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**United States Court of Appeals**  
*for the*  
**Sixth Circuit**

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Case Nos.  
18-1855 and  
18-1871

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GARY B.; JESSIE K., a minor, by Yvette K., guardian *ad litem*; CRISTOPHER R., a minor, by Escarle R., guardian *ad litem*; ISAIAS R., a minor, by Escarle R., guardian *ad litem*; ESMERALDA V., a minor, by Laura V., guardian *ad litem*;  
PAUL M.; JAIME R., a minor, by Karen R., guardian *ad litem*,

*Plaintiffs-Appellants,*

– v. –

RICHARD D. SNYDER, Governor; JOHN C. AUSTIN, member of the MI Bd of Education; MICHELLE FECTEAU, member of the MI Bd of Education; LUPE

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*(For Continuation of Caption See Inside Cover)*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MICHIGAN IN CASE NO. 2:16-CV-13292  
THE HONORABLE STEVEN J. MURPHY III

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**BRIEF AMICI CURIAE OF THE CAMPAIGN FOR THE CIVIC MISSION  
OF THE SCHOOLS, THE CENTER FOR INFORMATION  
AND RESEARCH ON CIVIC LEARNING AND ENGAGEMENT  
(CIRCLE), THE CENTER FOR EDUCATIONAL EQUITY AT  
TEACHERS COLLEGE, COLUMBIA UNIVERSITY (CEE), THE LOU  
FREY INSTITUTE AND THE CIVIC ENGAGEMENT RESEARCH  
GROUP AT THE UNIVERSITY OF CALIFORNIA, RIVERSIDE  
(CERG), IN SUPPORT OF APPELLANTS AND REQUESTING  
A REVERSAL OF THE DECISION BELOW**

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*Defendants-Appellees.*

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Gallup, *Leadership Perspectives on Public Education: The Gallup 2018 Survey of K-12 School District Superintendents* (2018).....25, 26

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Gutmann, Amy and Dennis Thompson, *Why Deliberative Democracy?* (2004)....15

Hart, Daniel, Thomas Donnelly, James Youniss and Robert Atkins, *High School Community Service as a Predictor of Adult Voting and Volunteering*, 44 AM. EDUC. RES. J 197 (2007).....20

.....

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Kahne, Joseph E., Erica Hodgins and Elyse Eidman-Aadahl, *Redesigning Civic Education for the Digital Age: Participatory Politics and the Pursuit of Democratic Engagement*, 55 THEORY & RESEARCH IN SOC. EDUC. 1 (2016)..18

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Kahne, Joseph E., Jacqueline Ullman and Ellen Middaugh, “Digital Opportunities for Civic Education” in *Making Civic Count: Citizenship Education for a New Generation* (David E. Campbell, Meira Levinson and Fredrick M. Hess, eds, 2012)..... 18

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| <i>Stanford Center on Adolescence, Youth Civic Development &amp; Education: A Conference Report 19</i> (2014).....   | 2      |
| U.S. Department of Education, <i>Advancing Civic Learning and Engagement in Democracy: A Road Map and Call to Action 1</i> (2012) .....  | 2      |
| U.S. Department of Education, <i>For Each and Every Child—A Strategy for Education Equity and Excellence</i> (2013).....   | 26     |
| Zaff, Jonathan F., Kristen A. Moore, Angela Romano Papillo and Stephanie Williams, <i>Implications of Extracurricular Activity Participation During Adolescence on Positive Outcomes</i> 18 <i>J. ADOLESC. RES.</i> 599 (2003) ..... | 20     |

## INTEREST OF AMICI

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

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

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

programming, as well as to make the case for policy and infrastructure that supports youth engagement.

*The Center for Educational Equity at Teachers College, Columbia*

*University (CEE)* is a policy and research center that champions children's right to a meaningful opportunity to graduate from high school prepared for college, careers, and civic participation. CEE is the convener of the DemocracyReadyNY Coalition, a collaboration of 35 diverse state-wide organizations committed to youth civic preparation, and it works on a national basis to promote meaningful opportunities for all students to become capable citizens and to ensure that all schools, particularly schools attended predominately by students in poverty and students of color, are equipped to provide resources, services, and supports to make this happen.

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



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

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

This brief was authored wholly by Michael A. Rebell, Esq., Executive Director of the Center for Educational Equity at Teachers College, Columbia University. None of the *amici*, nor any other person, contributed any money to fund preparing or submitting the brief, except that CEE paid the costs for the printing of the brief. Each of the *amici* is authorized to file this brief by the procedures of their respective institutions, but the positions taken herein do not necessarily represent the positions of those institutions.

## ARGUMENT

### I. THE DECISION BELOW SHOULD BE REVERSED AND REMANDED

The central legal issue in this case is whether students have a right under the U.S. Constitution to the opportunity for a basic education that will prepare them to be capable citizens in a democratic society. After reviewing in detail the relevant Supreme Court case law, Judge Murphy concluded below that the citizenship preparation issues raised by this case differ from “the bare right to education or the right to an equally funded education,” (Opinion, RE.117, Page ID# 2810), at issue in *San Antonio Indep Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973), and that in *Rodriguez* the plaintiff students were accorded “an opportunity to acquire the minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process” that plaintiffs here assert they have been denied (*Id.*)

Because the Supreme Court has “neither confirmed nor denied” that access to an education adequate for capable citizenship is a fundamental right, Judge Murphy held that “The Court must therefore cautiously take up the task.” (Opinion, RE.117, Page ID# 2813). In doing so, he held that there is no fundamental substantive due process right to a minimum level of education necessary for capable citizenship (Opinion, RE.117, Page ID# 2829). Judge

Murphy did not, however, determine whether such a right may exist under the Equal Protection Clause, since he determined that plaintiffs have not “satisfied the threshold requirement of disparate treatment” because “students in non-Detroit schools” are not “the appropriate comparators,” (Opinion, RE.117, Page ID# 2821) and that plaintiffs have not demonstrated that defendants’ actions fail to satisfy minimal rationality review (Opinion, RE.117, Page ID# 2823-24). The trial court’s holdings in regard to both the substantive due process and the equal protection issues were erroneous.

#### A. Substantive Due Process

Judge Murphy correctly stated that the applicable Supreme Court law regarding the identification of fundamental rights under the due process clause “requires courts to exercise reasoned judgement in identifying interests of the person so fundamental that the State must accord them its respect,’ *Obergefell v. Hodges*, 135 S. Ct. 2584, 2598 (2015), and that fundamental rights are only those ‘objectively, deeply rooted in the Nation’s history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.’ *Washington v. Glucksberg*, 521 U.S. 702,720-21 (1997),” (Opinion, RE.117, Page ID# 2813-14).

He erred, however, in denying that an education sufficient to prepare students for capable citizenship satisfies these criteria. The nation’s founders believed that the profound experiment in republican government that they were initiating “depended on citizens’ ability to participate in public life and to exhibit civic virtues such as mutual respect and prudent judgment.” Lorraine M. McDonnell, *Defining Democratic Purposes*, in REDISCOVERING THE DEMOCRATIC PURPOSES OF EDUCATION 1, 2 (Lorraine M. McDonnell, P. Michael Timpane & Roger Benjamin eds., 2000.) Horace Mann, the founder of the nineteenth-century “common school” movement that established the universal system of public schools also stressed the primacy of preparation for citizenship:

Education must be universal....With us, the qualification of voters is as important as the qualification of governors, and even comes first, in the natural order....The theory of our government is – not that all men, however unfit, shall be voters – but that every man, by the power of reason and the sense of duty, shall become fit to be a voter.

HORACE MANN, LECTURES ON EDUCATION, vii (1855).

Judge Murphy rejected the argument that education is “deeply rooted” in the nation’s history because “there was no federal or state-run school system anywhere in the United States as late as 1830,” (Opinion, RE.117, Page ID# 2818.). He cites for this proposition, Barry Friedman and Sara Solow, *The Federal Right to an Adequate Education*, 81 GEO. WASH. L. REV. 92,117 (2013). Judge Murphy failed

to note, however, that this article itself, after carefully considering the applicable canons of constitutional interpretation, concluded that there is indeed a federal right to education under the due process clause. These authors concluded that although the deep links between education and the viability of democracy widely recognized by the founders were not fully put into effect immediately, the establishment of the common schools beginning in the 1830s, the adoption of compulsory education by all of the states beginning in the 1890s and the increased emphasis on education by the states and the federal government throughout the twentieth century make clear that “the ‘traditions and conscience’ of the country, reflected in our laws and practices over the 150 years from the 1830s through the 1980s, [established] that the constitutional right to an adequate education is evident.” *Id* at 121.<sup>1</sup>

Friedman and Solow also emphasized the importance of the fact that state courts throughout the country have recognized the critical importance of education

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<sup>1</sup> Recent scholarship has also emphasized the significant implications of the emphasis on education during the Reconstruction era. See, e.g., Derek W. Black, *The Fundamental Right to Education*, 94 NOTRE DAME L. REV., \_\_\_\_\_ Vol. 94, 2019, (forthcoming), available at SSRN: <https://ssrn.com/abstract=3256887> (discussing the Reconstruction Congress’ requirement that in order to re-enter the union, Southern states were required to include a clause providing a right to education in their state constitutions.)

to the maintenance of a democratic society in the education equity and education adequacy cases that have been brought in 47 states over the past 45 years. The Court rejected this position, however, stating that “State courts that have found a right to a minimum level of education have not done so based on the intrinsic necessities of a free society, but rather, on the precise wording of the relevant state constitutions.” (Opinion, RE.117, Page ID# 2819.). The precise wording of many of the state constitutions, especially those written after 1830, do, however, clearly spell out that “The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools.” *See, e.g.* Minn. Const. Art. XIII§ 1 (first adopted in 1857) and Idaho Const, Art. IX § 1 (first adopted in 1889.) And based either on explicit language of this type in the state constitutions or on their interpretations of the meaning of other language in state constitutional provisions concerning education, at least 32 state highest courts have specifically stated that the prime purpose or a prime purpose of education in these constitutional clauses is to “prepare students to function productively as civic participants.” *Campaign for Fiscal Equity v. State of New York*, 801 N.E. 2d 326, 332 (NY, 2003), *Accord, e.g., Rose v. v. Council, for Better Education*, 790 S.W. 2d186, 205-206, 212 (KY 1989), *Conn. Coalition for Justice v. Rell*, 990 A.2d 206,253 (Conn. 2010); *See*

*also*, MICHAEL A. REBELL, *FLUNKING DEMOCRACY, SCHOOLS, COURTS AND CIVIC PARTICIPATION* at 57 (citing these 32 state court decisions.)

The longevity and the depth of the link between education and democracy throughout American history is unique, and judicial declaration of a federal constitutional right to an education adequate to prepare students for capable citizenship would not constitute a relevant precedent for arguments for finding a fundamental right to decent housing or other goods or services. *Cf. (Opinion, RE.117, Page ID# 2818).*

#### B. Equal Protection

The justification for the lower court's dismissal of plaintiffs' equal protection claims is hard to fathom. The complaint clearly alleges that each of the defendants, as the public officials responsible for setting educational policy and overseeing educational administration in the state of Michigan, are responsible for enacting and implementing the state statutes and regulations regarding public education. (Complaint, RE. 1, Page ID# 23-26.) It further cites state constitutional provisions, statutes and court decisions that explicitly state that the state has ultimate decision-making authority regarding education and a legal obligation to supervise all Michigan schools. (Complaint, RE. 1, Page ID#47-49.)

The plaintiffs claim that although most other students throughout the state are being provided access to an education adequate to prepare them for capable citizenship, Detroit public school students are not. *See, e.g.*, Complaint, RE. 1, Page ID#126-127. Whether these defendants were derelict in not providing sufficient funding, not promulgating sufficient regulations and guidelines or not providing effective oversight and management of the plaintiffs' schools, the complaint clearly has alleged a proper comparator for claiming that the state officials' failure to offer students in the plaintiff schools access to an education adequate for citizenship that is being provided to the majority of other students in the state constitutes a proper claim of a denial of equal protection of the laws.

II. PREPARATION FOR CAPABLE CITIZENSHIP REQUIRES MORE THAN BASIC LITERACY; IT REQUIRES CIVIC KNOWLEDGE, CIVIC SKILLS, CIVIC EXPERIENCES AND CIVIC VALUES

Because of the dismal circumstances experienced by the members of the plaintiff class in schools where "illiteracy is the norm." (Complaint, RE. 1, Page ID# 7), plaintiffs emphasize the importance of the opportunity to learn basic literacy skills, which clearly are a *sine qua non* for functioning as a civic participant. As the plaintiffs allege, and the court below noted, "voting, participating meaningfully in civic life, and accessing justice require some measure



of literacy.” (Opinion, RE.117, Page ID# 2816.) Literacy, as defined in the complaint, includes not only elementary reading skills but also “adolescent literacy ---- the knowledge capabilities that build on primary literacy skills and develop the ability to compose, comprehend, reflect upon and critique.” (Complaint, RE. 1, Page ID# 30.) Clearly, to vote, to serve on a jury and to otherwise participate in civic life, one needs not only to read simple texts, but also to comprehend public policy issues, to determine how particular problems and issues relate to one’s personal interests and to the common good, how to compare and contrast multiple perspectives with contrasting evidence and how to distinguish accurate from false information.

For these reasons, *amici* believe that the type of education the Supreme Court contemplated when it indicated in *Rodriguez* that “some identifiable quantum of education” may be necessary to exercise basic constitutional rights like voting and free expression (411 U.S. at 36), clearly included more than just literacy skills. As Justice Marshall specifically stated in *Rodriguez*:

Education serves the essential function of instilling in our young an understanding of and appreciation for the principles and operation of our governmental processes. Education may instill the interest and provide the tools necessary for political discourse and debate. Indeed, it has frequently been suggested that education is the dominant factor affecting political consciousness and participation.

*Id* at 113 (*Marshall, J., dissenting.*)<sup>1</sup> The Supreme Court majority in *Rodriguez* stated that it did not dispute these propositions, *id* at 36.

In essence, then, the “identifiable quantum of education” that is necessary for capable citizenship goes beyond just literacy and must include “an understanding” of how government operates, the skills needed to enter into “political discourse and debate,” experiences that develop “political consciousness and participation” and the values that promote an “appreciation for the principles” of our democratic system. The *amici* organizations have studied in depth the specific knowledge, skills, experiences and values that schools can and should convey to prepare their students to function productively as civic participants. There is, in fact, a substantial research base and a virtual national consensus among scholars, educators, and policymakers on the “quantum of education” that schools need to provide all of their students in each of these areas to prepare them for capable citizenship.

#### A. Civic Knowledge

The range of knowledge that civic participants need in order to participate effectively in a democratic society today is much greater than in the past. Civic participation—whether as voters, jurors, or people working together to make a change in the community—requires a working knowledge of many subjects, including history, politics, economics, science, and technology. Successful

deliberation in our complex and diverse contemporary culture requires, for example, at least a basic understanding of the history and culture of “the varied subgroups (ethnic, national, religious, gender-based) that comprise one’s own nation, their achievements, struggles, and contributions,” as well as “contributions and similarly complex knowledge about nations and traditions outside one’s own.”

MARTHA NUSSBAUM, *NOT FOR PROFIT: WHY DEMOCRACY NEEDS THE HUMANITIES* 81 (2010).

The educational priorities that were established in the federal No Child Left Behind Act (NCLB) and have now been continued in its successor legislation, the Every Student Succeeds Act (ESSA), stress competency in basic literacy and mathematics, but not in civics, history, world languages, social studies, economics, and the arts. 20 U.S.C. A § 6311(b) (1) (C). Particularly in schools with constrained resources, what gets tested tends to be what gets taught; the lower status of civics, history, and social studies in state accountability systems has led many schools ----- undoubtedly including the plaintiffs’ schools involved in this case -----to substantially reduce in recent years the time students spend on studies in these areas.<sup>2</sup>

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<sup>2</sup> See, e.g. *From the Capital to the Classroom: Year 4 of the No Child Left Behind Act* (Washington, D.C.: Center on Education Policy, 2006), Table 4-D, p. 96. (In 2006, 33% of diverse school districts in a nationally representative selection of 299 schools reported that they had reduced social-studies instruction (history,

All states do have standards for social studies, a broad category that includes civics/government along with other disciplines such as history, economics, and geography. In recent years, many educators and policy organizations have urged states to update their standards in order to emphasize higher-order thinking skills and the critical-analytic approach that is necessary for understanding contemporary civic issues. In 2013, 15 national professional organizations, including *amicus* Campaign for the Civic Mission of Schools and officials from 20 states collaborated on a College, Career and Civic Life (C3) Framework for Social Studies State Standards that incorporates this approach. The College, Career, and Civic Life (C3) Framework for Social Studies State Standards: Guidance for Enhancing the Rigor of K-12 Civics, Economics, Geography, and History (2013.)<sup>3</sup>

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geography, civics) somewhat or to a great extent in order to devote more time to English and/or math, in response to NCLB accountability systems.)

<sup>3</sup> The C3 standards recommend that, by the end of 12<sup>th</sup> grade, students should, among other things, be able to:

- Analyze the role of citizens in the U.S. political system, with attention to various theories of democracy, changes in Americans' participation over time, and alternative models from other countries, past and present.
- Explain how the U.S. Constitution establishes a system of government that has powers, responsibilities, and limits that have changed over time and that are still contested.
- Evaluate citizens' and institutions' effectiveness in addressing social and political problems at the local, state, tribal, national, and/or international level.

A recent survey by the leaders of *amici* CIRCLE and Civic Mission of the Schools indicates that many states have adopted these standards, but that Michigan has not.<sup>4</sup> The caliber of civics and other social studies courses currently being taught in the plaintiff schools is, therefore, an issue that the trial court should consider if this Court should remand this case.

B. Civic Skills

Effective political participation depends on adequate literacy as well as verbal and other cognitive skills. The skills deemed most important for students to acquire for civic preparation, according to the civics framework promulgated by the National Assessment Governing Board, are those that help citizens identify, explain, and analyze information and arguments; in addition, civic participants should be able to evaluate, take, and defend positions on public policies. National Assessment Governing Board, *Civics Framework for the National Assessment of Educational Progress 23-26* (2014), available at

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- Apply civic virtues and democratic principles when working with others.
  - Use appropriate deliberative processes in multiple setting

*Id* at 32-34.

<sup>4</sup> Peter Levine and Kei Kawashima-Ginsberg, *The Republic is (Still) at Risk— and Civics is Part of the Solution 25* (2017), available at <http://www.civxnow.org/documents/v1/SummitWhitePaper.pdf>

<https://www.nagb.org/publications/frameworks/civics/2014-civics-framework.html>. Students also need to master the critical reasoning and deliberation skills that are essential to appraise one-sided or false information, assess policy alternatives effectively, and enter into fruitful conversation with persons with opposing views.<sup>5</sup>

The highly partisan and polarized state of current American politics is far from this model of “deliberative democracy.” If the current polarization of our politics is to be overcome, this is likely to occur primarily in schools where diversity is valued and young people at a formative age are encouraged to deal with differences through tolerance and respect. Developing skills for deliberative democracy begins with exposing students to controversial ideas in the classroom. As Diana Hess, the Dean of the School of Education, University of Wisconsin-Madison, puts it:

Democratic education without controversial issues discussion would be like a forest without trees or fish without water, or a symphony without sound. Why? Because controversy about the nature of public good and how to achieve it, along with how to mediate among competing democratic values, are intrinsic parts of democracy. If there is no controversy, there is no democracy. It is as simple as that.

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<sup>5</sup> See, e.g., JOHN PARKINSON AND JANE MANSBRIDGE, *DELIBERATIVE SYSTEMS, DELIBERATIVE DEMOCRACY AT THE LARGE SCALE* (2012), AMY GUTMANN AND DENNIS THOMPSON, *WHY DELIBERATIVE DEMOCRACY?* (2004.)

DIANA E. HESS, *CONTROVERSY IN THE CLASSROOM: THE DEMOCRATIC POWER OF DISCUSSION* 35 (2009).

Mastering the pedagogical skills to provide this kind of instruction in a non-partisan manner requires effective training and professional development. It is unlikely that the inexperienced teachers at the plaintiff schools, many of whom are unqualified to teach the classes in which they are placed (*See*, Complaint, RE. 1, Page ID#101-102.) have the ability and training necessary to effectively engage in this kind of instruction.

*Applying Critical Analytic Skills to Use of New Media*

Accelerating use of digital media present both major challenges and major opportunities for educators seeking to develop critical reasoning and deliberation skills in their students. On the one hand, the internet and social media may make it more difficult to motivate and equip students for civic participation if students use these tools primarily for socializing, entertainment, and consumer pursuits. On the other hand, the digital age has the potential to create a dynamic new public square that can inspire young people to engage more deeply with political issues and to develop more sharply honed research and deliberation skills.

Joseph Kahne, executive director of *amicus* CERG, has written extensively about how the participatory potential of social media can overcome apathy of young people, but he argues that to take advantage of these possibilities, educators

today need to teach core practices of civic and political engagement differently than they have in the past.<sup>6</sup> They must create and implement curricula and instructional practices that will enable all students to analyze sources of information critically, distinguish accurate from inaccurate information and seek exposure to a wide range of views on important issues.

It is doubtful that the poorly equipped schools that plaintiffs attend have the computer technology and the software needed for this type of instruction (*See*, Complaint, RE. 1, Page ID#81-86.) or that their inexperienced and poorly trained teachers are capable of providing it, and these issues also need to be considered by the trial court if this case is remanded for trial.

### C. Civic Experiences

In addition to civic knowledge and civic skills, students also need to practice civic engagement through experiential learning opportunities that show them how

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<sup>6</sup> *See, e.g.*, Joseph Kahne, Jacqueline Ullman and Ellen Middaugh, “Digital opportunities for Civic Education in MAKING CIVIC COUNT: CITIZENSHIP EDUCATION FOR A NEW GENERATION (David E. Campbell, Meira Levinson and Fredrick M. Hess, eds, 2012). Joseph Kahne, Erica Hodgins and Elyse Eidman-Aadahl, *Redesigning Civic Education for the Digital Age: Participatory Politics and the Pursuit of Democratic Engagement*, 55 THEORY & RESEARCH IN SOC. EDUC.1, (2016.), available at <http://www.tandfonline.com/doi/full/10.1080/00933104.2015.1132646>.



government actually works and what active involvement in community activities can accomplish.

John Dewey recognized almost a century ago that involvement in student government, service-learning activities, speech and debate, civic-action projects, and other actual and simulated civic and political activities provide important opportunities for developing civic skills and dispositions. JOHN DEWEY, DEMOCRACY AND EDUCATION: AN INTRODUCTION TO THE PHILOSOPHY OF EDUCATION (1935). The experience of working closely together for extended periods of time on extracurricular activities like drama productions, concerts, sports teams, school newspapers, and the like, also afford students the kind of experiences that are most conducive to overcoming stereotypes and facilitating meaningful communication among people from varied income, racial, religious, and ethnic groups. Participation in community-service activities directly acquaints students with community problems and political issues of which they may not have been aware or were aware only in the abstract.

Many studies have found direct links between these types of experiences and increased civic participation in later life. For example, a longitudinal analysis of the experiences of a sample of 20,000 students found that the likelihood of involvement in civic-engagement activities eight years after graduation was approximately 50% greater for students who had participated in high-school

extracurricular activities for one year than for students who had not, and that students who had participated for two years evidenced even greater rates of civic engagement.<sup>7</sup> Participation in extracurricular activities has also been found to promote increased voting.<sup>8</sup> Studies have also shown that both voluntary and school-required community-service activities are strong predictors of adult voting and volunteering.<sup>9</sup>

The Court below, on remand, should, therefore, consider the extent to which extracurricular opportunities, community service and other important experiential opportunities are, in fact, available in the plaintiff schools.

#### D. Civic Values

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<sup>7</sup> Margo Gardner, Jodie Roth, Jeanne Brooks-Gunn, *Adolescents' participation in organized activities and developmental success 2 and 8 years after high school: Do sponsorship, duration, and intensity matter?* 44 DEV. PSYCH. 814 (2008); see also, Jonathan F. Zaff, Kristen A. Moore, Angela Romano Papillo and Stephanie Williams, *Implications of Extracurricular Activity Participation During Adolescence on Positive Outcomes* 18 J. ADOLESC. RES. 599 (2003). (Adolescents who consistently participated in activities from 8th grade through 12th grade were more likely to vote, or volunteer than those who participated only occasionally or those who never participated).

<sup>8</sup> Reuben J. Thomas and Daniel A. McFarland, *Joining Young Voting Young: The Effects of Youth Voluntary Associations on Early Adult Voting*, Circle Working Paper #73 (2010), available at <http://eric.ed.gov/?id=ED512250>. (The most robust effects on voting habits resulted from high school involvement in the performing arts.)

<sup>9</sup> Daniel Hart, Thomas M. Donnelly, James Youniss and Robert Atkins, *High School Community Service as a Predictor of Adult Voting and Volunteering*, 44 AM. EDUC. RES. J 197 (2007); See also, Joseph E. Kahne and Susan E. Spote, *Developing Citizens: The Impact of Civic Learning Opportunities on Students' Commitment to Civic Participation*, 45 AMER. EDUC. RES. J 738 (2008).

Most contemporary educators who are concerned about civic preparation believe that schools today also need to promote certain character values and civic dispositions, in addition to providing access to civic knowledge, skills, and experiences.<sup>10</sup> The nineteenth-century common schools sought to inculcate values like patriotism, religious faith, hard work, responsibility, honesty, altruism, and courage. Contemporary proponents of civic preparation endorse fostering most of these personal values, although they do not allude to religious values (at least not in the public schools). They emphasize that democratic citizens need to be responsible, honest, hard-working, caring, and have the courage to do what is right and just, even in difficult circumstances.

Most contemporary educators and policymakers also emphasize equality, tolerance, due process, and respect for the rule of law as important democratic

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<sup>10</sup> See, e.g. Pathways to Civic Character: A Shared Vision For America's Schools (signed by, *inter alia*, the Association for Supervision and Curriculum, National Association of Elementary School Principals, the National Association of Secondary School Principals, and the National School Boards Association), available at [http://www.utahciviccoalition.org/downloads/Pathways\\_to\\_Civic\\_Character.pdf](http://www.utahciviccoalition.org/downloads/Pathways_to_Civic_Character.pdf); Carnegie Corporation and CIRCLE, The Civic Mission of Schools, 4 (2003), available at [http://civicmission.s3.amazonaws.com/118/f7/1/172/2003\\_Civic\\_Mission\\_of\\_Schools\\_Report.pdf](http://civicmission.s3.amazonaws.com/118/f7/1/172/2003_Civic_Mission_of_Schools_Report.pdf); Character Counts! Six Pillars of Character (trustworthiness, respect, responsibility, fairness, caring and citizenship), available at website, [www.charactercounts.org](http://www.charactercounts.org).

values. The value of tolerance, combined with an emphasis on critical thinking, is especially important to foster the kind of deliberative discussions needed to prepare students for civic participation in a diverse democratic society.<sup>11</sup>

To be effective in developing civic values, schools must build social trust and create a safe, orderly environment that conveys to students a sense that the system is supportive of their aims and needs and is capable of dealing forthrightly with issues that affect their lives. It is unlikely that such an atmosphere exists, however, in the schools attended by members of the plaintiff class which, according to the complaint, are extremely overcrowded, and lack the resources to deal with the trauma and social-emotional issues with which many of these students cope in their daily lives, Complaint, RE. 1, Page ID#97-99.)

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<sup>11</sup> Traditional values like patriotism can be taught in a way that respects tradition, but also rings true to contemporary issues and contemporary values. For example, a distinguished panel of scholars and educators at a recent conference of the Stanford Center on Adolescence articulated three aspects of patriotism that teachers should address in order to ring true to the experiences of all students: “1) felt attachment to society and to the ideals that the United States has traditionally espoused; 2) willingness to criticize and change aspects of the country that do not live up to those values; and 3) commitment to make personal sacrifices, when necessary, for those ideals and for the common good. Stanford Center on Adolescence, Youth Civic Development & Education: A Conference Report 19 (2014)

### III. THIS CASE HAS IMPORTANT NATIONAL IMPLICATIONS

The apparent failure of many schools in Detroit to teach basic literacy and to provide their students appropriate opportunities in regard to civic knowledge, skills, experiences and values is an acute example of a more general national pattern of the downgrading of civics instruction and civic experiences in schools throughout the country over the past half century. Education for citizenship, which historically permeated the school curriculum, has become a diminishing component of the schooling experience. The U.S. Department of Education has itself acknowledged this reality:

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

U.S. Department of Education, *Advancing Civic Learning and Engagement in Democracy: A Road Map and Call to Action 1* (2012).

As a result of this gross neglect of civic education, Americans' knowledge of basic political facts is strikingly low. For example, on the 2014 civics exam administered by the National Assessment of Educational Progress, only 23% of a national sample of 18 year-olds performed at or above a "proficient" level.

National Assessment of Educational Progress, 2014 Civics Assessment, available at [http://www.nationsreportcard.gov/hgc\\_2014/#civics](http://www.nationsreportcard.gov/hgc_2014/#civics). In recent surveys, only one-third of Americans could name all three branches of government and one-third could not name any; just over a third thought the founding fathers intended to grant each of the branches substantial power, but that the President would have the final say; barely half of Americans knew that a 5-4 decision of the Supreme Court carries the same legal weight as a 9-0 ruling, and many of these thought that a 5-4 ruling would be referred to Congress for resolution. Campaign for the Civic Mission of the Schools *et al*, Guardian of Democracy Report: The Civic Mission of Schools 4 (2011) (“The Guardian of Democracy Report.”)

Given the lack of political awareness among our citizens, it is not surprising that relatively few Americans vote. In the 2016 presidential election, only 61.4% of Americans eligible to vote chose to do so, and among younger voters, aged 18-29, the voter turn-out was only 46.1%. Thomas File, U. S. Census Bureau, Voting in America: A Look at the 2016 Presidential Election, available at [https://www.census.gov/newsroom/blogs/random-samplings/2017/05/voting\\_in\\_america.html](https://www.census.gov/newsroom/blogs/random-samplings/2017/05/voting_in_america.html). Americans rank 139<sup>th</sup> in voter participation out of 172 world democracies. McCormick Tribune Foundation, Civic Engagement in Our Democracy 6 (2007), available at <http://documents.mccormickfoundation.org/publications/civicdisengagement.pdf>.

Americans who do not vote also often do not participate in any sustained way in other political or community civic activities. There has been a dramatic decline in recent decades in active participation in civic associations, PTAs, and religious organizations, and, overall, social bonds have atrophied. ROBERT PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 254 (2000).<sup>12</sup>

Despite their current shortcomings, however, schools continue to be the main institutional setting in our society in which young people from diverse political and social backgrounds can come together at a formative age in a venue where rational discussion and tolerance for differing views can be prized and rewarded. In order for schools to foster these essential elements of civic preparation, however, Michigan and other states must adopt education policy and pedagogical approaches that recognize and respond to these critical civic preparation needs.

Politicians and educators have for years given lip service to the need for civic education, but they have failed to deliver on their abstract commitments. For

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<sup>12</sup> Although most American students are not being prepared properly for civic participation today, the gaps in civic knowledge and civic preparation are particularly acute for African American students and students living in poverty. This has created what Harvard professor Meira Levinson has called a “civic empowerment gap.” MEIRA LEVINSON, *NO CITIZEN LEFT BEHIND* (2012).

example, more than a decade ago, *amici* Campaign for the Civic Mission of the Schools, and CIRCLE, issued, together with the American Bar Association's Division for Public Education and a number of other major national organizations, a widely-cited report that summarized the research and best practices in the field. Guardian of Democracy Report, *supra*. That report emphasized the essential positions on civic knowledge, c skills, experiences and values discussed in this brief. These and similar recommendations have been endorsed and reiterated by other commissions and political leaders. *See, e.g.* U.S. Dep't of Educ., For Each and Every Child—A Strategy for Education Equity and Excellence (2013); Educ. Comm'n of the States, State Civic Education Policy Framework (2014), available at <http://www.ecs.org/clearinghouse/01/16/12/11612.pdf>. Nevertheless, despite this virtual national consensus on what needs to be done to improve preparation for citizenship in the schools, preparation for citizenship remains a low priority in most schools.

Educators themselves are becoming increasingly concerned about the impediments to their ability to prepare students properly for capable citizenship in today's world. Indeed, in a very recent Gallup poll, dated August 30, 2018, 74% of school superintendents nationwide strongly agreed or agreed with the proposition that preparing students for engaged citizenship is a challenge for their district; in 2013, 51% of superintendents agreed with that statement. Gallup, Leadership



Perspectives on Public Education: The Gallup 2018 Survey of K-12 School District Superintendents 6 (2018), available at <https://www.gallup.com/education/241151/gallup-k-12-superintendent-report-2018.aspx>. To effectively meet this challenge, however, students and educators need a strong declaration from the courts that preparation for civic engagement is a right that must be re-established as a prime priority for the schools.

Although the Supreme Court left open in *Rodriguez* the question of whether there is a fundamental right to an education adequate to prepare students for capable citizenship under the U.S. Constitution, for the past 45 years no case has been brought before the federal courts that has provided an opportunity for the courts to deal with this issue. The current case has come to the fore and has received wide-spread national attention because of the heightened realization in our highly polarized society that the schools by and large are not graduating students who are capable of, and committed to, maintaining the viability of the nation's democratic institutions. As former Supreme Court Justice David Souter has put it, "Civic education reform is, literally, essential to the continued vitality of American Constitutional government as we know it." Keynote Speech Opening Assembly, American Bar Association Annual Meeting, Chicago, August 1, 2009, available at <http://www.abanet.org/publiced/JusticeSouterChallengesABA.pdf>

If this case is reversed and remanded, the trial court will determine the extent to which the members of the plaintiff class are being denied access to basic literacy because of a lack of competent management and adequate resources. At the same, the trial court should review the evidence regarding all aspects of the opportunity for civic preparation that the plaintiffs are receiving and determine the full extent to which the state may be denying these students an education adequate to prepare them for capable citizenship. Based on that evidence, the trial court, subject to likely further appellate review by this Court, can define with precision the substance and the parameters of this important federal constitutional right.

A judicial declaration of the existence of such a right will go far toward inducing policy makers and educators, not only in Michigan, but throughout the country, to make civic preparation an essential priority for their schools. Detailed injunctive remedies may well not be needed, since as the Guardian of Democracy Report, *supra*, and the literature summarized in this brief make clear, most educators know what they need to do to prepare all of their students to function productively as civic participants. The core problem is that competing state statutory and regulatory mandates and resource inadequacies have established other educational priorities and have hampered the schools' ability to prepare students properly for capable citizenship. Public awareness that the federal constitution requires schools to prioritize at this time their traditional

responsibilities to prepare students to function productively as civic participants will likely catalyze a broad-based policy response that will allow them to do so.

### CONCLUSION

For all the aforesaid reasons, *amici curiae* respectfully request that the Court reverse the decision below and remand the case to the trial court for appropriate further proceedings.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) and Fed R. App. P. 29 (a)(5) because, according to the word-count feature of Microsoft Word, this brief contains 6, 219 words, excluding the parts of the brief exempted by Fed R. App. P. 32(f).
2. This brief complies with typeface requirements of Fed R. App. P 32(a)(5) and the type style requirements of ed. R./ App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Office Word in Times New Roman 14-point font.

Dated: November 21, 2018

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### CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2018, I caused to be electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the appellate CM/ECF system. To the best of my knowledge, all parties to this appeal are represented by counsel who are registered CM/ECF users and will be served electronically by the appellate CM/ECF system.

DATED: November 21, 2018

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