# Notes

### Definition of Zero Tolerance

#### Zero tolerance refer to strict codes of conduct in schools initiated by the passage of the Gun-Free Schools Act of 1994

The Free Dictionary no date—The Free Dictionary, American online dictionary, cross-references the contents of The American Heritage Dictionary of the English Language, the Columbia Encyclopedia, the Computer Desktop Encyclopedia, the Hutchinson Encyclopedia and Wikipedia, as well as the Acronym Finder database, several financial dictionaries, legal dictionaries and other content. (“Zero Tolerance,” Legal Dictionary via The Free Dictionary by Farlex, Available Online at <http://legal-dictionary.thefreedictionary.com/zero+tolerance>, Accessed 07-30-2017)

Zero Tolerance

The policy of applying laws or penalties to even minor infringements of a code in order to reinforce its overall importance and enhance deterrence.

Since the 1980s the phrase zero tolerance has signified a philosophy toward illegal conduct that favors strict imposition of penalties regardless of the individual circumstances of each case. Zero tolerance policies deal primarily with drugs and weapons and have been implemented by most school districts in the United States. Two federal laws have driven zero tolerance but state legislatures have also been willing to mandate similar policies. Supporters of zero tolerance policies contend that they promote the safety and well-being of school children and send a powerful message of deterrence. In addition, supporters believe strict adherence to these polices ensures that school officials do not treat individual children differently. Critics of zero tolerance believe that inflexible discipline policies produce harmful results. Moreover, school administrators have failed to use common sense in applying zero tolerance, leading to the expulsion of children for bringing to school such items as an aspirin or a plastic knife.

The term zero tolerance was first employed by President ronald reagan's administration when it launched its War on Drugs initiative in the early 1980s. Some school districts embraced the initiative in an attempt to eradicate drug possession and drug use on school property. The policy became law, however, when Congress passed the Drug-Free Schools and Campuses Act of 1989 (Pub.L. 101-226, December 12, 1989, 103 Stat. 1928). The act banned the unlawful use, possession, or distribution of drugs and alcohol by students and employees on school grounds and college campuses. It required educational agencies and institutions of higher learning to establish disciplinary sanctions for violations or risk losing federal aid. As a result, the majority of schools and colleges immediately began to adopt zero tolerance polices to safeguard their federal funding.

Congress legislated zero tolerance polices toward weapons on school grounds when it passed the Gun-Free Schools Act of 1994 (Pub. L. 103-382, Title I, § 101, October 20, 1994, 198 Stat. 3907). According to the act, every state had to pass a law requiring educational agencies to expel from school, for not less than one year, any student found in possession of a gun. Students with disabilities under either the Individuals with Disabilities Act (IDEA) (Pub.L. 91-230, Title VI, April 13, 1970, 84 Stat. 175 to 188) or Section 504 of the Rehabilitation Act (Pub.L. 93-112, September 26, 1973, 87 Stat. 355) could be expelled for only 45 days. Despite these strict provisions, the act permitted school superintendents to modify the expulsion requirement on a case-by-case basis.

This federal law was the catalyst for school zero tolerance policies that soon went beyond drugs and weapons to include hate speech, harassment, fighting, and dress codes. School principals, who must administer zero tolerance policies, began to suspend and expel students for seemingly trivial offenses. Students have been suspended or expelled for a host of relatively minor incidents, including possession of nail files, paper clips, organic cough drops, a model rocket, a five-inch plastic ax as part of a Halloween costume, an inhaler for asthma, and a kitchen knife in a lunch box to cut chicken. Outraged parents of children disciplined by zero tolerance policies protested to school boards, publicized their cases with the news media, and sometimes filed lawsuits in court seeking the overturning of the discipline. Courts generally have rejected such lawsuits, concluding that school administrators must have the ability to exercise their judgment in maintaining school safety.

# Affirmative Case Research

### Plan

#### The United States federal government should rule that zero tolerance policies and harsh disciplinary procedures in elementary and secondary education are a violation of Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment through an application of the rational basis test.

## 1AC

### Contention One — Discrimination

#### Advantage One is Discrimination,

#### First, Schools are key — status quo disciplinary policies resemble the modern day Jim Crow and are an example of institutionalized racism aimed to further hinder the development of African American school children

Reynolds 15 (Alexander Reynolds is a Journalist, author, advocate for social justice and global reform of the prison system. “The School-to-Prison Pipeline Is Institutional Racism” http://www.huffingtonpost.com/alexander-reynolds/school-to-prison\_b\_8108068.html)MW

What is the school-to-prison pipeline? The school-to-prison pipeline is a no-nonsense trend in American education, where children are directed straight from the classroom and into the bureaucratic clutches of the criminal justice system. The phenomenon manifests itself in disciplinary practices and zero-tolerance policies that criminalize unruly behavior and minor infractions such as truancy, graffiti or violating a school dress code. Not only that, it involves the presence of security guards, and police on campus, breaking up trivial playground fights with a billy-club and a taser. Gone are the days of the blackboard jungle, when you could give your paper tiger of a schoolmaster some delinquent lip and get away with it. These days, interrupting teacher during class might get you pepper sprayed and hauled off to jail in full restraints to face the full wrath of the juvenile justice system. Whatever happened to detention after school? It got farmed out to the cops. Unbelievable? No sports fans, only in America! Where did these zero-tolerance policies of zero-sense come from? Fear of Columbine-style massacres ushered in the modern era of paranoia and punishment in the classroom. Now the open halls of education lead to the closed doors and barred grilles of the prison cell. School has become a police state and a halfway house to jail. It is a great act of violence committed against youth by adults. Little surprise that many kids caught in the school-to-prison pipeline come from low-income families; have learning disabilities or histories of abuse and neglect. Indeed, they are the very ones who might benefit from a well-rounded education. Instead, they are alienated, excluded, criminalized and written off by society. So, what exactly is this school-to-prison pipeline? Simple**: it’s just another term for institutional racism and incarcerating disadvantaged African-American schoolchildren** instead of educating them. It’s happening right now, every day, in every town and city in America, and yet there is an absence of public outrage. Jim Crow in the classrooms of 21st Century America, surely not? Yes, unfortunately. Young black kids, males especially, have always been at threat of punishment by unhinged authority figures afraid of school violence. The figures are shocking. And racial disproportionality in the school-to-prison pipeline is a black and white fact. But black, white or whatever, it’s an aberrant policy and practice to criminalize children and pollute the future waters of society. Moreover, the whole thing gives you pause to wonder, whatever happened to the social contract between teacher and parent in public schools? Black, white or whatever, we send our kids on good faith to the cherished institution of school, hoping that they will exit the experience fully qualified for the rigors of a sophisticated, ever changing world. We don’t tend to think of school as the problem itself. No parent wants to send his or her child to an environment that isn’t safe and secure. But no parent would think of school as a backward meat grinder that fails kids and puts them in boot camp. So much for the legal doctrine of in loco parentis, but thanks all the same for the miscarriage of education, and the lesson our kids will never forget. Every year, the U.S. spends $10,500 per child on education and $88,000 on each child incarcerated. Sixty-six percent of children who have been incarcerated never return to school. The U.S. incarcerates five times more children than any other nation state in the world. Is this the best that America can offer the child in the 21st Century? “Let us reform our schools,” said John Ruskin in 1862, “and we shall find little reform needed in our prisons.” He wasn’t wrong. Throwing kids in jail ruins lives and makes things worse all round for the family. It’s time to lay down the gavel on criminalizing youth and make school the best days of their lives. It’s a better investment for society in the long run.

#### Second, Our evidence is reverse causal and there is no negative effects on discipline--- Only Removal Solves

Curley 16 (Caitlyn Curley is a writer and journalist covering education, prison reform, and unemployment rates @ GenFKD. “Zero Tolerance Policies: A Key Tool in the School-to-Prison Pipeline” <http://www.genfkd.org/zero-tolerance-policies-key-tool-school-prison-pipeline>” MW)

Children who interact with law enforcement at a young age are more likely to end up in the criminal justice system. Suspensions, expulsions and arrests, all components of zero tolerance policies, lead to these interactions. As evidenced by extensive research, the rise of zero tolerance policies has led to more suspensions, expulsions and arrests, and therefore more children ending up in the criminal justice system later in life. The rise of zero tolerance policies Zero tolerance policies came about during the tough on crime era in the 1980s, when public fear of increasing street crime resulted in politicians pushing legislation for harsher sentences. Congress also turned this attitude toward schools, passing the Gun-Free Schools Act in 1994, which mandated that schools expel any student, for at least one year, for bringing a weapon to school. By 1996, 79 percent of schools had adopted zero tolerance policies for violence. Public fear of violence in schools peaked after the Columbine shooting in 1999 and zero tolerance policies were adopted by schools all over the country. Soon, zero tolerance policies were expanded beyond violence and many schools began implementing them for drug use and other offenses. In the same time period, the federal government was expanding funding for security guards and law enforcement in schools. With the extra muscle, zero tolerance policies were toughly enforced, seeing more kids suspended and expelled. The sad result of zero tolerance policies Zero tolerance policies were intended to provide swift punishment for unacceptable actions, but they have instead been used more broadly for mild incidents, resulting in a dramatic increase in suspensions and expulsions. Between 1972 and 2009, the number of secondary school students suspended or expelled over a school year increased about 40 percent. Now, an estimated two million students are suspended each year and only five percent of serious disciplinary actions in recent years actually involve possession of a weapon. Unfortunately, these zero tolerance policies disproportionately affect minority children. Nationally, black students are suspended nearly four times as often as white students, and Latino youth are roughly twice as likely to be suspended or expelled. What’s worse, despite the intentions of zero tolerance policies, research has been unable to prove that they increase the safety level at schools.

#### Third, Zero Tolerance Policies (or ZTPs) are net negative at disciplining students

APA 06 (APA is the leading scientific and professional organization representing psychology in the United States, with more than 115,700 researchers, educators, clinicians, consultants and students as its members. “Zero tolerance policies can have unintended effects, APA report finds” <http://www.apa.org/monitor/oct06/tolerance.aspx> )

Zero tolerance policies in schools, intended to reduce school violence and behavior problems, can actually have the opposite effect, according to a report of the APA Zero Tolerance Task Force adopted by APA's Council of Representatives at its August meeting. The task force reviewed 10 years of research on the effects of zero tolerance policies in middle and secondary schools and concluded that such policies not only fail to make schools safe or more effective in handling student behavior, they can actually increase the instances of problem behavior and dropout rates. The research also showed that zero tolerance policies failed to increase the consistency of discipline across student groups and failed to decrease uneven enforcement of punishment across racial lines. There are discipline strategies, according to the task force report, that can target disciplinary actions to specific misbehaviors without sacrificing school safety or mandating all students to the same punishment. Three levels of intervention are recommended: primary prevention strategies targeting all students; secondary strategies targeting those students at risk for violence or disruption; and tertiary strategies targeting those students who have already been involved in violent or disruptive behavior. The report does not recommend that schools abandon zero tolerance policies, but that they be modified to allow for more flexibility and so that individual teachers and administers can use their judgment on appropriate responses to incidents that take place in their classrooms or buildings. "Many incidents that result in disciplinary action in school happen because of an adolescent's or child's poor judgment, not due to an intention to harm," states Cecil Reynolds, PhD, task force chair. "Zero tolerance policies may exacerbate the normal challenges of adolescence and possibly punish a teenager more severely than warranted."

#### Fourth, These institutionalized inequalities condemn entire populations to preventable suffering and death.

Bezruchka 14 — Stephen Bezruchka, Senior Lecturer in Health Services and Global Health at the School of Public Health at the University of Washington, holds a Master of Public Health from Johns Hopkins University and an M.D. from Stanford University, 2014 (“Inequality Kills,” *Divided: The Perils of Our Growing Inequality*, Edited by David Cay Johnston, Published by The New Press, ISBN 9781595589446, p. 194-195)

Differences in mortality rates are not just a statistical concern—they reflect suffering and pain for very real individuals and families. The higher mortality in the United States is an example of what Paul Farmer, the noted physician and anthropologist, calls structural violence. The forty-seven infant deaths occur every day because of the way society in the United States is structured, resulting in our health status being that of a middle-income country, not a rich country.

There is growing evidence that the factor most responsible for the relatively poor health in the United States is the vast and rising inequality in wealth and income that we not only tolerate, but resist changing. Inequality is the central element, the upstream cause of the social disadvantage described in the IOM report. A political system that fosters inequality limits the attainment of health.

The claim that economic inequality is a major reason for our poor health requires that several standard criteria for claiming causality are satisfied: the results are confirmed by many different studies by different investigators over different time periods; there is a dose-response relationship, meaning more inequality leads to worse health; no other contending explanation is posited; and the relationship is biologically plausible, with likely mechanisms through which inequality works. The field of study called stress biology of social comparisons is one such way inequality acts. Those studies confirm that all the criteria for linking inequality to poorer health are met, concluding that the extent of inequality in society reflects the range of caring and sharing, with more unequal populations sharing less. Those who are poorer struggle to be accepted in society and the rich also suffer its effects.

A recent Harvard study estimated that about one death in three in this country results from our very high income inequality. Inequality kills through structural violence. There is no smoking gun with this form of violence, which simply produces a lethally large social and economic gap between rich and poor.

#### Fifth, Discussions of race must be at the forefront of political discussions or else it allows the perception that race does not matter

Chandler and McKnight 2009 — Prentice Chandler – Ph.D from the University of Alabama, Assistant Professor of Social Studies Education and Critical Race Theory, and Douglas McKnight - Ph.D. Louisiana State University, professor of Educational Leadership, Policy and Technology Studies and Social and Cultural Studies, “*The Failure of Social Education in the United States: A Critique of Teaching the National Story from "White" Colourblind Eyes,” Journal for Critical Education Policy Studies, v7 n2 p217-248 Nov 2009*

This avoidance of race in social studies classrooms and schools in general leads to teachers and administrators deciding what the definition of race should be for students; ―when teachers affirm that race is irrelevant either by audible words or by their silence about race, they reveal perhaps unwitting, racist assumptions that all people are alike‖ (Branch, 2001, p. 110- 111). Racism in this position has been individualized to the point that people are shielded from the notion that racism occurs on cultural, legal and systemic levels, and that it is supported by the status quo on those levels (Wildman & Davis, 1997). To ignore race and its appearance in society and school allows the perception that race does not matter, and that failures (of a group or person) are due to innate deficiencies within that particular person, rather than allowing for systemic evaluation of the status quo. The colour-blind philosophy has created a situation in which whites are unable to understand that people of colour have more institutional and individual barriers than they do (Blau, 2003; Dixon & Rousseau, 2005).¶ When teachers treat race in particular ways (i.e. remain silent, give it partial treatment, and represent ̳Others‘ experiences through ―white eyes‖) they are operating from the right to define the story. It is based on the premise that ―someone has more of a right to state what they think the world looks like and to coerce others into agreeing with that view‖ (Armstrong & Ng, 2005, p. 32). In other words, it sustains the power of the storyteller, who historically in the classroom has been and continues to be white, especially in elementary grades, even as the overall racial and ethnic makeup of the US shifts. And this powerful position is made all the more problematic when the story itself serves to defend dominant white images (DiPardo & Fehn, 2000; Chalmers, 1997) even as it claims to have overcome racism and achieved ―colour- blind‖ status, hence enabling the dominant culture of whiteness to remain intact and not confront race as a compelling problem in US history as well as in the present. This condition preserves the story of the US as a ―white‖ story, even as multicultural education theorists attempt to gain access to the story for ―people of colour.‖

### Contention Two — Prisons

#### Advantage Two is Prisons,

#### First, Current disciplinary procedures entrench racial disparities and structural violence in the US by forcing minority and disabled students into the prison industrial complex

Knefel 13 – Molly Knefel is a journalist and co-host of the daily political podcast, Radio Dispatch. She is also an elementary after-school teacher. *“The School-to-Prison Pipeline: A Nationwide Problem for Equal Rights”* <http://www.rollingstone.com/music/news/the-school-to-prison-pipeline-a-nationwide-problem-for-equal-rights-20131107> MW

What happens to education when students, from preschool to high school, are subjected to disciplinary policies that more closely resemble policing than teaching? Around the country, advocates are collecting data illustrating the devastating effects of what they call the "school-to-prison pipeline," where student behavior is criminalized, children are treated like prisoners and, all too often, actually end up behind bars. "The school-to-prison pipeline refers to interlocking sets of relationships at the institutional/structural and the individual levels," explains Mariame Kaba, founding director at Project NIA, an advocacy group in Chicago fighting youth incarceration. "All of these forces work together to push youth of color, especially, out of schools and into unemployment and the criminal legal system." This fall, the New York Civil Liberties Union (NYCLU) issued a report focusing on how the criminalization of school discipline is profoundly harming children's educational opportunities in New York City. "Once a child is subjected to suspensions or arrests in school, they are less likely to graduate and more likely to end up involved in the criminal justice system," says Donna Lieberman, the NYCLU's executive director. "That means they're on a path to prison, not graduation." The report demonstrates that the city's black and low-income students, as well as students with disabilities, are disproportionately affected by suspensions, expulsions and arrests – which have skyrocketed under Mayor Michael Bloomberg's administration. The data also shows a correlation between neighborhoods whose students experience high rates of suspension and those with high rates of stop-and-frisk, the controversial policing tool ruled unconstitutional earlier this year. The number of students suspended from New York City schools each year has more than doubled under Bloomberg, from roughly 29,000 in 2001 to almost 70,000 in 2011. Half of those suspended were black, despite black students comprising less than a third of the student population. Black students with disabilities have the highest rates of suspension, almost three times higher than their white disabled peers. White students with disabilities are also suspended at higher rates than their non-disabled peers. "It's a lot about race," says Lieberman. "Black students are far more likely than [non-disabled] white students and white students with special needs to be suspended from school." And the problem is not unique to New York City. Texas Appleseed, a social and economic justice advocacy group, filed a complaint earlier this year with the U.S. Department of Education's Office of Civil Rights alleging that disciplinary policies in Texas schools have a disparate impact on African-American students. "Whether you're looking at suspensions or expulsions, or whether you're looking at ticketing for Disorderly Conduct or Disruption of Class," says Deborah Fowler, deputy director at Texas Appleseed, "in each of those cases, you're going to see African American students over-represented." Their data shows that black students in Texas schools are more than 30 percent more likely to receive "discretionary" disciplinary action, often ensnaring them in the adult criminal court system even if they're under 18. Similarly, black students in Chicago public schools are disproportionately targeted for school-based arrests, representing about 40 percent of the student population but 75 percent of those arrested, according to a Project NIA report released earlier this year. Kaba says that the massive closures of public schools in Chicago's poor black communities have exacerbated school pushout, leaving thousands of children without access to their neighborhood schools. In New York City, children in certain neighborhoods are subject to the same aggressive police tactics that dictate daily life in their broader communities. Side by side, the NYCLU report compares one map illustrating neighborhoods where police most frequently stopped and frisked school-age youth with another map illustrating rates of suspension by zip code. "Students who live in neighborhoods that have high rates of stop-and-frisk are more likely to be suspended than students who live in low stop-and-frisk zones, regardless of where they go to school," explains Lieberman. While she emphasizes that correlation does not equal causation, she adds: "It is abundantly clear that the policies of the Bloomberg administration with regard to law enforcement and with regard to school safety and discipline are policies that evidence an utter disdain for their impact on communities of color, particularly young people of color." The NYCLU report paints a picture of communities whose young residents are subjects of police control whether they are in school or on the streets, and whose most vulnerable young people are targeted rather than supported. The district with the most low-income students – District 7 in the Bronx, with over 85 percent of students qualifying for free or reduced lunch – also has the highest rate of suspensions. And the harsh disciplinary policies don't just affect older students. In the academic year of 2010-2011, there were 93 four-year-olds suspended, one-third of whom were disabled. Furthermore, the fleet of School Safety Officers (SSOs) in schools – at over 5,000, they almost double the amount of guidance counselors, according to Lieberman – are not trained to work with special needs children who may require unique emotional or behavioral support. The disappearance of Queens teenager Avonte Oquendo from his school in early October illuminates what Lieberman says is a structural failure of New York schools to support the needs of their students. Avonte, who has autism and is nonverbal, was seen by an SSO in the building before he left. "[The SSO] didn't know the child had special needs. So what we have is the illusion of safety, and unfortunately, the results can be disastrous." There are roughly 123,000 special education students in New York City schools. Nearly one-third of all suspensions are served by students with disabilities even though they are only one sixth of the population. Only 27 percent of disabled students graduated on time in 2011; that number decreases to a remarkable 5 percent when looking only at students in self-contained special education classrooms. As the country's largest school district, argues the NYCLU, New York City is poised to address the school-to-prison-pipeline not just locally, but nationally. They recommend putting an end to zero-tolerance policies and the criminalization of school discipline, as well as increased training and support for the SSOs charged with keeping students safe. "We are excited at the prospect of a new administration in city hall that is sensitive to the challenges facing all young people, especially young people of color, and committed to overhauling those policies and adopting an approach that ensures that all kids have a fair shake in our society," says Lieberman. "In order to have a fair shake, you need to have access to a decent education and be treated with respect, whether it's in schools or on the street."

#### Second, Disciplinary reform is the key to resolving the capitalistic exploitation of minorities utilized expand the school to prison pipeline

Porter 15 – Tracie R. Porter; Associate Professor of Law and Director of the Business Law Center, Western State College of Law; B.A., 1990, Cornell College; J.D., 1994, Drake University School of Law. // *The School-to-Prison Pipeline: The Business Side of Incarcerating, Not Educating, Students in Public Schools* // <http://media.law.uark.edu/arklawreview/2015/05/15/the-school-to-prison-pipeline-the-business-side-of-incarcerating-not-educating-students-in-public-schools/> // 2005 // Accessed 6/27/2017 // MW

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. I. Introduction This essay takes a critical look at the practice of spending and profiteering by governments and private businesses to incarcerate, rather than educate, students in our public schools. This practice often forces students arrested or expelled from school into the school-to-prison pipeline.[2] If lawmakers and school administrators allow the strict disciplinary practices in public schools to continue, an even greater number of African American and Latino students will be deprived of an education. In turn, these children will continue to be exploited by the private prison industry and government prison systems, which use cheap labor from students pushed out of school to increase their bottom lines. [[56]]The impact of purported race-neutral disciplinary policies, such as zero tolerance, in public schools is too harsh and fails to consider the crippling effects they have on the students subjected to exclusionary discipline.[3] **These punitive policies eventually deprive students of civil rights and liberties, the right to an education among them, which courts must recognize as “The New Civil Right.”** Disciplinary policies in public schools cannot force school administrators to arrest or expel students for non-violent offenses, especially when such sanctions have grossly disproportionate effects on students of color.[4] In addition, the school environment should be conducive to learning, which cannot occur when the facility looks more like a prison than a classroom. If the government placed more resources into programs that seek to curb misbehavior instead of spending billions of taxpayer dollars on building a prison industry, students in public schools would have a real chance of becoming valuable contributors to society. Lawmakers and school administrators must abandon policies that criminalize adolescent behavior and redirect the resources poured into the militarized policing of students in public schools. Doing so promises to create schools and classrooms that are conducive to learning. In turn, this will reverse the trend of schools serving as pipelines to prison for African American and Latino youth. The notion of being arrested at school and ending up in prison is foreign to me. I attended schools in the Chicago public school system from pre-school through my high school graduation, so it is unimaginable for me to think that if I were in a public school today, my adolescent back-talking and youthful challenges to authority could have landed me in prison instead of the legal profession or academia. I recall many times when my teachers had to deal with the challenges of students acting out in class, but this misbehavior was harmless, even at its worst. Not once did I see a police officer remove a student from [[57]]campus or an administrator exile a student from school for days, weeks, or months. I even remember when my classmates and I purposely broke the rules by going off the closed campus for a “Jew Town” polish and fries at lunch.[5] When we returned to class, our homeroom teacher told us that he “smelled what we had done.” I never feared that I would be denied an education because I had broken school rules. In today’s public school environment, however, I could easily see my actions leading me on a dramatically different path. Expulsion or suspension would have landed me alone at home, and negative forces in my community could have changed my fate as a bright, latchkey kid to something other than a lawyer, scholar, and teacher in this world. **The almost inevitable incarceration of students expelled or suspended by public school administrators is profitable for both the government and private businesses. The school-to-prison pipeline is a problem based in part on capitalistic principles of profit maximization.** Today, the system uses students discarded by our schools and prevents them from securing an education, demonstrating the value placed on imprisonment over education by both our governments and the private prison industry. Students end up in prison through the school-to-prison pipeline—a phenomenon tied to the zero-tolerance policies of our schools and the **failed education policies of our governments**.[6] For African American and Latino students in particular, going to school and violating school rules can land them in prison. A recent report issued by the Department of Education Office for Civil Rights indicated that school administrators expelled, and law enforcement arrested, African American students in staggeringly disproportionate numbers [[58]]compared to white students and other students of color.[7] The likelihood these students will end up in prison is also disproportionately high.[8] Without question, the rise in punitive discipline in our public schools contributes to the country’s astonishing incarceration rate—currently the highest in the world.[9] The United States prison population grew from less than 300,000 in 1972 to approximately 2,000,000 by the turn of the century.[10] **As of 2012, our country incarcerated 920 out of every 100,000 adult citizens**.[11] According to CNN, “[w]e imprison more of our own people than any other country on earth, including China which has four times our population, or in human history.”[12] Remarkably, the United States holds 25% of the world’s prisoners, but only has 5% of the world’s population.[13] According to 2009 statistics from the Census Bureau and the Department of Justice, African Americans and Latinos predominate the prison population despite comprising a relatively small percentage of the total United States population.[14] [[59]]As for students, 40% of children expelled from public schools are African American.[15] Of students arrested or referred to law enforcement while in school, 70% are African American or Latino.[16] School administrators are also three and a half times more likely to suspend African American students than white students,[17] even for the same non-violent offenses. Even worse, these expelled or suspended students will likely never graduate high school and end up in prison, where 68% of male inmates do not have a high school diploma.[18] In 2011, the ACLU suggested that placing children from the school environment into the criminal justice system fueled “the nation’s addiction to incarceration.”[19] **Each of these staggering statistics is rooted in the capitalistic goals of private businesses and public governments. Regrettably, the prison system has become a very profitable business venture in America’s modern, capitalistic society.[**20] According to a report issued by Pew Charitable Trusts, inmates released from state prison in 2009 cost states billions of dollars nationwide—a sobering figure considering most of those costs were spent incarcerating non-violent offenders.[21] In the prison industrial complex, private prisons have become a dominant force over the last three decades. The two largest private prison corporations—the Corrections Corporation of America (CCA)[22] and the GEO Group[23]—control 75% of the for-profit prison [[60]]business in the United States.[24] In 2010 alone, the two corporations generated nearly $3 billion in revenue.[25] These figures equal or exceed some of the United States Department of Education’s recent budget allocations, such as “a new five-year, $2.5 billion Access and Completion Incentive Fund to support innovative state efforts to help low-income students complete college”[26] and “a $3 billion increase in funding for K–12 education programs.”[27] However, these long-term expenditures also assume that students will be in the public educational system long enough to take advantage of the programs, but school administrators instead use these funds for bureaucratic or policing expenses related to arresting, expelling, or suspending students**. A 2007 study by two civil rights organizations further demonstrated the government’s emphasis on incarceration over education.** Researchers found “the U.S. spen[t] almost $70 billion annually on incarceration, probation and parole.”[28] This figure represented a 127% increase from 1987 to 2007, dramatically outpacing the funding for higher education during the same time period.[29] These findings suggest governments and private companies are willing to invest in incarceration, but not education. For private prison corporations, students are the commodities that support their investments, and these commodities are often African American or Latino. Understanding the capital investments and policy decisions made by the government when it puts its citizens, specifically students, in prison explains why public school disciplinary policies perpetuate the school-to-prison pipeline. This critical [[61]]essay addresses the government’s investment in incarcerating over educating African American and Latino students through punitive discipline measures such as zero-tolerance policies. This essay postulates that harsh school discipline policies eventually lead to the incarceration of students of color—children the government is neither committed nor obligated to educate. Education is not a defined civil right, but the paradigm must shift and our society must start treating it as one. I also surmise that private prisons need students to become inmates in order to supply the prison industry with free or cheap labor. **Thus, keeping students out of the education system and placing them in the prison system benefits both the government—because it avoids the costs associated with keeping those students in school—and private prisons—because they rely on a steady flow of inmates.** Therefore, educating children, especially African American students, has less value to the government than perpetuating the flow of prisoners into the discount labor market. The federal government places emphasis, disappointingly, on the capitalistic notion of building a profitable prison industry for itself and for private corporations. **As a growing industry in the United States, private prisons and their corporate stockholders have an incentive to increase the prison population because prisoners are profitable commodities to their business.[**30] These corporations derive their revenue from federal and state governments that contract out the management and operation of prisons, even allowing these corporations to design and construct the prison facilities.[31] The government guarantees a certain amount of money for each prisoner held in a private prison, which leads each prison to carefully control its costs, often aided by the use of cheap prison labor.[32] To ensure a stable flow of prisoners fills the cells in their facilities, stockholders of private prisons also engage in extensive lobbying efforts at both the federal and state levels.[33] [[62]]Federal and state prison systems also utilize prison labor as a cheap alternative to the open market. Inmates in the federal prison system produce a vast array of the nation’s military supplies.[34] Recently, Congress made a concerted effort to cut the cost of military uniforms by turning to the federal prison system, where workers are paid less than $2 per hour.[35] In 2013, inmates in federal prisons “stitched more than $100 million worth of military uniforms.”[36] State prison systems are no different. For example, the State of California reduces prison terms for inmates who work during their sentences, such as by fighting wildfires.[37] Today, the government invests more resources to maintain its expanding prison system than it does to educate our children. According to recent data collected from forty states by the Census Bureau and the Vera Institute of Justice, state governments spend more money per year to keep an individual in prison than they do to educate a student in a primary or secondary school.[38] The statistics revealed that at least forty states spent less than $20,000 annually per student on education, and only twelve states spent more than $10,000 per student.[39] However, approximately thirty states spent $20,000 or more per inmate per year, and only ten states spent less than $20,000.[40] Clearly, the money trail reveals the disturbing priority the government has placed on incarceration over education.

#### Third, The prison industrial complex is modern fascism – it promotes a culture of genocide which makes the extermination of populations a necessity

Dillon 2013 — Stephen, phd in philosophy, fugitive life: race, gender and the rise of the neoliberal-carceral state, <https://conservancy.umn.edu/bitstream/handle/11299/153053/Dillon_umn_0130E_13833.pdf?sequence=1>)

Political repression in the United States has reached monstrous proportions. Black and Brown peoples especially, victims of the most vicious and calculated forms of class, national and racial oppression, bear the brunt of this repression. Literally tens of thousands of innocent men and women, the overwhelming majority of them poor, fill jails and prisons; hundreds of thousands more…are subject to police, FBI, and military intelligence surveillance.1 For Davis, the imprisonment of tens of thousands of poor people of color meant “fascism” had taken hold in the United States. Davis’s co-editor Bettina Aptheker declared, “This is a fascist program. It is a genocidal program.”2 James Baldwin argued that Davis’s isolation and loneliness reminded him of a “Jewish housewife in the boxcar headed to Dachau,” describing prisons as “concentration camps” under which white Americans could measure their safety in “chains and corpses.”3 These sentiments concerning racism and the prison formed a common sense amongst the radical and revolutionary left in the 1970s United States. Prisons, as Michel Foucault noted in an essay from the same year, were “a war having other fronts in the black ghettos, the army and the courts.”4 Incarceration was “an experience of [a] hostage, of a concentration camp, of class warfare, an experience of the colonized.”5 The title of the collection itself emphasized the profound violence the black power movement felt it was confronted with—as Baldwin exclaimed to Davis, “For, if they take you in the morning, they will be coming for us that night.”6 What is most breathtaking about this collection is what it tells us about the changes that occurred to the U.S. prison system just years after Davis and her cohort declared “fascism” had gripped the nation. Less than a decade later, a convergence between the intensely racialized politics of law and order and the poverty and unemployment created by deindustrialization produced the largest prison system in this world. The fact that over the next forty years the number of people in prison would expand exponentially from 200,000 in the 1970s to 2.5 million in 2000 would have been considered practically impossible and epistemologically unthinkable to the people contesting the post-civil rights expansion of the prison system. In fact, 1970s radicals and revolutionaries on the left thought that the worst had arrived and that a new world was dawning. Many of the collection’s authors considered the intensity of the era’s police and penal violence as indicative of the “serious infirmities of the social order.”7 For Davis and her co-authors, the “bourgeois democratic state,” especially its judicial system, was “disintegrating” and the “revolutionary transformation of society” was close at hand. In other words, the increasing brutality of the police, courts, prisons, and an emerging economic crisis were reflective of a “profound social crisis, of systemic disintegration.”8 If we could speak to the past and try to issue a warning of what was coming, of the unprecedented regimes of capture and immobilization that we live with today, our warnings would be inconceivable.

#### Fourth, Utilitarianism is a flawed system. It is impossible to measure and to predict the benefits and/or harms resulting from a course of action or a moral rule.

McCarthy and Lysaught 7 — *What’s wrong with utilitarianism?, “The Moral Course of Thinking” in Gathered for the Journey: Moral Theology in Catholic Perspective, Rapids*: Michigan: Eerdmans Publishing Company, 2007. http://theophilogue.com/2009/11/19/utilitarianism-what-is-it-why-does-it-not-work/

McCarthy and Lysaught rehearse some of the standard criticisms of utilitarianism, for which I have given my own articulation and creative names. They run as follows: The Inevitability of Arbitrariness—It has no way to objectively determine the nature, importance, and value of consequences.To put it another way: How do we know what are “good” and “bad” consequences? What consequences count most? Whose opinion of what are “good” consequences and what are “bad” consequences counts most?Failure to give coherent and rational criterion for answering such questions spells decisive defeat for the whole theory of exclusive utilitarianism. It seems to need something else to help it out. That is why I personally think that the utilitarian factor is legitimate when considered as part of the picture, but exclusive utilitarianism always leads to arbitrary judgment of consequences, and therefore arbitrary ethics. The Contrary Intuition—It often undermines our common sense and moral intuitions, often demanding certain actions that rub our conscience the wrong way. For example, what if I knew I could cheat on my wife with my female boss without her ever finding out in order to get a raise, which would have “good” consequences for my family (less financial stress, my wife could cut back to part time to spend more time with the kids, the kids could benefit from more parental care, I could save more money for the kids for college, etc.)? My gut tells me: Don’t do this, it is wrong, wrong, wrong. But utilitarianism tells me it’s [works] like a math problem (good consequences = good action).The **O**mniscience Requirement**—** sometimes it is impossible to know the totality of the potential (much less the actual) consequences of one’s actions. Sometimes what looks to us to be a disaster turns out to be a blessing in disguise? We get fired only to later realize that the new job we attain as a consequence pays better and is more enjoyable. On the flip side, sometimes we think something is going to turn out great, but in the end is a big letdown. If these small scale experiences in the lives of ordinary people demonstrate how difficult it is to know the consequences of certain actions—how much more difficult must it be for people whose decisions effect an entire nation (e.g. the President) to judge the full weight of the consequences of their decisions?

### Plan

#### The United States federal government should rule that zero tolerance policies and harsh disciplinary procedures in elementary and secondary education are a violation of Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment through an application of the rational basis test.

### Contention Three — Solvency

#### First, The plan rules on the rational basis test of the 14th Amendment and Title VI of the Civil Rights Act - that would end zero tolerance policies due to racial discrimination

Skiba et al 9 [RUSSELL J. SKIBA, SUZANNE E. ECKES, AND KEVIN BROWN; Russell J. Skiba, Professor, Indiana University School of Education; Director, Equity Project at Indiana University; B.A., Catholic University, 1975; Ph.D., University of Minnesota, 1987. Suzanne E. Eckes, Associate Professor, Indiana University School of Education; B.A., University of Wisconsin-Madison, 1990; Ed.M., Harvard University, 1998; J.D. and Ph.D. University of Wisconsin-Madison, 2003. Kevin Brown, Professor, Indiana University Maurer School of Law-Bloomington & Emeritus Director of the Hudson & Holland Scholars Program-Indiana University-Bloomington; B.S., Indiana University, 1978; J.D., Yale University, 1982. African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy; New York Law School Review; Volume 54: 2009-2010; <http://www.indiana.edu/~equity/docs/Skiba%20et%20al%2054%204.pdf>]

One criticism of zero tolerance policies is that they disproportionately impact students of color. Those opposed to zero tolerance for this reason argue that zero tolerance policies: 1) do not effectively balance safety with educational opportunity for all, and 2) “create a ‘schoolhouse-to-jailhouse’ pathway” for minority students. 112Likewise, the Justice Policy Institute and the Children’s Law Center assert that these policies are creating “funnels for the juvenile justice system.” 113Studies have demonstrated that a disproportionate number of students who are expelled from school are from low-income families or are students of color. 114For example, Donald Stone reported that black students were either suspended or expelled at a rate 250% higher than the rate at which white students are expelled. 115 In this empirical study, Stone surveyed thirty-five school divisions representing a population of 1,382,562 students about information relating to school suspensions. Within this population, 46% of the student body was white, 44% was black, and 10% was made up of other races. Even though the black and white population was almost equal, the study found that when examining suspension rates, 71.5% of the suspended students were black and 28.5% were white. 116The study did not note if the offenses were different or more severe between the different racial groups, but it did indicate that the most common offenses included fighting, cursing, weapons on campus, and skipping class. 117Similarly, Wu found that when socioeconomic indicators are held constant, black students were still disciplined at higher rates than white students. 118 Students of color are also disproportionately represented in discipline related to off-campus crimes. 119 The right not to be discriminated against on the basis of race, color, or national origin is protected by the Equal Protection Clause of the Fourteenth Amendment 120 and explicitly guaranteed by Title VI of the Civil Rights Act of 1964. 121 Specifically, section 601 of Title VI “prohibits discrimination based on race, color, or national origin in covered programs and activities.” 122 Section602 of Title VI authorizes federal agencies to effectuate section 601 through the issuance of regulations. 123 In the following sections, we examine the scientific research and case law regarding racial and ethnic disparities in school discipline. Within the demands that educational interventions are non-discriminatory, to what extent can it be demonstrated that school discipline is fair or unfair? What response have courts had to claims of discrimination in school discipline? A. Scientific Research on Racial/Ethnic Disproportionality in School Discipline For over thirty years, in national, state, district, and building level data, the documentation of disciplinary overrepresentation for African American students has been highly consistent. 124 Recent analyses have found rates of out - of school suspensions between two to three times greater for African American elementary school students than white students, 125 although findings of Latino disparities have been somewhat less consistent. 126 Over-exposure to exclusionary school discipline places racially and ethnically diverse students at increased risk for a range of negative outcomes. Given the strong and robust finding that the amount of time engaged in academic settings is among the strongest predictors of achievement, 127disproportionate exclusion of students of color increases their risk of lower academic success. Disproportionate representation in exclusionary discipline is also troubling given the generally negative outcomes that have been found to be associated with the use of out-of-school suspension and expulsion. The data indicate that minority students are being disproportionately exposed to interventions that increase disciplinary recidivism, negatively predict¶ school achievement, nd in the long-term, are associated with higher rates of school dropout and increased contact with the juvenile justice system. 1311. Socioeconomic Status .Race and socioeconomic status (“SES”) are unfortunately highly connected in American society. 132This connection suggests that apparent racial disproportionality in school discipline could be simply a by-product of disproportionality associated with SES. Statistical analyses have indeed found low SES to be a risk factor for school suspension. 133Yet multivariate statistical models have also shown that nonwhite students still report and experience significantly higher suspension rates than white students, even after statistically controlling for poverty. 134Thus, although economic disadvantage may contribute to disproportionate rates of discipline for students of color, it cannot completely explain racial and ethnic disparities in school suspension and expulsion.2. Disparate Rates of Disruption. Implicit in the poverty hypothesis is the assumption that African American students may engage in higher rates of disruptive behavior than other students. Yet investigations of student behavior, race, and discipline have yielded no evidence that African American over-representation in school suspension is due to higher rates of misbehavior, regardless of whether the data are self-reported, or based on analysis of disciplinary records. 136 If anything, studies have shown that African American students are punished more severely for less serious or more subjective infractions. Ann McFadden and her colleagues reported that black pupils in a Florida school district were more likely than white students to receive severe punishments (e.g., corporal punishment, school suspension) and less likely to receive milder consequences¶ (e.g., in-school suspension). 137 These results are consistent with findings that African American students are referred for corporal punishment for less serious behavior than are other students. 138 Some evidence suggests that the over-representation of African American students in school exclusion begins with racial disparities in rates of office referrals from classroom teachers. 139 In a study specifically devoted to African American disproportionality in school discipline, Russell Skiba and his colleagues found that white students were referred to the office significantly more frequently for offenses that appear more capable of objective documentation: smoking, vandalism, leaving without permission, and obscene language. 140 In contrast, African American students were referred more often for disrespect, excessive noise, threat, and loitering, behaviors that would seem to require more subjective judgment. 141In short, there is no evidence that racial disparities in school discipline can be explained through higher rates of disruption among African American students. Although much more investigation is necessary to better understand all the factors that contribute to racial disparities in school discipline, the evidence suggests that these disparities are caused at least in part by cultural mismatch or insufficient training in culturally responsive classroom management practices. 142B. Case Law Regarding Racial/Ethnic Disparities in Discipline The courts have become involved in school cases concerning racially disproportionate discipline actions in a few instances. Before examining individual cases, this section will first explain the legal avenues that students rely upon when filing such claims against school districts. One avenue for students of color who assert such claims is the Equal Protection Clause of the Fourteenth Amendment. 143 The Equal Protection Clause states that “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” 14 4 Under this Clause, courts apply different tests depending on school officials’ motivation for taking action. If school officials are motivated by legitimate educational considerations, then the court will apply a rational basis test, asking¶ whether the school officials’ actions are reasonably related to these legitimate educational reasons. 145 This test is generally considered deferential to school administrators. 146 It is born out of a notion that government officials are the experts in how best to conduct their business. 147Therefore, courts should not seek to impose their own judgments on the decisions of governmental actors, as long as there is a reasonable basis for the decision. If, however, school officials are motivated by racial animus, then courts will apply strict scrutiny. 148 Under this test, school officials must supply a compelling justification for their actions and those actions must be narrowly tailored to advancing the compelling justifications. 149This heightened scrutiny, however, does not apply, for example, if non-racially motivated actions produce a disparate impact on the educational opportunities of black students. 150If black students are disciplined at much higher rates than white students, but these disparities are shown to be based on racially neutral decision making by school officials, then the disparity is not considered unconstitutional racial discrimination. Instead, it is simply the unfortunate result of the application of legitimate decision making by educational officials. 151 Another claim that students assert in school disciplinary cases involving racial discrimination comes under Title VI of the Civil Rights Act of 1964. 152 Title VI prohibits discrimination on the basis of “race, color, or national origin . . . under any programs or activity receiving Federal financial assistance.” 153 When plaintiffs use Title VI they may assert that school disciplinary practices result in disparate treatment of students of color. Disparate treatment requires the student to demonstrate that school officials acted intentionally in creating the inequitable environment. 154 The¶ Supreme Court has held that disparate treatment under Title VI is, therefore, similar to racial discrimination recognized under the Equal Protection Clause in that the student must demonstrate that the school officials acted with discriminatory intent. 155 In order to prove intent, the plaintiff must demonstrate that a “challenged action was motivated by an intent to discriminate,” 156and plaintiffs may present evidence of intent that is direct or circumstantial. 157As a result of the intent requirement, it is difficult for students to bring successful Title VI actions. The Harvard Civil Rights Project and the Advancement Project contend that Title VI has been “ineffective and [is] rarely enforced” in discipline cases. 158In the past, the Title VI regulations provided some assistance to students alleging racial discrimination in school discipline cases under a disparate impact claim. Disparate impact occurs when students demonstrate that a facially neutral policy has a negative impact on a protected class of students. 159 Specifically, while a successful argument under Title VI requires intentional discrimination, its accompanying regulations permitted a broader interpretation of the law, allowing plaintiffs to argue disparate impact. 160In earlier cases, the U.S. Supreme Court also found that these regulations may prohibit discrimination that has a disparate impact on protected groups—even if there was no evidence of intentional discrimination. 161As will be discussed, however, private rights of actions under Title VI regulations were foreclosed by the 2001 U.S. Supreme Court case Alexander v. Sandoval. 162

#### Second, Current jurisprudence on race in K-12 programs uses the strict scrutiny test on 14th Amendment issues – this terminally thumps all efforts at racial equality in schools

Archer 7 [Deborah N. Archer; Associate Professor of Law, New York Law School. B.A., 1993 Smith College; J.D., 1996 Yale Law School. MOVING BEYOND STRICT SCRUTINY: THE NEED FOR A MORE NUANCED STANDARD OF EQUAL PROTECTION ANALYSIS FOR K THROUGH 12 INTEGRATION PROGRAMS; JOURNAL OF CONSTIITTIONAL LAW; Feb. 2007;

http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1248&context=jcl]

Throughout several areas of the law the Supreme Court has often¶ rationalized the restrictions and limitations put on the remedial use¶ of race by stating that many of the ultimate goals of affirmative action¶ in higher education and employment are best left to K through 12¶ education' to achieve. At the same time, federal courts have taken steps to curtail the ability of primary and secondary school boards to¶ voluntarily craft measures to address racial inequalities and disparities¶ that continue to plague our public schools fifty years after Brown v.¶ Board of Education declared separate schools unconstitutional.4 If the¶ courts are going to defer resolution of the nation's race problems to¶ our public schools, they cannot simultaneously prevent these schools¶ from using the tools most directly capable of bringing the nation¶ closer to achieving the promise of Brown.¶ Recently in Massachusetts, a federal appellate court applied the¶ Supreme Court's affirmative action analysis from Grutter v. Bollinger'¶ to strike down a race-conscious K through 12 integration program.¶ In Comfort v. Lynn School Committee, the United States Court of Appeals¶ for the First Circuit evaluated a race-conscious integration program¶ using the strict scrutiny framework of Grutter. Comfort is part of¶ a trend of applying strict scrutiny to race-conscious integration programs¶ that has gained new momentum following the decision in Grutter.8 Invited by the Supreme Court's seemingly unequivocal language¶ in Adarand Constructors v. Pena' that "all racial classifications, imposed¶ by whatever federal, state, or local governmental actor, must be analyzed¶ by a reviewing court under strict scrutiny,"' ° federal district and¶ appellate courts confronted with the question have generally treated¶ the equal protection issues raised by voluntary school integration in¶ the tradition of affirmative action, no matter how they ultimately decide¶ the matter on the merits." While Grutter and its companion case,¶ Gratz v. Bollinger,12 provided significant guidance on the use of race conscious¶ admissions policies in higher education, the decision did¶ not shed light on the applicability of these standards to K through 12¶ student assignment programs. That affirmative action programs and¶ race-conscious integration programs both involve education does not¶ mean they implicate the same rights.¶ [W]hile racial distinctions are irrelevant to nearly all legitimate state¶ objectives and are properly subjected to the most rigorous judicial scrutiny¶ in most instances, they are highly relevant to the one legitimate state¶ objective of eliminating the pernicious vestiges of past discrimination;¶ when that is the goal, a less exacting standard of review is appropriate.13¶ This principle is even more compelling when the state action reviewed¶ is the elimination of segregation among primary and secondary¶ school children.¶ While many courts have recognized that important differences exist¶ between affirmative action in higher education and employment,¶ and while race-conscious student assignment programs exist and¶ must be carefully weighed, 4 the courts have largely treated these as differences in degree, not differences in kind. The courts have also¶ largely ignored that the acceptable approach in affirmative action¶ cases is simply not feasible for a local school district. This term, the¶ United States Supreme Court will review the cases of McFarland v. Jefferson¶ County Public Schools 5 and Parents Involved in Community Schools v.¶ Seattle School District, No. 116 to determine whether voluntary integration¶ efforts by school districts should be viewed in the light of affirmative¶ action and subjected to strict scrutiny.

#### Third, A court decision that doesn’t use strict scrutiny i.e. the plan is key – reverses current jurisprudence allows the flexibility for racial equality programs to thrive

Archer 7 [Deborah N. Archer; Associate Professor of Law, New York Law School. B.A., 1993 Smith College; J.D., 1996 Yale Law School. MOVING BEYOND STRICT SCRUTINY: THE NEED FOR A MORE NUANCED STANDARD OF EQUAL PROTECTION ANALYSIS FOR K THROUGH 12 INTEGRATION PROGRAMS; JOURNAL OF CONSTIITTIONAL LAW; Feb. 2007;

http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1248&context=jcl]

Federal courts should resist the request to import the strict scrutiny¶ analysis from the affirmative action context and apply it to the¶ voluntary school integration context to limit the broad latitude that¶ school districts have traditionally enjoyed, and indeed need, in order¶ to make sensitive, well-informed, educational policy decisions. Not only would doing so run counter to the historical development of the¶ Supreme Court's jurisprudence, but it would make little sense from a¶ philosophical, analytical, and practical perspective. The qualitative¶ and analytical differences between affirmative action and voluntary¶ integration programs in the K-12 context, when viewed in conjunction¶ with the distinct history and context out of which voluntary¶ school integration emerged, and the critical, practical impact of subjecting¶ race-conscious policies to "the skeptical, questioning, beadyeyed¶ scrutiny''21¶ ° of strict scrutiny make it clear that strict scrutiny has¶ no place here. In the end, when a school district takes race into account¶ for the purpose of integration in student assignment, there¶ simply is no legal injury; on the contrary, there is instead a universally¶ shared benefit for all students-namely, the opportunity to learn in a¶ racially integrated educational setting. The Court's decisions to apply¶ strict scrutiny do not afford school districts the discretion necessary to¶ implement and maintain policies that would prevent a return to the¶ kinds of racially isolated conditions that first garnered the attention¶ of those school boards. Rather, it empowers judges to make sensitive¶ pedagogical decisions best left to school boards and educational experts.

#### Fourth, Even if it doesn’t, referencing compliance with other laws in the decision creates leeway that removes the necessity of the strict scrutiny test – redistricting cases proves

Archer 7 [Deborah N. Archer; Associate Professor of Law, New York Law School. B.A., 1993 Smith College; J.D., 1996 Yale Law School. MOVING BEYOND STRICT SCRUTINY: THE NEED FOR A MORE NUANCED STANDARD OF EQUAL PROTECTION ANALYSIS FOR K THROUGH 12 INTEGRATION PROGRAMS; JOURNAL OF CONSTIITTIONAL LAW; Feb. 2007;

http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1248&context=jcl]

For this reason, the fact that a student choice plan takes race into¶ account should no more trigger classic strict scrutiny than the mere¶ consideration of race in electoral districting should trigger strict scrutiny.¶ 53 In the realm of electoral redistricting, the Court has held that¶ the consideration of race in legislative redistricting does not automatically¶ trigger strict scrutiny as "the theory of strict scrutiny [has]¶ yielded to the need for an electoral system that is equally open to¶ members of minority groups."054 In Miller, the Court held that legislatures¶ must be given the leeway to consider race because racial considerations¶ are necessary to comply with the Voting Rights Act and¶ with constitutional mandates.' 55 Moreover, legislative redistricting is¶ within the authority of legislatures and, therefore, "the legislatures¶ must have discretion to exercise the political judgment necessary to¶ balance competing interests and courts must exercise extraordinary caution in adjudicating claims that a State has drawn district lines on¶ the basis of race. Therefore, courts assessing a redistricting plan "must be sensitive to the complex interplay of forces that enter a legislature's¶ redistricting calculus. 1 57 Accordingly, strict scrutiny is not¶ applied unless race is the predominant factor in creating a legislative¶ district; not just a factor in the decision. 5 " And, not only must race¶ predominate, but the plaintiff must also prove that "the legislature¶ subordinated traditional race-neutral districting principles" to racial¶ considerations. 59 Finally, the Court acknowledged that in seeking to¶ challenge electoral districts on the basis of race, the burden of proof¶ on plaintiffs is a "demanding one. ""° And, until the plaintiff meets¶ this burden, the good faith of the legislature must be presumed. 6¶ '¶ While the Supreme Court has not yet articulated another context¶ in which strict scrutiny will only be triggered if the use of race is 162 found to predominate the decision-making process, there are parallels¶ between legislative redistricting and K-12 education that support¶ the conclusion that the adoption of race-conscious student assignment¶ programs to eliminate segregation should not automatically¶ trigger strict scrutiny.' 63¶ School boards, like legislatures, must also comply with federal and¶ state constitutional and statutory requirements, many of which require¶ school boards to maintain racially integrated schools or to¶ avoid programs that have a disparate impact on racial groups.'6 In¶ order to avoid violating these statutory and constitutional provisions,¶ some level of race-consciousness when addressing student assignments¶ is necessary.

#### **Fifth, Removal of zero tolerance policies not only causes a shift to better forms of discipline, but also sweeps the feet from under the prison industrial complex**

Heitzeg 14 — Nancy A. Heitzeg, Ph.D., Professor of Sociology and Program Director, Critical Studies of Race/Ethnicity @St. Catherine University // *“Criminalizing Education: Zero Tolerance Policies, Police in the Hallways and The School to Prison Pipeline”* // [https://www.hamline.edu/uploadedFiles/Hamline\_WWW/HSE/Documents/criminalizing-education-zero-tolerance-police.pdf // 2014 // Accessed on 7/14/2017 //](https://www.hamline.edu/uploadedFiles/Hamline_WWW/HSE/Documents/criminalizing-education-zero-tolerance-police.pdf%20//%202014%20//%20Accessed%20on%207/14/2017%20//) MW

The Rise of the Prison Industrial Complex During the past 40 years there has been a dramatic escalation the U.S. prison population, a ten-fold increase since 1970. The increased rate of incarceration can be traced to the War on Drugs and the rise of lengthy mandatory minimum prison sentences for drug crimes and other felonies. These policies have proliferated, not in response to crime rates or any empirical data that indicates their effectiveness, but in response to the aforementioned media depictions of both crime and criminals and new found sources of profit for prisons (Davis 2003) The United States currently has the highest incarceration rate in the world. Over 2.2 million persons are in state or federal prisons and jails - a rate of 751 out of every 100,000 (Jones and Mauer, 2013). Another 5 million are under some sort of correctional supervision such as probation or parole (PEW 2008). These harsh policies - mandatory minimums for drug violations, “three strikes”, increased use of imprisonment as a sentencing option, lengthy prison terms - disproportionately affect people of color. As Michelle Alexander (2010) observes in The New Jim Crow, these policies and their differential enforcement have, in effect, re-inscribed a racial caste system in the United States. A brief glimpse into the statistics immediately reveals both the magnitude of these policy changes as well as their racial dynamic. Despite no statistical differences in rates of offending, the poor, the under-educated, and people of color, particularly African Americans, are over-represented in these statistics at every phase of the criminal justice system. (Walker, Spohn & DeLone 2012) While 1 in 35 adults is under correctional supervision and 1 in every 100 adults is in prison, 1 in every 36 Latino adults , one in every 15 black men, 1 in every 100 black women, and 1 in 9 black men ages 20 to 34 are incarceration (Pew 2008 ). Approximately 50% of all prisoners are 9 black, 30% are white and 1/6 Latino, with Blacks being imprisoned at more than 9 times the rate of whites. (Bureau of Justice Statistics 2012). To complicate matters, punitive policies extend beyond prison time served. . In addition to the direct impact of mass criminalization and incarceration, there is plethora of, what Mauer and Chesney-Lind (2002) refer to as “invisible punishments”. These additional collateral consequences further decimate communities of color politically, economically and socially. The current expansion of criminalization and mass incarceration is accompanied by legislation that further limits the political and economic opportunities of convicted felons and former inmates. “Collateral consequences” are now attached to many felony convictions and include voter disenfranchisement, denial of Federal welfare, medical, housing or educational benefits, accelerated time-lines for loss of parental rights and exclusion from any number of employment opportunities. Collateral consequences are particularly harsh for drug felons who represent the bulk of the bulk of the recently incarcerated. Drug felons are permanently barred from receiving public assistance such as TANF, Medicaid, food stamps or SSI, federal financial aid for education, and federal housing assistance. These policies dramatically reduce the successful reintegration of former inmates, increases the likelihood of recidivism and return to prison. One of the most insidious aspects of this project in mass incarceration is its’ connection to the profit motive (Davis 2003). Once solely a burden on tax payers, the so-called “prison – industrial complex” is now a source of corporate profit, governmental agency funding, cheap neo-slave labor, and employment for economically depressed regions. “The prison industrial complex is not a conspiracy, but a confluence of special interests that include politicians who exploit crime to win votes, private companies that make millions by running or supplying prisons 10 and small town officials who have turned to prisons as a method of economic development.” (Silverstein 2003) This complex now includes over 3,300 jails, over 1,500 state prisons, and 100 Federal prisons in the US. Nearly 300 of these are private for-profit prisons (ACLU, 2011). Over 30 of these institutions are super-maximum facilities, not including the super-maximum units located in most other prisons. As Brewer and Heitzeg (2008 ) observe: “the prison industrial complex is a selfperpetuating machine where the vast profits and perceived political benefits to policies that are additionally designed to insure an endless supply of “clients” for the criminal justice system”. Profits are generated via corporate contracts for cheap inmate labor, private and public supply and construction contracts, job creation for criminal justice professionals, and continued media profits from exaggerated crime reporting and the use of crime/punishment as ratings grabbing news and entertainment. The perceived political benefits include reduced unemployment rates due to both job creation and imprisonment of the poor and unemployed, “get tough on crime” and public safety rhetoric, funding increases for police as well as criminal justice system agencies and professionals. And these policies - enhanced police presence in poor neighborhoods and communities of color; racial profiling; mandatory minimum and “three-strikes” sentencing; draconian conditions of incarceration and a reduction of prison services that contribute to the likelihood of “recidivism”; and “collateral consequences” that nearly guarantee continued participation in “crime” and return to the prison industrial complex following initial release – have major implications for youth of color. 11 A similarly repressive trend has emerged in the juvenile justice system. The juvenile justice system shifted sharply from its’ original rehabilitative, therapeutic and reform goals. While the initial Supreme Court rulings of the 1960s – Kent, in re Gault and Winship – sought to offer juveniles some legal protections in what was in fact a legal system, more recent changes have turned the juvenile justice system into a “second-class criminal court that provides youth with neither therapy or justice.” (Feld 2007) Throughout the 1990s, nearly all states and the federal government enacted a series of legislation that criminalized a host of “gang-related activities”, made it easier (and in some cases mandatory) to try juveniles as adults, lowered the age at which juveniles could be referred to adult court, and widened the net of juvenile justice with blended sentencing options that included sentences in both the juvenile and adult systems (Griffin 2008; Heitzeg 2008; Podkopacz and Feld 2001;Walker, Spohn and DeLone 2007). The super-predator youth and rampant media coverage of youth violence provided the alleged justification for this legislation as well as for additional federal legislation such as Consequences for Juvenile Offenders Act of 2002 (first proposed in 1996) and The Gun-Free Schools Act of 1994, which provides the impetus for zero tolerance policies in schools and the school to prison pipeline, the subject of later detailed discussion. The racial disparities are even greater for youth. African Americans, while representing 17% of the youth population, account for 45% of all juvenile arrests. (NAACP 2005) Black youth are 2 times more likely than white youth to be arrested, to be referred to juvenile court, to be formally processed and adjudicated as delinquent or referred to the adult criminal justice system, and they are 3 times more likely than white youth to be sentenced to out-of –home residential placement (Panel on Justice 2001; Walker, Spohn and Delone 2012). Nationally, 1 in 12 3 Black and 1 in 6 Latino boys born in 2001 are at risk of imprisonment during their lifetime. While boys are five times as likely to be incarcerated as girls, girls are at increasing risk. This rate of incarceration is endangering children at younger and younger ages (Children’s Defense Fund 2007). In addition, black youth at additional risk due to the high rates of imprisonment for African American adults. Black youth are increasingly likely to have a parent in prison -- among those born in 1990, one in four black children had a father in prison by age 14. Risk is concentrated among black children whose parents are high-school dropouts; 50% of those children had a father in prison (Wildeman 2009). African American youth are at increasing risk of out-of-home placement due the incarceration of parents. While young black children are about 17 percent of the nation’s youth, they are now account for more than 50% of the children in foster care. This explosion in foster care has been fueled by the destabilization of families and the mass incarceration of Black men and women (Roberts 2004; Brewer 2007; Bernstein 2005; Wildeman 2009). It is youth of color who are being tracked into the prison pipeline via media stereotyping, a punishment-oriented juvenile justice system, and educational practices such as zero-tolerance. All are designed, by intent or default, to insure an endless stream of future bodies into the prison industrial complex. As Donzinger (1996, 87) aptly notes, “Companies that service the criminal justice system need sufficient quantities of raw materials to guarantee long term growth in the criminal justice field, the raw material is prisoners…The industry will do what it must to guarantee a steady supply. For the supply of prisoners to grow, criminal justice policies must insure a sufficient number of incarcerated Americans whether crime is rising or the incarceration is necessary.” 13 While media coverage was instrumental in creating the climate of fear, the policy shifts that resulted were consistent with larger trends in criminal justice. Critics of these policy changes charge that this is no mere coincidence. The proliferation of mandatory minimum sentences, punitive measures in juvenile justice and attendant collateral consequences serve to incarcerate and re-incarcerate current generations, but it is the school to prison pipeline and related educational policies/practices that shapes the “client pool” for future generations of the incarcerated. While Advanced Placement and vocational tracks prepare students for their respective positions in the workforce, it is the “schoolhouse to jailhouse track” that prepares students for their futures as inmate neo-slave laborers in the political-economy of the prison industrial complex. The age of mass incarceration and the prison industrial complex calls for the continual replenishment of the ranks of the imprisoned, and it is youth of color that are most often selected to fill that onerous role. The School to Prison Pipeline: Zero Tolerance and Policing in the Hallways While media and the rise of the prison industrial complex create the context**, shifts in educational policy provide the immediate impetus for the flow of children from school to legal systems**. The school to prison pipeline is facilitated by several trends in education that most negatively impact students of color. These include growing poverty rates and declining school funding, re-segregation of schools by race and class, under-representation of students of color in advanced placement courses and over-presentation in special education tracks, No Child Left Behind (NCLB) , high stakes testing, and rising drop-out/push -out rates (NAACP 2005; Hammond 2007 ) . All these factors are correlated with the school to prison pipeline, and each is the subject of lengthy analysis elsewhere .**The focus here is increased reliance on zero tolerance policies**, which play an immediate and integral role in feeding the school to prison pipeline. 14 These policies, in combination with the aforementioned factors, provide the direct mechanism by which students are removed from school by suspension/expulsion, pushed toward dropping out, charged in juvenile court, and routed into the prison pipeline. While there is no official definition of the term zero tolerance, generally the term means that a harsh predefined mandatory consequence is applied to a violation of school rules without regard to the ―seriousness of the behavior, mitigating circumstances, or the situational context (APA 2006). Zero-tolerance policies are additionally associated with an increased police and security presence at school, metal detectors, security cameras, locker and person searches and all the accoutrements of formal legal control. Violators- disproportionately Black and Latino-are suspended, expelled, and increasingly arrested and charged in juvenile court as a result. (ABA 2001) Zero tolerance rhetoric, which was borrowed from the War on Drugs, became widespread as school officials and community leaders expressed outrage at gang shootings and the impending wave of “super-predators”. Despite school crime rates that were stable or declining, related policies were implemented by the mid- 1990s. The Gun-Free Schools Act of 1994 (GFSA) provided the initial impetus for zero tolerance policies. The GFSA mandates that all schools that receive federal funding must 1) have policies to expel for a calendar year any student who brings a firearm to school or to school zone, and 2) report that student to local law enforcement, thereby blurring any distinction between disciplinary infractions at school and the law. Subsequent amendments to The GFSA and changes in many state laws and local school district regulations broadened the GFSA focus on firearms to apply to many other kinds of weapons. (Skiba 2001; Birkland and Lawrence 2009). 15 Most schools have adopted zero-tolerance policies for a variety of behavioral issues largely directed towards weapons, alcohol/drugs, threatening behavior, and fighting on school premises, and as the name implies, indicate zero-tolerance for any infractions. According to the Centers for Disease Control (2006), in most cases 100% of school districts had prohibitions against weapons, and fighting, nearly 80% had bans on gang-activity at school, and over 90% had implemented zero tolerance policies for alcohol, tobacco and other drugs. Zero-tolerance policies are additionally associated with an increased police presence at school, metal detectors, security cameras, locker and person searches and all the accoutrements of legal control. The Safe Schools Act of 1994 and a 1998 amendment to the Omnibus Crime Control and Safe Streets Act of 1968 promoted partnerships between schools and law enforcement, including the provision of funding for in-school police forces or School Resource Officers (Raymond 2011). It has become routine for districts to assign staff/volunteers to monitor halls and bathrooms, equip staff with communication devices, use metal detectors and cameras, and have uniformed security guards or police present. It is less common, but also possible now for some schools to employ canine units, Tasers, and SWAT team raids for drug and weapons searches (Birkland and Lawrence 2009). Ironically, enhanced security measures were largely inspired by the school-shootings in largely white suburban schools, they have been most readily adopted and enforced in urban schools with low student-to teacher ratios, high percentages of students of color and lower test scores. Nearly 70% of these schools report a police presence (Justice Policy Institute 2011, Na and Gottfredson 2011; Skiba 2001). Zero tolerance policies have generally involved harsh disciplinary consequences such as long-term and/or permanent suspension or expulsion for violations, and often arrest and referral to juvenile or adult court. While the original intent of The GFSA was to require these 16 punishments for serious violations involving weapons, they have frequently been applied to minor or non-violent violations of rules such as tardiness and disorderly conduct. According to the ABA (2001), zero-tolerance policies do not distinguish between serious and non-serious offenses, nor do they adequately separate intentional troublemakers from those with behavioral disorders. They cast a very wide net; students have been suspended and or expelled for nail clippers, Advil and mouthwash. Zero tolerance policies are target students for minor infractions, increasingly focus on younger elementary and pre-school students, and often rely on force and arrest for relatively minor disciplinary issues.

Consider the following cases:  A seventeen-year-old junior shot a paper clip with a rubber band at a classmate, missed, and broke the skin of a cafeteria worker. The student was expelled from school.  A nine-year-old on the way to school found a manicure kit with a 1-inch knife. The student was suspended for one day.  Two 10-year-old boys from Arlington, Virginia were suspended for three days for putting soapy water in a teacher's drink. The boys were charged with a felony that carried a maximum sentence of 20 years, and were formally processed through the juvenile justice system before the case was dismissed months later.  A Pennsylvania kindergartener tells her pals she's going to shoot them with a Hello Kitty toy that makes soap bubbles. The kindergartener was initially suspended for two days, and the incident was reclassified as "threat to harm others."  In Massachusetts, a 5-year-old boy attending an after-school program makes a gun out of Legos and points it at other students while "simulating the sound of gunfire," as one school official put it. He was expelled.  A5 year old boy in Queens NY was arrested, handcuffed and taken to a psychiatric hospital for having a tantrum and knocking papers off the principals’ desk.  In St Petersburg Florida, a 5 year old girl was handcuffed arrested and taken into custody for having a tantrum and disrupting a classroom.  An 11 year old girl in Orlando Florida was tasered by a police officer, arrested and faces charges of battery on a security resource officer, disrupting a school function and resisting with violence. She had pushed another student.  An honors student in Houston, Texas was forced to spend a night in jail when she missed class to go to work to support her family. 17  A thirteen-year old from New York was handcuffed and removed from school for writing the word “okay” on her school desk. (Advancement Project 2012; Justice Policy Institute 2011; Eckholm 2013)

Zero tolerance policies have proliferated without evidence that they actually improve school safety and security (Skiba 2001). In theory, zero-tolerance policies are intended to have a deterrent effect for intentionally troublesome students, i.e. the mere presence of the policies is intended to thwart disruptive behavior. But, as with harsh penalties for juvenile and criminal justice, zero tolerance was adopted and expanded in lieu of data supporting either effectiveness or need. There is, however, mounting evidence that these policies do contribute to the school to prison pipeline. According to the Advancement Project (2005) “Zero tolerance has engendered a number of problems: denial of education through increased suspension and expulsion rates, referrals to inadequate alternative schools, lower test scores, higher dropout rates, and racial profiling of students…… Once many of these youths are in “the system,” they never get back on the academic track. Sometimes, schools refuse to readmit them; and even if these students do return to school, they are often labeled and targeted for close monitoring by school staff and police. Consequently, many become demoralized, drop out, and fall deeper and deeper into the juvenile or criminal justice systems. Those who do not drop out may find that their discipline and juvenile or criminal records haunt them when they apply to college or for a scholarship or government grant, or try to enlist in the military or find employment. In some places, a criminal record may prevent them or their families from residing in publicly subsidized housing. In this era of zero tolerance, the consequences of child or adolescent behaviors may long outlive students’ teenage years.” Several specific problems with zero tolerance policies warrant closer examination: racial disproportionality, increased rates of expulsion, elevated drop-put rates, and denial of due process and equal protection for students. 18 Racial Disproportionality On the surface, zero tolerance policies are facially neutral; they are to apply equally to all regardless of race, class and gender. A growing body of research suggests that these policies are anything but (ABA 2001; NAACP 005; Skiba 2002). Criminalized education disproportionately impacts the poor, students with disabilities, LGBT students and youth of color, especially African Americans, who are suspended, expelled and arrested at the highest rates, despite comparable rates of infraction (Witt 2007; Advancement Project 2011). The U.S. Department of Education, Civil Rights Division documents the disparity. Nationally, black students were three and a half times more likely to be suspended or expelled than their white peers. One in five black boys and more than one in 10 black girls received an out-of-school suspension (Lewin 2012). Black students made up only 18 percent of students, but they accounted for 35 percent of those suspended once, 46 percent of those suspended more than once and 39 percent of all expulsions. In districts that reported expulsions under zero-tolerance policies, Hispanic and black students represent 45 percent of the student body, but 56 percent of those expelled under such policies (Lewin 2012; Advancement Project 2012 ). In addition, Black and Latino students represent over 70 percent of the students arrested or referred to law enforcement at school (Eckholm 2013). This racial over-representation then manifests itself in both higher drop-out rates for students of color (students from historically disadvantaged minority groups have little more than a fifty-fifty chance of finishing high school with a diploma) as well as the racialized dynamic of the legal system (Losen and Gillepsie 2012; Schott Foundation 2012). These racial disparities cannot be explained by differences in behavior; they must be explained by differential enforcement of zero tolerance policies. Since research has found no 19 indication that African youth violate rules at higher rates than other groups (Skiba 2002), the persistence of stereotypes of young male males and “cultural miscommunication” between students and teachers is oft cited as one key factor. 83 percent of the nation's teaching ranks are filled by whites, mostly women, and stereotypes can shape the decision to suspend or expel. “Some of the highest rates of racially disproportionate discipline are found in states with the lowest minority populations, where the disconnect between white teachers and black students is potentially the greatest. White teachers feel more threatened by boys of color. They are viewed as disruptive." (Witt 2007). The matter is further complicated by the tendency of teachers and school officials to define disruptive white youth as in need of medical intervention rather zero tolerance consequences. One of the growth sectors of psychiatry is the diagnosis and treatment of Disorders of Infancy, Childhood and Adolescence (DICA), particularly the Disruptive Behavior Disorders of Attention-Deficit Hyperactivity Disorder, Oppositional Defiant Disorder and Conduct Disorder (Diller, 1998, Males 1996; APA 2000). These psychiatric labels perfectly overlap with potential educational and legal labels, and thus offer an alternative mechanism for parents, school officials and law enforcement to deal with disciplinary infractions and drug use by students. Indeed, research indicates that class, insurance coverage, and race are key indicators of who receives treatment (Safer and Malever 2000). These factors play a significant role in the labeling of youth in particular; study after study shows racial disparities in the diagnosis and treatment of ADHD as well as other Disruptive Behavior Disorders, with the indication that teachers were most likely to expect and define ADHD as an issue for white boys. (Currie 2005; Safer and Malever 2001). This racial disproportionality is cited as one of the key factors in the school to prison pipeline. Students that are already subject to what the Panel on Juvenile Justice (2001) calls 20 compound and cumulative risk for legal processing have that risk magnified by zero tolerance policies that are unequally applied. Increased Rates of Suspensions and Expulsions Not surprisingly, zero tolerance policies have lead to a dramatic increase in suspensions and expulsions. Annually, there are approximately 3.3 million suspensions and over 100,000 expulsions each year (NCES 2009). This number has nearly doubled since 1974, with rates escalating in the mid 1990s as zero tolerance policies began to be widely adopted (NAACP 2005). These rates have risen even though school violence generally has been stable or declining (Skiba 2002). In addition to increased rates of suspension/expulsion for elementary and secondary students, zero tolerance policies have seeped downward to impact pre-school children. Nearly seven of every thousand pre-schoolers are expelled from state-funded pre-school programs - over three times the rate of expulsions in grades K-12 (NAACP 2005). This is not a climate conducive to education, not just for the suspended certainly but for all students. Turning schools into “secure environments” – replete with drug-sniffing dogs, searches and school-based police- lowers morale and makes learning more difficult. It also engenders a sense of mistrust between students and teachers, and contributes negative attitudes towards school in general (Advancement Project 2006). For students who are suspended or expelled the stakes are even higher. Students are deprived of educational services and, at best referred to sub-standard alternatives schools. Many states fail to offer any access to alternative schools. Students are left to fend for themselves, and if they are re-instated are now further behind their peers and more likely to be suspended again (PolakowSuransky 2000). In fact, rather than deterring disruptive behavior, the most likely consequence of 21 suspension is additional suspension (NASP 2001). There has yet to be a research study identifying a direct correlation between zero tolerance policies and safe schools; a few studies have indicated that the zero tolerance policies do not result in fewer disciplinary infractions or reductions in the number of repeat offenders. The American Psychological Association (2006) reported finding no evidence that zero tolerance reduced are associated with negative outcomes for youth, academically, socially, emotionally, and behaviorally; this includes a decreased commitment to education in light of perceptions of unfair treatment (Arum and Preiss 2009). Increasingly. suspension and expulsion is simultaneously to arrest. Many schools are further expediting the flow of children out of the schools and into the criminal justice system by doling out a double dose of punishment for students who misbehave. In addition to being suspended or expelled, students are also increasingly finding themselves arrested or referred to law enforcement or juvenile court and prosecuted for behavior at school. Students who are suspended or expelled may also be referred to juvenile court by school officials, but in a growing number of schools, zero tolerance policies are directly enforced by police or school resource officers. There is no national data collected on juvenile arrests that originate at school, but reports on a variety of districts indicate that school-based arrests have more than doubled. The presence of police officers at school – most of them large urban pre-dominantly minority schools - adds as well to racial disparities as racial profiling practices are transferred from the streets to the hallways (Dohrn 2001; Advancement Project 2006; ). Additionally the majority of these arrests are – not for weapons or drugs – but for minor infractions such as disorderly conduct or disruptions. This criminalization of what were once issues of school discipline is a direct conduit into the prison pipeline. 22 Elevated Dropout Rates Zero tolerance policies contribute to the already high drop-out rate for students of color. Students from historically disadvantaged minority groups (American Indian, Hispanic, and Black) have little more than a fifty-fifty chance of finishing high school with a diploma. By comparison, graduation rates for Whites and Asians are 75 and 77 percent nationally. Students in intensely segregated (90-100%) minority schools are more than four times as likely to be in predominantly poor schools than their peers attending schools with less than ten percent minority students (84% compared to 18%)” (Orfield and Lee 2007; Schott Foundation, 2012). And of course, these are the schools that take the most strident approaches to zero tolerance. Increased drop-out rates are directly related to the repeated use of suspension and expulsion (NASP 2001). ). Students who have been suspended or expelled are more likely to experience poor academic performance, and eventually drop-out (Advancement Project 2011). Additional suspensions increase this likelihood; The National Center for Education Statistics (2012) documents this: 31 percent of high school sophomores that left school had been suspended three or more times, a rate much higher than for those who had not been suspended at all. Critics have noted that zero tolerance policies have been used to “push –out” low performing students in the era of No Child Left Behind legislation. Since school funding is directly tied to test scores, NCLB gives schools an incentive to get rid of rather than remediate students with low test scores. According to the NAACP (2005) “Ironically, some of the hallmarks of modern education reform—including demands for greater accountability, extensive testing regimes, and harsh sanctions imposed on schools and teachers—actually encourage schools to funnel out those students whom they believe are likely to drag down a school’s test scores. Rather than address the systemic problems that lead to poor educational performance, harsh discipline policies provide schools with a convenient method to remove certain students and thereby mask educational deficiencies.” 23 Recent studies show how schools in a number of states have raised test scores by "losing" large numbers of low-scoring students; most of these students are of color. In one Texas city, scores soared while tens of thousands of students--mostly African-American and Latino-- disappeared from school. Educators reported that exclusionary policies were used to hold back, suspend, expel or counsel out students in order to boost scores (Hammond 2007; Advancement Project 2010). Even when well-intended educators wish to help these students, schools are often lacking the guidance counselors, intervention programs and other resources to address students with special educational and behavioral needs. They may feel there is no alternative to pushing them out, even if the result may involve immediate or future incarceration. Zero tolerance policies create a venue for doing so. **Legal and Constitutional Questions Zero tolerance policies raise a myriad of legal issues related to statutory vagueness, inconsistent application, and lack of due process for searches/seizures and arrests that occur on school property (ABA 2005).** These policies present clear constitutional questions with regard to both definition and enforcement. Zero tolerance mandates have come under attack for both statutory vagueness and failure to allow local school administrators discretion in determining application of these policies. Many state laws fail to clearly distinguish between serious and trivial policy violations. For example, many state laws do not define “dangerous weapon”, but then require expulsion under the federal Gun Free School Act. It is this lack of clarity that has allowed for expulsion of students with 24 scissors and nail clippers. Similar vagueness pervades other aspects of zero tolerance, including the failure to define “dangerous drugs’, threatening behavior and so on (Polakow-Suransky, 2000). Statutory vagueness makes it impossible for students to know exactly what is being prohibited, and lack of clearly defined school rules and procedures allows officials tremendous discretion to suspend and expel students for minor infractions. This vagueness plagues due process expectations as well. Again, many states have no stated requirements or clearly published set of expectations for students and parents. Not only is there no clarity as to exactly what is prohibited, there are also no identified procedure that enumerates students rights, procedural expectations or processes to allow for appeal or reinstatement (Polakow-Suransky 2000). This is clear violation of even the rudimentary due process rights accorded to students under the Supreme Court decision of Goss v. Lopez (419 U.S. 565 1975), which held that students may not be suspended without a hearing. Under many state laws, students may currently be suspend and/or expelled without hearings or in fact, without any written policy guidelines as to recourse, appeal or request for re-instatement. The due process concerns for students are magnified by the shrinking boundaries between school and legal systems. The requirement that school official report certain infractions to law enforcement and the increased presence of police at schools may lead to arrest the due process protections that students may expect outside school (Feld 2007). Evidence used to legally incriminate students may be obtained in violation of the Fourth and Fifth Amendment prohibitions against unreasonable search/seizure and self-incrimination; student expectation of school are different than their expectations of police encounters on the street. And, zero tolerance policies have led to increased student concerns over perceived rights violations at school, with African American students the most likely of any group to report discrimination in disciplinary 25 procedures (Arum and Preiss 2009). This result is unsurprising, given that Black and Latino students represent over 70 percent of the students arrested or referred to law enforcement at school (Eckholm 2013). In the past decade, a growing number of legal challenges have been raised to zero tolerance policies. The bulk of their suits involve policies related to drugs and weapons and raise questions regarding vagueness, interrogations in lieu of Miranda, and intrusive searches and seizures. The bulk of these cases are brought by students from wealthier, majority white schools (Arum & Preiss 2009). Recently one of these cases made it to the U.S. Supreme Court case. In Safford Unified School District #1 et al. v. Redding, the Court ruled that a strip search of a 13 year old Savana Redding (who was accused of bringing prescriptive ibupropen to school) was, in fact, unreasonable. The decision, which barred some school strip searches for drugs, did not offer school much guidance or students much hope for Fourth Amendment protection. The narrow ruling upheld the school’s right to search Redding’s backpack and outer garments, and were told only to take account of the extent of danger of the contraband in question and whether there is good reason to think it is hidden in an intimate place (Liptak 2009). For the foreseeable future, students who are the most risk of being pushed out of school and into the prison pipeline can expect few legal protections or due process guarantees. Interrupting the School to Prison Pipeline” At issue are the values of a nation that writes off many of its poorest children in deficient urban schools starved of all the riches found in good suburban schools nearby, criminalizes those it has short-changed and cheated , and then willingly expends ten times as much to punish them as it ever sent to teach them when they were still innocent and clean.” (Kozol 2005) The school to prison pipeline has already claimed tens of thousands of young lives. Fueled by poverty and segregation, an under-funded education system pressured by high stakes testing 26 and zero tolerance policies, media misrepresentation of youth crime and an increasingly draconian justice system, this link between education and incarceration continues to threaten the future of untold more. Failure to address these contributing factors is costly, certainly in terms of the funds diverted from education towards incarceration, but also in lost potential and lost lives. “Many of these young people never reenter the mainstream educational system, and the loss to society is immeasurable. Not only do communities lose the potential talents that these students hold, but they also commit themselves to expending vast resources—far greater than the resources it would take to adequately fund public education—to deal with the problems that these students will likely pose when they grow into adults.”(NAACP 2005) For nearly a decade, scholars and activists have organized and pushed for policy changes particularly an end to zero-tolerance policies in school – to interrupt the school to prison pipeline. Recommendations have come from scholars, non-profit advocacy organizations (such the Advancement Project, the NAACP, Southern Poverty Law Center, the ACLU, Consortium to Prevent School Violence and Children’s Defense Fund) and professional associations (e.g. National Association of School Psychologists, The American Psychological Association, The American Bar Association.) The goal of all these programs is to stymie the steady flow of youth of color from out of school into legal systems. Since zero tolerance policies represent the most immediate and direct conduit from school to legal systems, they have been the target of reform suggestions. Short of repealing zero tolerance legislation, legislatures and school districts could take steps to alleviate some of the surrounding legal issues and disparities. Recommendations include the following (Advancement Project 2012; American Bar Association 2001; Hewitt and Losen, 2010; NAACP 2005):  State legislatures must clarify statutes pertaining to the referral of students to law enforcement agencies. 27  State legislatures must protect the civil rights of all students and safeguard against discriminatory practices that lead to disproportionate expulsion of minority students  States should maintain compulsory attendance requirements for those under 16, mandate and offer alternative educational services  State legislatures should clearly define and enforce reinstatement procedures  State legislatures should mandate and school districts engage in data collection of arrest/summons data and should monitor referrals to law enforcement to root out subjective, unnecessary, and discriminatory referrals  School districts must be sensitive to the experiences communities of color have had with law enforcement  Schools should notify students and parents under what circumstances the law requires, or standard practice dictates, referral of students to law enforcement agencies and for what conduct.  Schools should implement policies that require that parents, or an adult advocate for the student, be present for any questioning of children where it is possible that criminal charges may be filed.  Students should be routinely advised of their Miranda rights where criminal charges may be filed. Similarly, school districts and school administrations could revise their particular policies to reduce suspensions and expulsions and offer meaningful alternatives for disruptive students. Suggestions - which have been established by experience and data as effective alternatives – include (CPSV 2008, APA 2006, Hewitt and Losen, 2010; NASP 2008; Justice Policy Institute, 2011):  Schools must cease criminalizing students for trivial behaviors that can be handled by traditional, educationally-sound school disciplinary measures.  Schools should avoid incorporating harsh automatic consequences that do not consider mitigating circumstances into school codes of conduct for specific violations, or remove these restrictions if already in place.  Schools must employ a wide variety of disciplinary consequences in student codes of conduct, and indicate that the use of these should be tailored to the specific circumstances of the student and the violation. 28  Schools should specify graduated categories of inappropriate or undesirable behaviors, and align them with categories of consequences - this is a more desirable than specifying punishments for each behavior.  Schools should minimize the use of exclusionary disciplinary punishments and include an amnesty clause where non-violent students who inadvertently bring banned objects to school or find them can give them to a school official without fear of punishment.  Schools must utilize their mental health experts - school psychologists, counselors and social workers - to research and develop discipline policies and positive behavior training strategies  In developing alternatives to zero tolerance, schools should involve families and community resources include violence prevention, social skills training, and early intervention strategies.  Schools should eliminate police, refrain from using law enforcement responses to student behavior, offer an officers coming in contact with youth, additional training, and create graduated responses to student behavior that take into account the circumstances of the case. Pilot projects in several school districts have achieved success in reducing suspension and expulsions by relying on alternatives to zero tolerance policies. A number of school districts and states have revised their disciplinary policies, distinguishing between minor infractions and more serious violations, offering graduated responses to discipline, reducing the amount of suspension time, and encouraging a non-punitive common sense approach to discipline (APA 2006; Southern Poverty Law Center 2008; NAACP 2005; NASP 2008). Other districts have implemented better data collection methods to facilitate the documentation of disparities in school discipline with an eye towards remedies. Still others have offered additional training and evaluation for police officers who patrol the hallways, with a particular emphasis on dealing with students who have disabilities or mental health challenges (Advancement Project 2012; Justice Policy Institute 2011). Most recently, several school districts have turned away from a 29 punishment –centered approach entirely with an emphasis instead on restorative/ transformative justice models and peace circles as means to create a positive school climate and culture (Brown 2013; Urban Strategies Council 2012; Prison Culture 2013). Restorative/ transformative justice methods have emerged as one of the most promising approaches to creating schools where community - not social control – is at the center. North Lawndale College Prep (NLCP) in Chicago offers an example of how students can benefit by a reliance on counselors rather than cops, and how student conflict mediators who resolve crises in school. Prison Culture (2013) describes a visit to NCLP: Walking the halls at NLCP, one is greeted by messages of peace and by college banners. When you talk to students, they seem happy to be at school…. When we visited, the school was at over 100 days of peace and counting. Every month, student conflict mediators (Peace Warriors) plan incentive events for uninterrupted days of peace. “Keeping the peace” is very important at NLCP... What comes across clearly in the students’ words is that they consider the school community to be a family. Families disagree and in the good ones, you are not cast out if you make a mistake. Restorative justice plays an important role in NLCP’s culture. Peace circles are regular occurrences. The entire school has bought into the concept. You can hear it when students talk about getting second chances and teachers discuss the importance of keeping students in school rather than pushing them out through suspensions. Comparable approaches have achieved success in Oakland, Portland and Denver, where once high suspension and expulsion rates have been reduced dramatically (Brown 2013; Urban Strategies Council 2012). The work of transformative justice is often time consuming, but it is certainly less costly in both dollars and lives than the current policies that push students out of school on a pathway to prison. 30 But as the school to prison pipeline exists in a larger context, so too must efforts to dismantle it. The interruption of the school to prison pipeline requires reforms of educational policies such as zero tolerance, but it also requires a deep examination of our lust for punishment. Current racialized, fear – driven policies such as zero tolerance, mass incarceration, and mandatory minimum sentences are rooted in a socio-political climate that emphasizes punishment rather than prevention. Rather than invest in education, policymakers have chosen instead to subsidize incarceration - yes for corporate profit and political gain, but at exorbitant social costs. While impoverished schools struggle to expend approximately $10,000 per pupil per year, it costs over $50,000 annually to incarcerate that same child (Kozol 2005). Different choices might be made if the youth at risk were wealthy or white, but they are not. Ultimately, the school to prison pipeline can only be truly interrupted by uprooting the racist and classist under-pinning of juvenile and criminal justice, by a return to a separate, less punitive juvenile justice system, and by the re-envisioning of a legal system guided by reparative justice rather than retribution and mass imprisonment (Justice Policy Institute 2008; Council on Crime and Justice 2008). The future of youth of color depends on our ability to reject the endless cycle of incarceration and recommit to the promise of education.

#### **Finally, The Courts have shown massive disengagement towards school discipline cases since the Goss ruling — Only the aff is sufficient to overturn that precedent towards disengagement**

* This card can answer states cps, because schools will just win in court/ or their cases won’t be heard

Black 15 — Derek Black is a Professor of Law at the University of South Carolina. The focus of his current scholarship is the intersection of constitutional law and public education, particularly as it pertains to educational equality and fairness for disadvantaged students. His earlier work focused more heavily on intentional discrimination standards. His articles have been published and are forthcoming in the California Law Review, Northwestern University Law Review, Vanderbilt Law Review, and Washington University Law Review, among various others. His latest text is Ending Zero Tolerance which argues for constitutional protections to check abuses in school discipline and lays out theories by which courts should re-engage to enforce students’ rights and support broader reforms. // *The Constitutional Limit of Zero Tolerance in Schools*// 1/25/2015 // <http://www.minnesotalawreview.org/articles/constitutional-limit-tolerance-schools/> //MW

In the decades following Goss, courts have surprisingly grown even less willing to seriously entertain discipline claims, whether under procedural or substantive due process. Whatever one makes of a particular court’s rationale, the overall trend has been to reject more and more student claims. Richard Arum’s study found that a student’s chance of prevailing in court on a discipline claim in 1990 was at its lowest point since 1960 (a decade and a half before Goss was decided).244 Eight years before Goss in 1967, the probability of student victory was forty-nine percent.245 Less than a decade after Goss, it had fallen to thirty-nine percent and by 1990 it was thirty-five percent— lower than in any year in the study prior to Goss. A later study by Youssef Chouhoud and Perry Zirkel revealed an even bleaker picture in more recent years. Relying on a different methodology, they distinguished between the types of claims students made and whether a court decision was on the merits of a student’s claims.247 During the 1990s and 2000s, they found that students secured conclusive victories about ten to twenty percent of the time, while schools secured conclusive victories about seventy-five percent of the time.248 Moreover, student victories were more often on technical grounds rather than substantive.249 Ironically, both studies also found that students’ chances were worse in federal than state court.250 None of this data definitively speaks to whether courts are dismissing otherwise valid claims, but the declining chances of success after the recognition of student rights in Goss is, at least, curious. It is possible that plaintiffs and lower courts had caught districts off guard by enforcing due process rights before Goss explicitly recognized them,251 which would have elevated 246plaintiff victory rates. This, however, would only explain a short-term decline in plaintiff success rates after Goss. It would not explain why rates continued to decline in the 1980s and 1990s. It is also possible that plaintiffs are simply filing more frivolous or poorly conceived cases, but this appears unlikely given that the number of discipline cases filed each year has been relatively constant and always been very small.252 **The better explanation is an increased negative judicial temperament toward discipline cases and the compounding effect of the precedent those courts set**. Prior to Goss, it was not unusual for courts to expect a school to justify its disciplinary action.253 **Today, courts routinely reject claims with no more than two or three lines of due process analysis**.254

## Solvency

### AT: No Spillover

#### The establishment of a precedent *distinct* from the Grutter decision is key to broad desegregation measures by overturning the Louisville and Seattle Cases— key to solve the mortality gap

Welner 6— Kevin G. Welner, Director of the National Education Policy Center located at the University of Colorado at Boulder, professor of education policy at the University of Colorado at Boulder School of Education, 2006. (“K–12 Race-Conscious Student Assignment Policies: Law, Social Science, and Diversity,” Review of Educational Research, Fall, Vol. 76, No. 3, Available Online at <https://pdfs.semanticscholar.org/a6bc/c5244e0ebaeb01182b402f2c21ac9879bcd9.pdf>, Accessed 07-26-2017, p. 376-7)

“Universities,” the Grutter Court observed, “represent the training ground for a large number of our Nation’s leaders. . . . In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity” (Grutter, 2003, p. 332; emphasis added). This path to leadership, however, “begins much earlier in high-quality elementary and secondary schools that are too rarely found in communities where minority students live” (Liu, 2004, p. 706). This is an important connection between the diversity interests endorsed by the Court in Grutter and the K–12 diversity interests explored here.

Notwithstanding the fact that Grutter is a higher-education case, the opinion cites two K–12 cases (Brown, 1954, and Plyler, 1982) as the sole authority for asserting the “overriding importance of preparing students for work and citizenship” (Grutter, 2003, p. 331). Carrying this line of reasoning forward, Justice Ruth Bader Ginsberg’s concurrence points to the interconnection between the educational inequities in K–12 education and the ongoing need for affirmative action in higher education: However strong the public’s desire for improved education systems may be . . . it remains the current reality that many minority students encounter markedly inadequate and unequal educational opportunities. Despite these inequalities, some minority students are able to meet the high threshold requirements set for admission to the country’s finest undergraduate and graduate educational institutions. As lower school education in minority communities improves, an increase in the number of such students may be anticipated. From today’s vantage point, one may hope, but not firmly forecast, that over the next generation’s span, progress toward nondiscrimination and genuinely equal opportunity will make it safe to sunset affirmative action. (Grutter, 2003, p. 346)

Such issues concerning the equality and adequacy of educational opportunities for students of color are now before the Supreme Court in the Louisville and Seattle cases. Just as the Court took serious notice of higher education research in Grutter, it is likely to look in these new cases to the K–12 research discussed in this article. This research reveals that, while attaining improvement of education in minority communities has been and remains an elusive goal for policymakers, one reasonable approach is to avoid policies and practices that increase racial isolation. To accomplish this goal, race-conscious student assignment policies may well be necessary, and the Court’s decision in Grutter appears to lend legal support to such policies.

Race-conscious policies are not inherently desirable. Ideally, the United States would have no need for them. Ideally, there would be no racial achievement gap. Ideally, there would be no segregation, de facto or otherwise. Ideally, this would not be a society “in which race unfortunately still matters,” at least with regard to life chances (Grutter, 2003, p. 333). Yet the nation cannot move toward these ideals while concurrently educating generations of students in racially isolated schools. For policymakers willing to acknowledge and confront this reality, RCSAPs might be an important policy option for the near future. Whether this option will be available, however, depends on the constitutional determination that will soon be made by the Supreme Court.

### AT: Circumvention

#### Recognizing a due process right solves circumvention

Friedman and Solow 2013 Jacob D. Fuchsberg Professor of Law and Affiliated Professor of Politics at NYU, JD from Georgetown AND Clerk to SCOTUS Justice Stephen Breyer, JD from Yale. Friedman, Barry and Sara Solow. “The Federal Right to an Adequate Education.” *George Washington Law Review* 81.1 (2013): 92-156.

As we explain briefly below, however, this notion of instant and absolute judicial power does not reflect the history of education reform in the states. The judicial articulation of education as a constitutional right has had a significant positive impact on education reform, but often in more subtle ways than might be imagined for decisions involving constitutional rights. In many states experiencing judicial action in education, court decisions have served as a goad or a prod to political actors, motivating them to pass laws and enact policy reforms that move the reality in the schoolhouses towards society's fundamental values about what children should be able to achieve. 3 39 But at the same time, the process of compliance has necessarily tempered judicial declarations. State supreme court judges have found that political opposition movements reacting to court decisions, through "backlash," have limited what can be accomplished through education litigation. Judges have their say, but so too do political actors. Still, and finally, constitutionalizing a right provides a constitutional floor, safeguarding education from cuts during times of economic difficulty.

## Prisons Advantage

### They Say: “Alt Causes”

#### No Alt Causes — If students weren’t so incriminated in schools they would be less likely to fall victim to their alt causes, but even then, they aren’t alt causes, our evidence is specific to schools being the supplier to prisons.

#### All alternative causes are just reasons that schools are more important

Marchbanks et al. 16—Miner P. Marchbanks, Associate Research Scientist at Texas A&M University with a specialization in utilizing advanced econometric techniques to answer public policy questions, Anthony A. Peguero, Associate Professor of Sociology and Criminology at Virginia Tech, Kay S. Varela, graduate student in the sociology department at Texas A&M, Jamilia J. Blake, Associate Professor of Educational Psychology, John Major Eason, Assistant Professor in Department of Sociology at Texas A&M University, 2016.(“School Strictness and Disproportionate Minority Contact: Investigating Racial and Ethnic Disparities With the ‘School-to-Prison Pipeline’,” Sage Journals, December 29th, Available Online at <http://journals.sagepub.com/doi/abs/10.1177/1541204016680403>, Accessed 07-30-2017,p.3)

Research has consistently shown that racial and ethnic minorities are more likely to reside in communities that are characterized by poverty, unemployment, family disruption, crime and violence, social isolation, and discrimination (Dura´n, 2012; Kubrin & Weitzer, 2003; Morenoff, Sampson, & Raudenbush, 2001; Peterson & Krivo, 2012; Shaw & McKay, 1942). Shaw and McKay (1942) used structural factors such as high residential mobility, ethnic heterogeneity, and low economic status to explain community disruption. Shaw and McKay (1942) highlighted that social disorganization and the amount of delinquency is determined by the neighborhoods’ ability to control the behaviors of its members and youth. The development of social ties to conventional institutions and belief in conventional values become problematic for residents living in such communities (Brunson & Miller, 2009; Dura´n, 2012; Kubrin & Weitzer, 2003; Morenoff et al., 2001; Peterson & Krivo, 2012; Shaw & McKay, 1942). Thus, the significance of schools is believed to be a central and vital social institution that influences youth engagement in deviance and/or delinquency. In general, urban schools have more problems with adolescent misconduct because these schools are embedded within communities with higher rates of crime, violence, poverty, unemployment, and disorganization (Brunson & Miller, 2009; Gottfredson, 2001; Rios, 2011; Shedd, 2015). It is under this perspective that there has been growing focus on the role of schools as a potential mechanism that contributes to DMC. Given that schools are influenced by community characteristics, it is reasonable that schools may have an impact on the complex relationship between race, ethnicity, urbanicity, schools, and DMC.

### They Say: “Schools Not Key”

#### Schools are prisons that treat children like violent convicts— this has a disparate impact on minority communities and feeds kids into the prison system

Marchbanks et al. 16—Miner P. Marchbanks, Associate Research Scientist at Texas A&M University with a specialization in utilizing advanced econometric techniques to answer public policy questions, Anthony A. Peguero, Associate Professor of Sociology and Criminology at Virginia Tech, Kay S. Varela, graduate student in the sociology department at Texas A&M, Jamilia J. Blake, Associate Professor of Educational Psychology, John Major Eason, Assistant Professor in Department of Sociology at Texas A&M University, 2016.(“School Strictness and Disproportionate Minority Contact: Investigating Racial and Ethnic Disparities With the ‘School-to-Prison Pipeline’,” Sage Journals, December 29th, Available Online at <http://journals.sagepub.com/doi/abs/10.1177/1541204016680403>, Accessed 07-30-2017,p.3)

There is evidence that schools with high levels of racial and ethnic minorities are ‘‘prison like,’’ as these schools sustain similar features including police presence, security measures, surveillance, and stringent discipline policies (Kim et al., 2012; May, 2014; Noguera, 2008; Portillos et al., 2012; Rios, 2011; Shedd, 2015; Skiba et al., 2011). Welch and Payne (2012) argue that school disciplinary actions tended to be much more punitive in schools with greater levels of racial and ethnic minorities, especially in urban contexts. Moreover, schools with a greater proportion of racial and ethnic minorities are less likely to use restorative practices in discipline but are more likely to focus on punitive punishment (e.g., suspension, detention), are more likely to use zero-tolerance policies, are more likely to use extreme measures of action (e.g., expulsion, police referrals for minor offenses), and are less likely to refer students with behavioral issues to the school counselor (Welch & Payne, 2010, 2012). In turn, there are mounting concerns, particularly in urban and predominately racial and ethnic minority schools, with the expanded use of surveillance and security measures, as well as more stringent school punishment practices. Such practices, including police presence, metal detectors, and zero-tolerance policies, among others, begin to mimic institutional atmospheres, especially for schools located in disadvantaged or urban areas (Noguera, 2008; Portillos et al., 2012; Rios, 2011; Shedd, 2015). Despite wanting to foster a positive school security experience, scholars have found that the utilization of police and security measures may give students the impression that their schools believe or perceive all students as potential sources or targets of violence, even in schools located in affluent and/or suburban areas (Addington, 2009; Kupchik, 2010; May, 2014). This type of school climate or environment can foster fear, resentment, and other negative reactions that can interfere with promoting an effective learning environment (Kupchik, 2010; Peguero & Bracy, 2015; Portillos et al., 2012). Such practices and policies may promote negative outcomes such as increased likelihood of juvenile justice contact, especially for racial and ethnic minority youth (Davis & Sorensen, 2013; May, 2014; Kirk, 2009; Nicholson-Crotty et al., 2009; Rios, 2011; Rocque & Paternoster, 2011; Shedd, 2015).

Increased juvenile justice rates for racial and ethnic minority children is referred to as disproportionate minority contact (DMC), a term which highlights the disproportionate number of racial and ethnic minority youth who come into contact with the juvenile justice system (Davis & Sorensen, 2013; Kempf-Leonard, 2007; Nicholson-Crotty et al., 2009; Piquero, 2008). The Juvenile Justice and Delinquency Prevention Act of 2002 shifted DMC from ‘‘disproportionate minority confinement’’ to ‘‘disproportionate minority contact’’ in order to bring attention to the potential disproportionate representation of racial and ethnic minority youth at all decision points within the juvenile justice continuum (Davis & Sorensen, 2013; Kempf-Leonard, 2007; Nicholson-Crotty et al., 2009; Piquero, 2008). This act sparked a number of investigations into the sources of DMC as well as data-based prevention and system improvement programs to better understand and address DMC (Davis & Sorensen, 2013; Kempf-Leonard, 2007; Nicholson-Crotty et al., 2009; Piquero, 2008). As a result of DMC research, it is evident that the overrepresentation of racial and ethnic minorities exists at many stages of the juvenile justice process, including arrest, referral, conviction, and secure confinement (Davis & Sorensen, 2013; Kempf-Leonard, 2007; Nicholson-Crotty et al., 2009; Piquero, 2008). ‘‘Trey’’ Marchbanks et al. 3

#### Suspension is linked to dropouts and incarceration

Nelson and Lind 15—Libby Nelson, education reporter for Vox and an expert on higher education policy. She has covered the subject for higher education’s two publications of record—Inside Higher Ed and The Chronicle of Higher Education, wrote about higher education for POLITICO Pro Education, founding reporter of Morning Education, a daily briefing newsletter, Dara Lind, Covering immigration and criminal justice for Vox.com, B.A. In Amthropology from Yale University, 2015. (“The school to prison pipeline, explained,” Justice Policy Institute, February 24th, Available Online at <http://www.justicepolicy.org/news/8775>, Accessed 07-30-2017)

Students who are suspended are more likely to repeat a grade or drop out than students who were not. The Texas study, considered the most thorough analysis of school discipline policies and their effects, looked at data from every seventh-grader in the state in 2000, 2001, and 2002, then tracked their academic and disciplinary records for six years. They found that 31 percent of students who were suspended or expelled repeated a grade, compared with only 5 percent of students who weren't.

It's hard to prove causation; it's possible that students who misbehave would have ended up in academic trouble no matter how they were punished. But the Texas study found that students who had been suspended or expelled were twice as likely to drop out compared to students with similar characteristics at similar schools who had not been suspended.

Students who are disciplined by schools are also more likely to end up in the juvenile justice system. The Texas study found that, of students disciplined in middle or high school, 23 percent of them ended up in contact with a juvenile probation officer. That figure stands at 2 percent among those not disciplined. And students who have been suspended or expelled are three times more likely to come into contact with the juvenile probation system the following year than one who wasn't.

A juvenile detention center in Maricopa County, AZ. (Mike Fiala/Hulton Archive via Getty)

It's hard to prove that suspensions cause delinquency in the same way they cause poor educational outcomes. But researchers argue that just as out-of-school suspensions or expulsions don't do anything to improve a student's academic standing, they don't do anything to monitor his behavior or improve his safety, either.

#### Schools are key they turn students over to SROs and courts— gives them early exposure to juvenile justice system

Nelson and Lind 15—Libby Nelson, education reporter for Vox and an expert on higher education policy. She has covered the subject for higher education’s two publications of record—Inside Higher Ed and The Chronicle of Higher Education, wrote about higher education for POLITICO Pro Education, founding reporter of Morning Education, a daily briefing newsletter, Dara Lind, Covering immigration and criminal justice for Vox.com, B.A. In Amthropology from Yale University, 2015. (“The school to prison pipeline, explained,” Justice Policy Institute, February 24th, Available Online at <http://www.justicepolicy.org/news/8775>, Accessed 07-30-2017)

When a school allows a School Resource Officer to arrest a student — or, less drastically and more commonly, refers a student to law enforcement or juvenile court as a form of discipline — they're turning that student over to the juvenile justice system. That makes it that much easier for a student to get a juvenile record (so even if punishment for a first offense is light, punishment for a second offense is likely to be much harsher).

This happens way more at schools with officers. A report by the Justice Policy Institute found that, even controlling for a school district's poverty level, schools with officers had five times as many arrests for "disorderly conduct" as schools without them.

This isn't something that the juvenile court system is calling for — quite the opposite. The chief judge of the juvenile court in Clayton County, Georgia has become an outspoken opponent of police in schools and the school-to-prison pipeline after placing cops on school grounds resulted in eleven times as many students getting sent to juvenile court. He told Congress at a 2012 hearing that "the prosecutor’s attention was taken from the more difficult evidentiary and 'scary' cases—burglary, robberies, car thefts, aggravated assaults with weapons — to prosecuting kids that are not 'scary,' but made an adult mad."

The Department of Education only started collecting detailed data on arrests and referrals for the last two iterations of its Office for Civil Rights report. So it's hard to be confident about trends. But there's some evidence that arrests and referrals are on the decline; referrals to law enforcement of students without disabilities, for example, went down about 9 percent between 2009-10 and 2011-12.

### They Say: “Squo Solves: Juvenile Crime Rates”

#### Despite dropping juvenile crime rates, the school to prison pipeline is still very much intact

Nelson and Lind 15—Libby Nelson, education reporter for Vox and an expert on higher education policy. She has covered the subject for higher education’s two publications of record—Inside Higher Ed and The Chronicle of Higher Education, wrote about higher education for POLITICO Pro Education, founding reporter of Morning Education, a daily briefing newsletter, Dara Lind, Covering immigration and criminal justice for Vox.com, B.A. In Amthropology from Yale University, 2015. (“The school to prison pipeline, explained,” Justice Policy Institute, February 24th, Available Online at <http://www.justicepolicy.org/news/8775>, Accessed 07-30-2017)

Juvenile crime rates are plummeting, and the number of Americans in juvenile detention has dropped. One report shows the juvenile incarceration rate dropped 41 percent between 1995 and 2010.

But school discipline policies are moving in the opposite direction: out-of-school suspensions have increased about 10 percent since 2000. They have more than doubled since the 1970s. Black students are three times more likely to be suspended or expelled than white students, according to the Education Department's Office for Civil Rights, and research in Texas found students who have been suspended are more likely to be held back a grade and drop out of school entirely. Those facts have led to concern among some people, including the Obama administration, that schools are suspending students too much and need to find other ways to discipline them.

The reason the difference between juvenile detention and school discipline is so surprising — and the reason school discipline is seen as a growing concern — is that the two are connected, leading civil-rights advocates to talk about a "school-to-prison pipeline." Especially for older students, trouble at school can lead to their first contact with the criminal justice system. And in many cases, schools themselves are the ones pushing students into the juvenile justice system — often by having students arrested at school.

Here's how the current state of school discipline developed and why some districts and federal officials are working to change the status quo.

1) CONCERNS ABOUT CRIME LED SCHOOLS TO ADOPT 'ZERO TOLERANCE' POLICIES

In the 1970s, keeping students out of school as a punishment was relatively rare: fewer than 4 percent of students were suspended in 1973, according to an analysis of Education Department data by the Southern Poverty Law Center. But growing concern about crime and violence in schools led states and districts to adopt policies that required students to be suspended.

The Gun-Free Schools Act, passed in 1994, mandated a yearlong out-of-school suspension for any student caught bringing a weapon to school. And as states began adopting these zero-tolerance policies, the number of suspensions and expulsions increased. The suspension rate for all students has nearly doubled since the 1970s, and has increased even more for black and Hispanic students.

Zero-tolerance policies have been widely criticized when schools have interpreted "weapon" very broadly, expelling students for making guns with their fingers or chewing a Pop-Tart into a gun shape or bringing a camping fork for Cub Scouts to class.

But they're not the only reason schools suspended students more frequently. At the same time as zero-tolerance policies for violence were growing, school districts adopted their own version of the broken windows theory of policing. The broken windows theory emphasizes the importance of cracking down on small offenses in order to make residents feel safer and discourage more serious crimes; in schools, it translated into more suspensions for offenses that previously hadn't warranted them — talking back to teachers, skipping class, or being otherwise disobedient or disruptive.

At the same time, administrators started relying more heavily on actual police — in the form of School Resource Officers (SROs) stationed in schools. From 1997 to 2007, the number of SROs increased by nearly a third. Ostensibly, they were there to prevent mass school shootings like the one at Columbine High School in Colorado in 1998 — in other words, to protect students, not to police them.

But as often happens with law enforcement, resources that are supposed to be used for a rare occurrence often get used for more common occurrences simply because they're there. About 92,000 students were arrested in school during the 2011-2012 school year, according to US Department of Education statistics. And most of those are low-level violations: 74 percent of arrests in New York City public schools in 2012, according to a report published by the state courts, were for misdemeanors or civil violations.

### They Say: “Alternative Causes”

#### Zero tolerance policies are the root cause to the school-to-prison pipeline – it outlives any other cause and ensures failure in life despite alternative attempts to remedy.

Heitzeg 13 – Nancy Heitzeg, PhD, Professor of Sociology and Program Director, Critical Studies of Race/Ethnicity, “Zero Tolerance Policies, Police in the Hallways and The School to Prison Pipeline,” St. Catherine University, 2013, <https://www.hamline.edu/uploadedFiles/Hamline_WWW/HSE/Documents/criminalizing-education-zero-tolerance-police.pdf>

\*\*\*no explicit date? – check this later, I think its 2013

The School to Prison Pipeline: Zero Tolerance and Policing in the Hallways While media and the rise of the prison industrial complex create the context, shifts in educational policy provide the immediate impetus for the flow of children from school to legal systems. The school to prison pipeline is facilitated by several trends in education that most negatively impact students of color. These include growing poverty rates and declining school funding, re-segregation of schools by race and class, under-representation of students of color in advanced placement courses and over-presentation in special education tracks, No Child Left Behind (NCLB) , high stakes testing, and rising drop-out/push -out rates (NAACP 2005; Hammond 2007 ) . All these factors are correlated with the school to prison pipeline, and each is the subject of lengthy analysis elsewhere .The focus here is increased reliance on zero tolerance policies, which play an immediate and integral role in feeding the school to prison pipeline. 14 These policies, in combination with the aforementioned factors, provide the direct mechanism by which students are removed from school by suspension/expulsion, pushed toward dropping out, charged in juvenile court, and routed into the prison pipeline. While there is no official definition of the term zero tolerance, generally the term means that a harsh predefined mandatory consequence is applied to a violation of school rules without regard to the ―seriousness of the behavior, mitigating circumstances, or the situational context (APA 2006). Zero-tolerance policies are additionally associated with an increased police and security presence at school, metal detectors, security cameras, locker and person searches and all the accoutrements of formal legal control. Violators- disproportionately Black and Latino-are suspended, expelled, and increasingly arrested and charged in juvenile court as a result. (ABA 2001) Zero tolerance rhetoric, which was borrowed from the War on Drugs, became widespread as school officials and community leaders expressed outrage at gang shootings and the impending wave of “super-predators”. Despite school crime rates that were stable or declining, related policies were implemented by the mid- 1990s. The Gun-Free Schools Act of 1994 (GFSA) provided the initial impetus for zero tolerance policies. The GFSA mandates that all schools that receive federal funding must 1) have policies to expel for a calendar year any student who brings a firearm to school or to school zone, and 2) report that student to local law enforcement, thereby blurring any distinction between disciplinary infractions at school and the law. Subsequent amendments to The GFSA and changes in many state laws and local school district regulations broadened the GFSA focus on firearms to apply to many other kinds of weapons. (Skiba 2001; Birkland and Lawrence 2009). 15 Most schools have adopted zero-tolerance policies for a variety of behavioral issueslargely directed towards weapons, alcohol/drugs, threatening behavior, and fighting on school premises, and as the name implies, indicate zero-tolerance for any infractions. According to the Centers for Disease Control (2006), in most cases 100% of school districts had prohibitions against weapons, and fighting, nearly 80% had bans on gang-activity at school, and over 90% had implemented zero tolerance policies for alcohol, tobacco and other drugs. Zero-tolerance policies are additionally associated with an increased police presence at school, metal detectors, security cameras, locker and person searches and all the accoutrements of legal control. The Safe Schools Act of 1994 and a 1998 amendment to the Omnibus Crime Control and Safe Streets Act of 1968 promoted partnerships between schools and law enforcement, including the provision of funding for in-school police forces or School Resource Officers (Raymond 2011). It has become routine for districts to assign staff/volunteers to monitor halls and bathrooms, equip staff with communication devices, use metal detectors and cameras, and have uniformed security guards or police present. It is less common, but also possible now for some schools to employ canine units, Tasers, and SWAT team raids for drug and weapons searches (Birkland and Lawrence 2009). Ironically, enhanced security measures were largely inspired by the school-shootings in largely white suburban schools, they have been most readily adopted and enforced in urban schools with low student-to teacher ratios, high percentages of students of color and lower test scores. Nearly 70% of these schools report a police presence (Justice Policy Institute 2011, Na and Gottfredson 2011; Skiba 2001). Zero tolerance policies have generally involved harsh disciplinary consequences such as long-term and/or permanent suspension or expulsion for violations, and often arrest and referral to juvenile or adult court. While the original intent of The GFSA was to require these 16 punishments for serious violations involving weapons, they have frequently been applied to minor or non-violent violations of rules such as tardiness and disorderly conduct. According to the ABA (2001), zero-tolerance policies do not distinguish between serious and non-serious offenses, nor do they adequately separate intentional troublemakers from those with behavioral disorders. They cast a very wide net; students have been suspended and or expelled for nail clippers, Advil and mouthwash. Zero tolerance policies are target students for minor infractions, increasingly focus on younger elementary and pre-school students, and often rely on force and arrest for relatively minor disciplinary issues. Consider the following cases: • A seventeen-year-old junior shot a paper clip with a rubber band at a classmate, missed, and broke the skin of a cafeteria worker. The student was expelled from school. • A nine-year-old on the way to school found a manicure kit with a 1-inch knife. The student was suspended for one day. • Two 10-year-old boys from Arlington, Virginia were suspended for three days for putting soapy water in a teacher's drink. The boys were charged with a felony that carried a maximum sentence of 20 years, and were formally processed through the juvenile justice system before the case was dismissed months later. • A Pennsylvania kindergartener tells her pals she's going to shoot them with a Hello Kitty toy that makes soap bubbles. The kindergartener was initially suspended for two days, and the incident was reclassified as "threat to harm others." • In Massachusetts, a 5-year-old boy attending an after-school program makes a gun out of Legos and points it at other students while "simulating the sound of gunfire," as one school official put it. He was expelled. • A5 year old boy in Queens NY was arrested, handcuffed and taken to a psychiatric hospital for having a tantrum and knocking papers off the principals’ desk. • In St Petersburg Florida, a 5 year old girl was handcuffed arrested and taken into custody for having a tantrum and disrupting a classroom. • An 11 year old girl in Orlando Florida was tasered by a police officer, arrested and faces charges of battery on a security resource officer, disrupting a school function and resisting with violence. She had pushed another student. • An honors student in Houston, Texas was forced to spend a night in jail when she missed class to go to work to support her family. 17 • A thirteen-year old from New York was handcuffed and removed from school for writing the word “okay” on her school desk. (Advancement Project 2012; Justice Policy Institute 2011; Eckholm 2013) Zero tolerance policies have proliferated without evidence that they actually improve school safety and security (Skiba 2001). In theory, zero-tolerance policies are intended to have a deterrent effect for intentionally troublesome students, i.e. the mere presence of the policies is intended to thwart disruptive behavior. But, as with harsh penalties for juvenile and criminal justice, zero tolerance was adopted and expanded in lieu of data supporting either effectiveness or need. There is, however, mounting evidence that these policies do contribute to the school to prison pipeline. According to the Advancement Project (2005) “Zero tolerance has engendered a number of problems: denial of education through increased suspension and expulsion rates, referrals to inadequate alternative schools, lower test scores, higher dropout rates, and racial profiling of students…… Once many of these youths are in “the system,” they never get back on the academic track. Sometimes, schools refuse to readmit them; and even if these students do return to school, they are often labeled and targeted for close monitoring by school staff and police. Consequently, many become demoralized, drop out, and fall deeper and deeper into the juvenile or criminal justice systems. Those who do not drop out may find that their discipline and juvenile or criminal records haunt them when they apply to college or for a scholarship or government grant, or try to enlist in the military or find employment. In some places, a criminal record may prevent them or their families from residing in publicly subsidized housing. In this era of zero tolerance, the consequences of child or adolescent behaviors may long outlive students’ teenage years.” Several specific problems with zero tolerance policies warrant closer examination: racial disproportionality, increased rates of expulsion, elevated drop-put rates, and denial of due process and equal protection for students.

### They Say: “Squo Solves – Obama”

#### DeVos is heading in the exact opposite direction – only the plan can prevent Trump and DeVos rollback of Obama’s guidances – even if, they weren’t enough to solve – they just identified that a problem existed.

Townes 4/18 – Carimah Townes, Reporter for the Fair Punishment Project, Internally Citing DeVos Interviews, DoE Studies, and Karen Dolan, Fellow at the Institute for Policy Studies, “Betsy DeVos wants more character development in schools. That’s a big problem.” 04/18/2017, https://thinkprogress.org/betsy-devos-and-the-future-of-school-discipline-7653c7485533

You’ve read the stories.¶ An eighth grader was [locked up for throwing skittles](https://thinkprogress.org/police-allegedly-locked-up-a-black-eighth-grader-for-six-days-because-he-threw-skittles-e86c9468f947) on a schoolbus. A 6-year-old girl was [handcuffed for taking candy from a teacher’s desk](https://thinkprogress.org/a-6-year-old-girl-was-handcuffed-at-school-for-taking-candy-8c66e2f9e420). An officer [slammed and dragged a high school girl](https://thinkprogress.org/spring-valley-officer-assault-is-just-the-tip-of-the-iceberg-de441ecb0e82), because she wouldn’t put her phone down. A Texas cop [choked a 14-year-old boy over a shoving match](https://thinkprogress.org/texas-cop-chokes-14-year-old-student-for-his-safety-d1a1d2cb0845)in school. A middle school student was [suspended and charged for allegedly stealing a carton of milk](https://thinkprogress.org/a-school-accused-a-student-of-milk-theft-he-was-innocent-but-is-still-going-to-court-d9a2c7ce1fa8) from a cafeteria — even though he didn’t do it.¶ Across the country, teachers rely on law enforcement and draconian punishments to correct students’ behavior in the classroom. In the Era of Trump, extreme discipline is poised to get worse.¶ During an [interview](https://townhall.com/columnists/calthomas/2017/02/16/a-new-direction-on-education-n2286379) with Townhall columnist Cal Thomas in February, Secretary of Education Betsy DeVos said that character development and values are lacking in schools, which contributes to poor achievement. But education advocates and legal experts say poor achievement stems from racist and punitive policies disguised as character development, and worry about the future of the school-to-prison pipeline under DeVos’ leadership.¶ The pipeline is the result of treating students like criminals in schools —often for non-criminal behavior. Institutions with zero-tolerance disciplinary policies suspend and expel students — or have cops make arrests — for minor infractions, such as wearing the wrong uniform, truancy, disobeying teachers’ instructions, or getting into schoolyard fights.¶ Forced out of the classroom, [kids are more likely to fall behind](https://thinkprogress.org/spring-valley-officer-assault-is-just-the-tip-of-the-iceberg-de441ecb0e82) in coursework, drop out of school, and commit future offenses that land them in the criminal justice system. They also miss out on social and emotional learning that leads to maturation, self-control, and positive habits.¶ The discipline-centric approach “mirrors that broken windows policy that’s also discredited in law enforcement — that you attack the small things to prevent somebody from becoming a larger-scale criminal,” Karen Dolan, a fellow at the Institute for Policy Studies, told ThinkProgress. And just as biased police disproportionately target people of color on the streets, biased educators determine which students are in need of correcting.¶ Based on national data, researchers have been able to create a general profile of the students most impacted by the pipeline. [Black kids](https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools/OutofSchool-OffTrack_UCLA_4-8.pdf) are most likely to be disciplined because of zero-tolerance policies — a trend that [begins in preschool](https://thinkprogress.org/new-data-shows-the-school-to-prison-pipeline-starts-as-early-as-preschool-80fc1c3e85be). Students who have disabilities are suspended two times more than those who do not, and account for one-fourth of students “arrested and referred to law enforcement,” per [data from the Department of Education’s Office for Civil Rights](https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf).¶ LGBTQ youth are [disproportionately sanctioned](http://www.glsen.org/sites/default/files/Educational%20Exclusion_Report_6-28-16_v4_WEB_READY_PDF.pdf) as well. Many are penalized because of harassment or assault by their peers, or punished for their sexual orientation and gender expression. According to GLSEN, 15.1 percent of the LGBTQ students it surveyed had been suspended. Forty percent experienced some form of discipline, including suspension, detention, or expulsion.¶ The federal government was [slowly chipping away at the pipeline](https://www2.ed.gov/policy/gen/guid/school-discipline/index.html) under the Obama administration. Notably, the [DOE and DOJ released nonbinding guidelines](https://www.usnews.com/news/politics/articles/2014/01/08/govt-offers-new-approach-to-classroom-discipline) to clarify that “school personnel” are primarily responsible for standard discipline and should not rely on police, also known was School Resource Officers (SROs); [called on public schools to end corporal punishment](https://www2.ed.gov/policy/gen/guid/school-discipline/files/corporal-punishment-dcl-11-22-2016.pdf); and [issued guidance to create behavioral supports for students with disabilities](https://www.ed.gov/news/press-releases/us-department-education-releases-guidance-schools-ensuring-equity-and-providing-behavioral-supports-students-disabilities).¶ But during her confirmation hearing, [DeVos said](http://www.politico.com/tipsheets/morning-education/2017/01/senate-panel-votes-on-devos-today-218495) she would change course and “defer to the judgment of state and local officials” on the subject of biased discipline in school. “I do not think the nation’s governors want me to come to their states and tell them what to do,” she said.¶ As Secretary of Education, DeVos has been quiet about the school-to-prison pipeline. But her comments about character development and her general desire to privatize public schools are setting off alarm bells. Advocates fear that biased discipline will become even more harsh in schools and further jeopardize marginalized students.¶ “The language around values and character development isn’t necessarily negative in and of itself,” Policy Associate Kimberly Quick of the Century Foundation, a nonpartisan think tank, told ThinkProgress. “But the problem is it could invite further bias against minority students and students with disabilities.”¶ ‘A failing of character’¶ DeVos’ [push to enroll more students in public and private charter schools](https://thinkprogress.org/trump-education-secretary-public-schools-3eb20d886c49)— which have freer rein to discipline students and less oversight than public institutions— is especially disconcerting to education policy experts. Those are the very types of schools that purport to be arbiters of character and values, Dolan said.¶ “Many Christian schools, private [schools], and charter schools bill themselves as a place for wayward teens,” she said. Such schools employ a “regimented, militarized” style of discipline and “take the same approach that many conservatives take with regard to poverty or any type of stereotyping of historically marginalized communities, where they say it’s a failing of character.”¶ Character development is part and parcel of the [“no excuses” model](https://thinkprogress.org/inside-a-charter-school-that-enforces-a-culture-of-compliance-f8b7ff4356ec) embraced by charter school networks nationwide, which prioritizes a culture of uniformity and obedience. For instance, the Knowledge is Power Program, which has 200 member schools across the country, developed [seven pillars of character](http://www.kipp.org/approach/character/) that students must demonstrate: zest, grit, optimism, self-control, gratitude, social intelligence, and curiosity. STRIVE Preparatory Schools also [emphasize “values” in the classroom](http://www.striveprep.org/about-us/), including scholarship, teamwork, respect, intelligence, virtue, and effort. To achieve these qualities, students must follow rigid behavioral norms outlined in school rulebooks.¶ Children and teenagers have been [penalized](https://www.theatlantic.com/magazine/archive/2014/12/how-strict-is-too-strict/382228/) for wearing the wrong shoes, closing their eyes, and leaning against walls. [Demerits are handed out](https://www.washingtonpost.com/posteverything/wp/2016/08/11/schools-that-accept-no-excuses-from-students-are-not-helping-them/?utm_term=.316da2406bed) for taking notes at the wrong time and slouching. Any sign of “defiance” can get a student [kicked out of class](https://thinkprogress.org/inside-a-charter-school-that-enforces-a-culture-of-compliance-f8b7ff4356ec). Kids are disciplined for [talking in the hallway](http://leadershipprepcanarsie.uncommonschools.org/sites/default/files/downloads/2015_lpcn_ea_student_and_family_handbook_0.pdf), [fiddling with their hair](http://leadershipprepcanarsie.uncommonschools.org/sites/default/files/downloads/2015_lpcn_ea_student_and_family_handbook_0.pdf), or [displaying “moral turpitude](http://www.kippdelta.org/sites/default/files/user-1/FCCP_Handbook_2015-16.pdf).” Teachers who fail to uphold strict standards in the classroom are [monitored](https://www.washingtonpost.com/posteverything/wp/2016/08/11/schools-that-accept-no-excuses-from-students-are-not-helping-them/?utm_term=.316da2406bed) and, sometimes, [demoted](https://www.washingtonpost.com/posteverything/wp/2016/08/11/schools-that-accept-no-excuses-from-students-are-not-helping-them/?utm_term=.316da2406bed).¶ These expectations are also underscored by a troubling dynamic: the students whose behavior instructors are policing are [disproportionately Black](https://www.nytimes.com/2016/08/21/us/blacks-charter-schools.html).¶ “Students of color are often penalized under things like ‘values,’ for being ‘aggressive’ or ‘noncompliant,’ whereas white students presenting the same behaviors would be called ‘inquisitive’ or ‘independent,’” said Quick. “It’s concerning to hear that language, from a school discipline standpoint.”¶ As private institutions, charter schools have the authority to create their own policies without outside oversight. Nevertheless, the Civil Rights Project at UCLA collected data that paints a bleak picture: it found that charters suspend Black and disabled students at a [higher rate than public schools](https://www.civilrightsproject.ucla.edu/news/press-releases/featured-research-2016/study-finds-many-charter-schools-feeding-school-to-prison-pipeline). Black charter school students are also four times more likely to be suspended than their white counterparts, and disabled students are between two and three times more likely to be suspended than students with no disability.¶ Although she’s been silent on the school-to-prison pipeline, DeVos’ enthusiastic praise of charter schools could usher in a new wave of institutions that embrace racially-biased and severe behavior-correcting measures.¶ “It rings hollow to me, to have somebody say these children aren’t being given the best opportunities because their value system is being ignored,” Dolan said of DeVos. “The very opposite is true: It’s under attack. Their character is presumed to be bad, and they are attacked for that and pushed out of schools.”¶ Proving civil rights violations¶ Chief among policy experts’ concerns is that a lack of accountability in charter schools will spill into public ones.¶ The DOE’s Office for Civil Rights (OCR) currently [requires](https://www.aclupa.org/our-work/current-campaigns/beyond-zero-tolerance/data/) that public schools and charter schools that receive federal funding collect and report data on the use of school discipline. According to the ACLU, the DOE’s [Civil Rights Data Collection tool](https://www.aclupa.org/files/8914/0251/6818/Final_2014_CRDC_Webinar_-_HJ_revisions.pdf) “reveals school climate disparities related to discipline, restraint and seclusion, retention, and bullying” and accounts for “race/ethnicity, sex, limited English proficiency, and for students with disabilities and students without disabilities.”¶ Advocates fear that the requirement will be thrown out of the window. During the confirmation process, DeVos [wouldn’t confirm that she’d enforce the data collection](https://thinkprogress.org/betsy-devos-education-policies-46608a6da03a).¶ “If that data is not made available, we can’t tell where the problems are happening. It gives people and schools that are engaging in discriminatory practice cover,” Quick said. “You can’t prove it’s systemic.”¶ Also unnerving is DeVos’ [lack of knowledge about discrimination in schools](https://thinkprogress.org/betsy-devos-draws-a-blank-on-major-anti-discrimination-law-693da8deb116)and her position on the current status of civil rights.¶ During her confirmation hearing in January, DeVos didn’t seem to know that the Individuals With Disabilities Education Act (IDEA) is a longstanding federal civil rights law that requires schools to accommodate the needs of students with disabilities. When Sen. Tim Kaine (D-VA) asked her if all K-12 schools that receive federal dollars should meet the requirements of IDEA, DeVos answered that “it’s best left to the states.” Following up on Kaine’s question, Sen. Maggie Hassan (D-NH) asked DeVos if she knew that IDEA is a federal law. DeVos responded, “I may have confused it.”¶ Then, [during an interview in February](https://thinkprogress.org/betsy-devos-education-policies-46608a6da03a), DeVos said that she “can’t think of any” civil rights issues in schools that should be addressed at the federal level. Days later, she showed how serious she was by [rolling back Title IX protections](https://thinkprogress.org/transgender-guidance-rescinded-3a9749060868) for transgender youth.¶ “DeVos has not — so far — shown a great amount of knowledge around these issues and she hasn’t commented on tough issues like racial discrimination very much,” Quick said.¶ Candice Jackson, who DeVos tapped to lead OCR last week, doesn’t have an extensive background in civil rights law, [ProPublica reported](https://twitter.com/yashar/status/852918496006746112). During her undergraduate years at Stanford University, she also published a story about being discriminated against as a white person.¶ “The DOE worked very closely with the Office of Civil Rights to tackle nondiscrimination under the Obama administration,” Dolan said. “The DOJ and DOE worked hand-in-hand to look and see — and take seriously — the racial discrimination that exists in schools. They weren’t able to fix it, but they did recognize it.”¶ “I’m not sure that these would be priorities in her administration,” Quick said.¶ Discipline without aid¶ Dolan and Quick agree that DeVos’ language surrounding character development is also problematic because it fails to acknowledge the resources students need to thrive.¶ “[The] fact that she’s talking about character development without talking about support systems to make sure that students can really succeed in these environments is disturbing,” Quick said. For instance, DeVos has yet to discuss the lack of counselors in schools nationwide.¶ Statistics highlight the degree to which discipline has been militarized over time. There are approximately [17,000 SROs](http://support/) stationed in public schools, and they [outnumber counselors in three of the five largest school districts](https://thinkprogress.org/there-are-more-officers-than-counselors-in-the-largest-public-school-districts-57af05880c25) in the country.¶ [Juvenile justice experts](https://thinkprogress.org/new-orleans-is-locking-up-hundreds-of-traumatized-kids-83e2c70c7873) and [psychologists](http://nyspbis.org/RF1617/Powerpoints/Applying%20Trauma%20Informed%20Strategies%20to%20Classrooms%20and%20Student%20Interactions.pdf) agree that misbehavior in schools is directly tied to social and emotional trauma outside of the classroom.¶ “Typically, children who are in need of extra help are coming from difficult circumstances,” Dolan said. “What are the stressors going on in a child’s life, both inside of school and outside of school? Are they hungry? Do they have sufficient housing? Are their family members okay?”¶ More and more, public school districts are [trying to scale back harsh disciplinary tactics](https://www.the74million.org/article/exclusive-data-shows-3-of-the-5-biggest-school-districts-hire-more-security-officers-than-counselors) and [emphasizing therapy to address student trauma](http://www.slate.com/blogs/schooled/2015/01/22/school_discipline_bay_area_schools_cut_down_on_suspensions_by_targeting.html). Social and emotional development was also a cornerstone of the DOE’s push to rethink discipline under the Obama administration. In 2014, the department created School Climate Transformation Grants, to better train teachers and “implement evidence-based strategies with multi-tier behavioral frameworks,” in roughly 1,000 schools.¶ Based on her record of supporting charter schools and the [expansion of Christian education](http://www.huffingtonpost.com/entry/betsy-devos-religion-in-schools_us_583f04d1e4b04fcaa4d61c88), DeVos’ idea of character development will likely look very different in the future.¶ “If we’re moving away from public schools that are increasingly paying attention to social and emotional development…into unaccountable charter schools and these character-based disciplinary approaches to educating children, we’re going in exactly the wrong direction,” Dolan said.

#### DeVos is a disaster waiting to happen – the school-to-prison pipeline is guaranteed to be expanded under the guise of “character development” – she’ll pursue harsher and more discriminatory zero tolerance policies.

Macias 4/18 – Kelly Macias, Staff Writer at Daily Kos focusing on Racial Justice, Social Justice, and Gender Issues, “Black and LGBTQ Students Face Increased School-to-Prison Pipeline Under Betsy DeVos,” Daily Kos, 04/18/2017, https://www.dailykos.com/stories/2017/4/18/1653987/-Black-and-LGBTQ-students-face-increased-school-to-prison-pipeline-under-Betsy-DeVos

We knew that putting Betsy DeVos in charge of the Department of Education was a disaster waiting to happen and it was only a matter of time before things went from bad to worse. Last week, DeVos [announced](http://www.dailykos.com/stories/2017/4/14/1653143/-DeVos-taps-oppressed-white-woman-to-head-civil-rights-office-at-Education-Department) Candice Jackson as her pick to head up the Office of Civil Rights—a position for which Jackson has absolutely no experience or qualifications whatsoever; leaving us almost certain that this move is actually intended to gut rather than protect the civil rights of the nation’s students. And today’s news is even less encouraging. Given DeVos’s stance on character development in schools and preference for charter and private schools, experts say we have great cause to worry about the [future](https://thinkprogress.org/betsy-devos-and-the-future-of-school-discipline-7653c7485533) of the school-to-prison pipeline under DeVos’s leadership. ¶ During an [interview](https://townhall.com/columnists/calthomas/2017/02/16/a-new-direction-on-education-n2286379) with Townhall columnist Cal Thomas in February, Secretary of Education Betsy DeVos said that character development and values are lacking in schools, which contributes to poor achievement. But education advocates and legal experts say poor achievement stems from racist and punitive policies disguised as character development, and worry about the future of the school-to-prison pipeline under DeVos’ leadership.¶ The [school-to-prison](http://www.dailykos.com/story/2017/04/16/1652891/-Working-to-end-the-school-to-prison-pipeline-An-interview-with-Virginia-Delegate-Mike-Mullin) pipeline is a huge problem funneling so-called “problem children” out of the classroom and into the juvenile justice system—disproportionately impacting kids of color, poor kids, kids with special needs and kids from single parent homes. When kids are forced out of the classroom and treated like criminals, often for minor infractions such as wearing the wrong uniform, truancy and schoolyard fights, this can set them down a dangerous path that studies show makes them more likely to fall behind in their classwork, drop out of school and end up in the criminal justice system. It also has a financial cost, as it costs way more to incarcerate kids than it does to keep them in the classroom and educate them. ¶ Based on national data, researchers have been able to create a general profile of the students most impacted by the pipeline. [Black kids](https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools/OutofSchool-OffTrack_UCLA_4-8.pdf) are most likely to be disciplined because of zero-tolerance policies — a trend that [begins in preschool](https://thinkprogress.org/new-data-shows-the-school-to-prison-pipeline-starts-as-early-as-preschool-80fc1c3e85be). Students who have disabilities are suspended two times more than students who do not, and account for one-fourth of students “arrested and referred to law enforcement,” per [data from the Department of Education’s Office for Civil Rights](https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf).¶ LGBTQ youth are [disproportionately sanctioned](http://www.glsen.org/sites/default/files/Educational%20Exclusion_Report_6-28-16_v4_WEB_READY_PDF.pdf) as well. Many are penalized because of harassment or assault by their peers, or punished for their sexual orientation and gender expression. According to GLSEN, 15.1 percent of the LGBTQ students it surveyed had been suspended. Forty percent experienced some form of discipline, including suspension, detention, or expulsion.¶ The Obama administration began slowly trying to encourage educators to rethink discipline and create a more supportive school climate that aimed to decrease suspensions and expulsions but all of this is likely to increase, rather than decrease, under DeVos’s watch. While we haven’t explicitly heard dear old Betsy say anything about it (how many times must we say that she is not at all qualified to have anything to do with educating young people?), that in itself isn’t particularly encouraging. ¶ As Secretary of Education, DeVos has been quiet about the school-to-prison pipeline. But her comments about character development and her general desire to privatize public schools are setting off alarm bells. Advocates fear that biased discipline will become even more harsh in schools and further jeopardize marginalized students. [...]¶ DeVos’s [push to enroll more students in public and private charter schools](https://thinkprogress.org/trump-education-secretary-public-schools-3eb20d886c49)— which have freer rein to discipline students and less oversight than public institutions— is especially disconcerting to education policy experts. Those are the very types of schools that purport to be arbiters of character and values, [Karen Dolan, a fellow at the Institute for Policy Studies said].¶ “Many Christian schools, private [schools], and charter schools bill themselves as a place for wayward teens,” she said. Such schools employ a “regimented, militarized” style of discipline and “take the same approach that many conservatives take with regard to poverty or any type of stereotyping of historically marginalized communities, where they say it’s a failing of character.”¶ This is really frightening. If the above data shows that black kids and LGBTQ are the most disproportionately disciplined in schools, we can only imagine what will happen to them if they are forced into private, Christian and charter schools per DeVos’s push under the guise of educational choice. It already appears that DeVos has no intent to improve public education and what will happen to the most marginalized of students now? Just exactly what kind of “character development” will they be forced to undergo? Will Mike Pence be in charge of the curriculum? Will this include conversion therapy? This is not to be trusted. Make no mistake, this is a disaster waiting to happen.

### They Say: “Turn: Business Shift”

#### This just doesn’t link to the affirmative. The plan doesn’t change the process of existing the prison-industrial complex, but rather only prevent new children from entering.

### They Say: “Squo Mental Support Solves”

#### The plan is a pre-requisite to mental support – even with mental support accessible – zero tolerance still causes incarceration.

Gross 16 – Natalie Gross, Program Specialist and the Latino Ed Beat Blogger for EWA, Part of Two Writing Teams that Won First-Place Awards in 2013 from the New Mexico Press Association and received the School Bell Award in 2014 from the Texas State Teachers Association, has a Bachelor’s degree from Maranatha Baptist University and is pursuing a Master’s degree in journalism from Georgetown University, “Study Highlights Racial Disparities in Mental Health Services, School Discipline,” Education Writers Association, 08/16/2016, http://www.ewa.org/blog-latino-ed-beat/study-highlights-racial-disparities-mental-health-services-school-discipline

Black and Hispanic children experience mental health problems at a similar rate than their white peers, yet are less likely to receive treatment, a new study of nationally representative data shows. ¶ The [study](http://joh.sagepub.com/content/early/2016/08/11/0020731416662736.abstract) was published Friday in the International Journal of Health Services using 2006-2012 data from the [Medical Expenditure Panel Survey](https://meps.ahrq.gov/mepsweb/) (MEPS). Its [findings include](http://www.eurekalert.org/pub_releases/2016-08/pfan-bah081216.php): ¶ “Black and Latino children made, respectively, 37 percent and 49 percent fewer visits to psychiatrists, and 47 percent and 58 percent fewer visits to any mental health professional, than white children. ¶ Black children’s low use of services was not due to lesser need. Black and white children had similar rates of mental health problems, and similar rates of severe episodes that resulted in psychiatric hospitalization or emergency visits.¶ While poor children and young adults had lower rates of care, differences in income and insurance did not account for the racial/ethnic disparities in care.¶ Among children, girls got less mental health care than boys.”¶ Researchers from Harvard and Hofstra medical schools and the City University of New York School of Public Health cited cultural values and lack of access to quality mental health professionals as potential reasons for the disparity.¶ According to a 2008 report by the [Center for Mental Health in Schools](http://smhp.psych.ucla.edu/temphome.htm) at UCLA, only 16 percent of all children receive any kind of mental health services, and of these, 70 to 80 percent receive this care in a school setting — thus, schools have often become a “de facto mental health system” for youth.¶ But this new study notes that psychiatric and behavioral problems among minority youth rarely result in mental health care, but rather discipline at school and even incarceration. ¶ “Minority kids don’t get help when they’re in trouble. Instead they get expelled or jailed,” researcher Steffie Woolhandler of Harvard Medical School said in a [news release](http://www.eurekalert.org/pub_releases/2016-08/pfan-bah081216.php). “But punishing people for mental illness or addiction is both inhumane and ineffective. The lack of care for minority youth is the real crime.”¶ Numerous studies have revealed disparities in school discipline rates between white and minority students, with black and Latino students more likely to face suspensions or expulsion. Just recently, the U.S. Department of Education released its [latest civil rights data](http://www.ewa.org/blog-latino-ed-beat/what-federal-civil-rights-data-reveal-about-hispanic-students), showing that Latino students were more likely that whites to attend a school that had a law enforcement officer but no school counselor.¶ The International Journal of Health Services study states that behaviors that might result in a referral for mental health treatment for white children “more often incur criminal sanctions for minorities.” Black and Hispanic youth make up 63 percent of children in juvenile detention facilities, the researchers write.¶ So, what can educators do to counteract these trends? The U.S. Department of Health and Human Services’ [mentalhealth.gov](https://www.mentalhealth.gov/talk/educators/index.html) website states educators should be familiar with the warning signs for mental health problems, which can include a pattern of disruptive behavior that lasts for at least six months.¶ Other suggestions the department gives for schools include educating staff, parents and students on symptoms of mental health problems and the resources available to help, teaching and reinforcing positive behaviors and decision-making, encouraging good physical health, and helping to ensure students have access to school-based supports.

#### Mental support doesn’t solve because of current disciplinary measures – the school to prison pipeline is inevitable absent the plan.

Holmes 15 – Jack Holmes, Bachelor’s Degree in Political Science and Philosophy at Vanderbilt University, Citing Multiple Institutions Research including New York Times, APA, ACLU, and David Ramsey, from Pennsylvania State University’s Department of Sociology and Criminology, “White Kids Get Medicated When They Misbehave, Black Kids Get Suspended – Or Arrested,” NYMag, 08/06/2015, http://nymag.com/scienceofus/2015/08/white-kids-get-meds-black-kids-get-suspended.html

In recent years, as a national conversation about racial discrepancies in American policing has heated up, a depressing subplot has also emerged: a pattern of similar discrepancies in how discipline is meted out in schools. Black students made up just 18 percent of students in the public schools sampled [by the New York Times](http://www.nytimes.com/2012/03/06/education/black-students-face-more-harsh-discipline-data-shows.html) in 2012, but “they accounted for 35 percent of those suspended once” and 39 percent of those expelled — examining federal data, [the Times also noted](http://www.nytimes.com/2013/12/03/education/seeing-the-toll-schools-revisit-zero-tolerance.html) that “nationwide, more than 70 percent of students involved in arrests or referrals to court are black or Hispanic.” Even black preschoolers [were not exempt](http://www.npr.org/sections/codeswitch/2014/03/21/292456211/black-preschoolers-far-more-likely-to-be-suspended): They made up the same 18 percent of the student population, but constituted half of all suspensions.¶ As everyone from the [Times](http://www.nytimes.com/2014/01/06/opinion/zero-tolerance-reconsidered.html) to [the ACLU](https://www.aclu.org/fact-sheet/what-school-prison-pipeline) has noted, the enactment of tough “zero-tolerance” policies in schools has led to the criminalization of what had previously been viewed as minor disciplinary issues. Zero-tolerance often mandates that students be suspended — even referred to law enforcement and arrested — for minor transgressions: Until a 2013 rule change, Los Angeles students routinely received automatic suspensions for refusing to take off their hats (this fell under a category of violation called “willful defiance”), while a Florida district, the sixth largest in the country, [set a state record](http://www.nytimes.com/2013/12/03/education/seeing-the-toll-schools-revisit-zero-tolerance.html) for student arrests in a jurisdiction in 2011, primarily on charges of possessing small amounts of marijuana and spraying graffiti. The ACLU has called this phenomenon the “school-to-prison pipeline.”¶ Now, [a new paper in SAGE](http://soe.sagepub.com/content/early/2015/05/27/0038040715587114.abstract) takes a closer look at how race and class affect school districts’ approaches to punishment, but also examines another important element of school discipline: Some disruptive kids, rather than being punished, are “medicalized” — that is, eventually given diagnoses, therapy, and/or medication as a result of behavioral problems. As “problem behaviors such as inattention, hyperactivity, and defiance of adult authority have received increased attention” since the 1990s, the study notes, schools have increasingly sought treatment and made special provisions for disruptive students through mental-health provisions in state and federal legislation.¶ For the study, David M. Ramey, of Pennsylvania State University’s department of sociology and criminology, used data from over 60,000 schools in 6,000 districts to examine trends in how schools’ racial and socioeconomic makeup impacted how they dealt with misbehaving students.¶ Among other things, he found that:¶ If you’re a black student or you’re poor, you’re far more likely to be punished than offered behavioral treatment when you misbehave.¶ There was a strong correlation between the percentage of black students in a school and the rates of punitive discipline, and an inverse relationship between the percentage of black students and the rate of behavioral treatment. “Schools with more black students relative to other schools in the district had higher rates of suspension or expulsion and police referral or arrest” than other in-district schools, the study notes, and also had substantially lower rates of enrollment in mental-health and special education programs. Students in more socioeconomically disadvantaged districts are also far more likely to face criminalized punishment than kids in more affluent areas, in part, Ramey thinks, because criminalized punishment is cheaper than mental-health treatment, and these districts are often strapped for cash. Here, race and class are — as is so often the case — inextricably linked.¶ Ramey draws on prior work in the field to demonstrate that the far higher rates of criminalization black students experience may be the result of endemic bias on the part of school officials. [An American Psychological Association study](http://www.apa.org/news/press/releases/2014/03/black-boys-older.aspx) found that black boys are perceived as older and less innocent than their white peers, and [some](http://www.indiana.edu/~atlantic/wp-content/uploads/2011/12/Skiba-et-al.-Race-is-not-neutral..pdf) [studies](https://books.google.com/books/about/Bad_Boys.html?id=3YMDorLC-cQC) indicate teachers can suffer from the [fundamental attribution error](https://en.wikipedia.org/wiki/Fundamental_attribution_error), attributing minority children’s misbehavior to different causes than they do white children’s. Ramey notes how [one study found that](http://www.researchgate.net/publication/22704692_A_Theory_of_Motivation_for_Some_Classroom_Experience) schools blame “poor parenting, cultural deficiencies, and poor character” for bad behavior among racial minority children, and see that behavior as permanent and leading almost inexorably to involvement with the criminal justice system. Further, [a study](http://www.jstor.org/stable/25746206?seq=1#page_scan_tab_contents) on enrollment in special education programs found that “teachers and administrators are less likely to attribute minority students’ misbehavior to underlying behavior disorders,” which could be ameliorated with mental-health treatment.¶ When school officials are given more leeway in how they discipline students, the role of race is more apparent in their decision-making.¶ “In disadvantaged districts,” says Ramey, “the school board tends to have a lot more power in setting disciplinary policy, in particular at the top, and it’s followed relatively uniformly across the schools.” A district might mandate metal detectors or zero-tolerance policies, for example, and every school follows those policies, regardless of the makeup of the student body. In more affluent districts, things are different. There, Ramey says, “The schools and administrators are allowed a greater degree of autonomy.” School boards outline a disciplinary guideline (usually tied to government funding through state or federal law) that they want to meet, but individual schools have more flexibility in how they meet them, be it through tougher punitive discipline or the expansion of mental-health programs. “This is where you see race really mattering,” Ramey says. “The predominantly black schools in advantaged districts have much higher levels of suspension than predominantly white schools in advantaged districts. Conversely, predominantly black schools have much lower rates of [mental-health-program] enrollment than predominantly white schools in advantaged districts.”¶ Some schools have come to mirror the adult criminal justice and mental-health systems in how they deal with problematic behavior.¶ For most of the United States’ industrialized existence, working-class schools tried to reproduce the organization and principles of the industrial labor force: vocational skills, and an emphasis on the values of order, compliance, efficiency, and uniformity. But [various](http://eric.ed.gov/?id=EJ753302) [theories](http://www.annualreviews.org/doi/abs/10.1146/annurev.so.18.080192.001233) hold that as the U.S. manufacturing economy and its labor system fled overseas in the second half of the 20th century, the criminal justice and mental-health systems replaced it as a model for how schools should be run. Ramey says that some of the discrepancies in these systems are mirrored in U.S.schools: “There are racial inequalities in the mental-health system across the life course, and it’s the same with the criminal justice system.” Like their adult counterparts, children of color are far more likely than white children to be pulled into the criminal justice system. Like adults, they are far less likely to seek out or be referred to mental-health professionals for treatment. “A lot of these structural inequalities we see in adult systems of social control are reproduced throughout childhood,” says Ramey.¶ Of course, it’s not all cut-and-dried: The sources of racial disparities in treatment, for instance, do not lie exclusively within these larger systems. Black families have [been shown](http://www.ncbi.nlm.nih.gov/pubmed/20697849) to be “skeptical of medical and mental-health research, particularly contested and controversial issues like ADHD,” and are therefore less likely to seek out treatment, while predominantly Latino schools see less medicalized and criminalized discipline, all things being equal. “Some of the research,” Ramey says, “suggests that Hispanics and Hispanic families in Hispanic schools — in particular first-generation immigrants — tend to avoid social control institutions altogether, be it the criminal justice system, the mental-health system, or the medical system,” often due to language barriers, immigration status, and other concerns.¶ More research is definitely needed in this area, both because of limitations in this analysis (it does not look at the treatment of a black individual compared to a white one for the same behavior at the same school, for example) and the gravity of the issue. There is clearly a discrepancy in how schools respond to bad behavior based on the racial and socioeconomic makeup of their student bodies, but there are still plenty of unanswered questions about the details.

### They Say: “Starts in Pre-K”

#### K-12 is Key – California proves high school growth and diplomas matter.

Boone 16 – Alastair Boone, Senior Staff for the Daily Californian, Bachelor’s Degree in English Language and Literature from the University of California at Berkeley, Citing a Report by the Correction Association of New York and a study by The Atlantic, “Dismantling the School-to-Prison Pipeline,” The Daily Californian, 04/21/2017, http://www.dailycal.org/2016/04/21/dismantling-the-school-to-prison-pipeline/

California [has built more than 20 prisons since 1980](http://www.huffingtonpost.com/2013/08/30/california-prisons-schools_n_3839190.html) — in that same time, the state has built only one additional UC campus, in Merced.¶ Statistics such as this abound. When it comes to funding, they capture a troubling comparison: [According to university data](http://universityofcalifornia.edu/infocenter/california-expenditures-corrections-and-public-education), nine percent of California’s general funds are allocated to the state’s prison system, while the UC and CSU systems receive only 5.2 percent.¶ These statistics present a clear imperative — the state should be spending more money on education than it does on incarceration. There is an unmistakable correlation between an underfunded education system and a prison system that is bursting at its seams: A stunted academic life creates a greater likelihood of being sent to prison. Building more prisons will not fix the root of this problem, but neither will simply building more universities.¶ According to an Atlantic article on this issue, [68 percent](http://www.theatlantic.com/education/archive/2015/07/incarceration-education-emancipation/398162/#article-comments) of the state prison population has not received a high school diploma. And while establishing more UC campuses would better support the Californians who are on track to pursue a college degree, it would do little to solve the problem of why we have spent the past 36 years building prisons instead.¶ Consider the makeup of this 68 percent: for many, primary education is the very system that leads to imprisonment. In what is frequently referred to as the “school-to-prison pipeline,” K-12 schools often implement zero-tolerance policies that discipline students for minor infractions, such as being late to school or violating dress codes. These policies are intended to teach accountability and curb violence in dangerous schools. Unsurprisingly, though, they have proven to be [racially discriminatory](http://www.theatlantic.com/education/archive/2014/01/how-to-discipline-students-without-turning-school-into-a-prison/282944/) and frequently lead at-risk students to suspension and expulsion. This effectively removes them from exactly the educational system that could lead toward college or a career instead of the penal system. ¶ It isn’t the sheer possession of a high school diploma that keeps students out of prison. Education’s power to prevent incarceration seems to have as much to do with the growth that can occur in tolerant school systems as it does with the diploma itself.¶ I grew up in San Francisco, where I was privileged enough to attend a private high school. My school was small — I graduated with a class of 66 — and as a result, everybody was aware of each other. I learned to be accountable because I always had to be accounted for — an experience that allowed me to feel as though my presence carried weight.¶ When I was a senior, I presented a speech at a school assembly. It was almost May and the weather was starting to turn, so I wore a skirt made of fabric that looked more like tissue paper than cotton. Later, a female teacher pulled me aside to tell me that the skirt was in violation of our dress code, adding that it is already difficult to be taken seriously in academia as a woman. “That skirt won’t help,” she said. “I would recommend wearing tights next time.”¶ It was embarrassing for me to confront my violation of the dress code, but that’s where my punishment ended. And while the risk that I would be suspended or expelled was low, I was allowed a holistic understanding of why the rule existed in the first place, instead of being isolated from the environment that was meant to help me learn. ¶ Zero-tolerance policies do exactly the opposite by removing students from school all together. In this alienation, these schools mime correctional facilities, punishing for the sake of punishing and often failing to prevent the violent crime that the policies are intended to target.¶ Systems of primary and secondary education should be a space set aside for problem solving, which requires more nuance than implementing standardized punishments.¶ Ironically, this space only becomes available to some when they get to prison. In 2011, [a report by the Correction Association of New York](http://www.correctionalassociation.org/resource/education-from-the-inside-out-the-multiple-benefits-of-college-programs-in-prison) found that college programs in prisons incentivised maturity and leadership. For those of us who are lucky enough to receive a high school diploma, these are qualities that we generally garner from K-12 education. Such maturity and leadership are often the qualities that earn us admission into the world of postsecondary education.¶ As California considers its overcrowded and overfunded prisons, the state must focus its energy on K-12 education. This shift has the power to prevent crime, save money and help foster a proactive criminal justice system.

### Incarceration Bad – Violence

#### Youth incarcerated with adults increases the risk of injury and violence

**Lahey 16**  - Jessica Lahey, writer of a Parent-Teacher column on New York Times and author, (The Steep Costs of Keeping Juveniles in Adult Prisons, Jan 8 2016, The Atlantic, <https://www.theatlantic.com/education/archive/2016/01/the-cost-of-keeping-juveniles-in-adult-prisons/423201/>)

Juveniles [constitute 1,200 of the 1.5 million](http://cfyj.org/images/pdf/Zero_Tolerance_Report.pdf) people housed in federal and state prisons in this country, and nearly 200,000 youth enter the adult criminal-justice system each year,[most for non-violent crimes](http://www.campaignforyouthjustice.org/documents/KeyYouthCrimeFacts.pdf). On any given day, [10,000 juveniles](http://www.eji.org/childrenprison) are housed in adult prisons and jails. These **children lose more than their freedom when they enter adult prisons**; they **lose out on the educational and psychological benefits offered by juvenile-detention facilities.** Worse, they are **much more likely to suffer sexual abuse and violence** at the hands of other inmates and prison staff. The National Prison Rape Elimination Commission described their fate in blunt terms[in a 2009 report](https://www.ncjrs.gov/pdffiles1/226680.pdf): “More than any other group of incarcerated persons, **youth incarcerated with adults are probably at the highest risk of sexual abuse**.”

### Incarceration Bad – Poverty

#### Incarceration exacerbates the impact of poverty -- the financial impacts associated with incarceration are incredibly damning for minority families

Semuels 15 (Alana Semuels, writer at the Atlantic and National Correspondent, What Incarceration Costs American Families, 2015, The Atlantic, https://www.theatlantic.com/business/archive/2015/09/the-true-costs-of-mass-incarceration/405412/)

**America spends** [**$80 billion a year**](http://www.brookings.edu/~/media/research/files/papers/2014/05/01%20crime%20facts/v8_thp_10crimefacts.pdf) **incarcerating 2.4 million people**. That money is spent on things like beds, staff, food, and facilities—but the effects of that incarceration are costly in other ways too, according to a [new report](http://action.ellabakercenter.org/site/Survey?SURVEY_ID=5302&ACTION_REQUIRED=URI_ACTION_USER_REQUESTS) out Tuesday from the [Ella Baker Center for Human Rights](http://ellabakercenter.org/). The report is a result of a yearlong project that collected information in 14 states through focus groups and surveys are suddenly unable to pay for basic needs such as food and housing, the report found. About 70 percent of those families are caring for children under the age of 18. **Women** like Smith are **often** **responsible for court-related costs associated with the conviction, and many families go into debt to pay those fees, leaving even less for food and shelter**. When that family member gets out of jail, their loved ones are left with the task of supporting their reentry. This burden is ongoing since people with a criminal record often are unable to find work upon their release. “**Poverty, in particular, perpetuates the cycle of incarceration, while incarceration itself leads to greater poverty**,” the report says. Going to prison is an increasingly costly proposition. In 40 states, people facing imprisonment must find the money for things such as attorney fees, court fees, bond and restitution—the total costs of which average about $13,607. Many defendants choose to pay for private attorneys, but even those who don’t must pay application fees for public defenders in 43 states, which can range from $10 to $480. Fees associated with criminal justice have become a big revenue generator for states, but saddle incarcerated people and their families with significant debt: Now, **up to 85 percent of people returning from prison have some sort of criminal-justice debt, up from 25 percent in 1991,** according to the report. The costs don’t stop after a trial and conviction. Families who try to maintain contact with a prisoner must pay high fees for phone calls from prison. The Prison Policy Initiative [found](http://www.prisonpolicy.org/blog/2014/05/23/price-of-incarceration/) that families pay $1 billion annually to call relatives in prison, and until 2013, calls could cost $17 for a 15 minutes (the FCC cracked down on this and those calls now cost $3.75). Visiting prisons is also costly for families, who must pay for background checks in many states, as well as transportation to the facility. **One-third of families in the report said they went into debt to pay for visitation or phone calls.** And when—and if—the individual is released from prison, the costs continue to mount. **Three in four people surveyed found it difficult to find work after being released from prison, and only 40 percent of those surveyed were working full-time after five years**. **This makes it difficult for one-time prisoners to pay child support, or contribute to housing or food costs**. It also makes it difficult for them to further their education, one of the only things that can improve their financial prospects. Those released can also be denied public housing because of their conviction history, and their families can be kicked out of public housing if they have someone living with them who has a criminal record. **Nearly 80 percent of those surveyed said they were ineligible for or denied housing because of their criminal record**. “All of the places that I wanted to live—that were nice and where I could raise kids told me ‘no.’ So I ended up where I am now, in a rundown four-plex that’s a slum with moldy walls,” one focus-group participant in Kansas told the interviewers. The Baker Center does have a few recommendations for how to improve life for prisoners and their families. The first centers on restructuring criminal-justice policies. States could follow the lead of California, which in 2014 [reclassified](http://www.latimes.com/local/crime/la-me-0226-prop47-report-20150226-story.html) six non-violent offenses from felony charges to misdemeanors in order to reduce prison time. States and cities could also look into alternatives to incarceration, including [programs](http://www.vera.org/project/common-justice) that require people who commit crimes to be held accountable by those harmed. The second recommendation concerns **the barriers that exist when people get out of prison**. HUD and other public-housing entities could make it easier for people with criminal records to be eligible for public housing. States and cities could remove the section on job applications that requires people to disclose a criminal history. And they could also rethink current policies that make people with criminal records ineligible for Pell Grants and other federal programs that make it easier to get an education. Finally, the report recommends that communities reverse budget cuts and give more on-the-job training and reentry preparation to prisoners.“We can no longer afford to continue business as usual with criminal justice in the U.S.,” the report concludes. “**If our nation truly wants to support all families and communities … we must drastically reduce the financial, emotional, and health impacts on incarcerated people and their loved ones.**”

#### Mass Incarceration is becoming recognized as an economic issue—impacts stem from smaller workforces, to homelessness, the time to act is now

Bowling 13 (Julia Bowling, Research Associate in the Brennan Center’s Justice Program, Mass Incarceration Gets Attention as an Economic Issue, 2013, NYU School of Law, https://www.brennancenter.org/blog/mass-incarceration-gets-attention-economic-issue-finally)

This week, in a move surprising to many, the AFL-CIO passed a [resolution](http://www.aflcio.org/About/Exec-Council/Conventions/2013/Resolutions-and-Amendments/Resolution-17-Prisons-and-Profits-The-Big-Business-Behind-Mass-Incarceration) stating their intent to end mass incarceration. **The country’s largest federation of unions now officially opposes long mandatory minimum sentences for nonviolent crimes, and supports reforms to help former prisoners reintegrate into society**. This announcement will be well received among economists working on criminal justice reform. Long seen as a racial justice issue in the American political arena**, mass incarceration has recently, although belatedly, come to be recognized as a fiscal concern. With the world’s largest incarcerated population, the United States government spends an unsustainable $79 billion a year on corrections**. But, until now, the understanding of incarceration’s broader economic impact has largely been confined to academia. In the AFL-CIO press [release](http://www.aflcio.org/Blog/Political-Action-Legislation/AFL-CIO-Condemns-Mass-Incarceration-of-People-of-Color-at-the-AFL-CIO-Convention), University of California at Berkeley Economist Steven Pitts put it best: “We cannot organize an economy that provides shared prosperity if we don’t also end mass incarceration.” **Mass incarceration greatly disrupts the American job market.** [**Sixty-one percent**](http://www.bjs.gov/content/pub/pdf/p11.pdf) **of people in prison are between 18-39 years old -- in the prime of their working life. Removing able-bodied working-age people from the labor market** [**lowers the quality**](http://www.jstor.org/stable/10.1086/210135) **of our work force and permanently damages their employment and educational opportunities**. The formerly incarcerated face a daunting uphill battle with unemployment. **In addition to gaps in employment and lack of work experience, the AFL-CIO resolution** [**notes**](http://www.aflcio.org/About/Exec-Council/Conventions/2013/Resolutions-and-Amendments/Resolution-17-Prisons-and-Profits-The-Big-Business-Behind-Mass-Incarceration) **that many re-entering civil society return to neighborhoods, “long suffering from economic divestment, high unemployment, poor infrastructure and isolation.”** Most importantly, the formerly incarcerated face stigma and discrimination. Efforts to “ban the box” on employment forms asking about criminal records may have worked in earlier eras, but today a former convict’s past is only a quick Google search away. Given this reality, it is no surprise that [60 percent](http://www.mdrc.org/publication/power-work) of formerly incarcerated people are unemployed, compared to [7.3 percent](http://www.tradingeconomics.com/united-states/unemployment-rate) of the general population. High unemployment among ex-prisoners leads to higher state and federal government assistance payouts, loss of income tax revenue, and drains on spending for other essential programs. The diminished employment prospects of formerly incarcerated individuals also have an enormous effect on their partners and children. Currently, 1 in 28 [children](http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs(1).pdf) has a parent in prison. **Having an incarcerated parent** [**doubles**](http://www.nytimes.com/2009/07/05/us/05prison.html) **a child’s chances of experiencing homelessness, and increases the likelihood that they’ll exhibit social problems, academic problems, and be incarcerated themselves.** Nobel Prize Winning Economist Joseph Stiglitz noted in the [New York Times](http://opinionator.blogs.nytimes.com/2013/08/27/how-dr-king-shaped-my-work-in-economics/?ref=josephestiglitz&_r=0), “a young American’s life prospects are more dependent on the income and education of his parents than in almost any other advanced country.” **The economic impact of incarceration pushes families through the revolving doors of the criminal justice system, and fuels a multi-generational cycle of poverty. The AFL-CIO’s resolution is an important sign that the biggest players in America’s economy are beginning to wake up to the reality that mass incarceration is as much an economic issue as a criminal justice one. Let’s hope more of those in the political and business arenas make ending mass incarceration a priority.**

#### Incarceration entraps people in poverty

Stone 2014 - Chad Stone, Chief Economist at the center on budget and Policy Priorities, (“Misplaced Priorites,” November 7, 2014, US News, https://www.usnews.com/opinion/economic-intelligence/2014/11/07/high-incarceration-rates-put-pressure-on-state-budgets-hurt-the-poor?int=opinion-rec)

**Incarceration hurts former inmates’ earnings capacity and employment prospects**. That **increases poverty for former inmates and their families as does incarceration itself**, which takes a potential earner out of the household. These **effects are amplified in communities with high incarceration rates**.  Evidence suggests that removing large numbers of working-age men and women from the community tends to reduce economic and social opportunities even for community members with no interaction with the criminal justice system.    
On the flip side, **states have been underinvesting in educating children and young adults, especially those in high-poverty neighborhoods**.  At least 30 states are providing [less general funding per student this year for K-12 schools than before the recession](http://www.offthechartsblog.org/how-has-state-k-12-funding-fared-in-your-state/#map), after adjusting for inflation; in 14 states, the reduction exceeds 10 percent.

### Incarceration Bad – “Social Capital”

#### Social Capital is severely reduced by incarceration

Roberts 15 (Dorothy E Roberts, American scholar, UPenn Professor, social justice advocate, The Social and Moral costs of Mass Incarceration in African American Communities, 2015, HeinOnline)

**Sociologists have explained the damage to social networks in terms of impeding the formation of social capital.** While human capital refers to an individual's own talents, **social capital is the capacity of individuals and groups to achieve important goals through their connections to others**. 66 **Social capital flourishes most in broad networks that include "weak ties" that enable people to interact with numerous other networks in simple ways**. 67 **Mass incarceration not only overwhelms the small, isolated kin networks prevalent in poor communities, but also makes it harder for residents to form expansive networks that are most adept at producing social capital.**

#### Reductions in social capital lead to a wealth of impacts: domestic violence, distrust in law enforcement, an inability to improve impoverished, minority communities and social violence which also fuel more incarceration

Roberts 15 (Dorothy E Roberts, American scholar, UPenn Professor, social justice advocate, The Social and Moral costs of Mass Incarceration in African American Communities, 2015, HeinOnline)

By straining social networks, mass incarceration also affects communities' social norms. Drawing upon social disorganization theory, researchers have shown that weakening infrastructure threatens a community's foundation of informal social control.84 Disorganized communities cannot enforce social norms because it is too difficult to reach consensus on common values and on avenues for solving common problems. Because informal social controls play a greater role in public safety than do formal state controls**, this breakdown can seriously jeopardize community safety**. Todd Clear found that while low levels of incarceration increase neighborhoods' public safety, "**when incarceration reaches a certain level in an area that already struggles for assets, the effects of imprisonment undermine the building blocks of social order**."'85 **The mass movement of adults between the neighborhood and prison impedes the ability of families and other socializing groups, such as churches, social clubs, and neighborhood associations, to enforce informal social controls**. 86 Clear concludes: Well-established theory and a solid body of evidence indicate that high levels of **incarceration concentrated in impoverished communities has a destabilizing effect on community life, so that the most basic underpinnings of informal social control are damaged** .... This, in turn, reproduces the very dynamics that sustain crime. 87 Legal scholars have used social norm theory to augment the traditional economic conception of deterrence by recognizing that **individuals' decisions to commit crimes are influenced by social context as well as by the price of crime**. 88 **Criminal behavior is shaped by individuals' perceptions of their neighbors' values, beliefs, 'and' conduct**. According to these theorists, perceptions of community norms of orderliness in particular have an impact on residents' willingness to break the law. "Norms of order are critical to keeping social influence pointed away from, rather than toward, criminality," writes Dan Kahan.89 Social norm theorists highlight the role the law plays in shaping these social influences on criminal and law-abiding behavior. The state can discourage crime by producing the right kind of social meaning through the regulation of social norms. When government authorities enforce norms of orderliness they signal to residents that the community values basic norms and is in control of the environment, thereby influencing citizens to refrain from committing serious crimes. Social norm theorists make two kinds of arguments with respect to mass incarceration and state norm enforcement. First, they argue that **mass imprisonment is ultimately counterproductive**. Because of its impact on community norms, writes Tracey Meares, "the inevitable consequence of the current drug law enforcement strategy undermines rather than enhances the deterrent potential of long sentences." 90 Social norm theorists also rely on the social influence conception of deterrence to advocate law enforcement strategies that avoid the need for long prison sentences. Some argue that measures that maintain visible order in communities, such as New York City's quality-of-life initiative and Chicago's gang-loitering ordinance, reduce crime more effectively than costly imprisonment for violent offenses.91 Another explanation of **the link between social control and violent crime focuses on neighborhood cooperation rather than neighborhood disorder.** Using data from a 1995 survey of Chicago neighborhoods, Felton Earls, Stephen Raudenbush, and Robert Sampson found that the "collective efficacy" of residents-their ability and willingness to take joint action for the common good-was associated with reduced violence. 92 Removing small numbers of disruptive residents probably facilitates neighborhood cooperation. **By weakening beneficial social networks, however, high levels of imprisonment may ultimately reduce neighbors' collective efficacy that keeps violence in check**. A key component of the criminogenic dynamic of mass incarceration is the negative view of the justice system it generates. Social scientists have theorized, based on social control research, **that people who live in neighborhoods with high prison rates tend to feel a strong distrust of formal sanctions, less obligation to obey the law, and less confidence in the capacity of informal social control in their communities**. 93 When a sizeable portion of a community has been in prison, prison loses its stigma. Noting that "African Americans are far more likely to disapprove of the police, the courts, and severe penal sentences than are whites,"'94 Todd Clear and Dina Rose **tie distrust of the criminal justice system to "a kind of civic isolation, in which the workings of the state are seen as alien forces to be avoided rather than services to be employed.** '95 The erosion of trust gives people less stake in law-abiding behavior. It also makes victims of **crime reluctant to seek help from law enforcement, often leaving them little redress**. **This distrust of law enforcement has had a profound impact on strategies for combating domestic violence in African American communities**. **Feminist scholars increasingly question the wisdom of relying on criminal justice remedies for domestic abuse, especially in minority communities**. 96 **Given the history of police brutality against blacks, many black women are reluctant to enlist law enforcement to protect them**. 97 Moreover, criminal sanctions appear to have detrimental consequences for minority victims of abuse. One study shows that mandatory arrest in Milwaukee, while decreasing violence by employed, married, and white men, actually increased repeat violence by unemployed, unmarried, and African American men.98 **The authors concluded that the policy prevented thousands of acts -of violence against white women at the price of many more acts of violence against African American women.**

### Incarceration Bad – Recidivism

#### Juveniles who are sent to prison when they are younger are more likely to commit another crime when they are holder, leading to a high-crime environment.

Beauchamp 13 (Zack Beauchamp, Senior reporter on Vox, “STUDY: Throwing Kids in Jail Makes Crime Worse, Ruins Lives, Jun 17 2013, <https://thinkprogress.org/study-throwing-kids-in-jail-makes-crime-worse-ruins-lives-f67672a65637>)

More surprisingly, given that prison is supposed to deter crime, going to jail also made kids more likely to offend again. Young offenders who were incarcerated were a staggering 67 percent more likely to be in jail (again) by the age of 25 than similar young offenders who didn’t go to prison.Moreover, a similar pattern held true for serious crimes. Aizer and Doyle found that incarcerated youth were more likely to commit “homicide, violent crime, property crime and drug crimes” than those that didn’t serve time.

These findings are particularly troubling given that kids are often sent to the criminal justice system for relatively minor offenses. This phenomenon, dubbed the “[school-to-prison pipeline](http://thinkprogress.org/justice/2013/03/25/1764821/mississippi-school-district-agrees-stop-suspending-kids-for-dress-code-violations/),” involves the use of harsh, often criminal, punishment for bad school behavior and truancy, particularly in low-income and minority schools.

#### Incarceration leads to a never ending cycle of incarceration

Pounds 14 (Nekima Levy-Pounds, Lawyer, professor, activist, president of NAACP chapter, Par for the Course? Exploring the Impacts of Incarceration and Margianlization on Poor Black Men in the US, 2013, HeinOnline)

Given the wide array of challenges that poor **African-American men** face prior to incarceration, it is not surprising that these men **find it particularly difficult to successfully reenter society upon release from prison**. Recent reports indicate that roughly **90 percent of employers conduct criminal background checks on prospective employees**.'33 In many cases, even an arrest record that does not include a conviction could prevent a person from being hired. **These policies disproportionately impact poor African-American men and ultimately have the effect of increasing the likelihood that they will re-enter the revolving doors of the criminal justice system**: Twenty years ago, misdemeanor arrest and conviction records were papers kept in court storerooms and warehouses, often impossible to locate. Ten years ago they were computerized. Now they are instantly searchable on the Internet for $20 to $40 through commercial criminal-record database services. Employers, landlords, credit agencies, licensing boards for nurses and beauticians, schools, and bank snow routinely search these databases for background checks on applicants. **The stigma of criminal records can create barriers to employment and education for anyone, including whites and middle class people**. **Criminal drug arrest and conviction records can severely limit the life chances of the poor, the young, and especially young African Americans and Latinos.** In addition to the discrimination that occurs when people with criminal histories attempt to become gainfully employed, there are often statutory barriers that prevent those with criminal histories from working in certain industries and obtaining certain types of professional licenses.135 These barriers to successful reentry are generally known as collateral consequences. **Beyond barriers to employment, collateral consequences consist of bars to public and private housing, public benefits, and federal financial aid, to name a few.** Estimates indicate that more than 700,000 individuals are released from prisons each year, with **approximately 95 percent of prisoners set to return from prison at some point in their lives.**136 In many cases, **a return from prison is short-lived**, as studies show that roughly 70 percent of prisoners return to prison within three years of being released.137 **Many of those who are re-incarcerated are not necessarily re-imprisoned for commission of a new** **crime**. However, in many instances, they are re-incarcerated for technical parole violations such as being unable to find suitable employment and housing within an allotted time period.138 **For poor African-American men, the stakes continue to be high when they return from prison, as these men are more likely to be released into environments that almost certainly guarantee their return to the criminal justice system, namely because of a scarcity of jobs that pay a living wage and a lack of affordable housing in poor communities of color**.13 9 **Even in neighborhoods in which public housing is available, individuals who have committed a drug-related crime may be ineligible to reside in public housing.**14 0 These types of restrictions severely limit the options for those seeking to gain a new lease on life following a period of incarceration. **This leads to a seemingly never-ending cycle of incarceration followed by a brief period of release, to the detriment of the individual as well as his or her family and community. Tax payers also bear the brunt of this cycle, as it costs around $226,000 per year to incarcerate an individual.**

#### Incarceration increases the likelihood of recidivism

**Holman et al. 06** - Barry Holman and Jason Ziedenburg, Senior Associate of Research and Quality Assurance for the Department of Youth Rehabilitation Services of Washington, D.C. and the former Director of Research and Public Policy for the National Center on Institutions and Alternatives (“The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities,” Justice Policy Institute, http://www.justicepolicy.org/images/upload/06-11\_rep\_dangersofdetention\_jj.pdf)

A recent literature review of youth corrections shows that **detention has a profoundly negative impact on** young people’s **mental and physical well-being,** their **education, and** their **employment.** One psychologist found that for one-third of incarcerated youth diagnosed with depression, the onset of the depression occurred after they began their incarceration,6 and another suggests that poor mental health, and the conditions of confinement together conspire to make it more likely that incarcerated teens will engage in suicide and self-harm.7 Economists have shown that the **process of incarcerating youth will reduce their future earnings and their ability to remain in the workforce**, and could change formerly detained youth into less stable employees. Educational researchers have found that upwards of 40 percent of incarcerated youth have a learning disability, and they will face significant challenges returning to school after they leave detention. Most importantly, for a variety of reasons to be explored, there is credible and significant research that suggests that the experience of detention may make it more likely that youth will continue to engage in delinquent behavior, and that the **detention experience may increase the odds that youth will recidivate**, further compromising public safety.

### Incarceration Bad – Voter Rights

#### Incarceration/Prison denies the right to vote for prisoners

Newkirk 16 (Vann R. Newkirk, staff writer at the Atlantic, Polls for Prisons, 03-09-16, the Atlantic, https://www.theatlantic.com/politics/archive/2016/03/inmates-voting-primary/473016/)

For more than half a century, **the country’s plummeting voter turnout rate has been a cause of national concern and been vigorously debated**. **But most analyses of voter turnout fail to consider the large and growing number of noncitizens, prisoners, people on parole or probation, and ex-felons who have been disenfranchised by electoral laws**. By not doing so, they tend to misestimate the extent and sources of the overall decline in voter turnout in the United States (Manza and Uggen, 2006, pp. 176-177).11 Conventional accounts of growing political participation among African Americans based on national surveys, such as the CPS and the National Election Study, also appear to be off the mark. **The much heralded narrowing of the black-white gap in voter turnout in recent years likely is due not to rising voter turnout among blacks but to the exclusionary effects of high rates of incarceration and to declines in turnout among whites**. Claims that voter turnout among young black men reached record levels in the 2008 election and exceeded that of young white men for the first time do not hold up once the incarcerated population is factored in (Rosenfeld et al., 2011; Pettit, 2012, Chapter 5). The U.S. Census Bureau (2013, p. 3) recently reported that African Americans voted at a higher rate than whites in the 2012 presidential election. This was the first time blacks outvoted whites since the Census Bureau started publishing voting rates by eligible citizenship population in 1996. However, **the Census Bureau analysis did not consider the institutionalized population, which is composed primarily of people residing in correctional institutions and nursing homes**. **If the hundreds of thousands of African Americans who are incarcerated and therefore ineligible to vote were factored in, the turnout figures for blacks in the 2012 presidential election would have been substantially reduced, perhaps below the turnout rate for whites.**

#### With less prisoners incarcerated, they can vote and are able to avoid another disaster like the Trump presidency

Kozlowska 16 (Hannah Kozlowska, NY Times and Foreign Policy magazine journalist, What would happen if felons could vote in the US?, 10-06-16, Quartz, https://qz.com/784503/what-would-happen-if-felons-could-vote/)

**Researchers estimate felon and ex-felon turnout and voting choices by matching the voting patterns of populations that are similar to them in their gender, race, age, income, education, marital and employment status**. **Generally, they find that Democrats are most hurt by felony disenfranchisement—a belief held by politicians as well.** Nationally, **those who are imprisoned are disproportionately African-American, a crucial Democratic constituency. About 40% of all inmates are African-American, and an estimated 36% of all of those disenfranchised by a felony conviction are black**. This population is likely “going to be a largely urban, largely young demographic group, largely male,” said Weaver. While it’s unclear exactly how large of a share of all disenfranchised felons constitute Latinos, who [also generally prefer Democrats](http://www.pewhispanic.org/2014/11/07/hispanic-voters-in-the-2014-election/), we can assume it would be in the area of 20%, which is the share of Latinos in the current inmate population. The picture is more complicated for the white felon population, who are generally poor. The median income of white inmates [before they enter incarceration is $21,000](http://www.prisonpolicy.org/reports/income.html). And low-income white voters have voted for both major parties in the recent past. In 2008, 51% of white voters with an income below $50,000 chose John McCain. Between 2008 and 2012, there’s [been a significant pivot](http://www.people-press.org/2012/08/23/a-closer-look-at-the-parties-in-2012/) toward the GOP among low-income and less educated whites. All that being said, the share of disenfranchised felons and the racial distribution of inmates varies significantly from state to state, so potential outcomes of granting them the right to vote have to be considered on a state level. According to Uggen and Manza, **there’s a number of elections where Democrats have suffered as a result of felony disenfranchisement**. **They believe that because felons couldn’t vote, Republican candidates had a “small but clear” advantage over Democrats in every presidential and senatorial election cycle from 1972 to 2000, including races in Virginia, Georgia, Texas, Kentucky, and Wyoming**. The most notable, and most debated, is the 2000 election that put George W. Bush in the White House. He won over Democrat Al Gore by gaining Florida’s 25 electoral college votes by [537 votes in the popular election.](http://uselectionatlas.org/RESULTS/state.php?year=2000&fips=12) In 2000, Florida had more than 827,000 inmates and former felons who weren’t permitted to vote. Uggen and Manza estimate that 68.9% would have voted Democrat. They estimated the turnout at 27.2%. That would have given the Democrats an extra 155,025 votes and Gore would have won over Bush by almost 85,000 votes. Even if turnout among felons and inmates was just 13.1%, Gore would have scored enough extra votes to have won Florida and the presidential election. Not everyone agrees with Uggen and Manza. Traci Burch, political scientist and assistant professor at Northwestern University, [says that](http://link.springer.com/article/10.1007/s11109-010-9150-9) because Florida’s felon population was largely white, the majority would have voted for Bush, and the result of the election would have remain unchanged. The [discrepancy stems](https://www.washingtonpost.com/news/monkey-cage/wp/2015/12/02/ted-cruz-cited-this-research-when-he-said-most-violent-criminals-are-democrats-now-the-researchers-say-hes-wrong/) partly from the question mentioned above: Who would white felons vote for if they could? **Current polls say that black and Latino voters aren’t backing Donald Trump. He is attracting white, uneducated voters, but according to FiveThirtyEight, the polling website, only** [**12% of Trump voters have incomes below $30,000**](http://fivethirtyeight.com/features/the-mythology-of-trumps-working-class-support/). According to the [Pew Research Center](http://www.people-press.org/2016/09/13/2016-party-identification-detailed-tables/), the poorest white voters—the group that best matches the overall white prison population—are split evenly among Republicans and Democrats, with the majority (38%) registered as Independent. Uggen speculates that the partisan effect of felony disenfranchisement on this election could be “somewhat muted,” because of the poor whites’ shift to the GOP. Burch, who disagrees with Uggen and his colleagues about the effect of felony disenfranchisement in the past, points out that what matters is the proportion of them state by state. She [wrote in 2010](http://link.springer.com/article/10.1007/s11109-010-9150-9): “**The impact of disenfranchisement on future elections is uncertain not only because of the changing size of the disfranchised population, but also because of the changing demography**. Although most ex-felons are white in many states, recent cohorts of offenders have become more racially diverse. In Florida, for instance, while black men and women make up only 35% of the ex-felon population, 41% of people currently being supervised for felony convictions are black.” (35% refers to those who completed their sentences, and 41% to those in prison, probation or parole). She also notes that turnout could be higher with increased awareness: “To the extent that disfranchisement remains prominent on the public agenda, offenders may be mobilized to vote.” One thing is certain: **If felons were allowed to vote, they would be a force to be reckoned with in the 2016 election**. Florida and Iowa are among the battleground states this year with the strictest laws on voting by convicted felons. In Florida, as many as [1.5 million](http://www.miamiherald.com/news/politics-government/election/article95076927.html) people are disenfranchised because they were convicted of a felony. In Iowa, it’s about [56,000 individuals](http://www.desmoinesregister.com/story/news/politics/2016/06/30/iowa-supreme-court-upholds-ban-felons-voting-iowa/86525128/). In Wisconsin, it’s [more than 62,000](https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-wisconsin). All of those are significant shares of the states’ voting populations.

## Discrimination Advantage

### They Say: “Zero Tolerance means equal punishment”

#### Zero tolerance policies don’t prevent discrimination — black students are much more likely to be expelled

Nelson and Lind 15—Libby Nelson, education reporter for Vox and an expert on higher education policy. She has covered the subject for higher education’s two publications of record—Inside Higher Ed and The Chronicle of Higher Education, wrote about higher education for POLITICO Pro Education, founding reporter of Morning Education, a daily briefing newsletter, Dara Lind, Covering immigration and criminal justice for Vox.com, B.A. In Amthropology from Yale University, 2015. (“The school to prison pipeline, explained,” Justice Policy Institute, February 24th, Available Online at <http://www.justicepolicy.org/news/8775>, Accessed 07-30-2017)

Black students are suspended or expelled three times more frequently than white students. And while black children made up 16 percent of all enrolled children in 2011-12, according to federal data, they accounted for 31 percent of all in-school arrests.

The disparity begins in preschool: 48 percent of preschool children suspended more than once are black. And students with disabilities are also suspended more frequently than students without disabilities. This, too, can have a racial component. One 2014 study by a Columbia University researcher found that five-year-old boys whose fathers had been incarcerated were substantially less behaviorally "ready" for school than five-year-olds whose fathers hadn't been incarcerated - making them more likely to be placed in special-education classes for their behavioral disabilities.

Several studies have looked at the relationship between race, behavior, and suspension, and none have them have proven that black students misbehave at higher rates. A study in 2002 found that white students were more likely to be disciplined for provable, documentable offenses — smoking, vandalism, and obscene language — while black students were more likely to be disciplined for more subjective reasons, such as disrespect.

Schools with more black students tend to have higher rates of suspension, researchers have found. There's a 2010 study by researchers at Villanova University that showed the punitiveness of a school's discipline policy was positively correlated with the percentage of its students that were black. It wasn't correlated with students' rates of juvenile delinquency or drug use.

A landmark study of Texas discipline policies found that 97 percent of school suspensions were the choice of school administrators. Only 3 percent of students had broken rules that made suspension a required punishment, such as carrying a weapon to school. And those discretionary suspensions fell particularly hard on black students: they were 31 percent more likely to receive a discretionary suspension, even after controlling for 83 other variables.

Many discretionary suspensions and arrests are for tough-to-define offenses, like "insubordination" or "willful defiance," which can just mean a student has challenged the authority of a teacher or school administrator. In California, for example, 40 percent of all suspensions during the 2010-11 school year were for "willful defiance" — which a US Department of Education official defined in 2012 as "any behavior that disrupts a classroom." "Insubordination" was the most common cause of suspension in New York City public schools in 2013-14.

Unsurprisingly, there's a racial disparity in suspensions for nebulous offenses like these: in 2006-2007 (the last year data appears to be readily available) in New York City, 51 percent of students suspended for "profanity" were black, and 57 percent of students suspended for "insubordination." Even arrests by SROs are often for vague reasons: in New York in 2012, one of every six arrests in schools was for "resisting arrest" or "obstructing governmental administration" after the student had been in a conflict with an officer.

### They Say: “Squo Solves: Justice Department”

#### Justice Department reforms in the context of Texas and Tennessee—that’s not sufficient

#### Overturning precedent is necessary to create enforcement and curb circumvention

#### DOJ reforms are insufficient and won’t be pushed under a Trump presidency—we shouldn’t risk it.

Deruy 16 (Emily Deruy, writer for the Atlantic covering education and ed policy, December 20, 2016, “School Discipline in a Post-Obama World” The Atlantic, https://www.theatlantic.com/education/archive/2016/12/white-house-looks-to-cement-its-school-discipline-legacy/511190/, Accessed 7/28/17)

“Should” is the operative word: King and the Education Department have had little power to mandate discipline reform at the national level. While the department has been more active than many previous administrations in issuing guidelines and investigating discipline complaints through the civil-rights office, states and districts can still largely handle discipline according to their own rules. Whether the next administration continues to wield the civil-rights office that way isn’t clear, and Obama’s team will depart with plenty of cases still unfinished. Trump has spoken about moving the division over to the Justice Department, which is set to be led by Jeff Sessions, a Republican senator from Alabama. Sessions has questioned what he sees as a “complex system of federal regulations and laws,” and said he sees those regulations as factors in “the decline in civility and discipline in classrooms all over America.” How he would approach the issue as U.S. attorney general is unclear.

#### 4. DOJ reforms didn’t work

-responds to texas warrant in card

Thompson 16 (Laura Marie Thompson, writer and reporter for the Texas Observer, December 14, 2016, “In Texas, the School-to-Prison Pipeline is Still Going Strong” Texas Observer, <https://www.texasobserver.org/in-texas-the-school-to-prison-pipeline-is-still-going-strong/>, accessed 7/28/17)

Despite the Texas Legislature’s efforts to curb the school-to-prison pipeline, law enforcement still plays a major role in disciplining students for minor infractions, according to a new report from Texas Appleseed and Texans Care for Children. In 2013, the Legislature eliminated two Class C misdemeanors — Disruption of Class and Disruption of Transportation — but the proportion of “disorderly conduct” cases has risen, suggesting school police have pivoted to ticketing the same classroom misbehavior using a different offense. These charges put students in adult courtrooms, facing criminal records that can follow them into adulthood. Following the 2013 reforms, ticketing of Texas students dropped by 50 percent. But the number of disciplinary measures has since leveled off, leading to what the report refers to as a troubling “new normal.” Of the 72 school districts that Texas Appleseed and Texans Care for Children examined, officers arrested students an astonishing 29,000 times and issued more than 41,000 tickets for complaints from 2011 to 2015. Latino students were arrested and referred for juvenile probation 1.87 times more often than their white classmates; for black students, the rate was 2.86 times higher. The report, which tracked tickets, complaints, arrests and use of force incidents, found that students of color and children with special needs were disproportionately affected by law enforcement’s involvement in schools. Latino students were arrested and referred for juvenile probation 1.87 times more often than their white classmates; for black students, the rate was 2.86 times higher. “The over-representation of black and Latino youth in our arrest, complaint and probation and court referrals data is disturbing,” said Morgan Craven, director of Texas Appleseed’s School-to-Prison Pipeline Project. “We know from years of research that children of color are not more likely to misbehave than their peers, and yet they continue to be punished at disproportionately high rates. The current system of overly punitive school discipline results in discriminatory outcomes.” Those outcomes affect children in more ways than one. If a student is first arrested in high school, he or she is 50 percent more likely to drop out before graduation. After school, an arrest record can seriously impede a person’s ability to find housing, a job or access to social services like welfare. “Research shows that when students are pushed out of class and into court or juvenile probation, they are more likely to be involved with the justice system when they get older,” said Lauren Rose, director of youth justice policy at Texans Care for Children. “We must clarify the role of school police officers and provide schools better training and strategies to manage student behavior to keep kids on a path to success.” The report contains several other eye-opening findings: Texas school districts appear to spend more on police officers than counselors. Students with disabilities make up 24 percent of arrests, despite constituting only 9 percent of all enrollment. 46 percent of kids age 10-12 in probation programs were referred by their school. Students as young as age 6 are subject to use of force by school police.

### They Say: “DeVos Circumvents”

#### Durable fiat checks—anything else turns debate from a should question to a would question and the aff would never be able to win.

#### Court precedent key—it spills down and lower courts/other officials have to comply.

#### People will sue for noncompliance—Borrower Defense Rule case proves

Chappell 17 (Bill Chappell is a writer and producer who currently works on The Two Way, NPR's flagship news portal. In the past, he has edited and coordinated digital features for Morning Edition and Fresh Air, in addition to editing the rundown of All Things Considered. He frequently contributes to other NPR blogs, such as All Tech Considered and The Salt., July 6, 2017 “18 States Sue Betsy DeVos And Education Dept. Over Delay Of Borrower Defense Rule” NPR, <http://www.npr.org/sections/thetwo-way/2017/07/06/535776573/18-states-sue-betsy-devos-and-education-dept-over-delay-of-borrower-defense-rule>, Accessed 7/28/17)

Attorney generals from Massachusetts, New York and 16 other states filed suit against Education Secretary Betsy DeVos and her department Thursday, accusing DeVos of breaking federal law and giving free rein to for-profit colleges by rescinding the Borrower Defense Rule. The filing by 18 states and Washington, D.C., asks a U.S. District Court to declare the Education Department's delay of the rule unlawful and to order the agency to implement it. The states say they have pursued "numerous costly and time-intensive investigations and enforcement actions against proprietary and for-profit schools" that violated consumer protection laws. The Borrower Defense Rule was adopted by the Obama administration last November and had been set to take effect this month. It was created to make it "simpler for students at colleges found to be fraudulent to get their loans forgiven," as NPR's Ed team has reported. Large amounts of money are potentially at stake. As the states' complaint notes, "taxpayers invested $32 billion in for-profit schools in the 2009-10 academic year, more than the annual budget of the U.S. Department of Justice and the U.S. Department of State during that time period."

#### DeVos won’t circumvent — she ducked on the issue of school discipline

Ujifusa 7/27 — Andrew Ujifusa is an @educationweek reporter and co-author of the @PoliticsK12 blog. // *“Lawmakers Ask Betsy DeVos to Clamp Down on 'Zero Tolerance' Discipline”* // [http://blogs.edweek.org/edweek/campaign-k-12/2017/07/lawmakers\_ask\_betsy\_devos\_zero\_tolerance\_discipline\_schools.html //](http://blogs.edweek.org/edweek/campaign-k-12/2017/07/lawmakers_ask_betsy_devos_zero_tolerance_discipline_schools.html%20//) MW

More than 60 Democratic lawmakers in Congress have requested more information from Secretary of Education Betsy DeVos about how she plans to support reductions in school discipline policies that remove students from classrooms and schools. In the Wednesday letter, the members of Congress stress to DeVos that limiting out-of-school suspensions and harsh, "zero tolerance" disciplinary approaches lead to a better atmosphere for minority students, while continuing such practices disproportionately impacts those students. They want DeVos to use her oversight power to make sure states' Every Student Succeeds Act plans support other approaches to discipline, and they want to know what, if any, guidance she plans to provide to states on the issue. DeVos hasn't really weighed in decisively with her thoughts on school discipline. In June, she ducked a question about the disproportionate impact of some disciplinary practices on certain groups of students. (We asked the U.S. Department of Education for any response to the letter, and we'll update this post if we hear back.) But it was an area where the Obama administration was relatively active. Obama Education Department officials, for example, called for school discipline practices to be more evenhanded. And they highlighted data about how minority students have been on the receiving end of more serious forms of discipline. An Education Week analysis released in January showed that black students are arrested at school at disproportionate rates. "We believe it is well within the scope of the Department's authority to continue taking steps towards reducing exclusionary and aversive discipline practices in schools, and that the Department has an obligation to take such steps under the Every Student Succeeds Act," the lawmakers wrote to DeVos. Instead, the lawmakers say that DeVos should encourage approaches such as positive behavioral interventions and supports, trauma-informed care, and de-escalation techniques. Some analysts, however, have questioned the Obama administration's approach. A March study of New York City schools written by Max Eden for the Manhattan Institute, for example, found that school climate might suffer if there's a shift away from suspensions. "It is often assumed that reducing suspensions will help those students without imposing negative spillover effects on their better-behaved peers. However, research demonstrates that disruptive peer behavior can have significant negative effects on students," Eden wrote.

### They Say: “No Solve – Teacher Access Preschools”

#### K-12 is key—our evidence says most people drop out in middle school/high school, and we need to deter repeated use of zero tolerance policies.

#### Preschool reform is an effect of the plan—the aff sets a precedent which applies to preschools

### They Say: “Util”

#### Reject util-calculating lesser evils results in the more extreme systemic violence and state of exceptions.

**Weizman, ‘11**

(Eyal, London University spatial and visual cultures professor, The least of all possible evils, pg 8-10)

The theological origins of the lesser evil argument still cast a long shadow on the present. In fact the idiom has become so deeply ingrained, and is invoked in such a staggeringly diverse set of contexts - from individual situational ethics and international relations, to attempts to govern the economics of violence in the context of the war on terror' and the efforts of human rights and humanitarian activists to maneuver through the paradoxes of aid - that it seems to have altogether taken the place previously reserved for the term "˜good'. Moreover, the very evocation of the "˜good' seems to everywhere invoke the utopian tragedies of modernity, in which evil seemed lurking in a horrible manichaeistic inversion. If no hope is offered in the future, all that remains is to insure ourselves against the risks that it poses, to moderate and lessen the collateral effects of necessary acts, and tend to those who have suffered as a result. In relation to the "˜War on terror, the terms of the lesser evil were most clearly and prominently articulated by former human rights scholar and leader of Canada's Liberal Party Michael Ignatieff. In his book The Lesser Evil Ignatieff suggested that in "˜balancing liberty against security' liberal states establish mechanisms to regulate the breach of some human rights and legal norms, and allow their security services to engage in forms of extra juridical violence - which he saw as lesser evils - in order to fend off or minimize potential greater evils, such as terror attacks on civilians of western states. If governments need to violate rights in a terrorist emergency, this should be done, he thought, only as an exception and according to a process of adversarial scrutiny. "˜Exceptions', Ignatieff states, "˜do not destroy the rule but save it, provided that they are temporary, publicly justified, and deployed as a last resort. The lesser evil emerges here as a pragmatic compromise a “tolerated sin” that functions as the very justification for the notion of exception. State violence in this model takes part in a necro-economy in which various types of destructive measure are weighed in a utilitarian fashion, not only in relation to the damage they produce, but to the harm they purportedly prevent and even in relation to the more brutal measures they may help restrain. In this logic, the problem of contemporary state violence resembles indeed an all-too-human version of the mathematical minimum problem of the divine calculations previously mentioned, one tasked with determining the smallest level of violence necessary to avert the greatest harm. For the architects of contemporary war this balance is trapped between two poles: keeping violence at a low enough level to limit civilian suffering, and at a level high enough to bring a decisive end to the war and bring peace. More recent works by legal scholars and legal advisers to states and militaries have sought to extend the inherent elasticity of the system of legal exception proposed by Ignatieff into ways of rewriting the laws of armed conflict themselves. Lesser evil arguments are now used to defend anything from targeted assassinations and mercy killings, house demolitions, deportation, torture, to the use of (sometimes) non~ lethal chemical weapons, the use of human shields, and even "˜the intentional targeting of some civilians if it could save more innocent lives than they cost. In one of its more macabre moments it was suggested that the atomic bombings of Hiroshima might also be tolerated under the defense of the lesser evil. Faced with a humanitarian A-bomb, one might wonder what, in fact, might come under the definition of a greater evil. Perhaps it is time for the differential accounting of the lesser evil to replace the mechanical bureaucracy of the "banality of evil' as the idiom to describe the most extreme manifestations of violence. Indeed, it is through this use of the lesser evil that societies that see themselves as democratic can maintain regimes of occupation and neo-colonization. Beyond state agents, those practitioners of lesser evils, as this book claims, must also include the members of independent nongovernmental organizations that make up the ecology of contemporary war and crisis zones. The lesser evil is the argument of the humanitarian agent that seeks military permission to provide medicines and aid in places where it is in fact the duty of the occupying military power to do so, thus saving the military limited resources. The lesser evil is often the justification of the military officer who attempts to administer life (and death) in an "˜enlightened' manner; it is sometimes, too, the brief of the security contractor who introduces new and more efficient weapons and spatio-technological means of domination, and advertises them as "˜humanitarian technology'. In these cases the logic of the lesser evil opens up a thick political field of participation bringing together otherwise opposing fields of action, to the extent that it might obscure the fundamental moral differences between these various groups. But, even according to the terms of an economy of losses mid gains, the concept of the lesser evil risks becoming counterproductive: less brutal measures are also those that may be more easily naturalized, accepted and tolerated - and hence more frequently used, with the result that a greater evil may be reached cumulatively

#### Ignoring the institutionalized violence against trans- people creates complacency with invisible wars and everyday acts of violence that create the conditions for large magnitude impacts

Scheper-Hughes and Bourgois, ‘4

(Prof of Anthropology @ Cal-Berkely; Prof of Anthropology @ UPenn) (Nancy and Philippe, Introduction: Making Sense of Violence, in Violence in War and Peace, pg. 19-22)

This large and at first sight “messy” Part VII is central to this anthology’s thesis. It encompasses everything from the routinized, bureaucratized, and utterly banal violence of children dying of hunger and maternal despair in Northeast Brazil (Scheper-Hughes, Chapter 33) to elderly African Americans dying of heat stroke in Mayor Daly’s version of US apartheid in Chicago’s South Side (Klinenberg, Chapter 38) to the racialized class hatred expressed by British Victorians in their olfactory disgust of the “smelly” working classes (Orwell, Chapter 36). In these readings violence is located in the symbolic and social structures that overdetermine and allow the criminalized drug addictions, interpersonal bloodshed, and racially patterned incarcerations that characterize the US “inner city” to be normalized (Bourgois, Chapter 37 and Wacquant, Chapter 39). Violence also takes the form of class, racial, political self-hatred and adolescent self-destruction (Quesada, Chapter 35), as well as of useless (i.e. preventable), rawly embodied physical suffering, and death (Farmer, Chapter 34). Absolutely central to our approach is a blurring of categories and distinctions between wartime and peacetime violence. Close attention to the “little” violences produced in the structures, habituses, and mentalites of everyday life shifts our attention to pathologies of class, race, and gender inequalities. More important, it interrupts the voyeuristic tendencies of “violence studies” that risk publicly humiliating the powerless who are often forced into complicity with social and individual pathologies of power because suffering is often a solvent of human integrity and dignity. Thus, in this anthology we are positing a violence continuum comprised of a multitude of **“small wars and invisible genocides”** (see also Scheper- Hughes 1996; 1997; 2000b) **conducted in** the normative social spaces of public **schools, clinics**, emergency rooms, hospital wards, nursing homes, **courtrooms**, public registry offices, **prisons, detention centers**, and public morgues. The violence continuum also refers to **the ease with which humans are capable of reducing the socially vulnerable into expendable nonpersons** and assuming the license - even the duty - to kill, maim, or soul-murder. We realize that in referring to a violence and a genocide continuum we are flying in the face of a tradition of genocide studies that argues for the absolute uniqueness of the Jewish Holocaust and for vigilance with respect to restricted purist use of the term genocide itself (see Kuper 1985; Chaulk 1999; Fein 1990; Chorbajian 1999). But we hold an opposing and alternative view that, to the contrary, it is absolutely necessary to make just such existential leaps in purposefully linking violent acts in normal times to those of abnormal times. Hence the title of our volume: Violence in War and in Peace. If (as we concede) there is a moral risk in overextending the concept of “genocide” into spaces and corners of everyday life where we might not ordinarily think to find it (and there is), an even greater risk lies in failing to sensitize ourselves, in misrecognizing protogenocidal practices and sentiments daily enacted as normative behavior by “ordinary” good-enough citizens. Peacetime crimes, such as prison construction sold as economic development to impoverished communities in the mountains and deserts of California, or the evolution of the criminal industrial complex into the latest peculiar institution for managing race relations in the United States (Waquant, Chapter 39), constitute the “small wars and invisible genocides” to which we refer. This applies to African American and Latino youth mortality statistics in Oakland, California, Baltimore, Washington DC, and New York City. These are “invisible” genocides not because they are secretedaway orhidden from view, but quite the opposite**.** As Wittgenstein observed**,** the things that are hardest to perceive are those which are right before our eyes and therefore taken for granted**.** In this regard, Bourdieu’s partial and unfinished theory of violence (see Chapters 32 and 42) as well as his concept of misrecognition is crucial to our task. By including the normative everyday forms of violence hidden in the minutiae of “normal” social practices - in the architecture of homes, in gender relations, in communal work, in the exchange of gifts, and so forth - Bourdieu forces us to reconsider the broader meanings and status of violence, especially the links between the violence of everyday life and explicit political terror and state repression, Similarly, Basaglia’s notion of “peacetime crimes” - crimini di pace - imagines a direct relationship between wartime and peacetime violence. Peacetime crimes suggests the possibility that war crimes are merely ordinary, everyday crimes of public consent applied systematic- ally and dramatically in the extreme context of war. Consider the parallel uses of rape during peacetime and wartime, or the family resemblances between the legalized violence of US immigration and naturalization border raids on “illegal aliens” versus the US government- engineered genocide in 1938, known as the Cherokee “Trail of Tears.” Peacetime crimes suggests that everyday forms of state violence make a certain kind of domestic peace possible. Internal “stability” is purchased with the currency of peacetime crimes, many of which take the form of professionally applied “strangle-holds.” Everyday forms of state violence during peacetime make a certain kind of domestic “peace” possible. It is an easy-to-identify peacetime crime that is usually maintained as a public secret by the government and by a scared or apathetic populace. Most subtly, but no less politically or structurally, the phenomenal growth in the United States of a new military, postindustrial prison industrial complex has taken place in the absence of broad-based opposition, let alone collective acts of civil disobedience. The public consensus is based primarily on a new mobilization of an old fear of the mob, the mugger, the rapist, the Black man, the undeserving poor. How many public executions of mentally deficient prisoners in the United States are needed to make life feel more secure for the affluent? What can it possibly mean when incarceration becomes the “normative” socializing experience for ethnic minority youth in a society, i.e., over 33 percent of young African American men (Prison Watch 2002). In the end it is essential that we recognize the existence of a genocidal capacity among otherwise good-enoughhumansand that we needto exercisea defensivehypervigilance to the less dramatic, permitted, and even rewardedeveryday acts of violence that render participation in genocidal acts and policies possible (under adverse political or economic conditions), perhaps more easily than we would like to recognize. Under the violence continuum we include, therefore, all expressions of radical social exclusion, dehumanization, depersonalization, pseudospeciation, and reification which normalize atrocious behavior and violence toward others. A constant self-mobilization for alarm, a state of constant hyperarousal is, perhaps, a reasonable response to Benjamin’s view of late modern history as a chronic “state of emergency” (Taussig, Chapter 31). We are trying to recover here the classic anagogic thinking that enabled Erving Goffman, Jules Henry, C. Wright Mills, and Franco Basaglia among other mid-twentieth-century radically critical thinkers, to perceive the symbolic and structural relations, i.e., between inmates and patients, between concentration camps, prisons, mental hospitals, nursing homes, and other “total institutions.” Making that decisive move to recognize the continuum of violence allows us to see the capacity and the willingness - if not enthusiasm - of ordinary people, the practical technicians of the social consensus, to enforce genocidal-like crimes against categories of rubbish people. **There is no primary impulse out of which mass violence** and genocide are **born, it is ingrained in** the common sense of **everyday** social **life**. The mad, the differently abled, the mentally vulnerable have often fallen into this category of the unworthy living, as have the very old and infirm, the sick-poor, and, of course, the despised racial, religious, sexual, and ethnic groups of the moment. Erik Erikson referred to “pseudo- speciation” as the human tendency to classify some individuals or social groups as less than fully human - a prerequisite to genocide and one that is carefully honed during the unremark- able peacetimes that precede the sudden, “seemingly unintelligible” outbreaks of mass violence. Collective denial and misrecognition are prerequisites for mass violence and genocide. But so are formal bureaucratic structures and professional roles. The practical technicians of everyday violence in the backlands of Northeast Brazil (Scheper-Hughes, Chapter 33), for example, include the clinic doctors who prescribe powerful tranquilizers to fretful and frightfully hungry babies, the Catholic priests who celebrate the death of “angel-babies,” and the municipal bureaucrats who dispense free baby coffins but no food to hungry families. Everyday violence encompasses the implicit, legitimate, and routinized forms of violence inherent in particular social, economic, and political formations. It is close to what Bourdieu (1977, 1996) means by “symbolic violence,” the violence that is often “nus-recognized” for something else, usually something good. Everyday violence is similar to what Taussig (1989) calls “terror as usual.” All these terms are meant to reveal a public secret - the hidden links between violence in war and violence in peace, and between war crimes and “peace-time crimes.” Bourdieu (1977) finds domination and violence in the least likely places - in courtship and marriage, in the exchange of gifts, in systems of classification, in style, art, and culinary taste- the various uses of culture. Violence, Bourdieu insists, is everywhere in social practice. It is misrecognized because its very everydayness and its familiarity render it invisible. Lacan identifies “rneconnaissance” as the prerequisite of the social. The exploitation of bachelor sons, robbing them of autonomy, independence, and progeny, within the structures of family farming in the European countryside that Bourdieu escaped is a case in point (Bourdieu, Chapter 42; see also Scheper-Hughes, 2000b; Favret-Saada, 1989). Following Gramsci, Foucault, Sartre, Arendt, and other modern theorists of power-vio- lence, Bourdieu treats direct aggression and physical violence as a crude, uneconomical mode of domination; it is less efficient and, according to Arendt (1969), it is certainly less legitimate. While power and symbolic domination are not to be equated with violence - and Arendt argues persuasively that violence is to be understood as a failure of power - violence, as we are presenting it here, is more than simply the expression of illegitimate physical force against a person or group of persons. Rather, we need to understand violence as encompassing all forms of “controlling processes” (Nader 1997b) that assault basic human freedoms and individual or collective survival. Our task is to recognize these gray zones of violence which are, by definition, not obvious. Once again, the point of bringing into the discourses on genocide everyday, normative experiences of reification, depersonalization, institutional confinement, and acceptable death is to help answer the question: What makes mass violence and genocide possible? In this volume we are suggesting that mass violence is part of a continuum, and that it is socially incremental and often experienced by perpetrators, collaborators, bystanders - and even by victims themselves - as expected, routine, even justified. The preparations for mass killing can be found in social sentiments and institutions from the family, to schools, churches, hospitals, and the military. They **harbor the** early “warning signs” (Charney 1991), the “**priming**” (as Hinton, ed., 2002 calls it), or the “genocidal continuum” (as we call it) **that push social consensus toward devaluing** certain forms of human **life** and lifeways from the refusal of social support and humane care **to** vulnerable **“social parasites”** (the nursing home elderly, “welfare queens,” undocumented immigrants, drug addicts) **to the militarization of everyday life** (super-maximum-security prisons, capital punishment; the technologies of heightened personal security, including the house gun and gated communities; and reversed feelings of victimization).

#### You should prioritize ethics over utilitarianism – life itself only has value if we also are allotted the full dignity and respect that comes from individual rights and freedoms

Shue ‘89

Henry Shue, Professor of Ethics and Public Life, Princeton University, 89 “Nuclear Deterrence and Moral Restraint,” pp. 141-2

Given the philosophical obstacles to resolving moral disputes, there are at least two approaches one can take in dealing with the issue of the morality of nuclear strategy. One approach is to stick doggedly with one of the established moral theories constructed by philosophers to “rationalize” or “make sense of” everyday moral intuitions, and to accept the verdict of the theory, whatever it might be, on the morality of nuclear weapons use. A more pragmatic alternative approach assumes that trade-offs in moral values and principles are inevitable in response to constantly changing threats, and that the emergence of novel, unforeseen challenges may impel citizens of Western societies to adjust the way they rank their values and principles to ensure that the moral order survives. Nuclear weapons are putting just such a strain on our moral beliefs. Before the emergence of a nuclear-armed communist state capable of threatening the existence of Western civilization, the slaughter of millions of innocent human beings to preserve Western values may have appeared wholly unjustifiable under any possible circumstances. Today, however, it may be that Western democracies, if they are to survive as guardians of individual freedom, can no longer afford to provide innocent life the full protection demanded by Just War morality. It might be objected that the freedoms of Western society have value only on the assumption that human beings are treated with the full dignity and respect assumed by Just War theory. Innocent human life is not just another value to be balanced side by side with others in moral calculations. It is the raison d’etre of Western political, economic, and social institutions. A free society based on individual rights that sanctioned mass slaughter of innocent human beings to save itself from extinction would be “morally corrupt,” no better than soviet society, and not worth defending. The only morally right and respectable policy for such a society would be to accept destruction at the hands of tyranny,

### They Say: “No Solve – Empirics”

#### Litigation solves enforcement

Kim et al 10 (Catherine Y. Kim, Catherine Kim is an Associate Professor of Law at the University of North Carolina Law School, where she teaches Immigration & Citizenship Law, Civil Procedure, Administrative Law, and Civil Rights Law. Her research focuses on the institutional competence of courts and administrative agencies as engines of social justice reform, particularly with respect to immigrants and communities of color. Daniel J. Losen, Daniel J. Losen is director of the Center for Civil Rights Remedies, an initiative at the Civil Rights Project/Proyecto Derechos Civiles (CRP)., Damon T. Hewitt, Damon T. Hewitt Is currently Senior Advisor in the U.S. Programs division of Open Society Foundations. Previously, he was Director of the Education Practice Group at the NAACP Legal Defense and Educational Fund (LDF). Damon initially joined LDF’s New York office as a Skadden Fellow in October 2001. “The School-to-Prison Pipeline: Structuring Legal Reform” p. 131, Accessed 7/28/17)

Perhaps the most effective method for addressing the back end of the School- to-Prison Pipeline is to keep youth out of the courts in the first instance. As discussed more fully in the preceding chapter, a growing number of youth in juvenile court are referred to law enforcement for conduct fairly typi- cal of adolescent behavior that, a generation ago, would have been handled informally by school administrators. As a result, juvenile courts spend more time addressing school behavior issues than in generations past. Attempts to address these trends may involve civil challenges to limit school-based arrests, to curb the circumvention of special education laws through court referrals, and to address the racial disparities in juvenile referrals. l. CIVIL CHALLENGES To SCHOOL-BASED ARRESTS The preceding chapter discusses strategies for challenging the criminal- ization of school misconduct. that is, facial challenges to laws underlying school-based arrests. Impact litigators should probe additional avenues. For example, in New York, the Family Court Act prohibits officers from taking children aged fifteen or younger into custody for noncriminal violations, for example. disorderly conduct or loitering. which do not amount to misde- meanors or felonies.“ Data disclosed pursuant to a Freedom of Information Act request suggest, however, that school resource officers in New York City schools frequently arrest young children for such minor offenses.“ Where a jurisdiction provides similar statutory limits to the arrests of children. advo- cates might consider bringing structural reform litigation to enforce them. In other jurisdictions, where there are no such statutory provisions but where there are contractual agreements or memoranda of understanding between the police department and public school district that limit the cir- cumstances under which children may be arrested at school, advocates might seek to enforce the terms of these agreements through litigation. Adminis- trators from the juvenile court, the police department, and the public school district in Clayton County, Georgia, have entered into such a cooperative agreement to limit the arrest of schoolchildren for common public-order offenses such as affray and disorderly conduct. Where no such agreements or statutory protections exist, nonlitigation tools remain available, such as research and public education on patterns of police referrals for minor misbehavior that may indicate a school’s failure to supervise children, failure to implement programs to address discipline issues, or inappropriate delegation of disciplinary authority. Alternatively, advocates might seek the passage of legislation or the entry of contractual agreements between police and schools to limit school-based arrests.

#### Recognizing a due process right solves circumvention

Friedman and Solow 2013 --Jacob D. Fuchsberg Professor of Law and Affiliated Professor of Politics at NYU, JD from Georgetown AND Clerk to SCOTUS Justice Stephen Breyer, JD from Yale. Friedman, Barry and Sara Solow. “The Federal Right to an Adequate Education.” George Washington Law Review 81.1 (2013): 92-156.

As we explain briefly below, however, this notion of instant and absolute judicial power does not reflect the history of education reform in the states. The judicial articulation of education as a constitutional right has had a significant positive impact on education reform, but often in more subtle ways than might be imagined for decisions involving constitutional rights. In many states experiencing judicial action in education, court decisions have served as a goad or a prod to political actors, motivating them to pass laws and enact policy reforms that move the reality in the schoolhouses towards society's fundamental values about what children should be able to achieve. 3 39 But at the same time, the process of compliance has necessarily tempered judicial declarations. State supreme court judges have found that political opposition movements reacting to court decisions, through "backlash," have limited what can be accomplished through education litigation. Judges have their say, but so too do political actors. Still, and finally, constitutionalizing a right provides a constitutional floor, safeguarding education from cuts during times of economic difficulty.

## Add-Ons

### 2AC — Dropout Factories

#### Reducing the number of high school dropouts stimulates the US economy

Koebler 11 (Jason Koebler is a freelance writer based in New York City. “Study: Reducing Dropout Rate Would Pump Billions Into Economy” https://www.usnews.com/education/blogs/high-school-notes/2011/04/04/study-reducing-dropout-rate-would-pump-billions-into-economy)

High school dropouts could be costing the nation billions of dollars, according to a new report by the Alliance for Excellent Education. That's because high school dropouts earn less money, pay fewer taxes, and spend less of the money they earn than those who have received at least a high school diploma. The study estimates that if half of the 1.3 million students who dropped out from the class of 2010 had graduated, those students would earn about $7.6 billion more annually compared to their likely earnings without a high school diploma. The additional spending would generate about 54,000 additional jobs and would add approximately $713 million annually in state tax revenues. The project was spearheaded by former West Virginia Governor Bob Wise, now the organization's president, who has championed the cause of education reform beyond those who have children in the public school system." My goal is if I can't move you [on education reform] on equity, then I'm going to try to move you on the economics," Wise says. "I want to show them why that high school 15 miles away has a direct impact on everyone's economic future." [Learn how some schools are improving graduation rates.] Wise says he hopes the report will influence lawmakers and state executives as they deal with difficult budget decisions. "Lawmakers at the federal and state level have critical decisions to make, [including] major budget cuts," Wise says. "The important thing to recognize is cutting deficits is important, but you get more bang for your buck by cutting dropouts. Cutting dropouts is even more important than cutting deficits." One might assume that with more high school graduates, the value of a diploma would decrease, but Wise says that's not the case. He points to the 1944 G.I. Bill that allowed many returning World War II veterans to get a college or professional education. "The result of that bill was not a shrinking pie, but an expanding one," he says. "And this is not the same economy we had 40 years ago, which was an industrial economy with loads of averagely skilled people. We live in an information age economy, and there is only one currency: education.

#### Dropout factories stifle the nation’s economy and competitiveness

**Carlson 14** -- <Carolyn Carlson, associate Professor of Education at Washburn University, *SRATE Journal*, v23 n2 p1-7 Sum 2014>

**Almost seven thousand students drop out of high school every day** (Alliance for Excellent Education, 2010b**). It is estimated that one in ten high schools in the United States is considered a “dropout factory” – a term given to a high school where no more than 60% of the students who begin attending the school as freshman complete their senior year** (Zuckerbrod, 2007). The most common reason these students drop out of high school is that their poor literacy skills prevent them from keeping up with the increasingly demanding high school curriculum (Allington, 1994; Biancarosa & Snow, 2004; Kamil, 2003; Snow & Biancarosa, 2003). Due to the large number of students who fail to complete high school, there are an estimated 1.3 million students who should have earned a diploma with the Class of 2010, but dropped out before doing so (Alliance for Excellent Education, 2011c). “By dropping out, these individuals significantly diminish their chances to secure a good job and a promising future” (Alliance for Excellent Education, 2010b, p.1). The Common Core State Standards (CCSS) (National Governors Association Center for Best Practices, 2010) set forth requirements for middle and secondary teachers to develop instructional practices that enhance the literacy skills of their students so that they are more prepared to meet the demands of school. Dropout Rates and the Impact on the Economy

**Among developed countries, the United States ranks 21st in high school graduation rates** (Alliance for Excellent Education, 2011c). The lack of literacy skills needed to be successful as students progress through school is one factor contributing to the increasing dropout rate in the United States.

The following statistics on students who fail to graduate from high school highlight this ongoing problem:

**Approximately 1.2 million students who will not graduate from high school with their peers as scheduled** (Alliance for Excellent Education, 2010b).  In the southeast region of the country, 52 of Miami’s 106 high schools (49%) are considered dropout factories; 19 of Memphis’ 58 high schools (33%) are considered dropout factories; 5 of Louisville’s 36 high schools (14%) are considered dropout factories; 14  of Charlotte’s 52 high schools (27%) are considered dropout factories; 42 of Atlanta’s 149 high schools (28%) are considered dropout factories; 10 of Nashville’s 57 high schools (18%) are considered dropout factories (Alliance for Excellent Education, 2010a).  Low attendance or a failing grade can identify future dropouts, and in some cases as early as sixth grade (Jerald, 2006).  Ninth grade serves as a bottleneck for many students who begin their first year only to find that their academic skills are insufficient for high school-level work (Balfanz & Legters, 2006).  **The total number of high school graduates is projected to decrease three percent between the thirteen year period between 2007-2008 and 2020-2021** (NCES, 2011b).  The 7,000 students who drop out of high school each day leave the environment of the school and enter the community as workers with often inadequate literacy skills. This has a detrimental impact on the economy because not only do high school dropouts tend to earn less and contribute less, but they also tend to cost more in expenses.

Lower local, state, and national earnings are a consequence of the high dropout rate. The unemployment rate among high school

dropouts is three times higher than those holding a bachelor’s degree (Alliance for Excellent Education, 2011b). **In 2012, the unemployment rate for high school dropouts (age 25 and older) was 12.4%, but was only 8.3% for individuals who earned a regular high school diploma but did not attend college** (U.S. Department of Labor, 2013). **Further, individuals without a high school diploma that are able to secure a job earn less than their peers with diplomas.** A high school dropout in Texas earns approximately $9,000 less per year than a high school graduate (Alliance for Excellent Education, 2011a). **If the students who dropped out of the Class of 2011 had graduated, the nation’s economy would likely benefit from nearly $154 billion in additional income over the course of their lifetimes** (Alliance for Excellent Education, 2011c).

Lower local, state, and national tax revenues are a consequence of the high dropout rate. A high school dropout contributes about $60,000 less in taxes over his/her lifetime (Alliance for Excellent Education, 2006a). If the graduation rate in Oklahoma increased to 90%, there would be an additional $6.2 million in annual state and local tax revenues (Alliance for Excellent Education, 2013b). Even one “class” of dropouts has a significant impact on the economy. If half of the students who dropped out of the Class of 2008 in the Dallas-Fort Worth area had graduated, the increase in wages and spending would have grown the state and local tax revenues by $19 million during an average year (Alliance for Excellent Education, 2010a).

**Lower local, state, and national spending is a consequence of the high dropout rate.** Nationwide, if an additional 666,000 students had graduated with the Class of 2012, the national economy would have benefitted from an additional $6.1 billion in annual spending (Alliance for Excellent Education, 2013a).

**If the graduation rate in Alabama increased to 90%, there would be an increase of $241 million in home sales and $15 million in auto sales** (Alliance for Excellent Education, 2013b). Unless high schools are able to graduate their students at higher rates, nearly 12 million students will likely drop out over the next decade, resulting in a loss to the nation of $1.5 trillion (Alliance for Excellent Education, 2011c).

Higher local, state, and national costs are a consequence of the high dropout rate. Each dropout, over his/her lifetime costs the nation approximately $260,000 (Amos, 2008). These costs include government health care, food stamps, housing, etc. as well as costs associated with criminal activity. Nearly

**13 million students will drop out over the next decade, costing the nation $3 trillion** (Alliance for Excellent Education, 2006a). **The United States would save between $7.9 and $10.8 billion annually by improving educational attainment among all recipients of government assistance such as food stamps, housing, etc.** (Alliance for Excellent Education, 2006a). If all students in the Class of 2006 in the state of Florida had earned diplomas, the state would have saved $1.4 billion in health care costs (Alliance for Excellent Education, 2006b).

The number of dropouts across the southeastern United States and the nation has a negative impact on the economy**. Increasing the graduation rate will positively impact the state and the nation by increasing wages, increasing spending, and decreasing costs. As a result of the impact that high school dropouts have on entire communities and the nation, a high school diploma is considered the “best economic stimulus package”** (Alliance for Excellent Education, 2010a, p.1).

#### [[insert impact]]

# Affirmative Off-Case Research

## Congress Counterplan

### 2AC — Perm Do Both

#### Perm Do Both — Shields the link to any courts DAs because it would look like its supported by congress.

#### Action from *both* the Court and Congress solves best

Silverstein 4 assistant professor of political science at the University of California [Gordan, "The Warren Court and Congress:Both Necessary–Neither Sufficient" in Congress and the Earl Warren Court, http://www.amacad.org/publications/bulletin/summer2004/scheiber.pdf]

In many ways, what we think of as the 1960s began fifty years ago, when the U.S. Supreme Court’s Brown v. Board of Education decision struck down legally mandated racial segrega- tion in public schools. From that moment, many social activists looked to the Court rather than Congress or state legislatures to advance their public policy goals. And a quick review of the Supreme Court over which Earl Warren pre- sided as chief justice from 1953 until his resig- nation in 1969 seems to con½rm their instinct. From civil rights to privacy, from protections for the rights of the accused to reforms of the electoral process itself–it is the Warren Court that leaps to mind. Recently, revisionists have tried to demonstrate that when it comes to social policy, the Court may speak loudly but has little real impact. 1 Only Congress and the president, they argue, can really change social policy. Supreme Court decrees may be cathartic, but little more than symbolic. Who’s Right? Neither. And Both. Many of the most important changes in American public policy, including those in the arena of civil rights, were the product of the Warren Court together with Congress. This was not a case of collaboration, but rather a case of two independent builders working on the same struc- ture. Each built on the product of the other, and each was constrained by what the other had done and was likely to do in the future. Their medium of communication and constraint was constitutional and statutory interpretation and precedent–both legislative and judicial

### 2AC — Social Change DA

#### CP can’t solve—Courts key to social change

Ginsberg and Miller-Cribbs 5 Professor and Director of Social Work at Appalachian State University, former Dean of social work at West Virginia University, former Commissioner of Human Services in West Virginia AND Associate Professor & Assistant Director at University of Oklahoma [Leon and Julie, Understanding social problems, policies, and programs, p96]

J. Figueira-McDonough (1993) suggests that the courts are of special importance in shaping current social welfare policy. Many of the reforms of recent years have come through litigation in the courts, especially the federal courts. Litigation has become vital in social policy development, although, according to Figueira-McDonough, the human services literature has not given that route of social change the attention it deserves. Judicial decisions, along with other policy changes, have the capacity to help whole groups of people, not just individuals. Also, as Figueira – McDonough points out, the rights of the most vulnerable individuals can be pursued in the courts more readily than they might through the lobbying process. An individual who contacts a legislator may or may not be taken seriously, depending upon the group he or she represents and its influence. In the courts an individual is heard, and his or her concern must be addressed.

### 2AC — Courts Key

#### The Counterplan fails to resolve any of the affirmative

Chemerinsky 4 — Erwin Chemerinsky, Alston & Bird Professor of Law at Duke Law School, former Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science and Director of the Center for Communications Law and Policy at the University of Southern California Law School, holds a J.D. from Harvard Law School and a B.S. from Northwestern University where he is a member of the Debate Society Hall of Achievement, 2004 (“The Deconstitutionalization of Education,” *Loyola University Chicago Law Journal* (36 Loy. U. Chi. L.J. 111), Fall, Available Online to Subscribing Institutions via Lexis-Nexis)

I. Introduction Fifty years ago, in Brown v. Board of Education, n1 Chief Justice Earl Warren eloquently proclaimed the importance of education. He wrote: Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. n2 Brown offered the promise that the federal courts would recognize a fundamental right to education and use the Constitution to ensure equal educational opportunity for all children in the United States. n**3 In my opinion, the simple reality is that without judicial action equal educational opportunity will never exist.** There is no powerful political constituency for equalizing educational opportunities for children who are poor or are part of racial minority groups. n4 For decades, no President has addressed the problem of school segregation. n5 Nor is it [\*112] possible to think of many state or local politicians who have made an issue of separate and unequal schools. Any systematic attempt to deal with education would be highly unpopular; transferring money and students from wealthy areas to poorer areas is sure to engender enormous opposition. Those with the most influence in the political system can opt out of city public schools, by living in suburbs or sending their children to private schools. n6 **The result is that if the courts do not equalize educational opportunity, no one will.** Yet, the reality is that for over thirty years, with the exception of largely disastrous and unsuccessful court-ordered busing, the Supreme Court, and the lower federal courts, have done nothing to advance desegregation of schools or to equalize expenditures for education. n7 In fact, the Supreme Court's overall approach has been to withdraw the courts from involvement in American schools. I term this withdrawl the "deconstitutionalization of education." In numerous decisions, involving many different kinds of claims, **the Supreme Court has professed almost unlimited deference to school officials and has refused to apply the Constitution in schools**. n8 The Court's abdication of responsibility for school desegregation and for equalizing educational opportunity must be understood as part of this larger pattern of the deconstitutionalization of education. n9 My goal in this article is to describe and criticize the deconstitutionalization of education. Part II of this article seeks to show how the Supreme Court has withdrawn the judiciary from enforcing the [\*113] Constitution in public schools. n10 Part III argues why the deconstitutionalization of education is undesirable and why judicial action, through the Constitution, is imperative to deal with the problems in American public schools. n11 Thus, this article is both descriptive, detailing the Court's abdication of responsibility for the constitutional rights of students, and normative, arguing that this is undesirable. II. Deconstitutionalization Has Occurred **What is striking and has been overlooked is that the Supreme Court's failure to enforce equal protection in the school context is part of its overall refusal to enforce any parts of the Constitution when it comes to public schools.** n12 In this section, I look at several examples, beginning with desegregation and then considering school funding, free speech rights for students, and searches of students. In every area, the result is the same: The Supreme Court has ruled in favor of school autonomy and refused to enforce constitutional limits to improve the quality of education. n13 A. Desegregation A recent study by Harvard Professor Gary Orfield carefully documents that during the 1990s America's public schools became substantially more segregated. n14 In the South, for example, he shows [\*114] that "from 1988 to 1998, most of the progress of the previous two decades in increasing integration in the region was lost. The South is still more integrated than it was before the civil rights revolution, but it is moving backward at an accelerating rate." n15 The statistics presented in Professor Orfield's study are stark. For example, the percentage of African-American students attending majority white schools has steadily decreased since 1988. n16 In 1954, at the time of Brown v. Board of Education, only 0.001% of African-American students in the South attended majority white schools. n17 In 1964, a decade after Brown, it was just 2.3%. n18 From 1964 to 1988, there was significant progress: from 13.9% in 1967, to 23.4% in 1968, to 37.6% in 1976, to 42.9% in 1986, and this percentage rose steadily to 43.5% in 1988. n19 But since 1988, the percentage of African-American students attending majority white schools has gone in the opposite direction. n20 By 1991, the percentage of African-American students attending majority white schools in the South had decreased to 39.2% and over the course of the 1990s it went to 36.6% in 1994, to 34.7% in 1996, and to 32.7% by 1998. n21 Professor Orfield shows that nationally the percentage of African-American students attending majority black schools and schools where over 90% of the students are minorities also has increased since 1995. n22 In 1986, 63.3% of black students attended schools that were fifty to one hundred percent comprised of minority students; by 1998-99, 70.2% of black students were attending schools that were 50 to 100% minority. n23 In North Carolina the same pattern exists. Between 1993, the number of schools with minority enrollments of eighty percent or more doubled. n24 In Charlotte, fewer than sixty percent of the schools are racially diverse, down from eighty-five percent in the 1980s. n25 [\*115] Quite significantly, Professor Orfield shows that the same is true for Latino students. The historic focus for desegregation efforts has been to integrate African-American and white students. The burgeoning Latino population requires that desegregation focus on this racial minority as well. The percentage of Latino students attending schools where the majority of students are of minority races, or almost exclusively of minority races, increased steadily over the 1990s. n26 Professor Orfield notes that "[Latinos] have been more segregated than blacks for a number of years, not only by race and ethnicity but also by poverty." n27 And there is every reason to believe that the problem is going to get worse. A significant cause of the predicament is that Supreme Court decisions ending successful desegregation orders are causing substantial increases in segregation. n28 In several cases, the Supreme Court concluded that school systems had achieved "unitary" status and thus that federal court desegregation efforts were to end. n29 The result was that remedies, which were in place and working, ended and resegregation resulted. Many lower courts followed the lead of the Supreme Court and likewise ended desegregation orders. n30 The result has been predictable: the increase in resegregation which Professor Orfield documents. n31 In several recent cases, the Supreme Court has considered when a federal court should terminate a desegregation order. n32 In 1991, in [\*116] Board of Education of Oklahoma City v. Dowell, the issue was whether a desegregation order, which had been terminated in 1977, should be reinstated when respondents contended that the district's new plan would mean a resegregation of the public schools. n33 Oklahoma schools had been segregated according to state law until 1972 - eighteen years after Brown. n34 In 1972, however, a federal court successfully desegregated the Oklahoma City public schools. n35 Evidence proved that ending the desegregation order would result in dramatic resegregation. n36 Nonetheless, the Supreme Court held that once a "unitary" school system had been achieved, a federal court's desegregation order should end even if it will mean resegregation of the schools. n37 The Court, however, did not define "unitary system" with any specificity. The Court simply said that courts should end desegregation decrees if the school board "has complied in good faith" and "the vestiges of past discrimination have been eliminated to the extent practicable." n38 The Court said that in evaluating this "the District Court should look not only at student assignments, but "to every facet of school operations - faculty, staff, transportation, extra-curricular activities and facilities.'" n39 In Freeman v. Pitts, the Supreme Court held that a federal court desegregation order should end when schools have complied with that particular order, even if other desegregation orders for the same school system remain in place. n40 A federal district court ordered desegregation of various aspects of a school system in Georgia that previously had been segregated by law. n41 Part of the desegregation plan had been met; the school system had achieved desegregation in pupil assignment and facilities. n42 Another aspect of the desegregation order, concerning assignment of teachers, had not yet been fulfilled. n43 After partially complying with the desegregation order, the school system planned to construct a facility that likely would benefit whites more than African-Americans. Nonetheless, the Supreme Court held that the federal court [\*117] could not review the discriminatory effects of the new construction because the part of the desegregation order concerning facilities had already been met. n44 The Court said that once a portion of a desegregation order is met, the federal court should cease its efforts as to that part and retain involvement only as to those aspects of the plan that have not been achieved. n45 Finally, in Missouri v. Jenkins, the Court ordered an end to a school desegregation order for the Kansas City schools. n46 Missouri law once required the racial segregation of all public schools. n47 It was not until 1977 that a federal district court ordered the desegregation of the Kansas City, Missouri public schools. n48 The federal court's desegregation effort made a difference. In 1983, twenty-four schools in the district had an African-American enrollment of more than ninety percent. n49 By 1993, no elementary-level student attended a school with an enrollment that was ninety percent or more African-American. n50 At the middle school and high school levels, the percentage of students attending schools with an African-American enrollment of ninety percent or more declined from about forty-five percent to twenty-two percent. n51 The Court, in an opinion by Chief Justice Rehnquist, ruled in favor of the state on every issue. n52 There were three parts to the Court's holding. First, the Court ruled that the district court's order, which attempted to attract non-minority students from outside the district, was impermissible because there was no proof of an inter-district violation. n53 [\*118] Chief Justice Rehnquist, however, applied Milliken v. Bradley to conclude that the inter-district remedy - incentives to attract students from outside the district into the Kansas City schools - was impermissible because there was only proof of an intra-district violation. n54 The social reality, however, is that many city school systems are now primarily comprised of minority students, while surrounding suburban school districts are almost all white. n55 Thus, effective desegregation requires an inter-district remedy. Second, the Court ruled that the district court lacked authority to order an increase in teacher salaries. n56 Although the district court believed that an across-the-board salary increase to attract teachers was essential for desegregation, the Supreme Court concluded that it was not necessary as a remedy. n57 In my view, this further limited the federal courts' remedial authority in dealing with the legacy of discrimination. Finally, the Court ruled that the continued disparity in student test scores did not justify continuance of the federal court's desegregation order. n58 The Court concluded that the Constitution requires equal opportunity, not any result, and therefore disparities between African-American and white students on standardized tests were not a sufficient basis for concluding that desegregation had not been achieved. Ultimately, the Supreme Court held that once a school complies with a desegregation order, the federal court effort should be ended. n59 The Court held that disparity in test scores is not a basis for continued federal court involvement. n60 Together, the three cases have given a clear signal to lower courts: The time has come to end desegregation orders, even when the effect will be resegregation. Lower courts have followed this lead. n61 The [\*119] United States Court of Appeals for the Fourth Circuit has ended the desegregation remedy for the Charlotte-Mecklenburg schools. n62 The Eleventh Circuit ended the desegregation order for the Hillsborough County schools in Tampa, Florida. n63 The Eleventh Circuit rejected the district court's conclusion that unitary status had not been reached. n64 Notwithstanding the Eleventh Circuit's conclusion, at thirteen Hillsborough schools Latino students outnumber whites and African-Americans combined. n65 A recent article in the National Law Journal describes the end of desegregation orders throughout the country and quotes education expert Gary Orfield: "We're going back to a kind of Plessy separate-but-equal world. I blame the courts. Because the courts are responsible for the resegregation of the South." n66 The federal courts are withdrawing from overseeing school desegregation; it is an area of profound deconstitutionalization. B. School Funding By the 1970s, it also was clear that there were substantial disparities in school funding. In 1972, education expert Christopher Jencks estimated that on average, fifteen to twenty percent more was being spent on each white student's education than on each African-American child's schooling throughout the country. n67 For example, the Chicago public schools, where 45.5% of the students were white and 39.1% were African-American, spent $ 5,265 for each student's education; but in the Niles school system, just north of the city, where 91.6% of the students [\*120] were white and 0.4% African-American, $ 9,371 was spent on each student's schooling. n68 Similarly, in mostly African-American Camden, New Jersey, $ 3,538 was spent on each pupil; but in mostly white Princeton, New Jersey, $ 7,725 was spent. n69 There, of course, is a simple explanation for the disparities in school funding. In most states, education is substantially funded by local property taxes. n70 Wealthier suburbs have significantly larger tax bases than poor inner cities. n71 The result is that suburbs can tax at a low rate and still have a great deal to spend on education. n72 Cities must tax at a higher rate and nonetheless have less to spend. n73 [\*121] The Court had the opportunity to remedy this inequality in education in San Antonio Independent School District v. Rodriguez. n74 But the Court profoundly failed and concluded that the inequalities in funding did not deny equal protection. n75 Rodriguez involved a challenge to the Texas system of funding public schools largely through local property taxes. n76 The Texas financing system meant that poor areas had to tax at a high rate, but had little to spend on education while wealthier areas could tax at lower rates, but still had much more to spend on education. n77 For example, one poorer district spent $ 356 per pupil, while a wealthier district spent $ 594 per student. n78 The plaintiffs challenged this system on two equal protection grounds: (1) it violated equal protection as impermissible wealth discrimination; and (2) it denied children from the poor areas the fundamental right to education. n79 The Court rejected the former argument by holding that poverty is not a suspect classification, and therefore discrimination against the poor only need meet rational basis review. n80 Moreover, the Court rejected the claim that education is a fundamental right. n81 The Court said: It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. Thus, the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. [\*122] Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution. n82 Justice Powell, writing for the majority, then concluded: "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected." n83 Although education obviously is inextricably linked to the exercise of constitutional rights such as freedom of speech and voting, the Court nonetheless decided that education, itself, is not a fundamental right. n84 Applying the rational relationship test, the Court said: The logical limitations on appellees' nexus theory are difficult to perceive. How, for instance, is education to be distinguished from the significant personal interests in the basics of decent food and shelter? Empirical examination might well buttress an assumption that the ill-fed, ill-clothed, and ill-housed are among the most ineffective participants in the political process, and that they derive the least enjoyment from the benefits of the First Amendment. n85 The Court also noted that the government did not completely deny an education to students; the challenge was to inequities in funding. n86 The Court concluded that strict scrutiny was inappropriate because there was neither discrimination based on a suspect classification nor infringement of a fundamental right. n87 The Court thus found that the Texas system for funding schools through local property taxes met the rational basis test. n88 The Court reaffirmed that education is not a fundamental right under the Equal Protection Clause in Kadrmas v. Dickinson Public Schools. n89 When a poor family challenged a state law authorizing local school systems to charge a fee for use of school buses, n90 the Court again [\*123] reiterated that poverty is not a suspect classification, that education is not a fundamental right, and that discrimination against the poor only has to meet rational basis review. n91 The Court said that education was not denied because the fee did not preclude the student from attending school. n92 Hence, the Court said that rational basis review was appropriate n93 and concluded that the plaintiffs "failed to carry the "heavy burden' of demonstrating that the challenged statute is arbitrary and irrational." n94 These decisions are wrong - tragically wrong - in holding that there is not a fundamental right to education. Education is essential for the exercise of constitutional rights, for economic opportunity, and ultimately for achieving equality. n95 Almost three decades after Brown, in Plyler v. Doe, Justice Brennan writing for the majority reiterated the vital importance of public education Public education is not a "right" granted to individuals by the Constitution. But neither is it merely some governmental "benefit" indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction ... . Education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. n96 Rodriguez and Kadrmas were enormously important steps in the deconstitutionalization of education because they made it clear that American public education is characterized by poor, African-American city schools surrounded by wealthy, white suburban schools spending a great deal more on education. n97 As discussed below, however, the federal Constitution does not address this predicament and the federal [\*124] courts offer no remedy to the problem via greater protections. n98 C. Freedom of Speech My thesis is that the Court's failure to enforce equal protection in education must be understood as part of a larger failure on the part of the judiciary to enforce the Constitution when it comes to schools. The First Amendment and the free speech rights of students are a powerful example of this. n99 Tinker v. Des Moines Independent Community School District was the high watermark of the Supreme Court protecting the constitutional rights of students. n100 The decision is perhaps best remembered for its ringing pronouncement: "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." n101 This sentence powerfully conveys that schools are not institutions immune from constitutional scrutiny. Tinker was decided in 1969, the last year of the Warren Court. Chief Justice Earl Warren had already announced his resignation and was soon to be replaced by the much more conservative Warren Burger. n102 The author of the majority opinion in Tinker, Justice Abe Fortas, already had been denied confirmation as Chief Justice when Tinker was released, and Justice Fortas would shortly resign from the Court amidst a scandal. n103 Justice Fortas's successor, Justice Harry Blackmun, would [\*125] be a strong conservative voice and a consistent conservative vote in his first years on the Court. n104 Over the three decades of the Burger and Rehnquist Courts, there have been virtually no decisions protecting rights of students in schools. Indeed, there have been remarkably few rulings concerning students' speech, despite hundreds of lower court decisions on the topic. Excluding cases concerning religious expression, there have been only two Supreme Court cases concerning student speech in elementary, middle schools, and high schools: Bethel School District No. 403 v. Fraser n105 and Hazelwood School District v. Kuhlmeier. n106 In both, the Court rejected the students' First Amendment claims and sided with the schools. n107 In Bethel, the Court upheld the punishment of a student for a speech given at a school assembly, in which the student nominated another student for a position in student government by giving a speech filled with sexual innuendos. n108 The school suspended the student speaker for a few days and kept him from speaking at his graduation as scheduled. n109 In upholding the punishment, the Supreme Court emphasized the need for judicial deference to educational institutions. n110 Chief Justice Burger, writing for the Court, said that "the determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board." n111 The Court also distinguished Tinker on the ground that it had involved political speech, [\*126] whereas the expression in Bethel was sexual in nature. n112 Chief Justice Burger said that "it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse." n113 He concluded that "[a] high school assembly or classroom is no place for a sexually explicit monologue ... [and] it was perfectly appropriate for the school to disassociate itself to make the point to the pupils that vulgar speech ... is wholly inconsistent with the "fundamental values' of public school education." n114 The Court went even further in its deference to school authorities in Hazelwood School District v. Kuhlmeier. n115 In Kuhlmeier, a school newspaper produced as part of a journalism class was going to publish, with the approval of its faculty advisor, stories about three students' experiences with pregnancy and about the impact of divorce on students. n116 No student's name was included in the article on pregnancy and one was mentioned in the article on divorce (although it had been deleted after the paper had been forwarded to the principal for review). n117 Prior to publication, the paper went to the school principal for final review. n118 The principal decided to publish the paper without these articles by deleting the two pages on which they appeared. n119 The principal expressed the view that the articles on pregnancy discussed sexual activity and birth control in a manner that were inappropriate for some of the younger students at the school. n120 Further, he reasoned that the three students in the article on pregnancy might be identified from other aspects of the article and that the parents of the student identified in the article about divorce should have the opportunity to respond. n121 The students claimed the principal's actions violated their right to free speech. n122 The Supreme Court upheld the principal's decision and rejected the First Amendment challenge. n123 At the outset, Justice White, writing for the Court, quoted Tinker, explaining that "students in the public [\*127] schools do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." n124 Quoting Bethel, however, he then added that the "First Amendment rights of students in the public schools "are not automatically coextensive with the rights of adults in other settings.'" n125 Justice White concluded that the school newspaper was a nonpublic forum and that as a result "school officials were entitled to regulate the contents of [the school newspaper] in any reasonable manner." n126 The Court emphasized the ability of schools to control curricular decisions, such as what appears in school newspapers published as part of journalism classes. n127 Justice White wrote: The question whether the First Amendment requires a school to tolerate particular student speech - the question that we addressed in Tinker - is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. The former question addresses educators' ability to silence a student's personal expression that happens to occur on the school premises. The latter question concerns educators' authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school. n128 The Court said that in this context schools have broad authority to regulate student speech. n129 The cases discussed above effectively deconstitutionalize the First Amendment in the context of schools by declaring there will be great judicial deference to school administrator's decisions. n130 Lower courts have followed this lead and have consistently sided with the schools and ruled against free speech claims of students. n131 [\*128] D**. Other Constitutional Rights of Students Another example of the deconstitutionalization of education concerns the Fourth Amendment.** n132 In New Jersey v. T.L.O., the Supreme Court held that schools could search students without meeting the probable cause requirement of the Fourth Amendment. n133 **The Court held that special disciplinary needs exist in the school context and that adherence to the warrant requirement "would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools."** n134 The Court expressly proclaimed the need to defer to the authority and expertise of the schools, declaring that "strict adherence to the requirement that searches be based upon probable cause" would undercut **"the substantial need of teachers and administrators for freedom to maintain order in the schools." n135 The Court diminished Fourth Amendment protections in schools even further in cases involving drug testing of students.** n136 In Vernonia School District v. Acton, the Supreme Court approved random drug testing for high school athletes. n137 In Acton, an Oregon school district required that all student athletes submit to drug testing before the school year and subsequent random tests during the school year. n138 Justice Scalia, writing for the Court, found that the program did not violate the Fourth Amendment. n139 The Court stressed that students have a relatively minimal privacy interest, especially when compared to the schools' significant interest in stopping the use of illegal drugs. n140 The Court expressed the need for deference to schools saying: "When the government acts as guardian and tutor the relevant question is whether the search is one that a reasonable guardian and tutor might undertake." n141 In other words, schools are allowed to violate the Fourth Amendment's basic requirement of individualized suspicion. The Court's deference to the authority and expertise of schools is [\*129] controlling. n142 The Court went even further in Board of Education of Pottowatamie School District v. Earls, by upholding a school program that required random drug testing of all students who wanted to participate in extracurricular activities, even non-competitive ones. n143 In Acton, the testing was limited to student athletes and the Court had stressed the risks of injury to drug impaired students participating in sports events. n144 Also in Acton, the school documented a serious drug problem among its students. n145 In Earls, however, the Oklahoma school district offered no such proof, and said that its goal was preventing drug use among students. n146 The Supreme Court, in the 5-4 Earls decision, accepted this rationale and held that the drug testing did not violate the Fourth Amendment. n147 Justice Thomas's opinion for the Court stressed the important interest of schools in preventing drug use and the minimal invasion of privacy from random drug tests. n148 Justice Thomas's reasoning would leave virtually no protection for students' Fourth Amendment rights in schools. Indeed, it appears, at least under Justice Thomas's majority opinion, that schools can impose drug testing as if there were no Fourth Amendment. n149 The denial of Fourth Amendment protections to [\*130] students in school is a clear and powerful example of the deconstitutionalization of education. This deference to schools has been evident in other areas, such as in determining what procedural due process is required in student disciplinary matters. n150 In Goss v. Lopez, the Court held that the government must provide procedural due process when suspending students from public schools. n151 Yet, just as the Supreme Court backed away from Tinker and its protection of speech in schools, so did the Court minimize the application of due process in education. n152 In Ingraham v. Wright, the Court held that the imposition of corporal punishment involved a deprivation of liberty, but did not require that the school provide any type of due process prior to its imposition. n153 The Court recognized that liberty includes "freedom from bodily restraint and punishment" and therefore where school authorities "deliberately decide to punish a child for misconduct by restraining the child and inflicting appreciable physical pain, ... Fourteenth Amendment liberty interests are implicated." n154 **Yet the Court refused to require that the school provide any procedures with regard to the imposition of corporal punishment. n155 The Court stated it was sufficient for due process that the state provided tort law remedies against abuses.** n156 The Court emphasized: "Hearings, even informal hearings require time, personnel, and a diversion of attention from normal school pursuits. School authorities may well choose to abandon corporal punishment rather than incur the burdens of complying with the procedural requirements." n157 The Court stressed the need for judicial deference to school authorities: "Assessment of the [\*131] need for, and the appropriate means of maintaining, school discipline is committed generally to the discretion of school authorities subject to state law." n158 The one area where the Court has been willing to apply the Constitution in schools concerns the Establishment Clause. n159 For example, the Court has consistently held that prayer in public schools violates the Establishment Clause of the First Amendment. n160 In Santa Fe Independent School District v. Doe, the Court held that student-delivered prayers at high school football games are unconstitutional. n161 Likewise, in Lee v. Weisman, the Court held that clergy-delivered prayers at public school graduations violate the Establishment Clause. n162 This enforcement of the First Amendment in schools, however, stands in marked contrast to the failure to apply so much else of the Constitution in education. III. The Undesirability of the Deconstitutionalization of Education I believe that the decisions described above are undesirable in two senses. First, the federal courts are abdicating their proper role under the Constitution to enforce the fundamental rights of children in schools. Second, the rulings are undesirable in their social effects: increased segregation, continued inequality of school funding, suppressed student speech, and lost privacy rights for students. n163 [\*132] As to the former, **the Supreme Court and the federal judiciary have an essential role to play in enforcing the Constitution's protections**, especially in contexts where the political branches are unlikely to do so. This philosophy - deference to the political branches of government in some areas, but the need for aggressive judicial review in others - was expressed in a very famous footnote in United States v. Carolene Products Co. n164 In footnote four, the Court declared: There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments... . It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment... . Nor need we inquire ... whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry. n165 In other words, courts generally should presume that laws are constitutional. As the Court has noted, a "more searching judicial inquiry" is appropriate when a law interferes with individual rights, restricts the ability of the political process to repeal undesirable [\*133] legislation, or discriminates against a "discrete and insular minority." n166 It is a framework that provides general judicial deference to the legislature but requires more intensive judicial review in particular areas. The enforcement of basic constitutional rights in schools fits exactly within the areas where the Carolene Products footnote justifies heightened review because the infringement of fundamental rights secured by the Bill of Rights, as well as a "discrete and insular minority exist." The discrete and insular minority concept protects groups that are unlikely to rely on the political process for adequate protection. Aggressive judicial review, therefore, is justified because insular minority groups cannot trust the other branches of government. n167 Racial minorities are the classic insular minority. The reality is that the political process never has worked - and I fear never will - to desegregate schools. It is impossible to think of any politician in recent years who has made school segregation an issue. Nor is the political process going to achieve the equalization of funding for schools. Those with the greatest political power benefit from the inequality, or at the very least are unaffected by it as they can send their children to private schools. n168 Families with children in inadequately funded public schools lack the political power to do anything about ensuring equal educational opportunity. Nor do students have political power to protect their First or Fourth Amendment rights through the political process. **For student rights, courts must take action or there will be no protections at all.** Unfortunately, the reality over the past quarter of a century has been the latter. n169 My objection, of course, is not solely at the process level. What is particularly troubling is the result of the Supreme Court's deconstitutionalization of education. American public education is separate and unequal, and as discussed above, becoming ever more [\*134] so. n170 The reality is that the average African-American or Latino student receives a very different education than the average white student in the United States. n171 The promise of Brown's equal educational opportunity has not been realized and will not be as long as the deconstitutionalization of education continues. People can devise accepting rationalizations: that courts could not really succeed; that desegregation does not matter; and that parents of minority students do not really care about desegregation. n172 But none of these rationalizations are true. Brown was right: Separate schools can never be equal. IV. Conclusion Why has this country failed to live up to Brown's promise and its mandate? In part, it is a lack of political will. No President since Lyndon Johnson has proposed steps to deal with segregation in housing or schools. No Congress has attempted to deal with the problem. Neither candidate for the 2004 presidential election proposed any way to deal with segregation. n173 There just is not the political will, and there never has been, to deal with segregated unequal schools through the legislative process. Unfortunately, the courts have failed us too. In a series of decisions, the Supreme Court has essentially deconstitutionalized education. n174 As [\*135] described above, constitutional guarantees of equal protection, freedom of speech, protection from unreasonable search and seizure, and procedural due process all have been deemed to have little application in schools. n175 Equal educational opportunity can be achieved. But living up to the legacy and promise of Brown will require effort and courage by politicians and courts that has yet to be shown. For far too long, the problem of separate and unequal schools has been ignored. The fiftieth anniversary of Brown should be the occasion for more than a celebration of that decision; it must be the time for making its promise a reality.

### 2AC — Perm Do The CP

#### Perm Do The CP — We didn’t commit to all three branches. If the CP solves the case then it has to rule which makes it not competitive, and if it doesn’t it proves that congress can’t rule and it cant solve the aff.

## Amendments Counterplan

### 2AC — “Perm: Do Both”

#### Perm: do both — Strict Scrutiny will still be used to interpret the amendment which means the aff is necessary for the CP to do anything.

### 2AC — “Perm: Do The Counterplan”

#### Perm: do the CP — an Amendment is a possible way of plan implantation.

### 2AC — Amendment Fiat Bad

#### Reject Amendment Fiat — multi-actor, multi-level fiat undermines aff ground. They can fiat a Congressional proposal, not *state approval*. “States say no” and “approval takes forever” are core aff ground. Reject the counterplan, not the plank: requiring the aff to win theory offense and *then* beat solvency is unrealistically hard and creates perverse incentives to waste 2AC time by adding no-cost illegitimate planks.

### 2AC — Strict Scrutiny

#### 1AC Skiba evidence proves that the federal government will use strict scrutiny to interpret amendments, creating a new one doesn’t stop that current process, means the CP cant solve.

### 2AC — “No Solvency — Legitimacy DA”

#### No Legitimacy DA — Rodriguez was a terrible decision. Overturning it is key to solve the case.

Stone 14 — Geoffrey R. Stone, Edward H. Levi Distinguished Service Professor of Law and former Dean of the Law School at the University of Chicago, Fellow of the American Academy of Arts and Sciences, former Provost of the University of Chicago, served as Law Clerk to the Honorable Supreme Court Justice William Brennan (1972-1973), holds a J.D. from the University of Chicago, 2014 (“How a 1973 Supreme Court Decision Has Contributed to Our Inequality,” *The Daily Beast*, May 15th, Available Online at <http://www.thedailybeast.com/how-a-1973-supreme-court-decision-has-contributed-to-our-inequality>, Accessed 06-07-2017)

The growing income inequality in the United States since the 1970s is a source of great concern for many Americans. The historic notion that, in America, upward mobility is in the hands of the individual increasingly seems more fiction than reality. Many factors have contributed to this state of affairs, but one important one is growing inequality in education. Some of the responsibility for this state of affairs rests with the Supreme Court. Although the Supreme Court building declares “Equal Justice Under Law,” on this issue, the Court has failed to live up to its own promise.

The state of public education in the United States is widely acknowledged to be little short of disastrous. This is due, in no small part, to a relatively obscure 1973 decision of the U.S. Supreme Court. In a hotly contested 5-to-4 decision in San Antonio Independent School District v. Rodriguez, the Court held that there is no constitutional right to an equal education. In so doing, it declined to address a fundamental problem that has undermined American public education ever since.

The problem, quite simply, is inequality of resources. There is a strong, though not perfect, correlation between dollars spent per pupil and student education outcomes (measured by such factors as dropout rates, high school graduation rates, scores on standardized tests, etc.). The correlation is especially robust in the lower grades, when students are in their formative years. According to a recent study, for example, a 10 percent increase in per pupil expenditures generates a 4 percent increase in graduation rates.

If disparities in per pupil expenditures were small, this might not be a big deal. But the reality is much more dramatic. My own state of Illinois is more or less in the middle of the pack among all states in per pupil expenditures. But the variation across the state is staggering. The average per pupil expenditure for elementary school students in Illinois is approximately $11,600 per year.

Per pupil expenditures across the state’s elementary schools, however, range from a high of $28,500 to a low of $6,400. The state is therefore spending more than four times as much per pupil on students in some districts than it is spending on students in other districts. These are huge variations. Unsurprisingly, these variations in per pupil expenditures affect the quality of education—and the lives—of these children forever.

Why on earth would we do such a thing? The answer is simple. Most states provide a modest amount of state funds to each school district—enough, in theory, to provide each child with a minimal—otherwise known as “adequate”—education. They then permit each school district to use its local property tax to raise additional funds as they choose. This is known as “local control.”

Of course, if each school district in the state had an equal capacity to raise educational funds through its property tax, this system might make sense. But that has no relationship to reality. Instead, school districts have vastly different capacities to generate revenue from the property tax, and this correlates in significant degree with the wealth, class, and race of the residents of each district.

Predictably, school districts with wealthy residents spend much more per student on average than school districts with poor residents. This “local control” is backed up by the power of the state, which effectively reinforces the advantages of wealth and perpetuates the disadvantages of poverty from one generation to the next. The system exacerbates inequality and defeats the notion that in America every person has a fair chance to succeed.

It would be bad enough if individuals used their private wealth to send their privileged children to private schools to ensure that they never have to compete with others on an equal basis. But here it is the state itself that facilitates this discrimination.

Is this constitutional? The Supreme Court considered this question in 1973 in Rodriguez. The case involved the constitutionality of Texas’s school financing scheme, which was similar to the one used today in Illinois and in almost every state in the nation. At issue in Rodriguez was a system that resulted in some school districts in the state spending twice as much per pupil as others. Note how the problem has worsened over the past four decades. In Illinois today, some districts spend more than four times as much per pupil as others.

A group of parents from a poor district challenged San Antonio’s school-funding system, but in a 5-to-4 decision, the Court rejected the constitutional challenge. In his dissenting opinion, Justice Thurgood Marshall argued that inequalities in the provision of public education must be viewed skeptically. This is so, he argued, because of education’s central importance in shaping the lives of our citizens and because there is a direct “relationship between education” and the ability of citizens to participate fully and effectively in “the political process.”

As the Supreme Court had observed unanimously two decades earlier in Brown v. Board of Education, “education is perhaps the most important function of state and local government. ... It is the very foundation of good citizenship” and “it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.” It is “doubtful,” the Court added in Brown, “that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education,” and “where the state has undertaken to provide” that opportunity,” it “must be made available to all on equal terms.”

In rejecting this view, the five members of the majority maintained that, “whatever merit” there might be in a constitutional challenge if a state’s system “occasioned an absolute denial of educational opportunities to any of its children,” there is no constitutional issue when there are “only relative differences in spending levels” and where the state provides each child with “an opportunity to acquire” at least “the basic minimal skills necessary” to function in society. The inequality, in other words, was not “a sufficient basis for striking down” the state’s funding system.

Rodriguez was a terrible decision at the time it was decided, and it remains an even more terrible decision today. Although a few state legislatures and state courts have reformed their state’s funding system to promote greater equality in public education, the situation in the vast majority of the states has gotten only worse with time.

Justice Marshall had it right in his dissenting opinion: “The majority’s holding can only be seen as a retreat from our historic commitment to equality of educational opportunity. ... In my judgment, the right of every American to an equal start in life, so far as the provision of a state service as important as education is concerned, is far too vital to permit state discrimination” of this sort. Marshall rejected the majority’s assertion that it should rest with the political process to deal with this issue, noting that that process has “proved singularly unsuited to the task of providing a remedy for this discrimination.” Echoing Brown, Marshall concluded that it is inappropriate to leave this issue to “the hope of an ultimate ‘political’ solution sometime in the indefinite future while, in the meantime, countless children unjustifiably receive inferior educations that ‘may affect their hearts and minds in a way unlikely ever to be undone.’”

And here we are 40 years later, and the legacy of the Supreme Court’s failure in Rodriguez plagues our nation to this day.

### 2AC — “No Solvency — Amendment Fails”

#### Amendment Fails — the Supreme Court will narrowly interpret it to preserve their emerging “separate but equal” doctrine. The impact is the whole case.

Imoukhuede 14 — Areto A. Imoukhuede, Professor of Law at Nova Southeastern University, holds a J.D. from Georgetown University Law Center, 2014 (“Education Rights and the New Due Process,” *Indiana Law Review* (47 Ind. L. Rev. 467), Available Online to Subscribing Institutions via Lexis-Nexis)

[\*500] Today's Supreme Court is in the process of reverting to Jim Crow Era constructions of "equality" and therefore abandoned "equality" as a viable principle of justice. n232 The Court's holdings in Rodriguez and later in Milliken v. Bradley demonstrate a transparent avoidance if not outright abandonment of the principle of equality. n233 These cases more closely resemble Plessy's doctrine of "separate but equal" than Brown and Brown's progeny's conclusion that separate is inherently unequal. n234

Absent robust protection of a right to high quality public education, minority and economically disadvantaged children will have no recourse as the quality of their education continues to erode. n235 The previously referenced data and research demonstrates that the average quality of American education has fallen sharply. n236 Minority and economically disadvantaged children as a group, however, underperform even this already low and plummeting U.S. average. n237

According to Julius Chambers, schools that predominantly serve non-white children are underfunded in comparison to majority white public schools. n238 These funding differences have been argued to be contributing factors in the overall performance gap between students graduating from majority white versus majority non-white public schools. n239 Similarly, schools in impoverished and working class communities tend to be significantly underfunded compared to more economically privileged public schools. n240 Here again, these funding differences have also been argued to be contributing factors to the overall performance gap between students graduating from public schools in economically privileged communities. n241 If there is currently a general U.S. education crisis, then the education situation for racial and ethnic minorities and working class children who as a group receive an even worse than average education is nearing a state of complete dysfunction.

[\*501] The decisions in these cases were not merely the result of some unintentional confusion regarding how best to define equality. n242 Much like the Reconstruction Era Court, which issued contextually inconsistent and racially hostile rulings that effectively bolster what has been referred to alternatively as a racial caste system or system of white supremacy, so too, the modern Court has chosen to ignore the lessons from Brown: that Fourteenth Amendment equality means more than just identical but separate facilities. n243 Equality connects with the Preamble's acclamation to form "a more perfect Union." n244 The Supreme Court has all but abandoned the principle of equality as a viable principle of justice in the education context. n245

### 2AC — “Balanced Budget Disad”

#### The counterplan creates a runaway convention — the risk is never zero.

**Dixon 11** — Rosalind Dixon, Professor, University of Chicago Law School, and Richard Holden, “CONSTITUTIONALAMENDMENTRULES: THEDENOMINATOR PROBLEM”, May 2011, http://www.law.uchicago.edu/files/file/346-rd-denominator.pdf

The value of constitutional stability, and maintaining certain kinds of “internal” constitutional pre-commitment (see e.g. Ferejohn & Sager 2003), will be another factor for constitutional designers to consider. One of the most serious objections against a constitutional convention mechanism, for example, is that can empower a small sub-group of voters or representatives to propose whole-scale revisions to a constitution, when the initial popular demand is for a much narrower form of constitutional updating or dialogue. Whatever the formal legal limits on a particular convention (and there has been a major debate in the U.S. in particular on this question: see e.g. Dellinger), as a political matter, most commentators agree, it will be extremely difficult to restrain a “runaway convention” that exceeds the bounds of its mandate for constitutional change, and therefore, the calling of such a convention always represents some threat to constitutional stability.

#### Causes a balanced budget amendment — collapses the economy

The Hill 17 — “GOP senators introduce balanced budget amendment”, 1/25/2017, http://thehill.com/policy/finance/316138-gop-senators-introduce-balanced-budget-amendment

Two Republican senators introduced a constitutional amendment requiring Congress to pass a balanced budget, they announced Wednesday. Sens. Chuck Grassley (Iowa) and Mike Lee (Utah) introduced on Tuesday a bill that would amend the Constitution to make it illegal for Congress to spend more than it collects in a fiscal year, raise taxes or increase the debt limit without support from two-thirds of both chambers of Congress. Balanced budget amendments have been criticized for limiting Congress’s ability to fight off economic crises with emergency spending and stimulus. The amendment would also bar Congress from spending more than 18 percent of the gross national product, which the senators say is the 40-year historical average of federal receipts. It also gives any federal lawmaker standing to sue Congress if the amendment isn’t enforced if that lawmaker is supported by one-third of the House or Senate.

#### Decline causes diversionary wars.

**Auslin 9** — Michael Auslin, Resident Scholar at the American Enterprise Institute, and Desmond Lachman, Resident Fellow at the American Enterprise Institute, “The Global Economy Unravels”, Forbes, 3-6, http://www.aei.org/article/100187

What do these trends mean in the short and medium term? The Great Depression showed how social and **global chaos** followed hard on economic collapse. The mere fact that parliaments across the globe, from America to Japan, are unable to make responsible, economically sound recovery plans suggests that they do not know what to do and are simply hoping for the least disruption. Equally worrisome is the adoption of more statist economic programs around the globe, and the concurrent decline of trust in free-market systems. The threat of instability is a pressing concern. China, until last year the world's fastest growing economy, just reported that 20 million migrant laborers lost their jobs. Even in the flush times of recent years, China faced upward of 70,000 labor uprisings a year. A sustained downturn poses grave and possibly immediate threats to Chinese internal stability. The regime in Beijing may be faced with a choice of repressing its own people or diverting their energies outward, leading to conflict with China's neighbors. Russia, an oil state completely dependent on energy sales, has had to put down riots in its Far East as well as in downtown Moscow. Vladimir Putin's rule has been predicated on squeezing civil liberties while providing economic largesse. If that devil's bargain falls apart, then wide-scale repression inside Russia, along with a continuing threatening posture toward Russia's neighbors, is likely. Even apparently stable societies face increasing risk and the threat of internal or possibly external conflict. As Japan's exports have plummeted by nearly 50%, one-third of the country's prefectures have passed emergency economic stabilization plans. Hundreds of thousands of temporary employees hired during the first part of this decade are being laid off. Spain's unemployment rate is expected to climb to nearly 20% by the end of 2010; Spanish unions are already protesting the lack of jobs, and the specter of violence, as occurred in the 1980s, is haunting the country. Meanwhile, in Greece, workers have already taken to the streets. Europe as a whole will face dangerously increasing tensions between native citizens and immigrants, largely from poorer Muslim nations, who have increased the labor pool in the past several decades. Spain has absorbed five million immigrants since 1999, while nearly 9% of Germany's residents have foreign citizenship, including almost 2 million Turks. The xenophobic labor strikes in the U.K. do not bode well for the rest of Europe. A prolonged global downturn, let alone a collapse, would **dramatically raise tensions** inside these countries. Couple that with possible protectionist legislation in the United States, unresolved ethnic and territorial disputes in **all regions of the globe** and a loss of confidence that world leaders actually know what they are doing. The result may be a series of small explosions that coalesce into a **big bang**.

### They Say: “Democracy Net-Benefit”

#### Turn: Constitutional Amendments prevent a deliberative democracy.

Heather K. Gerken, Professor of Law, Yale Law School, 55 Drake L. Rev. 925, Summer 2007

Informal amendments similarly problematize constitutional discourse. The temptation to claim unique access to constitutional meaning will always be strong. n78 But in the vast area governed by informal amendments, even judges willing to admit that informal amendments occur will find it difficult to pin down precisely what they mean. Credible claims of certainty are thus hard to come by for informal amendments. And that means that much of constitutional law will remain contested and contestable. There are also reasons one might value the ongoing contestability of constitutional law. One might value it because we believe in a minimalist approach to judging that leaves as much room as possible for democratic debate n79 or experimentation. n80 We might value the ongoing contestability of constitutional law because we are as suspicious about claims about what the Constitution says n81 as we are about claims about what the People want. n82 We might simply subscribe to an agonistic conception of politics. n83 One of the most intriguing reasons for valuing the ongoing contestability of constitutional law is the possibility that it creates space for citizens to participate in shaping constitutional meaning. In the words of Reva Siegel, "a system that permanently resolves the Constitution's meaning risks permanently estranging groups in ways that a system enabling a perpetual quest to shape constitutional meaning does not." n84 [\*942] Similarly, Friedman and Smith argue that the "contestability of [constitutional] history ... may represent an essential element of nation-shaping. The very process of telling the story, of disagreeing about it, of emphasizing one piece or another ... is what the Constitution is about." n85 So, too, Jack Balkin suggests that "the fact that people have their own interpretations of what the Constitution means, and the fact that the political system is full of dissensus and disagreement is actually necessary to the achievement of a legitimate constitutional system." n86 And Michael Seidman argues that a Constitution that can be used to upset political settlements ensures there are "no permanent [political] losers" and "provides citizens with a forum and a vocabulary that they can use to continue the argument." n87 "Even when they suffer serious losses in the political sphere, citizens will have reason to maintain their allegiance to the community," he writes, "not because constitutional law settles disputes but because it provides arguments, grounded in society's foundational commitments, for why the political settlement they oppose is unjust." n88

## States Counterplan

### 2AC — Perm Do Both

#### Perm Do Both ---

#### Shields the link to ptx because all 50 states doing it would mean congress wont backlash

#### Shields the link to federalism because maintains balance

#### The aff doesn’t spend money so there is no way that could be a net benefit

### 2AC — Empirics

#### Federal action is crucial to resolving the School-To-Prison-Pipeline --- states empirically fail

* Federal Leadership Signalling
* School administration fail to handle it
* Only the law can create protections
* Public education key

Porter 15 – Tracie R. Porter; Associate Professor of Law and Director of the Business Law Center, Western State College of Law; B.A., 1990, Cornell College; J.D., 1994, Drake University School of Law. // *The School-to-Prison Pipeline: The Business Side of Incarcerating, Not Educating, Students in Public Schools* // <http://media.law.uark.edu/arklawreview/2015/05/15/the-school-to-prison-pipeline-the-business-side-of-incarcerating-not-educating-students-in-public-schools/> // 2005 // Accessed 6/27/2017 // MW

**The public education system is the water main in the school-to-prison pipeline**. The discipline disparities in America’s public schools are indicative of the brokenness of our public education system. Whether students of color attend a predominantly white or predominately African American school, the outcome is the same—African American and Latino students are denied an education. The public school system for African American and Latino students seemingly provides a dual pipeline to prison. First, students face arrest in school and later become entangled in the criminal justice system, possibly without any chance of going home. Second, students expelled or suspended may have no other educational alternative and are often later arrested as a consequence of negative influences. To cap the school-to-prison pipeline, our current system **must undergo a legal reformation**. Lawmakers cannot allow capitalism to influence discipline in our public schools, nor can school administrators continue to disproportionately discipline our children of color. First, zero-tolerance policies are not the solution to controlling the school environment when the policies detrimentally harm students by putting them in prison or excluding them from school. Zero-tolerance policies for all non-violent **behavioral offenses must be eliminated**, and students cannot be arrested, expelled, or suspended for significant periods of time. Second, to the extent policies give school administrators discretion for all non-violent offenses that do not involve a weapon,[106] they must exercise this discretion and keep students in school. This allows African American and Latino [[74]]students to receive the same treatment as their white peers. Our society can no longer place children under arrest and exile them from the learning environment. After all, many of these students are acting like adolescents, not criminals. Third, school administrators must create an environment which embraces learning, not warfare. States and school districts must redirect the funds currently used for school security to other areas. For example, schools could devote resources to educational enhancement programs and social services for troubled students. This could include counseling services to help students with behavior issues or equipment that aids students in advancing their education to be competitive in the global market. A. Eliminating Zero-Tolerance Policies for All Non-Violent Offenses Originally, zero-tolerance policies sought to deter students from carrying weapons, possessing drugs, and engaging in violence in the school environment.[107] The disciplinary response required for these offenses was initially suspension or expulsion.[108] However, zero-tolerance policies have transformed and now mandate one-size-fits-all consequences for various behavioral situations, forcing school administrators to expel or suspend students, or to refer them to local police.[109] These “policies have generally involved harsh disciplinary consequences such as long-term and/or permanent suspension or expulsion for violations, and often arrest and referral to juvenile or adult court.”[110] According to one commentator, these policies also “target students for minor infractions, increasingly focus on younger elementary and pre-school students, and often rely on force and arrest for relatively minor disciplinary issues.”[111] [[75]]School districts and administrators must revise their policies to reduce suspension and expulsion rates among today’s students. If they choose to ignore the problem, the school-to-prison pipeline will continue to flourish. According to the National Association of School Psychologists, school administrators and teachers favor zero-tolerance policies because “they remove difficult students from school . . . [and] send a clear, consistent message that certain behaviors are not acceptable in the school.”[112] No research has shown, however, that zero-tolerance policies are effective for long-term deterrence, and such policies fail to further the goal of providing students with an education because they increase dropout rates.[113] Nevertheless, school administrators frequently employ exclusionary discipline in response to a wide range of common misbehavior, and the benefits to the school environment do not justify the harm caused to students. Our schools experienced a rapid proliferation in zero-tolerance policies despite the absence of data demonstrating their efficacy.[114] Yet some zero-tolerance policies are triggered by non-violent behavior such as truancy, “disrespect,” and “noncompliance.”[115] Suspending students for attendance problems is not an appropriate response, especially when missing school may indicate neglect, abuse, or some other problem unbeknownst to school administrators. Suspension for “disrespect” and “noncompliance” are similarly inappropriate because these behavioral problems may reflect an undiagnosed mental illness or some unfavorable condition at home. Children frequently challenge authority at all levels of adolescence, but punishing them by putting them out of school will not change their misbehavior. In fact, suspending students from school places them in an environment free from supervision and creates an opportunity for otherwise non-violent students to socialize with their more deviant peers. Thus, days or months away from school increase the likelihood of a student entering the school-to-prison pipeline. We must keep these students in school and address their behavioral issues in a way that helps them obtain an education without disturbing the learning environment. [[76]]Kicking students out of school should never be a school administrator’s first choice. Unlike the post-Brown period, during which state lawmakers threatened to fine or imprison school administrators who attempted to desegregate schools,[116] today’s school administrators wield authority unfettered by the threat of fines or imprisonment. Administrators must adopt an approach to discipline that utilizes “mental health experts,” such as “school psychologists, counselors and social workers . . . to research and develop discipline policies and positive behavior training strategies.”[117] Because discipline often indicates underlying behavioral issues, we must address any problems that affect the student, whether it is an unsteady home situation, a mental illness, abuse or neglect, or another circumstance that distracts from learning. At best, teachers and administrators should adopt attitudes that protect a child’s access to an education and views education as a civil right. Similarly, federal, state, and local governments should place greater emphasis on keeping students in the public education system, especially when the likely alternative is prison. B. Changing the Attitudes of School Administrators Even if lawmakers eliminate zero tolerance for non-violent offenses, they cannot unilaterally change the attitudes of public school administrators, which may be entrenched in racial and social biases, or who may feel ill-equipped to meet the needs of students. Without addressing this, they will continue to use expulsion and suspension for disciplinary violations involving students of color. African American students in particular experience harsher punitive discipline than their nonminority peers, even when controlling for socioeconomic status.[118] Annually, 40% of all students expelled from school are African American, and 70% of all in-school arrests involve African American or Latino students.[119] Social biases, and stereotypes about African American children in general, may account for this disproportionate application. According to some, these [[77]]attitudes are attributable to explicit and implicit biases.[120] To the extent possible, teachers and administrators must eliminate the biases formed about African American students. In her address at the University of Arkansas, Professor Laura R. McNeal urged districts to train school administrators and teachers about developmental and cultural competency as one means of addressing the problems associated with biases.[121] Common sense suggests that some form of bias causes today’s school administrators to discipline African American children more harshly in the absence of zero-tolerance policies. Biases could also account for the inconsistent application of zero-tolerance policies, which are often applied unevenly following minor rule infractions involving African American students. Recognizing administrators use discretion in disciplinary decisions, the Department of Education issued guidelines, rather than mandates, for administrators to consider because of the disparate impact commonly experienced by African American students.[122] Recent guidance clarifies how districts can meet their obligations under Title IV and Title VI of the Civil Rights Act of 1964,[123] which, among other things, outlawed racial discrimination in the public school system.[124] In the release, the Departments of Justice and Education used words such as “recommendations,” “guidance,” and “may,”[125] to describe the [[78]]policy, which sought to “ensure that discipline policies are drafted and applied in a manner that does not discriminate against racial or ethnic groups.”[126] Mandatory federal and state education policies, however, can do more—they must adopt a stronger tone and temperament for school administrators to follow, especially given the current disproportionate treatment along racial lines. Ultimately, “attitude reflect[s] leadership,”[127] which from a historical context provides insight as to the influence of racial bias on the discipline of students of color in our public schools. Even for young children, the federal government found that exclusionary discipline practices occur at high rates in early learning settings, and at even higher rates for young boys of color.[128] The Departments of Health and Human Services and Education stated the federal government hopes “to prevent, severely limit, and work toward eventually eliminating the expulsion and suspension­—and ensure the safety and well-being—of young children in early learning settings.”[129] For an issue that has readily been identified as a national problem from a child’s early developmental stages, elimination cannot come soon enough. Unless the government takes immediate action to eliminate the disparate impact, the matter is left solely to the discretion of school administrators. This will not protect students from administrators who make decisions based on biases toward African American children. Recent efforts to address the school-to-prison pipeline are not the first time that the federal government passed a law or implemented a policy resisted by school administrators. Well after the Brown II decision, school districts and administrators across the country refused to desegregate, and state and local [[79]]government leaders blatantly disregarded the law.[130] Particularly in the South, but also more subtly in the North, state legislators publicly committed to maintain segregated schools.[131] Even after the federal government offered funding incentives to desegregate schools in 1965,[132] some school districts refused to comply with the Brown mandates.[133] Entrenched in this historical segregationist attitude may be an implicit bias involving African American inferiority, which leads some to believe that African Americans deserve whatever harsher punishment results for violations of the law. Even when administrators apply purportedly race-neutral zero-tolerance policies, their uneven application reflects the historically poor local leadership within America’s public schools. The research is clear—school administrators disproportionately suspend, expel, or facilitate the arrest of African American students for non-violent offenses more than any other race.[134] Instead of determining the underlying cause of student misbehavior, administrators pass the problem to the criminal justice system. Among these harshly disciplined students, many have “a history of abuse, neglect, poverty or learning disabilities.”[135] Violence in the school setting is unacceptable, but treating children like criminals for non-violent adolescent behavior damages their lives forever, especially if students go from school directly into the criminal justice system. Failing to address this further fuels our country’s “addiction to [[80]]incarceration” and perpetuates a capitalistic tenement to the school-to-prison pipeline.[136] C. Creating Appropriate Public School Environments: Schools, Not Prisons When students enter through metal detectors, when police officers surround them strapped with automatic weapons, and when uniformed officers constantly arrest students for adolescent misbehavior, schools look more like way stations to prison than institutions of learning. School resource officers have been present in schools for much of the last decade.[137] These “resource officers” are ideally placed in schools to serve as role models, and often “shape[] the school social climate and students’ legal socialization.”[138] Despite their presence, some high schools experience an increase in disciplinary infractions.[139] In the Los Angeles Unified School District, the district’s 2014 budget allocated “more than $91 million on policing and security, including nearly $50 million for campus police officers and more than $32 million for civilian campus aides hired to patrol halls.”[140] This money should be spent educating students, not heavily policing them, especially when these funds could be used for special education, to hire additional counselors, or for seriously underfunded healthcare, after-school, and in-school food programs.[141] Recently, the district spent $13 million on 21,000 iPad Air tablets and 6000 Google Chromebooks for testing, but with disciplinary policies that favor expelling or suspending students, fewer students will be exposed to this new [[81]]technology.[142] Denying them not only an education, but also a chance to be competitive, creates a disadvantage when these students seek employment and other opportunities in the workforce. Once schools place students into the school-to-prison pipeline, their chances of receiving an education or succeeding in this world become daunting. Our government has failed to prioritize education, both inside and outside of prison. School should be a safe environment where students can learn and grow, not a place that operates as an assembly line to prison.

### 2AC — Strict Scrutiny DA

#### The CP can’t resolve strict scrutiny --- that kills solvency for the CP because in federal courts they are allowed to keep discriminating that’s Archer and Skiba.

### 2AC — Precedent DA

#### The CP can’t set precedent, the status quo is leaning towards disengagement on discipline policies, states wont feel pressured to change since they know they can just win in courts, that’s Black.

#### States Don’t solve precedent

Michael D. Blanchard, Associate, Skadden, Arps, Slate, Meagher & Flom, LLP; Judicial Clerk, Arizona Supreme Court, Justice Stanley Feldman, 1997-98, “ARTICLE: THE NEW JUDICIAL FEDERALISM: DEFERENCE MASQUERADING AS DISCOURSE AND THE TYRANNY OF THE LOCALITY IN STATE JUDICIAL REVIEW OF EDUCATION FINANCE”, University of Pittsburgh Law Review, Fall 1998, Lexis

A. Problems in State Constitutional Jurisprudence Unfortunately, state constitutional jurisprudence currently leaves much to be desired. As noted, state constitutional law essentially lay dormant from the 1920s, resuscitated only during the 1970s in response to the Burger Court's restraint with regard to expanding protection of individual rights. n304 It is not surprising, then, that the strength of state constitutionalism has suffered from its assimilation of the federal jurisprudence. n305 Having simply followed the Supreme Court's doctrine [\*288] developed under the Federal Constitution for some fifty years, independent state constitutional jurisprudence had stagnated. Moreover, protection of individual rights in the mind of the body politic has become synonymous with the United States Supreme Court and the Federal Constitution. In addition to the relative infrequency of state constitutional decisions, n306 state supreme court opinions reflect a general avoidance of analysis of the state constitution altogether. n307 From a stare decisis perspective, the paucity of analysis of state constitutional provisions weakens the precedential value of the state constitution itself by developing a constitutional jurisprudence that in essence ignores the state constitution. n308 Moreover, state decisions regarding provisions in the state constitution similar to clauses in the Federal Constitution are often interpreted under the same analytic framework utilized by the Supreme Court. n309 This [\*289] "lockstep" brand of analysis further confines state courts to operate within, and to be limited by, the established federal jurisprudence. Further, numerous state court decisions interpreting the state constitution fail to engage in analysis of the state constitution in a manner that recognizes the document as the guiding source of state law. Most notably, state court opinions have failed, until very recently, to address the state's constitutional history in giving effect to constitutional provisions. n310

### 2AC — States Theory

#### 50 State uniform fiat is a voter

#### Education -- Not real world- the 50 states have never cooperated on a single issue in uniformity since the founding of the U.S.

#### No lit. - There is no literature for or against all the states cooperating.

#### Justifies multiactor fiat – 50 actors against one actor can never win. If we target one of the actors the neg can say the other 49 will check which is key to reciprocity.

#### Err aff on theory - Err aff on theory – neg gets the block and can control the outcome of the debate by strategically picking certain arguments.

#### Voter for education and fairness.

## Train Teachers Counterplan

### 2AC — Perm Do Both

#### Permutation do both ---- educating teachers and removing zero tolerance policies solve the best and forces new forms of discipline.

### 2AC — Zero Tolerance DA

#### The Counterplan cant solve any of the aff, the entire thesis of zero tolerance policies is that they are too harsh and fail to facilitate good behavior, training teachers doesn’t do anything if students can be expelled or suspended for drawing on a desk.

#### As long as ZTP’s exist they will always have a negative effect on discipline

APA 06 (APA is the leading scientific and professional organization representing psychology in the United States, with more than 115,700 researchers, educators, clinicians, consultants and students as its members. “Zero tolerance policies can have unintended effects, APA report finds” <http://www.apa.org/monitor/oct06/tolerance.aspx> )

Zero tolerance policies in schools, intended to reduce school violence and behavior problems, can actually have the opposite effect, according to a report of the APA Zero Tolerance Task Force adopted by APA's Council of Representatives at its August meeting. The task force reviewed 10 years of research on the effects of zero tolerance policies in middle and secondary schools and concluded that such policies not only fail to make schools safe or more effective in handling student behavior, they can actually increase the instances of problem behavior and dropout rates. The research also showed that zero tolerance policies failed to increase the consistency of discipline across student groups and failed to decrease uneven enforcement of punishment across racial lines. There are discipline strategies, according to the task force report, that can target disciplinary actions to specific misbehaviors without sacrificing school safety or mandating all students to the same punishment. Three levels of intervention are recommended: primary prevention strategies targeting all students; secondary strategies targeting those students at risk for violence or disruption; and tertiary strategies targeting those students who have already been involved in violent or disruptive behavior. The report does not recommend that schools abandon zero tolerance policies, but that they be modified to allow for more flexibility and so that individual teachers and administers can use their judgment on appropriate responses to incidents that take place in their classrooms or buildings. "Many incidents that result in disciplinary action in school happen because of an adolescent's or child's poor judgment, not due to an intention to harm," states Cecil Reynolds, PhD, task force chair. "Zero tolerance policies may exacerbate the normal challenges of adolescence and possibly punish a teenager more severely than warranted."

### 2AC — Amendments DA

#### The CP fails to expand substantive due process to students in schools, makes solvency impossible. That’s Skiba.

### 2AC — Precedent DA

#### The Counterplan cant set a precedent --- this means schools can still win in court that what they are doing is okay and not have to change anything but teaching teachers.

### 2AC — Links to Education DAs

#### Links to the net benefit --- obviously just funding a bunch of teachers would link to their education disads.

## Anticommandeering Counterplan

### 2AC — Perm Do Both

#### 1. Permutation: Do Both. Sovereign constraints not necessary to preserve federalism.

Gerken 12 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, clerked for Judge Stephen R. Reinhardt of the U.S. Court of Appeals for the Ninth Circuit, and then for Justice David Souter of the U.S. Supreme Court, holds a J.D. from the University of Michigan Law School, 2012 (“Our Federalism(s),” William and Mary Law Review (53 Wm. & Mary L. Rev. 1549), Volume 53, No. 5, Available Online to Subscribing Institutions via Hein Online, Accessed 07-14-2017, Lil\_Arj)

C. Context, Not Contests

One might respond that even if federalism scholars have neglected certain topics in the field, that neglect has been benign. On this view, federalism scholars should write as if we require one theory to rule them all. Much of federalism scholarship has centered on the case law. And in a given case, of course, courts typically do end up choosing one theory or another.

That answer, however, strikes me as insufficient. In the legislative and administrative arenas, there is no requirement that we adhere to a single model of federalism. And, indeed, we do not. As noted above, 100 every flavor of federalism can be found somewhere in our system. We talk about "Our Federalism," but in fact it would be more accurate to describe our system as "Our Federalism(s)."

Scholars may even overestimate how important it is for the courts to hew to a single theory of federalism. The Court has cycled between theories of federalism for the last forty years. Although the result has been some embarrassingly inconsistent opinions, one could certainly imagine an intellectually coherent account for why the Court would invoke the sovereignty model in some instances and an autonomy model in others.10 So, too, one could easily imagine thinking differently about federal-state relations in the context of cooperative federalism than one does in the context of more conventional federal-state interactions.

I suppose one might reject pluralism on the ground that there is only one theory of federalism that adequately protects state power. Needless to say, such an argument would involve an extremely strong causal claim. To make such a claim, one would need to show not just that one's theory is superior in a given context but that it [End Page 1571] is superior across enough contexts to justify its adoption. Moreover, given that our current system embraces many forms of state power, one would also have to have some kind of account to explain why we have not yet gone to hell in a handbag.

I doubt that most scholars, when pressed, would insist on making claims as strong as these. Sovereignty types would surely acknowledge that not every area in which states regulate needs to be protected by formal rules.102 Proponents of process federalism would surely recognize that the states require at least some formal protections against federal intrusion."'o And although cooperative federalism has had an uneasy relationship with constitutional theory, few are interested in calling for its abolition.104

Instead, scholars' claims are best understood not as strong causal claims about the imperatives associated with one vision of federalism or another but as claims about how best to balance these three models of state power. The arguments are not about which theory ought to rule them all but about whether and when courts or policymakers should put their thumb on one side of the scale or the other.

Even here, we can see the impulse to emphasize one theory over others. These claims are typically cast as arguments for "more" sovereignty protections or "less" reliance on the courts to police federal-state relations. This type of argument, though, inevitably boils down to claims about balancing costs and benefits. Such arguments are thus highly likely to turn on contingency and context; it is hard to imagine resolving any such debate at the high level of generality at which these arguments are typically pitched. Scholars ought to spend more time on context and contingency. After all, any argument about the need for "more" of one approach or another implicitly assumes that it is acceptable for some federal-state interactions to fall outside one's preferred model. Once one has offered that concession, it is hard to imagine that one could write sensibly about the right outcome in a given case without taking into account the policymaking arena in which one operates. [End Page 1572] And yet scholars continue to make these arguments in markedly generic terms.10

Were scholars to write in this more pluralist vein, arguments about federalism would be less about contests and more about context. We would not see intellectual death matches between different accounts of state power but would instead encounter nuanced claims about what form of state power is most appropriate in a given circumstance. Debates would involve not an either/or but a both/and.

### 2AC — Racism DA

#### Racism DA —

#### A. “Progressive federalism” undermines rights for people of color — Voter ID laws prove.

Charles and Fuentes-Rohwert 15 — Guy-Uriel E. Charles, Charles S. Rhyne Professor of Law Senior Associate Dean for Faculty & Research at Duke Law School, the founding director of the Duke Law Center on Law, Race and Politics, previously was the Russell M. and Elizabeth M. Bennett Professor of Law at the University of Minnesota Law School, received his JD from the University of Michigan Law School and clerked for The Honorable Damon J. Keith of the United States Court of Appeals for the Sixth Circuit, and Luis Fuentes-Rohwert, Professor of Law and Harry T. Ice Faculty Fellow at Maurer School of Law at Indiana University, earned a LL.M. from Georgetown University School of Law, a Ph.D., J.D. and B.A. from the University of Michigan, 2015 (“Race, Federalism, and Voting Rights,” *The University of Chicago Legal Forum* (2015 U. Chi. Legal F. 113), Available Online to Subscribing Institutions via Hein Online, Accessed 06-26-2017, p. 143-148, Lil\_Arj)

III. RACE AND FEDERALISM UP AND DOWN

Return now to the empirical question about the utility of federalism that we left open in the last Part. In this Part we want to introduce a consideration that has not been central to the modern federalism debate: whether federalism enhances the liberty of people of color. Chief Justice Roberts's desire in Shelby [End Page 143] County to return the federalism balance to what it was not only prior to the intervention of the 1965 Voting Rights Act, but also prior to the Nineteenth Century and the Civil War Amendments, could be sensible under the right set of assumptions. One of the supposed great virtues of (our) federalism is that it enhances liberty because it facilitates the ability of national or ethnocultural minorities to rule by becoming local majorities. 1 4 1 From this perspective, defending federalism is defending the liberty of local minorities against national majorities. But the question that anti-nationalists, in particular the anti-nationalists on the Court, often fail to ask is, liberty for whom? The critical inquiry for modern proponents of federalism is whether federalism works for racial minorities in the way that federalist theorists purport. Put differently, states' rights theorists 1 42 never pause to ask whether the states are truly in competition with the federal government for protecting the rights of racial minorities. They never pause to ask whether federalism is good for people of color.

Though past need not be prologue, the concept of states' rights has, to put the point mildly, a sordid past in American history. 1 4 3 Federalism has not generally been viewed as an institutional arrangement that enhances the liberty of racial minorities in the United States; in fact, it has been viewed as doing the opposite. 144 The way that racism has been deployed in the name of federalism is a problem for federalism's advocates. 14 5 Whether fair or not, states' rights in the United [End Page 144] States has generally been associated with racial inequality. 146 Conversely, federal power has generally been associated with racial equality.1 47 From the perspective of citizens of color, liberty has in fact been delivered not by federalism but by nationalism. 148 It thus would take a lot of chutzpah to curtail federal power, which is being deployed to protect liberty in an area where the states have engaged in notorious and rampant race discrimination, in the name of states' rights. But this is precisely what Chief Justice Roberts did in Shelby County.

Central to the Chief Justice's argument in Shelby County for recalibrating the balance between state and federal power is the premise that the states are no longer engaging in systematic racial discrimination of the type that gave rise to the 1965 Act.1 49 This argument prompted a dissenting response from Justice Ginsburg, who maintained that the states might go back to their old ways and use proxies that either directly or indirectly minimize the political power of racial minorities or indirectly do so.o50 Additionally, Justice Ginsburg argued that in the last fifty years, if not since Reconstruction, the federal government has assumed the primary responsibility and has in fact done a better job of protecting the electoral rights of racial minorities. 151 Thus, as between the states and the federal government, the federal government is the less risky option, the safer bet.

For both Roberts and Ginsburg, the federalism question (that is, how much reserved powers do the states have or should the states have as against the federal government in the voting domain) is a function of a predictive judgment: whether the states are likely to engage in racial discrimination in voting as they did before or whether we have we moved well beyond that era. If we think the states are likely to backtrack, we ought to [End Page 145] favor the federal government; but if we think the states are reformed, we should return to them the reserved powers they presumably possessed at the Founding. Both justices used memorable analogies to make their respective points: Roberts that robust federal power is no longer necessary and Ginsburg that the states are likely to backtrack without federal supervision. 152 During the oral arguments in Northwest Austin, Roberts characterized the argument that it is the VRA that is keeping the states from engaging in racial discrimination in voting to be as compelling as the old story that an "elephant whistle" explains the absence of elephants. That is, he continued, "I have this whistle to keep away the elephants. You know, well, that's silly. Well, there are no elephants, so it must work." 15 3 In her Shelby County dissent, Ginsburg retorted by characterizing the argument that the coverage formula is no longer necessary because states are not currently engaged in racial discrimination as "like throwing away your umbrella in a rainstorm because you are not getting wet." 154

Roberts and Ginsburg are undoubtedly engaged in an important debate. But in one critical respect, the battle between Roberts and Ginsburg and the sides that they represent is beside the point, if the point is about federalism. The federalism question should not be whether the states will or will not engage in discrimination if federal supervision is removed. The federalism question ought to be whether the states will compete with the federal government for the allegiance of racial minorities. If one important and central argument in favor of federalism, and thus Shelby County, is that devolution of power enhances liberty by facilitating self-rule by national minorities or ethnocultural minorities, the question that Chief Justice Roberts and Justice Ginsburg should have been debating is whether removing central supervision will now better permit racial minorities-who are also ethnocultural minorities-to engage in self-rule. Instead of asking whether the states are widely or systematically discriminating against their citizens of color, the Court should have asked how well are the states [End Page 146] representing the interests of their citizens of color. What is the congruence between the policy preferences of citizens of color in Alabama, Texas, North Carolina, Georgia, etc., and the legislative outcome of their respective states? How well are these citizens represented by their states? This should be the question for federalism in this context.

If one is inclined to be generous, one can view Chief Justice Roberts's opinion in Shelby County as deeply generative. Roberts wants a restart on race, history, and federalism. Recall here his point in Shelby County that history did not end in 1965.155 We have argued elsewhere Roberts used Shelby County to redeem the states.156 But the states are not all that Roberts wants to redeem; he also wants to redeem federalism from its sordid past, a laudable goal. The anti-nationalists aim to change the states' rights narrative so that the idea of states' rights is no longer synonymous with racial discrimination. Recall also Chief Justice Roberts's claim in Shelby County that the South has changed, or at the very least it does not differ much, if at all, from the North.157

The redemption of federalism is an intriguing and worthwhile project. It would be salutary and productive to get beyond the states' rights as racism meme. And it is not fair to federalism's advocates to constantly tar them with the putridity of the past. But redemption is not cheap. If federalism is to be redeemed, federalism must work for people of color as well. And if federalism is to "work" for people of color, it is not enough for proponents of federalism to show that the states will no longer engage in rampant racial discrimination.

Our task here is to introduce a distinction between an argument for states' rights premised on the idea that the states (or many of them) are no longer engaging in racial discrimination and an argument for states' rights in which the states are actively representing the interests of their citizens of color. From our perspective, the argument for federalism cannot be premised on the idea that the states are no longer discriminating against racial minorities. It is not sufficient to simply say that the states are indifferent. The Court should not interpret the Constitution in a way that would disempower the [End Page 147] federal government, which is the governmental entity that best represents the interests of citizens of color, and leave citizens of color to the indifference of the states. Indifference is not an argument for federalism. Federalism promises better representation, at least as compared to representation from the center or as compared to a unitary system. Our point is that the promise of better representation or the promise of competition for representation ought to be extended to people of color.158

This is why the argument between Roberts and Ginsburg is beside the point. The states' side of federalism must do what federalism theory expects devolution and decentralization to do. Federalism must defend and protect racial representation. The states must rival the federal government for the affections of racial minorities. It is not enough that federalism is not bad for people of color; federalism must be good for people of color. This is the task of federalism.

[Note to debaters: Shelby County — Shelby County v. Holder, a 2013 Supreme Court case that held that Section 4 of the Voting Rights Act is unconstitutional; its formula can no longer be used as a basis for subjecting jurisdictions to preclearance.]

#### B. Sovereignty-based federalism undermines a future liberal president’s power to check racist states.

Gerken 10 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, clerked for Judge Stephen R. Reinhardt of the U.S. Court of Appeals for the Ninth Circuit, and then for Justice David Souter of the U.S. Supreme Court, holds a J.D. from the University of Michigan Law School, 2010 (“Foreword: Federalism All the Way Down,” *Harvard Law Review*, Vol. 124, No. 1, Available Online to Subscribing Institutions via SSRN, Accessed 07-14-2017, Lil\_Arj)

2. Minority Rule Without Sovereignty: A Middle Ground. — If we were to shake the notion that minority rule must be paired with sovereignty, we would notice that much of “Our Federalism” represents an [End Page 45] intriguing middle ground between the conventional poles in this debate. Federalism-all-the-way-down features minority rule without sovereignty. It is thus a democratic third way, one that fuses the opportunities for minority rule offered by federalism with the political integration offered by diversity. In these parts of “Our Federalism,” minority rule takes place in the nooks and crannies of an administrative structure. Minority groups’ decisions are thus contingent, limited, and subject to reversal by the center. Moreover, minorities make policy not separate and apart from the center, but as part of an integrated regime.

Like the diversity model, this account of federalism is one that emphasizes voice over exit. But the opportunities for “voice” that federalism-all-the-way-down supplies are of a more muscular variant than proponents of the diversity paradigm typically imagine. Within these institutional arrangements, the insider’s “voice” isn’t confined to speech. It includes the power to act — the ability to tweak, adjust, even resist federal policy by virtue of the role minorities play in administering that policy.

These unusual features supply grounds for building a nationalist account for federalism. Here I focus on the two areas where federalism has long been thought to be most vulnerable to attack by nationalists. If we can show that federalism’s signature vices can be recast as plausible virtues, the odds are that there are other areas where the cost-benefit analysis is more complicated than we typically assume.

The nationalists’ objection to conventional federalism typically takes one of two forms. The first is a worry that local power is a threat to minority rights.167 The second is a related concern about what we might loosely analogize to the principal-agent problem — the fear that state decisions that fly in the face of deeply held national norms will be insulated from reversal.168 Both find their strongest examples in the tragic history of slavery and Jim Crow. Both are rooted in a sovereignty account of federalism.

While skepticism about federalism’s past is eminently sensible,169 we should be open to the possibility that at this stage in our history, minority rule — and not just minority rights — represents a tool for [End Page 46] combating discrimination and promoting democracy. The next two sections show that if we shed the assumption that minority rule must be accompanied by sovereignty, we could look to local institutions as sites for minority rule. Those institutions are small enough to benefit two groups that are generally too small to control at the state level: racial minorities and dissenters, both objects of constitutional solicitude. Federalism reimagined thus reveals that the benefits of minority control can extend not just to Southern racists, but to blacks and Latinos; not just to powerful regional dissenters, but to weak local outliers. In each instance, federalism-all-the-way-down represents an institutional design strategy for furthering the goals that we traditionally associate with the First and Fourteenth Amendments — the very amendments that played such a crucial role in ending Jim Crow. It can thus reveal largely unexplored, largely unappreciated connections between the two grand traditions of constitutional law: structure and rights.170

Turning to the nationalists’ second worry — the principal-agent problem — I argue that minority rule without sovereignty offers a more attractive model of federalism because it allows the national majority to reverse a decision if it is willing to spend the political capital to do so. Freed from the heavy costs associated with sovereignty, we might even think that the principal-agent problem isn’t always a problem. While local resistance surely has its costs, minority rule at the local level generates a dynamic form of contestation, the democratic churn necessary for an ossified national system to change.

The arguments offered in the next two sections are nationalist in two senses. First, they turn one of the main arguments for national power on its head. In the wake of Reconstruction and Jim Crow, we have long thought that those interested in liberty and equality should look to the national government. The account below suggests, however, that localism can serve the same constitutional values as the First and Fourteenth Amendments.

Second, the account I offer here emphasizes the centripetal dimensions of “Our Federalism.”171 Some nationalists worry that federalism [End Page 47] needlessly fractures the nation, exercising a centrifugal force on the polity. My account depicts a system in which local power exercises a gravitational pull on outsiders, integrating them into the political system. It envisions a system in which the decisions produced by minority rule do not stand separate and apart from the system, but feed back into national debates. It is one in which the energy of outliers serves as a catalyst for the center.

#### C. Racism is a d-rule.

Memmi 99 — Albert Memmi, Professor Emeritus of Sociology at the University of Paris, 1999 (*Racism*, Published by the University of Minnesota Press, ISBN 0816631654, p. 163-165)

The struggle against racism will be long, difficult, without intermission, without remission, probably never achieved.

Yet, for this very reason, it is a struggle to be undertaken without surcease and without concessions. One cannot be indulgent toward racism; one must not even let the monster in the house, especially not in a mask. To give it merely a foothold means to augment the bestial part in us and in other people, which is to diminish what is human. To accept the racist universe to the slightest degree is to endorse fear, injustice, and violence. It is to accept the persistence of the dark [end page 163] history in which we still largely live. It is to agree that the outsider will always be a possible victim (and which man is not himself an outsider relative to someone else?). Racism illustrates, in sum, the inevitable negativity of the condition of the dominated; that is, it illuminates in a certain sense the entire human condition. The anti-racist struggle, difficult though it is, and always in question, is nevertheless one of the prologues to the ultimate passage from animality to humanity. *In that sense,* we cannot fail to rise to the racist challenge.

However, it remains true that one's moral conduct only emerges from a choice; one has to want it. It is a choice among other choices, and always debatable in its foundations and its consequences. Let us say, broadly speaking, that the choice to conduct oneself morally is the condition for the establishment of a human order, for which racism is the very negation. This is almost a redundancy. One cannot found a moral order, let alone a legislative order, on racism, because racism signifies the exclusion of the other, and his or her subjection to violence and domination. From an ethical point of view, if one can deploy a little religious language, racism is "the truly capital sin."22 It is not an accident that almost all of humanity's spiritual traditions counsel respect for the weak, for orphans, widows, or strangers. It is not just a question of theoretical morality and disinterested commandments. Such unanimity in the safeguarding of the other suggests the real utility of such sentiments. All things considered, we have an interest in [end page 164] banishing injustice, because injustice engenders violence and death.

Of course, this is debatable. There are those who think that if one is strong enough, the assault on and oppression of others is permissible. But no one is ever sure of remaining the strongest. One day, perhaps, the roles will be reversed. All unjust society contains within itself the seeds of its own death. It is probably smarter to treat others with respect so that they treat you with respect. "Recall," says the Bible, "that you were once a stranger in Egypt," which means both that you ought to respect the stranger because you were a stranger yourself and that you risk becoming one again someday. It is an ethical and a practical appeal--indeed, it is a contract, however implicit it might be. In short, the refusal of racism is the condition for all theoretical and practical morality. Because, in the end, the ethical choice commands the political choice, a just society must be a society accepted by all. If this contractual principle is not accepted, then only conflict, violence, and destruction will be our lot. If it is accepted, we can hope someday to live in peace. True, it is a wager, but the stakes are irresistible.

### 2AC — Presidential Powers DA

#### Presidential Powers DA —

#### A. Progressive federalism is massive constraint on executive power. The Aff solves by removing state’s ability to impede implementation.

Bulman-Pozen 14 — Jessica Bulman-Pozen, Associate Professor of Law at Columbia Law School, was a law clerk to Justice John Paul Stevens of the Supreme Court and Judge Merrick B. Garland of the U.S. Circuit Court of Appeals for the District of Columbia, received her J.D. from Yale Law School, where she served as editor-in-chief of the Yale Law Journal and was awarded the Israel H. Peres Prize by the faculty for the best student note in the Yale Law Journal. She also earned a M.Phil. from the University of Cambridge as a Gates Cambridge Scholar and a B.A. summa cum laude from Yale University, 2014 (“From Sovereignty and Process to Administration and Politics: The Afterlife of American Federalism,” *The Yale Law Journal*, April, Available Online at <http://www.yalelawjournal.org/essay/from-sovereignty-and-process-to-administration-and-politics-the-afterlife-of-american-federalism>, Accessed 07-19-2017, Lil\_Arj)

II. ADMINISTRATION: FEDERALISM AS THE SEPARATION OF POWERS

The federal government’s move, particularly with the social revolutions of the New Deal and Great Society, to regulate in areas traditionally occupied by the states has, in turn, bound up states in the administration of federal law. The dynamic is one of mutual empowerment more than federal aggrandizement: as the fourth branch grows, so too does the states’ role grow within it.34 States furnish administrative capacity and democratic legitimacy, bolstering the ability of the federal government to achieve its objectives. But they also inject diversity, contestation, and a degree of chaos, mild or otherwise,35 into national governance. Rather than a federal executive branch solely responsible for carrying out national programs, we see states serving as co-administrators, frequently challenging the federal executive’s exercise of its statutory authority. States also increasingly serve as a shadow federal legislature, rewriting substantial portions of statutory schemes subject to waivers from the federal executive. Here too, our federal government becomes federalist as states vary the content of national programs and push back against congressional decisions.

The state role in administering and authoring federal law complicates conceptions of federalism grounded in autonomy. As the cooperative federalism literature has long noted, a separate space for state action is nowhere to be found in the many programs that intertwine state and federal governance.36 In thinking about states’ role in federal statutory schemes, however, we have not paid sufficient attention to divisions within the federal government—whether across the branches, as this Part contemplates, or along other dimensions, such as partisan politics, as the next Part explores.

Breaking open the national side of cooperative federalism illuminates two important dynamics. First, it reveals that the diversity and competition generated by state administration of federal law do not follow from state-federal separateness. Instead, states ally themselves with certain federal actors and interests in order to oppose others. Diversity that also exists within the federal government assumes concrete form in the fifty states. Second, taking states seriously as national actors reveals that the separation of powers and checks and balances at the federal level are shaped by an actor outside the branches of the federal government. If we cannot fully understand today’s federalism without parsing the federal government, neither can we fully understand today’s separation of powers without considering the states.

A. States as Another Executive Branch

The main role states play in federal statutory schemes is as administrators of national programs, a sort of second executive branch operating alongside the President and the D.C. bureaucracy. Through its conditional spending and conditional preemption powers, and often a combination of the two, Congress has brought states into the administration of the United States’ most substantial statutory schemes. States exercise concurrent authority with the federal executive in social welfare programs like Medicaid and the Patient Protection and Affordable Care Act; environmental programs like the Clean Air Act and the Clean Water Act; and a host of other schemes from immigration to telecommunications to financial regulation.37

While these programs often travel under the label “cooperative federalism,” state actors do not always cooperate with their federal counterparts; their actions are often decidedly uncooperative.38 But such uncooperative behavior is rarely framed in terms of state versus federal authority as such. Instead, states tend to fight with the federal executive branch about the meaning of the statute Congress has designed and the allocation of federal authority. We witness debates about federalism that are really debates about the separation of powers.39

Consider two examples from recent years: state opposition to the Bush Administration’s failure to regulate greenhouse gas emissions and to the Obama Administration’s immigration policies. The Clean Air Act authorizes both the Environmental Protection Agency and California to adopt vehicle emissions standards.40 Because the state’s power to regulate is secured by a federal statute, this scheme frames regulatory disputes between the state and federal executive in terms of the congressional grant of authority, not state autonomy. When the Bush EPA declined to regulate greenhouse gas emissions and also denied California the waiver that would have allowed the state to regulate such emissions, California insisted that it was attempting to faithfully implement the Clean Air Act while the federal executive branch disregarded the statute. Its argument had less to do with federalism than with the distribution of federal authority: state officials argued that the Bush Administration was abdicating its statutory duty to regulate such admissions and that the state was seeking to vindicate congressional intent.41

Arizona’s recent fight with the Obama Administration concerning immigration policy has had much the same character. Arizona’s SB 1070 would have, among other things, made it a crime to be in Arizona without carrying registration papers, required police to determine a person’s immigration status during a stop upon reasonable suspicion that the person was unlawfully present, and allowed police to make warrantless arrests of persons they believed to have committed certain crimes.42 In defending the state law, Arizona did not challenge federal authority over immigration or insist on state autonomy. Just the opposite: it claimed the mantle of Congress and argued that it, and not the federal executive branch, was seeking to execute federal immigration law as Congress intended. The problem, Arizona argued, was that the federal executive was not carrying out federal immigration law to its fullest extent. And, it continued, Congress had lent states authority to cooperate in immigration enforcement so as to avoid such laggardness.43

As both the Clean Air Act and immigration examples suggest, when states want to carry out federal law differently from the federal executive, their most powerful objection sounds not in federalism, but rather in the separation of powers: they try to tar the federal executive’s choices as inconsistent with the statute that governs state and federal action alike. Rather than challenge the raw exercise of federal power, states instead challenge the faithfulness of the executive to the statutory scheme. They rely on power granted to them by one part of the federal government to contest the decisions of another part, and, whether rightly or wrongly, they cast themselves as Congress’s faithful agents, in contrast to a wayward executive branch.44

This state role is thus quite different from a traditional federalism conception pitting autonomous states against an autonomous federal government; integration, not separation, is key. Because a state’s strongest claim of right when it disagrees with the federal executive about how to carry out federal law comes from an appeal to the underlying statute, the federal law—and not arguments about state power as such—is where states turn regardless of what is motivating their challenges. Whether in private conversations between state and federal administrators, discussions mediated by legislators or the public, or filings in lawsuits, states trying to affect the federal executive’s decisions or chart a different course force the federal executive to defend itself with reference to the congressional grant of authority. Parsing the federal government proves critical to understanding state challenges.

Recognizing this intersection between federalism and the separation of powers does not only reorient our thinking about federalism; it also helps us to think differently about the separation of powers.45 The rise of the administrative state has long fueled concerns about the aggrandizement of executive power and the attendant demise of the separation of powers and checks and balances within the federal government.46 As Corwin himself observed, the passing of dual federalism was also the passing of a particular vision of the separation of powers: “the Federal system has shifted base in the direction of a consolidated national power, while within the National Government itself an increased flow of power in the direction of the President has ensued.”47 But these two concerns may answer more than exacerbate one another. Because states have been folded into the federal executive branch, state administration of federal law reproduces checks and balances within the enlarged executive domain.

Sometimes these checks and balances revolve directly around Congress. State administration of federal law may substitute for congressional monitoring of its delegates, forcing both state and federal administrators to defend their decisions in terms of the underlying statute. Often, however, a focus on Congress will not yield much. Especially with respect to the broad delegations that exercise critics of the administrative state, Congress’s intent may simply be that its delegates make the hard decisions. The very feature that leads to executive aggrandizement in the first instance also complicates efforts to cabin executive power with reference to congressional intent. The Clean Air Act, for example, confers substantial discretion on the executive branch, providing that regulation should ensue when in the EPA Administrator’s “judgment” emissions “cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.”48 Executive discretion is even more pronounced in the realm of immigration given that enforcement questions are by default subject to the executive’s policy choices, resource allocation, and particular judgments. Indeed, the Supreme Court’s decision in Arizona v. United States rests on the view that Congress intended the federal executive to set enforcement priorities and thus that federal legislative and executive choices cannot be parsed in the way the state argued.49

Coming up against the limits of traditional separation of powers analysis, state administration in such cases does not so much influence the relationship of the federal executive and legislative branches as generate, at one remove, the competition that is lacking between these branches. Rather than checks and balances between Congress and the federal executive, we see checks and balances between the states and the federal executive. State administration tees up both disputes about the powers and intentions of the branches of the federal government and nationwide public debates about federal law. It forces the executive branch to have conversations it wants to avoid. As these conversations are broadcast nationwide, the lines between state and federal become further blurred. The challenger state and federal executive each find supporters and detractors throughout the country, embedded in the federal government and state governments alike.50

When California sought to regulate greenhouse gas emissions pursuant to federal statutory authority, for instance, it forced the Bush Administration to defend its actions before a broad public. The EPA had to offer detailed reasons for its decisions and justify its preferred policies in ways it might have sidestepped were it the sole administrator of the law. And it found itself a target not only of angry state politicians, but also of angry federal politicians who agreed with the state’s substantive commitments and hauled agency officials in to testify. The controversy also generated substantial public debate, as the state-federal tussle crystallized the issues. This was no mere academic dispute: a state was ready to regulate greenhouse gas emissions under the Clean Air Act and, for better or worse depending on one’s view, the EPA was standing in its way.

When Arizona sought to ramp up enforcement of federal immigration law, it similarly forced a conversation that the Obama Administration was not sure it wanted to have.51 To invalidate Arizona’s law, the federal executive branch had to spell out its own decisions about immigration enforcement. While the President invoked statutory grants of authority and congressional priorities, he also suggested that with a gridlocked Congress, it had fallen to his Administration to shape immigration policy. But with states like Arizona contesting federal policy and seeking to enforce their own schemes, the Administration could not simply cite executive discretion. It had to defend its policy commitments and priorities before both the Supreme Court and the nation.

#### B. Strong presidential powers provide necessary flexibility to prevent WMD proliferation and attacks.

Yoo 12 — John Yoo, Emanuel Heller Professor of Law at the University of California-Berkeley, Visiting Scholar at the American Enterprise Institute, former official in the Office of Legal Counsel of the U.S. Department of Justice, holds a J.D. from Yale Law School, 2012 (“War Powers Belong to the President,” *ABA Journal*—a publication of the American Bar Association, February 1st, Available Online at http://www.abajournal.com/magazine/article/war\_powers\_belong\_to\_the\_president, Accessed 08-13-2015)

Our Constitution has succeeded because it favors swift presidential action in war, later checked by Congress’ funding power. If a president continues to wage war without congressional authorization, as in Libya, Kosovo or Korea, it is only because Congress has chosen not to exercise its easy check. We should not confuse a desire to escape political responsibility for a defect in the Constitution.

A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security. In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy.

The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

#### C. Proliferation risks global nuclear war.

Utgoff 2 — Victor A. Utgoff, Deputy Director of the Strategy, Forces, and Resources Division of the Institute for Defense Analyses and senior member of the National Security Council Staff, 2002 (“Proliferation, Missile Defence And American Ambitions,” *Survival*, Volume 44, Number 2, June, Available Online to Subscribing Institutions via EBSCOhost Electronic Journals Service, p. 87-90)

In sum, widespread proliferation is likely to lead to an occasional shoot-out with nuclear weapons, and that such shoot-outs will have a substantial probability of escalating to the maximum destruction possible with the weapons at hand. Unless nuclear proliferation is stopped, we are headed toward a world that will mirror the American Wild West of the late 1800s. With most, if not all, nations wearing nuclear 'six-shooters' on their hips, the world may even be a more polite place than it is today, but every once in a while we will all gather on a hill to bury the bodies of dead cities or even whole nations.

### 2AC — Perm Devolve another issue

#### Permutation: Do the plan and the Supreme Court of the United States should devolve authority over another issue to the 50 States governments and relevant US territories by ruling that that issue is a violation of the anti-commandeering doctrine. Justified to test the net-benefit’s intrinsicness.

### 2AC — Lopez Theory

#### Lopez-style counterplans are illegitimate: They aren’t real world and teach poor change strategies because no person could ever be in such a position. Even U.S. v. Lopez didn’t have all 50 states act. They crush aff ground by depriving the aff of a majority of fed key warrants through delegation of any federal power. They undermine topic education by forcing affs to dodge the central controversy for extreme affs with an angle against Lopez. Counterplans with one actor or the standalone States CP solve their offense.

### 2AC — Uncooperative Federalism Turn

#### Uncooperative federalism solves federal overreach — Patriot Act and marijuana enforcement prove.

Gerken and Revesz 17 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, and Joshua Revesz, Student at Yale Law School, 2017 (“Progressive Federalism: A User’s Guide,” *Democracy: A Journal of Ideas*, Number 44, Spring, Available Online at http://democracyjournal.org/magazine/44/progressive-federalism-a-users-guide/, Accessed 06-14-2017)

Types of Resistance

We often forget that the federal government’s administrative capacity is modest, relatively speaking. Excluding the military, it employs just short of three million personnel. Its 2015 budget (excluding defense, Social Security, and mandatory spending obligations) was less than $600 billion. Together, state and local governments dwarf these figures, with more than 14 million workers and a combined budget of more than $2.5 trillion.

Because of this, Washington can’t go it alone. When Congress makes a law, it often lacks the resources to enforce it. Instead, it relies on states and localities to carry out its policies. Without those local actors, the feds cannot enforce immigration law, implement environmental policy, build infrastructure, or prosecute drug offenses. Changing policies in these areas—and many more—is possible only if cities and states lend a hand. This arrangement creates opportunities for federal-state cooperation. But it also allows for “uncooperative federalism”: State and local officials can use their leverage over the feds to shape national policy.

This means that states can shape policy simply by refusing to partner with the federal government. This form of resistance involves more than mere obstruction. It allows progressive states to help set the federal agenda by forcing debates that conservatives would rather avoid and by creating incentives for compromise. When states opt out of a federal program, it costs the federal government resources and political capital. That’s why President Trump has a lot more incentive to compromise with Democrats in Sacramento than with those on the Hill.

Examples of uncooperative federalism abound. For example, red states and blue states alike objected to some of the PATRIOT Act’s expansive surveillance and detention rules as an attack on civil liberties. Rather than just complaining, they instructed their officials not to collect or share certain information with the feds unless the actions accorded with the states’ constitutions.

Or consider marijuana. Federal dependence on the states is so pronounced in criminal law that Vanderbilt law professor Robert Mikos has argued that states can “nullify” federal marijuana law by withdrawing enforcement resources. Colorado and Washington have already done so. These changes may be entrenched enough that even Jeff Sessions’s marijuana-hostile Department of Justice won’t be able to change the equation.

If progressive leaders hold their ground, they can shield their constituents from the policies they most oppose, and maybe even force compromise.

On other occasions, states have avoided a head-on confrontation with the feds and instead waged wars of attrition. For example, consider the response to the No Child Left Behind Act, perhaps the centerpiece of George W. Bush’s domestic policy. States accepted the federal grant money, but slow-walked reforms and often fudged testing standards. Their recalcitrance won out: The Bush Administration gave up and granted states so many waivers that they effectively gutted the federal program. The war has continued with the Obama Administration, which has struggled to rope states and localities into cooperating with its education agenda.

### 2AC — Marble Cake Federalism

#### Sovereignty divisions are impossible — “marble cake” federalism is good and inevitable.

Kincaid 95 — John Kincaid, Robert B. and Helen S. Meyner Professor of Government and Public Service and Director of the Meyner Center for the Study of State and Local Government at Lafayette College, Editor of *Publius*—The Journal of Federalism, former Executive Director of the U.S. Advisory Commission on Intergovernmental Relations, 1995 (“Foreword: The New Federalism Context of The New Judicial Federalism,” *Rutgers Law Journal* (26 Rutgers L.J. 913), Available Online to Subscribing Institutions via Hein Online, Accessed 06-26-2017, Lil\_Arj)

A private committee chaired by U.S. Senators Daniel J. Evans and Charles S. Robb proposed another swap in 1985.27 Reagan had convinced the Congress to consolidate 77 categorical grants into nine block grants in 1981 and otherwise reduce. the total number of funded grants from 539 in 1981 to 404 by 1984.28 However, the Congress soon increased the number of grants again, to 492 in 1989 and then 633 by 1995.29 More recently, Alice M. Rivlin, Director of President Clinton's Office of Management and Budget, proposed that the federal government "eliminate most of its programs in education, housing, highways, social services, economic development, and job training" so that the states can "take charge" of the nation's "productivity [End Page 918] agenda." 30 In turn, the federal government would ensure basic, universal health-care coverage and control health costs while also producing budget surpluses. President Clinton's "reinventing government" program includes sorting-out plans and proposals to consolidate many of the federal government's 633 grants-in-aid into a small number of block grants.3 1

The U.S. Supreme Court also endeavored to sort out federal and state functions during this period by trying, in National League of Cities v. Usery,32 to identify traditional state functions meriting Tenth Amendment protection against federal intrusion. Soon after this decision, however, the Court found it impossible to sort out such functions, especially state functions, and virtually abandoned the field nine years later, instructing the states to rely on the national political process rather than on the federal judicial process to protect their functional powers against federal encroachment. 33

If these political and judicial attempts to sort out functions have largely floundered in political and policy complexity, it should not be surprising that judges across the fifty states have not, during the same period, thoroughly sorted out their respective obligations under the Federal Constitution and their state constitution, or articulated a common, coherent theory of state constitutional jurisprudence distinct from federal constitutional jurisprudence. The federal system is, as Morton Grodzins observed, too fluid and chaotic to permit such neat theoretical developments in any definitive fashion.34 Grodzins did not regard this chaos as a failure, but as a generally positive feature of a democratic federal system premised on diversity, redundancy, multiple access to representative institutions, and checks and balances rather than on more streamlined principles of political centralization and administrative decentralization advocated by Tocqueville to accommodate what he regarded as the simple-minded intelligence of a [End Page 919] democratic age.35 This is not to recommend chaos theory as a new paradigm for state constitutional law analysis, but only to suggest that the complex rationality of a federal system observed by Tocqueville may, like a free-speech market, give the appearance of unintelligibility, even while a pattern of ordered discourse may be at work to bring emergent properties of the system into view.

## Abolitionism Kritik

### 2AC — FW — Plan-Text

#### Framework: Only evaluate arguments based off the plan text-any alternatives are self-serving and regressive which makes 2AC predictability and offense impossible-evaluate the consequences of the AFF and alternative because it is the only holistic way to evaluate prior questions.

### 2AC — No Link

#### The plan is non-reformist and negative reform – it aims to break the system down, not support it.

Ben-Moshe 13 — Liat Ben-Moshe, Assistant Professor of Disability Studies at the University of Toledo, Ph.D. in Sociology from Syracuse University, B.A. Honors Sociology and Anthropology from Tel-Aviv University, 2013 (“The Tension Between Abolition and Reform,” *Academic Journal*, Available Online at <https://www.academia.edu/3483590/The_tension_between_abolition_and_reform>, p. 88, Accessed 07/15/2017, MR)

This conceptualization of placing reform and abolition on a continuum can also be traced to the pioneering work Politics of Abolition, in which Mathiesen (1974) follows Andre Gorz’s distinction between reformist and “non-reformist” reforms. Reformist reforms are situated in the discursive formation of the system as is, so that any changes are made within or against this existing framework. Non-reformist reforms imagine a different horizon that should be realizable for the improvement of humanity, and are not limited by a discussion of what is possible at present. Mathiesen expands this notion to state that non-reformist reforms that are effective need to be of the abolishing kind. He also creates a typology that distinguishes between positive and negative reforms. Positive reforms are changes that improve the system so it will act more effectively, so that the system gains strength and abolition becomes more difficult. Examples of positive reforms in the current penal system include probation and technological monitoring systems (such as ankle bracelets) which, although ensure that those convicted could live outside of the prisons, further the reach of the penal regime to populations and actions that it had not dealt with before. On the other hand, negative reforms are changes that abolish or remove parts of the system on which it is dependent (Mathiesen, 1974). An example of negative reforms could be to demand better health care for prisoners in current prisons and jails, to a point where the prison system will not be able to afford these conditions and will have to start decarcerating inmates who require medical attention. This strategy was also used in deinstitutionalization lawsuits to decarcerate inmates from institutions for the developmentally disabled in the 1970s. Even if it makes the system look more responsive, from a public relations standpoint, such reforms do not contribute to the growth of the system as a whole. This relationship between abolition and reform is not only a scholarly debate, but also one with pragmatic implications. For instance, Angela Y. Davis (2002), a committed abolitionist, does not believe there is a strict line between reform and abolition. The question is what kinds of reforms are sought, and whether they will strengthen the system in the long run. For instance, fighting for health care for prisoners is something activists should support, as integral to abolitionist and decarcerating strategies. However, some health care initiatives are opposed by abolitionists such as attempts to open new prison hospitals or separate clinical wards, as these would only expand the scope of incarceration in the long run. Many prison abolition and anti-psychiatry activists are insistent that the trend to develop mental health services within the prison only serves to criminalize (mostly) women with psychiatric and cognitive disabilities. Quality health services of this nature are sparse outside the walls of the prison. Why should funds go to operate these services within an already oppressive system? Some

### 2AC — Perm Do Both

#### Permutation Do Both – Preventative reforms aimed at reducing prison sentences without directly reforming the prison system is consistent with the abolitionist critique and solves better

Mcleod 15 — Associate Professor, Georgetown University Law Center. Citing the Georgetown University Law Center, the Robina Institute of Criminal Law and Criminal Justice Conference on Preventive Justice at the University of Minnesota Law School, the UCLA School of Law, and to the editors of the UCLA Law Review. // *“Prison Abolition and Grounded Justice”* // [http://www.uclalawreview.org/wp-content/uploads/2015/06/McLeod\_6.2015.pdf // Accessed on 7/20/17 //](http://www.uclalawreview.org/wp-content/uploads/2015/06/McLeod_6.2015.pdf%20//%20Accessed%20on%207/20/17%20//) MW

Preventive justice designates a range of measures aimed at reducing the incidence of harmful behavior, typically by targeting the risks posed by specific individuals and less often by addressing the potential harm posed by given social situations. Preventive measures run the gamut from preventively detaining people deemed dangerous to increased spending on social programs that may serve to decrease crime.293 In some respects, in its most general sense the term preventive justice designates a field of regulatory activity not meaningfully distinguishable from general crime prevention apart from its reference to justice. The scholarly literature focused on preventive justice is overwhelmingly engaged with critically considering the injustice of particular (recent) punitive preventive measures, like sex offense registries or terrorism watch lists, and with underscoring the threats to vulnerable populations and to the liberal, libertarian, and rule of law values imperiled by individualized preventive targeting in criminal law administration.294 This scholarly work is primarily and remedially focused on addressing how procedural protections might limit the excesses of coercive, punitive preventive measures.295 By contrast, this Part explores a distinct and largely neglected structural and institutional conception of preventive justice that promises to minimize criminal law’s injustice and reduce crime. This alternative conception is aimed at prevention of interpersonal harm, along with other social problems, that might operate without enlisting criminal law enforcement. Although the current organization of an idea ofsecurity around punitive policing and prison-backed punishment has gradually come to seem natural and inevitable, this alternative conception of preventive justice serves as a corrective to the false sense of necessity that so often accompanies punitive preventive policing and punishment. Additionally, this alternative conception of preventive justice offers a manner of constraining punitive preventive measures other than through procedural mechanisms—namely, by substantively conceptualizing prevention in other terms and proliferating noncoercive modes of facilitating collective security. This neglected framework of prevention may operate without involvement of the conventional criminal process, without targeting individual persons for heightened surveillance, and without jeopardizing core principles of justice and fairness. Prevention so configured attends to the problems posed by interpersonal violence and other criminalized conduct by decreasing opportunities to offend and confronting criminalized conduct without first resorting to policing, prosecution, and conventional criminal punishment. This move away from preventive policing, prosecution, and punishment—away from the sort of interventions that Professor Bernard Harcourt has critically coined “punitive preventive measures”— and toward situational, structural, and institutional prevention entails an alternative form of preventive crime regulation consistent with an abolitionist project in that it does not rely on strategies of intervention that instigate criminal law’s institutions, violence, or surveillance.296 Prevention in this alternative register may, for these reasons, function as a constructive supplement to a prison abolitionist ethic. This Part explores how this alternative conception of prevention is consistent with an earlier vision of ensuring social order and collective peace, one that arguably dates to the late eighteenth and early nineteenth centuries, but has been largely abandoned or merely glossed over in contemporary criminal law scholarship. Preventive justice first surfaced as a relevant concept in Anglo-American legal discourse before there were established police forces, at a time when it remained uncertain how rapidly industrializing societies would seek to limit interpersonal harm while maintaining a commitment to liberty and privacy.297 Although Blackstone conceived of preventive justice as tied to directly policing probable criminals through an assessment of their character rather than other actuarial means,298 later social reformers were committed to a different approach to maintaining social order quite apart from what we would today conceive of as criminal law enforcement.299 The most famous of these reformers was Jeremy Bentham, who went as far in his unfinished Constitutional Code to explore the convening of a “Preventive Services Ministry,” the function of which would be to prevent “delinquency and calamity.”300 This conception of prevention was organized not so much around crime as around uncertainty, insecurity, and risk.301 Its purpose was to ensure the “security of [future] expectations” to the greatest extent possible.302 This involved an expanded conception of security, according to which individual criminal deviance was not any more of concern than the safety of mines and factories, precautions against fire and floods, and other “calamities” of nineteenth century life.303 Quite apart from his famous (or infamous) plans for panoptic prison reform, Bentham conceptualized security more broadly as a project of environmental design and risk reduction. As Martin Dubber has explained,“[Bentham’s] idea was to prevent the exigency. And so the possibility of an exigency became the justification for police power actions, rather than the exigency itself.”304 A professional punitive police power backed by the threat of imprisonment was thus not understood by Bentham and his contemporaries to be an inevitable force for preserving security, even as it is now an entirely taken for granted component of the modern state. Indeed, there was widespread suspicion of and resistance to the establishment of a punitive preventive police force centered on crime interdiction, and this deep suspicion of punitive policing persisted for years. As David Garland explores in his celebrated study, The Cultureof Control: Crime and Social Order in Contemporary Society: [E]ven the idea of “police” referred not to the specialist agency that emerged in the nineteenth century but to a much more general programme of detailed regulation. . . . The aim of this kind of “police” regulation was to promote public tranquility, and security, to ensure efficient trade and communications in the city, and to enhance the wealth, health, and prosperity of the population. To this end, city authorities promulgated detailed by-laws calling for . . . programmes of street lighting [and] the regulation of roads and buildings . . . . 305 Even though the police force that began to take shape during the nineteenth century focused more directly on crime control, the original purpose of prevention was “not to pursue and punish individuals but to focus upon the prevention of criminal opportunities and the policing of vulnerable situations.”306 During this time period, the idea that punitive policing would take up the work of limiting interpersonal harm was dismissed for decades as illiberal, prone to tyrannical abuse, and dangerous. For example, a Select Committee in the British House of Commons convened for three yearsto consider the introduction of a formal police force, concluding in 1818: [T]hough their property may occasionally be invaded, or their lives endangered by the hands of wicked and desperate individuals, yet the institutions of the country being sound, its laws well administered, and justice executed against offenders, no greater safeguards can be obtained, without sacrificing all those rights which society was instituted to preserve.307 The Committee thus recognized that risk of harm was an inevitable threat associated with social life. Consequently, the Committee could not conceive that extraordinary measures could be taken to avert crime and the risk thereof beyond institutional and structural efforts to limit risk and isolated responses against those individuals who committed offensive wrongs. Instead, by and large, these reformers thought that society ought to organize itself to minimize crime without unnecessary individual targeting, both by empowering people to care for themselves and by organizing collective social life to minimize opportunities for victimization and harm. This premise is at the core of the potential confluence of an abolitionist framework and this earlier form of prevention focused on structural measures of risk reduction rather than individualized targeting. Along these lines, the Select Committee of the House of Commons acknowledged: It is no doubt true, that to prevent crime is better than to punish it: but the difficulty is not in the end but the means, and though your committee could imagine a system of police that might arrive at the object sought for, yet in a free country, or even in one where any unrestrained intercourse of society is admitted, such a system would of necessity be odious and repulsive, and one which no government would be able to carry into execution. . . . [T]he very proposal would be rejected with abhorrence; it would be a plan which would make every servant of every house a spy upon the actions of his master, and all classes spies upon each other.308 Again in 1822, the House of Commons Select Committee Fourth Report concluded: It is difficult to reconcile an effective system of police, with that perfect freedom of action and exemption from interference, which are the great privileges and blessings of society in this country; and your Committee think that the forefeiture or curtailment of such advantages would be too great a sacrifice for improvements in police, or facilities in detection of crime, however desirable in themselves if abstractly considered.309 Only in 1828 did a Select Committee finally recommend the convening of a centralized criminal police force, but the force’s purpose was to prevent crime through diversified regulation, not to serve as an adjunct to punishment. As the Committee explained, “[the force’s] main object ought to be the prevention of crime, and not the punishment of it.”310 When a Scottish magistrate, Patrick Colquhoun, sought to centralize the police by creating an organization with fulltime police officers, officers were to address indigence, not just crime.311 To the extent officers sought to prevent crime directly, policing was to be organized to prevent criminal opportunities and vulnerable situations.312 Colquhoun’s Treatiseon the Policeof the Metropolis conceptualizes preventive policing to include regulations involving “markets, hackney-coach stands, paving, cleansing, lighting, watching, marking streets, and numbering houses.”313 It was apparent to these social reformers that any program of policing or crime regulation should consider education, employment, social integration, and engagement as indispensable and central components of their mandate. Even to proponents of policing, the advent of an organized police was understood to be part of a diversified form of governance, primarily social rather than punitive in orientation, and one in which citizens and society were principally responsible for crime prevention.314 In the intervening centuries, an idea of security organized around punitive policing and prison-backed punishment gradually has come to seem natural and inevitable, but this earlier conception of prevention may offer a corrective to that false sense of necessity and to the scholarship and reformist efforts centered on containing punitive preventive measures solely through procedural reform (rather than substantively reconceptualizing prevention in other terms and proliferating noncoercive modes of prevention).315 Much of the work of prevention in this alternative register is situation-specific, incremental, and unglamorous, but it promises the most urgently needed change in practices of overcriminalization and to criminal law enforcement’s violence. A further factor commending prevention in this alternative register, and an abolitionist ethic more broadly, is that the violence and dehumanization that haunts criminal law administration, and the needed reduction in overcriminalization and overpunishment, requires a much more radical shift than merely an at-tack on coercive preventive measures like sex offense registries or terrorism watchlists and a concomitant expansion of procedural protections. Different approaches are needed within which prevention may be conceptualized apart from individualized targeting and coercion, both before and after the fact of a criminal conviction. Preventive ambitions, as Fred Schauer has illuminated, are of course ubiquitous throughout the criminal law: “[U]sing the criminal law in order to achieve preventive goals is a pervasive dimension of our long-standing practices of punishment . . . .”316 Although critics of punitive preventive measures decry the procedural informality—or even irregularity—that routinely accompanies such measures (and importantly and rightly so), these critics overlook how eviscerated procedural protections are characteristic not just of the preventive periphery of precrime enforcement, but of most of the adjudications at criminal law’s core.317 As political theorist Stephen G. Engelmann provocatively put it, “[I]n the criminal law . . . elaborate procedures . . . are routinely suspended in ongoing orgies of plea-bargaining.”318 These “orgies of plea-bargaining” are produced by the often almost exclusive reliance on criminal law administration to manage social risk rather than proliferating other noncriminal forms of prevention and justice. More far-reaching emphasis on thisframework of prevention would beneficially focus conventional criminal law’s properly reactive processes on those relatively rare instances where some form of collective sanction—subject to procedural protections—is most called for. Such circumstances might include those relatively limited situations of interpersonal harm—instances of rape and murder, chief among them—where the rituals of the criminal process may perform important and desirable societal work, or at least for which we can conceive presently of no other appropriate response. The following Part continues to reconceptualize criminal law’s necessary ambit and the prevention of harm outside the institutions that form the penal arm of the state.

### **2AC — No Trade Off**

#### **Reforming specific prison conditions doesn't trade off with larger demands for prison justice**

Davis & Rodriguez 2k

[Angela Davis, prof in the History of Consciousness program @ UC, prison-related activist since 1970; interviewed by Dylan Rodriguez, Assistant Prof @ UC; “The Challenge of Prison Abolition: A Conversation”; Social Justice, 27:3=81 (2000:Fall) p.212]s

Angela: The seemingly unbreakable link between prison reform and prison development -- referred to by Foucault in his analysis of prison history -- has created a situation in which progress in prison reform has tended to render the prison more impermeable to change and has resulted in bigger, and what are considered "better," prisons. The most difficult question for advocates of prison abolition is how to establish a balance between reforms that are clearly necessary to safeguard the lives of prisoners and those strategies designed to promote the eventual abolition of prisons as the dominant mode of punishment. In other words, I do not think that there is a strict dividing line between reform and abolition. For example, it would be utterly absurd for a radical prison activist to refuse to support the demand for better health care inside Valley State, California's largest women's prison, under the pretext that such reforms would make the prison a more viable institution. Demands for improved health care, including protection from sexual abuse and challenges to the myriad ways in which prisons violate prisoners' human rights, can be integrated into an abolitionist context that elaborates specific decarceration strategies and helps to develop a popular discourse on the need to shift resources from punishment to education, housing, health care, and other public resources and services. Dylan: Speaking of developing a popular discourse, the Critical Resistance gathering in September 1998 seemed to pull together an incredibly wide array of prison activists -- cultural workers, prisoner support and legal advocates, former prisoners, radical teachers, all kinds of researchers, progressive policy scholars and criminologists, and many others. Although you were quite clear in the conference's opening plenary session that the purpose of Critical Resistance was to encourage people to imagine radical strategies for a sustained prison abolition campaign, it was clear to me that only a few people took this dimension of the conference seriously. That is, it seemed convenient for people to rejoice at the unprecedented level of participation in this presumably "radical" prison activist gathering, but the level of analysis and political discussion generally failed to embrace the creative challenge of formulating new ways to link existing activism to a larger abolitionist agenda. People were generally more interested in developing an analysis of the prison-industrial complex that incorporated the local work that they were involved in, which I think is an important practical connection to make. At the same time, I think there is an inherent danger in conflating militant reform and human rights strategies with the underlying logic of anti-prison radicalism, which conceives of the ultimate eradication of the prison as a site of state violence and social repression. What is required, at least in part, is a new vernacular that enables this kind of political dream. How does prison abolition necessitate new political language, teachings, and organizing strategies? How could these strategies help to educate and organize people inside and outside the prison for abolition?

### 2AC — Aff Solves

#### School reform is key – decarceration must begin with the educational system

Simmons, 2005 (Lizbet McCrary Simmons, Doctor of Philosophy, Prison Schools: Disciplinary Culture, Race and Urban Education, <http://search.proquest.com.proxy.lib.umich.edu/docview/305030433/A9EB96B2D8374AB9PQ/1?accountid=14667> )

While schools may be, as Angela Davis argues, “the most powerful alternative to jails and prisons,” they are not poised to counter the carceral unless, as she further suggests, they too are demilitarized, decarcerated, and devoid of violence (Davis, 2003). Davis argues that many schools already seem like prisons because they are physically flanked by armed security guards and by police and because learning is often disconnected from any sense of joy. Only when we remove the prison from education can we begin to imagine the ways in which the school itself could be at the heart of a national strategy of decarceration. To the extent that we imagine schools as presently occupying an oppositional strategy and, therefore, offering an immediate and ideal alternative to jails and prisons, we are letting public schools off the hook. This idealization of the public school in its current state dangerously skirts the territories of disciplinary culture in education and overlooks the struggle that would ensue were we to fight for institutions that are truly free of prison influences. Of primary concern is the possibility that in naming the phenomenon as one of clear opposition, the operative dynamics of schooling may be obscured, thereby masking the features of the very institution in which we have placed our hope, and limiting our capacity to struggle in grounded ways for change. If we aim to build on the promise of public schools as a primary vehicle for democratic participation - and I do assert that promise - and we seek to transform the prison system through them, it is first necessary to map the base territory of schooling, even if that map points to an educational system entangled and entrenched in the culture of criminal justice (Davis, 2003; Noguera, 2003a).

### 2AC — Reforms Effective

#### Abolitonists hyperbolize the harms of prisons and the ineffectiveness of reforms

Joshua A. Miller, 14, [editor of The Good Society](http://www.psupress.org/journals/jnls_PEGS.html), direct the [JCI Prison Scholars Program](http://www.anotherpanacea.com/about/prisonscholarsprogram.com), and teach philosophy, 7/29/14, “[Prison Abolition, Reform, and End-State Anxieties](http://www.anotherpanacea.com/2014/07/prison-abolition-reform-and-end-state-anxieties/)” http://www.anotherpanacea.com/?s=prison+abolition

This is where I find abolitionism frustrating: the project of prison abolition seems like an end-state rather than an end-in-view. It deliberately ignores (1) the [wishes of victims, citizens, and even many of the incarcerated](http://www.law.yale.edu/documents/pdf/Faculty/Forman_RacialCritiques.pdf) (all of whom are understood to be duped and epistemically blinded by the ideology of carcerality unless they adopt abolitionism.) It doesn’t start with our current carcerality and work away from it, but rather starts with a rejection of the current context and the constraints it creates (2). It’s inflexible (3) in the sense that it does not allow that some limited carcerality ([a la Norway](http://content.time.com/time/photogallery/0,29307,1989083,00.html)?) might still be reasonable. Though there’s the sense that that is the direction that abolitionism must proceed, it does not currently emphasize the development of the skills and abilities (4) that alternatives to incarceration would require. And though it does aim to foreclose carcerality forever, I do think abolitionists are most concerned to promote plurality, cooperation, and empowerment (5) for some of the most dominated people in our world today, which is why I can’t help feeling the pull of abolition even as the other objections I mention raise red flags.¶ Meliorism, on the other hand, has all the problems that the abolitionists describe. Reformers work with and within the system to resist it, which requires all sorts of rhetorical and practical compromises. By chipping at the edges and living too comfortably with “constraints” and “realism,” (2) meliorists leave the status quo mostly untouched. We adopt democratic projects and processes (1), but leave the fundamental injustices in place. We develop capacities (4) but usually we can’t create the institutions and conditions (5) where those capacities will be actualized. We are, at base, flexible (3) with evil, and thereby compromised by it, while the righteous know that evil requires inflexibility and even sacrifice.¶ Angela Davis puts it this way at the start of Are Prisons Obsolete?:¶ “As important as some reforms may be-the elimination of sexual abuse and medical neglect in women’s prison, for example-frameworks that rely exclusively on reforms help to produce the stultifying idea that nothing lies beyond the prison. Debates about strategies of decarceration, which should be the focal point of our conversations on the prison crisis, tend to be marginalized when reform takes the center stage. The most immediate question today is how to prevent the further expansion of prison populations and how to bring as many imprisoned women and men as possible back into what prisoners call the ‘free world.'”¶ No reformer wants to “produce the stultifying idea that nothing lies beyond prison,” but much of the rest of Davis’s book is devoted to the claim that reform is inextricable from that consequence. Ultimately, she equates prison reform with the absurdity of “slavery reform.” America’s prisons are historically and in current practice entangled with the Black Codes, the convict-lease system, Jim Crow, sexism, and antiblack racism; therefore, reformers are merely (hopefully unknowingly) fluffing the pillows while white supremacy and patriarchy is maintained:¶ If the words “prison reform” so easily slip from our lips, it is because “prison” and “reform” have been inextricably linked since the beginning of the use of imprisonment as the main means of punishing those who violate social norms.¶ Yet consider: Davis assumes that the majority of the increase in incarceration has been driven by the drug war, and that alternatives to incarceration will foreground drug treatment and decriminalization of drugs. In fact, though the largest group ofarrests are tied to drug use, the largest group of prisoners are incarcerated for violence; this reflects sentencing differences and the kinds of treatment diversion programs for which she calls. There’s good evidence that the drug war, poverty, and racist policing produce some of that violence, but not all of it. Plus, prison populations are already shrinking, but [at least some of this decline is due to the increase of post-release strategies that export carceral logics into a parolee’s (or even an unindicted suspect’s) everyday life](http://www.whitehouse.gov/ondcp/alternatives-to-incarceration). The goals of decarceration can fall into the logic of carcerality as easily as the goals of reform. So how much really separates reformers from abolitionists? A reformer might call for the restoration of prison education and voting rights, for the creation of schools that teach rather than prepare students for prison, for decriminalization and treatment of drug abuse, for poverty-reduction and racial justice, while still thinking that certain kinds of violence should lead to coercive detention, that restorative justice has dangerous implications when applied to cases of sexual assault or organized violence.

### 2AC — No Root Cause

#### No root causes – The carceral machine is an independent, structural force contributing to but not reducible to other forces of oppression.

Mallory (Prof of Philosophy at Brooklyn College) 7

(Jason L., Prisoner Oppression and Free World Privilege, Radical Philosophy Today, Volume 5, 2007)

Is prisoner abuse merely a symptom of other, more basic forms of oppression?¶ A third and final objection that can be voiced against the argument that current and former prisoners form distinct oppressed groups is that “prisoner oppression,” when analyzed on its most basic levels, amounts to no more than (or can be reduced to) class, race, and/or gender oppression. Don Sabo, Terry A. Kupers, and Willie London, for example, suggest that modern prisons possess four fea- tures of a patriarchal institution: homosociality, sex segregation, hierarchy, and violence;56 these features could be construed as evidence that prisoner oppression can be reduced in some way to a more fundamental system of gender oppression. There also exists a history of Marxian attempts to reduce all aspects of women’s and people of color’s oppression to economic exploitation. Simi- larly, one could argue that the injustices being called prisoner oppression also is “nothing more” than a class and/or race issue, especially when one recogniz- es that most U.S. current and former prisoners are people of color from poor/ working class backgrounds.¶ In response, I would, first, agree that mass incarceration clearly benefits white supremacist, capitalist, and patriarchal interests by preserving and reproducing virtually all of the most oppressive structures of inequality already present in the dominant U.S. society. Possessing, for example, the advantages of wealth and/ or white skin in the U.S. will significantly decrease the likelihood of becoming imprisoned and, if incarcerated, may mitigate some of the official and unofficial penalties, especially after one is released. The ability, for example, to obtain living-wage employment following decarceration with an understanding employ- er who is willing to overlook one’s prison record is certainly easier for those with wealth and/or white privilege. Affluent, well-connected people also do not need to rely upon public defenders when charged with a crime or when seeking appeals if convicted, so they are less likely to have inadequate legal representation, which translates into a greater probability of avoiding incarceration or extended prison terms. White people of all economic backgrounds similarly possess additional ad- vantages for avoiding imprisonment: White folks, for instance, are not personally oppressed by a racist U.S. legacy, beginning with American Indian genocide and African slavery and continuing with attacks against the Latina/o and Arab com- munities, that marks the bodies and cultures of people of color with destructive associations: criminal, violent, illegal, evil, diseased, uncivilized, terrorist, subhu- man. Whenever a white person in America stands before an officer, a judge, a jury, or a parole board she will not have to risk facing (or even ask herself if she might be facing) these racist, criminalizing assumptions held in the white collec- tive imagination, which could effectively deny her humanity, individuality, and ultimately her freedom. “[W]hen you grow up Indian,” writes current prisoner Leonard Peltier, “you don’t have to become a criminal, you already are a criminal. You never know innocence. I was brought up into a world like that. It’s a world most white people never see and will never know.”¶ The manufacture, however, of an outcast population that is systematically stored in remote human warehouses and permanently Othered—sociopolitically, economically, and legally—in ways distinct from or in addition to those disadvantages placed on other oppressed groups demonstrates how mass incarceration is creating its own, special form of oppression. While the majority of those in prison are people of color from the lower economic classes, 40 percent of prisoners are white and a small but significant segment of prisoners come from middle-class economic backgrounds. This demonstrates that white and wealth privilege will not always, though they may often, prevent one from being relegated to the prisoner classes.¶ In addition, if one survives incarceration long enough to be released, some post-prison penalties will be inflicted upon all former prisoners regardless of their membership in other privileged groups; for example, the lingering psychological damage caused by the brutal conditions of incarceration itself; increased risk of contracting HIV and/or hepatitis C and/or tuberculosis, all of which can have a higher-than-normal prevalence in many U.S. prisons;60 legal job discrimination against those with a prison (or criminal) record that can prevent even the more privileged from obtaining specific forms of desired employment (e.g., various posi- tions in government, barber licensing, some teaching jobs in high school and aca- demia); temporary or permanent electoral disenfranchisement depending on the state; and the pervasive and rarely contested social stigma that indelibly attaches to “ex cons,” a stain on one’s character that, in American society, can never be entirely washed away regardless of one’s membership in other privileged groups.¶ Conversely, those who experience other forms of oppression will not necessarily have to face the additional set of harms caused by mass incarceration, although one’s risk for imprisonment in the U.S. is significantly diminished if one is wealthy, white, gender conforming,61 and/or female. As a consequence of contemporary patterns of imprisonment, the myriad disadvantages inflicted by prisoner oppression are therefore disproportionately borne by those already oppressed by racism, classism, and transphobia, thereby exacerbating historical inequalities based on race, class, and gender identity/expression. Mass incarceration, however, does not directly, individually oppress all people of color, poor/working class people, or transgender people, even though it does indirectly harm each of these groups as a whole. Prisoner oppression is drawing its own distinguishable groove into the so- cial fabric, separating its victims to form its own identifiable classes, taken mostly from the already oppressed, for special acts of dehumanization and exclusion. As the carceral state continues to grow, the unmistakable set of harms inflicted by imprisonment will be increasingly recognized as an independent, structural force contributing but not reducible to other forces of oppression.

## Court Politics DA

### 2AC — No Link

#### Huge No Link: Normal Means for the Affirmative is uniform enforcement throughout federal district courts to rid confusion over the constitutionality of zero tolerance policies

Pelliccioni 08 — Christopher Pelliccioni is an Associate of Chadbourne & Parke LLP, a law firm in New York, NY. As a lawyer in New York, New York, attorney Pelliccioni serves New York County. // *“Is Intent Required - Zero Tolerance, Scienter, and the Substantive Due Process Rights of Students”* // <http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1511&context=caselrev> // MW

The emergence of zero tolerance policies in America's public schools has generated a great deal of controversy during the past decade. Though the creation of such policies dates back to the passage of the Gun-Free Schools Act of 1994,2 the outrage over its implications entered the spotlight in 1999. Hundreds of people in Decatur, Illinois, and thousands across the nation protested the expulsion of seven high school boys for fighting at a high school football game. 3 Ultimately, Jesse Jackson and the Rainbow Coalition went to Decatur to demonstrate against these policies.4 Zero tolerance has recently come under attack by many different organizations. At its meeting in February 2001, the American Bar Association approved a resolution opposing zero tolerance policies in schools, expressing concern about regulations that require automatic punishment without regard to circumstances.5 Groups such as the Rutherford Institute have begun to track and fight such policies through the representation of students affected by the imposition of zero tolerance laws.6 Why do these policies generate so much controversy? At their inception, these regulations were heralded by the American Federation of Teachers, who urged a nationwide adoption of zero tolerance policies to curb the effects of violence in America's schools. 7 Ultimately, the Gun-Free Schools Act of 1994 was passed, whereby each state receiving federal funding pursuant to the Elementary and Secondary Education Act must expel, for at least one year, any student who possesses a weapon on school grounds. 8 Many states have elected to go beyond the federal legislation by expanding the definition of "weapon" to include knives and other instrumentalities. 9 Though most people would seemingly agree that schools should adopt tough policies to curb school violence, the fact that many of these regulations lack a scienter requirement has generated much debate. Many courts have struggled with the constitutionality of a school policy that does not consider, whether a student intended to violate a rule prohibiting possession of knives, drugs, or alcohol on school grounds or at school activities. 10 Recently, the United States Court of Appeals for the Sixth Circuit essentially struck down zero tolerance policies, stating in Seal v. Morgan that "suspending or expelling a student for weapons possession, even if the student did not knowingly possess any weapon" would violate substantive due process. 1 The court ultimately concluded that such policies are irrational. 12 The Sixth Circuit is the first appellate court to expressly rule that such policies are unconstitutional; the opinions of various circuit courts of appeal and district courts have come to mixed conclusions on the issue. 13 Most recently, in an unpublished opinion, the United States Court of Appeals for the Fourth Circuit upheld zero toler-ance policies, stating that "federal courts are not properly called upon to judge the wisdom of a zero tolerance policy of the sort alleged to be in place." 14 The question of whether zero tolerance policies violate the substantive due process rights of students by not considering scienter as an element of the offense has important implications for school administration. School districts, confronted with inconsistent court opinions, are currently lacking clear guidance on how to constitutionally implement such policies. It is unclear whether school districts need to include an intent requirement in any policy that they create. This uncertainty has led to an overall evaluation of the tools that school districts can utilize to maintain order and safety in their schools. Concerning the legality of zero tolerance, it is unclear whether federal courts should be interfering with the implementation of these policies in the first place. Considering statements from the Supreme Court admonishing lower courts against interfering with the operations of public schools, it is uncertain what role federal courts should play in the adjudication of school policies. 15 It is also unclear whether these zero tolerance policies could or should fall within the strict liability exceptions to the criminal law necessity for mens rea or "guilty mind." Though school disciplinary decisions are not criminal matters, the use of strict liability in the context of zero tolerance should be analyzed under this framework because of the interests that students possess in attending public schools. Students are not having their liberty taken from them due to the imposition of zero tolerance, but their rights to an education are being seriously affected. Further, courts have questioned the use of strict liability in other areas of the law involving the deprivation of property interests, even though they do not involve criminal punishment or civil fines. This Note will explore whether scienter is constitutionally required as an element of a school's zero tolerance policy, and whether the lack of such an intent requirement violates a student's substantive due process rights. Part I looks at Supreme Court decisions interpreting the procedural and substantive due process rights of students. Part II examines the few cases that have analyzed whether zero tolerance policies that lack scienter violate a student's substantive due process rights. Part III points out that federal courts have been hesitant to interfere in public school ad-ministration, but that have the ability to do so if the school policy is not rationally related to a legitimate state interest. Finally, Part IV discusses the several areas of the law where a traditional mens rea is not required in order for a person to be convicted of a crime, and how zero tolerance policies do not fit within any such exception. Part IV further argues that zero tolerance policies that do not take the student's intent into account are irrational and illegal.

## Politics DA

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### 2AC — Link Turn

#### Plan is popular— prefer evidence that predicts broader trends

Dianis et al. 13—Judith Browne Dianis, an American civil rights attorney, co-director of Advancement Project, a liberal nonprofit organization based in Washington, D.C, Rhonda Brownstein, Legal Director at Southern Poverty Law Center, Jessica Feierman, Associate Director at Juvenile Law Center, co-authored the lead child advocates amicus briefs in Graham v. Florida, where the U.S. Supreme Court struck life without parole sentences for juveniles convicted of non-homicide offenses under the Eighth Amendment; Safford v. Redding, in which the U.S. Supreme Court held a school strip search unconstitutional; and J.D.B. v. North Carolina, where the U.S. Supreme Court ruled that a juvenile's age is relevant to the Miranda custody analysis under the Fifth Amendment, and Monty Neill, the Executive Director of the National Center for Fair and Open Testing (FairTest), 2013. (“Momentum Grows Against Zero Tolerance Discipline and High-Stakes Testing,” FairTest: The National Center for Fair and Open Testing, November 8th, Available Online at <https://www.fairtest.org/momentum-grows-against-zero-tolerance-discipline-a>, Accessed 07-24-2017)

Across the country, resistance is growing against public education’s increased dependence on high-stakes standardized testing and on exclusionary discipline, such as suspensions, expulsions, and school-based arrests. Whether from grassroots demonstrations, test boycott and opt-out campaigns, school board resolutions, or Congressional hearings on discipline, the message is the same: “Enough is enough!”

Parents, students, teachers and communities increasingly recognize what the research community has already established: overreliance on exclusionary discipline and high-stakes testing does not improve achievement or make schools safer. Instead, these practices damage opportunities to learn, particularly for our most vulnerable youth. The two policies are intertwined, with both having dramatically intensified in the NCLB era. State and federal governments must overhaul both to ensure that all children can succeed in a high-quality learning environment.

Truly outrageous cases related to discipline and testing often garner public attention. Six-year-old Christian, permanently expelled for “inappropriately touching” his kindergarten teacher; fifteen year-old Damien, expelled for a first offense of possessing a cell phone; sixteen-year-old Roger, “encouraged” to drop out weeks before standardized testing; young children breaking down in tears, even vomiting, as they face test after test in increasingly dreary classrooms. These cases are the tip of the iceberg.

Exclusionary discipline policies exacerbate the already serious racial skew in the justice system. The UCLA Civil Rights Project reported that schools suspend black students at more than three times the rate of whites. This widens the opportunity gap. A student who is suspended or expelled is nearly three times more likely to be in contact with the juvenile justice system the following year. Justice system involvement – especially secure confinement – actually increases recidivism. Nationally, about 70% of youth who have been incarcerated drop out of school.

Since the tragic shootings in Newtown, Connecticut, many school administrators are instituting or adding to existing school police forces, even though research indicates that more guns and policing don't make schools safer. After the Columbine High massacre, federal and state governments and local school districts adopted "zero tolerance" policies and rapidly increased deployment of law enforcement officers in schools. The result was damage to educational environments and tens of thousands more students being pushed out of schools and into the juvenile and criminal systems.

High-stakes testing, from determining high school graduation to judging schools and teachers, causes similar damage. http://fairtest.org/how-standardized-testing-damages-education-pdf The National Research Council (NRC) found that graduation tests increase the dropout rate without improving learning or college or job readiness. NRC also concluded that No Child Left Behind – which has promoted teaching to the test at the cost of a narrow and dull curriculum – failed to improve learning outcomes. Since NCLB started, the rate of improvement on the National Assessment of Educational Progress has declined in both reading and math at all grade levels for almost all groups, in both subjects, at all grade levels. http://fairtest.org/detailed-fairtest-study-naep-results-shows-nclb-ha

The Obama Administration’s Race to the Top and NCLB waiver programs further intensified the role of high-stakes exams. No other nation has as much standardized testing as the U.S. Educationally successful countries do not base school or teacher evaluations on their students’ scores.

Now the tide is turning. In the past decade, dozens of reports documented the damage caused by overreliance on exclusionary discipline and called for alternatives. Professional associations such as the American Psychological Association and the American Bar Association have taken strong stands against “zero tolerance” school discipline. So have conservative advocates such as Right on Crime and law enforcement groups such as Fight Crime Invest in Kids.

The federal Departments of Justice and Education announced a Supportive School Discipline Initiative. Some state legislatures, both Republican and Democratic controlled, passed legislation to reform exclusionary discipline policies. Most state applications for NCLB waivers included plans to improve school climate and discipline. The Dignity in Schools Campaign called for a national moratorium on out-of-school suspensions; more than 50 education and civil rights groups signed the statement. And the Senate Judiciary Committee hearing, Ending the School-to-Prison Pipeline, brought wide attention to the issue.

On the testing front, grassroots momentum for reform surged last spring. Parents and students ‘opted out’ of testing in communities across the nation. Students walked out on tests and held rallies in several cities. More than 880 Texas school boards, representing 91 percent of the state’s students, endorsed a resolution opposing high-stakes testing – then parents and educators organized a successful legislative campaign to eliminate 10 of 15 graduation tests. Teachers in Seattle high schools boycotted the MAP test, pushing the district to drop it. More than 550 organizations and 18,000 individuals have signed the National Resolution on High-Stakes Testing. http://timeoutfromtesting.org/nationalresolution/ In New York, more than 1,400 principals signed a statement, and hundreds of academics endorsed a public letter, against the state’s testing policies. The past two months saw 1500 people on Long Island and 2500 in Buffalo rally against high-stakes testing. Increasingly, newspaper editorial boards question the value of the expanding use of high-stakes exams. More and more candidates for local or state office criticize over-reliance on testing. And some local superintendents are cutting back on district testing requirements.

## Economy DA

### 2AC — Link Turn/Aff Solves

#### Reducing the number of high school dropouts stimulates the US economy

Koebler 11 (Jason Koebler is a freelance writer based in New York City. “Study: Reducing Dropout Rate Would Pump Billions Into Economy” https://www.usnews.com/education/blogs/high-school-notes/2011/04/04/study-reducing-dropout-rate-would-pump-billions-into-economy)

High school dropouts could be costing the nation billions of dollars, according to a new report by the Alliance for Excellent Education. That's because high school dropouts earn less money, pay fewer taxes, and spend less of the money they earn than those who have received at least a high school diploma. The study estimates that if half of the 1.3 million students who dropped out from the class of 2010 had graduated, those students would earn about $7.6 billion more annually compared to their likely earnings without a high school diploma. The additional spending would generate about 54,000 additional jobs and would add approximately $713 million annually in state tax revenues. The project was spearheaded by former West Virginia Governor Bob Wise, now the organization's president, who has championed the cause of education reform beyond those who have children in the public school system." My goal is if I can't move you [on education reform] on equity, then I'm going to try to move you on the economics," Wise says. "I want to show them why that high school 15 miles away has a direct impact on everyone's economic future." [Learn how some schools are improving graduation rates.] Wise says he hopes the report will influence lawmakers and state executives as they deal with difficult budget decisions. "Lawmakers at the federal and state level have critical decisions to make, [including] major budget cuts," Wise says. "The important thing to recognize is cutting deficits is important, but you get more bang for your buck by cutting dropouts. Cutting dropouts is even more important than cutting deficits." One might assume that with more high school graduates, the value of a diploma would decrease, but Wise says that's not the case. He points to the 1944 G.I. Bill that allowed many returning World War II veterans to get a college or professional education. "The result of that bill was not a shrinking pie, but an expanding one," he says. "And this is not the same economy we had 40 years ago, which was an industrial economy with loads of averagely skilled people. We live in an information age economy, and there is only one currency: education.

#### Dropout factories stifle the nation’s economy and competitiveness

**Carlson 14** -- <Carolyn Carlson, associate Professor of Education at Washburn University, *SRATE Journal*, v23 n2 p1-7 Sum 2014>

**Almost seven thousand students drop out of high school every day** (Alliance for Excellent Education, 2010b**). It is estimated that one in ten high schools in the United States is considered a “dropout factory” – a term given to a high school where no more than 60% of the students who begin attending the school as freshman complete their senior year** (Zuckerbrod, 2007). The most common reason these students drop out of high school is that their poor literacy skills prevent them from keeping up with the increasingly demanding high school curriculum (Allington, 1994; Biancarosa & Snow, 2004; Kamil, 2003; Snow & Biancarosa, 2003). Due to the large number of students who fail to complete high school, there are an estimated 1.3 million students who should have earned a diploma with the Class of 2010, but dropped out before doing so (Alliance for Excellent Education, 2011c). “By dropping out, these individuals significantly diminish their chances to secure a good job and a promising future” (Alliance for Excellent Education, 2010b, p.1). The Common Core State Standards (CCSS) (National Governors Association Center for Best Practices, 2010) set forth requirements for middle and secondary teachers to develop instructional practices that enhance the literacy skills of their students so that they are more prepared to meet the demands of school. Dropout Rates and the Impact on the Economy

**Among developed countries, the United States ranks 21st in high school graduation rates** (Alliance for Excellent Education, 2011c). The lack of literacy skills needed to be successful as students progress through school is one factor contributing to the increasing dropout rate in the United States.

The following statistics on students who fail to graduate from high school highlight this ongoing problem:

**Approximately 1.2 million students who will not graduate from high school with their peers as scheduled** (Alliance for Excellent Education, 2010b).  In the southeast region of the country, 52 of Miami’s 106 high schools (49%) are considered dropout factories; 19 of Memphis’ 58 high schools (33%) are considered dropout factories; 5 of Louisville’s 36 high schools (14%) are considered dropout factories; 14  of Charlotte’s 52 high schools (27%) are considered dropout factories; 42 of Atlanta’s 149 high schools (28%) are considered dropout factories; 10 of Nashville’s 57 high schools (18%) are considered dropout factories (Alliance for Excellent Education, 2010a).  Low attendance or a failing grade can identify future dropouts, and in some cases as early as sixth grade (Jerald, 2006).  Ninth grade serves as a bottleneck for many students who begin their first year only to find that their academic skills are insufficient for high school-level work (Balfanz & Legters, 2006).  **The total number of high school graduates is projected to decrease three percent between the thirteen year period between 2007-2008 and 2020-2021** (NCES, 2011b).  The 7,000 students who drop out of high school each day leave the environment of the school and enter the community as workers with often inadequate literacy skills. This has a detrimental impact on the economy because not only do high school dropouts tend to earn less and contribute less, but they also tend to cost more in expenses.

Lower local, state, and national earnings are a consequence of the high dropout rate. The unemployment rate among high school

dropouts is three times higher than those holding a bachelor’s degree (Alliance for Excellent Education, 2011b). **In 2012, the unemployment rate for high school dropouts (age 25 and older) was 12.4%, but was only 8.3% for individuals who earned a regular high school diploma but did not attend college** (U.S. Department of Labor, 2013). **Further, individuals without a high school diploma that are able to secure a job earn less than their peers with diplomas.** A high school dropout in Texas earns approximately $9,000 less per year than a high school graduate (Alliance for Excellent Education, 2011a). **If the students who dropped out of the Class of 2011 had graduated, the nation’s economy would likely benefit from nearly $154 billion in additional income over the course of their lifetimes** (Alliance for Excellent Education, 2011c).

Lower local, state, and national tax revenues are a consequence of the high dropout rate. A high school dropout contributes about $60,000 less in taxes over his/her lifetime (Alliance for Excellent Education, 2006a). If the graduation rate in Oklahoma increased to 90%, there would be an additional $6.2 million in annual state and local tax revenues (Alliance for Excellent Education, 2013b). Even one “class” of dropouts has a significant impact on the economy. If half of the students who dropped out of the Class of 2008 in the Dallas-Fort Worth area had graduated, the increase in wages and spending would have grown the state and local tax revenues by $19 million during an average year (Alliance for Excellent Education, 2010a).

**Lower local, state, and national spending is a consequence of the high dropout rate.** Nationwide, if an additional 666,000 students had graduated with the Class of 2012, the national economy would have benefitted from an additional $6.1 billion in annual spending (Alliance for Excellent Education, 2013a).

**If the graduation rate in Alabama increased to 90%, there would be an increase of $241 million in home sales and $15 million in auto sales** (Alliance for Excellent Education, 2013b). Unless high schools are able to graduate their students at higher rates, nearly 12 million students will likely drop out over the next decade, resulting in a loss to the nation of $1.5 trillion (Alliance for Excellent Education, 2011c).

Higher local, state, and national costs are a consequence of the high dropout rate. Each dropout, over his/her lifetime costs the nation approximately $260,000 (Amos, 2008). These costs include government health care, food stamps, housing, etc. as well as costs associated with criminal activity. Nearly

**13 million students will drop out over the next decade, costing the nation $3 trillion** (Alliance for Excellent Education, 2006a). **The United States would save between $7.9 and $10.8 billion annually by improving educational attainment among all recipients of government assistance such as food stamps, housing, etc.** (Alliance for Excellent Education, 2006a). If all students in the Class of 2006 in the state of Florida had earned diplomas, the state would have saved $1.4 billion in health care costs (Alliance for Excellent Education, 2006b).

The number of dropouts across the southeastern United States and the nation has a negative impact on the economy**. Increasing the graduation rate will positively impact the state and the nation by increasing wages, increasing spending, and decreasing costs. As a result of the impact that high school dropouts have on entire communities and the nation, a high school diploma is considered the “best economic stimulus package”** (Alliance for Excellent Education, 2010a, p.1).

## Legitimacy DA

### 2AC — Perception Low

#### Public perception of the court low

Charles Gardner Geyh, 16. the John F. Kimberling Professor of Law, Indiana University, Bloomington. Long-term loss in popular support. https://newrepublic.com/article/131451/supreme-court-losing-luster

Over the past 30 years, [the Pew numbers](http://www.people-press.org/2015/07/29/negative-views-of-supreme-court-at-record-high-driven-by-republican-dissatisfaction/) show that favorable views of the Supreme Court have declined from 64 percent in 1985 to 48 percent in 2015, while unfavorable opinions have increased from 28 percent to 43 percent. Why? It’s not as simple as saying that the Supreme Court has gotten too liberal or too conservative, because liberals and conservatives have both contributed to the long, slow decline in popular support for the Supreme Court. Part of the answer may be that the public is simply fed up with the federal government generally, which includes the Supreme Court for reasons having nothing to do with the court specifically. But something more is at work here, which has politicized the court in new and different ways. Just check out this [political cartoon](http://media.cagle.com/77/2013/10/22/13%229124_600.jpg) where a tree that has lost its leaves reveals twigs spelling out the faults of each of the government’s three branches. “Incompetence” is the legislative branch’s problem and “secrecy” the executive’s. And the judiciary’s? “Politics.” But what does that mean?

### 2AC — Education Thumper

#### Just ruled on education

NPR, March 22nd 2017, http://www.npr.org/sections/ed/2017/03/22/521094752/the-supreme-court-rules-in-favor-of-a-special-education-student

School districts must give students with disabilities the chance to make meaningful, "appropriately ambitious" progress, the Supreme Court said Wednesday in an 8-0 ruling. The decision in Endrew F. v. Douglas County School District could have far-reaching implications for the 6.5 million students with disabilities in the United States. The case centered on a child with autism and attention deficit disorder whose parents removed him from public school in fifth grade. He went on to make better progress in a private school. His parents argued that the individualized education plan provided by the public school was inadequate, and they sued to compel the school district to pay his private school tuition. The Supreme Court today sided with the family, overturning a lower court ruling in the school district's favor. The federal Individuals With Disabilities Education Act guarantees a "free appropriate public education" to all students with disabilities. Today's opinion held that "appropriate" goes further than what the lower courts had held. "It cannot be right that the IDEA generally contemplates grade-level advancement for children with disabilities who are fully integrated in the regular classroom, but is satisfied with barely more than de minimis progress for children who are not," read the opinion, signed by Chief Justice John Roberts. The case drew a dozen friend of the court briefs from advocates for students with disabilities who argued that it is time to increase rigor, expectations and accommodations for all. "A standard more meaningful than just above trivial is the norm today," wrote the National Association of State Directors of Special Education. The ruling seems likely to increase pressure from families and advocates in that direction.

### 2AC — Precedent Thumper

#### Just overturned precedent

Reuters, June 26th, “U.S. top court backs church in major religious rights case”, https://www.reuters.com/article/us-usa-court-church-idUSKBN19H1NX

WASHINGTON (Reuters) - Churches and other religious entities cannot be flatly denied public money even in states where constitutions explicitly ban such funding, the U.S. Supreme Court ruled on Monday in a major religious rights case that narrows the separation of church and state. The justices, in a 7-2 ruling, sided with Trinity Lutheran Church of Columbia, Missouri, which sued after being denied access to a state grant program that helps nonprofit groups buy rubber playground surfaces made from recycled tires. Conservative Chief Justice John Roberts, writing for the court's majority, said that "the exclusion of Trinity Lutheran from a public benefit for which it is otherwise qualified, solely because it is a church, is odious to our Constitution" and "cannot stand." Missouri's constitution prohibits "any church, sect or denomination of religion" or clergy member from receiving state money, language that goes further than the U.S. Constitution's separation of church and state. Three-quarters of the U.S. states have provisions similar to Missouri's barring funding for religious entities. Liberal Justice Sonia Sotomayor wrote a dissenting opinion saying the court had swept away legal precedents that allow for limits on state funding of churches. Fellow liberal Ruth Bader Ginsburg also dissented. "This case is about nothing less than the relationship between religious institutions and the civil government - that is between church and state. The court today profoundly changes that relationship by holding for the first time that the Constitution requires the government to provide public funds directly to a church," Sotomayor wrote.

### 2AC — Non unique and Turn

#### Not unique and turn — Courts involvement is high now — but a constitutional ruling — like the plan — ensures legitimacy

Amy Conant, Juris Doctor, Washington and Lee University School of Law, 2013, “STUDENT NOTE: RIF'd Off: The Denial of Education Opportunities Through Seniority-Based Layoff Policies and the Judiciary's Role in Reform”, Washington and Lee Journal of Civil Rights and Social Justice, Spring 2013, Lexis

In The Least Dangerous Branch? Consequences of Judicial Activism, Stephen Powers and Stanley Rothman present a critique of judicial activism in general, but address education specifically in the context of Brown v. Board of Ed. n212 Though the critique focuses on federal courts, the general contentions are easily applied to the state courts at issue in education reform. n213 Powers and Rothman look specifically at Brown and the wide- spread use of busing as a means of desegregating schools, calling it "[o]ne of the more protracted, complex, and controversial court-initiated policies." n214 They contend that evidence illustrates how busing was a narrow and simplistic response to a large social problem. n215 Linking the example to a broader critique of judicial activism, they state that "the principles advanced by the courts were less problematic than the remedies that they often imposed in their wake, [leading to] unintended consequences that did not necessarily serve even the interests of the intended beneficiaries [\*502] of these changes in law and policy." n216 This critique, however, focuses primarily on the judiciary's intervention into the means of reform. As such, it can be distinguished from the judicial intervention in later education reform in which the courts limited their decisions to findings of constitutional inadequacy but left the means for reform to the legislature. n217 If courts, in reforming "last hired, first fired" policies, limit their decisions to constitutional findings, they avoid the risk of judicial activism and therefore remain an appropriate vehicle for reform. Examining whether "last hired, first fired" policies are inadequate remains strictly a question of constitutional interpretation, in which the courts clearly have authority. In limiting decisions to this question, then, the courts would not overstep into determining what policies the legislature must use to provide an adequate education. Koski contends that the judiciary, rather than being an inappropriate vehicle for reform, is uniquely suited to do just that: "Because courts do not need to be responsive to majoritarian politics and because their decision-making is based on constitutional text and values . . . court participation in social policy-making through judicial review is not only legitimate, it is necessary to ensure the just treatment of all individuals and groups in a democracy." n218 Koski argues that even judges who are not elected are checked by more than the vague notion of "separation of powers." n219 Instead, even electorally unaccountable judges are checked by the notion that if their decisions are not viewed by the public as legitimate, they run the risk of being ignored and consequently ineffective. n220 As such, courts have inevitably become part of the educational policy-making landscape in spite of the fact that this role of the judiciary places the power in the hands of a select few, possibly unelected, officials. n221 In spite of criticism, the recent trend has been an increasing level of judicial [\*503] involvement; as the modern state becomes more administrative and managerial, judicial policy making becomes more and more necessary. n222

### 2AC — No Link

#### Education decisions based on constitutional questions don’t link

Michael D. Blanchard, Associate, Skadden, Arps, Slate, Meagher & Flom, LLP; Judicial Clerk, Arizona Supreme Court, Justice Stanley Feldman, 1997-98, “ARTICLE: THE NEW JUDICIAL FEDERALISM: DEFERENCE MASQUERADING AS DISCOURSE AND THE TYRANNY OF THE LOCALITY IN STATE JUDICIAL REVIEW OF EDUCATION FINANCE”, University of Pittsburgh Law Review, Fall 1998, Lexis

The second contention, that education finance questions do not lend themselves to judicially discoverable and manageable standards, likewise fails the logic test. As noted by Professor Redish, "if one examines the litany of case law either interpreting the broad language of the due process or equal protection clauses or establishing standards on which to invoke the first amendment right of free speech, one must suspect the disingenuineness of the "absence-of-standards' rationale." n239 The case of [\*275] education finance is no more problematic from the perspective of developing judicial guideposts than any other task of constitutional interpretation.

### 2AC — No Link and Turn

#### No link and turn — controversial decisions don’t reduce legitimacy — but can increase it

James L. Gibson Sidney W. Souers Professor of Government Professor of African and African American Studies, Gregory A. Caldeira Distinguished University Professor Dreher Chair in Political Communications and Policy Thinking Professor of Law, “Supreme Court Nominations, Legitimacy Theory, and the American Public: A Dynamic Test of the Theory of Positivity Bias”, July 2007, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=998283

As it turns out, some research indicates that even highly controversial events need not diminish the legitimacy of the Supreme Court and, indeed, may actually augment it. For instance, Gibson, Caldeira, and Spence (2003a) show that the Court’s decision in Bush v. Gore — a controversy holding enormous potential to threaten its legitimacy — did not wound the Supreme Court. The Court’s decision to award the presidential election to George Bush obviously pleased Republicans. But the evidence of the analysis of Gibson, Caldeira, and Spence is that Democrats — and even African Americans — did not alter their loyalty toward the institution as a result of this decision. Attitudes toward the institution seemed to be highly resistant to potentially corrosive influences. How can this be so? Gibson, Caldeira, and Spence argue that attention to the Court under nearly all circumstances enhances the institution’s prospects for legitimacy. In their theory, the process goes something like the following. People become attentive to the Supreme Court in the context of policy controversies (e.g., Bush v. Gore) or events like confirmation hearings. In such circumstances, judicial symbols proliferate — in part because elites and interest groups realize the power of such symbols and attempt to manipulate them — so it is impossible for attentive citizens to avoid exposure to them. These symbols — judicial robes, the use of “your honor,” even the temple-like Supreme Court building — teach a particular lesson: The Court is different. The theory posits that exposure to legitimizing judicial symbols reinforces the process of distinguishing courts from other political institutions. Citizens do not naturally differentiate between the judiciary and the other branches of government; that courts are special and different must be learned. The message taught by these powerful judicial symbols is that “courts are different,” and owing to these differences, the judiciary deserves more respect, deference, and obedience—in short, legitimacy. Because courts use “non-political,” principled processes of decision making (and since the American people seem not to approve of the decision-making procedures commonplace in political institutions — see Hibbing and Theiss-Morse 1995), and since judicial institutions associate themselves with symbols of impartiality and insulation from ordinary political pressures, those more exposed to courts come to accept the “myth of legality.” This process of social learning explains why citizens who are more aware of and knowledgeable about courts tend to adopt less realistic views of how these institutions actually operate and make decisions (e.g., Scheb and Lyons 2000). What is crucial for our purposes here, however, is that salient judicial events reinforce support for the institution through the exposure to legitimizing symbols. In this fashion, even controversial episodes profit the Court by enhancing its legitimacy.

### 2AC — Legitimacy Resilient

#### Legitimacy resilient — single decisions don’t matter

Grosskopf 98 (Anke and Jeffrey Mondak, Professor of Political Science — University of Pittsburgh and Florida State University, “Do Attitudes Toward Specific Supreme Court Decisions Matter? The Impact of Webster and Texas v. Johnson on Public Confidence in the Supreme Court”, Political Research Quarterly, 51(3), September)

Opinion about the Supreme Court may influence opinion about the Court’s decisions, but is the opposite true? Viewed from the perspective of the Court’s justices, it would be preferable if public reaction to rulings did not shape subsequent levels of support for the Court. If opinion about the Court were fully determined by early political socialization and deeply rooted attachments to democratic values, then justices would be free to intervene in controversial policy questions without risk that doing so would expend political capital. Consistent with this perspective, a long tradition of scholarship argues that the Supreme Court is esteemed partly because it commands a bedrock of public support or a reservoir of goodwill, which helps it to remain legitimate despite occasional critical reaction to unpopular rulings (Murphy and Tanenhaus 1958; Easton 1965, 1975; Caldeira 1986; Caldiera and Gibson 1992). The sources of this diffuse support are usually seen as rather stable and immune from short-term influences, implying that evaluations of specific decisions are of little or no broad importance. For instance, Caldeira and Gibson (1992) find that basic democratic values, not reactions to decisions, act as the strongest determinants of institutional support.

### A2: Legitimacy — Funding / Financing Specific

#### Education finance doesn’t link — too small an issue — other cases should have triggered

Michael D. Blanchard, Associate, Skadden, Arps, Slate, Meagher & Flom, LLP; Judicial Clerk, Arizona Supreme Court, Justice Stanley Feldman, 1997-98, “ARTICLE: THE NEW JUDICIAL FEDERALISM: DEFERENCE MASQUERADING AS DISCOURSE AND THE TYRANNY OF THE LOCALITY IN STATE JUDICIAL REVIEW OF EDUCATION FINANCE”, University of Pittsburgh Law Review, Fall 1998, Lexis

The third concern of state jurists, that involving the court in education finance will inevitably prove controversial and risk the marginalization of the court, is weak. Certainly, there is wisdom in the notion that the judiciary should proceed cautiously in "picking its fights." n242 But the extent to which that rationale is applicable in the state context is questionable in light of the procedural mechanisms available for popular repeal of unpopular opinions. n243 Further, this largely prudential concern hardly seems appropriate to the issue of education finance. The judiciary has survived its involvement in desegregation, reproductive rights, school prayer and the like. While education finance is undoubtedly a heated is [\*276] sue, there seems little chance that a controversial decision would precipitate the demise of the judiciary as a respected institution.

#### Rodroguez is not an absolute roadblock — room to distinguish Rod and still uphold precedent

Daniel S. Greenspahn, J.D. 2008, The George Washington University School of Law, “SYMPOSIUM: THE ROBERTS COURT AND EQUAL PROTECTION: GENDER, RACE, AND CLASS: RACE: A Constitutional Right to Learn: The Uncertain Allure of Making a Federal Case out of Education”, South Carolina Law Review , Summer 2008, Lexis

B. Getting over Rodriguez and into Federal Court Practical benefits aside, an immediate legal barrier confronts those who wish to pursue a federal right to education. Rodriguez has been broadly viewed as denying a right to an education under the Constitution. n117 Scholars characterize the decision by the "abrupt halt it marked in federal judicial support of major educational reform." n118 Federal appellate n119 and district courts, n120 as well as state courts, n121 have almost uniformly construed Rodriguez as foreclosing a constitutionally protected federal right to education. Despite these assumptions, Rodriguez stands for a more nuanced proposition: the Court in Rodriguez "did not decide that education is not a fundamental right, but that the facts of Rodriguez did not violate that right." n122 Justice Powell's opinion for the Court explicitly distinguished the relative differences in education spending in Rodriguez, which did not interfere with fundamental rights, from a hypothetical inadequate system n123 that "fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the [\*769] enjoyment of the rights of speech and of full participation in the political process." n124 The Court implied that some level of education is required when it noted that the Constitution does not guarantee citizens "the most effective speech or the most informed electoral choice." n125 The Court conceded that there might be "some identifiable quantum of education [that] is ... constitutionally protected." n126 Subsequent Supreme Court decisions confirm that Rodriguez left open the possibility that some level of education is a constitutionally protected fundamental right. In Plyler v. Doe, n127 the Court struck down a Texas law that barred children of illegal immigrants from attending public schools as a violation of the Fourteenth Amendment's Equal Protection Clause. n128 Concerned about the severe cost to the nation resulting from a permanent underclass of illiterate youth, n129 the Court applied a heightened scrutiny n130 that it developed further in the years following Rodriguez. n131 Although the Plyler Court stated education was not a right guaranteed by the Constitution, n132 the Court did insist that neither was it "merely some governmental "benefit' indistinguishable from other forms of social welfare legislation." n133 Education, the Court confirmed, was unique because of its importance to the basic institutions of our democracy and the lasting effect on children who are deprived of schooling. n134 In the 1980s, the Court explicitly stated, "As Rodriguez and Plyler indicate, this Court has not yet definitively settled ... whether a minimally adequate education is a fundamental right ... ." n135 But, in dicta in another opinion, Justice Powell affirmed that the Court's decision in Rodriguez left room for the recognition of "a constitutional right to a minimal level of free public education." n136 For thirty-five years, the possibility of a right to an adequate education arguably has lain dormant in Rodriguez, despite widespread perceptions to the contrary. n137 Furthermore, each reservation the Rodriguez Court provided about expressly recognizing a right to education has dissipated since 1973. Political support is an important factor in judicial recognition of any right because the judiciary relies on Congress, the executive branch, and state and local officials to implement its [\*770] decisions. n138 While there has been historical opposition to federal involvement in education, opposition faced by the Rodriguez Court in 1973, recent bipartisan efforts at the federal level to improve the nation's public school systems demonstrate current support for recognizing a federal right to education. n139 One of the Court's primary concerns in Rodriguez was local control of public schools, n140 perhaps because even thirty-five years ago, federal involvement in education was considered radical. n141 Not until the launch of Sputnik in 1957 and the threat of Russian superiority did the federal government begin investing in public schools. n142 Even after the Elementary and Secondary Education Act of 1965 first offered federal funding, n143 there was still widespread demand for local control of schools, especially given the prickly issues of desegregation and religion in schools. n144 As recently as the 1980s, President Reagan campaigned for the abolition of the Office of Education, which was part of the former United States Department of Health, Education, and Welfare. n145 Signifying a shift in policy, the enactment of NCLB in 2001 has been the most significant federal intervention in education in United States history, n146 notably receiving the broad support of a Republican-controlled Congress. n147 NCLB proclaims that one of its chief goals is to provide for the right of every student to [\*771] an adequate education. n148 NCLB has also fueled bipartisan efforts at state and local levels to hold the federal government responsible for providing the resources necessary to meet the law's stricter accountability requirements. n149 In 2007, the Supreme Court accepted an analogous call for educational accountability n150 under the Individuals with Disabilities Education Act n151 (IDEA) a bipartisan-supported federal statute governing special education. Thus, it is clear that today's Court has less to fear from the elected branches in endorsing a federal right to education than the Court in 1973. The Court in Rodriguez was also concerned that if education was ruled a fundamental right, the Court would have to rule that food, clothing, and housing were also fundamental rights because they are indistinguishable from education in terms of importance for participation in the political process. n152 Such apprehensions were entirely justifiable at a time when education was administered and overseen by the United States Department for Housing, Education, and Welfare. n153 Yet, after the 1979 creation of an independent cabinet-level Department of Education, n154 the Court reversed its course, noting that education is not "merely some governmental "benefit' indistinguishable from other forms of social welfare legislation." n155 Others have noted that education is distinguishable from other government benefits because it is the only institution for which the government compels attendance of all of its citizens. n156 [\*772] In Rodriguez, the Court had also fretted over the lack of manageable standards or alternative financing schemes that could remedy funding disparities between school districts. n157 At the time, federally funded educational research was just beginning with projects like the National Institute for Education and the National Center for Education Statistics, n158 and the United States Department of Education did not yet exist. n159 Aside from the California Supreme Court's ruling in Serrano v. Priest, n160 federal courts had little precedent for crafting a remedy for inadequate school funding. n161 The standards-based education reform movement that began in the early 1980s has provided two decades of measurable educational goals, which have been used extensively in state school funding cases and which now offer viable solutions. n162 As a result, state courts have had clear guidelines in defining the contours of an adequate education, including both inputs, such as school funding, and outputs, such as test scores. n163 State litigation has helped produce numerous studies and state revenue models to measure the costs of educational reforms and ensure their implementation. n164 State lawsuits have thus yielded judicially manageable standards n165 and illustrated that the process of fixing school funding inadequacies can be shared by courts and legislatures. In summary, modern advocates pursuing a federal right to education can arguably overcome Rodriguez. A closer and more nuanced analysis suggests that Rodriguez and subsequent Supreme Court decisions have preserved the possibility of a federal right to an education. The Rodriguez Court's chief concerns, such as local control n166 and a lack of tested remedies, n167 have diminished with over three decades of growing federal involvement in education n168 and successful state school funding litigation. n169 Although Rodriguez is still a barrier to advocates seeking entry [\*773] into the federal courts, it is not as impenetrable as many commentators and courts have argued.

#### Rodriguez is distinguishable

Michael A. Rebell, executive director of the Campaign for Educational Equity at Teachers College, Columbia University, “Educational Adequacy, Democracy, and the Courts”, 2002, https://www.nap.edu/read/10256/chapter/13

Thus, the majority decision implicitly left open the possibility of reconsidering this issue and taking some remedial action if, in a future case, it were to be established that students were being deprived of the type of “basic minimum” education the Court assumed that every Texas child was receiving. In fact, the Court went out of its way to reiterate this point in a later case when it stated that it still had not “definitively settled the questions whether a minimally adequate education is a fundamental right and whether a statute alleged to discriminatorily infringe that right should be accorded heightened equal protection review.”27

### A2: PQD link

#### Courts can and should intervene in political questions when constitutional rights are at sake — to abdisctate that responsibility is WORSE for legitimacy

Michael D. Blanchard, Associate, Skadden, Arps, Slate, Meagher & Flom, LLP; Judicial Clerk, Arizona Supreme Court, Justice Stanley Feldman, 1997-98, “ARTICLE: THE NEW JUDICIAL FEDERALISM: DEFERENCE MASQUERADING AS DISCOURSE AND THE TYRANNY OF THE LOCALITY IN STATE JUDICIAL REVIEW OF EDUCATION FINANCE”, University of Pittsburgh Law Review, Fall 1998, Lexis

Moreover, the idea that the judiciary may be precluded from constitutional adjudication because the issue is "too complex" is fundamentally antithetical to constitutionalism itself. If one accepts judicial review as a means to "defend the constitution against violations by the other departments, particularly the legislature," n195 one must accept that the complexity of the issue presented is irrelevant to the propriety of judicial review. The courts can hardly "be considered as the bulwarks of a limited Constitution against legislative encroachments," as Alexander Hamilton presumed, n196 if the bulwark is dropped every time a legislative encroachment happens to occur under factually complex circumstances. In any event, state courts are not unaccustomed to adjudicating matters of great complexity. Intuitively, the increasing complexity of society is reflected in the courts, the forum where societal problems and legislative solutions to them are often resolved.

### A2: Precedent Links

#### Precedent isn’t key to legitimacy — international examples prove

Calabresi 5

Steven, Professor of Law, CAN ORIGINALISM BE RECONCILED WITH PRECEDENT?: A SYMPOSIUM ON STARE DECISIS: TEXT, PRECEDENT, AND THE CONSTITUTION: SOME ORIGINALIST AND NORMATIVE ARGUMENTS FOR OVERRULING PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA v. CASEY, 22 Const. Commentary 311

I disagree with Professor Merrill that following precedent rather than text better protects Rule of Law values. First of all, there is an underlying disagreement between Professor Merrill and me about what the law is in constitutional cases. He thinks the caselaw is the law and I think the text of the Constitution is the law. At one level then, saying that stare decisis promotes the rule of law is self-justifying because it is just another way of saying that it is the caselaw that is the law and not the text. Textualists think the constitutional text is the "touchstone" of constitutional meaning, to quote Justice Frankfurter, 47 so a good textualist will feel the Rule of Law is disserved in abortion cases if the Supreme Court follows Roe v. Wade rather than the original meaning of Section 1 of the Fourteenth Amendment. Professor Merrill's claim that precedent is thicker than text and original history is provocative, but I think several responses might be made. First, Professor Merrill's view reflects deeply the training and biases of a lawyer trained in the common law English or American systems. Civil law lawyers in countries like Germany, France, Italy, Spain, or Japan follow the texts of those countries' civil law codes, and they do not follow precedent. No one would suggest that there is an absence of Rule of Law values like "equal treatment of similarly situated litigants" or "predictability" in Germany, France, Italy, Spain, or Japan. As an empirical matter, it is thus clearly possible to have a legal regime that gives no weight to precedent without losing anything in terms of Rule of Law values. Indeed, there are many more countries with civil law code systems around the world than there are common law countries. Most people in the developed world where the Rule of Law prevails live under systems of code, not systems of common law.

### A2: Stare Decisis Impact

#### Multiple checks prevent the collapse of stare decisis

Rehnquist 86 (James, Former Chief Justice — United States Supreme Court, Boston University Law Review, March, Lexis)

While stare decisis traditionally has been viewed as a restraint upon judicial fiat, the rejection of the doctrine would not unduly threaten the world of constitutional adjudication. That world is **full of forces** which **curb arbitrariness** and **promote continuity**, preserving the virtues of stare decisis. Although the danger of judicial knight-errantry exists with or without stare decisis, [141](http://web.lexis-nexis.com.proxy-remote.galib.uga.edu:2048/universe/document?_m=7af422e5b4b8306c299d59ec752e0490&_docnum=1&wchp=dGLbVzz-zSkVA&_md5=5335cdb6e73df2951eb9539fd793385f#n141) the potential for fiat is not limitless.  By providing for life tenure of judges, [142](http://web.lexis-nexis.com.proxy-remote.galib.uga.edu:2048/universe/document?_m=7af422e5b4b8306c299d59ec752e0490&_docnum=1&wchp=dGLbVzz-zSkVA&_md5=5335cdb6e73df2951eb9539fd793385f#n142) and making their impeachment difficult, [143](http://web.lexis-nexis.com.proxy-remote.galib.uga.edu:2048/universe/document?_m=7af422e5b4b8306c299d59ec752e0490&_docnum=1&wchp=dGLbVzz-zSkVA&_md5=5335cdb6e73df2951eb9539fd793385f#n143) the Constitution itself promotes doctrinal continuity. Justices are normally replaced one at a time. Thus, dramatic changes in the Court's personnel are infrequent. [144](http://web.lexis-nexis.com.proxy-remote.galib.uga.edu:2048/universe/document?_m=7af422e5b4b8306c299d59ec752e0490&_docnum=1&wchp=dGLbVzz-zSkVA&_md5=5335cdb6e73df2951eb9539fd793385f#n144) Surely, upheavals will occur and old doctrine will be challenged. But this is the way a Constitution designed to endure for the ages is supposed to work. Justice Douglas considered these occasional "unsettling periods" in the law as the "necessary consequence of our system and to my mind a healthy one," far preferrable to letting "the Constitution freeze in the pattern which one generation gave it." [145](http://web.lexis-nexis.com.proxy-remote.galib.uga.edu:2048/universe/document?_m=7af422e5b4b8306c299d59ec752e0490&_docnum=1&wchp=dGLbVzz-zSkVA&_md5=5335cdb6e73df2951eb9539fd793385f#n145)  Another restraint promoting doctrinal continuity in individual Justices is the reality of life under a critical microscope. Like "Waiting for Godot," [146](http://web.lexis-nexis.com.proxy-remote.galib.uga.edu:2048/universe/document?_m=7af422e5b4b8306c299d59ec752e0490&_docnum=1&wchp=dGLbVzz-zSkVA&_md5=5335cdb6e73df2951eb9539fd793385f#n146) Supreme Court opinions become the subjects of written exegeses containing many times the number of words as their progenitors. Perhaps as a result, Justices rarely change their minds. [147](http://web.lexis-nexis.com.proxy-remote.galib.uga.edu:2048/universe/document?_m=7af422e5b4b8306c299d59ec752e0490&_docnum=1&wchp=dGLbVzz-zSkVA&_md5=5335cdb6e73df2951eb9539fd793385f#n147) Of course, these rare occasions of  [\*373]  conversion receive much attention, but the institution seems to promote a high degree of individual consistency. Judges do not want to appear fickle.  An additional systemic restraint promoting continuity is the powerful incentive for Justices to write opinions which will serve the needs of the future as well as the present. [148](http://web.lexis-nexis.com.proxy-remote.galib.uga.edu:2048/universe/document?_m=7af422e5b4b8306c299d59ec752e0490&_docnum=1&wchp=dGLbVzz-zSkVA&_md5=5335cdb6e73df2951eb9539fd793385f#n148) A Justice's reputation depends on the longevity of his or her opinions. This is true whether the particular Justice is writing for the majority or as a dissenter; no opinions are more lauded for their prescience than Justice Holmes's dissent in *Lochner* [149](http://web.lexis-nexis.com.proxy-remote.galib.uga.edu:2048/universe/document?_m=7af422e5b4b8306c299d59ec752e0490&_docnum=1&wchp=dGLbVzz-zSkVA&_md5=5335cdb6e73df2951eb9539fd793385f#n149) or Justice Brandeis's dissent in *Olmstead v. United States.* [150](http://web.lexis-nexis.com.proxy-remote.galib.uga.edu:2048/universe/document?_m=7af422e5b4b8306c299d59ec752e0490&_docnum=1&wchp=dGLbVzz-zSkVA&_md5=5335cdb6e73df2951eb9539fd793385f#n150)  The potential for doctrinal upheaval is also limited by the subtle pressures of public opinion. The "switch in time that saved nine" [151](http://web.lexis-nexis.com.proxy-remote.galib.uga.edu:2048/universe/document?_m=7af422e5b4b8306c299d59ec752e0490&_docnum=1&wchp=dGLbVzz-zSkVA&_md5=5335cdb6e73df2951eb9539fd793385f#n151) is generally thought to illustrate this phenomenon. While the Court is immunized from the immediate demands of the populace -- hence the countermajoritarian difficulty -- it cannot, nor should it be, quarantined from the deeper trends of American politics. In fact, the Court never has veered too sharply from mainstream currents of thought. [152](http://web.lexis-nexis.com.proxy-remote.galib.uga.edu:2048/universe/document?_m=7af422e5b4b8306c299d59ec752e0490&_docnum=1&wchp=dGLbVzz-zSkVA&_md5=5335cdb6e73df2951eb9539fd793385f#n152) From a look at the Court's history Professor McCloskey concluded: "In truth the Supreme Court has seldom, if ever, flatly and for very long resisted a really unmistakable wave of public sentiment. It has worked with the premise that constitutional law, like politics itself, is a science of the possible." [153](http://web.lexis-nexis.com.proxy-remote.galib.uga.edu:2048/universe/document?_m=7af422e5b4b8306c299d59ec752e0490&_docnum=1&wchp=dGLbVzz-zSkVA&_md5=5335cdb6e73df2951eb9539fd793385f#n153) Susceptibility to these unmistakable  [\*374]  waves -- a susceptibility rooted, perhaps, in a fundamental survival instinct -- provides an additional restraint on the Court.  In short, the culture of constitutional adjudication in the Supreme Court is influenced by a variety of practical, personal and institutional forces, forces that are present, if at all, to a lesser extent in other tribunals. These influences ensure that the values served by the doctrine of stare decisis -- fairness, stability, predictability, efficiency -- will be preserved **even if** the doctrine itself is rejected.

### A2: Rule of Law — Econ

#### Rule of law does not affect economic growth

Economist 8

["Order in the jungle - Economics and the rule of law" 3-15, Lexis]

Consistent with that rather gloomy finding, some new research finds only a weak link between the rule of law and economic growth. The connection with wealth is well established (see chart again) but that is different: it has been forged over decades, even centuries. The link with shorter-term growth is harder to see. China appears to be a standing contradiction to the argument that the rule of law is needed for growth. It is growing fast and is the world's largest recipient of foreign investment, yet has lots of corruption and nothing that most Westerners would recognise as a rule-of-law tradition. (It does, though, guarantee some property rights and its government is good at formulating and implementing policies.)

### A2: Rule of Law — Democracy

#### Rule of law is not crucial to an effective democracy

Carothers 3 vice president for studies at the Carnegie Endowment for International Peace, founder and director of the Democracy and Rule of Law Program, former attorney-adviser in the Office of the Legal Adviser of the U.S. Department of State

[Thomas, "PROMOTING THE RULE OF LAW ABROAD The Problem of Knowledge," January, http://www.carnegieendowment.org/files/wp34.pdf]

Things are similarly murky on the political side of the core rationale. Unquestionably the rule of law is intimately connected with liberal democracy. A foundation of civil and political rights rooted in a functioning legal system is crucial to democracy. But again, the idea that specific improvements in the rule of law are necessary to achieve democracy is dangerously simplistic. Democracy often, in fact usually, co-exists with substantial shortcomings in the rule of law. In quite a few countries that are considered well-established Western democracies—and that hold themselves out to developing and post-communist countries as examples of the sorts of political systems that those countries should emulate—one finds various shortcomings: (1) court systems that are substantially overrun with cases to the point where justice is delayed on a regular basis; (2) substantial groups of people, usually minorities, are discriminated against and unable to find adequate remedies within the civil legal system; (3) the criminal law system chronically mistreats selected groups of people, again, usually minorities; and (4) top politicians often manage to abuse the law with impunity, and political corruption is common. Of course one can interpret this to mean that because of the deficiencies in the rule of law these countries are imperfect democracies. is is true enough, but the point is that they are widely accepted in the international community as established democracies. Yet their aid agencies are telling officials in the developing and post-communist world that well-functioning rule of law is a kind of tripwire for democracy. It would be much more accurate to say that the rule of law and democracy are closely intertwined but that major shortcomings in the rule of law often exist within reasonably democratic political systems. Countries struggling to become democratic do not face a dramatic choice of “no rule of law, no democracy” but rather a series of smaller, more complicated choices about what elements of their legal systems they wish to try to improve with the expectation of achieving what political benefits.

## Hollow Hope DA

### 2AC — Education Thumper

#### Just ruled on education

NPR, March 22nd 2017, http://www.npr.org/sections/ed/2017/03/22/521094752/the-supreme-court-rules-in-favor-of-a-special-education-student

School districts must give students with disabilities the chance to make meaningful, "appropriately ambitious" progress, the Supreme Court said Wednesday in an 8-0 ruling. The decision in Endrew F. v. Douglas County School District could have far-reaching implications for the 6.5 million students with disabilities in the United States. The case centered on a child with autism and attention deficit disorder whose parents removed him from public school in fifth grade. He went on to make better progress in a private school. His parents argued that the individualized education plan provided by the public school was inadequate, and they sued to compel the school district to pay his private school tuition. The Supreme Court today sided with the family, overturning a lower court ruling in the school district's favor. The federal Individuals With Disabilities Education Act guarantees a "free appropriate public education" to all students with disabilities. Today's opinion held that "appropriate" goes further than what the lower courts had held. "It cannot be right that the IDEA generally contemplates grade-level advancement for children with disabilities who are fully integrated in the regular classroom, but is satisfied with barely more than de minimis progress for children who are not," read the opinion, signed by Chief Justice John Roberts. The case drew a dozen friend of the court briefs from advocates for students with disabilities who argued that it is time to increase rigor, expectations and accommodations for all. "A standard more meaningful than just above trivial is the norm today," wrote the National Association of State Directors of Special Education. The ruling seems likely to increase pressure from families and advocates in that direction.

### 2AC — Hollow Hope Wrong

#### Hollow Hope thesis too sweeping — Courts FUNDAMENTAL for creating social change

Myron Orfield, Professor of Law and the Director of the Institute for Metropolitan Opportunity at the University of Minnesota, “Milliken, Meredith, and Metropolitan Segregation”, The Regents of the University of California UCLA Law Review, Feb 2015, Lexis

There was only token integration of schools before the passage of Title VI, the fund-withholding provisions of the 1964 Civil Rights Act. n35 Some scholars attribute the early slow progress to the "hollow hope" that courts can shape large social reforms. n36 Judicial intervention lacking a broad public mandate, they argue, creates backlash that forestalls durable progress that would otherwise be made by elected government. n37 The legal history of school desegregation demonstrates that this view is too simplistic. The three branches were partners in progress, with the Court's role likely the most important one. n38 Brown led to Title VI. When President Nixon refused to withhold funds from discriminatory school districts, federal courts forced him to do so. n39 Moreover, the Court in Green, n40 Swann, n41 Wright, n42 and Keyes n43 sweepingly expanded the meaning of Brown and Title VI in the face of hostile executive and legislative branches. n44

### 2AC — No Link and Turn

#### No link and turn — Social movements can use litigation and non-litigation strategies simultaneously — and courts don’t create vicious counter-movements but REDUCES them

Tommaso Pavone, PhD Candidate at Princeton , “Beyond The Hollow Hope: The Promise and Challenges of Studying Gradual Sociolegal Change”, Dec 7th 2014, https://scholar.princeton.edu/sites/default/files/tpavone/files/rosenberg-\_the\_hollow\_hope\_critical\_review.pdf

Few social movements are able to bring about comprehensive social change without the assistance of regime insiders (see Skerentny 2002).4 Yet to obtain the allegiance of sympathetic bureaucrats and policymakers, advocates for social change can benefit from couching their demands in a non-threatening language to quell fears of radicalism. The legal discourse, imbued as it is with technocratic jargon and the traditionalism of custom and precedent, is the language of the established regime, and consequently its use diminishes the fears of regime insiders that the social movement represents an existential threat that must be resisted in toto. By structuring the type of arguments and claims admitted in the case before them, courts offer activists opportunities to incrementally learn how to make claims in a way that maximizes the likelihood that politically powerful actors and ruling coalition members will lend a sympathetic ear. To be sure, by domesticating claims for reform courts may co-opt social movements and quesh their radical potential, as William Forbath (1989) and others have argued in the context of Lochner -era labor disputes. But litigation need not be the exclusive or even the predominant strategy of social activists.5 As negotiations couched in conservative regime discourse between social leaders and the ruling coalition are institutionalized via the judicial forum, activists on the street can continue to galvanize supporters with more radical ideological messages.

### 2AC — Courts Solve Social Change

#### Courts = Social change

Hall, Matthew E. K., Assistant Professor of Political Science and Law at Saint Louis University The Nature of Supreme Court Power, Cambridge University Press, 2010, page 160-161

My assessment of the Supreme Court’s power to initiate social change runs counter to the conclusions of most empirical studies on this topic. My findings directly contradict assertions that “litigation is ineffectual” (Scheingold 1974, 130), that “U.S. courts can almost never be effective producers of significant social reform” (Rosenberg 2008, 422), that “the Court is quite constrained in its ability to secure social change” (Baum 2003), and that “the Court is almost powerless to affect the course of national policy” (Dahl 1957, 293). In direct contrast to these claims, I find that the Court possesses remarkable power to alter the behavior of state and private actors in a wide range of policy issues. In those situations in which its rulings can be directly implemented by lower-court judges, the Court commands impressive powers even when facing “serious ­ resistance” (Rosenberg 2008, 420) “[w]ithout the support of real power holders” (Scheingold 1974, 130). Some scholars insist that when the Court has the support of these “real power holders … litigation is unnecessary” (Scheingold 1974, 130); my findings also contradict this claim. In those cases in which the Court could not implement its rulings through lower courts, it was only the combination of Court action with public support that induced change. Although public pressure may have eventually initiated reform without Court action, it is highly unlikely that this change would have occurred as quickly as it did without intervention from the Court in issue areas such as reapportionment, public aid to religious schools, and minority set-aside programs. In some situations, the Court is able to achieve what even broad national majorities could not ­ accomplish through other political institutions. Of course, the Court is not always successful at initiating change, nor would any reasonable student of the American political system expect it to be. Any statement about the Court’s power is relative to the expectations of the reader; those who previously understood Court rulings to be universally implemented may be struck by the relative weakness of the Court in my study. Nonetheless, when compared to the prevailing view of the Court’s power in the judicial politics literature, my study depicts the Court as a remarkably powerful institution, capable of enhancing or inhibiting political reform, enshrining or dismantling social inequalities, and expanding or suppressing individual rights. More importantly, my study highlights an important distinction between those Court rulings that can be directly implemented by lower courts and those that cannot. This distinction, though simple and intuitive, explains vastly different behavior outcomes in different types of Court rulings. It also suggests why other empirical studies of judicial power may have been led astray; without systematic case selection procedures to ensure avoiding selection bias, other studies of judicial power may have tended to place too much emphasis on unpopular lateral issues. Although some scholars have hinted at particular elements of the distinction between vertical and lateral issues, none have fully explored the concept or suggested the significance of its many repercussions. 5

### 2AC — No Impact

#### No extinction — warming is slow and adaptable

Indur Goklany is an independent scholar and author. He was a member of the US delegation that established the IPCC and helped develop its First Assessment Report, “CARBON DIOXIDE The good news”, 2015, <http://www.thegwpf.org/content/uploads/2015/10/benefits.pdf>

Firstly, the global climate has not been warming as rapidly as projected in the IPCC assessment reports. Figure 5 compares observed global surface temperature data from 1986 through 2012 versus modelled results. It confirms that models have been running hotter than reality. But these are the projections that governments have relied on to justify global warming policies, including subsidies for biofuels and renewable energy while increasing the overall cost of energy to the general consumer — costs that disproportionately burden those that are poorer. A comparison of performance of 117 simulations using 37 models versus empirical data from the HadCRUT4 surface temperature data set indicates that the vast majority of the simulations/models have overestimated warming.143 The models indicated that the average global temperature would increase by 0.30±0.02◦Cper decade during the period from 1993 to 2012 but empirical data show an increase of only 0.14±0.06◦C per decade.144 Model performance was even worse for the more recent 15-year period of 1998—2012. Here the average modelled trend was 0.21±0.03◦C per decade, quadruple the observed trend of 0.05±0.08◦C. Considering the confidence interval, the observed trend is indistinguishable from no trend at all; that is, warming has, for practical purposes, halted. Even the IPCC acknowledges the existence of this ‘hiatus’.145 Moreover, the HadCRUT4 temperature database indicates that the global warming rate declined from 0.11◦C per decade from 1951—2012 to 0.04◦C per decade from 1998—2012.146 This is despite the fact that, per the IPCC, the anthropogenic greenhouse gas forcing for 2010 (2.25 W/m2) exceeded what was used in the models for 2010 (1.78—1.84 W/m2) by around 25%.147 Some have argued that satellite temperature data should be preferred over surface datasets. In fact, satellite coverage is more comprehensive and more representative of the Earth’s surface than is achievable using surface stations, even if the latter were to number in the thousands. A recent review paper notes that satellites can provide ‘unparalleled global- and fine-scale spatial coverage’ presumably because of ‘more frequent and repetitive coverage over a large area than other observation means’.148 In addition, surface measurements are influenced by the measuring stations’ microenvironments, which will vary not only from station to station at any given time, but also over time at the very same station, as vegetation and man-made structures in their vicinity spring up, evolve and change.149 Satellite temperature data indicates that the globe has been warming at the rate of 0.12—0.14◦C per decade since 1979;150 by contrast, the IPCC assessments over the last 25 years have been projecting a warming trend of 0.2—0.4◦C per decade.151,152 The differences between modelled trends and those from satellites and weather balloons are shown in Figures 6 and 7.153 Nevertheless, based on these chains of unvalidated computer models, orthodox thinkers on climate change claim that global warming will, among other things, lower food production, increase hunger, cause more extreme weather, increase disease, and threaten water supplies. The cumulative impact will, they claim, diminish living standards and threaten species, and if carbon dioxide and other greenhouse gases are not curbed soon, pose an existential threat to humanity and the rest of nature. Some claim it may already be too late.154 The group 350.org, for instance, agitates for reducing atmospheric carbon dioxide levels, currently at 400 ppm, to 350 ppm, a level the earth last experienced in 1988.155 But since then, global GDP per capita has increased 60%, infant mortality has declined 48%, life expectancy has increased by 5.5 years, and the poverty headcount has dropped from 43% to 17% despite a population increase of 40%. Nostalgia for a 350 ppm world seems somewhat misplaced, if not downright perverse.156,157

#### Climate wars impact is bogus

**Gartzke 11** (Erik Gartzke, Department of Political Science, University of California, San Diego, Could climate change precipitate peace? , 9-21-11, Journal of Peace Research 49: 177-192, jj)

Where the basic science of climate change preceded policy, this second **consensus** among politicians and pundits **about climate and conflict formed in the absence of substantial scientific evidence**. **While anecdote and some focused statistical research suggests that civil conflict may have worsened in response to recent climate change in developing regions** (c.f., Homer-Dixon, 1991, 1994; Burke et al., 2009), **these claims have been severely criticized by other studies** (Nordås & Gleditsch, 2007; Buhaug et al., 2010; Buhaug, 2010). 1 In contrast, **the few long-term macro statistical studies actually find that conflict increases in periods of climatic chill** (Zhang et al., 2006, 2007; Tol & Wagner, 2010). 2 Research on the modern era reveals that **interstate conflict has declined in the second half of the twentieth century, the very period during which global warming has begun to make itself felt** (Goldstein, 2011; Hensel, 2002; Levy et al., 2001; Luard, 1986, 1988; Mueller, 2009; Pinker, 2011; Sarkees, et al., 2003). 3 While talk of a ‘climatic peace’ is premature, **assertions that global warming is injurious to world peace must be evaluated in light of countervailing evidence and contrasting causal claims**. 4 To understand why ***global warming can coincide with a reduction in interstate conflict***, it will be useful to recall that the contemporary situation differs from earlier eras of climate change to the degree that warming is a product of human activity. Human beings burn fossil fuels that produce greenhouse gases that lead to global warming. These same **fossil fuels propel economic and political systems that appear less inclined to certain forms of violent conflict** (Gartzke & Rohner, 2010, 2011). **Industrialization leads to economic development and democracy, each of which has been associated with peace. Prosperity** also **encourages international institutions and stabilizing global and regional hierarchies.** Thus, **global warming may coincide with peace**, while not actually inhibiting warfare. This study explores the relationship between climate change, liberal processes fueled by industrialization (development, democracy, international institutions), and interstate conflict. Previous studies of liberal peace have not paid much attention to climate change. Climatic peace may be yet another benefit purchased by all but accruing mostly to the developed world. At the same time, there might be trade-offs to consider in terms of the pace of development and the environment. The curvilinear relationship between development and interstate peace reported here and elsewhere (Boehmer & Sobek, 2005) suggests important advantages to increasing the pace of development, rapidly moving states through the ‘danger zone’ of partial industrialization. **If efforts to combat climate change cause nations to stagnate economically, then the world may unintentionally realize the worst fears of pundits and politicians for climate-induced conflict**. While the findings reported below clearly indicate that **the rise in global temperatures has not (yet) led to increased interstate conflict,** **there remains room for debate about whether global warming has** other deleterious, or even **beneficial, effects**. Under some conditions **climate change appears to reduce the frequency of interstate disputes**, though there is no compelling rationale for why this should be the case, even as this particular relationship is not robust with respect to the broadest set of coincident explanations. It may be too soon to provide a definitive answer to whether warming increases, reduces, or has no effect on interstate conflict, though of course waiting for more data also poses tradeoffs. Conversely, the consequences of global warming may well differ across countries and regions. Some states may become more violent under pressure from a warmer planet, even as other states or regions find greater cause for cooperation. For now, I focus on detailing global patterns of climate change and interstate conflict, a necessary first step.

### AT: Courts cant solve Social Change

#### Court action is as a rallying cry for movements and promotes institutional change when other branches fail to listen

Canon 98 Bradley, Professor of Political Science at the University of Kentucky, The Supreme Court and Policy Reform: The Hollow Hope Revisited, Leveraging the Law: Using the Courts to Achieve Social Change, Questia

Rosenberg's book should also caution us to be more careful in assessing Court cases. We should look to the lower courts if we wish to understand links between judicial efficacy and social reform. And we must look at the differences among parties and orders in specific cases. Not all litigants have the same interests, and orders in one case are primarily meant to address that case and not be the basis of large‐ scale social reform. Cases may become causes or rallying cries for a movement, and that may have import for society well beyond what the litigants or the Court intended. However, to judge a case or decision by standards we have imposed upon it retroactively, at least the way Rosenberg did, risks seriously misunderstanding what these cases stood for at the time they were litigated and decided. What an event may have stood for at a particular time in history is a very different question from what it means to us today, and the two questions and should not be confused. We need, then, to be clear how decisions are social "triggers" of action ( Cooper 1988, [16](http://www.questia.com/read/98118668) -18), prompting others to address the issues brought up by the Court. Finally, we need to recognize that even if the judiciary did not produce all the results that we have attributed to them, or do all that the litigants or the Court hoped, the judiciary may have been the only game in town at a time when the political process may have been closed to some groups. At a time when other social institutions were perhaps deaf to the needs of minorities, women, prisoners, or others, the judiciary did its best to address the grievances with which it was presented and to provide legitimacy to both claims and claimants in public discussion. The litigation and decisions that Rosenberg discussed were part of a still ongoing effort to bring about social and policy change which, perhaps unfortunately, is incremental at best ( Lindblom 1959), and was designed by our framers to be that way ( Dahl 1965, [4](http://www.questia.com/read/98118656) -34).

#### Courts key to social movement success

Lobel 7 Orly, Assistant Professor of Law, University of San Diego, THE PARADOX OF EXTRALEGAL ACTIVISM: CRITICAL LEGAL CONSCIOUSNESS AND TRANSFORMATIVE POLITICS, 120 Harv. L. Rev. 937, Lexis

In the following sections, I argue that the extralegal model has suffered from the same drawbacks associated with legal cooptation. I show that as an effort to avoid the risk of legal cooptation, the current wave of suggested alternatives has effects that ironically mirror those of cooptation itself. Three central types of difficulties exist with contemporary extralegal scholarship. First, in the contexts of the labor and civil rights movements, arguments about legal cooptation often developed in response to a perceived gap between the conceptual ideal toward which a social reform group struggled and its actual accomplishments. But, ironically, the contemporary message of opting out of traditional legal reform avenues may only accentuate this problem. As the rise of informalization (moving to nonlegal strategies), civil society (moving to extralegal spheres), and pluralism (the proliferation of norm-generating actors) has been effected and appropriated by supporters from a wide range of political commitments, these concepts have had unintended implications that conflict with the very social reform ideals from which they stem. Second, the idea of opting out of the legal arena becomes self-defeating as it discounts the ongoing importance of law and the possibilities of legal reform in seemingly unregulated spheres. A model encompassing exit and rigid sphere distinctions further fails to recognize a reality of increasing interpenetration and the blurring of boundaries between private and public spheres, profit and nonprofit sectors, and formal and informal institutions. It therefore loses the critical insight that law operates in the background of seemingly unregulated relationships. Again paradoxically, the extralegal view of decentralized activism and the division of society into different spheres in fact have worked to subvert rather than support the progressive agenda. Finally, since extralegal actors view their actions with romantic idealism, they fail to develop tools for  [\*971]  evaluating their success. If the critique of legal cooptation has involved the argument that legal reform, even when viewed as a victory, is never radically transformative, we must ask: what are the criteria for assessing the achievements of the suggested alternatives? As I illustrate in the following sections, much of the current scholarship obscures the lines between the descriptive and the prescriptive in its formulation of social activism. If current suggestions present themselves as alternatives to formal legal struggles, we must question whether the new extralegal politics that are proposed and celebrated are capable of producing a constructive theory and meaningful channels for reform, rather than passive status quo politics.

#### More ev

Canon 98 (Bradley, Professor of Political Science at the University of Kentucky, The Supreme Court and Policy Reform: The Hollow Hope Revisited, Leveraging the Law: Using the Courts to Achieve Social Change, Questia)

In order to measure the power of the Court, it is first necessary to define it and figure out how it can be measured. These are not trivial problems and they have created tremendous problems with Rosenberg's study. Rosenberg's definition of influence ignores the power of silence and mishandles the significance of numbers and assumptions. He assumes that influence is public, expressed, and visible: People say they are influenced. Or we can trace the sequence of influence by tracing statements and pressure. Or their behavior reflects it by alteration to follow precedent. Influence can be watched. Yet many people have strong incentives to mask the patterns of influence in order to show that they have been right on this issue from the beginning—that they did not get their beliefs from the courts or from anyone else. Politicians are not big on footnotes. Perhaps more significant, politics is often a game of inches. Small changes can be magnified politically from the impossible to the invincible. Lacking entirely in Rosenberg is the sense that politics is a game of percentages. It is simply and categorically unhelpful to be told what most people thought. The civil rights movement broke on a country in which safe districts were defined as districts in which the prevailing party had won 55% of the vote, and a large percentage of districts were not considered safe. Small changes in view of that context could move mountains. Expectations of small changes could be very significant. By that definition, a mere 5% of the voters holds the power. By extension, a factor of no significance to the vast majority of the population can dominate the political agenda by influencing that critical 5%. Often ethnic groups are carriers of just such political dynamite. It is not necessary that we document the power of the court on large numbers. A few will do.

### AT: Courts cant solve social movements

#### Litigation empirically helps social movements — wage reform and gender rights claims prove

McCann ’94 (Michael W., chair and professor in the department of political science at the University of Wisconsin “Rights at Work,” University of Chicago Press, 1994, p.5)

My interpretation of wage reform politics confirms that federal courts generally have lacked both the will and the capacity to correct discriminatory wage practices in our nation. Nevertheless, I contend that legal norms significantly shaped the terrain of struggle over wage equity; and, concurrently, that litigation and other legal tactics provided movement activists an important resource for advancing their cause. Indeed, the pay equity case experience to some extent turns the standard account of legal critics on its head. Where most critics emphasize that winning in court tends to make little difference in actual social relations, I contend that equity activists derived substantial power from legal tactics despite only limited judicial support. This later generalization was especially true in the formative stages of movement building and negotiation with employers during the late 1970s and early 1980s. Legal tactics declined in effectiveness as the courts narrowed constructions of civil rights law later in the decate, it is true. But even then, both the wage reform movement and its rights-based claims continued to draw power from legal conventions in creative ways. Overall, this study thus reveals a wide range of significant legal practices, tactics, and meanings that most existing studies of comparable worth activism tend to ignore. As such, my analysis provides an important but previously underdeveloped interpretive perspective regarding the complex, multidimensional history of recent struggles for gender-based wage equity reform.

#### Successful litigation creates indirect effects that are key to a social movement’s success

McCann ’94(Michael W., chair and professor in the department of political science at the University of Wisconsin“Rights at Work,” University of Chicago Press, 1994, Pg.10)

A less obvious but equally important corollary is that a movement’s specific legal tactics and practices — especially its appeals to official norms and institutions such as courts — often have multiple motivations and complex effects. Some legal mobilization theorists have adopted the conventional view that the “direct” effects of formal legal action most determine movement strategy and impact (Burstein and Monaghan 1986; Burstein 1991). That is, legal action is employed primarily to win short-term remedial relief for victims of injustice or to develop case law precedents capable of producing long-term institutional change. And no doubt reform movement litigation usually does seek such direct state support for the cause. However, the legal mobilization approach urged here also gives considerable attention to the indirect — or, in Galanter’s terminology, the “centrifugal” and “radiating” — effects and secondary tactical uses of official legal action in social struggle (Galanter 1983b). Such indirect effects can matter for building a movement, generating public support for new rights claims, and providing leverage to supplement other political tactics (see Scheingold 1974; Handler 1978; Olson 1984). Indeed, given the copious evidence demonstrating that judicial victories often produce uneven or negligible impacts on targeted social practices, such indirect effects and uses of litigation may be the most important of all for political struggles by most social movements (Handler 1978:210; also Scheingold 1974).

#### Supreme Court Justices use opinions to progress social movements

Guinier 9(Lani, Bennett Boskey Professor of Law, Harvard Law School “Symposium The Most Disparaged Branch,” Boston Law Review, 89 B.U.L. Rev. 539, April 2009, Lexis Nexis)

Supreme Court Justices can play a democracy-enhancing role by expanding the audience for their opinions to include those unlearned in the law. Of the current Justices, Justice Antonin Scalia has a particular knack for attracting and holding the attention of a nonlegal audience. His dissents are "deliberate exercises in advocacy" that "chart new paths for changing the law." Just as Justice Ginsburg welcomed women's rights activists into the public sphere in response to the Court majority's decision in Ledbetter, Justice Scalia's dissents are often in conversation with a conservative constituency of accountability. By writing dissents like these, both Justices have acknowledged that their audience is not just their colleagues or the litigants in the cases before them. Both exemplify the potential power of demosprudential dissents when the dissenter is aligned with a social movement or constituency that "mobilizes to change the meaning of the Constitution over time." Thus, Justice Ginsburg speaks in her "clearest voice" when she addresses issues of gender equality. Similarly, Justice Scalia effectively uses his originalist jurisprudence as "a language that a political movement can both understand and rally around.”  Both Justices Ginsburg and Scalia are at their best as demosprudential dissenters when they encourage a "social movement to fight on."

### AT: Symbolism of Law

#### The symbolic nature of law is what affects social change

McCann ’94 (Michael W., chair and professor in the department of political science at the University of Wisconsin “Rights at Work,” University of Chicago Press, 1994, Pg.6)

The starting point for this theory building enterprise is the basic definition offered by Frances Zemans: “The law is… mobilized when a desire or want is translated into a demand as an assertion of rights” (1983:700). From this simple premise we can elaborate a number of themes that inform a broad and somewhat novel vision of law. For one thing, the legal mobilization model emphasizes an understanding of law as identifiable traditions of symbolic practice. As Marc Galanter puts it, law should be analyzed more capaciously ‘as a system of cultural and symbolic meanings than as a set of operative controls. It affects us primarily through communication of symbols — by providing threats, promises, models, persuasion, legitimacy, stigma, and so on” (1983b:127).