu Ou, *Pathways of Long-Term Effects of an Early Intervention Program on Educational Attainment: Findings from the Chicago Longitudinal Study*, 26 J. APPLIED DEVELOPMENTAL PSYCH. 578, 596–605 (2005).

²⁶ Metin Kaya & Cahit Erdem, *Students' Well-Being and Academic Achievement: A Meta-Analysis Study*, 14 CHILD INDICATORS RSCH. 1743, 1761–63 (2021).

²⁷ Linda Darling-Hammond, *Assuring Essential Educational Resources Through a Federal Right to Education*, in A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY 235, 241 (Kimberly Jenkins Robinson ed., 2019).

²⁸ NAT'L RSCH. COUNCIL OF THE NAT'L ACADS., EDUCATION FOR LIFE AND WORK: DEVELOPING TRANSFERABLE KNOWLEDGE AND SKILLS IN THE 21ST CENTURY 23 (James W. Pellegrino & Margaret L. Hilton eds., 2012) [hereinafter *NRCNA*]; Monique Alexander & Vanessa A. Massaro, *School Deserts: Visualizing the Death of the*

Neighborhood School, 18 POL’Y FUTURES EDUC. 787, 793–94 (2020); SARAH M. STITZLEIN, FUTURES OF EDUC. INITIATIVE, UNESCO, USING CIVIC PARTICIPATION AND CIVIC REASONING TO SHAPE OUR FUTURE AND EDUCATION 3–4 (2020), <https://unesdoc.unesco.org/ark:/48223/pf0000374034?posInSet=5&queryId=00dfd85f-6f9d-4b4e-8e9b-a4c43e5fb19f>.

²⁹ DAVID T CONLEY, EDUC. POL’Y IMPROVEMENT CTR., A COMPLETE DEFINITION OF COLLEGE AND CAREER READINESS 1 (2012), <https://files.eric.ed.gov/fulltext/ED537876.pdf>.

³⁰ This definition borrows language from what is known as the Crick Report. QUALIFICATIONS & CURRICULUM AUTH., CITIZENSHIP ADVISORY GRP., EDUCATION FOR CITIZENSHIP AND THE TEACHING OF DEMOCRACY IN SCHOOLS: FINAL REPORT OF THE ADVISORY GROUP ON CITIZENSHIP 7 (1998) [hereinafter *Crick Report*], <https://dera.ioe.ac.uk/4385/1/crickreport1998.pdf>.

³¹ EMMA GARCÍA & ELAINE WEISS, ECON. POL’Y INST., MAKING WHOLE-CHILD EDUCATION THE NORM: HOW RESEARCH AND POLICY INITIATIVES CAN MAKE SOCIAL AND EMOTIONAL SKILLS A FOCAL POINT OF CHILDREN’S EDUCATION 1–5 (2016), <https://files.epi.org/pdf/107051.pdf>; Jon Alfuth, *Supporting Students in Learning: How States Are Rethinking Policies to Support Students in the COVID-19 Era*, KNOWLEDGEWORKS (Oct. 6, 2021), <https://knowledgeworks.org/resources/supporting-students-learning-policies-covid-19/>.

³² Alexander & Massaro, *supra* note 28, at 794–97.

³³ PEDRO A. NOGUERA, CITY SCHOOLS AND THE AMERICAN DREAM: RECLAIMING THE PROMISE OF PUBLIC EDUCATION 23–37, 42–43, 82–89 (James A. Banks ed., 2003); DANIEL SHOWALTER, SARA L. HARTMAN, KAREN EPPLEY, JERRY JOHNSON & BOB KLEIN, NAT’L RURAL EDUC. ASS’N, WHY RURAL MATTERS: CENTERING EQUITY AND OPPORTUNITY 11, 57 (2023), https://wsos-cdn.s3.us-west-2.amazonaws.com/uploads/sites/18/10-26WRMReport2023_DIGITALFINAL.pdf.

³⁴ Commonly known as the “Nation’s Report Card,” NAEP is administered by the National Center for Education Statistics (NCES) and monitors the overall performance of students over time. NAT’L ASSESSMENT OF EDUC. PROGRESS, NAEP HANDBOOK OF SURVEY METHODS 2 (2017), <https://nces.ed.gov/statprog/handbook/pdf/naep.pdf>.

³⁵ *Id.* (“Since 2009, the mathematics, reading, science, and writing assessments were developed using the same framework, allowing the results to be compared from 2009 forward.”). In addition, a National Academy of Sciences panel stated,

A test score, like other sources of information, is not exact. It is an estimate of the student’s understanding or mastery at a particular time. Therefore, high-stakes educational decisions should not be made solely or automatically on the basis of a single test score, but should also take other relevant information into account.

David J. Hoff, *Made to Measure*, EDUC. WEEK (June 16, 1999), <https://www.edweek.org/teaching-learning/made-to-measure/1999/06#>.

³⁶ This was recognized as a limitation in a study testing the validity of NAEP. *See* GERUNDA HUGHES, PETER BEHUNIAK, SCOTT NORTON, SAMI KITMITTO & JACK BUCKLEY, NAEP VALIDITY STUD. PANEL, NAEP VALIDITY STUDIES PANEL RESPONSES TO THE REANALYSIS OF TUDA MATHEMATICS SCORES 9 (2019), <https://files.eric.ed.gov/fulltext/ED599642.pdf>. In their response, those affiliated with NAEP noted,

[A]s the nation moves toward widespread implementation of instruction and assessment based on . . . college and career ready standards, NAEP must balance the goals of comparability across time (i.e., maintaining trend) with current relevance in a dynamic educational policy environment where daily concerns about state-based standards and state accountability assessments really carry more weight.

Id.

³⁷ Enis Dogan, Nat’l Ctr. for Educ. Stat., *Analysis of Recent NAEP TUDA Mathematics Results Based on Alignment to State Assessment Content*, in GERUNDA HUGHES, PETER BEHUNIAK, SCOTT NORTON, SAMI KITMITTO & JACK BUCKLEY, NAEP VALIDITY STUD. PANEL, NAEP VALIDITY STUDIES PANEL RESPONSES TO THE REANALYSIS OF TUDA MATHEMATICS SCORES, app. at 22–27 (2019), <https://files.eric.ed.gov/fulltext/ED599642.pdf>.

³⁸ NRCNA, *supra* note 28, at 1–4.

³⁹ University of Virginia School of Law, *Understanding Educational Opportunity Gaps*, YOUTUBE (Oct. 18, 2023) (statement of Sean Reardon), <https://www.youtube.com/watch?v=QRRV27X1Jck>.

⁴⁰ *See, e.g.*, PAUL E. BARTON & RICHARD J. COLEY, EDUC. TESTING SERV., PARSING THE ACHIEVEMENT GAP II, at 3 (2009), <https://www.ets.org/Media/Research/pdf/PICPARSINGII.pdf> (“[T]here are differences in these correlates of achievement among racial/ethnic and income groups, and those differences do mirror the achievement gaps. The

unavoidable conclusion is that if we are to close the gaps in achievement, we must first close the gaps in these life experiences and conditions.”).

⁴¹ CARL CAMPBELL BRIGHAM, *A STUDY OF AMERICAN INTELLIGENCE* 210 (1923).

⁴² NICHOLAS LEMANN, *THE BIG TEST: THE SECRET HISTORY OF THE AMERICAN MERITOCRACY* 34 (1999).

⁴³ *New NCES Tool Explores How Differential Learning Opportunities May Influence Achievement Gaps*, NAEP PLUS: THE OFF. BLOG OF THE NATION’S REP. CARD, https://nces.ed.gov/Nationsreportcard/Blog/Achievement_Gaps_Tool.aspx (last visited Feb. 1, 2024) (“[Y]ou can see how the White-Black, White-Hispanic, and White-Asian score gaps change when you control for some of the key contextual factors. By so doing, you can begin to explore how different factors influence score gaps.”).

⁴⁴ Education scholar Gloria Ladson-Billings contends that gaps in achievement, stemming from our nation’s long history of the denial of education and then segregated and low-quality education for generations of students of color, reveal a debt of opportunities that our nation owes to historically underserved and marginalized student groups. See Gloria Ladson-Billings, *From the Achievement Gap to the Education Debt: Understanding Achievement*, in *U.S. Schools*, 35 *EDUC. RESEARCHER* 3, 9–10 (2006). Similarly, sociologist Anindya Kundu explains that our nation also has a “relationship debt” that has accrued through a history of forced geographic and/or social displacement of low-income communities. University of Virginia School of Law, *Understanding Educational Opportunity Gaps*, YOUTUBE (Oct. 18, 2023) (statement of Anindya Kundu), <https://www.youtube.com/watch?v=QRRV27X1Jck>. For example, universities settled in largely low-income communities have the responsibility to work with local schools and form relationships with communities in ways that advance rather than undermine the livelihood of those in neighboring communities. *Id.*

⁴⁵ IVY MORGAN, *EDUC. TR., EQUAL IS NOT GOOD ENOUGH: AN ANALYSIS OF SCHOOL FUNDING EQUITY ACROSS THE U.S. AND WITHIN EACH STATE* 7–8 (2022), <https://edtrust.org/wp-content/uploads/2014/09/Equal-Is-Not-Good-Enough-December-2022.pdf>; see also BRUCE D. BAKER, MATTHEW DI CARLO & MARK WEBER, ALBERT SHANKER INST., *THE ADEQUACY AND FAIRNESS OF STATE SCHOOL FINANCE SYSTEMS* 2, 12, 13 (6th ed. 2024), https://www.schoolfinancedata.org/wp-content/uploads/2024/01/SFID2024_annualreport.pdf (finding for the 2020–2021 school year that “[e]ducational opportunity is unequal in every state—that is, higher-poverty districts are funded less adequately than lower-poverty districts” and that African American and Hispanic students are significantly more likely to attend school in districts with less than the adequate funding needed to achieve average U.S. test scores in math and reading); DANIELLE FARRIE & ROBERT KIM, *EDUC. L. CTR., MAKING THE GRADE: HOW FAIR IS SCHOOL FUNDING IN YOUR STATE?* 15–16 (2023), <https://edlawcenter.org/assets/MTG-2023/Making-the-Grade-23-Report.pdf> (finding that, in the 2020–2021 academic year, sixteen states allocated less state and local funding to their highest poverty districts while eleven states provided approximately the same funding to high- and low-poverty districts and only twenty-two states allocated a minimum of five percent or more funding to high-poverty districts); Rothstein, *supra* note 15, at 62–63.

⁴⁶ Showalter et al., *supra* note 33, at 6, 34.

⁴⁷ *Id.* at 10.

⁴⁸ *EDBUILD, \$23 BILLION*, at 4 (2019), <https://edbuild.org/content/23-billion/full-report.pdf>. (“Of those students in racially concentrated systems, about half attend school in a district that is more than 75% nonwhite (‘nonwhite districts’), and half are enrolled in districts that are more than 75% white (‘white districts’).”).

⁴⁹ Joshua Hyman, *Does Money Matter in the Long Run? Effects of School Spending on Educational Attainment*, 9 *AM. ECON. J.: ECON. POL’Y* 256, 257 (2017).

⁵⁰ C. Kirabo Jackson, Rucker C. Johnson & Claudia Persico, *The Effects of School Spending on Educational and Economic Outcomes: Evidence from School Finance Reforms* 1, 3, 25–40 (Nat’l Bureau of Econ. Rsch., Working Paper No. 20847, 2015) (“While we find small effects for children from affluent families, for low-income children, a 10 percent increase in per-pupil spending each year for all 12 years of public school is associated with 0.43 additional years of completed education, 9.5 percent higher earnings, and a 6.8 percentage-point reduction in the annual incidence of adult poverty. In fact, a 25 percent increase over all school age years is sufficiently large to eliminate the attainment gaps between children from low- and high-income families.”). The result is particularly unsettling because kindergarten is not mandatory in all states.

⁵¹ Christopher A. Candelaria & Kenneth A. Shores, *The Sensitivity of Causal Estimates from Court-Ordered Finance Reform on Spending and Graduation Rates* 1, 4 (Stan. Ctr. for Educ. Pol’y Analysis, Working Paper 16-05, 2015).

⁵² Linda Darling-Hammond, *Closing the Achievement Gap: A Systemic View*, in *CLOSING THE ACHIEVEMENT GAP FROM AN INTERNATIONAL PERSPECTIVE: TRANSFORMING STEM FOR EFFECTIVE EDUCATION* 7, 9 (Julia V. Clark ed., 2014).

⁵³ Thomas B. Timar & Marguerite Roza, “*A False Dilemma*”: *Should Decisions About Education Resource Use Be Made at the State or Local Level?*, 116 *AM. J. EDUC.* 397, 405–13 (2010); Viviane Robinson & Emma Gray, *What Difference Does School Leadership Make to Student Outcomes?*, 49 *J. ROYAL SOC’Y N.Z.* 171, 173 (2019); Dallas Hambrick Hitt & Pamela D. Tucker, *Systematic Review of Key Leader Practices Found to Influence Student Achievement: A Unified Framework*, 86 *REV. EDUC. RSCH.* 531, 561 (2016).

⁵⁴ See, e.g., *Abbott v. Burke*, 495 A.2d 376 (N.J. 1985); *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990); *Abbott v. Burke*, 643 A.2d 575 (N.J. 1994); *Abbott v. Burke*, 693 A.2d 417 (N.J. 1997); *Abbott v. Burke*, 710 A.2d 450 (N.J. 1998); *Abbott v. Burke*, 748 A.2d 82 (N.J. 2000); *Abbott v. Burke*, 798 A.2d 602 (N.J. 2002); *Abbott v. Burke*, 852 A.2d 185 (N.J. 2004); *Abbott v. Burke*, 971 A.2d 989 (N.J. 2009); *Abbott v. Burke*, 20 A.3d 1018 (N.J. 2011).

⁵⁵ N.J. CONST. art. VIII, § 4, cl. 1 (“The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.”); see also *Abbott v. Burke*, 20 A.3d 1018, 1100 (N.J. 2011) (Albin, J., concurring) (“The children of this state possess the ‘fundamental right’ to a thorough and efficient system of public education.”).

⁵⁶ See David G. Sciarra & Danielle Farrie, *From Rodriguez to Abbott: New Jersey’s Standards-Linked School Funding Reform*, in *THE ENDURING LEGACY OF RODRIGUEZ: CREATING NEW PATHWAYS TO EQUAL EDUCATIONAL OPPORTUNITY* 119, 125–42 (Charles J. Ogletree, Jr. & Kimberly Jenkins Robinson eds., 2015).

⁵⁷ DION BURNS, LINDA DARLING-HAMMOND & CAITLIN SCOTT ET AL., *LEARNING POL’Y INST.*, *CLOSING THE OPPORTUNITY GAP: HOW POSITIVE OUTLIER DISTRICTS IN CALIFORNIA ARE PURSUING EQUITABLE ACCESS TO DEEPER LEARNING*, at v–vi (2019), https://learningpolicyinstitute.org/media/355/download?inline&file=Positive_Outliers_Qualitative_REPORT.pdf.

⁵⁸ *Id.* at 49.

⁵⁹ 20 U.S.C. § 6311(b)(1)(A), (b)(1)(D) (requiring states to possess challenging academic standards that prepare students upon graduation to enter higher education institutions or to pursue career and technical learning opportunities within the state); see also Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1802 (2015) (codified as amended in scattered sections of 20 U.S.C.).

⁶⁰ Michael Soskil, *Teaching for Democracy: The Role of Student Autonomy and Agency*, in *FLIP THE SYSTEM US: HOW TEACHERS CAN TRANSFORM EDUCATION AND SAVE DEMOCRACY* 39, 41 (Michael Soskil ed., 2020).

⁶¹ *Id.*; ANINDYA KUNDU, *THE POWER OF STUDENT AGENCY: LOOKING BEYOND GRIT TO CLOSE THE OPPORTUNITY GAP* 27 (2020).

⁶² Conley, *supra* note 29, at 1.

⁶³ *Id.*

⁶⁴ Jeffrey B. Corbishley & Mary P. Truxaw, *Mathematical Readiness of Entering College Freshmen: An Exploration of Perceptions of Mathematics Faculty*, 110 *SCH. SCI. & MATHEMATICS* 71, 75 (2010); Sidika Nihan Er, *Mathematics Readiness of First-Year College Students and Missing Necessary Skills: Perspectives of Mathematics Faculty*, 42 *J. FURTHER & HIGHER EDUC.* 937, 937–52 (2018).

⁶⁵ NAT’L ASS’N OF COLLS. & EMPS. (NACE), *JOB OUTLOOK 2020* 13–16 (2019), <https://in.nau.edu/wp-content/uploads/sites/204/2020-nace-job-outlook.pdf>; Carol Stewart, Alison Wall & Sheri Marciniac, *Mixed Signals: Do College Graduates Have the Soft Skills That Employers Want?*, 14 *COMPETITION F.* 276, 276 (2016).

⁶⁶ For an interactive chart, see Claire Cain Miller & Francesca Paris, *New SAT Data Highlights the Deep Inequality at the Heart of American Education*, *N.Y. TIMES: THE UPSHOT* (Oct. 23, 2023), <https://www.nytimes.com/interactive/2023/10/23/upshot/sat-inequality.html>. The data for those charts rely on research by Raj Chetty, David J. Deming, and John N. Friedman. See generally Raj Chetty, David J. Deming & John Friedman, *Diversifying Society’s Leaders? The Determinants and Causal Effects of Admission to Highly Selective Private Colleges* (Nat’l Bureau of Econ. Rsch., Working Paper No. 31492, 2023), https://opportunityinsights.org/wp-content/uploads/2023/07/CollegeAdmissions_Paper.pdf.

⁶⁷ Chetty et al., *supra* note 66, at 16.

⁶⁸ NAT’L CTR. FOR EDUC. STAT., U.S. DEP’T OF EDUC., *DIGEST OF EDUCATION STATISTICS* tbl.311.40 (2022), https://nces.ed.gov/programs/digest/d22/tables/dt22_311.40.asp (reporting post-secondary students taking remediation courses 2019-2020).

⁶⁹ Showalter et al., *supra* note 10, at 32.

⁷⁰ DEREK W. BLACK, *SCHOOL HOUSE BURNING: PUBLIC EDUCATION AND THE ASSAULT ON AMERICAN DEMOCRACY* 254 (2020).

⁷¹ *Id.*; JENNIFER AYSUCUE, ERICA FRANKENBERG & GENEVIEVE SIEGEL-HAWLEY, NAT'L COAL. ON SCH. DIVERSITY, *THE COMPLEMENTARY BENEFITS OF RACIAL AND SOCIOECONOMIC DIVERSITY IN SCHOOLS 1–2* (2017); Amy Stuart Wells, Lauren Fox & Diana Cordova-Cobo, *How Racially Diverse Schools and Classrooms Can Benefit All Students*, CENTURY FOUND. (Feb. 9, 2016), <https://tcf.org/content/report/how-racially-diverse-schools-and-classrooms-can-benefit-all-students/>.

⁷² COMM'N ON THE PRAC. OF DEMOCRATIC CITIZENSHIP, AM. ACAD. OF ARTS & SCIS., *OUR COMMON PURPOSE: REINVENTING AMERICAN DEMOCRACY FOR THE 21ST CENTURY* 63 (2020), https://www.amacad.org/sites/default/files/publication/downloads/2020-Democratic-Citizenship_Our-Common-Purpose.pdf [hereinafter *Our Common Purpose*].

⁷³ See Crick Report, *supra* note 30, at 7; Stitzlein, *supra* note 28, at 3. The concept of globalization has led many to affirm that students need to learn to be global citizens. See Nigel Dower & John Williams, *Glossary*, in *GLOBAL CITIZENSHIP: A CRITICAL INTRODUCTION* xix, xxii (Nigel Dower & John Williams eds., 2002).

⁷⁴ *Crick Report*, *supra* note 30, at 7.

⁷⁵ *Our Common Purpose*, *supra* note 72, at 63.

⁷⁶ Joseph Kahne & Ellen Middaugh, *High Quality Civic Education: What Is It and Who Gets It?*, 72 *SOC. EDUC.* 34, 37 (2008).

⁷⁷ U.S. DEP'T OF EDUC., *ADVANCING CIVIC LEARNING AND ENGAGEMENT IN DEMOCRACY: A ROAD MAP AND CALL TO ACTION 1* (2012), <https://www.ed.gov/sites/default/files/road-map-call-to-action.pdf>.

⁷⁸ Kate Stringer, *Citizenship as a Classroom Priority: New Gallup Poll Shows 74 Percent of Superintendents Say 'Preparing Engaged Citizens' Has Become a Major Challenge for Their Districts*, *THE 74* (Aug. 30, 2018), <https://www.the74million.org/citizenship-as-a-classroom-priority-new-gallup-poll-shows-74-percent-of-superintendents-say-preparing-engaged-citizens-has-become-a-major-challenge-for-their-districts/> (noting that, based on data from a Gallup poll, 74% of 2,000 surveyed school leaders rated preparing students to be “engaged citizens” as a challenge, which was an increase from 50% the previous year).

⁷⁹ David F. Larabee, *Public Goods, Private Goods: The American Struggle Over Educational Goals*, 34 *AM. EDUC. RSCH. J.* 39, 42 (1997). Interestingly, many in the public no longer see this as a primary purpose of the public schools, as discussed in Frederick M. Hess, Gary J. Schmitt, Cheryl Miller & Jenna M. Schuette, *Foreword to STEVE FARKAS & ANN M. DUFFET, FDR GRP. FOR THE AEI PROGRAM ON AM. CITIZENSHIP, HIGH SCHOOLS, CIVICS, AND CITIZENSHIP: WHAT SOCIAL STUDIES TEACHERS THINK AND DO 1* (2010), <http://files.eric.ed.gov/fulltext/ED516497.pdf>.

⁸⁰ See Judith Torney-Purta, *The School's Role in Developing Civic Engagement: A Study of Adolescents in Twenty-Eight Countries*. 6 *APPLIED DEVELOPMENTAL SCI.* 203, 203–212 (2002).

⁸¹ Joseph E. Kahne & Susan E. Sporte, *Developing Citizens: The Impact of Civic Learning Opportunities on Students' Commitment to Civic Participation*, 45 *AM. EDUC. RSCH. J.* 738, 746–47, 754 (2008).

⁸² JAMES YOUNISS & MIRANDA YATES, *COMMUNITY SERVICE AND SOCIAL RESPONSIBILITY IN YOUTH* 36 (1997).

⁸³ *Id.*

⁸⁴ *Id.*; Kahne & Sporte, *supra* note 81, at 744–45, 753.

⁸⁵ Kahne & Middaugh, *supra* note 76, at 37.

⁸⁶ MICHAEL A. REBELL, *FLUNKING DEMOCRACY: SCHOOLS, COURTS, AND CIVIC PARTICIPATION 1* (2018).

⁸⁷ Kei Kawashima-Ginsberg & Felicia Sullivan, *Study: 60 Percent of Rural Millennials Lack Access to a Political Life*, *THE CONVERSATION* (Mar. 26, 2017, 10:39 PM), <https://theconversation.com/study-60-percent-of-rural-millennials-lack-access-to-a-political-life-74513>.

⁸⁸ Peter Levine, *The Civic Opportunity Gap*, 66 *ASCD EDUC. LEADERSHIP*, no. 8, 2009, at 24.

⁸⁹ Aaron Metzger, Lauren Alvis & Benjamin Oosterhoff, *Adolescent Views of Civic Responsibility and Civic Efficacy: Differences by Rurality and Socioeconomic Status*, 70 *J. APPLIED DEVELOPMENTAL PSYCH.*, July–Sept. 2020, at 5–6 (2020).

⁹⁰ Michael Barber & John B. Holbein, *400 Million Voting Records Show Profound Racial and Geographic Disparities in Voter Turnout in the United States*, 17 *PLOS ONE*, no.6, 2022, at 4–7.

⁹¹ Susan M. Chambré, *Has Volunteering Changed in the United States? Trends, Styles, and Motivations in Historical Perspective*, 94 *SOC. SERV. REV.* 373, 389 (2020).

⁹² See, e.g., Joseph Kahne & Ellen Middaugh, *Democracy for Some: The Civic Opportunity Gap in High School 3–4* (Ctr. for Info. & Rsch. on Civic Learning & Engagement (CIRCLE) Working Paper No. 59, 2008).

⁹³ *Our Common Purpose*, *supra* note 72, at 62–63.

⁹⁴ *Id.* at 63.

⁹⁵ University of Virginia School of Law, *Launch of the Education Rights Institute, Law and Policy Reform for Educational Opportunity Gaps*, YOUTUBE (Oct. 18, 2023) (video introduction by Martha Minow), https://www.youtube.com/watch?v=2V4Lcd0GP_o.

⁹⁶ Kimberly Jenkins Robinson, *How Reconstructing Education Federalism Could Fulfill the Aims of Rodriguez*, in *THE ENDURING LEGACY OF RODRIGUEZ: CREATING NEW PATHWAYS TO EQUAL EDUCATIONAL OPPORTUNITY 203, 207–09* (Charles J. Ogletree, Jr. & Kimberly Jenkins Robinson eds., 2015) [hereinafter Robinson, *Reconstructing Education Federalism*].

⁹⁷ *Id.* at 203, 212–14.

⁹⁸ Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27 (codified as amended in scattered sections of 20 U.S.C.); 2022 *Public Elementary-Secondary Education Finance Data*, U.S. CENSUS BUREAU (2022), <https://www.census.gov/data/tables/2022/econ/school-finances/secondary-education-finance.html> [hereinafter *2022 Report*] (reporting preliminary federal spending data for 2022).

⁹⁹ For additional analysis of the law and policy considerations for a federal right to education, see A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY (Kimberly Jenkins Robinson ed., 2019).

¹⁰⁰ Robinson, *An American Dream Deferred*, *supra* note 11, at 330–31.

¹⁰¹ Robinson, *The Essential Questions*, *supra* note 5, at 1, 20.

¹⁰² U.S. CONST. art. I, § 8 (“The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States . . .”). For an analysis of the potential benefits and challenges of Congress enacting a federal right to education, see Kimberly Jenkins Robinson, *A Congressional Right to Education: Promises, Pitfalls, and Politics*, in A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY 186, 186–202 (Kimberly Jenkins Robinson ed., 2019).

¹⁰³ Derek W. Black, *Implying a Federal Constitutional Right to Education*, in A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY 135, 147–50, 155–58 (Kimberly Jenkins Robinson ed., 2019); S. Educ. Found., *No Time to Lose: Why the United States Needs an Education Amendment to the U.S. Constitution*, in A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY 208, 221–27 (Kimberly Jenkins Robinson ed., 2019); Mark Lieberman, *America’s Children Don’t Have a Federal Right to Education. Will That Ever Change?*, EDUC. WEEK, (Oct. 24, 2023), <https://www.edweek.org/policy-politics/americas-children-dont-have-a-federal-right-to-education-will-that-ever-change/2023/10>.

¹⁰⁴ University of Virginia School of Law, *Law and Policy Reforms for Educational Opportunity Gaps*, YOUTUBE (Oct. 18, 2023) (statement of Joshua Weishart), https://www.youtube.com/watch?v=2V4Lcd0GP_o.

¹⁰⁵ Derek W. Black, *The Constitutional Compromise to Guarantee Education*, 70 STAN. L. REV. 735, 741 (2018).

¹⁰⁶ U.S. CONST. amend. XIV, § 1 (“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”).

¹⁰⁷ Black, *supra* note 105, at 767–74.

¹⁰⁸ See U.S. CONST. art. IV, § 4; Black, *supra* note 105, at 774–75, 781–83.

¹⁰⁹ U.S. CONST. art. IV, § 4.

¹¹⁰ Northwest Ordinance of 1787, Act of Aug. 7, 1789, ch. 8, 1 Stat. 50. It was the members of the Congress of the Confederation who expressed the critical nature of the government’s role in furthering education as a necessary foundation for good government through the passage of the Northwest Ordinance of 1787. See Gerard Robinson, *A Federal Role in Education: Encouragement as a Guiding Philosophy for the Advancement of Learning in America*, 50 U. RICH. L. REV. 919, 942, 940–49 (2016) (recommending encouragement as the guiding principle for the appropriate federal role for education).

¹¹¹ *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954); Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27 (codified as amended in scattered sections of 20 U.S.C.); Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773 (codified as amended at 20 U.S.C. §§ 1400–1409); Equal Educational Opportunities Act of 1974, Pub. L. No. 93-380, 88 Stat. 514 (codified at 20 U.S.C. §§ 1701–1758); Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7; Title IX of the Education Amendments of

1972, Pub. L. No. 92-318, 86 Stat. 235, 373–75 (codified as amended at 20 U.S.C. §§ 1681–1688); 2022 Report, *supra* note 98 (reporting preliminary federal spending data for 2022).

¹¹² U.S. CONST. art. VI (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”); James E. Ryan, *The Tenth Amendment and Other Paper Tigers: The Legal Boundaries of Education Governance*, in WHO’S IN CHARGE HERE? THE TANGLED WEB OF SCHOOL GOVERNANCE AND POLICY 42, 55, 57 (Noel Epstein ed., 2004) (“State legislatures . . . have plenary authority to make laws regarding education.”).

¹¹³ ANNE NEWMAN, REALIZING EDUCATIONAL RIGHTS: ADVANCING SCHOOL REFORM THROUGH COURTS AND COMMUNITIES 82 (2013) (describing better student outcomes following the successful *Rose v. Council for Better Education, Inc.*, 790 S.W.2d 186 (1989), Kentucky school finance litigation); Jackson et al., *supra* note 50, at 160; Sciarra & Farrie, *supra* note 56, at 121–22 (describing the research showing better student outcomes following increases in funding and decreases in funding inequities).

¹¹⁴ Robinson, *The Essential Questions*, *supra* note 5, at 13.

¹¹⁵ Marguerite Roza, Larry Miller & Paul Hill, *Strengthening Title I to Help High-Poverty Schools: How Title I Funds Fit into District Allocation Patterns* 5 (Ctr. on Reinventing Pub. Educ., Working Paper Series, 2005); DARIA HALL & NATASHA USHOMIRSKY, EDUC. TR., CLOSE THE HIDDEN FUNDING GAPS IN OUR SCHOOLS 2 (2010), https://edtrust.org/wp-content/uploads/2013/10/Hidden-Funding-Gaps_0.pdf.

¹¹⁶ KIMBERLY JENKINS ROBINSON, LEARNING POL’Y INST., PROTECTING EDUCATION AS A CIVIL RIGHT: REMEDYING RACE DISCRIMINATION AND ENSURING A HIGH-QUALITY EDUCATION 13–15 (2021), [https://learningpolicyinstitute.org/media/548/download?inline&file=Education As Civil Right REPORT.pdf](https://learningpolicyinstitute.org/media/548/download?inline&file=Education%20As%20Civil%20Right%20REPORT.pdf); Kimberly Jenkins Robinson, *No Quick Fix for Equity and Excellence: The Virtues of Incremental Shifts in Education Federalism*, 27 STAN. J. L. & POL’Y 201, 206–20 (2016) (describing research confirming four weaknesses of school funding: “(1) lower funding to districts serving students with greater needs; (2) insufficient linkage of funding systems to desired educational outcomes, (3) low funding levels, and (4) inadequate oversight of state funding systems”); Sciarra & Farrie, *supra* note 56, at 141–42.

¹¹⁷ Michael A. Rebell, *Rodriguez Past, Present, and Future*, in THE ENDURING LEGACY OF RODRIGUEZ: CREATING NEW PATHWAYS TO EQUAL EDUCATIONAL OPPORTUNITY 65, 72–73 (Charles J. Ogletree, Jr. & Kimberly Jenkins Robinson eds., 2015); Sciarra & Farrie, *supra* note 56, at 135–41; University of Virginia School of Law, *Law and Policy Reforms for Educational Opportunity Gaps*, YOUTUBE (Oct. 18, 2023) (remarks by Mark Rosenbaum), https://www.youtube.com/watch?v=2V4Lcd0GP_o. Mark Rosenbaum was the lead litigator in *Gary B. v. Whitmer*, 957 F.3d 616 (6th Cir. 2020).

¹¹⁸ Robinson, *The Essential Questions*, *supra* note 5, at 14; Robinson, *An American Dream Deferred*, *supra* note 11, at 331; Robinson, *Reconstructing Education Federalism*, *supra* note 96, at 223–24.

¹¹⁹ 600 U.S. 181, 230 (2022).

¹²⁰ *See id.*; Angela Onwuachi-Willig, *Roberts’s Revisions: A Narratological Reading of the Affirmative Action Cases*, 137 HARV. L. REV. 192, 210–12, 239 (2023); Elissa Nadworny, *Why the Supreme Court Decision on Affirmative Action Matters*, NPR (June 29, 2023, 2:26 PM), <https://www.npr.org/2023/06/29/1176715957/why-the-supreme-court-decision-on-affirmative-action-matters>; Adam Liptak, *Supreme Court Rejects Affirmative Action Programs at Harvard and U.N.C.*, NEW YORK TIMES (June 29, 2023), <https://www.nytimes.com/2023/06/29/us/politics/supreme-court-admissions-affirmative-action-harvard-unc.html>; *see also* Kimberly Jenkins Robinson, *Fisher’s Cautionary Tale and the Urgent Need for Equal Access to an Excellent Education*, 130 HARV. L. REV. 185, 223–38 (2016) (arguing that the United States should adopt “a comprehensive approach to close the opportunity gaps that encourage the use of affirmative action”).

¹²¹ Chetty et al., *supra* note 66 (noting that highly selective colleges accept students from wealthy families at higher rates than those from low-income families with similar academic qualifications); Soo-Yong Byun, Matthew J. Irvin & Judith L. Meece, *Rural-Nonrural Differences in College Attendance Patterns*, 90 PEABODY J. EDUC. 263, 275 (2016) (“[R]ural high school graduates enrolled in college were significantly less likely to first attend a highly selective and selective institution, compared to their nonrural counterparts”).

¹²² Robinson, *The Essential Questions*, *supra* note 5, at 12–18 (discussing, among other cases, *Martinez v. Malloy*, 350 F. Supp. 3d 74 (D. Conn. 2018), and *Waithe ex rel. A.C. v. McKee*, 23 F.4th 37 (1st Cir. 2022), *aff’g Waithe ex rel. A.C. v. Raimondo*, 494 F. Supp. 3d 170 (D.R.I. 2020)).

¹²³ *Gary B.*, 957 F.3d at 642 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997)), *vacated on reh'g en banc*, 958 F.3d 1216 (6th Cir. 2020). As the court in *Gary B.* explains, the guarantee of substantive due process within the Constitution's Due Process Clause has been interpreted "to recognize that certain interests are so substantial that no process is enough to allow the government to restrict them, at least absent a compelling state interest." *Id.* at 643. The *Gary B.* court found that this substantive due process had been violated by the denial of "access to literacy." *Id.* at 648.

¹²⁴ Ethan Bakuli, *Detroit's \$94 Million 'Right to Read' Lawsuit Settlement Is Finally Coming Through for DPSCD*, CHALKBEAT (July 7, 2023, 3:37 PM), <https://www.chalkbeat.org/detroit/2023/7/7/23787399/detroit-public-schools-right-to-read-settlement-whitmer-emergency-management/>.

¹²⁵ *Gary B. v. Whitmer*, 958 F.3d 1216 (6th Cir. 2020) (en banc), *vacating Gary B.*, 957 F.3d 616.

¹²⁶ Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.



SCHOOL *of* LAW
Education Rights Institute

The Education Rights Institute (ERI) aims to expand the opportunity for students in the United States to enjoy a high-quality education that empowers them to be college and career ready and engaged civic participants.

For more information, visit law.virginia.edu/education

 facebook.com/educationrights institute

 twitter.com/UVALawERI

 linkedin.com/showcase/education-rights-institute

 youtube.com/@UVALawEducationRightsInstitute