## Notes/Explanation

This file contains a set of negative arguments to use against the Right To Education affirmative. It includes all previous materials released at Georgetown and the SDI.

## Inequality Advantage Answers

### 1NC — Inequality Advantage (Stem)

#### “Right To Education” Fails — many other policies *also* key.

Darby and Levy 11 — Derrick Darby, Associate Professor in the Department of Philosophy at the University of Kansas, holds a Ph.D. in Philosophy from the University of Pittsburgh, and Richard E. Levy, J.B. Smith Distinguished Professor of Constitutional Law at the University of Kansas School of Law, holds a J.D. from the University of Chicago School of Law, 2011 (“Slaying The Inequality Villain In School Finance: Is The Right To Education The Silver Bullet?,” *Kansas Journal of Law & Public Policy* (20 Kan. J.L. & Pub. Pol'y 351), Summer, Available Online to Subscribing Institutions via Lexis-Nexis)

C. Implications

Whether school finance litigation relies on adequacy or equity and whether one chooses to understand the philosophical demands of a right to education in terms of adequacy or equality, attending to the empirical evidence suggests that it will take much more than improved resources to address the complex problem of educational inequality. Indeed, once we expand our horizons to consider the full and complex array of factors that affect educational achievement, it is clear that the right to an education cannot alone bear the burden of alleviating educational inequality, especially if the right is understood in terms of educational funding. To illustrate, assuming that adequacy theorists are correct about the negative impact of segregation on unequal group-based educational outcomes, societal efforts may have to reach well beyond schools, perhaps to mandate greater integration in places where people live, work, worship, and play. It is unlikely that simply bringing young and middle school age children together in school for a few hours a day, five days a week, will be enough to overcome many of the negative effects of voluntary segregation in other parts of society. Of course, such a proposal would be met with serious resistance and criticism. Still, it may be difficult for proponents of greater integration to avoid moving in this direction.

If we consider additional factors, such as the health and cognitive effects of poverty, teacher perceptions of student ability, or teacher expectations or student expectations of discrimination in the labor market as factors shaping educational outcomes, then it is also clear that merely recognizing a right to education will not suffice. We would have to combine this right with a larger effort to reduce poverty, greater enforcement of existing anti-discrimination laws, or the development of new approaches to targeting subtle and not so subtle forms of discrimination throughout society. Hence, a serious appreciation of the complexity of the empirical debate regarding the factors that shape educational outcomes seems to demand a more cautious assessment about the prospect of recognizing a right to education as the silver bullet to slay the educational inequality villain.

Although we may someday have a better empirical understanding of the factors affecting educational success, it is clear that scholars have yet to settle this matter. For practical purposes, then, what matters most is that we are more circumspect when we draw conclusions about weighty matters pertaining to the demands of equality and justice. In the present case, the variety of competing explanations of unequal educational outcomes forces us to curb our enthusiasm for the prospects that recognizing a right to education will suffice to eradicate educational inequalities. Many factors affect educational outcomes - some related to resources, others related to the educational system and the manner in which education is delivered, and many that are unrelated to the educational system. Pending a final settlement of these matters, which is highly improbable, it will be all the more difficult for courts, lawyers, and [\*377] policymakers to sort out the problem of educational inequality. n121

#### Funding Not Key — empirically proven.

Hanushek 15 — Eric A. Hanushek, Paul and Jean Hanna Senior Fellow at the Hoover Institution at Stanford University, Chairman of the Executive Board of the Texas Schools Project and Senior Research Fellow at the University of Texas at Dallas, Research Associate at the National Bureau of Economic Research, former Commissioner of the Equity and Excellence Commission at the U.S. Department of Education, former Professor of Economics and Political Science at the University of Rochester, holds a Ph.D. in Economics from the Massachusetts Institute of Technology, 2015 (“Not Enough Value to Justify More of the Same,” *Room for Debate*—a *New York Times* scholarly blog, March 26th, Available Online at <https://www.nytimes.com/roomfordebate/2015/03/26/is-improving-schools-all-about-money/not-enough-value-to-justify-more-of-the-same>, Accessed 06-07-2017)

It is hard getting around the historic facts. Real per pupil spending has more than doubled in the past 40 years, but the mathematics and reading scores of 17-year-olds have barely budged.

We must recognize that more of the same is unlikely to yield better results – and by implication reform through spending is not the way to improvement.

Advocates of more spending frequently attempt to trivialize the position of critics by twisting it into “money does not matter.” That statement is, of course, silly, because schools must pay salaries, buy equipment and run a variety of programs that do indeed require money.

But in simple terms, how money is spent is much more important than how much is spent. The problem has been that schools have not systematically used additional funds in ways that lead to improvements in student outcomes — and there is no reason to expect better choices in the future.

Supporters of added funding — as opposed to more fundamental reform in how money is used — frequently argue that it is other forces that prevent schools from doing better: Their students are more disadvantaged or there is more need for special education, etc. Even generous allowances for spending associated with educational mandates do not explain or justify the more than doubled spending over the past four decades, without any gains in achievement.

To an economist, a central issue is incentives for school personnel. There are no extra rewards for teaching well or consequences for teaching badly. If we simply raise all salaries for school personnel — for both effective and ineffective educators — we should not be surprised when student achievement does not change. If we further reduce teacher-pupil ratios, even after the disappointing results of the past two decades, we should not be surprised that spending rises with no gain in achievement.

Given decades of unproductive spending increases, it is a mistake to lead with greater spending and hope for the best.

#### Schools Not Key To Inequality — Finland proves.

Bruenig 14 — Matt Bruenig, Freelance Writer specializing in Poverty and Political Theory, has written for *The Washington Post*, *Los Angeles Times*, *The Atlantic*, *The New Republic*, *The American Prospect*, *In These Times*, *Jacobin*, and *Dissent*, 2014 (“America’s dangerous education myth: Why it isn’t the best anti-poverty program,” *Salon*, May 12th, Available Online at <http://www.salon.com/2014/05/12/americas_dangerous_education_myth_no_it_isnt_the_best_anti_poverty_program/>, Accessed 06-19-2017)

If you’ve followed the education reform debate in this country, the Finland story should be familiar by now. Almost as if engaged in an elaborate troll, Finland has apparently organized its educational system in exactly the opposite way as the reform movement here claims is necessary. The reformers say we need longer school days, but the Finns have short ones. The reformers say we need extensive standardized testing, but the Finns have almost none. The reformers say we need to keep a close leash on teachers, but the Finns give their teachers considerable freedom. Despite all of these pedagogical mistakes, the Finns consistently find themselves at the top of the international education scoreboard.

Normally, the suggested lesson of the Finland story is that the education reformers’ proposals are at minimum unnecessary and perhaps even counterproductive. Whether this lesson actually falls out of the Finland story is the subject of hotly contested arguments that are insufferably boring. However, flying under the radar of these Finland debates is a much less contestable and interesting lesson: Education cannot deliver economic equality.

If ever there was an opportunity to show that education can fix inequality and poverty, Finland is it. The children come into its education system with the lowest poverty rates in the world. In addition to its overall excellence, Finland’s education system is also extremely egalitarian in the way that it instructs its pupils. There are almost no private schools, college is free, and an ethos of total inclusion seems to reign. It is the closest thing to the liberal education utopia as you will probably ever find.

Despite all of this, Finnish economic inequality and poverty is still quite high, at least when you look at the market distribution of income. In 2010, Finland’s market poverty rate (defined as those with incomes below 50 percent of the median income) was 32.2 percent. By comparison, the United States’ market poverty was actually lower at 28.4 percent. When it comes to overall inequality, Finland’s Gini coefficient in 2010 was 0.479. This was only slightly lower than the U.S.’ Gini coefficient, which stood at 0.499.

Education boosters bizarrely think that providing everyone a high-quality education will somehow magically result in them all having good-paying jobs. But, as Finland shows, this turns out not to be true. Apparently, it’s not possible for everyone to simultaneously hold jobs as well-paid upper-class professionals because at least some people have to actually do real work. A modern economy requires a whole army of lesser-skilled jobs that just don’t pay that well and the necessity of those jobs doesn’t go away simply because people are well-educated.

The reason Finland’s ultimate distribution of income is so equal is not because its great education system has made everyone receive high paychecks (an impossible task), but because Finland has put in place distributive policies that make sure its national income is shared broadly. In 2010, Finland’s tax level was 42.5 percent of its GDP, which was nearly double the tax level of the U.S. By strategically spreading that tax money around through a host of cash transfer and benefit programs, Finland’s high market poverty rate of 32.2 percent fell to just 7.3 percent. Its child poverty rate, which Finland focuses extra attention on, fell down to 3.9 percent. Overall economic inequality took a similar dive.

The real lesson that the Finland story teaches us is not the one about pedagogical techniques that draws so much fierce debate. Rather, it’s a lesson about what very successful pedagogy and excellent education can actually do for a society. Good education can make your society well-educated and more productive, but it cannot generate a labor market in which everyone works a high-paying job. It cannot ensure that market income is distributed evenly or adequately. It cannot even come remotely close to doing those things.

The upshot of this lesson is that the fixation on education as a solution to poverty, inequality or any other distributional problem is totally wrongheaded. Good and equitable education is a huge plus for all sorts of things, but it doesn’t create an egalitarian society. Those who say it will – a group that includes reformers and their opponents – have no idea what they are talking about and, through their ignorant distractions, help sow the seeds of never-ending stratification and low-end material insecurity.

#### Status Quo Solves — ESSA promotes equity.

Cook-Harvey et al. 16 — Channa M. Cook-Harvey, Senior Researcher at the Learning Policy Institute, former Research and Practice Associate at the School of Education at Stanford University, holds a Ph.D. in Race, Inequality, and Language in Education from Stanford University, et al., with Linda Darling-Hammond, President of the Learning Policy Institute, Charles E. Ducommun Professor of Education and Faculty Director of the Stanford Center for Opportunity Policy in Education at Stanford University, former President of the American Educational Research Association, former Senior Social Scientist and Director of the RAND Education and Human Resources Program at the RAND Corporation, holds an Ed.D. in Urban Education from Temple University, Livia Lam, Senior Policy Advisor at the Learning Policy Institute, Charmaine Mercer, Director of the DC office and Senior Researcher at the Learning Policy Institute, and Martens Roc, Policy and Outreach Advisor at the Learning Policy Institute, 2016 (*Equity and ESSA: Leveraging Educational Opportunity Through the Every Student Succeeds Act*, Published by the Learning Policy Institute, Available Online at <https://learningpolicyinstitute.org/sites/default/files/product-files/Equity_ESSA_REPORT.pdf>, Accessed 06-18-2017, p. 2)

ESSA and Its Implications for Educational Equity

A critical role for the federal government is to promote equity for underserved children and youth, and the nation’s most prominent education laws have long had equal educational opportunity as a central mission. However, equity is still far from accomplished in the United States.4 Fortunately, there is greater attention to these issues than has been true for many years.

The recent passage of ESSA is intended to address many of the shortcomings of NCLB. ESSA explicitly calls for the teaching of higher-order thinking skills, and allows states to replace the sanctions that narrowed the curriculum and caused good teachers to flee from low-performing schools with strategies for continuous improvement.5 However, its emphasis on state control of accountability systems to achieve these goals has raised concerns among advocates that states may overlook the needs of low-performing schools or fail to address the achievement gap between traditionally underserved students and their peers. This has led some advocates to question if equity has been lost under ESSA.

These concerns are legitimate given the long history of unequal educational opportunity in the United States, from the time of slavery— when it was a crime to teach an enslaved person to read—through segregated systems offering dramatically different resources for learning. At the same time, it is clear that a new strategy is needed to ensure a high-quality education for all. In fact, a close examination of ESSA shows that, in many respects, it provides more leverage for equity than NCLB. For example, it is more insistent that states illuminate and address inequalities in resources, students’ access to a full and rich curriculum, and the distribution of effective, properly assigned, and experienced teachers. In addition, the law offers broader opportunities for states to consider what schools and educators need to inspire the kinds of student learning outcomes that our nation’s most privileged children enjoy.

### Extend: “Right To Education Fails”

#### A right to education is unenforceable — can’t prove that funding shortfalls are responsible for bad outcomes.

Darby and Levy 11 — Derrick Darby, Associate Professor in the Department of Philosophy at the University of Kansas, holds a Ph.D. in Philosophy from the University of Pittsburgh, and Richard E. Levy, J.B. Smith Distinguished Professor of Constitutional Law at the University of Kansas School of Law, holds a J.D. from the University of Chicago School of Law, 2011 (“Slaying The Inequality Villain In School Finance: Is The Right To Education The Silver Bullet?,” *Kansas Journal of Law & Public Policy* (20 Kan. J.L. & Pub. Pol'y 351), Summer, Available Online to Subscribing Institutions via Lexis-Nexis)

Another possibility would be to focus on outcomes as evidence of inequitable or inadequate funding. n138 Although courts often identify the basic components of the education that the state must finance (i.e., educational outcomes) and require funding that is capable of achieving those educational outcomes, they also acknowledge that the primary responsibility for determining the content of a suitable education and the funding necessary to achieve it lies with the legislature and other relevant policymakers. It is not so easy to establish that a given level of funding is "inadequate" or that a certain degree of funding disparity is inequitable, since there is no obvious basis on which to determine the constitutionally required funding and the linkage between funding and outcomes is so complex. In the Montoy litigation, the legislature had commissioned a study by outside consultants who identified the inputs necessary to provide a suitable education (defined by outcomes), and then projected the costs of those inputs. n139 This sort of evidence, however, may not be available or may be the subject of dispute.

In the absence of definitive information about the level of funding [\*383] required to achieve adequacy or equity, we might measure a state's compliance with its constitutional obligations by determining whether desired educational outcomes are being achieved. n140 Thus, for example, one way to show that funding is inadequate or inequitable might be to show that outcomes are deficient or unequal. Conversely, it would also be possible to defend existing funding as adequate and equitable (notwithstanding contrary conclusions in a cost study) by pointing to adequate or equitable educational outcomes supporting that conclusion. n141 Insofar as information on outcomes - via various assessment tools mandated by state and or federal law - is increasingly available, evidence of deficient and unequal outcomes (or adequate and equitable ones) may be relatively easy to obtain. This sort of analysis could also be relevant to the question of remedy, as courts might target improvements in terms of educational outcomes and monitor improvements as a means of measuring the sufficiency of legislative responses. n142

This evidentiary and remedial approach is consistent with a right to a suitably funded education and would not require the courts to define or redefine the underlying right in terms of outcomes, but it is likely to run into problems of causation. The element of causation is an important component of many legal doctrines, such as tort law and standing. n143 Here, poor educational outcomes are evidence that the state has failed to provide adequate or equitable funding only if we can say these outcomes are caused by the level of funding. In light of the considerations discussed above, n144 such as the complex relationship between funding and outcomes, the extrinsic factors that influence [\*384] student success, and the ongoing empirical debates about the causes of inequalities in educational outcomes, that causal relationship is in doubt. It is not sufficient simply to assume that inadequate or inequitable educational outcomes are caused by inadequate or inequitable funding, rather than other factors such as cultural, structural, or personal barriers, and it may be impossible to prove that connection so as to justify reliance on outcomes as evidence of a constitutional violation or remedial compliance.

#### Courts won’t enforce a right to education.

Darby and Levy 11 — Derrick Darby, Associate Professor in the Department of Philosophy at the University of Kansas, holds a Ph.D. in Philosophy from the University of Pittsburgh, and Richard E. Levy, J.B. Smith Distinguished Professor of Constitutional Law at the University of Kansas School of Law, holds a J.D. from the University of Chicago School of Law, 2011 (“Slaying The Inequality Villain In School Finance: Is The Right To Education The Silver Bullet?,” *Kansas Journal of Law & Public Policy* (20 Kan. J.L. & Pub. Pol'y 351), Summer, Available Online to Subscribing Institutions via Lexis-Nexis)

One possibility would be for litigants or courts to define the right at issue as a right to constitutionally adequate and/or equitable educational outcomes. n134 Many school finance decisions are not entirely clear whether the underlying constitutional right is the right to a suitable education or the right to a suitably funded education - often using these two phrases (or ones that are similar) interchangeably. n135 In light of the complex array of factors affecting educational achievement, however, the two are not the same. The right to suitable finance implies that the legislature must provide funding, but if it provides that funding, there is no additional duty to ensure that educational outcomes are achieved. The right to an education, on the other hand, might imply that the student must be educated, meaning that the student has attained some educational outcomes. Under this view, what matters is the educational outcome, and the duty to fund education is satisfied if the desired educational outcomes are achieved. This approach might be an attractive one for litigants and courts, insofar as the ultimate goal of educational funding is students who [\*382] are educated.

Nonetheless, there are both interpretive and policy difficulties with this approach. As noted previously, the recognition of an individual right to an education may be a contestable interpretation of relevant constitutional provisions, which often speak in terms of a legislative obligation to provide suitable finance and only rarely contain language suggesting that each child has a right to an education. n136 Such language may support an individual right to a suitably financed education much more readily than an individual right to educational outcomes. More fundamentally, although the state may be responsible for providing an education, it cannot bear the ultimate responsibility to make students learn. First, as discussed above, many factors that affect educational achievement are beyond the ability of the educational system or the state to control, and it may not be able to overcome cultural, structural, or personal barriers to learning. Second, the student has the ultimate control over whether she will learn to the best of her ability. Holding the state responsible for educational outcomes is thus both unrealistic and a negation of individual students' responsibility for their own learning. We might therefore expect that courts would be hesitant to embrace such a right, especially given the already difficult position in which their decisions requiring additional funding have placed them. n137

### Extend: “Funding Not Key” – General

#### Empirical evidence disproves “funding key.”

Mehlhorn 15 — Dmitri Mehlhorn, Senior Fellow at the Institute for Education Policy at Johns Hopkins University, Senior Fellow at the Progressive Policy Institute, holds a J.D. from Yale Law School and an M.P.P. in Education Policy from Harvard University, 2015 (“You Can’t Spin School Funding,” *Dropout Nation*—an online education journal, November 5th, Available Online at <http://dropoutnation.net/2015/11/05/you-cant-spin-school-funding/>, Accessed 07-04-2017)

The evidence is from other nations, and from recent history, is clear: money is not the primary problem facing America’s schools. A growing body of evidence from within the U.S. confirms this point. Since all three of these benchmarks (international, historical, and intra-American) are independent proof points, reform skeptics would need to discredit all three to make their case. Simply put, Ben demonstrates that he cannot persuasively discredit any of them.

How much does the United States spend on education? The starting point, which Ben buries behind a number of tangents, is that America spends more than any society in history. All credible sources tell roughly the same story. Ben did not like the source I used in my first column, so let’s use the National Center for Education Statistics. It reports a $621 billion total national investment in public elementary and secondary schools for 2011-2012.

We spend more than other countries spend, yet get weaker results. The international story has been repeatedly verified: Compared to other nations, the United States spends more on each student, and the students get less. Ben is right that we should try to compare apples to apples, but the best efforts to do so repeat this conclusion. An older, thorough study by McKinsey & Company in 2007, noted that Singapore achieves top performance while spending less per pupil than 27 of 30 OECD countries. More recently, NCES says we spend $12,401 per pupil, about 35 percent more than the per-pupil average for the industrialized world. In case after case, and in study after study, the best school systems do more with less than America and its public education systems.

Ben’s responds that education spending should be measured as a share of Gross Domestic Product, rather than as an absolute number. In this, Ben forgets what we are discussing: whether schools in America have enough money to succeed. His preferred metric – education spending divided by GDP – has uses, but is not relevant to whether schools have enough resources.

To see why, consider that America’s GDP at the start of 1992 was about $9 trillion in today’s dollars. Under Bill Clinton, GDP growth averaged 3.8 percent, while under George W. Bush it fell to 1.6 percent. Imagine a “Clinton scenario” where we had 3.8 percent growth from 1992 until today, and a “GWB scenario” where we had 1.6 percent growth from 1992 until today. The difference in GDP would be $22 trillion vs. $13 trillion. Under these two scenarios, if actual dollars in schools were exactly the same, “education spending as a percent of GDP” would be appear 70 percent higher under George W. Bush. Thus, by Ben’s metric, the fastest way to get school spending right is to tank the economy. [This does, perhaps, explain Ben’s support for Bernie Sanders.]

We spend a lot more than we used to, without commensurate results: America’s schools today spend about 2.5 times per pupil what they spent in 1970, notwithstanding a small per-pupil dip since 2008. Ben acknowledges “the fact that K-12 spending has risen in inflation-adjusted dollar value terms over the past 45 years,” but then waves that away by saying that “real spending on practically everything has increased in dollar terms since the 1970.” That statement is jarringly untrue.

Over that time period, per-unit prices have plummeted in many areas, including appliances, telecommunications, electronics, computers, televisions, and audio-visual devices. Some sectors have taken advantage: for instance, U.S. military spending has increased only 10 percent since 1970, while dramatically improving its comparative and absolute effectiveness. True, declining costs in some sectors have been offset by price increases in other areas, but this overall mix is called “inflation.” By using “inflation-adjusted” dollars, we account for the interplay of cost increases and cost declines. If we ignored inflation, the increase in dollars would be 14 times rather than merely 2.5 times.

Results for America’s schools have improved only slightly since 1970s, despite spending more than doubling. At face value, this suggests that funding is not the primary constraint facing America’s schools.

#### There is no correlation between funding and outcomes — comprehensive study proves.

Coulson 14 — Andrew J. Coulson, Director of the Center for Educational Freedom at the Cato Institute, former Senior Fellow in Education Policy at the Mackinac Center for Public Policy, 2014 (“State Education Trends: Academic Performance and Spending over the Past 40 Years,” Cato Institute Policy Analysis Number 746, March 18th, Available Online at https://object.cato.org/sites/cato.org/files/pubs/pdf/pa746.pdf, Accessed 07-06-2017, p. 57)

Conclusion

Academic performance and preparation for college success are widely shared goals, and so it is useful for the public and policymakers to know how they have varied over time at the state level. The present paper estimates these trends by adjusting state average SAT scores for variation in student participation rates and demographic factors known to be associated with those scores.

In general, the findings are not encouraging. Adjusted state SAT scores have declined by an average of 3 percent. This echoes the picture of stagnating achievement among American 17-year-olds painted by the Long Term Trends portion of the National Assessment of Educational Progress, a series of tests administered to a nationally representative sample of students since 1970. That disappointing record comes despite a more-than-doubling in inflation-adjusted per pupil public-school spending over the same period (the average state spending increase was 120 percent). Consistent with those patterns, there has been essentially no correlation between what states have spent on education and their measured academic outcomes. In other words, America’s educational productivity appears to have collapsed, at least as measured by the NAEP and the SAT.

That is remarkably unusual. In virtually every other field, productivity has risen over this period thanks to the adoption of countless technological advances—advances that, in many cases, would seem ideally suited to facilitating learning. And yet, surrounded by this torrent of progress, education has remained anchored to the riverbed, watching the rest of the world rush past it.

Not only have dramatic spending increases been unaccompanied by improvements in performance, the same is true of the occasional spending declines experienced by some states. At one time or another over the past four decades, Alaska, California, Florida, and New York all experienced multi-year periods over which real spending fell substantially (20 percent or more of their 1972 expenditure levels). And yet, none of these states experienced noticeable declines in adjusted SAT scores—either contemporaneously or lagged by a few years. Indeed, their score trends seem entirely disconnected from their rising and falling levels of spending.

Two generations seems a long time for a field to stand outside of history, particularly when those generations have witnessed so many reforms aimed at improving education. Perhaps it’s time to ask if there are inherent features in our approach to schooling that prevent it from enjoying the progress typical in other fields.

#### Test scores disprove “funding key” — money is wasted on a staffing surge.

Robinson and Scafidi 16 — Gerard Robinson, Resident Fellow in Education Policy Studies at the American Enterprise Institute, former Commissioner of Education for the State of Florida, former Secretary of Education for the Commonwealth of Virginia, holds an M.Ed. from Harvard University, and Benjamin Scafidi, Professor of Economics, Finance, and Quantitative Analysis and Director of the Education Economics Center at Kennesaw State University, Senior Fellow at the Georgia Public Policy Foundation, former Chair of Georgia’s Charter Schools Commission, Director of Education Policy for the Georgia GOAL Scholarship Program, holds a Ph.D. in Economics from the University of Virginia, 2016 (“More Money, Same Problems,” *U.S. News & World Report*, September 20th, Available Online at <https://www.usnews.com/opinion/articles/2016-09-20/more-money-wont-fix-failing-public-schools>, Accessed 07-06-2017)

Schools need extra money to help struggling students, or so goes the long-standing thinking of traditional education reformers who believe a lack of resources – teachers, counselors, social workers, technology, books, school supplies – is the problem. We agree that, at some level, resources matter to education. That said, a look back at the progress we've made under reformers' traditional response to fixing low-performing schools – simply showering them with more money – makes it clear that this approach has been a costly failure.

Since World War II, inflation-adjusted spending per student in American public schools has increased by 663 percent. Where did all of that money go? One place it went was to hire more personnel. Between 1950 and 2009, American public schools experienced a 96 percent increase in student population. During that time, public schools increased their staff by 386 percent – four times the increase in students. The number of teachers increased by 252 percent, over 2.5 times the increase in students. The number of administrators and other staff increased by over seven times the increase in students.

One could argue that those extra staff were needed to educate students with special needs, who were excluded by most public schools prior to 1970. Or maybe these extra staff were utilized to provide equal opportunity to African-American students who had been traditionally discriminated against during the Jim Crow era.

This staffing surge still exists today. From 1992 to 2014 – the most recent year of available data – American public schools saw a 19 percent increase in their student population and a staffing increase of 36 percent.

This decades-long staffing surge in American public schools has been tremendously expensive for taxpayers, yet it has not led to significant changes in student achievement. For example, public school national math scores have been flat (and national reading scores declined slightly) for 17-year-olds since 1992.

In addition, public high school graduation rates experienced a long and slow decline between 1970 and 2000. Today, graduation rates are slightly above where they were in 1970.

We think it is time to reform our thinking about public schools. One avenue we should consider is the important role of parents. According to a 2005 meta-analysis by William H. Jeynes, students living with involved parents had an academic advantage of higher grades and test scores than those living with less-involved parents. And according to Strong Families, Strong Schools, studies of families show that the family's influence on a student is more important to his or her success than family income or level of education.

Currently two states – Georgia and Massachusetts – are looking at ways to fix public schools beyond more bucks and bureaucracy.

Georgia Gov. Nathan Deal is pushing a constitutional amendment that would allow the state to take control of persistently failing public schools. Voters in November will decide whether to transfer control of and funding for these schools to a state entity – the Opportunity School District – that will either manage failing public schools directly or convert them to charter public schools governed by a local board of parents and other citizens. The amendment is likely to pass, despite fierce opposition from the public school establishment.

Massachusetts has one of the oldest charter school laws in the nation and is home to the highest-performing charter schools today. Low-income students in Boston charter schools generate learning growth equivalent to 31 days in math and 59 days in reading. With results like these, we might expect people to cheer. But this is not the case. Several groups, including the teachers' union, oppose the state's Charter School Expansion Initiative, a November ballot initiative, arguing that charters "create separate and unequal conditions for success by failing to serve as many high-need students as their host districts."

It is long past time to try something new to improve American schools. To give all students an opportunity to succeed, public education needs innovative approaches for the delivery of teaching and learning – be it through the options up for a vote in Georgia and Massachusetts, or by empowering parents with more choices in public schools. Money, while important, cannot solve our nation's public school challenges alone: It will take new and creative approaches that involve parents and communities, too.

#### The Supreme Court agrees with Hanushek.

Alito 9 — Samuel Alito, Associate Justice of the Supreme Court of the United States, 2009 (Majority Opinion in *Horne, Superintendent, Arizona Public Instruction v. Flores at al.*, Case Number 08–289, Available Online at <https://www.supremecourt.gov/opinions/08pdf/08-289.pdf>, Accessed 07-14-2017, p. 28-29)

Fourth and finally, NCLB marks a shift in federal education policy. See Brief for Petitioner Speaker of the Arizona House of Representatives et al. 7–16. NCLB grants States “flexibility” to adopt ELL programs they believe are “most effective for teaching English.” §6812(9). Reflecting a growing consensus in education research that increased funding alone does not improve student achievement,17 NCLB expressly refrains from dictating funding levels. Instead, it focuses on the demonstrated [end page 28] progress of students through accountability reforms.18 The original declaratory judgment order, in contrast, withdraws the authority of state and local officials to fund and implement ELL programs that best suit Nogales’ needs, and measures effective programming solely in terms of adequate incremental funding. This conflict with Congress’ determination of federal policy may constitute a significantly changed circumstance, warranting relief. See Railway Employees v. Wright, 364 U. S. 642, 651 (1961) (noting that a court decree should be modified when “a change in law brings [the decree] in conflict with statutory objectives”).

Footnote 17: See, e.g., Hanushek, The Failure of Input-Based Schooling Policies, 113 Economic J. F64, F69 (2003) (reviewing U. S. data regarding “input policies” and concluding that although such policies “have been vigorously pursued over a long period of time,” there is “no evidence that the added resources have improved student performance”); A. LeFevre, American Legislative Exchange Council, Report Card on American Education: A State-by-State Analysis 132–133 (15th ed. 2008) (concluding that spending levels alone do not explain differences in student achievement); G. Burtless, Introduction and Summary, in Does Money Matter? The Effect of School Resources on Student Achievement and Adult Success 1, 5 (1996) (noting that “[i]ncreased spending on school inputs has not led to notable gains in school performance”).

Footnote 18: Education literature overwhelmingly supports reliance on accountability-based reforms as opposed to pure increases in spending. See, e.g., Hanushek & Raymond, Does School Accountability Lead to Improved Student Performance? 24 J. Pol’y Analysis & Mgmt. 297, 298 (2005) (concluding that “the introduction of accountability systems into a state tends to lead to larger achievement growth than would have occurred without accountability”); U. S. Chamber of Commerce, Leaders and Laggards: A State-by-State Report Card on Educational Effectiveness 6, 7–10 (2007) (discussing various factors other than inputs—such as a focus on academic standards and accountability—that have a significant impact on student achievement); S. Fuhrman, Introduction, in Redesigning Accountability Systems for Education 1, 3–9 (S. Fuhrman & R. Elmore eds. 2004); S. Hanushek et al., Making Schools Work: Improving Performance and Controlling Costs 151–176 (1994).

### Extend: “Funding Not Key” – JJP Bad

#### JJP is an outlier that doesn’t support the plan.

Mehlhorn 15 — Dmitri Mehlhorn, Senior Fellow at the Institute for Education Policy at Johns Hopkins University, Senior Fellow at the Progressive Policy Institute, holds a J.D. from Yale Law School and an M.P.P. in Education Policy from Harvard University, 2015 (“You Can’t Spin School Funding,” *Dropout Nation*—an online education journal, November 5th, Available Online at <http://dropoutnation.net/2015/11/05/you-cant-spin-school-funding/>, Accessed 07-04-2017)

The conclusions of Stanford’s Hanushek and NBER’s Jackson, Johnson, and Persico: Ben cites a 2015 National Bureau of Economic Research paper by a team led by Kirabo Jackson which assessed the effects of court-mandated school funding increases on student results in the 1970s and 1980s. In the spirit of helping Ben and other reform skeptics stay focused on relevance, let’s just take everything that Jackson et al. state at face value:

1. Their result establishes a caveat to established prior research that money does not usually drive better student outcomes. As they wrote, prior national studies “found little association” between spending and results, citing reports dating back to the Coleman Report of 1966 and includes studies by Stanford’s Eric Hanushek, Julian R. Betts of University of California, San Diego, and Jeffrey T. Grogger of University of Chicago.

2. The Jackson study shows results from a narrow fact set, in which short-term spending increases were disproportionately used to benefit student instruction. They explicitly note that this is not typical for K-12 spending increases: “how the money is spent matters a lot,” and “our evidence suggests that exogenous spending increases went toward more productive inputs than endogenous spending increases.” This comment supports the hypothesis of education reformers: that additional resources for public schools will be quickly captured by the K-12 bureaucracy rather than being spent on behalf of students. Again from Jackson and his team: “money per se will not improve student outcomes” because, for instance, “using the funds to pay for lavish faculty retreats will likely not have a positive effect on student outcomes.” This directly mirrors the anecdote that headlines my original piece, in which the Fairfax County Public Schools’ lobbying campaign for additional funds omitted the fact that school leaders had just voted themselves a 60 percent pay increase.

3. The Jackson fact base also reveals diminishing returns to funding increases. In other words, an extra dollar in 1970, when schools spent $4,500 in today’s dollars, might have a lot more impact than an extra dollar today, when schools spend more than twice as much. This was pointed out by Hanushek in his response to their study that “by implication, spending today might be expected to have a much smaller impact than they estimate.” Jackson team’s conceded that: “Indeed we find that this is the case in our study. Areas with the lowest initial spending levels were also those for which increased spending had the most pronounced positive effect.”

Let’s review to make sure we don’t lose track of the argument. Even if we only use the words from the authors of Ben’s best evidence, we can conclude three things: First, that the Jackson study is an exception to substantial scholarship in the other direction. Secondly, that their study is limited to a specific type of spending that is atypical in K-12 budgets. And finally, that their study is based on data from a much lower initial starting point, and their own results suggest that adding money today might have a substantially diminished result.

#### The JJP study is methodologically flawed.

DeAngelis 17 — Corey A. DeAngelis, Policy Analyst at the Center for Educational Freedom at the Cato Institute, Distinguished Doctoral Fellow and Ph.D. student in Education Policy at the University of Arkansas-Fayetteville, Policy Advisor for the Heartland Institute, holds an M.A. in Economics from the University of Texas-San Antonio, 2017 (“Education Dollars Should Matter—but Do They?,” *Cato At Liberty*—the Cato Institute’s blog, June 8th, Available Online at <https://www.cato.org/blog/education-dollars-should-matter>, Accessed 06-09-2017)

Education reporters such as Chalkbeat’s Matt Barnum continue to cling to the idea that pouring exorbitant resources into an inefficient school system can make a sustainable difference in the lives of America’s children. To support the claim, Barnum points to a couple of recent studies examining the association between court-ordered education spending increases and student outcomes.

Jackson, Johnson, and Perisco (2016) conclude that an annual 10% increase in per pupil spending for all 12 years of schooling leads to an increase of about a third of a year of completed education. Similarly, Lafortune, Rothstein, and Schanzenbach (2016) find that court-ordered spending increases improve test scores for the least-advantaged students by a little under a hundredth of a standard deviation per year.

However, both of these studies suffer from important methodological issues that limit their ability to identify a strong causal relationship between education dollars and student outcomes.

Methodological Problems

Obviously, court-ordered spending reforms are not random events, so using them to predict educational expenditures still results in biased estimates. The public’s desire to improve education in a given location likely leads simultaneously to court-ordered spending increases and political pressures to improve school quality.

Perhaps more concerning is that event studies like the ones Barnum cites capture an entire package of educational reforms during a particular period. For some reason, authors of these types of studies have chosen to point to spending as the cause of the altered outcomes. However, other reforms such as testing accountability, pay-for-performance, and educational choice happened during the study timeframes.

Costs vs. Benefits

For the sake of argument, let’s assume that the detected effects could actually be attributed to educational dollars.

The study by Lafortune, Rothstein, and Schanzenbach finds that a large court-ordered spending increase only raises test scores by seven-thousandths of a standard deviation per year. For the most-advantaged students, the effects are zero. The fact that the detected impacts are trivial suggests that authors are simply picking up the bias generated by their empirical techniques.

#### Overwhelming counter-evidence disproves JJP.

Greene 15 — Jay P. Greene, Department Head and 21st Century Chair in Education Reform at the University of Arkansas, former Senior Fellow at the Manhattan Institute for Policy Research, holds a Ph.D. in Political Science from Harvard University, 2015 (“Does School Spending Matter After All?,” Jay P. Greene’s blog—a scholarly education blog, May 29th, Available Online at <https://jaypgreene.com/2015/05/29/does-school-spending-matter-after-all/>, Accessed 06-25-2017)

This is the question raised by a new study by C. Kirabo Jackson, Rucker C. Johnson and Claudia Persico in Education Next. Jackson, et al claim to have up-ended decades of school finance research by finding a link between school spending and improved student outcomes. After reading that article and an earlier, more detailed version posted on the NBER web site, I find nothing to persuade me to abandon the long-standing and well-established finding that simply providing schools with more resources does not improve student outcomes.

Let’s remember how well-established this finding is by noting that Eric Hanushek conducted a comprehensive review of the literature and concluded:

…the research indicates little consistent relationship between resources to schools and student achievement. Much of the research considers how resources affect student achievement as measured by standardized test scores. These scores are strongly related to individual incomes and to national economic performance, making them a good proxy for longer run economic impacts. But, the evidence – whether from aggregate school outcomes, econometric investigations, or a variety of experimental or quasiexperimental approaches – suggests that pure resource policies that do not change incentives are unlikely to be effective. (p. 866)

Jackson, et al acknowledge that past research has failed to find a link between school resources and student outcomes:

Coleman found that variation in school resources (as measured by per-pupil spending and student-to-teacher ratios) was unrelated to variation in student achievement on standardized tests. In the decades following the release of the Coleman Report, the effect of school spending on student academic performance was studied extensively, and Coleman’s conclusion was widely upheld.

But they believe that past research was flawed in two important respects. First, test scores may be a weak indicator of later-life success, so it would be better to look at stronger measures, like educational attainment, employment, and earnings. Second, they believe that past studies of school spending may suffer from an endogeneity problem. That is, extra money has tended to go to schools facing challenges. The failure to find a link between more resources and better achievement may be because schools with a weaker future trajectory are the ones more likely to get more money. So, the causal arrow may be going in the wrong direction. Weak performance may be causing more resources rather than more resources causing weak performance.

Jackson, et al solve the first issue by focusing on longer-term student outcomes, like educational attainment and earnings. They claim to have a solution to the second problem by finding a type of spending increase that is unrelated to the expected trajectory of school performance. Court-ordered spending, they say, is exogenous, while regular legislative increases in spending are endogenous.

The surprising findings of the Jackson, et al article hinge entirely on this claim that court-ordered spending is exogenous. Looking at attainment and earnings by itself does not produce a different result than past research that has focused on test scores. The thing that allows Jackson, et al to find that spending is linked to better student outcomes is the fact that they do not examine actual spending increases. Instead, they predict changes in spending based on court-orders and use that predicted spending in place of the actual spending.

This instrumental variable technique developed by James Heckman, however, only works if the instrument is in fact exogenous. That is, court-ordered spending has to be unrelated to the future trajectory of school performance. Given how critical this point is to the entire article, you might think Jackson, et al would spend a fair amount of energy to justifying the exogeneity of court-ordered spending. They do not.

It is completely mysterious to me why we should believe that court-ordered spending differs from legislatively-originated spending in the likelihood that it is linked to the expected future trajectory of school performance. That is, schools facing challenges are just as likely to get extra money if the spending originates in the courts or in the legislature. If we are concerned that the causal arrow is going in the wrong direction in that weak performance causes more money rather than the other way around, we should have that concern just as much whether the motivation for the money came from the court or the legislature.

Jackson, et al do not make a proper case for the exogeneity of court-ordered spending other than to describe it as a “shock” to school spending. But there is nothing more shocking about spending that originates in the courts than in the legislature. Court cases take years to develop, be decided, and complete appeals. And then they have to be implemented by legislative action. The timing of court-ordered spending is no more surprising to schools than regular legislative spending. Nor is the amount of spending change necessarily more dramatic than those originating in legislatures. The passage of ESEA and its re-authorizations infused large amounts of money into schools.

Jackson et al need to convince us that court-ordered spending is exogenous to get their unusual result. If they just used conventional methods, they would confirm the wide-spread finding that extra money does not improve outcomes. As they describe it:

We confirm that our approach generates significantly different results than those that use observed increases in school spending, by comparing our results to those we would have obtained had we used actual rather than predicted increases as our measure of changes in district spending. For all outcomes, the results based simply on observed increases in school spending are orders of magnitude smaller than our estimates based on predicted SFR-induced spending increases, and most are statistically insignificant.

But Jackson, et al fail to justify the claim that court-ordered spending is exogneous on which their entire article depends nor does such a claim seem plausible.

But even if you were to somehow believe that court-ordered spending is exogenous, it would still be unwise to jump to the conclusion that we now know money matters and should open the resource spigots to K-12 education. First, the past research Hanushek reviewed includes studies that do not suffer from either of the concerns raised by Jackson, et al. That is, some of those studies examine later-life outcomes for students and not just test scores and some of those studies rely on experimental methods with which there is no problem with causation. Why should we disregard those studies for this one new study even if we were to ignore the concerns I’ve raised above?

Second, Jackson, et al are examining the effect of court-ordered spending in the 1970s when spending levels in real terms were much lower and variation in spending across districts within states was much higher. It’s quite a leap to think that more money now would have the same effect as then. To my surprise, Bruce Baker made this same point in response to the Jackson, et al article in comments to Education Week:

“[E]xploring such [far-apart] outcomes, while a fun academic exercise, is of limited use for informing policy,” he wrote in an email to Education Week. “Among other things, these are changes that occurred under very different conditions than today.”

Mr. Baker also disagreed with the researchers’ caveat that similar changes might have a much smaller effect if introduced today, in part because total school funding nationwide increased by 175 percent over 43 years, from an average of $4,612 per student in 1967 to about $12,772 per student in 2010, as measured in 2012 dollars.

So does school spending matter after all? I think the answer is still clearly “no.”

#### JJP is wrong — spending increases *don’t* improve outcomes.

Hanushek 15 — Eric A. Hanushek, Paul and Jean Hanna Senior Fellow at the Hoover Institution at Stanford University, Chairman of the Executive Board of the Texas Schools Project and Senior Research Fellow at the University of Texas at Dallas, Research Associate at the National Bureau of Economic Research, former Commissioner of the Equity and Excellence Commission at the U.S. Department of Education, former Professor of Economics and Political Science at the University of Rochester, holds a Ph.D. in Economics from the Massachusetts Institute of Technology, 2015 (“Does Money Matter After All?,” *Jay P. Greene’s Blog* (guest post), July 7th, Available Online at https://jaypgreene.com/2015/07/07/does-money-matter-after-all/, Accessed 06-14-2017)

Considerable prior research has failed to find a consistent relationship between school spending and student performance, making skepticism about such a relationship the conventional wisdom. Given that skepticism, new studies that purport to find a systematic relationship between school spending and student performance get disproportionate attention.

There is in fact great demand for results linking funding with favorable outcomes. Knowing that a strong relationship existed would mean that policy makers outside of the schools – legislatures, governors, and courts – only have to concern themselves with how much money was provided to schools and not with how money was used. And, meeting our education challenges by providing more money appears from history to be easier than pursuing more fundamental changes in schools.

Kirabo Jackson, Rucker C. Johnson, and Claudia Persico offer a new study suggesting that a clear money-performance relationship exists if you just look in the right place. Their overarching conclusion is that “methods matter.” Their discovery of a money-performance relationship is attributed to analyzing the effects of spending that emanates from court decisions (exogenous variation in spending), tracing the effect of this spending to long run outcomes (completed schooling and wages), and focusing on the right subgroup (disadvantaged students).

From a methodological viewpoint, details are important here. How court decisions are dated given long and repeated legal involvement in many states; how the spending reaction to court decisions is measured; whether the court decisions are unrelated to the character of schools before court involvement; and how court-mandated spending differs from other increased spending are a few of the details. Nevertheless, while these are important methodological issues, it is more useful to focus on the substance of their findings.

Jackson, Johnson, and Persico reach the following conclusions about the impact of a 10 percent increase in spending for all 12 years of schooling: 1) It would increase years of schooling by 0.44 years for poor children and by an insignificant 0.075 years for non-poor children, implying that a spending increase of 22.7 percent would eliminate the average education gap; 2) It would increase high school graduation rates by 11.6 percentage points for poor children and 6 percentage points for non-poor children; 3) It would increase subsequent family incomes by 16.4 percent for poor children and zero for non-poor children; 4) It would reduce subsequent adult poverty rates by 6.8 percentage points for poor children and zero for non-poor children.

Their analysis covers schooling experiences for the period 1970-2010. Thus, it is useful to connect these estimates to actual funding patterns over the period. Between 1970 and 1990, real expenditure per pupil increased not by 10 percent but by over 84 percent. By 2000, this comparison with 1970 topped 100 percent, and it reached almost 150 percent by 2010. No amount of adjustment for special education, LEP, or what have you will make these extraordinary increases in school funding go away.

If a ten percent increase yields the results calculated by Jackson, Johnson, and Persico, shouldn’t we have found all gaps gone (and even reversed) by now due to the actual funding increases? And, even with small effects on the non-poor, shouldn’t we have seen fairly dramatic improvements in overall educational and labor market outcomes? In reality, in the face of dramatic past increases in school funding, the gaps in attainment, high school graduation, and family poverty have remained significant, largely resisting any major improvement. And, the stagnating labor market performance for broad swaths of the population has captured considerable recent public and scholarly attention.

What could reconcile these apparent inconsistencies? Here are some possibilities:

\* There might be sharply diminishing returns to spending so that their estimates apply most clearly in 1970 when spending (in 2011-12 $’s) was just $4,500 as opposed to 2010 when spending was $11,000. Thus, by implication, spending today might be expected to have a much smaller impact than they estimate.

\* Only spending induced by the courts might have the large impacts they identify, with spending not related to judicial rulings having a negligible impact. The likelihood of this is a little questionable since, with a few exceptions such as NJ and WY, the courts have done little to look into how any legislature responds in terms of specific spending programs. But, if true, normal spending increases by state legislatures and by local taxpayers would not be expected to have any impact on outcomes.

\* The estimates of Jackson, Johnson, and Persico might simply be very wrong.

Maybe there are other ways to reconcile the Jackson, Johnson, and Persico estimates with the aggregate data on spending and outcomes. But in the end they themselves state what is now commonly accepted: How money is spent matters. Indeed, by simple consideration of their evidence, how money is spent is more important than how much is spent.

Of course, it is always important to recognize that none of this discussion suggests that money never matters. Or that money cannot matter. It just says that the outcomes observed over the past half century – no matter how massaged – do not suggest that just throwing money at schools is likely to be a policy that solves the significant U.S. schooling problems seen in the levels and distribution of outcomes. We really cannot get around the necessity of focusing on how money is spent on schools.

#### JJP’s response to Hanushek is wrong.

Hanushek 15 — Eric A. Hanushek, Paul and Jean Hanna Senior Fellow at the Hoover Institution at Stanford University, Chairman of the Executive Board of the Texas Schools Project and Senior Research Fellow at the University of Texas at Dallas, Research Associate at the National Bureau of Economic Research, former Commissioner of the Equity and Excellence Commission at the U.S. Department of Education, former Professor of Economics and Political Science at the University of Rochester, holds a Ph.D. in Economics from the Massachusetts Institute of Technology, 2015 (“Not in the Right Ballpark,” *Education Next*, July 20th, Available Online at http://educationnext.org/not-right-ballpark/, Accessed 07-04-2017)

My critique of the paper by Jackson, Johnson, and Persico is very simple and might be lost in the dazzling misdirection of their response. When I learned computer programming, I was taught to use simplified approximations of results to make sure that my more complicated, and harder to check, programs produced answers that were in the right ballpark. This step apparently is no longer taught.

Jackson, Johnson, and Persico claim that a 22.7 percent spending increase is large enough to eliminate the average outcome difference in school attainment between the poor and non-poor. This is their estimate of the causal effect of added spending. Between 1970 and 2010 we saw real spending increases per pupil of roughly 150 percent, or over six times what they claim is necessary to close the average attainment gap between poor children (those in families below two times the poverty level) and nonpoor children (those in families above two times the poverty level). Applying their estimates of the causal effect of added spending to the actual increases in spending suggests that the average poor-nonpoor gap in school attainment should have been more than closed – which is not even close to what we observe. A large and frustratingly-resilient average attainment gap continues to exist between children in poor and nonpoor families.

Separating wheat from chaff is difficult, so a few added remarks are useful.

• Nobody suggests that one should use the time series pattern of spending increases to estimate the causal effect of spending. The approximation in my critique was introduced only to see if their answer could be in the right ballpark. It does not look to be.

• There is also no suggestion in my critique that there would not continue to be a distribution of outcomes within poor and nonpoor groups. If the average poor and nonpoor students got something close to a 150 percent increase in spending, the Jackson, Johnson, and Persico results imply that the gap in average attainment by poverty status should have been more than closed and indeed reversed. This estimate of the effect on average differences says nothing about whether there is a remaining distribution of attainment, which one would guess that there would be.

• My calculations are not an extrapolation beyond the bounds of their data, because they pertain to the data Jackson, Johnson, and Persico use in obtaining their causal estimates.

• Nobody disagrees that over time the U.S. student population has changed. There are more children in single-parent families, more children in families where English is not the first language, and more children in families below the poverty level – all factors that might lead to a more difficult to educate student population. But there are also more educated parents and smaller families over time – factors that might lead to an easier to educate population. No analysis has accurately netted out these influences. But, back to their causal estimates: one would have to believe that the net changes in families fully absorb the six-fold spending increase above their mean-equalizing level in order to reconcile actual spending increases with the clear lack of any dramatic outcome improvements. If the “quality” of our children has really deteriorated so much, we as a nation are in much more trouble than most people believe.

• The investigation of “mechanisms” by Jackson, Johnson, and Persico does not show that reducing pupil-teacher ratios or increasing teacher salaries is causally related to better outcomes. They show that court-induced funding tends to go more toward these crudely-measured inputs than non-court-induced spending – but they do not show that these factors actually led to the outcome improvements that they identify. Indeed these findings on mechanisms also fail a simple sniff test: Between 1970 and 2008, pupil-teacher ratios for the nation fell by over thirty percent. Indeed this is the biggest driver of the increase in spending over that period, and spending unrelated to court orders followed this policy very closely – but outcomes did not.

• When proclaiming the importance of their causal estimates of the impact of school spending, there are no qualifications: “Our findings provide compelling evidence that money does matter, and that additional school resources can meaningfully improve long-run outcomes for students.” But, when interpreting their results for policy, they are much more circumspect: “Spending increases should be coupled with systems that help ensure spending is allocated toward the most productive uses” – a conclusion that is unrelated to their causal analysis but that reflects exactly the conclusion to which most people have come.

The central issue remains: How do we ensure that added funds to schools are used in ways that improve student outcomes? Jackson, Johnson, and Persico and I completely agree that just providing money is not sufficient for getting good results. The time series evidence shows that the existing incentives in schools have not produced consistently better results to go along with dramatically increased funding, even if some funds have been used effectively. We apparently disagree on the other half – the necessity of spending, but I fail to see how their analysis or other available evidence shows that more money is a necessary condition for improvement. It may or may not be necessary, but arriving at any conclusion on this depends on specific policies. We need to see the results of a set of policies that consistently improves achievement in order to assess whether (and how much) more funding is really necessary.

### Extend: “Funding Not Key” – Baker Bad

#### Baker is wrong — serious academics don’t take him seriously.

Mehlhorn 15 — Dmitri Mehlhorn, Senior Fellow at the Institute for Education Policy at Johns Hopkins University, Senior Fellow at the Progressive Policy Institute, holds a J.D. from Yale Law School and an M.P.P. in Education Policy from Harvard University, 2015 (“You Can’t Spin School Funding,” *Dropout Nation*—an online education journal, November 5th, Available Online at <http://dropoutnation.net/2015/11/05/you-cant-spin-school-funding/>, Accessed 07-04-2017)

The conclusions of Professor Bruce Baker: Even more than Jackson and his team., Ben relies heavily on articles published by Bruce Baker of Rutgers University’s Graduate School of Education. This reliance is common among reform skeptics, as Baker reaches the most anti-reform conclusions to be found within mainstream academia. Particularly cited by Ben is Baker’s 2012 editorial published by the Albert Shanker Institute in which he writes that “by the early 2000s, the cloud of uncertainty conjured by Hanushek in 1986 had largely lifted in the aftermath of the various, more rigorous studies that followed.” Baker justifies this claim largely by citing Northwestern University’s Larry Hedges, who re-reviewed Hanushek’s studies “quality control measures.” Reading Baker’s paper by itself, it is understandable why Ben finds a clear academic consensus that money matters.

The problem is that Baker omits so much that his conclusion borders on outright mendacity. For instance, Baker chooses not to mention that Hanushek wrote several peer-reviewed rebuttals to Hedges’ work. One of Hanushek’s responses could have been written with Ben in mind: “Hedges, Laine, and Greenwald commit the larger error of asking the wrong question. This problem tends to get lost in their statistical manipulations and their zeal to overturn prevailing conclusions about the effectiveness of pure resource policies in promoting student achievement.”

A later paper from Hanushek goes into great detail about how Hedges and company “misinterpret the implications of their analysis [and,] through a series of analytical choices, systematically bias their results toward the conclusions they are seeking.” While Hanushek’s rebuttal is devastating, the more important point is that Baker simply pretends it does not exist – he paints a story of academic consensus that is entirely false.

In assessing Baker, it is worth noting that serious education researchers tend to not even mention Baker. Jackson and his team, for instance, write an entire paper that “money matters”, and don’t once mention Baker’s 2012 editorial. Rather, they refer to studies from 1995 and 1996 (which Baker ignores) that school spending doesn’t lead to better results.

The reason Baker gets so little play in serious education academia is because he writes editorials, not studies. His analyses are designed to achieve his intended results, and he does this by making subjective and one-sided decisions about what to include and what to ignore. [This is a point Dropout Nation Editor RiShawn Biddle hit upon four years ago.] This is expected for expert witnesses at trials, but it is disturbing for someone who pretends to be an academic, and is not transparent that he gets paid for reports by parties with a direct financial stake in his outcomes.

This problem was underscored in a 2011 tape-recorded conversation in which Baker said he would play with data, manipulate the questions he asked, and “pull things in and out” of his models “to tell the most compelling story” in exchange for a substantial research grant. This telephone conversation, including Baker’s own partially exculpatory comments, appears in full at about the 3-minute mark of this video clip. [Baker offers a rather lengthy explanation and defense of what happened.]

None of this automatically invalidates Baker’s conclusions, but most of his research suffers the same kinds of glaring deficiencies I just mentioned regarding his 2012 Shanker Institute paper. Some day, someone may decide to write a point-by-point review of Baker’s editorials, but for now the main point is to take his sweeping anti-reform conclusions with a heaping of salt.

#### Hanushek is a legend. Baker is obnoxious.

Biddle 11 — RiShawn Biddle, Editor and Founder of *Dropout Nation*—an online publication about education reform, Director of Communications at the National Indian Education Association, 2011 (“When Being A Poor Man’s Diane Ravitch Isn’t Good Enough,” *Dropout Nation*, July 11th, Available Online at http://dropoutnation.net/2011/07/28/problems-poor-mans-diane-ravitch/, Accessed 07-04-2017)

One of the sad consequences of Diane Ravitch’s laughable attempt to become the Camille Paglia of education is that other university-based education researchers of the traditionalist mode want to do the same. After all, why toil anonymously writing tomes that will never be read — or trying to make the education research field less-incestuous and more-rigorous in methodology — when you can make a small name for yourself supposedly debunking the school reform movement? The latter is probably a lot more fun.

One such person is Bruce Baker of Rutgers University, who has devoted so much of his career attempting to prove that spending more money on education leads to better results — including serving as an occasional witness for the equity and adequacy lawsuit crowd who have long sustained this theory. But in the past couple of years, Baker has managed to become one of those poor man’s Diane Ravitches, offering comfort to a legion of education traditionalists desperately looking for anyone to buttress their failed vision of American public education. And he’s gotten real good at engaging in name-calling when it comes to Bryan Hassel, Marguerite Roza, Eric Hanushek and other leading research lights in the school reform movement. (He also called your editor, with whom he has tangled on occasion, a hack, failing to realize that among reporters and editorialists, that term is more-often a badge of pride than insult.) To Baker’s lament, save for the occasional Education Next column, his targets generally ignore him. This should be no surprise. Ravitch is occasionally capable of coming up with something interesting (if not necessarily empirically-driven); Baker, on the other hand, couldn’t muster up provocative if it jumped on his desk, danced a jig, and kissed him on the nose.

So your editor wasn’t entirely shocked when Baker decided last week to ignore the entire substance of Dropout Nation‘s piece on the possibility of school reformers and Parent Power activists using the same legal tactics employed by the school funding crowd to advance school choice. Instead, he focused on the opening statement that there was no evidence that increased spending led to better student achievement.

Since I had more-important matters to which I must attend, didn’t notice the piece until it showed up on my incoming links log, and figured that Baker’s screed would be no more scintillating than his last attempt, I didn’t bother to immediately respond till now. Let’s say this: He disappoints on the name-calling (it was nothing new), and once again proved that he didn’t understand the difference between a media outlet (which Dropout Nation is) and a research publication. But then Baker attempted to cite research defending his ultimate point: That more money spent on education leads to higher levels of student achievement. And what he offers is, well, not all that compelling.

The first example he cites is a report written by Joydeep Roy, formerly of the Economic Policy Institute. Those of us who have covered the debate over graduation rates are quite familiar with Roy’s work, or lack thereof, on the subject and simply laugh when hearing it. His 2006 report, cowritten with EPI’s boss Larry Mishel, attempted to use federal education sampling data to weakly prove that graduation rates had not only not been in decline, but were actually been increasing, and that school reformers were wrong in their assertions. Not only was Roy’s argument disproved by Nobel Laureate James Heckman in his own research on the issue, but it had long ago been demolished by the work of then-Urban Institute scholar Christopher Swanson (now with the research division of the firm that publishes Education Week), former Manhattan Institute scribe Jay P. Greene (now at the George W. Bush Center) and his protege, Marcus Winters, Schott Foundation’s Michael Holzman and Johns Hopkins’ Robert Balfanz, who used actual enrollment data to prove the point. Since then, neither EPI nor its most-prominent sponsor, the National Education Association, have made much hay about it.

As for Roy’s school finance study? If one doesn’t consider the political effects of other school reforms — most-notably, the moves Michigan made towards holding schools accountable for performance beginning with the passage of Public Act 25 in 1990, which brought accountability to the state’s traditional public school systems for the first time — then Roy’s hypothesis and evidence that Michigan’s overhaul of school funding and increased subsidies for districts serving mostly-poor students could be convincing. But Roy fails to measure the possible impacts of accountability on student achievement, something that he is capable of doing even within the time-period limitations of the study. As a result, the report is a very nice white paper that makes a case for forcing states to finally behave responsibly and bear the full burden of funding schools, something for which Dropout Nation advocates. But it is not convincing evidence that increasing school funding leads to higher levels of student achievement.

One would think Baker could have found a better stalking horse for his debunking. In fact, the other studies he cites could have, in theory, been better for this purpose (although, one study, from MassINC, hardly offers the substantial evidence Baker claims, largely because it doesn’t account for efforts in bolstering accountability). Even his own handiwork would have probably sufficed. But the fact that he didn’t isn’t exactly shocking.

For one, Baker, like Ravitch, tends to engage in cherry-picking, citing the studies that best-favor his position and give no credence to those studies which offer a different narrative. Nothing wrong with that, to a certain extent, if you are a think tanker, a policy or grassroots advocate, or even an editorialist; after all, all three are primarily engaged in articulating solutions for issues and offering a worldview through which to frame them. But even then, they will admit there is another side to an argument and offer some level of nuance. But in the case of Baker, who is supposed to be engaged in university-based education research — an area in which solutions and opinion are supposed to be secondary to the goal of shining light on topics within education, and thus, supposed to be purer than thou — it means that he has moved away from being a researcher to being an advocate and pundit. Baker has essentially given up the role of being a pure researcher to being the very think tanker and advocate he generally despises. While Ravitch can pull such a trick off with ease largely because no one has ever considered her an empirical researcher in the first place, Baker is trying to play on both sides of the proverbial street and failing miserably.

Second, the reality is that research on school funding offers a far mixed view on the efficacy of spending more money than Baker is willing to admit. Even if one goes along with Baker and dismisses the legendary Hanushek’s famed meta-analysis of the issue, the research — including Harold Wenglinsky’s 1997 study on the use of school funding — articulates a different position: That isn’t so much the level of funding that matters. It is how the money is spent. And as Charlene Tow notes in her 2006 study of California’s school funding system, it can also depend on the source of the funding itself. This isn’t to say that higher spending in efforts that are focused on student achievement won’t yield positive effects, but that just increasing spending in and of itself won’t work, especially if the districts receiving the funds are fiscally profligate.

All are points school reformers have been articulating in a convincing manner for the past three decades, whether Baker likes it or not. And in a time in which cash-strapped states are dealing with $137 billion in budget deficits for the next two fiscal years and must address $1.4 trillion in pension deficits and unfunded retired teacher healthcare costs, simply focusing on increasing funding won’t work. And with so much money tied up by ineffective practices such as degree- and seniority-based compensation (including $8 billion a year dedicated to additional pay for teachers earning master’s degrees), it will take the systemic reform of K-12 in order to make school spending more effective in improving student achievement.

But Baker’s piece does hit on one of the biggest problems in education — and one of the reasons why debates over school reform can end up being so circular: Education research, including from those working in universities, is hardly an exemplar of any form of quality.

Let’s be clear: Education research at all levels is getting better and more-rigorous — and this is thanks to the data-driven efforts pioneered by Hanushek and William Sanders and advanced with the help of think tanks (to the annoyance of university researchers). But, as Forbes noted a decade in its report on the controversy surrounding the Success for All reading program, the education research field is often so incestuous that a supposed peer reviewer can also have a business relationship with the researcher presenting the data (and not recuse themselves in light of the conflict). The interpretations by researchers can also be so agenda-driven that even if underlying data is solid, it becomes sullied by association. So peer review in education research is not as exacting as it is in more-rigorous social- and hard science fields. And as a result, criticisms of think tank research by university-based counterparts, especially from wanna-be Ravitches, end up seeming rather specious.

### Extend: “Schools Not Key To Inequality”

#### Giving every student an excellent education won’t do anything to decrease poverty and inequality.

Bruenig 12 — Matt Bruenig, Freelance Writer specializing in Poverty and Political Theory, has written for *The Washington Post*, *Los Angeles Times*, *The Atlantic*, *The New Republic*, *The American Prospect*, *In These Times*, *Jacobin*, and *Dissent*, 2012 (“Education reform will not fix poverty or inequality,” *Matt Bruenig’s blog*, March 12th, Available Online at http://mattbruenig.com/2012/03/12/education-reform-will-not-fix-poverty-or-inequality/, Accessed 07-04-2017)

As regular readers know by now, I am fairly skeptical of the Education Reform Movement. I am not convinced that the reforms advocated by this well-funded movement will actually work because I suspect that the real problem is economic inequality, not bad schools or bad teachers. But even if one believed that the policies pushed by the reformers would be successful, a question then arises: successful at what?

Education reformers observe that a large achievement gap exists between poor and wealthy students, and try to find ways to eliminate that gap through reforms. But why? What is the point of eliminating the achievement gap? Reformers give many reasons, some of which are undeniably legitimate. Quality education is a freestanding good, and our present economic and educational system denies that good to multitudes of students. Eliminating ignorance is an intrinsic good worth striving for even if nothing else results from it.

However, education reformers do not view reducing the achievement gap as good simply because knowledge and learning are good; they also view it as a way of reducing poverty and economic inequality. It is not just the education reformers who think this either. Almost every milquetoast liberal effort to reduce poverty centers around trying to funnel more poor people into college. The reasoning for this proceeds as follows: people with college degrees make significantly more money; therefore if everyone had a college degree, everyone would make significantly more money.

This analysis does not actually make sense. It is true that if you take any given poor person and push them through college, that specific poor person will probably escape poverty as a result. However, taking all poor people and putting them all through college will not result in all of them escaping poverty. Anyone can escape poverty, but not everyone can.

The reason you cannot scale up college as a poverty-reducer is that high-paying jobs are scarce, positional goods. In the present economy, only so many people can capture good jobs, not because only so many people have the credentials to do so, but because only so many good jobs exist. The number and quality of jobs are decided by market forces, not the number of college graduates. You could educate every single person in the United States to the point where they held a joint PhD-JD-MD-MBA, but that does not mean we would suddenly become a society of doctors, lawyers, managers, and professors. The market defines how many people can hold those positions: we cannot keep adding management jobs and law jobs if there is not market demand for more.

Ultimately, someone has to clean toilets, prepare food, and build infrastructure. In fact, as Doug Henwood pointed out in the latest LBO newsletter, only 5 of the top 20 growing professions even require a college degree. Putting more people through college wont change that, and will thus have little impact on the total amount of inequality or poverty in the United States. Although better educating the population wont create high-paying jobs out of thin air, it may marginally increase the productivity of workers in general. But as we have seen over the past 4 decades, increased productivity does not necessarily translate into more income for working people.

In many ways, capturing high-paying jobs is a lot like capturing one of the tickets to a very popular concert. If you camp out for five days, you will capture one of the tickets. But if everyone camps out for five days, that does not mean they will all get tickets. There are only so many tickets to be captured and there are only so many high-paying jobs to be captured.

So closing the achievement gap will not reduce poverty or economic inequality; it will merely change the distribution of it. Once the achievement gap is closed and we enter into the utopian world of genuine equal opportunity, poor and rich kids will have an equal chance at winding up in miserable poverty. As I have written before, providing kids an equal opportunity to compete for the scarce, non-poverty jobs is not really an improvement, and it certainly does not make an economy just. Education Reformers who think that they can take a bite out of inequality and poverty through closing the achievement gap misunderstand how the economy — and the labor market in particular — works.

#### Better social mobility isn’t valuable in an unjust economy.

Bruenig 11 — Matt Bruenig, Freelance Writer specializing in Poverty and Political Theory, has written for *The Washington Post*, *Los Angeles Times*, *The Atlantic*, *The New Republic*, *The American Prospect*, *In These Times*, *Jacobin*, and *Dissent*, 2011 (“Social mobility does not make an economy just,” *Matt Bruenig’s blog*, October 22nd, Available Online at http://mattbruenig.com/2011/10/22/social-mobility-does-not-make-an-economy-just/, Accessed 07-04-2017)

But these usual responses to the right-wing line all kind of buy into the notion that social mobility is a chiefly important thing. While more social mobility and more opportunity is — all things equal — better than less mobility and opportunity, they should hardly be conceded as the most important things.

If the distribution of economic products is manifestly unjust, social mobility and equal opportunity cannot possibly make up for that fact.

Consider for example a hypothetical society in which one person owned almost everything and had a life of great opulence, but everyone else lived in totally subjugated misery. If everyone had an equal shot at being the one person who lived well and exploited everyone else, would that make such an economy just? I don’t think so and I don’t think anyone else would seriously say so either. The US economy is not as stratified as that, but it is similar in some respects. We have a class of managers, executives, and bankers who live very well while a great number of others struggle. Even if it was the case (and it is not) that everyone had an equal opportunity to be one of the select few who lived well, that would not make the widespread misery of others justifiable.

High social mobility in an unjust economy does not decrease misery; it just changes the distribution of it. Instead of all the misery of deprivation and insecurity falling on those born to poor parents, social mobility allows for it to equally fall on children born of poor and rich parents. Is this a better world? Not really.

Poverty and inequality reduction is a freestanding good and is necessary for the construction of a just economy. Although the right-wing’s social mobility fairy tale is a farce and easy to attack as such, we should not forget that mobility is just one component of a just economy, and arguably not even the most important.

#### Education can’t solve without distributional reforms.

Bruenig 13 — Matt Bruenig, Freelance Writer specializing in Poverty and Political Theory, has written for *The Washington Post*, *Los Angeles Times*, *The Atlantic*, *The New Republic*, *The American Prospect*, *In These Times*, *Jacobin*, and *Dissent*, 2013 (“Education and poverty, again,” *Matt Bruenig’s blog*, September 21st, Available Online at http://mattbruenig.com/2013/09/21/education-and-poverty-again/, Accessed 07-04-2017)

Erik Loomis wrote about the Diane Ravitch v. Michelle Rhee stuff. I don’t care about the majority of the content of this conflict. More arts funding? Ok I guess. I don’t know. I didn’t particularly like arts classes. I liked gym class. How about more of that? I don’t know: leave it to some pedagogy experts or something to figure out.

But I come in when Loomis writes this about Rhee: “Rhee says that we can’t solve poverty until we solve education. This is absurd on the face of it.” Anyone who says this is an enemy of poor people, full stop. And there are plenty. Recall earlier Arne Duncan said it: “What I fundamentally believe and what the president believes […] is that the only way to end poverty is through education.”

To be super clear, let’s distinguish between three claims here:

1. Education is a way to end poverty.

2. Education is the best way to end poverty.

3. Education is the only way to end poverty.

These are all false, but since number three is the one Rhee and Duncan and the education reformer crowd pushes, let’s start there. It is flatly not the case that to end poverty you need to alter education. Americans should know this. Starting from the 1960s, we as a society cut outrageously high rates of elderly poverty by 71%. We did that by sending old people checks called Social Security. We also know from international data that low-poverty countries get that way through tax and transfer schemes, not unlike Social Security (I, II). If you are saying nothing but education will dramatically cut poverty, when things other than education absolutely will and have, you are an enemy of the poor. You are contributing to a discursive world where people ignore the easiest, most proven ways to cut poverty. You are a bad person.

Now let’s focus our attention on number one, that education is a way to reduce poverty. In fact, we have dramatically ramped up educational attainment in the US in the last forty years or so and market poverty has not taken a dive. As a basic logical matter, being more educated doesn’t make you less poor. Having more money makes you less poor. So education, even if you think it is necessary, is not sufficient to end poverty. You need distributive institutions that actually generate a specific distributive result, and education is certainly not sufficient for ensuring that happens. A more educated populace will probably be more productive, but that too — as we have seen for the last four decades — is not sufficient for ensuring the gains of such productivity increases flow to the non-rich. Education is good, but sufficient for solving poverty it is not.

Finally we get to number two, that education is the best way to reduce poverty. Since it is not even sufficient for reducing poverty, this is wrong. But even if it were sufficient for reducing poverty, all of the international and domestic evidence we have indicates that the best way to cut poverty in a rich, developed country like this is to simply change the distribution of income in society. It’s not hard. If the pre-tax distribution of income is no good (and it isn’t), you just tax and transfer money around. That is the proven way to dramatically cut poverty. It is surely the best way to do so, not education.

I can’t tell if education reformers are stupid, riddled with ideology, or just trying to make their projects seem grander than they are. But when they say you can’t solve poverty without education, they are wrong wrong wrong. If they don’t stop saying it, they should rightly be understood as antagonistic to the interests of poor people.

#### Econometric data in the U.S. proves.

Rothstein 17 — Jesse Rothstein, Professor of Public Policy and Economics and Director of the Institute for Research on Labor and Employment at the University of California-Berkeley, Faculty Research Fellow at the National Bureau of Economic Research, Fellow at the National Education Policy Center at the University of Colorado, former Senior Economist for the Council of Economic Advisers, former Chief Economist at the U.S. Department of Labor, holds a Ph.D. in Economics from the University of California-Berkeley, 2016 (“Inequality of Educational Opportunity? Schools as Mediators of the Intergenerational Transmission of Income,” Institute for Research on Labor and Employment Working Paper #105-17, April, Available Online at http://www.irle.berkeley.edu/files/2017/Inequality-Of-Educational-Opportunity.pdf, Accessed 06-19-2017, p. 35-36)

8 Conclusion

Chetty et al.’s (2014) pathbreaking work showed that there is dramatic variation in intergenerational income mobility across geographic areas within the United States. This raises the intriguing possibility that we can identify policies that account for this variation and, by exporting these policies from high- to low-mobility areas, move closer to equality of opportunity.

CHKS presented suggestive correlations that indicated that school quality might be an important contributing factor. This paper has investigated this suggestion further, by asking whether high- and low-income children’s academic outcomes are more equal in areas where their adult economic outcomes are more equal – that is, in areas with more intergenerational mobility. I find that there is statistically significant variation across commuting zones in the gradients of educational attainment, academic achievement, and non-cognitive skills with respect to parental income. Intergenerational income transmission is reasonably strongly correlated with the educational attainment gradient and with the labor market return to education, but does not covary strongly with either academic achievement or non-cognitive skill gradients (with the exception of gradients computed from teacher reports of children’s non-cognitive skills).

I find that only about one-tenth of the across-CZ variation in intergenerational income [end page 35] mobility is attributable to differences in children’s earnings deriving from differences in skill accumulation. A slightly larger share is attributable to differences in the labor market returns to children’s skills. About one-third is attributable to differences in the labor market return to parental income holding skills (and the returns to skills) constant. The remaining, largest portion derives from differences in spousal and non-labor income, primarily reflecting differences in the likelihood of having a working spouse.

Although this evidence is observational rather than causal, it strongly suggests that differences in elementary and secondary school quality are not an important determinant of variation in income mobility. (This is not to say that school quality is not important for other reasons, of course, or even that it does not contribute to overall mobility in a way that is roughly constant across CZs.) There appears to be more of a role for access to higher education in driving economic mobility, though even here the contribution is not large relative to the overall variation. Further investigation into the determinants of local intergenerational mobility should focus on differences in the returns to education, in the returns to family income conditional on children’s human capital, and in the relative propensity of children from high- and low-income families to have working spouses. Plausible factors driving the former might include institutions determining local income inequality, such as state income taxation and union density. The second, reflecting direct effects of parental income on children’s earnings conditional on children’s human capital, might reflect variation in the importance of labor market networks or in spatial or social stratification of the labor market. The third seems to reflect differences in the likelihood of marriage rather than variation in assortative mating; insofar as this reflects differences across CZs in the likelihood that romantic partners will be formally married rather than differences in the likelihood of partnership, it may not represent meaningful variation in equality of opportunity.

\* CHKS = Chetty et al. 2014

#### This is true even if the plan makes all schools equally excellent *tomorrow*.

Katz 14 — Daniel Katz, Assistant Professor and Chair of the Department of Educational Studies at Seton Hall University, holds a Ph.D. in Curriculum, Teaching, and Educational Policy from Michigan State University, 2014 (“The Moral Perversity of Today’s Education ‘Reform’,” *Daniel Katz’s blog*, September 29th, Available Online at <https://danielskatz.net/2014/09/29/the-moral-perversity-of-todays-education-reform/>, Accessed 07-04-2017)

In the 21st century, we are exhorted to education reformers’ policy agenda by language invoking the struggles undertaken by some of our most heroic figures, Dr. Martin Luther King, Jr., Rosa Parks, Representative John Lewis, and told that the best way to close the historic education achievement gap between suburban white children and their urban African American and Latino peers is to embrace highly disruptive change. We are further told that all of our children are still “at risk” because even in the well-off communities of our upper middle class, students are not learning what they need in a global economy. Without education reform, our impoverished students will remain locked in poverty, and our comfortable students will slide into stagnation.

For the sake of this discussion, let me do something I never do. Let me assume, momentarily, that the education reformers are correct. Assume that common standards and aligned mass assessments will create a seamless system of curricula that challenge students meaningfully, and that those standards encompass a strong vision of student accomplishment. Assume that adoption of the standards and assessments narrow the differences between states and districts so that expectations remain high for all students. Assume the assessments are well-crafted and valid measures that stand as good proxies for student learning. Assume value added measures of teacher evaluation are statistically valid and supported by a robust body of research. Assume that eliminating the job protections of tenure would mean that vast numbers of students would have greater contact with skilled teachers and that there would be no negative consequences to the rest of the teacher workforce. Assume that the proliferation of charter schools in urban school districts would give vastly more students options to attend a high performing school and that pressures from school choice schemes would increase the quality of zoned schools. Assume that urban charter schools fully serve all students who arrive at their doors. Assume that the advocates of “no excuses” charter schools are correct and that they genuinely demonstrate that closing the achievement gap can be accomplished entirely within school through teachers armed with extremely high expectations.

Assume every last bit of that is true.

Then what?

This is a more critical question than many realize because even if the performance gaps in American education closed overnight, we would still need an economy that can accommodate many more and more equitably distributed high performing graduates than we currently have. Advocates of current reforms certainly seem to be banking on this. Jonathan Chait of New York Magazine recently wrote that Eva Moskowitz of the Success Academy charter school network should be considered a “hero of American social justice,” and he declared that her schools have “been a staggering triumph of upward mobility.” That’s quite a claim to make for a chain of schools whose oldest students have just begun high school, and, in fact, it rests almost entirely about the network’s accomplishments in state administered standard examinations.

However, the attractiveness of the claim is fairly obvious. If we admit that economic injustice and that institutional racism have a detrimental impact upon students in poverty and students of color, then we have to admit that many of the gains made over the decades by students from upper middle class and upper class backgrounds are at least partially attributable to unearned privileges as well as to individual merit. Further, we would have to engage in a policy discussion that attempts to alleviate the deprivations of poverty and institutional racism rather than to extol individuals to claw their way past such obstacles largely on their own. The “no excuses” brand of charter schools claims that they have figured out how to lift all of their students to the same level of education and opportunity as students in the suburbs, and their policy allies are hardly shy about singing their virtues, as represented in standardized test scores:

[Tweet Graphic Omitted]

Former New York City School Chancellor Joel Klein does not want to talk about the complicating factors surrounding Success Academy results, nor does he spend time considering how far such results could be replicated. Success Academy fits into a narrative that believes schools and teachers are fully responsible for providing all of the lift out of poverty.

But, as I said, assume that it is possible and that Jonathan Chait’s premature declaration of social mobility comes true. What awaits these students? If current trends in economics do not begin to change soon, the answer to that question is not especially hopeful. While there is still an discernible “college wage premium” for those who earn four year degrees, since the 1980s, a significant portion of that is more attributable to cratering wages among people without degrees than to significant wage growth among those with degrees:

[Graphic Omitted]

While a Millennial with a college degree earns a wage that is $730 more than a late boomer with the same degree, the wage trends for those with either a two year degree and no degree have dropped precipitously since the early 80s compared with decades of modest but steady growth before. A college degree may be necessary for a middle class career today, but more and more, it looks as if the degree is more a means to keep from falling into chronic income insecurity rather than as a genuine means of economic advancement.

If the middle class is increasingly a tenuous position in the American economy, it is even worse for the lower middle class, an economic stratum that has traditionally helped families transition from working class to more economically secure circumstances. According the The Hamilton Project at the Brookings Institution, nearly half of American families live at 250 percent of the federal poverty level (FPL) or below, and 30 percent live between 100 percent and 250 percent of the FPL. Unlike families below the poverty level, such lower middle class households are equally likely to be headed by a married couple or a single parent, and nearly half have a head of household who has attended at least some college. The report on their economic struggles notes that, despite living above the poverty line, large percentages of these families rely upon a number of tax and transfer benefits such as SNAP and the Earned Income Tax Credit to remain above the FPL. Indeed, without many of these programs, the number of families that would slip from an unsecured lower middle class to simple poverty is significant. As a transition point from poverty to a more secure middle class, the lower middle class is faltering badly.

And where is the evidence that the economy is desperate for more workers with bachelors degrees? It certainly is not in the wages earned by recent college graduates. According to the Economic Policy Institute, wage growth adjusted for inflation has been nonexistent since 2000, and the downward trend has continued even as the economy has recovered from the Great Recession:

[Graphic Omitted]

If college graduates were in short supply, basic labor economics dictates that businesses competing for them would have to offer higher wages, but even in the vaunted STEM fields, wages, while higher overall than in non-STEM fields, have not grown significantly for most of the 21st century.

Reality suggests that even if all education reform assumptions were true, graduates of a “properly reformed” school system would still graduate into an economy that is not equipped to lift them from poverty and that is barely equipped to maintain those in the middle class where they currently reside. The recently published study by Karl Alexander of The Johns Hopkins University, The Long Shadow, illustrates just how complex and potentially unsuccessful the rise from poverty can be. Out of 800 children studied from first grade to their late twenties, only 33 moved from the low income to the high income bracket. While a good education is certainly a PART of a pathway out of poverty, it is by no means the ONLY way out, and with more and more workers in the economy struggling to keep pace, it is perverse to suggest that we bestow upon schools the sole responsibility for lifting children from poverty.

And yet that is exactly what is implicit and even explicit in reformers’ policy objectives and rhetoric. When Jonathan Chait calls Success Academy a “triumph of upward mobility” he is expressly saying that equalizing standardized test scores through Moskowitz’s “no excuses” methodology will effectively raise the children in her schools to economic security. But even if everything he says about her accomplishments is true, we cannot blithely assume that this academic accomplishment translates into mobility when the economy shows no indications of providing the kind of reward for work that would translate academic standing into economic standing. Eva Moskowitz’s scholars still face a world where this trend shows no signs of abating:

[Graphic Omitted]

And, of course, we know that we cannot grant the reformers that their agenda will work because much of it simply will not or is built upon faulty and deceptive claims. Common standards are being implemented in 45 states simultaneously with virtually no field examination of whether or not they improved instruction at the classroom, school or district levels. Evaluating teachers based on Value Added Models is problematic at best, statistically invalid at worse. There is scant to no evidence that the elimination of teacher tenure is going to significantly improve the teaching in urban schools, and, in fact, the states with the weakest teacher job protections tend to be states that perform very poorly on national assessments. Success Academy, despite claiming to teach similar high need populations as NYC district schools, has a very high attrition rate, and they do not replace students who leave. This is a trait shared with many other “no excuses” charter schools who eventually have student populations with many fewer disabled students, English language learners and students on free and reduced lunch than their district counterparts. They combine the selective attrition of the most difficult to teach students with an extreme emphasis on discipline for even minor infractions of the rules and, at Success Academy and elsewhere, a curriculum aimed at test preparation. While there is little evidence yet that such test performance training will result in long term economic success, there is evidence that charter school expansion can make segregation actually worse.

And this is where reform advocacy devolves from being merely wrong-headed and into territory that is dangerously close to immoral. America has one of the highest child poverty rates in the developed world. It is well established that poverty and its deprivations have serious, often lifelong, impact on people in health, education and economic outcomes. While improving educational opportunity for children in poverty is a necessary component of expanding opportunity, left to its own, education reform, ANY education reform, cannot make significant dents into the roadblocks that stand before our nation’s poor. We do not have an economy where the lower middle class can survive on the wages offered for their work. We do not have an economy where 90% of the wage earners possess more than 49 percent of the total income in the country, and we do not have an economy where the often expressed need for college educated workers has led to growth in income earned by college graduates.

Worse, we have accepted no society wide responsibility to address child poverty in any meaningful way that would lift more children into the economic circumstances more highly correlated with school success than any other factor. In fact, as a society, we have responded to current economic circumstances with demands to cut discretionary programs in ways that can directly harm children, deepening the already woeful health, education and economic outcomes for children in poverty. Matt Bruenig of Demos, estimates that with an investment of 1% of GDP in a straight transfer program, child poverty could be cut by 50 percent, almost instantly. He further points out that our 24 percent of GDP taxation level is among the lowest in the developed world, and it is hard to argue that there is no room for an extra percentage point of GDP.

But there is no political will to discuss this or other direct approaches to lifting people out of poverty in our government. More accurately, there is no willingness for the major political donors who effectively leverage significant portions of policy in America to do anything that changes either the economy or their taxation levels. There is, however, significant interest in bypassing those discussions and placing all of the responsibility to both transforming our economy and for lifting disadvantaged children from poverty upon teachers and school.

It fits the meritocracy narrative, and it may tug at our cultural bias towards individualism in the face of daunting odds.

But it is immoral.

#### Even if education is important, it’s just one issue among many.

Bruenig 17 — Matt Bruenig, Freelance Writer specializing in Poverty and Political Theory, has written for *The Washington Post*, *Los Angeles Times*, *The Atlantic*, *The New Republic*, *The American Prospect*, *In These Times*, *Jacobin*, and *Dissent*, 2017 (“Education Is Just Another Issue,” *Matt Bruenig’s blog*, May 3rd, Available Online at http://mattbruenig.com/2017/05/03/education-is-just-another-issue/, Accessed 07-04-2017)

In his piece about DC’s failed school voucher program, David Leonhardt had this to say:

[E]ducation isn’t just another issue. It is the most powerful force for accelerating economic growth, reducing poverty and lifting middle-class living standards. Well-educated adults earn much more, live longer and are happier than poorly educated adults. When researchers try to tease out whether education does much to cause these benefits, the answer appears to be yes.

Two things here.

First, the poverty part I’ve bolded is just wildly untrue. The most powerful force for reducing poverty in a rich country like the US is distributive policy. I’ve written on this dozens of times before, so I won’t belabor the point here. But let me give one example.

We could, in an instant, eliminate extreme child poverty, cut deep child poverty by 50 percent, and cut overall child poverty by 40 percent by implementing a $250/month universal child benefit program that would have a fiscal cost of less than 0.5 percent of GDP. How long do you think it would take higher overall educational attainment to accomplish that? Would it ever?

Second, Leonhardt’s proof that education delivers the goods does not actually show that at all. He links to a prior write up he did of a study that compared individuals who barely got into college to those who barely failed to get into college. The study showed that the individuals who barely got in did substantially better in life than the ones who barely failed to get in. Leonhardt quickly concludes from this both that it is the college education that is responsible for the gain and, implicitly, that this effect is universalizable such that you could push more and more people through college and the result would just be more and more people getting more and more good jobs.

But the study does not support these conclusions.

An alternative explanation for why those who barely get into college do so much better than those who barely fail to get into college is that education credentials are used to filter individuals for later job placement. If this is true, it is not that the education caused new good jobs to come into existence that the college-attenders then occupied. Rather, it is that the college-attender’s credentials made them out-compete the non-attender for the scarce number of good jobs that exist. That is to say, the education of the attenders gave them positional gains that allowed them to enter the labor market at a higher spot than the non-attenders.

And, no, this is not a fanciful alternative explanation. It is one of the most prominent arguments made by those who criticize education optimists like Leonhardt. And it is obviously true, at least in some cases. For instance, people who get law degrees have much higher incomes than those without them. But even Leonhardt would certainly admit that giving everyone a legal education would not usher in a country whose labor market purely consisted of highly-paid people suing one another for stuff. Yet that is precisely the reasoning Leonhardt works off of when talking about college education as a whole.

Despite what folks like Leonhardt tell you, education is not the centerpiece of all that is good in the world. It is not the universal salve for all that ails society. This is a bizarre rhetorical strategy education reformers have adopted to inflate the importance of their political project. But it’s bogus. Education is just another issue.

#### Labor policies overwhelm education.

Mishel 11 — Lawrence Mishel, President of the Economic Policy Institute—an independent, nonprofit, nonpartisan think tank that researches the impact of economic trends and policies on working people in the United States and around the world, holds a Ph.D. in Economics from the University of Wisconsin, 2011 (“The Overselling of Education,” *The American Prospect*, February 7th, Available Online at <http://prospect.org/article/overselling-education-0>, Accessed 06-18-2017)

What is the Role of Education in Prosperity?

It's certainly true that America needs better-educated citizens beginning with pre-K and public education, stronger community colleges, more affordable paths to higher education, and comprehensive training policies that increase skills and lead to better-paid jobs. But none of these education policies are the primary cure either for the widening income inequality of the past three decades or the current crisis of joblessness. The income distribution was much more equal during the postwar boom when most young workers had only a high school diploma -- because we had strong institutions of worker representation and wage-setting as well as tax and regulatory policies that constrained the greed at the top.

More education and training are necessary to obtain the long-term growth we desire and to provide equal access to job opportunities for the entire population and workforce. Individuals deciding whether to pursue more education and training would be wise to enhance their human capital, as it will place them in a better position as wage earners and citizens.

That being said, the challenge we face with persistent unemployment exceeding 9 percent is not better education and training for those currently unemployed. Rather, we need more jobs.

The huge increase in wage and income inequality over the last 30 years was not caused by a skills deficit. Rather, workers face a "wage deficit." The key challenge is to provide good jobs and re-establish the basis for wages and compensation to grow in tandem with productivity, as they did before 1979.

We do need more investment in education at all levels, so that the children of the working class have a better opportunity to compete for good jobs. We also need what Europeans call an active labor-market policy, so that the money we invest in training is directly connected to re-employment at good wages, rather than operating in a vacuum.

The nation's productivity increased by 80 percent from 1979 to 2009, and good productivity growth can be expected in the future. It is not education gaps that have caused nearly all of those gains to be captured by the top but rather economic policies that redistributed economic and political power.

### Extend: “Status Quo Solves – ESSA”

#### ESSA bolsters equity — four reasons.

Cook-Harvey et al. 16 — Channa M. Cook-Harvey, Senior Researcher at the Learning Policy Institute, former Research and Practice Associate at the School of Education at Stanford University, holds a Ph.D. in Race, Inequality, and Language in Education from Stanford University, et al., with Linda Darling-Hammond, President of the Learning Policy Institute, Charles E. Ducommun Professor of Education and Faculty Director of the Stanford Center for Opportunity Policy in Education at Stanford University, former President of the American Educational Research Association, former Senior Social Scientist and Director of the RAND Education and Human Resources Program at the RAND Corporation, holds an Ed.D. in Urban Education from Temple University, Livia Lam, Senior Policy Advisor at the Learning Policy Institute, Charmaine Mercer, Director of the DC office and Senior Researcher at the Learning Policy Institute, and Martens Roc, Policy and Outreach Advisor at the Learning Policy Institute, 2016 (*Equity and ESSA: Leveraging Educational Opportunity Through the Every Student Succeeds Act*, Published by the Learning Policy Institute, Available Online at <https://learningpolicyinstitute.org/sites/default/files/product-files/Equity_ESSA_REPORT.pdf>, Accessed 06-18-2017, p. 2-3)

ESSA offers at least four ways to strongly advance equity, if it is thoughtfully regulated and implemented.

First, Title I establishes a set of expectations for states to design standards and assessments that develop and measure higher-order thinking skills, and provides some of the resources in Title II for professional learning that could make these rights real. Just as W.E.B. Du Bois argued for a rich, liberal education for black children, when most wanted to relegate them to training for menial labor, so ESSA insists on a 21st-century curriculum focused on critical thinking and problem-solving for the children it is intended to serve, rather than a rote-oriented education that prepares disadvantaged students for the factory jobs of the past. This means teachers and school leaders must learn to provide that kind of education, along with the assessments that develop and measure it, and use these assessments for ongoing improvement, rather than punishment. ESSA provides a means for the nation to take up this work. [end page 2]

Second, ESSA requires states to use multiple measures to evaluate student and school progress—both overall and for subgroups of students. These could include not only measures of student outcomes—such as test score gains, English learner progress, and graduation rates—but also measures of students’ opportunities to learn. For example, how many students receive and complete a college preparatory sequence or a high-quality career technical pathway? Does the school have experienced and effective teachers well-qualified in the areas they teach? Do teachers have access to relevant, job-embedded, high-quality professional development aligned to their needs and the needs of the students? Do student and parent survey results indicate there is a safe, supportive school climate that offers high-quality learning opportunities to students? Has the school reduced high and disproportionate rates of suspension and expulsion or chronic absenteeism that impede student success? Such measures can shine a light on inequities as well as poor learning conditions and help diagnose the steps required to close the opportunity gap.

Third, for the first time, a number of features of the law directly address the resource gaps among our schools. States must report schools’ actual per-pupil spending on school report cards, which should raise awareness about the fair distribution of state and local dollars. ESSA maintains the “supplement, not supplant” requirement, which is intended to ensure that schools receiving Title I funds get at least as much state and local funding as they would have otherwise received were they not funded by Title I. ESSA also establishes a new weighted student-based funding pilot that would reward up to 50 districts for innovative funding based on student needs—offering more resources for students who are from low-income families, English learners, migratory, or neglected, delinquent, or otherwise at risk, such as homeless or foster youth. A new Student Support and Academic Enrichment authorization can also be used to target funds to implement strategies and supports that address some of these needs.

Finally, the law supports the use of evidence-based interventions to increase achievement generally and as strategies for improving schools that are struggling. Defining this requirement thoughtfully and treating it seriously could lead to significantly wiser investments in high-need schools and concomitantly better outcomes.

If thoughtfully leveraged, these four features of the law can serve as pillars of opportunity that help create a bridge from our inequitable, old-style, factory-models school to much more engaging and equitable learning communities (see Figure 1).

#### ESSA funds social services beyond the classroom — they’re key.

Galmiche and Cardinali 15 — Jack Galmiche, President and Chief Executive Officer of the Nine Network of Public Media—the national coordinator of American Graduate, an organization working to support community-based solutions to the dropout crisis, and Daniel Cardinali, President of Communities In Schools, Inc.—the U.S.’s largest dropout prevention organization, 2015 (“The promise of the Every Student Succeeds Act,” *The Hill*, December 18th, Available Online at <http://thehill.com/blogs/congress-blog/education/263633-the-promise-of-the-every-student-succeeds-act>, Accessed 06-18-2017)

It’s far too soon for anyone to say exactly how the Every Student Succeeds Act will affect American education. But in the wake of its passage, we’re hopeful the new law will deliver on its promise to address one of the toughest challenges we face: enabling more of our students to get a high school diploma.

To be sure, there’s good news these days around graduation rates. The U.S. Department of Education just released a report showing that a higher proportion of America’s students graduated from high school in the 2013 – 2014 school year (82 percent) than ever before, about a one percent increase over the previous year.

While the national graduation rate is on a trajectory to reach 90 percent by 2020, we find a much different—and more discouraging—picture among students from low-income households. As GradNation points out, “Low-income students are graduating at a rate that’s almost 15 percentage points below the rate for their non-low-income peers.” Indeed, poverty is by far the most predictive indicator when it comes to low graduation rates. It cuts across all other demographic and social factors, including ethnicity and race.

The question for all of us, then, is: what can we – educators, parents, leaders and people from across the community – do to equip more poor, at-risk students with the tools and support they need to stay in school and graduate? How can we ensure that they will be as prepared as possible to excel in the world beyond graduation?

ESSA includes at least two new provisions that we think could be enormously helpful.

First, local high schools now must use the graduation rate as one of several measures of success. This provision recognizes something we have emphasized for several years: that a young person today cannot afford to enter the work force without at least the foundational skills and knowledge that come with a high school diploma. Moreover, our communities and our country suffer when young people don’t finish high school.

With that as a guiding light, more and more groups like ours are identifying and sharing evidence-based approaches that work to keep students in school through graduation. While there are no silver bullets to improving graduation rates, one proven intervention is sustained and substantive help from caring adults willing to support students’ difficult journeys in the classroom and in other parts of their lives. Don’t our students, especially those most at-risk of dropping out, deserve this nation’s most effective prevention and intervention initiatives?

We have mountains of data to prove that mentoring and guidance can be the key to success, especially for low-income youth who so often wrestle with severe personal and academic challenges.

Secondly, ESSA allows the use of Title I funds, which are specified for the poorest schools and districts, for “integrated student supports,” a broad array of social services that can help at-risk students successfully navigate the barriers they face on the way to graduation. Title I and new competitive grant programs can give schools and community partners many more options for providing mentoring, parental engagement programs, violence and trauma prevention, drug abuse counseling, and other services proven to reduce dropout rates.

This is important because, even in places where such services exist, they can be fragmented and out of the line of sight of the students who need them most. What’s needed often are trained, caring adult who in partnership with principals, teachers, and parents will identify the most at-risk students and connect them to community programs and services they need to graduate high school career and be post-secondary ready. That’s the kind of local customization of intervention that so many of our partners have been talking about and putting into practice all over the country.

The Every Student Succeeds Act, the first major national education overhaul since the passage of the No Child Left Behind Act in 2001, has the potential to breathe new life into approaches that many groups like ours have recognized as effective and essential for student’s to succeed. But it’s only part of the equation of success. It’s now up to people around the country to seize that opportunity and put its resources to effective use, particularly in communities that need it most.

## Structural Violence Module Answers

### 1NC — Structural Violence Module

#### No Inequality D-Rule — it’s not a moral obligation.

Frankfurt 15 — Harry G. Frankfurt, Professor Emeritus of Philosophy at Princeton University, Fellow of the American Academy of Arts and Sciences, holds a Ph.D. in Philosophy from Johns Hopkins University, 2015 (“Let's Get This Straight: Income Inequality And Poverty Aren't The Same Thing,” *Forbes*, August 24th, Available Online at https://www.forbes.com/sites/realspin/2015/08/24/lets-get-this-straight-income-inequality-and-poverty-arent-the-same-thing/#6fd78168273a, Accessed 06-19-2017)

There is very considerable discussion nowadays about the increasingly conspicuous discrepancy between the incomes of wealthier Americans and the incomes of those Americans who are less wealthy. President Barack Obama has declared that income in­equality is the greatest political challenge of our time. But just what is so awful about economic inequality? Why should we have this great concern, urged upon us by so many politicians and public figures, about the growing gap between the in­comes of the richest people in our country and the incomes of those who are less affluent?

The first thing to notice is that economic inequality, however undesirable it may be for various reasons, is not inherently a bad thing. Think about it: We could arrange for the members of a society to be economically equal by ensuring that the economic resources available to each member of the society put everyone equally below the poverty line. To make everyone equally poor is, obviously, not a very intelligent social ambition.

Insofar as people aim for equality (i.e., having the same as others), they are distracted from measuring the specific economic needs that are implied by their own particular interests, ambitions and capacities. The trouble with adopting equality as a social goal, then, is that it is alienating. It diverts people from being guided, in assessing their personal economic circumstances, by the most pertinent features of their own lives; and it leads them instead to measure their economic needs according to the significantly less pertinent circumstances of others.

It isn’t especially desirable that each have the same as others. What is bad is not inequality; it is poverty. We should want each person to have enough—that is, enough to support the pursuit of a life in which his or her own reasonable ambitions and needs may be comfortably satisfied. This individually measured sufficiency, which by definition precludes the burdens and deprivations of poverty, is clearly a more sensible goal than the achievement of an impersonally calibrated equality.

There is, of course, an evil other than poverty which it is important to avoid. The social undesirability of wide economic inequality does not lie only in a concurrent incidence of poverty. It lies also in the superior political influence, and other competitive advant­ages, enjoyed by those who are especially well-off. These advantages, when they are deliberately exploited, tend to undermine a fundamental requirement of our constitutionally mandated social order. Accordingly, such anti-democratic misuses of the competitive advantages provided by exceptional wealth must be discour­aged by suitable legislative, regulatory and judicial oversight.

It is not inequality itself that is to be decried; nor is it equality it­self that is to be applauded. We must try to eliminate poverty, not because the poor have less than others but because being poor is full of hardship and suffering. We must control inequality, not because the rich have much more than the poor but because of the tendency of inequality to generate unacceptable discrepancies in social and political influence. Inequality is not in itself objectionable—and neither is equality in itself a morally required ideal.

#### No Inequality-Based Mortality Gap — it’s already closed.

Currie and Schwandt 16 — Janet Currie, Henry Putnam Professor of Economics and Public Affairs and Director of the Center for Health and Well Being at Princeton University, Director of the Program on Children at the National Bureau of Economic Research, holds a Ph.D. in Economics from Princeton University, and Hannes Schwandt, Assistant Professor in the Department of Economics at the University of Zurich, holds a Ph.D. in Economics from Universitat Pompeu Fabra (Spain), 2016 (“Falling inequality in mortality in the US,” VoxEU.org—the Centre for Economic Policy Research’s policy portal, July 2nd, Available Online at <http://voxeu.org/article/mortality-inequality-good-news-county-level-approach>, Accessed 06-19-2017)

Overall, our results show that the health of the next generation in the poorest areas of the US has improved tremendously and that the race gap has largely closed. It is surprising how little attention has been paid to this health success story in either the academic or the public discussion.

Likely drivers for the strong decline in mortality inequality are social policies that helped the most disadvantaged families. One of the most important may be expansions of public health insurance to poor pregnant women and children that took place in the late 1980s and 1990s. Other important factors include reductions in smoking prevalence, expansions of food and nutrition programs, and reductions in pollution. Overall, these findings show that even in times of great economic inequality, inequality in health outcomes is not inevitable but is strongly mediated by policy.

### Extend: “No Inequality D-Rule”

#### No moral obligation to reduce inequality.

Frankfurt 15 — Harry G. Frankfurt, Professor Emeritus of Philosophy at Princeton University, Fellow of the American Academy of Arts and Sciences, holds a Ph.D. in Philosophy from Johns Hopkins University, 2015 (“Inequality isn't immoral,” *Los Angeles Times*, October 9th, Available Online at <http://www.latimes.com/opinion/op-ed/la-oe-1011-frankfurt-inequality-morality-20151011-story.html>, Accessed 06-19-2017)

Many people believe that economic equality has, in itself, considerable moral value. They urge that efforts to approach the egalitarian ideal should therefore be accorded a significant priority. In my opinion, this is a mistake. Economic equality is not, as such, of any particular moral importance, and economic inequality is not, in itself, morally objectionable.

Quite often, advocacy of egalitarianism is based less on an argument than on a purported moral intuition: Economic inequality just seems wrong. It strikes many people as altogether apparent that, taken simply in its own right, the possession by some of more money than others is morally offensive.

I suspect, however, that people who profess to have this intuition are actually not responding to inequality but to another feature of the situations they are observing. What they find morally objectionable is not that some individuals have less money than others — a relative quantitative discrepancy. Rather, it is the fact that those with less have too little — an absolute quantitative deficiency. It is the fact that they are poor.

Mere differences in the amounts of money people have are not in themselves distressing. We tend to be quite unmoved, after all, by inequalities between those who are merely well-to-do and those who are extremely rich.

If we believe of some person that her life is fulfilling, that she is content with her economic situation and that she is not troubled by any resentments or sorrows that more money could assuage, we are not ordinarily much interested — at least, from a moral point of view — in a comparison of the amount of money she has with the amounts possessed by others. The fact that some people have much less than others is not at all morally disturbing when it is clear that the worse off have plenty.

Familiar discrepancies between the principles egalitarians profess, and the way in which egalitarians commonly conduct their own lives, seem to confirm my argument.

I won't harp on the fact that some egalitarians hypocritically accept high incomes and special opportunities for which, according to the moral theories they recommend, there is no adequate justification. What's significant, to me is that many egalitarians (including many academic proponents of the doctrine) are not truly concerned about whether they are as rich as are other people. They often believe that they have roughly enough money for what is important to them, and they are therefore not terribly preoccupied with the fact that some people are more affluent. Many egalitarians would consider it rather shabby or even reprehensible to care, with respect to their own lives, about economic comparisons of that sort. And, notwithstanding the implications of the doctrine to which they adhere, they would be appalled if their children grew up with such concerns.

It is often argued as an objection to economic egalitarianism that there is a dangerous conflict between equality and liberty. The argument rests on the assumption that if people are left to themselves, there will inevitably be a tendency for inequalities of income and wealth to develop. From this assumption, it is inferred that an egalitarian distribution of money can be achieved only at the cost of repressing liberties that are indispensable to the development of that undesired tendency.

Whatever may be the merit of this argument concerning the relationship between equality and liberty, economic egalitarianism engenders another conflict, one of more fundamental significance: It encourages people to care about how much money other people have, which distracts them from calculating their monetary requirements in the light of their personal circumstances. But, surely, the amount of money available to others has nothing directly to do with what is needed for the kind of life a person would most sensibly and appropriately seek for himself. In this way, the doctrine of equality contributes to the moral disorientation and shallowness of our time.

The fact that economic equality is not in its own right a morally compelling ideal is in no way, of course, a reason for regarding it as being, in all contexts, an inappropriate goal. Those with greater wealth enjoy significant, and often objectionable, advantages over those with less; the rich can throw around more weight than the poor in affecting the character of our nation and in determining the trajectory of our political life. Commitment to an egalitarian economic policy might, then, be indispensable for promoting the attainment of various desirable social and political ends.

Our most fundamental challenge, however, is not the fact that the incomes of Americans are widely unequal. It is that too many Americans are poor. Inequality of incomes might be eliminated, after all, just by arranging that all incomes be equally below the poverty line. Needless to say, that way of achieving equality of incomes — by making everyone equally poor — has very little to be said for it. From the point of view of morality, it is not important that everyone should have the same. What is important is that each should have enough.

What does it mean, though, for a person to have enough? It means, more or less, that he is content — or that it is reasonable for him to be content — with having no more money than he actually has. And to say this is, in turn, to say that the person does not (or cannot reasonably) regard whatever is distressing or unsatisfying in his life as being due to his having too little money.

When someone is wondering whether to be satisfied with the resources at his disposal, what is it that's genuinely important for him to take into account? The assessments he wishes to make are personal; they have to do with the specific quality of his own life. What he must do is to make these assessments on the basis of a realistic estimate of how closely the course of his life suits his individual capacities, meets his particular needs, fulfills his best potentialities and provides him with what he cares about.

With respect to none of these considerations, it seems to me, is it essential for him to measure his circumstances against the circumstances of anyone else. No doubt, such comparisons may be illuminating; they may enable a person to understand his own situation more clearly. Even so, they are at best helpful. They do not get to the heart of the matter.

The widespread conviction that equality itself has some basic value as an independently important moral ideal is not only mistaken, it is an impediment to the identification of what is truly of fundamental moral and social worth.

#### Any moral obligation has already been fulfilled — intergenerational mobility is high because of increased overall prosperity.

Hederman and Azerrad 12 — Rea Hederman, Assistant Director and Research Fellow at the Center for Data Analysis at The Heritage Foundation, holds an M.P.P. from Georgetown University, and David Azerrad, Associate Director of the B. Kenneth Simon Center for Principles and Politics at The Heritage Foundation, holds a Ph.D. in Politics from the University of Dallas, 2012 (“Defending the Dream: Why Income Inequality Doesn’t Threaten Opportunity,” Heritage Foundation Report, September 13th, Available Online at <http://www.heritage.org/poverty-and-inequality/report/defending-the-dream-why-income-inequality-doesnt-threaten-opportunity>, Accessed 06-19-2017)

Intergenerational absolute mobility—a comparison of how much you earn and how much your parents earned when they were your age—is a good measure of a society’s overall improvement. If many people have negative mobility, a society is losing ground. If a society doubles income and wealth for a younger generation as compared to their parents, most observers will believe that it has improved regardless of the ability of people to move up as compared to their peers.

Almost every child does better than his parents in this regard: 93 percent of children born to a family at the bottom of the scale do better than their parents, and 88 percent of children in the middle exceed their parents’ income.[105] Recent evidence suggests that absolute mobility is still strong for the current younger working generation as compared to their parents.[106] The real numbers are even better, since many studies exclude the children of immigrants. Virtually every child of immigrants will do better than his or her parents. These numbers reinforce the fact that almost everyone is enjoying the fruits of America’s increasing prosperity.

As a society, we want to give people not only the opportunity to do better than their parents, but also the chance to move up compared to their peers. Robust intergenerational relative mobility means that many at the bottom are moving up. Some of the most recent studies have found that there has been no downward trend in relative mobility over the past 40 years, while others conclude that there has been no downward trend for only the past 20 years.[107] Either way, the rise in income inequality has not led to a decrease in mobility.

### Extend: “No Inequality-Based Mortality Gap”

#### The mortality gap is already being eliminated — their evidence is based on flawed projections that ignore recent improvements.

Phelan 16 — Meagan Phelan, Executive Director of the Science Press Package at the American Association for the Advancement of Science, 2016 (“Science: Life Expectancy Gap Is Narrowing Between Rich and Poor American Youth,” American Association for the Advancement of Science, April 20th, Available Online at <https://www.aaas.org/news/science-life-expectancy-gap-narrowing-between-rich-and-poor-american-youth>, Accessed 06-19-2017)

The life expectancy gap between America's rich and poor is shrinking for the young, a new study published in the 29 April issue of Science reports. In fact, life expectancy at birth has been improving for virtually all income groups born in 1990 onward.

"These results are extremely hopeful in that they suggest that today's children are going to grow up into healthier adults with less inequality in health in the future," said lead author Janet Currie, the Henry Putnam Professor of Economics and Public Affairs at Princeton University.

"We were surprised at how large the reductions in mortality have been for younger people," she continued, "and at how these reductions extend all the way into young adulthood; at how extraordinarily large the declines in African-American mortality have been; and finally, at how little attention anyone has paid to this incredible health success story."

The results of Currie and her colleagues suggest that many of the U.S. policies directed at improving the health of the young and the poor in recent decades may have been effective.

Previous research suggests that mortality inequality — differences in how long people live compared to their peers — has grown since the start of the 21st century, with Americans in the top income bracket having gained several years of life expectancy while those at the bottom have gained almost nothing, or have even experienced a decline in life expectancy.

Critically, however, much of this work was based on studies that calculate life expectancy of people starting at age 40 or age 50, ignoring improvements that have been occurring at younger ages — and that have been shown to be important predictors of a group's health and mortality later in life.

"The reason we got interested in this project," Currie said, "was that we knew that there have been tremendous improvements in the health of poor American children over the past 20 years. These improvements are due to specific policies such as expansions of public health insurance, improvements in food and nutrition programs, and expansions of the Earned Income Tax Credit. Yet, the dominant narrative has completely ignored these improvements."

To provide what they believe is a more accurate picture that accounts for those improvements, Currie and colleagues looked at the life expectancy of people from birth. Yet another important difference between their work and previous efforts is that they went beyond looking at life expectancy, instead looking at actual death rates at different ages.

"Non-demographers may not realize that all life expectancy rates are based on the assumption that mortality at each age will remain exactly the same as it is now," said Currie. "That is, when you calculate life expectancy starting at age 40, you assume that future mortality rates at ages 50, 60, and 70 for people who are now 40 will be exactly the same as they currently are for people who are currently ages 50, 60, and 70. In an era when mortality is changing, that is not a very good assumption. We argue that is much better to look at the age-specific mortality rates themselves, which is what we do in most of the paper."

Currie and colleagues studied inequality in mortality for all age groups in 1990, 2000, and 2010 in an analysis based on U.S. counties ranked by poverty levels.

They found that while mortality inequality at older ages (above age 75 for men and above age 45 for women) has been increasing (consistent with results from previous studies), mortality inequality for poor children up through poor adults age 20 has actually been declining rapidly. These mortality improvements were most pronounced in poorer counties, the researchers say, suggesting that the life expectancy gap between rich and poor is shrinking notably.

Since these younger groups will form the future adult U.S. population, this research suggests that inequality in old age mortality is likely to decline going forward.

#### Aff evidence is too pessimistic. *Newest trends* are overwhelmingly positive.

Currie and Schwandt 16 — Janet Currie, Henry Putnam Professor of Economics and Public Affairs and Director of the Center for Health and Well Being at Princeton University, Director of the Program on Children at the National Bureau of Economic Research, holds a Ph.D. in Economics from Princeton University, and Hannes Schwandt, Assistant Professor in the Department of Economics at the University of Zurich, holds a Ph.D. in Economics from Universitat Pompeu Fabra (Spain), 2016 (“Mortality Inequality: The Good News from a County-Level Approach,” *Journal of Economic Perspectives*, Volume 30, Number 2, Spring, Available Online at http://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.30.2.29, Accessed 06-19-2017, p. 48-49)

Discussion and Conclusions

In contrast to many recent analyses of mortality inequality, we find improvements in overall life expectancy in both rich and poor counties. Our focus on life [end page 48] expectancy at birth rather than life expectancy in middle age may explain this finding. We find that inequality in mortality has fallen greatly among children. It is worth emphasizing that the reductions in mortality among African Americans, especially African-American males of all ages, are stunning and that is a major driver of the overall positive picture. This positive finding has been largely neglected in much of the discussion of overall mortality trends. Although our overall message is more positive than some earlier studies, we do find an alarming stagnation in mortality among white women aged 20 to 49. In the poorest counties mortality even increased slightly, indicating increasing inequality in mortality in that group.

It sometimes seems as if the research literature on mortality is compelled in some way to emphasize a negative message, either about a group that is doing less well or about some aspect of inequality that is rising. In contrast, this study is one of comparatively few, along with Aizer and Currie (2014) and Currie and Schwandt (forthcoming), that has emphasized improvements in life expectancy across the broad US population. Our results point to strong health improvements and decreasing inequality, particularly among the younger cohorts who will form the future adult population of the United States. Given the growing literature demonstrating a connection between health in childhood and future health (as in Currie and Rossin-Slater 2015), this improvement in health among young people in poor counties suggests that these cohorts may well be healthier and suffer less mortality inequality in the future than those who are currently middle-aged and older. In addition, much of the increase in inequality in older cohorts in the past 20 years has been driven by historical smoking patterns. Current cohorts have much lower lifetime smoking rates, which is also likely to lead to more convergence in mortality rates.

We believe that a balanced approach to the mortality evidence, which recognizes real progress as well as areas in need of improvement, is more likely to result in sensible policymaking. After all, emphasizing the negative could send the message that “nothing works,” especially in the face of seemingly relentless increases in income inequality. We have emphasized considerable heterogeneity in the evolution of mortality inequality by age, gender, and race. Going forward, identifying social policies that have helped the poor and reduced mortality inequality is an important direction for future research. Similarly, understanding the reasons that some groups and age ranges have seen stagnant mortality rates will be important for mobilizing efforts to reduce inequality in mortality and improve the health of the poor.

## Global Leadership Module Answers

### 1NC — Global Leadership Module

#### No National Security Risk — their evidence is baseless.

Walt et al. 12 — Stephen M. Walt, Robert and Rene Belfer Professor of International Affairs at Harvard University, Fellow in the American Academy of Arts and Sciences, former Master of the Social Science Collegiate Division and Deputy Dean of Social Sciences at Princeton University, holds a Ph.D. in Political Science from the University of California-Berkeley, et al., with Carole Artigiani, Founder and President Emerita of Global Kids, Inc.—an educational organization, Member of the Council on Foreign Relations, holds an M.A. in Women’s History from Sarah Lawrence College, Linda Darling-Hammond, Charles E. Ducommun Professor of Education and Faculty Director of the Stanford Center for Opportunity Policy in Education at Stanford University, former President of the American Educational Research Association, former Senior Social Scientist and Director of the RAND Education and Human Resources Program at the RAND Corporation, holds an Ed.D. in Urban Education from Temple University, and Randi Weingarten, President of the American Federation of Teachers, former President of the United Federation of Teachers, holds a J.D. from the Cardozo School of Law, 2012 (“U.S. Education Reform and National Security,” Council on Foreign Relations Independent Task Force Report Number 68, Available Online at <https://www.cfr.org/content/publications/attachments/TFR68_Education_National_Security.pdf>, Accessed 07-13-2017, p. 65)

I am pleased to support the Task Force’s effort to draw attention to the issue of public education. The report contains valuable information and some useful suggestions for reform, but in my judgment falls short in several areas.

First, the report exaggerates the national security rationale for reforming U.S. K-12 education. It says a troubled public education system is a “very grave national security threat facing this country,” but it offers only anecdotal evidence to support this unconvincing claim. The United States spends more on national security than the next twenty nations combined, has an array of powerful allies around the world, and remains the world leader in science and technology. It also ranks in the top 10 percent of the world’s 193 countries in educational performance, and none of the states whose children outperform U.S. students is a potential rival. Barring major foreign policy blunders unrelated to K-12 education, no country is likely to match U.S. military power or overall technological supremacy for decades. There are good reasons to improve K-12 education, but an imminent threat to our national security is not high among them.

\* Note: this is from a dissenting opinion published as part of the CFR report.

#### No U.S. Leadership Impact — benefits are empirically disproven.

White 16 — Hugh White, Professor of Strategic Studies at the Australian National University, former Intelligence Analyst with Australia’s Office of National Assessments and Senior Official with Australia’s Department of Defence, 2016 (“What’s So Great About American World Leadership?,” *The Atlantic*, November 23rd, Available Online at <https://www.theatlantic.com/international/archive/2016/11/trump-world-order-foreign-policy/508547/>, Accessed 02-19-2017)

So it appears the American electorate no longer accepts the American role in the world that policymakers have long taken for granted. And what if the electorate is right? Maybe the foreign-policy assumptions of the past few decades do need to be overhauled. The record, after all, is not very impressive. So far this century, America has failed to achieve most of the key national-security objectives it has set for itself.

Does that sound harsh? Here is a list, in no particular order, of some key goals both the Bush and Obama administrations set for themselves in foreign policy: Prevent North Korea getting nuclear weapons; prevent Iran getting nuclear weapons and contain its growing influence in the Middle East; transform Iraq and Afghanistan into stable, progressive, pro-Western states, or at least leave them as minimally functioning countries; contain and eventually crush jihadist extremism; harness the Arab Spring to enhance U.S. influence in the Arab world; reconcile Russia to the U.S.-led order and resist its efforts to rebuild a sphere of influence in Eastern Europe; resist China’s challenge to the U.S.-led order in Asia; broker a durable settlement between Israel and the Palestinians; and prevent another 9/11 on U.S. soil.

Of all these, the only clear success is the avoidance of another direct major attack on America itself. The nuclear deal with Iran may prove a partial success, but even there the best we can hope is that an Iranian nuclear capability has been deferred. All the rest have been total failures. And yet these are exactly the kind of goals that America should have been able to achieve if it was to fulfill the orthodox vision of its global leadership. That vision is, or has been, that America can and should create and uphold in every region of the world an international order which is based on American values and which supports America’s interests. And it should be able to do that without incurring the immense costs and risks it bore in the conflicts of the last century. It is a noble vision, and the world would be a better place if it was realized. But the record suggests it does not corresponded to reality. We’d better ask why.

#### Leadership Decline Inevitable — Trump dysfunctionality.

Sokolsky and Miller 17 — Richard Sokolsky, Nonresident Senior Fellow in the Russia and Eurasia Program at the Carnegie Endowment for International Peace, former Member of the Secretary of State’s Policy Planning Office, holds an M.A. from the School of Advanced International Studies at Johns Hopkins University, and Aaron David Miller, Distinguished Scholar and Vice President for New Initiatives at the Woodrow Wilson International Center for Scholars, served in the U.S. Department of State for 24 years, holds a Ph.D. in American Diplomatic and Middle East History from the University of Michigan, 2017 (“Trump’s Foreign Policy: 100 Days of Global Bafflement,” *Politico*, April 24th, Available Online at <http://carnegieendowment.org/2017/04/24/trump-s-foreign-policy-100-days-of-global-bafflement-pub-68763>, Accessed 06-27-2017)

3. Trump’s Foreign Policy Process Is Deeply Dysfunctional.

There have been times during the past 100 days when the administration looked like the gang who couldn’t shoot straight. Of course, all administrations suffer from infighting and turf wars, and new administrations always take some time to get their sea legs. But in the six administrations in which we worked, we have never seen a national security decision making process as dysfunctional as this one. What makes it so?

First, there is the president’s heavy-handed and uncoordinated intervention in the policy making process. His off-hours twitter storms have left allies and friends uncertain and confused about U.S. policies and intentions. Being unpredictable can sometimes create leverage in a transaction, but when taken to an extreme, as has happened, it can also damage American credibility, leadership and influence.

Second, there is the cacophony of voices—or in some cases no voices at all. On a number of issues, notably U.S. policy toward Syria, Israeli-Palestinian peace and North Korea, the president and his foreign policy team are not using the same set of talking points—as when U.S. Ambassador to the U.N. Nikki Haley declared that peace in Syria would require Assad’s departure while Tillerson stated that Assad’s fate was up to the Syrian people to decide. The mixed signals sow further confusion and doubt about who’s speaking for the administration on foreign policy. The failure so far of Tillerson and the State Department to effectively articulate and explain U.S. foreign policy is a particular problem, leaving foreign governments guessing about American plans.

Third, effective policy coordination and execution has been MIA largely because almost none of the key policy positions at State or Defense has been filled. Without officials at the deputy, under secretary, assistant secretary, and deputy assistant secretary levels offering ideas, issuing strategic direction and policy guidance, the bureaucracy is left rudderless and U.S. embassies are left without instructions or guidance to explain American policy to the host government.

Fourth, all administrations like to centralize control over sensitive foreign policy issues in the White House, but this typically occurs within a structured interagency decision-making process; ideas bubble up through the bureaucracy in the form of papers, meetings and more meetings. We have seen no evidence that such a process is in place on most issues; instead, there is an ad hoc and improvisational quality to many of Trump’s decisions. More importantly, the portfolios for many important foreign policy issues, such as China, Mexico and Middle East peace, have been handed to Jared Kushner, the president’s son-in-law, a foreign policy neophyte overloaded with responsibilities that no mortal can manage and lacking the government experience to work the system to see his preferences enacted.

Kelly, Mattis, McMaster and Tillerson have had a modicum of success lately in bringing a semblance of order to an unruly process. But the administration still does not have the right people in the right positions and with the right process to consistently produce, articulate and implement coherent and sustainable policies.

Over time, this situation may improve as the president begins to understand that people, process and experience matter, and that you can’t have an effective foreign policy without them. But we’re betting the current dysfunction isn’t going to disappear quickly. This will not be a linear process—there will be more zigs and zags because all too often Trump will continue to be Trump—impulsive, pugilistic and volatile.

#### No “Competitiveness” Impact — no economic basis.

Krugman 94 — Paul Krugman, Professor of Economics at the Massachusetts Institute of Technology, 1994 (“Competitiveness: A Dangerous Obsession,” *Foreign Affairs*, March-April, Available Online to Subscribing Institutions via Lexis-Nexis Academic Universe)

It was a disappointing evasion, but not a surprising one. After all, the rhetoric of competitiveness – the view that, in the words of President Clinton, each nation is "like a big corporation competing in the global marketplace" – has become pervasive among opinion leaders throughout the world. People who believe themselves to be sophisticated about the subject take it for granted that the economic problem facing any modern nation is essentially one of competing on world markets – that the United States and Japan are competitors in the same sense that Coca-Cola competes with Pepsi – and are unaware that anyone might seriously question that proposition. Every few months a new best-seller warns the American public of the dire consequences of losing the "race" for the 21st century. n1 A whole industry of councils on competitiveness, "geo-economists" and managed trade theorists has sprung up in Washington. Many of these people, having diagnosed America's economic problems in much the same terms as Delors did Europe's, are now in the highest reaches of the Clinton administration formulating economic and trade policy for the United States. So Delors was using a language that was not only convenient but comfortable for him and a wide audience on both sides of the Atlantic.

Unfortunately, his diagnosis was deeply misleading as a guide to what ails Europe, and similar diagnoses in the United States are equally misleading. The idea that a country's economic fortunes are largely determined by its success on world markets is a hypothesis, not a necessary truth; and as a practical, empirical matter, that hypothesis is flatly wrong. That is, it is simply not the case that the world's leading nations are to any important degree in economic competition with each other, or that any of their major economic problems can be attributed to failures to compete on world markets. The growing obsession in most advanced nations with international competitiveness should be seen, not as a well-founded concern, but as a view held in the face of overwhelming contrary evidence. And yet it is clearly a view that people very much want to hold – a desire to believe that is reflected in a remarkable tendency of those who preach the doctrine of competitiveness to support their case with careless, flawed arithmetic.

This article makes three points. First, it argues that concerns about competitiveness are, as an empirical matter, almost completely unfounded. Second, it tries to explain why defining the economic problem as one of international competition is nonetheless so attractive to so many people. Finally, it argues that the obsession with competitiveness is not only wrong but dangerous, skewing domestic policies and threatening the international economic system. This last issue is, of course, the most consequential from the standpoint of public policy. Thinking in terms of competitiveness leads, directly and indirectly, to bad economic policies on a wide range of issues, domestic and foreign, whether it be in health care or trade.

### Extend: “No National Security Risk”

#### No evidence supports CFR — many alternate causalities.

Artigiani et al. 12 — Carole Artigiani, Founder and President Emerita of Global Kids, Inc.—an educational organization, Member of the Council on Foreign Relations, holds an M.A. in Women’s History from Sarah Lawrence College, et al., with Linda Darling-Hammond, Charles E. Ducommun Professor of Education and Faculty Director of the Stanford Center for Opportunity Policy in Education at Stanford University, former President of the American Educational Research Association, former Senior Social Scientist and Director of the RAND Education and Human Resources Program at the RAND Corporation, holds an Ed.D. in Urban Education from Temple University, Stephen M. Walt, Robert and Rene Belfer Professor of International Affairs at Harvard University, Fellow in the American Academy of Arts and Sciences, former Master of the Social Science Collegiate Division and Deputy Dean of Social Sciences at Princeton University, holds a Ph.D. in Political Science from the University of California-Berkeley, and Randi Weingarten, President of the American Federation of Teachers, former President of the United Federation of Teachers, holds a J.D. from the Cardozo School of Law, 2012 (“U.S. Education Reform and National Security,” Council on Foreign Relations Independent Task Force Report Number 68, Available Online at <https://www.cfr.org/content/publications/attachments/TFR68_Education_National_Security.pdf>, Accessed 07-13-2017, p. 60-61)

National security requires a healthy economy, energy independence, investments in research and development, strong defense, a thriving civil society, a respected and involved diplomatic corps, and, most of all, a healthy and high-functioning political system. (The current political environment is a clear demonstration of what happens when we have a public—and public officials—who are uninformed and/or ill-informed about our nation’s history, our political system, and the values upon which it was built.)

Certainly schools must play a critical role in assuring that these needs of national security can be met. Yet, while some of the data are disturbing, nothing in this report convinces me that that our public schools “constitute a very grave national security threat facing this country.” Indeed, claims of alarm can only set the stage for dramatic actions unsupported by evidence: in this case, market-based approaches to school reform, that, overall, have not demonstrated their effectiveness. Indeed, charter schools and vouchers are diverting funds and energy away from neighborhood schools, and the more successful ones rely on additional support from private sources (“voluntary taxation”), a situation that is [end page 60] neither sustainable nor scalable. Moreover, the drive toward “competition” can diminish individual commitment to the common good, thus undermining the very nature and purpose of public education: preparing young people of all backgrounds to become informed and active citizens who understand their rights and responsibilities to contribute to society and participate in the shaping of policies that affect their communities and the larger world.

\* Note: this is from a dissenting opinion published as part of the CFR report.

#### Military readiness is strong now.

Petraeus and O’Hanlon 16 — David Petraeus, Retired Army General and Commander of Coalition Forces in Iraq and Afghanistan, former Director of the Central Intelligence Agency, and Michael O’Hanlon, Director of Research and Senior Fellow in Foreign Policy at the Brookings Institution, Visiting Lecturer at Princeton University, Adjunct Professor at Johns Hopkins University, holds a Ph.D. from Princeton University, 2016 (“The Myth of a U.S. Military ‘Readiness’ Crisis,” *Wall Street Journal*, August 9th, Available Online at <http://www.wsj.com/articles/the-myth-of-a-u-s-military-readiness-crisis-1470783221>, Accessed 11-20-2016)

U.S. military readiness is again a hot issue in the presidential election, but unfortunately the current debate glosses over some of the most important facts. While Congress’s sequestration-mandated cuts to military spending have hurt preparedness, America’s fighting forces remain ready for battle. They have extensive combat experience across multiple theaters since 9/11, a tremendous high-tech defense industry supplying advanced weaponry, and support from an extraordinary intelligence community.

For those concerned that America’s military is in decline or somehow not up to the next challenge, we offer a few reassuring facts:

• The current national defense budget of over $600 billion a year far exceeds the Cold War average of about $525 billion (in inflation-adjusted 2016 dollars) and the $400 billion spent in 2001, according to official Pentagon and Office of Management and Budget data. The national defense budget, which doesn’t include Veterans Affairs or the Department of Homeland Security, constitutes 35% of global military spending and is more than that of the next eight countries—including China and Russia—combined. Spending has been reduced from the levels of the late Bush and early Obama years, but that isn’t unreasonable in light of scaled-down combat operations abroad and fiscal pressures at home.

• Assuming no return to sequestration, as occurred in 2013, Pentagon budgets to buy equipment now exceed $100 billion a year, a healthy and sustainable level. The so-called “procurement holiday” of the 1990s and early 2000s is over.

• While some categories of aircraft and other key weapons are aging and will need replacement or major refurbishment soon, most equipment remains in fairly good shape. According to our sources in the military, Army equipment has, on average, mission-capable rates today exceeding 90%—a historically high level. Marine Corps aviation is an exception and urgently needs to be addressed.

• Training for full-spectrum operations is resuming after over a decade of appropriate focus on counterinsurgency. By 2017 the Army plans to rotate nearly 20 brigades—about a third of its force—through national training centers each year. The Marine Corps plans to put 12 infantry battalions—about half its force—through large training exercises. The Air Force is funding its training and readiness programs at 80%-98% of what it considers fully resourced levels. This situation isn’t perfect, but it has improved—and while the military is still engaged in combat operations across the world.

• The men and women of today’s all-volunteer military continue to be outstanding and committed to protecting America. Typical scores of new recruits on the armed forces qualification test are now significantly better than in the Reagan years or the immediate pre-9/11 period, two useful benchmarks. The average time in service, a reflection of the experience of the force, is now about 80 months in the enlisted ranks, according to Defense Department data. That is not quite as good as in the 1990s, when the average was 85-90 months, but is better than the 75-month norm of the 1980s.

While there are areas of concern, there is no crisis in military readiness. But that doesn’t mean the U.S. is good enough—especially in a world of rapidly changing technology, new threats emerging across several regions, and a constantly evolving strategic landscape. Here are some of the most pressing issues:

Should the Army and Navy, considerably reduced in size in recent years, be modestly larger? Are the Air Force, Navy and Marine Corps overemphasizing short-range tactical manned fighter jets in their aircraft modernization plans, and underemphasizing drones and bombers? Can the Navy develop underwater robotics and unmanned systems more aggressively? How can the U.S. more effectively counter other nations’s ballistic- and cruise-missile capabilities? What more needs to be done to structure and enhance Defense Department capabilities for operations in cyberspace? How should the military best prepare and structure forces for “advise and assist” missions to the Middle East, Europe and elsewhere?

Beyond Defense Secretary Ash Carter’s admirable initiatives, are there other ways the military can bring Silicon Valley and other innovators into the defense world? How much larger does the defense budget need to be, and how should it be structured, in base budget and supplemental funds for ongoing overseas operations? And what next steps might be needed to counter the growing assertiveness of Russia and China?

The good news is that there are reasonable answers to each of these challenges that are affordable and at least partially achievable. The bad news is that such issues are getting insufficient attention in the continuing debate. It’s time to remedy that.

### Extend: “No U.S. Leadership Impact”

#### No leadership impact — the U.S. is *not* indispensable.

Zenko 14 — Micah Zenko, Douglas Dillon Fellow with the Center for Preventive Action at the Council on Foreign Relations, former Research Assistant at the Belfer Center for Science and International Affairs at the Kennedy School of Government at Harvard University, former Researcher at the Brookings Institution, 2014 (“The Myth of the Indispensable Nation,” *Foreign Policy*, November 6th, Available Online at <http://foreignpolicy.com/2014/11/06/the-myth-of-the-indispensable-nation/>, Accessed 08-10-2015)

Indispensables also hold an unrealistic faith in the latent power of leadership that flows from suppose it indispensable-ness. During a House hearing in September, Gerald Feierstein, Principal Deputy Assistant Secretary of State for Near Eastern Affairs, declared: "When the United States stands up and demonstrates resolve and demonstrates a direction, the international community generally supports and falls into place behind." Really? This hypothesis would surprise anyone who tracks multilateral fora where U.S. officials state their policy positions and then repeatedly fail to compel other leaders to get in line — see, for example, the Climate Change Conference in Copenhagen in December 2009, and the WTO trade talks since the Doha Round opened in 2001.

And if Feierstein is referring only to warfare, then why do so few countries with deployable military assets participate in U.S.-led campaigns in a meaningful way? The United States provided the majority of the actual combat forces and airpower in Iraq, Afghanistan, and Libya, and is doing so again in the air campaign to counter the Islamic State (IS). Most countries that could participate have either declined to do so, or are taking part by providing such limited and constrained capabilities that they are not significantly enhancing the coalition’s capabilities. In each of these military interventions, the United States decried unilateralism, attempted to form a large coalition, and then found itself paying most of the costs, dropping most of the bombs, sacrificing the most soldiers, and losing most of his credibility.

Whether it is multilateral talks or military operations, other governments do not do as Washington demands because, quite simply, it is not in their national interests to do so. Moreover, the United States refuses to employ the political will or coercive leverage to force them to. The point being is that few, if any, substantive and enduring foreign-policy activities can be done unilaterally, and asserting one’s indispensability does nothing to alter others’ interests. It is often stated that countries in the Middle East or East Asia are looking for America "to lead," but they actually want U.S. leadership on their terms, and in support of their own narrow objectives. The moment that leadership conflicts with the visions and objectives those countries hold, they cease or severely limit their partnerships with the United States.

Finally, the Indispensables belief that America’s role in the world is "absolutely necessary" in all areas is simply arrogant. It discounts the tremendous and essential contributions from non-U.S. countries, international non-governmental organizations, and civil society. This includes the 128 countries contributing 104,184 troops and police forces currently deployed in support of sixteen U.N. peacekeeping operations worldwide. The United States provides only 113 troops to U.N. peacekeeping operations, but, importantly, foots 27 percent of the bill and provides logistics support. Or, consider the billions of dollars from the Gates Foundation, Norwegian Refugee Council, Mercy Corps, International Red Cross and Red Crescent, and countless others, which improve the lives of the poorest and most in need. Each of these public health, humanitarian, and development organizations offer the deep pockets and political neutrality that allows them access to areas where the United States simply cannot or will not go.

The reason that the United States is not the indispensable nation is simple: the human and financial costs, the tremendous risks, and degree of political commitment required to do so are thankfully lacking in Washington. Moreover, the structure and dynamics of the international system would reject or resist it, as it does in so many ways that frustrate the United States from achieving its foreign policy objectives. The United States can be truly indispensable in a few discrete domains, such as for military operations, which as pointed out above has proven disastrous recently. But overall there is no indispensable nation now, nor has there been in modern history. Indispensables may feel compelled to repeat this feel-good myth, but nobody should believe them.

#### U.S. military power isn’t key to global stability.

Preble 14 — Christopher A. Preble, Vice President for Defense and Foreign Policy Studies at the Cato Institute, holds a Ph.D. in History from Temple University, 2014 (“The Truth about Military Spending,” *Cato at Liberty*—the Cato Institute’s blog, June 25th, Available Online at <https://www.cato.org/blog/truth-about-military-spending>, Accessed 11-20-2016)

Some could argue that the United States can ill afford to cut its military spending given the current state of the world. Such cuts would only serve to embolden our adversaries like China and Russia, and exacerbate the turmoil in the Middle East, North Africa, and southwest Asia.

But, if anything, many of the current security issues in the world have resulted from America being too involved militarily. The U.S.-led war in Iraq, for example, certainly contributed to the current chaos in the Middle East. The war also undermined American influence by revealing the limits of America’s military power. The operation in Libya destabilized a country in which the United States had no vital interest, and showed Iran and others what happens when you negotiate away your nuclear program. And arming Syrian rebels has prolonged a civil war in which ISIS gained the strength, experience, and gear needed to launch a successful offensive into Iraq. It turns out that having an unrivaled military only gets you so far.

Americans can and should spend less on the military, because the U.S. military can and should do less, even in the face of what is happening in the Middle East, Eastern Europe, and Asia. And others, especially our wealthy allies in Europe and Asia, can, and probably should, spend more, as illustrated by another Cato infographic.

#### Other countries fill-in — retrenchment doesn’t cause war.

Preble and Friedman 10 — Christopher Preble, Director of Foreign Policy Studies at the Cato Institute, served as a commissioned officer in the U.S. Navy, holds a Ph.D. in History from Temple University, and Benjamin H. Friedman, Research Fellow in Defense and Homeland Security Studies at the Cato Institute, Ph.D. Candidate in Political Science at the Massachusetts Institute of Technology, 2010 (“A U.S. Defense Budget Worthy of Its Name,” *The Globalist*, November 18th, Available Online at http://www.cato.org/pub\_display.php?pub\_id=12582, Accessed 01-07-2011)

Another argument for high military spending is that U.S. military primacy underlies global stability. According to this theory, our forces and alliance commitments dampen conflict between potential rivals, preventing them from fighting wars that would disrupt trade.

This logic liberates defense planning from old-fashioned considerations like enemies and the balance of power. It sees the requirements of global policing as the basis for the size of the U.S. military. That is no standard at all, which is why hawks embrace it. Boundless objectives justify limitless costs.

That argument overestimates both the American military's contribution to international stability and the danger that instability abroad poses to Americans. U.S. force deployments in Europe and Asia now contribute little to peace, at best making already low odds of war among states slightly lower. Inertia, rather than our security requirements, explains the perseverance of U.S. military alliances.

During the Cold War, Japan, Western Europe and South Korea grew wealthy enough to defend themselves. We should let them do so. These alliances heighten our force requirements and threaten to drag us into wars, while providing no obvious benefit. Without our forces there, our allies would pay the cost of balancing local adversaries.

### Extend: “Leadership Decline Inevitable – Trump”

#### Trump has already abrogated U.S. leadership.

Bremmer 16 — Ian Bremmer, President and Founder of Eurasia Group—a global political risk research and consulting firm, Global Research Professor at New York University, Founding Chairman of the Global Agenda Council on Geopolitical Risk at the World Economic Forum, Harold J. Newman Distinguished Fellow in Geopolitics at the Asia Society Policy Institute, holds a Ph.D. in Political Science from Stanford University, 2016 (“The Era of American Global Leadership Is Over. Here's What Comes Next,” *Time*, December 19th, Available Online at <http://time.com/4606071/american-global-leadership-is-over/>, Accessed 07-14-2017)

Trump's "America first" approach fundamentally changes the U.S. role in the world. Trump agrees with leaders of both political parties that the U.S. is an exceptional nation, but he insists that the country can't remain exceptional if it keeps stumbling down the path that former Presidents, including Republicans and Democrats, have followed since the end of World War II. Washington's ambition to play the role of indispensable power allows both allies and rivals to treat U.S. taxpayers like chumps, he argues. Better to build a "What's in it for us?" approach to the rest of the world. This is a complete break with a foreign policy establishment that Trump has worked hard to delegitimize—and which he continues to ostracize by waving off charges of Russian interference in the election and by refusing the daily intelligence briefings offered to all Presidents-elect. American power, once a trump card, is now a wild card. Instead of a superpower that wants to impose stability and values on a fractious and valueless global order, the U.S. has become the single biggest source of international uncertainty.

#### Trump already ended U.S. leadership.

Brands 17 — H.W. Brands, Jack S. Blanton Sr. Chair in History at the University of Texas-Austin, former Melbern G. Glasscock Chair in American History at Texas A&M University, holds a Ph.D. in History from the University of Texas-Austin, 2017 (“From Wilson to Trump: How the ‘American Century’ of global leadership ends with ‘America First’,” *The Hill*, July 2nd, Available Online at <http://thehill.com/blogs/pundits-blog/the-administration/340277-from-wilson-to-trump-how-the-american-century-of-global>, Accessed 07-14-2017)

The American Century couldn’t last forever. Its underpinning was the economic hegemony that peaked in 1945, when America’s industrial output matched that of the rest of the world combined and the dollar’s dominion let American negotiators dictate rules for the world economy. America’s economic edge was bound to erode as Germany and Japan recovered from the war. It lost additional ground after China ditched one-party socialism in favor of one-party capitalism.

American presidents had to adjust. The World Trade Organization bent less readily to American will than the General Agreement on Tariffs and Trade, its predecessor. Antitrust actions by the European Union mattered as much to multinational firms as decisions by the U.S. Justice Department. The dollar, once the anchor of global finance, floated on the same uncertain sea of hopes and fears as other currencies.

Yet if the American Century rested on American economic strength, it also rested on American leadership. Wilson staked America’s claim to leadership; every president from FDR to Obama confirmed it.

And Trump threw it away. Thus the American Century ends, not with a bang but a tweet.

### Extend: “No Competitiveness Impact”

#### “Competitiveness” is the wrong focus — it’s a bankrupt metaphor.

Krugman 11 — Paul Krugman, Columnist for the *New York Times*, Professor of Economics and International Affairs at Princeton University, and Recipient of the 2008 Nobel Prize in Economics, 2011 (“The Competition Myth,” *New York Times*, January 23rd, Available Online at http://www.nytimes.com/2011/01/24/opinion/24krugman.html, Accessed 08-11-2013)

Meet the new buzzword, same as the old buzzword. In advance of the State of the Union, President Obama has telegraphed his main theme: competitiveness. The President’s Economic Recovery Advisory Board has been renamed the President’s Council on Jobs and Competitiveness. And in his Saturday radio address, the president declared that “We can out-compete any other nation on Earth.”

This may be smart politics. Arguably, Mr. Obama has enlisted an old cliché on behalf of a good cause, as a way to sell a much-needed increase in public investment to a public thoroughly indoctrinated in the view that government spending is a bad thing.

But let’s not kid ourselves: talking about “competitiveness” as a goal is fundamentally misleading. At best, it’s a misdiagnosis of our problems. At worst, it could lead to policies based on the false idea that what’s good for corporations is good for America.

About that misdiagnosis: What sense does it make to view our current woes as stemming from lack of competitiveness?

It’s true that we’d have more jobs if we exported more and imported less. But the same is true of Europe and Japan, which also have depressed economies. And we can’t all export more while importing less, unless we can find another planet to sell to. Yes, we could demand that China shrink its trade surplus — but if confronting China is what Mr. Obama is proposing, he should say that plainly.

Furthermore, while America is running a trade deficit, this deficit is smaller than it was before the Great Recession began. It would help if we could make it smaller still. But ultimately, we’re in a mess because we had a financial crisis, not because American companies have lost their ability to compete with foreign rivals.

But isn’t it at least somewhat useful to think of our nation as if it were America Inc., competing in the global marketplace? No.

#### Krugman is *right* — “competitiveness” is economically bankrupt.

Schrage 94 — Michael Schrage, writer, consultant and research associate at the Massachusetts Institute of Technology, 1994 (“The Myth of a 'Competitive' Economic Policy,” *Los Angeles Times*, March 10th, Available Online at http://articles.latimes.com/print/1994-03-10/business/fi-32358\_1\_economic-policy, Accessed 08-11-2013)

An American economy that cares a great deal about boosting domestic productivity requires policy-makers who care very little about global competitiveness.

A Zen koan for the nationalistic '90s? The sound of one Keynesian clapping? A lyric for aspiring autarkists?

None on the above. It's the startling pronouncement of MIT's Paul Krugman, one of the country's most brilliant young economists, a nonpartisan academic with a reputation for intellectual honesty and a cruel tongue.

You might recall that Krugman was widely quoted criticizing industrial-policy economist Laura D'Andrea Tyson's research when President Clinton named her chairwoman of his Council of Economic Advisers.

Alternating between statistical scalpels and macroeconomic machetes, Krugman bloodily eviscerates "competitiveness" as a policy doctrine without any kind of economic validity.

What supply-side "economics" was to Reaganomics, Krugman asserts, competitiveness has become to Clintonomics: a sort of psuedo-rational pastiche that Nobel Prize-winning chemist Irving Langmuir once described as "pathological science"--that is to say, no science at all.

"To make a harsh but not entirely unjustified analogy," he says in his essay "Competitiveness: A Dangerous Obsession" in the current issue of Foreign Affairs, "a government wedded to the ideology of competitiveness is as unlikely to make good economic policy as a government committed to creationism is to make good science policy, even in areas that have no direct relationship to the theory of evolution."

"Gee, we must be making progress," smiles Dan Burton, president of the Council of (sigh) Competitiveness, which was formed by frustrated high-tech executives in the wake of the Ronald Reagan Administration's rejection of its own presidential commission on the topic. "In 1987, competitiveness was dismissed as a buzzword. Today, it's graduated to being a dangerous obsession."

Might Krugman be the one with the dangerous obsession? Not after you see the numbers. His arguments would command respect even without his impeccable credentials. They're important because he takes the global competitiveness champions like Tyson, U.S. Trade Representative Mickey Kantor, Labor Secretary Robert B. Reich and health care guru Ira Magaziner on their own terms, impatiently redoes their arithmetic for them and makes a strong case that competitiveness issues amount to little more than a rounding error in the $6-trillion U.S. economy.

## Political Inequality Module Answers

### 1NC — Political Inequality Module

#### Education Not Sufficient — money in politics outweighs.

Paige 15 — Mark Paige, Assistant Professor of Educational Leadership at the University of Massachusetts-Dartmouth, holds a Ph.D. in Educational Leadership and Policy Analysis and a J.D. from the University of Wisconsin-Madison, 2015 (“Realizing Educational Rights,” *Journal of Law and Education*, Volume 44, Issue 2, Spring, Available Online to Subscribing Institutions via ProQuest)

Finally, the book omits an essential reference regarding the influence of money on the democratic process. An educated, engaged citizenry are necessary to a vibrant democracy. However, because of the disproportionate influence of money on the political system, it is insufficient.9 Those who have more money have more influence, notwithstanding their individual education. Thus, an adequate or equal education may be a hollow victory, unless larger political reform occurs.

#### No Fascism Impact — data disproves and education isn’t key.

York 17 — John York, Research Assistant at the Center for Principles and Politics at The Heritage Foundation, Director of Public Relations at the Program for Constitutional Democracy and Adjunct Faculty at the University of Virginia, holds a Ph.D. in American Government and Politics from the University of Virginia, 2017 (“Does Rising Income Inequality Threaten Democracy?,” The Heritage Foundation, June 30th, Available Online at <http://www.heritage.org/poverty-and-inequality/report/does-rising-income-inequality-threaten-democracy>, Accessed 07-10-2017)

The argument that rising inequality threatens democracy hinges on three interlocking claims:

\* The upper, middle, and lower classes have divergent policy priorities. While the rich seek to cut social welfare programs and lower taxes, the middle class and poor seek to buttress the social safety net while shifting more of the tax burden to the upper class.

\* Those in the upper class (i.e., the rich) have outsized influence in Washington, primarily with Congress but also in the White House.

\* As economic inequality has grown in recent decades, the political influence of the rich has grown along with it.

For the most part, as plausible as these claims may appear to be, they are not supported by the data. Political scientists who have looked into these claims have concluded that the empirical evidence supporting them suffers from four major shortcomings:

\* There are very few data about what the richest 1 percent—the group whose soaring incomes have been principally responsible for rising inequality since the late 1970s—want from government. There are almost no data on the wealthiest 1 percent of Americans because polls typically ask respondents about their income and not their net worth. Most studies instead investigate the policy preferences of the affluent: the top 10 percent or 20 percent of income earners.

\* Studies reveal that it is unusual for a policy to attract strong support among people from one income bracket only. More commonly, policies that are unpopular with the affluent are unpopular with both the middle and lower classes. This pattern has held over time: There is no evidence that the policy preferences of the affluent are becoming more disconnected from those of the average voter as income inequality grows.

\* Recent research shows that the top decile of income earners and the middle class have largely equivalent influence in Washington with respect to major pieces of legislation and prominent executive actions (the two policy outcomes studied in the literature).5

\* There is no evidence that the influence of the affluent on major policy outcomes has increased as income inequality has grown. Contrary to what one would expect from reading the studies on inequality and democracy, spending on welfare programs benefitting the poor has gone up dramatically and the tax burden on the wealthy has increased in recent decades.

Ultimately, the focus in the literature on income inequality and its impact on major federal policies like the income tax rate, welfare, and public education funding distracts attention from the real problems facing our democracy. While there is not much evidence that the affluent have more influence than the average citizen on the highly salient, broadly consequential policy matters upon which survey questions are based, this does not mean that every voice is heard equally in the halls of power.

#### Public Opinion Already Matters — their authors are too pessimistic.

Stimson 14 — James Stimson, Raymond Dawson Bicentennial Distinguished Professor of Political Science at the University of North Carolina, Fellow of the American Academy of Arts and Sciences, holds a Ph.D. in Political Science from the University of North Carolina, 2014 (“Don’t Underestimate the Power of Public Opinion,” *Room for Debate*—a *New York Times* expert blog, April 22nd, Available Online at <http://www.nytimes.com/roomfordebate/2014/04/21/do-the-rich-call-the-shots-13/dont-underestimate-the-power-of-public-opinion>, Accessed 08-12-2015)

“Government doesn’t care about the views of people like me,” people often say in surveys. And undoubtedly they believe it to be true.

But that pessimistic view is wrong. The systematic evidence of broad opinion movements and government policy-making shows a strong connection between them. When public opinion changes, demanding for example more or less government, government responds in the demanded direction. And it does so quickly.

Such evidence is broadly consistent with the ideas that professionals in politics are ambitious to be re-elected and that they are astute observers of public opinion movements. We have a constitutional structure that makes them attuned to the important subgroup of Americans who turn out at the polls. (Among nonvoters the “government doesn’t care” claim is probably closer to the truth.)

And we don’t need sophisticated statistical analyses to see such a pattern. Observe a 2008 election in which a more left-leaning than usual public elected Barack Obama and produced a jobs-producing stimulus and healthcare reform, followed by a Tea Party election result in 2010 which shifted the public debate to budget cuts and deficit reduction, coming close to repeal of the Affordable Care Act. This sort of evidence tells us that the public as a whole gets what it wants.

### Extend: “Education Not Sufficient (Citizens United)”

#### Citizens United outweighs — Chomsky agrees.

Chomsky 10 — Noam Chomsky, Professor Emeritus at the Massachusetts Institute of Technology, Member of the American Academy of Arts and Sciences, the National Academy of Sciences, and the American Philosophical Society, holds a Ph.D. in Linguistics from the University of Pennsylvania, 2010 (“The Corporate Takeover of U.S. Democracy,” *In These Times*, February 3rd, Available Online at <http://inthesetimes.com/article/5502/the_corporate_takeover_of_u.s._democracy/>, Accessed 07-14-2017)

Jan. 21, 2010, will go down as a dark day in the history of U.S. democracy, and its decline.

On that day the U.S. Supreme Court ruled that the government may not ban corporations from political spending on elections–a decision that profoundly affects government policy, both domestic and international.

The decision heralds even further corporate takeover of the U.S. political system.

To the editors of The New York Times, the ruling “strikes at the heart of democracy” by having “paved the way for corporations to use their vast treasuries to overwhelm elections and intimidate elected officials into doing their bidding.”

The court was split, 5-4, with the four reactionary judges (misleadingly called “conservative”) joined by Justice Anthony M. Kennedy. Chief Justice John G. Roberts Jr. selected a case that could easily have been settled on narrow grounds and maneuvered the court into using it to push through a far-reaching decision that overturns a century of precedents restricting corporate contributions to federal campaigns.

Now corporate managers can in effect buy elections directly, bypassing more complex indirect means. It is well-known that corporate contributions, sometimes packaged in complex ways, can tip the balance in elections, hence driving policy. The court has just handed much more power to the small sector of the population that dominates the economy.

Political economist Thomas Ferguson’s “investment theory of politics” is a very successful predictor of government policy over a long period. The theory interprets elections as occasions on which segments of private sector power coalesce to invest to control the state.

The Jan. 21 decision only reinforces the means to undermine functioning democracy.

The background is enlightening. In his dissent, Justice John Paul Stevens acknowledged that “we have long since held that corporations are covered by the First Amendment”–the constitutional guarantee of free speech, which would include support for political candidates.

In the early 20th century, legal theorists and courts implemented the court’s 1886 decision that corporations–these “collectivist legal entities”–have the same rights as persons of flesh and blood.

This attack on classical liberalism was sharply condemned by the vanishing breed of conservatives. Christopher G. Tiedeman described the principle as “a menace to the liberty of the individual, and to the stability of the American states as popular governments.”

Morton Horwitz writes in his standard legal history that the concept of corporate personhood evolved alongside the shift of power from shareholders to managers, and finally to the doctrine that “the powers of the board of directors “are identical with the powers of the corporation.” In later years, corporate rights were expanded far beyond those of persons, notably by the mislabeled “free trade agreements.” Under these agreements, for example, if General Motors establishes a plant in Mexico, it can demand to be treated just like a Mexican business (“national treatment”)–quite unlike a Mexican of flesh and blood who might seek “national treatment” in New York, or even minimal human rights.

A century ago, Woodrow Wilson, then an academic, described an America in which “comparatively small groups of men,” corporate managers, “wield a power and control over the wealth and the business operations of the country,” becoming “rivals of the government itself.”

In reality, these “small groups” increasingly have become government’s masters. The Roberts court gives them even greater scope.

The Jan. 21 decision came three days after another victory for wealth and power: the election of Republican candidate Scott Brown to replace the late Sen. Edward M. Kennedy, the “liberal lion” of Massachusetts. Brown’s election was depicted as a “populist upsurge” against the liberal elitists who run the government.

The voting data reveal a rather different story.

High turnouts in the wealthy suburbs, and low ones in largely Democratic urban areas, helped elect Brown. “Fifty-five percent of Republican voters said they were `very interested’ in the election,” The Wall St. Journal/NBC poll reported, “compared with 38 percent of Democrats.”

So the results were indeed an uprising against President Obama’s policies: For the wealthy, he was not doing enough to enrich them further, while for the poorer sectors, he was doing too much to achieve that end.

The popular anger is quite understandable, given that the banks are thriving, thanks to bailouts, while unemployment has risen to 10 percent.

In manufacturing, one in six is out of work–unemployment at the level of the Great Depression. With the increasing financialization of the economy and the hollowing out of productive industry, prospects are bleak for recovering the kinds of jobs that were lost.

Brown presented himself as the 41st vote against healthcare–that is, the vote that could undermine majority rule in the U.S. Senate.

It is true that Obama’s healthcare program was a factor in the Massachusetts election. The headlines are correct when they report that the public is turning against the program.

The poll figures explain why: The bill does not go far enough. The Wall St. Journal/NBC poll found that a majority of voters disapprove of the handling of healthcare both by the Republicans and by Obama.

These figures align with recent nationwide polls. The public option was favored by 56 percent of those polled, and the Medicare buy-in at age 55 by 64 percent; both programs were abandoned.

Eighty-five percent believe that the government should have the right to negotiate drug prices, as in other countries; Obama guaranteed Big Pharma that he would not pursue that option.

Large majorities favor cost-cutting, which makes good sense: U.S. per capita costs for healthcare are about twice those of other industrial countries, and health outcomes are at the low end.

But cost-cutting cannot be seriously undertaken when largesse is showered on the drug companies, and healthcare is in the hands of virtually unregulated private insurers–a costly system peculiar to the U.S.

The Jan. 21 decision raises significant new barriers to overcoming the serious crisis of healthcare, or to addressing such critical issues as the looming environmental and energy crises. The gap between public opinion and public policy looms larger. And the damage to American democracy can hardly be overestimated.

#### Citizens United ruins democracy by cementing corporate control.

Sanders 12 — Bernie Senders, Member of the United States Senate (I-VT), 2012 (“We must stop this corporate takeover of American democracy,” *The Guardian*, January 20th, Available Online at <https://www.theguardian.com/commentisfree/cifamerica/2012/jan/20/us-constitution-and-civil-liberties-us-supreme-court>, Accessed 07-14-2017)

The corporate barbarians are through the gate of American democracy. Not satisfied with their all-pervasive influence on our culture, economy and legislative processes, they want more. They want it all.

Two years ago, the United States supreme court betrayed our Constitution and those who fought to ensure that its protections are enjoyed equally by all persons regardless of religion, race or gender by engaging in an unabashed power-grab on behalf of corporate America. In its now infamous decision in the Citizens United case, five justices declared that corporations must be treated as if they are actual people under the Constitution when it comes to spending money to influence our elections, allowing them for the first time to draw on the corporate checkbook – in any amount and at any time – to run ads explicitly for or against specific candidates.

What's next … a corporate right to vote?

Don't laugh. Just this month, the Republican National Committee filed an amicus brief in a US appeals court contending that the natural extension of the Citizens United rationale is that the century-old ban on corporate contributions directly to candidates and political parties is similarly unconstitutional. They want corporations to be able to sponsor candidates and parties directly while claiming with a straight face this would not result in any sort of corruption. And while, this month, they take no issue with corporations being subject to the existing contribution limits, anyone paying attention knows that eliminating such caps will be corporate America's next prize in its brazen ambition for absolute control over our elections.

The US Constitution has served us very well, but when the supreme court says, for purposes of the first amendment, that corporations are people, that writing checks from the company's bank account is constitutionally-protected speech and that attempts by the federal government and states to impose reasonable restrictions on campaign ads are unconstitutional, our democracy is in grave danger.

I am a proud sponsor of a number of bills that would respond to Citizens United and begin to get a handle on the problem. But something more needs to be done – something more fundamental and indisputable, something that cannot be turned on its head by a rightwing supreme court.

That is why I have introduced a resolution in the Senate (introduced by Representative Ted Deutch in the House) calling for an amendment to the US Constitution that says simply and straightforwardly what everyone – except five members of the United States supreme court – understands: corporations are not people with constitutional rights equal to flesh-and-blood human beings. Corporations are subject to regulation by the people. Corporations may not make campaign contributions – the law of the land for the last century – or dump unlimited sums of money into our elections. And Congress and states have broad power to regulate all election spending.

I did not introduce this lightly. In fact, I have never sought to amend the Constitution before. The US Constitution is an extraordinary document that, in my view, should not be amended often. In light of the supreme court's Citizens United decision, however, I see no alternative. The ruling has radically changed the nature of our democracy. It has further tilted the balance of power toward the rich and the powerful at a time when the wealthiest people in this country have never had it so good.

At a time when corporations have more than $2tn in cash in their bank accounts, make record-breaking profits and swarm Washington with their lobbyists 24 hours a day, seven days a week, for the highest court in the land to suggest that there is just not enough corporate "speech" in our system defies the bounds of reason and sanity. The ruling already has led to plans, for example, by industrialist brothers David and Charles Koch to steer more than $200m – potentially much more – to conservative groups ahead of election day 2012. Karl Rove has similar designs.

Does anybody really believe that that is what American democracy is supposed to be about?

I believe that the Citizens United decision will go down as one of the worst in our country's history – and one that demands an amendment to our Constitution in order to restore sovereign power to the people, as our nation's founders intended.

If we do not reverse it and the culture of corporate dominance over our elections that it has exacerbated, there will be no end to the impact that corporate interests have on our campaigns and our democracy.

### Extend: “Public Opinion Already Matters”

#### Public opinion *can* make a difference — elites don’t always win.

Krugman 14 — Paul Krugman, Columnist for the *New York Times*, Professor of Economics and International Affairs at Princeton University, and Recipient of the 2008 Nobel Prize in Economics, 2014 (“Class, Oligarchy, and the Limits of Cynicism,” *The Conscience of a Liberal*—Paul Krugman’s *New York Times* blog, April 21st, Available Online at http://krugman.blogs.nytimes.com/2014/04/21/class-oligarchy-and-the-limits-of-cynicism/, Accessed 08-11-2015)

A recent paper (pdf) by Martin Gilens and Benjamin Page is getting a lot of attention, and deservedly so. Gilens and Page look at a number of issues over the past 30+ years where polling data let us identify public policy preferences, which can be compared with elite and interest-group preferences. And what they find is that politicians don’t seem to care very much about what the public thinks: when elite preferences and popular preferences are different, the elite almost always wins.

This is an important insight — and it gains special force these days, when the elite’s views not only favor the elite versus the rest (duh) but have also been systematically wrong, on issues from invading Iraq to giving deficits a higher priority than jobs.

But there is a danger here of going too far, and imagining that electoral politics is irrelevant. Why bother getting involved in campaigns, when the oligarchy rules whichever party is in power?

So it’s worth pointing out it does make a difference. Yes, Democrats pay a lot of attention to plutocrats, and even make a point of inviting Patrimonial Capitalism: The Next Generation to White House galas (I would have missed that, even though it’s in my own paper, but for Kathleen Geier. Thanks!). But it’s quite wrong to say that the parties’ behavior in office is the same. As Floyd Norris points out, Obama has in fact significantly raised taxes on very high incomes, largely through special surcharges included in the Affordable Care Act; and what the Act does with the extra revenue is expand Medicaid and provide subsidies on the exchanges, both means-tested programs whose beneficiaries tend to be mainly lower-income adults. The net effect will be significant losses for the super-elite — not crippling losses, to be sure, and hardly anything that will affect their elite status — and major gains to tens of millions of less fortunate Americans.

If you’re waiting for a revolution, or even a new New Deal, this may seem disappointing. But it matters a lot all the same.

#### Their evidence relies on Gilens and Page. Subsequent studies debunked them.

Matthews 16 — Dylan Matthews, Staff Writer at *Vox*, 2016 (“Remember that study saying America is an oligarchy? 3 rebuttals say it's wrong.,” *Vox*, May 9th, Available Online at <http://www.vox.com/2016/5/9/11502464/gilens-page-oligarchy-study>, Accessed 10-20-2016)

In 2014, a slew of headlines seemed to confirm what many had long suspected — that the rich were actually the ones in control and the rest of us chumps were just along for the ride:

"Study: US is an oligarchy, not a democracy"; "Princeton Study: US No Longer An Actual Democracy"; "Study: You Have 'Near-Zero' Impact on US Policy"; "Study: Politicians listen to rich people, not you"; "Rich people rule!"

All of these stories were about a study by political scientists Martin Gilens of Princeton and Benjamin Page of Northwestern, modestly titled, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens."

Their conclusion was explosive: "Economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while average citizens and mass-based interest groups have little or no independent influence."

The paper soon went viral as proof that America is an "oligarchy" (the press's term, not theirs) where the views of the rich control what happens and the views of the middle class are ignored. The authors were even on The Daily Show — not bad for academics without so much as a book to promote:

There's only one problem: Research published since then has raised serious questions about this paper, both its finding and its analysis. This is, of course, how normal science works; some academics put a finding out there, and their peers pick it apart.

But the study has become a frequently invoked piece of evidence in debates about money in politics, and the public and political debate has not kept up with the scholarly one. And the latest scholarly critiques suggest that while the rich certainly have more political influence than the middle class, ordinary Americans still win a substantial share of the time, even when the affluent oppose them.

America is an imperfect democracy, in other words — but it's hardly an oligarchy.

When the rich and middle class disagree, each wins about half the time

Since its initial release, the Gilens/Page paper's findings have been targeted in three separate debunkings. Cornell professor Peter Enns, recent Princeton PhD graduate Omar Bashir, and a team of three researchers — UT Austin grad student J. Alexander Branham, University of Michigan professor Stuart Soroka, and UT professor Christopher Wlezien — have all taken a look at Gilens and Page's underlying data and found that their analysis doesn't hold up.

## Moral Obligation Module Answers

### 1NC — Moral Obligation Module

#### Weigh Consequences — deontology is irresponsible in the policy sphere.

Goodin 95 — Robert E. Goodin, Distinguished Professor of Philosophy and Social & Political Theory in the Research School of Social Sciences at the Australian National University, holds a D.Phil. in Politics from Oxford University, 1995 (“Utilitarianism as a public philosophy,” *Utilitarianism as a Public Philosophy*, Published by Cambridge University Press, ISBN 0521462630, p. 8-10)

The strength of utilitarianism, the problem to which it is a truly compelling solution, is as a guide to public rather than private conduct. There, virtually all its vices - all the things that make us wince in recommending it as a code of personal morality - loom instead as considerable virtues.

Consider first the raft of criticisms couched in terms of the impersonality of utilitarianism. Like all universalist philosophies, utilitarianism asks us to take "the view from nowhere.”19 There is no obvious place within utilitarian theories for people's idiosyncratic perspectives, histories, attachments, loyalties or personal commitments.

That rings untrue to certain essential qualities of personal life. The essence of the communitarian challenge is that everyone comes from somewhere. There are no free-floating individuals, of the sort with which liberals generally, and utilitarians paradigmatically, populate their moral theories."20 People have, and upon reflection we think they should have, principled commitments and personal attachments of various sorts.21[end page 8]

As an account of the peculiar role responsibilities of public officials (and, by extension, of ordinary individuals in their public capacities as citizens) that vice becomes a virtue, though. Those agents, too, have to come from somewhere, bringing with them a whole raft of baggage of personal attachments, commitments, principles and prejudices. In their public capacities, however, we think it only right and proper that they should stow that baggage as best they can.

Complete neutrality might be an impossible ideal. That is another matter.22 But it seems indisputable that that is an ideal which people in their public capacities should strive to realize as best they are able. That is part (indeed, a central part) of what it is to be a public official at all. It is the essence of public service as such that public servants should serve the public at large. Public servants must not play favorites.

Or consider, again, criticisms revolving around the theme that utilitarianism is a coldly calculating doctrine.23 In personal affairs that is an unattractive feature. There, we would like to suppose that certain sorts of actions proceed immediately from the heart, without much reflection much less any real calculation of consequences. Among intimates it would be extremely hurtful to think of every kind gesture as being contrived to produce some particular effect.

The case of public officials is, once again, precisely the opposite. There, it is the height of irresponsibility to proceed careless of the consequences. Public officials are, above all else, obliged to take care: not to go off half cocked, not to let their hearts rule their heads. In Hare's telling example, the very worst thing that might be said of the Suez misadventure was not that the British and French did some perfectly awful things (which is true, too) but that they did so utterly unthinkingly.

Related to the critique of utilitarianism as a calculating doctrine is the critique of utilitarianism as a consequentialist doctrine. According to utilitarianism, the effects of an action are everything. There are no actions which are, in and of themselves, morally right or wrong, good or bad. The only things that are good or bad are the effects that actions produce.25

That proposition runs counter to certain ethical intuitions which, at [end page 9] least in certain quarters, are rooted deeply. Those who harbor a Ten Commandments view of the nature of morality see a moral code as being essentially a list of "thou shalts" and "thou shalt nots" - a list of things that are right or wrong in and of themselves, quite regardless of any consequences that might come from doing them.26

That may or may not be a good way to run one's private affairs. 27 Even those who think it is, however, tend to concede that it is no way to run public affairs. It is in the nature of public officials' role responsibilities that they are morally obliged to "dirty their hands" — make hard choices, do things that are wrong (or would ordinarily be wrong, or would be wrong for ordinary private individuals) in the service of some greater public good.28 It would be simply irresponsible of public officials (in any broadly secular society, at least) to adhere mindlessly to moral precepts read off some sacred list, literally "whatever the consequences."29 Doing right though the heavens may fall is not (nowadays, anyway) a particularly attractive posture for public officials to adopt.

#### Rights Not Absolute — avoiding catastrophe is a lesser evil.

Nielsen 96 — Kai Nielsen, Professor of Philosophy at the University of Calgary, 1996 (“There Is No Dilemma Of Dirty Hands,” *South African Journal of Philosophy*, Volume 15, Issue 1, February, Available Online to Subscribing Institutions via Academic Search Elite)

It might be thought that I am begging questions and sweeping things under the rug with my conception of the lesser evil. I am just implicitly assuming, it might be argued, that the lesser evil is what results in the least harm (the fewer deaths, the lesser misery, pain, undermining of self-respect, autonomy, security and the like). But, the objection will continue, the 'lesser evil' may not be that, but the not doing of certain things, for example, not violating someone's rights, not administering unjust laws, not taking (let alone shooting) hostages, not refusing to take prisoners, not lying and the like. The, in short, not doing of these plain moral evils. Where any of the rights violations that go with the doing of these forbidden things occur, we have a greater evil than if they do not. Suffering and misery are bad, but rights violations are even worse.

It seems to me that this is an implausible response. Sometimes violating someone's rights may avert a catastrophe. And then, it seems to me, their rights should be violated. But there are other sorts of examples that drive home my point as well. Even when under the Nazis it became apparent that he would be required to administer abhorrent (and thoroughly abhorrent to him as well) Nazi racial laws, a German judge, appointed during the Weimar republic, might rightly not resign. He does not resign because he realizes that he might very well in the discriminatory way he applied these vile laws be able to save lives that would not have been saved if he had been replaced by a Nazi hack. And, to move to a still different example, shooting some hostage, and threatening to shoot some others, might prevent the sacking and putting to the sword of a whole village or at least give the villagers time to flee. (Remember here, Berthold Brecht, as well as Karl Marx, on the Paris Commune.) It seems to me that there is no serious question where the lesser evil lies in such situations, for example, violating someone's rights to prevent a massacre. The violating of a person's rights is there plainly a lesser evil. It is blind rights worship or rule worship not to see that.

### Extend: “Weigh Consequences”

#### Even if deontology is good for *individuals*, policymakers are in a unique position where consequences matter.

Nye 86 — Joseph S. Nye, Jr., Ford Foundation Professor of Security Affairs at Harvard University, Director of the Center for Science and International Affairs at the John F. Kennedy School of Government at Harvard University, former Deputy to the Undersecretary of State For Security Assistance, 1986 (*Nuclear Ethics*, Published by Free Press, ISBN 0029230918, p. 32-34)

The third approach stresses the common nature of humanity. States and boundaries exist, but their existence does not endow them with moral significance. Ought does not follow from is. David Luban has written, "The rights of security and subsistence... are necessary for the enjoyment of any other rights at all. No one can do without them. Basic rights, therefore, are universal. They are not respecters of political boundaries, and require a universalist politics to implement them; even when this means breaching the wall of state sovereignty." 53 Many citizens hold multiple loyalties to several communities at the same time. They may wish their governments to follow policies that give expression to the rights and duties engendered by other communities in addition to those structured at the national level.

While the cosmopolitan approach has the virtue of accepting transnational realities and avoids the sanctification of the nation-state, an unsophisticated cosmopolitanism also has serious drawbacks. First, if morality is about choice, then to underestimate the significance of states and boundaries is to fail to take into account the main features of the real setting in which choices must be made. To pursue individual justice at the cost of survival or to launch human rights crusades that cannot hope to be fulfilled, yet interfere with prudential concerns about order, may lead to immoral consequences. And if such actions, for example the promotion of human rights in Eastern Europe, were to lead to crises and an unintended nuclear war, the consequences might be the ultimate immorality. Applying ethics to foreign policy is more than merely constructing philosophical arguments; it must be relevant to the international domain in which moral choice is to be exercised.

The other problem with an unsophisticated cosmopolitan approach is ethical; it discards the moral dimension of national politics. As Stanley Hoffmann has written, "States may be no more than collections of individuals and borders may be mere facts. But a moral significance is attached to them." 54 People wish to live in historic communities and autonomously to express their own political choices. A pure cosmopolitan view that ignores those rights of self-determination fails to do justice to the difficult job of balancing rights in the international realm. One of the reasons that states have nuclear weapons is that peoples wish to defend their sovereign autonomy as independent moral communities at this stage in human history.

#### Policymakers must weigh consequences.

Brock 87 — Dan W. Brock, Professor of Philosophy and Biomedical Ethics at Brown University, 1987 (“Truth or Consequences: The Role of Philosophers in Policy-Making," *Ethics*, Volume 97, July, Available Online via JSTOR, p. 787)

When philosophers become more or less direct participants in the policy-making process and so are no longer academics just hoping that an occasional policymaker might read their scholarly journal articles, this scholarly virtue of the unconstrained search for the truth—all assumptions open to question and follow the arguments wherever they lead—comes under a variety of related pressures. What arises is an intellectual variant of the political problem of "dirty hands" that those who hold political power often face. I emphasize that I do not conceive of the problem as one of pure, untainted philosophers being corrupted by the dirty business of politics. My point is rather that the different goals of academic scholarship and public policy call in turn for different virtues and behavior in their practitioners. Philosophers who steadfastly maintain their academic ways in the public policy setting are not to be admired as islands of integrity in a sea of messy political compromise and corruption. Instead, I believe that if philosophers maintain the academic virtues there they will not only find themselves often ineffective but will as well often fail in their responsibilities and act wrongly. Why is this so?

The central point of conflict is that the first concern of those responsible for public policy is, and ought to be, the consequences of their actions for public policy and the persons that those policies affect. This is not to say that they should not be concerned with the moral evaluation of those consequences—they should; nor that they must be moral consequentialists in the evaluation of the policy, and in turn human, consequences of their actions—whether some form of consequentialism is an adequate moral theory is another matter. But it is to say that persons who directly participate in the formation of public policy would be irresponsible if they did not focus their concern on how their actions will affect policy and how that policy will in turn affect people.

The virtues of academic research and scholarship that consist in an unconstrained search for truth, whatever the consequences, reflect not only the different goals of scholarly work but also the fact that the effects of the scholarly endeavor on the public are less direct, and are mediated more by other institutions and events, than are those of the public policy process. It is in part the very impotence in terms of major, direct effects on people's lives of most academic scholarship that makes it morally acceptable not to worry much about the social consequences of that scholarship. When philosophers move into the policy domain, they must shift their primary commitment from knowledge and truth to the policy consequences of what they do. And if they are not prepared to do this, why did they enter the public domain? What are they doing there?

### Extend: “Rights Not Absolute”

#### Their insistence that rights must be weighed above all other concerns ensures that all rights become functionally worthless. Only consequentialism can preserve meaningful rights.

Waldron 93 — Jeremy Waldron, Professor of Law at the University of California-Berkeley, 1993 (“Liberal rights: Two sides of the coin,” *Liberal Rights: Collected Papers 1981-1991*, Published by Cambridge University Press, ISBN 0521436176, p. 32-33)

The approach I took in the last section may also upset those who want to maintain at all costs that each individual right is absolute, and who in consequence refuse to face issues of scarcity, conflict, and moral priority. I discuss in Chapter 9 one of the sources of this insistence. The modern preoccupation with rights is partly a response to the trade-offs that characterize utilitarian calculations. Rights were supposed to express limits on what could be done to individuals for the sake of the greater benefit of others. But if rights themselves involve conflicts and balancing, it looks as though there is no getting away from the casuistry and complex moral calculations thought to be the hallmark of more blatantly consequentialist theories.

I have some sympathy with this, but, as I also argue in Chapter 9, the insistence on absolutism does not make the conflicts go away; it doesn't make the situations that appear to call for trade-offs disappear. Those situations are not something that consequentialists and their fellow travelers have perversely invented in order to embarrass moral absolutists. It is not the theorist's fault that there are sometimes several drowning people and only one lifeguard. As I said earlier, the world turns out not to be the sort of place to which absolute moral requirements are an apt response. If we insist on the absoluteness of rights, there is a danger that we may end up with no rights at all, or, at least, no rights embodying the idea of real concern for the individuals whose rights they are. At best, we will end up with a set of moral constraints whose absoluteness is secured only by the contortions of agent-relativity, that is, by their being understood not as concerns focused on those who may be affected by our [end page 32] actions but as concerns focused on ourselves and integrity.

The proper response to situations posing conflicts and dilemmas is not to deny that they exist or protect the term "rights" from being contaminated by them. It is to face up to the challenges they pose with the clearest sense we can get of the intrinsic worth of each individual's well-being and independence in a world also inhabited by others. Unless that sense becomes hopelessly attenuated, it is exactly what we should identify as our theory of rights. Rights are not to be thought of as moral absolutes, waiting, tragically unemployed, on the sidelines of a world riven by distasteful conflict and hard choices. On the contrary, they are supposed to be our best and most honest individualist response to such a world. Whatever can be said to address those conflicts and those choices, in the name of the liberal ideal of high spirited men and women each leading a life on his or her own terms - that is what our theory of rights should be.

#### Rights conflicts are inevitable — weighing consequences is required to balance competing interests.

Heard 97 — Andrew Heard, Associate Professor of Political Science at Simon Fraser University, 1997 (“The Challenges of Utilitarianism and Relativism,” *Human Rights: Chimeras in Sheep’s Clothing?*, Available Online at http://www.sfu.ca/ ~aheard/417/util.html, Accessed 09-22-2005)

Utilitarian challenges to the enjoyment of human rights need not occur only in such extraordinary circumstances. Imprisonment may be justified because there is thought to be a greater good for society that an individual be completely denied their freedom of movement and locked away. Utilitarian calculations may also resolve disputes that arise with conflicts between different rights or the enjoyment of the same right by different individuals. The decision faced by any government to balance the needs of health care, education, welfare payments, and the justice system leads to tough choices about the relative proportion of the state's budget that should be dedicated to each social program. The distribution of state resources among these services will in the end depend on the government's perception of the greatest good provided for that society. Also, even within one area of spending the government will have to decide on distributing the benefits in a particular way. For instance, there may be a need to balance expensive hospital equipment, such as CAT scanners, against paying for nurses and hospital beds for patients undergoing general surgery. In the education system, governments need to balance the amount spent on primary, secondary, vocational, and higher learning. Different societies distribute their resources according their vision of the greatest good arising from the particular needs of that society.

## International Law Advantage Answers

### 1NC — International Law Advantage

#### Alternate Causalities Thump — the U.S. is non-compliant with many human rights laws.

HRW 17 — Human Rights Watch, 2017 (“United States: Events of 2016,” Human Rights Watch World Report 2017, Available Online at <https://www.hrw.org/world-report/2017/country-chapters/united-states>, Accessed 07-14-2017)

The United States has a vibrant civil society and strong constitutional protections for many civil and political rights. Yet many US laws and practices, particularly in the areas of criminal and juvenile justice, immigration, and national security, violate internationally recognized human rights. Those least able to defend their rights in court or through the political process—members of racial and ethnic minorities, the poor, immigrants, children, and prisoners—are the people most likely to suffer abuses.

The election of Donald Trump as president in November 2016 capped a campaign marked by misogynistic, xenophobic, and racist rhetoric and Trump’s embrace of policies that would cause tremendous harm to vulnerable communities, contravene the United States’ core human rights obligations, or both. Trump’s campaign proposals included deporting millions of unauthorized immigrants, changing US law to allow torture of terrorism suspects, and “load[ing] up” the Guantanamo Bay detention facility.

#### Impact Not Unique — U.S. human rights leadership has already been destroyed by Trump and the rise of China and Russia.

Strangio 17 — Sebastian Strangio, Journalist and Independent Southeast Asia Analyst, Regional Contributor to Nikkei Asian Review, holds an M.A. in International Politics from the University of Melbourne (Australia), 2017 (“Welcome to the Post-Human Rights World,” *Foreign Policy*, March 7th, Available Online at <http://foreignpolicy.com/2017/03/07/welcome-to-the-post-human-rights-world/>, Accessed 07-14-2017)

Less than two months in, President Donald Trump is already shaping up as a disaster for human rights. From his immigration ban to his support for torture, Trump has jettisoned what has long been, in theory if not always in practice, a bipartisan American commitment: the promotion of democratic values and human rights abroad.

Worse is probably set to come. Trump has lavished praise on autocrats and expressed disdain for international institutions. He described Egyptian strongman Abdel Fattah al-Sisi as a “fantastic guy” and brushed off reports of repression by the likes of Russia’s Vladimir Putin, Syria’s Bashar al-Assad, and Turkey’s Recep Tayyip Erdogan. As Trump put it in his bitter inauguration address, “It is the right of all nations to put their own interests first. We do not seek to impose our way of life on anyone.” Kenneth Roth, the executive director of Human Rights Watch, has written that Trump’s election has brought the world to “the verge of darkness” and threatens to “reverse the accomplishments of the modern human rights movement.”

But this threat is not new. In fact, the rise of Trump has only underlined the existential challenges already facing the global rights project. Over the past decade, the international order has seen a structural shift in the direction of assertive new powers, including Xi Jinping’s China and Putin’s Russia, that have openly challenged rights norms while at the same time crushing dissent in contested territories like Chechnya and Tibet. These rising powers have not only clamped down on dissent at home; they have also given cover to rights-abusing governments from Manila to Damascus. Dictators facing Western criticism can now turn to the likes of China for political backing and “no-strings” financial and diplomatic support.

This trend has been strengthened by the Western nationalist-populist revolt that has targeted human rights institutions and the global economic system in which they are embedded. With populism sweeping the world and new superpowers in the ascendant, post-Westphalian visions of a shared global order are giving way to an era of resurgent sovereignty. Unchecked globalization and liberal internationalism are giving way to a post-human rights world.

All this amounts to an existential challenge to the global human rights norms that have proliferated since the end of World War II. In that time, the Universal Declaration of Human Rights, adopted in 1948, has been supplemented by a raft of treaties and conventions guaranteeing civil and political rights, social and economic rights, and the rights of refugees, women, and children. The collapse of the Soviet Union and the end of the Cold War served to further entrench human rights within the international system. Despite the world’s failure to prevent mass slaughter in places like Rwanda and Bosnia, the 1990s would see the emergence of a global human rights imperium: a cross-border, transnational realm anchored in global bodies like the U.N. and the European Union and supervised by international nongovernmental organizations and a new class of professional activists and international legal experts.

#### Democratic Peace Theory Wrong — doesn’t prevent war.

Larison 12 — Daniel Larison, Senior Editor at *The American Conservative*, holds a Ph.D. in History from the University of Chicago, 2012 (“Democratic Peace Theory Is False,” *The American Conservative*, April 17th, Available Online at http://www.theamericanconservative.com/larison/democratic-peace-theory-is-false/, Accessed 08-11-2013)

Rojas’ claim depends entirely on the meaning of “genuine democracy.” Even though there are numerous examples of wars between states with universal male suffrage and elected governments (including that little dust-up known as WWI), the states in question probably don’t qualify as “genuine” democracies and so can’t be used as counter-examples. Regardless, democratic peace theory draws broad conclusions from a short period in modern history with very few cases before the 20th century. The core of democratic peace theory as I understand it is that democratic governments are more accountable to their populations, and because the people will bear the costs of the war they are going to be less willing to support a war policy. This supposedly keeps democratic states from waging wars against one another because of the built-in electoral and institutional checks on government power. One small problem with this is that it is rubbish.

Democracies in antiquity fought against one another. Political equality and voting do not abolish conflicts of interest between competing states. Democratic peace theory doesn’t account for the effects of nationalist and imperialist ideologies on the way democratic nations think about war. Democratic nations that have professional armies to do the fighting for them are often enthusiastic about overseas wars. The Conservative-Unionist government that waged the South African War (against two states with elected governments, I might add) enjoyed great popular support and won a huge majority in the “Khaki” election that followed.

As long as it goes well and doesn’t have too many costs, war can be quite popular, and even if the war is costly it may still be popular if it is fought for nationalist reasons that appeal to a majority of the public. If the public is whipped into thinking that there is an intolerable foreign threat or if they believe that their country can gain something at relatively low cost by going to war, the type of government they have really is irrelevant. Unless a democratic public believes that a military conflict will go badly for their military, they may be ready to welcome the outbreak of a war that they expect to win. Setting aside the flaws and failures of U.S.-led democracy promotion for a moment, the idea that reducing the number of non-democracies makes war less likely is just fantasy. Clashing interests between states aren’t going away, and the more democratic states there are in the world the more likely it is that two or more of them will eventually fight one another.

### Extend: “Impact Not Unique (Trump)”

#### Trump has destroyed human rights leadership.

Posner 17 — Michael Posner, Co-Director for the Center of Business and Human Rights and Professor of Business and Society at the Stern School of Business at New York University, Board Member of the International Service for Human Rights, former Founding Executive Director and President of Human Rights First (The Lawyers Committee for Human Rights), former Assistant U.S. Secretary of State for Democracy, Human Rights, and Labor, holds a J.D. from the University of California-Berkeley, 2017 (“Trump Abandons the Human-Rights Agenda,” *The New Yorker*, May 26th, Available Online at <http://www.newyorker.com/news/news-desk/trump-abandons-the-human-rights-agenda>, Accessed 07-14-2017)

In his first four months in office, President Donald Trump has shaken America’s democratic foundations at home and abandoned a powerful bipartisan commitment to human rights. Seemingly forgotten is the legacy of Ronald Reagan, who, in his first Inaugural Address, pledged that America would “be the exemplar of freedom and a beacon of hope” for oppressed populations around the world.

Trump seems indifferent to, and at times disdainful of, this deeply rooted global commitment. He begs off mentioning human rights publicly, as he did on Sunday, in Riyadh, where he spoke to Arab and Muslim leaders from around the world. “We are not here to lecture,” he said. “We are not here to tell other people how to live, what to do, who to be, or how to worship. Instead, we are here to offer partnership—based on shared interests and values—to pursue a better future for us all.”

But Trump has developed a habit of embracing those whose values are antithetical to our own. He repeatedly expresses admiration for the Russian President, Vladimir Putin. “I do respect him,” Trump told Bill O’Reilly, in February. “But he’s a killer,” O’Reilly said. “There are a lot of killers,” Trump replied. “We’ve got a lot of killers. What, do you think our country’s so innocent?”

In early April, Trump welcomed to the White House the Egyptian President, Abdel Fattah El-Sisi, a leader who has locked up tens of thousands of his political opponents, decimated the human-rights community, and severely undermined Egypt’s democratic institutions. In their Oval Office meeting, Trump enthusiastically embraced Sisi, calling him “somebody that’s been very close to me from the first time I met him.”

In late April, Trump reached out to Rodrigo Duterte, the mercurial leader of the Philippines, who has invoked Hitler’s mass extermination of Jews as a model for how he would like to dispose of drug dealers and addicts. In what White House aides called a “very friendly conversation,” Trump congratulated Duterte for doing “an unbelievable job on the drug problem,” and invited him to visit.

And, last month, Trump called President Recep Tayyip Erdoğan, of Turkey, to congratulate him for winning a much-disputed referendum that will solidify his autocratic rule and further erode the country’s democratic institutions. Since a failed coup attempt last July, Erdoğan has sacked academics and thousands of judges and other public officials. Earlier this month, Trump welcomed Erdoğan to the White House—a visit that was marred by an attack on peaceful demonstrators outside the Turkish Embassy by his security agents.

In keeping with this pattern, Trump delivered his first major foreign-policy address to government leaders from the Arab and Muslim world, calling for a “principled realism, rooted in common values, shared interests, and common sense.” It makes sense for the President to talk about shared interests in regional security, in fighting terrorism, and in challenging Iran’s misadventures in Syria and Iraq and its support for Hezbollah. But shared values? According to Freedom House, Saudi Arabia is the eleventh least-free nation on earth: a place where free speech, assembly, and association are a distant dream; religious tolerance is nonexistent; and gender discrimination is pervasive.

Much of Trump’s speech was a call to isolate and weaken isis and other violent extremist groups by denying them financial support. “We must strip them of their access to funds,” he urged, failing to acknowledge, even implicitly, that the Saudis have doled out tens of billions of dollars in recent years to support the spread of Wahhabism, a puritanical strain of Islam, underwriting thousands of religious schools and mosques throughout the Arab and greater Islamic world. A number of these institutions have served as recruiting havens for violent extremists.

Perhaps most distressing is the President’s seeming lack of understanding of the root causes of the violent extremism that has plagued the Middle East and South Asia for decades, much less a willingness to confront them. As Ban Ki-moon, the United Nations Secretary-General at the time, wrote last year, “Violent extremism tends to thrive in an environment characterized by poor governance, democracy deficits, corruption and a culture of impunity for unlawful behavior engaged in by the State or its agents.” Elliott Abrams, a senior official in the George W. Bush Administration, addressed this point in reaction to Trump’s speech in Saudi Arabia, saying that “the President’s approach would work if terrorists were coming from outer space and our task was solely to organize against them militarily. That’s no doubt part of the task—but that’s not all of it, because they are coming from within the societies whose leaders he was addressing. He offered no explanation of what was producing this phenomenon.”

Trump assumes that foreign policy boils down to national-security and economic interests and that everything else, especially attention to human rights and democracy, is a distraction. Earlier this month, Secretary of State Rex Tillerson told State Department employees that pursuing such issues “really creates obstacles” in achieving what is best for America. That two-dimensional world view was on clear display in Riyadh, as Trump declined, even by inference, to challenge the Muslim leaders on their own bleak human-rights records, or to point out the link between their failures and the pervasive violent extremism in the region. Trump is right to recognize that America’s strategic and economic interests are vital, and oftentimes primary, and that the government often does need to engage with autocratic states to protect them, yet, in ignoring human rights, his Administration misses a valuable opportunity to advance these very interests.

#### Trump will accelerate the global collapse of democracy.

Klaas 17 — Brian Klaas, Fellow in Global and Comparative Politics at the London School of Economics, holds a D.Phil. in Politics from the University of Oxford (New College), 2017 (“Democracy is dying around the world—and the West has only itself to blame,” *Quartz*, March 10th, Available Online at <https://qz.com/928351/donald-trumps-autocracy-democracy-is-dying-around-the-world-and-the-west-has-only-itself-to-blame/>, Accessed 07-15-2017)

That rosy trend has reversed. In each year since 2006, the world has become less democratic. We have now suffered more than a full decade of declines for global democracy.

At the same time, despots across the globe are becoming more authoritarian. Their abuses are becoming more brutal; their violations of democracy more egregious. From Turkey to Russia to Iran, ruthless regimes are steadfastly suffocating the dying gasps of pro-democracy reform movements in their societies. Indeed, in the last 11 years, 109 countries have seen a net decline in their level of democracy, according to the independent watchdog organization Freedom House.

The West–that hodgepodge of developed countries that embody liberal values, from Canada to the European Union to Japan—is partly to blame for the global recession of democracy. Misguided Western foreign policy, like backing friendly dictators, turning a blind eye to abuses of democracy, or actively toppling democratic regimes, hurt democracy in the long run. More recently, counterproductive foreign policy decisions have corresponded with the rise of illiberal populism.

Unfortunately, in the short term, the state of global democracy is going to get worse. US president Donald Trump certainly did not start the trend of democracy’s retreat, but his “America First” foreign policy guarantees its continued—and likely accelerated—global decline.

### Extend: “Democratic Peace Theory Wrong”

#### Democratic peace theory is methodologically and empirically bankrupt — democracies *aren’t* inherently peaceful.

Layne 7 — Christopher Layne, University Distinguished Professor, Robert M. Gates Chair in National Security, and Professor of International Affairs at the Bush School of Government and Public Service at Texas A&M University, Research Fellow with the Center on Peace and Liberty at The Independent Institute, holds a Ph.D. in Political Science from the University of California-Berkeley, 2007 (“Liberal Ideology and U.S. Grand Strategy,” *The Peace of Illusions: American Grand Strategy from 1940 to the Present*, Published by Cornell University Press, ISBN 0801474116, p. 121-122)

As a theory of international politics, the democratic peace theory carries little weight.20 It rests on dubious grounds methodologically.21 More importantly, it is not valid empirically. Democratic states *have* gone to war with other democracies, and in crises democracies are just as prone to making military threats against other democracies as they are against nondemocracies.22 However, democratic peace theory has a lot of clout in policymaking because it plays to the Wilsonian predispositions of U.S. strategists and provides the United States a handy pretext for intervening in the internal affairs of regimes it considers troublemakers. Thus, far from being a theory of peace, democratic peace theory causes the United States to act like a "crusader state."23 America's crusader mentality springs directly from liberalism's intolerance of competing ideologies and the concomitant belief that—merely by existing—nondemocratic states threaten America's security and the safety of liberalism at home. According to Wilsonian precepts, the best way to deal [end page 121] with such states is to use American power to bring about regime change.24 The belief that the United States can only be safe in a world of liberal democracies creates real, and often otherwise avoidable, friction between the United States and nondemocratic states.

#### Democratic peace theory lacks historical or theoretical grounding.

Schwartz and Skinner 2 — Thomas Schwartz, Professor of Political Science at University of California-Los Angeles, and Kiron K. Skinner, Fellow at the Council on Foreign Relations, Fellow at the Hoover Institution, Assistant Professor of History and Political Science at Carnegie Mellon University, 2002 (“The myth of the democratic peace,” *Orbis*, Volume 46, Issue 1, Winter, Available Online to Subscribing Institutions via ScienceDirect)

Here we show that neither the historical record nor the theoretical arguments advanced for the purpose provide any support for democratic pacifism. It does not matter how high or low one sets the bar of democracy. Set it high enough to avoid major exceptions and you find few, if any, democracies until the Cold War era. Then there were no wars between them, of course. But that fact is better explained by NATO and bipolarity than by any shared form of government. Worse, the peace among the high-bar democracies of that era was part of a larger pacific pattern: peace among all nations of the First and Second Worlds. As for theoretical arguments, those we have seen rest on implausible premises.

Why, then, is the belief that democracies are mutually pacific so widespread and fervent? The explanation rests on an old American tendency to slip and slide unawares between two uses of the word “democracy”: as an objective description of regimes, and as a term of praise—a label to distinguish friend from foe. Because a democracy (term of praise) can do no wrong—or so the thinking seems to run—at least one side in any war cannot be a democracy (regime description). There lies the source of much potential mischief in foreign policy.

### They Say: “Soft Power Add-On”

#### Trump has already destroyed U.S. soft power.

Moran 17 — Tom Moran, Columnist for *The Star-Ledger*, 2017 (“Scathing poll shows Trump draining U.S. global power,” *The Star-Ledger*, July 4th, Available Online at <http://www.nj.com/opinion/index.ssf/2017/07/scathing_poll_shows_trump_draining_us_global_power.html>, Accessed 07-14-2017)

As America celebrates its first July 4th in the Donald Trump era, a global poll from Pew shows that respect for America is growing - in Israel and Russia.

Pretty much everyone else in the world, though, thinks we have lost our minds by handing the steering wheel to a lunatic.

In Germany, confidence in the American president dropped from 86 percent during President Obama's final year to 11 percent today. In Canada, it's dropped from 83 percent to 22 percent.

Mexico set the world record, with just 5 percent expressing confidence. Apparently, they are grouchy about being dismissed as a bunch of rapists, and they don't want to pay for a giant wall that would bar them from territory that was theirs before we stole it at gunpoint in 1848. Touchy hombres!

Asked what traits define this president, the three words that popped up most frequently worldwide were these, in order: Arrogant, intolerant, and dangerous.

This global revulsion at Trump diminishes American power by making it tougher to win allies, in war and peace. We can use our military and economic might as leverage against other nations; that hard power is undiminished.

But our influence depends on soft power as well, the appeal of our ideals, the ability to persuade other nations to share our goals, to make our efforts their own.

That soft power gave us allies to fight in Iraq and Afghanistan. It gave us global support for sanctions on Iran over its nuclear program. It yielded the world's first major climate agreement in Paris. It is the foundation for the international cooperation that has thwarted terror attacks at home.

Trump could argue that he is ruffling feathers by putting U.S. interests first, by pressing the Europeans to carry more of their own weight within the NATO alliance, by pushing back against trade deals that he believes cost American jobs, and by taking a harder line on immigration and travel. The world is angry because a tough new sheriff is in town, and he's looking to American interests first.

Bu that explanation misses a great deal.

Start with Trump's decision to withdraw from the Paris climate accord. The Republican Party in America is the only major political party in the world that denies the science, and Trump has embraced that ignorance with a new gusto.

To the rest of the world, and even to most Americans, that makes our president a dangerous blockhead. This isn't a theory anymore. Glaciers are melting, islands are sinking, and global temperatures are breaking new records every year. It takes willful ignorance to look past all that.

America under Trump has also abandoned its traditional concern for human rights across the world, giving tyrants a free pass. He praised the Saudi regime as "magnificent" without a peep about its oppression of women or its habit of whipping people who criticize the royal family. Trump said Egyptian dictator Fattah el-Sisi is doing a "fantastic job" even as his security forces use torture as a routine, including widespread rape of female detainees.

Are we really supposed to believe he's resurrecting the hard line against Cuba out of concern for human rights -- not Florida's electoral votes?

The world may just be nervous, as we are, over Trump's lying and incompetence. His warning that America might not defend NATO allies against a Russian attack put the Baltic states in danger, and rattled all of Europe. His threat to abandon the "One China" policy was a rookie mistake that provoked a needless confrontation, and was quickly reversed. Key senior posts remain unfilled - of the 560 jobs requiring Senate approval, Trump has offered nominees for just 161.

How badly Trump has depleted our store of soft power? The world has more faith in the leaders of Russia and China than in the leader of America, according to this poll. So how will Trump form a global alliance when he needs one?

It's July 4, and we're supposed to celebrate our independence. But this year, let's take a moment to remember that we are not alone in the world, that we need friends as well. And our friends are worried, with good reason.

## Progressive 14th Amendment Advantage Answers

### 1NC — Progressive 14th Amendment Advantage

#### Obergefell Thumps — the status quo solves or the plan doesn’t.

Yoshino 15 — Kenji Yoshino, Chief Justice Earl Warren Professor of Constitutional Law at New York University School of Law, holds a J.D. from Yale Law School, 2015 (“A New Birth Of Freedom?: Obergefell v. Hodges,” *Harvard Law Review* (129 Harv. L. Rev. 147), November, Available Online to Subscribing Institutions via Lexis-Nexis)

[\*147] The decision in Obergefell v. Hodges n1 achieved canonical status even as Justice Kennedy read the result from the bench. A bare majority held that the Fourteenth Amendment required every state to perform and to recognize marriages between individuals of the same sex. n2 The majority opinion ended with these ringing words about the plaintiffs: "Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right." n3

While Obergefell's most immediate effect was to legalize same-sex marriage across the land, its long-term impact could extend far beyond this context. To see this point, consider how much more narrowly the opinion could have been written. It could have invoked the equal protection and due process guarantees without specifying a formal level of review, and then observed that none of the state justifications survived even a deferential form of scrutiny. The Court had adopted this strategy in prior gay rights cases. n4

Instead, the Court issued a sweeping statement that could be compared to Loving v. Virginia, n5 the 1967 case that invalidated bans on interracial [\*148] marriage. n6 Like Loving, Obergefell held that the marriage bans at issue not only violated the Due Process Clause but also violated the Equal Protection Clause. n7 Yet Obergefell differed from Loving in two important respects. Where Loving emphasized equality over liberty, n8 Obergefell made liberty the figure and equality the ground. n9 Obergefell also placed a far stronger emphasis on the intertwined nature of liberty and equality. n10

In doing so, Obergefell became something even more than a landmark civil rights decision. It became a game changer for substantive due process jurisprudence. This Comment will discuss how Obergefell opened new ground in that great debate.

#### No Progressive Spillover — the Supreme Court won’t apply the dignity precedent to other contexts because of judicial ideology.

Hutchinson 17 — Darren Lenard Hutchinson, Professor of Law and Stephen C. O’Connell Chair at the Levin College of Law at the University of Florida, former Professor at the Washington College of Law at American University, holds a J.D. from Yale Law School, 2017 (“Undignified: The Supreme Court, Racial Justice, and Dignity Claims,” *Florida Law Review*, Volume 69, Number 1, January, Available Online via SSRN at https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2745610, Accessed 07-30-2017, p. 6-8)

Despite several reasons for optimism, this Article contends that dignity-based litigation in federal courts would not contribute meaningfully to the attainment of substantive racial equality—at least not in the near future. Several factors support a more cautious stance towards the possibility of achieving substantive racial equality through dignity- based litigation.

First, the concept of dignity remains undertheorized, amorphous, and indeterminate in judicial opinions. Because Court doctrine does not offer a precise meaning of dignity, judges possess a great degree of discretion to interpret and define its meaning prospectively. The [end page 6] ambiguity of dignity as a doctrinal concept complicates its litigation value for victims of racial injustice.

Second, in a series of cases, the Court has utilized dignity arguments to strike down racial equality measures. Specifically, the Court has invoked the dignity of whites and the states to justify invalidation of affirmative action policies and civil rights legislation.

Third, even when the Court has protected human dignity as a constitutional value, it has failed to extend solicitude to some of the most vulnerable social groups. In abortion cases, for example, the Court has disregarded the significant burdens that waiting periods, informed consent, and other legal constraints impose upon poor women and juveniles.

Fourth, Court precedent that portrays dignity in liberal terms contradictorily preserves social inequality because the Court has carefully tailored these rulings to limit their reach. In particular, while the Court has utilized dignity to invalidate legislation that discriminates on the basis of sexual orientation, its rulings do not imply broad disruption of heteronormative state action. Precedent related to sexual orientation has limited reach because the Court has declined to consider whether LGBT persons constitute a suspect class. Furthermore, while the Court has linked reproductive rights and dignity, it has also lowered the standard of review for antiabortion regulations from strict scrutiny to undue burden. Application of undue burden has led to judicial [end page 7] validation of types of regulations that had failed under Roe v. Wade's strict scrutiny test.

Fifth, judicial ideology—not lack of a good theory—explains why the Court has interpreted the Equal Protection Clause in a manner that impedes substantive racial equality. The Court’s racial equality precedent enacts the primary views that whites hold regarding race relations in the United States. The Court’s embrace of majoritarian viewpoints has led to the formation of an equal protection doctrine that legitimizes racial hierarchy.

For all of the foregoing reasons, legal scholars should reconsider their optimistic assertions regarding the potential use of dignity-based litigation as a means of attaining substantive racial justice. In the near future, it is unlikely that the Supreme Court will reinterpret the Equal Protection Clause and employ antisubordination theory or similar approaches that legal scholars have advocated. In the long term, however, changes in the composition of the Court, along with continued politicization of racial inequality by antiracist social movements, could lead to doctrinal innovation.

#### No Internal Link — the Supreme Court will remain conservative for the next 25 years.

Keck 16 — Thomas M. Keck, Michael O. Sawyer Chair of Constitutional Law and Politics and Professor of Political Science in the Maxwell School of Citizenship and Public Affairs at Syracuse University, holds a Ph.D. in Political Science from Rutgers University, 2016 (“Republicans Own The Supreme Court For Another Generation,” *The Huffington Post*, November 23rd, Available Online at <http://www.huffingtonpost.com/entry/republicans-own-the-supreme-court-for-another-generation_us_5835eca8e4b01ba68ac40219>, Accessed 07-30-2017)

Defying all historical norms, this electoral success has not produced a Democratic majority on the Supreme Court. Indeed, Democratic appointees have not held a majority on the Court since 1970, and Donald Trump’s election makes it likely that this half-century of Republican control will continue on the Court for years to come.

Because Republican senators refused to consider President Obama’s nomination of Merrick Garland to replace the late Justice Antonin Scalia, President-elect Trump has one vacancy to fill immediately. Justices Ruth Bader Ginsburg, Stephen Breyer, and Anthony Kennedy are all aged 78 or older, and Clarence Thomas, though only 68, has served for 25 years and might be tempted to retire while President Trump can name his successor. If Trump successfully replaces Scalia and any two of these other four justices, his three appointees will join with Chief Justice John Roberts and Justice Samuel Alito to form a Republican majority that will last at least until one of these justices retires. Roberts and Alito, each appointed by President George W. Bush, are 61 and 66 years old, respectively, so that moment may not come until 2030 or so. In other words, no matter how Democrats do in the next three presidential elections, control of the Supreme Court may remain out of reach.

#### No Positive Rights Enforcement — they’re inherently indeterminate.

Cross 1 — Frank B. Cross, Herbert D. Kelleher Centennial Professor of Business Law at the University of Texas at Austin and Professor of Law at the University of Texas Law School, 2001 (“The Error of Positive Rights,” *UCLA Law Review* (48 UCLA L. Rev. 857), April, Available Online to Subscribing Institutions via Lexis-Nexis)

Because of the economics of rights enforcement and the strategic concerns of the judiciary, judges are likely to do very little to promote the ends commanded by those rights. One reason is that such positive rights, by their nature, are highly indeterminate. Hershkoff acknowledges that positive welfare rights are an ""example of indeterminacy,' requiring a court to choose from among contested values without any selection criteria, in the face of imperfect information and normative uncertainty." n250 While all language is somewhat ambiguous, positive rights would suffer from particular indeterminacy. The reason for this indeterminacy is that such rights are consequentialist, requiring the judiciary to create a program that achieves a given result. n251 This characteristic provides another basis for distinguishing positive and negative rights - the former call for a specific result, while the latter simply regulate particular actions or conduct. n252

Advocates observe that positive rights tend to be vague and indeterminate. Their "lack of conceptual clarity" represents a "serious obstacle" to their implementation. n253 They describe a positive right to "nutritious food" as "hopelessly vague and indeterminate." n254 While quite vague, these terms could be defined and given greater determinacy over time. n255

Much of the discussion of the indeterminacy regarding positive rights relates to defining the substance of the right itself, namely, what is a minimally [\*902] sufficient income, and ignores the more serious indeterminacy about positive rights relating to their consequential nature. Even if we could define precisely what the poor were entitled to, there remains the question of what program would effect that entitlement. Current policymakers might be unable to define the actions that would ensure a minimally sufficient living standard for all Americans. In the context of welfare policy, a "prime difficulty is that of assuring that the actual effects of a measure in fact conform to its intended objectives." n256

#### Dignity Doctrine Bad — the plan’s precedent will be used to support conservative decisions.

Rosen 15 — Jeffrey Rosen, President and Chief Executive Officer of the National Constitution Center, Professor of Law at The George Washington University, Nonresident Senior Fellow at the Brookings Institution, Contributing Editor for the *Atlantic*, holds a J.D. from Yale Law School, 2015 (“The Dangers of a Constitutional 'Right to Dignity',” *The Atlantic*, April 29th, Available Online at <https://www.theatlantic.com/politics/archive/2015/04/the-dangerous-doctrine-of-dignity/391796/>, Accessed 07-30-2017)

There is no doubt that Justice Kennedy accurately and movingly describes the indignity and stigma that bans on same sex marriage impose on the right of LGBT citizens to define their own identities and to claim the benefits of equal citizenship. But constitutionalizing that injury with broad abstractions like dignity may lead to results in the future that liberals come to regret. Already, the European Court of Justice’s recognition of a sweeping “Right to be Forgotten” on the Internet has lead to the most dramatic clash between European traditions of protecting dignity and American traditions of protecting free speech in a generation.

And down the line, the right to dignity—now celebrated by liberals for what it means to gay rights—could ultimately produce other decisions in unrelated cases that they would not be so quick to celebrate. In the McDonald case, striking down gun possession laws under the Second Amendment, Justice Scalia recognized a dignitary interest attached to the right to bear arms. “[T]he conceptual core of the liberty clause ... pertains to ... [an individual’s] [s]elf-determination, ... dignity [or] respect,” he wrote.

The word dignity eludes narrow definition, or for that matter, any generally agreed upon definition. The Court itself has not provided a clear definition of dignity. One scholar, William A. Parent, declares, “[D]ignity is to possess the right not to be arbitrarily and therefore unjustly disparaged as a person.” In another article on “the Jurisprudence of Dignity,” Leslie Meltzer Henry writes that there is no single definition, but that dignity includes various conceptions including institutional status, equality, liberty, individual integrity, and collective virtue. She concludes, “dignity’s conceptions and functions are dynamic and context-driven.”

If dignity is defined so elastically, then conservatives judges might invoke it to strike down not only gun-control laws, but also other progressive legislation. Libertarian groups invoked the “sweet-mystery-of-life” my language in Casey to argue that the Obamacare healthcare mandate unconstitutionally violated the dignity and autonomy of Americans by forcing them to buy health insurance. In the future, cigarette smokers might argue that anti-smoking bans violate their ability to create an individual identity. And conservative Christian wedding photographers could claim that anti-discrimination laws compelling them to photograph gay weddings violate their dignity and ability to define themselves as conservative Christians. What courts would do when confronted with the clashing dignitary rights of the religious wedding photographer and the gay couple, or the hunter and the victim of gun violence, is anyone’s guess, because dignity is such an abstract concept that its boundaries are difficult to discern.

In suggesting that the expansion of the right to dignity is something that liberals may come to regret, I’m not arguing that same-sex marriage bans can or should easily be upheld in light of the Supreme Court precedents on the books. In the same-sex marriage arguments, the liberal justices seemed drawn to the idea that marriage is a fundamental right that must be expanded to all citizens on equal terms. A decision along those lines—although broader in some respects than a ruling based on dignity—might be easier to confine to cases involving marriage. And given Justice Kennedy’s previous opinions for the Court ruling out of bounds moral disapproval and the preservation of tradition for its own sake, it’s hard to think of any other plausible reasons for upholding the marriage bans that don’t rely on what the Court has defined as animus. Still, if the Court strikes down same-sex marriage bans on the grounds that they violate a right to dignity, liberals may have second thoughts about empowering judges to decide whose dignity trumps when the interests of citizens with very different conceptions of dignity clash.

### Extend: “Obergefell Thumps”

#### Obergefell already energized the doctrine of equal dignity. If it didn’t spur a doctrinal shift, neither will the plan.

Tribe 15 — Laurence H. Tribe, Carl M. Loeb University Professor and Professor of Constitutional Law at Harvard Law School, holds a J.D. from Harvard Law School, 2015 (“Equal Dignity: Speaking Its Name,” *Harvard Law Review* (129 Harv. L. Rev. F. 16), November, Available Online to Subscribing Institutions via Lexis-Nexis)

But by dispensing with Glucksberg, Justice Kennedy has not left the courts completely without guidance when identifying fundamental rights. Justice Kennedy's opinion also sets forth a foundational principle that gives form and substance to the Poe dissent's common law spirit. Yoshino calls this core component of Obergefell the "antisubordination principle," n11 but although I certainly agree that antisubordination plays an important role in the doctrinal achievement of Obergefell, I would characterize the decision's core in different, more expansive terms. I argue that Obergefell's chief jurisprudential achievement is to have tightly wound the double helix of Due Process and Equal Protection into a doctrine of equal dignity – and to have located that doctrine in a tradition of constitutional interpretation as an exercise in public education. Equal dignity, a concept with a robust doctrinal pedigree, does not simply look back to purposeful past subordination, but rather lays the groundwork for an ongoing constitutional dialogue about fundamental rights and the meaning of equality. Obergefell is an important landmark, but it will not be -- and should not be -- the last word.

### Extend: “No Progressive Spillover”

#### The Supreme Court is too conservative to apply dignity-based analysis in progressive ways — the plan’s precedent is not sufficient to transform Fourteenth Amendment doctrine.

Hutchinson 17 — Darren Lenard Hutchinson, Professor of Law and Stephen C. O’Connell Chair at the Levin College of Law at the University of Florida, former Professor at the Washington College of Law at American University, holds a J.D. from Yale Law School, 2017 (“Undignified: The Supreme Court, Racial Justice, and Dignity Claims,” *Florida Law Review*, Volume 69, Number 1, January, Available Online via SSRN at https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2745610, Accessed 07-30-2017, p. 61-62)

Conclusion

The Roberts Court has decided several cases that invoke the concept of dignity to advance reproductive rights and privacy. Furthermore, humanitarian and human rights law, foreign constitutions, and some state constitutions recognize dignity as an important value. The increasing appearance of dignity-based arguments in Supreme Court rulings has moved some scholars to argue that dignity claims could advance racial justice. The Obergefell decision, which makes strong use of the concept of dignity, will likely generate more scholarship advocating dignity- based framing of racial-justice claims.

Although dignity-based claims look promising on the surface, a closer examination of Court doctrine reveals limitations. For example, the Court has invoked the dignity of whites and states to justify invalidation of race- based remedies and civil rights measures. Furthermore, the Court’s restrained equal protection analysis does not result from the lack of a good theory; instead, it reflects the conservative ideology of a majority of the Court. These Justices have created doctrines that mirror white majoritarian perspectives regarding race. Dignity-based claims cannot alter the Court’s ideological balance.

Constitutional law, however, evolves as a result of political, social, and economic processes. Political activism by racial-justice advocates can motivate politicians and the media to endorse racially egalitarian policies. If these forces intersect, then racial-justice advocates, like social movement actors of the past, will have a better probability of achieving desired outcomes in federal courts. Such developments, however, will likely occur over the long-term, rather than immediately.

Legal scholars must analyze the broader social and political context in which constitutional law develops before they advocate strategies for [end page 61] social movement lawyers. Dignity-based claims can lead to the development of antisubordination race-equality doctrines only if the social conditions necessary for evolution in constitutional interpretation exist. In the absence of a more promising social and political climate, dignity-based claims, standing alone, will not cause a substantial shift in Court doctrine concerning race.

#### History disproves progressive spillover.

Hutchinson 17 — Darren Lenard Hutchinson, Professor of Law and Stephen C. O’Connell Chair at the Levin College of Law at the University of Florida, former Professor at the Washington College of Law at American University, holds a J.D. from Yale Law School, 2017 (“Undignified: The Supreme Court, Racial Justice, and Dignity Claims,” *Florida Law Review*, Volume 69, Number 1, January, Available Online via SSRN at https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2745610, Accessed 07-30-2017, p. 26-27)

II. Reason For Doubt: Why Dignity-Based Claims In Federal Courts Will Not Likely Lead To Racial Justice In The Near Future

The Supreme Court has invoked the concept of dignity in its opinions for over seventy years. Nevertheless, the Court has not done much to elaborate the meaning of dignity. Consequently, dignity suffers from ambiguity and indeterminacy—which weakens the contention that dignity-based litigation claims can lead to better racial-justice outcomes. Even if the Court were to theorize dignity, the resulting conception likely would not validate antisubordination or anticaste approaches to racial justice. Instead, for several reasons, the Court would probably adhere to its current race-equality doctrine, which generally prohibits intentional [end page 26] racial discrimination, regardless of purpose, and upholds facially neutral legislation, even when it disparately harms persons of color.

### Extend: “No Internal Link”

#### Gorsuch has already flipped the balance.

Wheeler 17 — Lydia Wheeler, Reporter at *The Hill*, 2017 (“Supreme Court enters new era, raising conservative hopes,” *The Hill*, April 8th, Available Online at <http://thehill.com/regulation/court-battles/327884-supreme-court-entering-new-era>, Accessed 07-30-2017)

The ascension of Neil Gorsuch to the Supreme Court is expected to usher in a new conservative majority that could become part of President Trump's legacy.

Gorsuch, who was confirmed by the Senate on Friday, is widely expected to shift the ideological balance of the court to the right, with his views seen as mostly in line with the man he is replacing: the late Justice Antonin Scalia.

But some court watchers say Gorsuch may be even more conservative than Scalia, his mentor and a fellow adherent to the originalist view of the Constitution.

“I think it’s interesting he’s cast as either a follower of Scalia or a more temperate version of Scalia, but in fact it seems that he may be quite to the right of Scalia in certain areas,” said Caroline Fredrickson, president of the left-leaning American Constitution Society for Law and Policy.

#### Kennedy’s impending retirement will move the Court further to the right.

Millhiser 17 — Ian Millhiser, Justice Editor at *Think Progress*, 2017 (“What happens to America if Justice Kennedy retires,” *Think Progress*, July 5th, Available Online at <https://thinkprogress.org/the-dire-consequences-if-justice-kennedy-retires-7ec120ee6de1>, Accessed 07-30-2017)

This past weekend, as most Americans were preparing for cookouts and fireworks, NPR’s Nina Totenberg dropped a bombshell. Justice Anthony Kennedy, the closest thing the Supreme Court has to a swing vote, has told young lawyers seeking clerkships in his chambers that “he is considering retirement.”

If Kennedy does retire, that decision presents an existential threat to many civil rights that seemed safely entrenched before Donald Trump’s second-place victory in last November’s election.

Four years from now, Trump may be remembered as both a political accident and the man who inspired a broad coalition of voters to cast his unique brand of racist incompetence out of office. He owes his job to a constitutional relic that allows the loser of a presidential election to nonetheless take office, and Trump has thus far struggled to advance a legislative agenda through Congress.

And yet, if Kennedy does retire, Trump will be an extraordinarily consequential president.

Kennedy is a conservative. But on a number of issues — such as abortion, race, LGBT rights, criminal justice, and gerrymandering — he was a relative moderate compared to his fellow Republicans on the Supreme Court. If Trump nominates someone to replace Kennedy who’s more similar to Neil Gorsuch, the hardline conservative Trump picked for the seat that Senate Republicans held open until Trump could fill it, the law will move drastically to the right on many crucial issues.

#### If Kennedy retires, the Court will move *very far* to the right.

Millhiser 17 — Ian Millhiser, Justice Editor at *Think Progress*, 2017 (“What happens to America if Justice Kennedy retires,” *Think Progress*, July 5th, Available Online at <https://thinkprogress.org/the-dire-consequences-if-justice-kennedy-retires-7ec120ee6de1>, Accessed 07-30-2017)

And yet, a president who lost by nearly 3 million votes could fill a second seat on the Supreme Court with a hardliner similar to Neil Gorsuch. If Kennedy retires, moreover, Trump’s second nominee is likely to be confirmed by a bloc of senators who, due to Senate malapportionment, represent less than half of the nation.

If that happens, we will have the most conservative Supreme Court since the early days of the Roosevelt administration. The Court will run roughshod over rights that millions of Americans take for granted. It will grow even more political. Women, people of color, gender and sexual minorities will wait each June to discover how the Court will push them deeper into the margins of society.

And liberals will increasingly come to think that the federal judiciary is exclusively a source of sorrow.

The last time a majority political faction decided that the judiciary had become so captured by their ideological opponents that they no longer had a stake in it, President Franklin Roosevelt threatened to pack the Court with 6 new justices in order to neutralize it.

Should Kennedy retire, the Court’s new majority risks a similar showdown if they use the power they owe to an accidental president to entrench a partisan agenda.

### Extend: “No Positive Rights Enforcement”

#### Positive rights can’t be effectively enforced.

Cross 1 — Frank B. Cross, Herbert D. Kelleher Centennial Professor of Business Law at the University of Texas at Austin and Professor of Law at the University of Texas Law School, 2001 (“The Error of Positive Rights,” *UCLA Law Review* (48 UCLA L. Rev. 857), April, Available Online to Subscribing Institutions via Lexis-Nexis)

Commonly, the case for positive rights implicitly presumes that judges are benevolent magicians, willing and able to wave a wand and thereby dispel the sad conditions of poverty. n401 If not wizards, judges are at least regarded as philosopher-kings who can both perceive and create a just society. n402 Realistically, judges for pragmatic reasons will do little to enforce [\*924] positive rights, even were they formally recognized constitutionally. If judges did involve themselves actively in the effort to secure such rights, they would probably make matters worse. The case for positive rights ignores the ideological influences on judicial decision making, which renders the legislature presumptively a more suitable forum. n403 The case ignores the strictures of the process of litigation, which is less promising for the poor than is the legislative process. n404 The case erroneously presumes that the courts can discern the policy best suited to achieving the desired consequential ends, when in fact the legislature is better suited for this goal. n405 Finally, the case presumes that judges can effectively implement their decisions, when in fact such implementation is highly uncertain and might in fact be counterproductive. n406 These four failings doom any hopes that the recognition of positive rights will improve the lives of the intended beneficiaries.

### Extend: “Dignity Doctrine Bad”

#### “Dignity” undermines all other rights — it’s too amorphous to be constrained.

Greenfield 15 — Scott H. Greenfield, Attorney and Counsellor At Law at Hull McGuire, PC, holds a J.D. from New York Law School, 2015 (“The Dangerous Dilemma of Dignity,” *Simple Justice: A Criminal Defense Blog*, July 5th, Available Online at <https://blog.simplejustice.us/2015/07/05/the-dangerous-dilemma-of-dignity/>, Accessed 07-30-2017)

While Turley’s approach is soft and subtle, I will tread on it with the full weight of my criminal defense lawyer combat boots in the hope of stomping the crap out of it. Dignity is dangerous. As a concept, it’s just another rhetorical trick that, wrapped up in a pretty bow, would allow anyone to manufacture a right to do whatever they want to do. Even worse, it would allow someone to shut down what others do because it harshes their feelz of dignity.

We’re often confronted with the clash of rights, but at minimum we have a paper that tells us which are superior to others called the Constitution. For example, the First Amendment provides for free speech. That’s an express right, inviolate because the Constitution says so. Some will argue that their right to dignity means that your right to free speech doesn’t extend to “hate speech,” defined as speech that makes hurts their feelz. That makes them feel undignified.

So if they have a right to dignity, it comes at the expense of your right to free speech. But that’s not where it ends.

Other groups outside the lesbian, gay, bisexual and transgender community could invoke this precedent, since the reasoning does not concern a protected sexual-orientation class but rather a citizen’s right to dignity. Could employees challenge workplace dress codes as intruding upon their right to “define and express their identity”? Could those subject to college admissions preferences raise claims that race or gender classifications deny their individual effort to “define and express their identity”? Kennedy’s approach has only deepened the uncertainty over how courts will handle such cases.

As dignity is “elusive and malleable,” as Turley puts it, or meaningless, as I would say, pretty much anything could become captive to a dignity argument. Its ripples would eventually be felt in almost every aspect of our lives, with people demanding their right to dignity from being subject to your right to dignity. Or your right to anything else.

Turley uses the example of a gay couple being denied a wedding cake with a homosexual theme, coming at the expense of the dignity of a Christian baker whose dignity would be compromised by being compelled to bake it. Already, the ACLU has announced that religious freedom has fallen out of favor, even though the free exercise clause is an express right in the First Amendment. It’s picking which rights are worthy of its concern, and religion didn’t make the cut.

Notwithstanding the dolts who argue that the Constitution “means what it says,” we struggle now with the hard rights, the ones reasonably susceptible to definition. Is Pastafarian really a religion? But consider what would become of our efforts to function if a right as amorphous and meaningless as “dignity” was enshrined in the emanations and penumbras of the Constitution?

Take it to the logical extreme and it would likely end up as a transient tyranny of the majority:

Nevertheless, pressure is rising to criminalize forms of “hate speech” or speech that is viewed as discriminatory or degrading to certain groups. Universities increasingly warn students and faculty not just against comments deemed racist but also against an ever-expanding list of “microaggressions,” such as the use of “melting pot” and other terms considered insensitive.

All in the name of dignity, with the insistence of voices claiming that they speak for the majority of our butthurt nation of delicate souls.

Obergefell would be a tragic irony if it succeeded in finally closing the door on morality and speech codes only to introduce an equally ill-defined dignity code. Both involve majoritarian values, enforced by the government, regarding what is acceptable and protectable. Substituting compulsory morality with compulsory liberalism simply shifts the burden of coercive state power from one group to another.

It’s not that dignity is a bad word or an evil concept, but that it is so vague as to become a bludgeon of the majority to justify the evisceration of the rights of everyone who isn’t on board the Official Dignity Train.

Just as the joy of same sex marriage is going to eventually give way to the misery of same sex divorce, the elevation of dignity to a right is going to give way to the criminalization of the exercise of other rights that the overly sensitive decide are affronts to dignity. And even if you are on the good side now, bear in mind that the whims of the majority shift quickly, and you may well find yourself in the undignified position of being on the wrong side later.

## School Choice CP

### 1NC — School Choice CP

#### First/next off is the School Choice Counterplan.

#### The United States federal government should substantially restrict K-12 education monopolies and support school choice for parents and students by:

#### \* attaching federal education funds to individual students and conditioning the receipt of federal funds to a school’s participation in an open enrollment process conducted by a state-sanctioned authority;

#### \* allowing states to opt out of the statutory and regulatory requirements of federal education laws in exchange for creating a marketplace of informed school choice and competition including public, charter, private, and virtual schools;

#### \* promoting informed parental choice by producing and disseminating research on the relative performance of students at each school; and

#### \* enforcing civil rights laws regarding education.

#### First, the counterplan is the best way to improve K-12 education because it promotes competition and choice.

Whitehurst 12 — Grover J. “Russ” Whitehurst, Director of the Brown Center on Education Policy at the Brookings Institution, Member of The Koret Task Force on K–12 Education—a group of senior education scholars brought together by the Hoover Institution, former Director of the Institute of Education Sciences at the U.S. Department of Education, former U.S. Assistant Secretary for Educational Research and Improvement, former Chair of the Department of Psychology at the State University of New York at Stony Brook, holds a Ph.D. in Experimental Child Psychology from the University of Illinois at Urbana-Champaign, 2012 (“Let the Dollars Follow the Child,” *Education Next*, Volume 12, Number 2, Spring, Available Online at <http://educationnext.org/let-the-dollars-follow-the-child/>, Accessed 06-15-2017)

Washington is at a crossroads on K–12 education policy. Policymakers can 1) continue down the path of top-down accountability; 2) devolve power to states and districts, thereby returning to the status quo of the mid-1990s; or 3) rethink the fundamentals, do something different, and empower parental choice.

The federal government’s involvement in K–12 education has accelerated through the Clinton, Bush, and Obama administrations. The best evidence indicates that this substantially heightened federal role has had only modest impact on student achievement, far short of what had been hoped. It might be that further centralization would yield more benefits, but it is doubtful that more federal control is politically possible, and, in any case, any additional yield is uncertain.

The second option—devolving recently accumulated federal power to the states—underlies recent reauthorization proposals for the Elementary and Secondary Education Act (ESEA) that allow each state to establish its own accountability system and that require teeth only for the very lowest-performing schools. It is unclear to us how releasing states and school districts from federal accountability and granting them maximum flexibility is anything more than a return to the status quo. It is the regrettable consequence of that approach that motivated increased federal involvement in the first place.

The Koret Task Force at the Hoover Institution (see sidebar, page 16), of which I am a member, believes that an evolved form of the ESEA that retains rigorous accountability is preferable to returning control of public schooling to local public-school monopolies and states, which will fall into old habits all too quickly. But we believe that the best interests of the nation require something other than either a return to the happy days of local school governance or evolutionary improvements to the type of top-down accountability found in No Child Left Behind.

We need a fundamentally new approach.

We propose to reform the nation’s schools on the basis of two principles that have served the nation exceedingly well throughout its history: federalism and choice. The federal structure of our government offers an opportunity to specify the role of Washington strategically, to leverage what it clearly can do best, while allocating to states and locales what they are best suited to do. Our particular view of federalism is disciplined by the laws of economics and empirical experience, a perspective known as fiscal federalism. The second organizing principle is choice. Much has been written and studied regarding choice in education—on charter schools, vouchers, choice among district schools, and much more—but the idea, so powerful in our economy and in other enterprises, including higher education, has rarely been examined in the context of federalism and the appropriate roles of Washington and lower levels of government.

A New Framework

What is fiscal federalism? Fiscal federalism argues that government services are most efficiently delivered if provided closest to the taxpayers or consumers receiving them, and that competition among local governments for residents and taxpayers will improve those services. In the context of public education, the challenge is to identify the areas of constraint for local providers of education services, determine which can be best addressed by state government, and assign the remainder to Washington.

But there is a fundamental flaw in fiscal federalism theory as it applies to education: the ability of taxpaying parents of school-age children to vote with their feet (leave school districts with which they are dissatisfied) is severely constrained for the low-income populations that are most likely to find themselves served by low-performing schools. This lack of geographical mobility for large segments of the population undermines the competitive pressure that low-performing schools and school districts would otherwise expect to face. This leaves those districts vulnerable to the interests of whoever is powerful at the local level, more often than not organizations that represent teachers who are employed by school districts, rather than to the influence of parents and taxpayers.

One way to correct the strong tendency of local school bureaucracies to cater more to adult than student interests is to intervene from above, the course of action taken by Washington over the last 15 years. We argue that this has been only weakly effective while imposing a heavy regulatory burden on schools. We propose instead to create real competition for students and the public funding that accompanies them among the providers of K–12 education services. Considerable research indicates that schools respond to competitive pressure. In a systematic review of 41 empirical studies on this topic through 2002, Columbia University researchers Clive Belfield and Henry Levin found that “a sizable majority report beneficial effects of competition.”

In our proposal, funding must follow students and be weighted to compensate for the extra costs associated with high-need students if schools are to compete for students and if parents are to have real choice. Parents must have the widest possible choice of schools for their children and be armed with good information on the performance of schools. Informed choice that is accompanied by financial consequences for schools will create a marketplace for schooling that will evolve toward greater responsiveness to what parents want, will be more innovative, and will become more productive.

A Role for Washington

The federal government currently funds a wide range of K–12 education initiatives (see Table 1). The task force has identified just four functions that are essential to its role in education: creating and disseminating information on school performance in each classroom and program effectiveness, including information on individual student performance; enforcing civil rights laws; providing financial support to high-need students; and enhancing competition among providers.

Information: The provision of information on the condition of education and on the results of education research is primarily a public service. In such situations, a serious free-rider problem exists: because it is impossible to prevent a class of consumers who have not paid for the information from consuming it, far too little evidence will be produced if it is not supported by an organization with the entire nation’s interests at heart. The free-rider problem is one reason that state and local authorities cannot be entrusted with the task of knowledge production. Furthermore, evidence does not merely need to be produced; it needs to be based on high-quality data. Gathering and auditing data are almost pure public services. Thus, it is easy to justify federal support for research, data gathering, and dissemination of information. Without valid information on the performance of students at each school relative to that of their peers across the country, the entire education enterprise flies blind, leaving parents, teachers, school managers, and policymakers with nothing more than intuition and consensus as the basis for making decisions.

Civil Rights: When state and local actions in education are discriminatory, the federal government should step in to enforce civil rights laws. Acts of unjust discrimination, such as those that would deny a student an educational experience for which the student is qualified based solely on race, gender, disability, or other protected status, are costly to society. Students who fail to be educated may need cash transfers as adults; they might take up crime or engage in other antisocial behaviors. Owing to mobility and society-wide redistribution, we all suffer in these cases. Thus, the federal government, and not merely state and local governments, has an obligation to curb discrimination.

Compensatory Funding: Regardless of whether the underlying cause is disability, lack of English proficiency, or poverty, high-need students are more expensive to educate than other students. Failure to provide additional resources can provide an incentive for other students to move to another school if they are able. The burden that the high-need student produces will thus be disproportionately borne by those who are too immobile to avoid it, most likely other high-need students. The federal government can counteract these inequities through cash transfers. The difficulty is figuring out the right financial supplement and the best mechanism for distributing it.

Title I of the ESEA and the Individuals with Disabilities Education Act (IDEA) are designed to disburse funds to states and school districts for the education of high-need students. Rather than the complicated federal schemes under which funds are currently disbursed to districts, funds should be attached to the student. Individual schools would receive federal funds based on student counts, with a weighting formula to adjust for factors such as the increased burden of educating high-need students and for regional differences in costs. Sometimes called “backpack funding,” weighted funding that follows the student has been shown to direct proportionally more funds to schools that serve needy students than traditional distribution schemes.

Choice and Competition: The federal government can and should restrict education monopolies and support school choice for parents and students. The current system, which relies on residential mobility to drive school districts to improve education services, does not work well enough to improve education outcomes or to ensure equity. Such a system consigns the poor and immobile to inferior schools and leaves the control of schools in the hands of those who benefit most from the status quo. The simple feature of eliminating a default school assignment by the school district—thus requiring every parent to engage in school choice—eliminates socioeconomic differences in the likelihood that parents will shop for schools. Further, if parents could exercise school choice through web-based portals that highlight the important variables of school performance, socioeconomic differences in knowledge could be muted. Here, again, the federal government has a role to play, for example, by funding open competitions for designers and implementers of school-choice portals.

Market-based competition cannot prevail in public education unless the consumers of public education can choose where to be schooled. We propose that as a condition of the receipt of federal funds to support the education of individual students, schools be required to participate in an open enrollment process conducted by a state-sanctioned authority. Such a process would maximize the matches between school and student preferences. Unified open-enrollment systems that encompass as many choices as possible from the regular public, charter, private, and virtual school universes are essential to the expansion of choice and competition in K–12 education. These systems have to be designed so that all schools have the same time frame for applications and admission decisions, and so that they cannot be gamed by either schools or applying families.

The federal government has a legitimate role in overseeing the marketplace for schooling, including the architecture of parental choice systems. It is in the interest of society that the concentration of high-need students not increase in particular schools. Choice systems have to be carefully and explicitly designed to avoid students being sorted by race, economic background, and other conditions. Several options exist for ensuring that schools cannot discriminate against groups of students, including a lottery system (currently required in federal regulations for start-up charter schools), controlled choice (in which algorithms are used to maintain balanced enrollment), and a financial or fee supplement attached to students in protected classes.

#### Second, school choice is the most effective way to improve K-12 education — the best meta-study proves.

Wolf 16 — Patrick J. Wolf, Distinguished Professor of Education Policy and 21st Century Endowed Chair in School Choice in the Department of Education Reform at the University of Arkansas College of Education and Health Professions, Principal Investigator of the School Choice Demonstration Project, holds a Ph.D. in Government from Harvard University, 2016 (“School Choice Boosts Test Scores,” *Jay P. Greene’s Blog*—a scholarly education blog, May 10th, Available Online at <https://jaypgreene.com/2016/05/10/school-choice-boosts-test-scores/>, Accessed 06-19-2017)

Private school choice remains a controversial education reform. Choice programs, involving school vouchers, tax-credit scholarships, or Education Savings Accounts (ESAs), provide financial support to families who wish to access private schooling for their child. Once declared dead in the U.S. by professional commentators such as Diane Ravitch and Greg Anrig, there are now 50 private school choice programs in 26 states plus the District of Columbia. Well over half of the initiatives have been enacted in the past five years. Private school choice is all the rage.

But does it work? M. Danish Shakeel, Kaitlin Anderson, and I just released a meta-analysis of 19 “gold standard” experimental evaluations of the test-score effects of private school choice programs around the world. The sum of the reliable evidence indicates that, on average, private school choice increases the reading scores of choice users by about 0.27 standard deviations and their math scores by 0.15 standard deviations. These are highly statistically significant, educationally meaningful achievement gains of several months of additional learning from school choice. The achievement benefits of private school choice appear to be somewhat larger for programs in developing countries than for those in the U.S. Publicly-funded programs produce larger test-score gains than privately-funded ones.

The clarity of the results from our statistical meta-analysis contrasts with the fog of dispute that often surrounds discussions of the effectiveness of private school choice. Why does our summing of the evidence identify school choice as a clear success while others have claimed that it is a failure (see here and here)? Three factors have contributed to the muddled view regarding the effectiveness of school choice: ideology, the limitations of individual studies, and flawed prior reviews of the evidence.

School choice programs support parents who want access to private schooling for their child. Some people are ideologically opposed to such programs, regardless of the effects of school choice. Other people have a vested interest in the public school system and resist the competition for students and funds that comes with private school choice. No amount of evidence is going to change their opinion that school choice is bad.

A second source of disputes over the effectiveness of choice are the limits of each individual empirical study of school choice. Some are non-experimental and can’t entirely rule out selection bias as a factor in their results (see here, and here). Fortunately, over the past 20 years, some education researchers have been able to use experimental methods to evaluate privately- and publicly-funded private school choice programs. Experimental evaluations take the complete population of students who are eligible for a choice program and motivated to use it, then employ a lottery to randomly assign some students to receive a school-choice voucher or scholarship and the rest to serve in the experimental control group. Since only random chance, and not parental motivation, determines who gets private school choice and who doesn’t, gold standard experimental evaluations produce the most reliable evidence regarding the effectiveness of choice programs. We limit our meta-analysis to the 19 gold standard studies of private school choice programs globally.

Each of the gold standard studies, in isolation, has certain limitations. In the experimental evaluation of the initial DC Opportunity Scholarship Program that I led from 2004 to 2011, the number of students in testing grades dropped substantially from year 3 to year 4, leading to a much noisier estimate of the reading impacts of the program, which were positive but just missed being statistically significant with 95% confidence. Two experimental studies of the Charlotte privately-funded scholarship program, here and here, reported clear positive effects on student test scores but were limited to just a single year after random assignment. Two recent experimental evaluations of the Louisiana Scholarship Program found negative effects of the program on student test scores but one study was limited to just a single year of outcome data and the second one (which I am leading) has only analyzed two years of outcome data so far. The Louisiana program, and the state itself, are unique in certain ways, as are many of the programs and locations that have been evaluated. What are we to conclude from any of these individual studies?

Meta-analysis is an ideal approach to identifying the common effect of a policy when many rigorous but small and particular empirical studies vary in their individual conclusions. It is a systematic and scientific way to summarize what we know about the effectiveness of a program like private school choice. The sum of the evidence points to positive achievement effects of choice.

Finally, most of the previous reviews of the evidence on school choice have generated more fog than light, mainly because they have been arbitrary or incomplete in their selection of studies to review. The most commonly cited school choice review, by economists Cecilia Rouse and Lisa Barrow, declares that it will focus on the evidence from existing experimental studies but then leaves out four such studies (three of which reported positive choice effects) and includes one study that was non-experimental (and found no significant effect of choice). A more recent summary, by Epple, Romano, and Urquiola, selectively included only 48% of the empirical private school choice studies available in the research literature. Greg Forster’s Win-Win report from 2013 is a welcome exception and gets the award for the school choice review closest to covering all of the studies that fit his inclusion criteria – 93.3%. (Greg for the win!)

Our meta-analysis avoided all three factors that have muddied the waters on the test-score effects of private school choice. It is a non-ideological scientific enterprise, as we followed strict meta-analytic principles such as including every experimental evaluation of choice produced to date, anywhere in the world. Our study was accepted for presentation at competitive scientific conferences including those of the Society for Research on Education Effectiveness, the Association for Education Finance and Policy, and the Association for Policy Analysis and Management. Our study is not limited by small sample sizes or only a few years of outcome data. It is informed by all the evidence from all the gold standard studies. Finally, there is nothing arbitrary or selective in our sample of experimental evaluations. We included all of them, regardless of their findings. When you do the math, students achieve more when they have access to private school choice.

#### Third, school choice is key to equal opportunity and integration. The plan locks students into a failed system.

Ford 17 — Virginia Walden Ford, Executive Director of D.C. Parents for School Choice—the political grassroots organization that successfully lobbied for voucher legislation in DC, 2017 (“School choice the fastest track to integration,” *The Hill*, May 23rd, Available Online at <http://thehill.com/blogs/pundits-blog/education/334608-school-choice-the-fastest-track-to-integration>, Accessed 06-19-2017)

Access to a quality education shouldn’t depend on where you live, where you came from or how much money you make.

As a mom who fought like heck to make sure my son was in the right schooling environment for him, I believe education is a basic American right that keeps our nation on the right track.

But recent history has shown that public schools are increasingly segregated not just by race, but also by income. Families too often are forced to send their child to a default school, regardless of the quality of the education or the achievement level of their peers. It wasn’t supposed to be this way.

The landmark Supreme Court case Brown vs. the Board of Education of Topeka — a unanimous decision that ended the deplorable “separate-but-equal” statutes that had been in place — turns 63 this month. In the 1960s and 1970s, the decision worked to integrate schools, especially as neighborhoods became more racially integrated.

But by the 1980s, neighborhoods continued becoming more integrated, but public schools went in the opposite direction.

Between 1970 and 2009, income-based segregation more than doubled, with the percentage of families residing either in “affluent” or “low-income” neighborhoods going from 15 percent to 33 percent.

When it comes to residential real estate, schools often wind up linked to property values. That means the price of renting or owning in a “good” district continues to rise, making economic integration an impossibility for many families.

Worse, there are those who use the economic segregation of education to reverse the original intent of the justices in Brown.

Take, for example, the recent case of Gardendale, Ala., a predominantly white suburb that’s attempting to separate itself from the much more diverse Jefferson County school district to which it belongs.

A number of minority students from other parts of Jefferson County have taken advantage of intradistrict school choice to attend school in Gardendale. Instead of embracing these students, families in Gardendale want to create their own district, and some have openly admitted their motivation is race-based.

The Jefferson County students may soon be denied the access to a quality education that we have repeatedly said defines our nation.

The reality is that Brown didn’t get us where we need to be: It broke down barriers but failed to establish new pathways. That’s why I strongly believe that we must have a robust system of state-based educational choice if we ever intend to empower every K-12 student in America.

School choice addresses the problem of deepening segregation in two ways: First, it uncouples the decisions about where to live and where to send children to school. Second, it allows schools to provide different educational offerings to different audiences, empowering families to choose schools based on what their students actually need.

If we truly want to desegregate our schools and promote academic achievement, here are three easy ways to get started:

First, enact universal school choice programs that allow all families to access the funds that are set aside by state governments to educate their students. Programs can be scaled to ensure greater access for lower-income and special needs families, but universality helps erode non-economic barriers and makes sure all families have shared interests in the sustainability of these programs.

Second, work with education providers, community groups, policymakers and other stakeholders to promote accountability and prevent fraud using a common-sense system of checks and balances.

Finally, make sure families are aware of and understand the schooling options available to their students, including information available in multiple languages, outreach from community groups and services to help with application forms along with other administrative support.

We know this approach works. State-based choice programs across America have been proven to improve academic outcomes, raise parental satisfaction and produce more civic-minded, tolerant students.

As Congress prepares to ask Secretary of Education Betsy DeVos next week about the Trump administration’s education budget, Members should consider the importance of school choice policies made at the local and state level as opposed to being dictated by the federal government.

Two decades ago, as a single mom trying to find the best educational fit for my kids, I didn’t know where to turn. My son was only able to access a great education because he received a private scholarship that paid his private school tuition. I know how drastically different — and worse — his life would be without that education.

When the Supreme Court unanimously decided in Brown more than six decades ago, the justices surely didn’t anticipate desegregation followed by intense re-segregation and self-segregation.

Until the system of haves and have-nots, historically and presently defined by race and money, is upended, American K-12 education will continue to exist as a separated, unequal enterprise.

True school choice — making sure all students can get in where they fit in — will help solve the K-12 integration dilemma.

#### Fourth, the plan and permutation make revolutionary school innovation impossible. Only universal choice solves.

Forster 16 — Greg Forster, Senior Fellow with the Friedman Foundation for Educational Choice, holds a Ph.D. in Political Philosophy from Yale University, 2016 (*A Win-Win Solution: The Empirical Evidence on School Choice*, Fourth Edition, May, Available Online at <http://www.edchoice.org/wp-content/uploads/2016/05/A-Win-Win-Solution-The-Empirical-Evidence-on-School-Choice.pdf>, Accessed 06-19-2017, p. 35)

Only Universal School Choice Can Sustain Dramatic Change

Ultimately, the only way to make school reform work on a large scale is to break the government monopoly on schooling. The monopoly is not just one powerful obstacle to reform among many; it is what makes all the many obstacles as powerful as they are. The monopoly ensures that no meaningful accountability for performance can occur, except in rare cases as a result of Herculean efforts. The monopoly empowers a dense cluster of rapacious special interests resisting efforts to improve schools.

The monopoly creates an environment where the urgent need for change cannot be made a tangible part of the daily cultural life of the school. Institutional culture in the existing system is hostile, not just to this or that reform, but also to reform in general, because the monopoly excludes the only institutional basis for making the need for change seem plausible and legitimate: the prospect of losing the institution’s client base and the funding that goes with it.

When any institution has a captive client base, support for innovation vanishes. Reform requires people and institutions to do uncomfortable new things, and change will not occur until discomfort with the status quo becomes greater than the discomfort of the change. An institution with captive clients can continue to function into the foreseeable future more or less as it always has, without change. Why not just continue doing things in the way that feels comfortable and natural?

Worst of all, the monopoly pushes out educational entrepreneurs who can reinvent schools from the ground up. Only a thriving marketplace that allows entrepreneurs to get the support they need by serving their clients better can produce sustainable innovation.

In any field of human endeavor—whether education, medicine, politics, art, religion, manufacturing, or anything else—entrepreneurs who want to strike out in new directions and do things radically differently need a client base. There need to be people who will benefit from the new direction and support it. And that client base must be robust on three dimensions: size, strength, and suffrage. There must be enough supporters; they must have enough ability to provide support; and they must have enough freedom to decide for themselves what to support.

The government school monopoly crowds out this client base. School choice has the potential to solve this problem by providing enough families (size) with enough dollars (strength) and enough choice (suffrage) to support educational entrepreneurs. Unfortunately, existing school choice programs fall short on all three dimensions. Only universal choice can open the door to the full-fledged revolution in schooling America needs in the new century.

#### Finally, the counterplan *alone* is key to prevent coercion. Reject the plan because it is an unethical violation of freedom.

McCluskey 16 — Neal McCluskey, Director of the Center for Educational Freedom at the Cato Institute, former Policy Analyst at the Center for Education Reform, holds a Ph.D. in Public Policy from George Mason University, 2016 (“Ultimately, ‘School Choice’ Must Be about Freedom,” *Cato At Liberty*—the Cato Institute’s blog, January 25th, Available Online at <https://www.cato.org/blog/ultimately-school-choice-must-be-about-freedom>, Accessed 06-19-2017)

It is National School Choice Week, and this ever-growing event-of-events will feature discussions throughout the country tackling test scores, competition, empowering the poor, efficient use of taxpayer dollars, monopoly breaking, and numerous other, very important topics. But ultimately just one goal must be paramount: maximizing freedom. In the end, it is defending liberty – the true, bedrock American value – that school choice must be about.

This is first and foremost a normative conviction. Freedom must have primacy because society is ultimately composed of individuals, and leaving individuals the right and ability to control their own lives is fundamentally more just than having the state – be it through a single dictator, or majority of voters – control our thoughts, words, or actions.

Of course, children are subject to someone’s control no matter what. But a corollary to free individuals, especially when no one is omniscient and there is no unanimous agreement on what is the “right” way to live, or think, or believe, must be free association – free, authentic communities. We must allow people and communities marked by hugely diverse religious, philosophical, or moral views, and rich ethnic and cultural identities and backgrounds, to teach their children those things. Short of stopping incitement of violence or clear parental abuse, the state should have no authority to declare that “your culture is acceptable,” or “yours must go.” Indeed, crush the freedom of communities and you inevitably ~~cripple~~ [destroy] individual liberty, taking away one’s choices of how and with whom to live.

Of course, the reasons to demand educational freedom are not just normative. They are also about effective education, and it is not hard to understand, at a very basic level, why.

If there are things on which all agree, choice is moot – all will teach and respect those things. But if we do not all agree, forcing diverse people to support a single system of “common” schools yields but three outcomes: first, divisive conflict; then, either inequality under the law – oppression – when one side wins and the other loses, or lowest-common-denominator curricula to keep the peace. Forced conflict and curricular mush no one should want. And inequality under the law we should all loathe and fear, even if we do not care about the rights of others and think we will come out the victors today. Tomorrow, we may not.

School choice is something for which all Americans should fight. But ultimately, it is too limiting. What we need is freedom for all.

### Federalism Net-Benefit

#### The Federalism DA is a net-benefit.

KTF 12 — The Koret Task Force on K–12 Education, a group of senior education scholars brought together by the Hoover Institution, 2012 (“Choice and Federalism: Defining the Federal Role in Education,” Report by The Koret Task Force on K–12 Education, Available Online at <http://www.hoover.org/sites/default/files/research/docs/choice-and-federalism.pdf>, Accessed 06-15-2017, p. 71-72)

Because the foundation of our proposal is a system of choice transactions between parents and individual schools, it might seem that we have abrogated the role of states in providing for the education of their citizens, a role that is in many cases enshrined in state constitutions. That is not the case, for three reasons.

First, we previously reported that the courts have determined that dangling a carrot in front of states in the form of federal funding in exchange for adopting federally specified reforms is not a mandate and does not violate constitutional strictures on federal action. Thus, making state adoption of the reforms we propose a condition for ESEA, Head Start, or IDEA funding represents, at a conceptual level, no more or less federal interference in state authority over education than the present requirements of ESEA. At a functional level it represents much less interference. States that do not wish to pursue reforms based on informed choice and student-based funding would not have to; those that do would be carrying out those reforms consistent with their constitutional authority.

Second, the current state role in education has grown substantially at the expense of the role of school districts as a direct result of the ever increasing federal role. In effect, state departments of education [end page 71] have become wholly owned subsidiaries of the US Department of Education, as their principal responsibility has become implementing federal education law and as their principal source of funds has become administrative set-asides in federal education grants. That some of these state administrative functions might be rolled back or eliminated under our proposal does not represent federal interference in the right of states to oversee education. Rather, the changes in state responsibilities under our proposal would primarily be a result of the federal government’s removing itself from many areas in which it has heretofore been active and prescriptive and in which it required states to be its implementing partner.

Finally, our proposal places with the states the critical responsibilities that had been central to their roles prior to the growth in federal control. Among these are responsibility for determining whether individual schools or groups of schools within a state are licensed or accredited and appropriating funds for a variety of education purposes, including equalizing funding for schools that serve less- versus more- advantaged students. The backpack funding model we propose admits of many different design and funding decisions, all of which would be made at the state level. In addition, under our proposal, states would take on a new and critically important function: collecting and providing information on school performance in the context of choice systems in which parents shop for schools. In effect, under the system we propose, states set the bar for entry into the market of education providers; they decide how much funding is available from the state to support which K–12 education programs; and they provide or oversee the information and choice portals for parents on which the whole system rests. These critical functions under the precepts of fiscal federalism are best carried out at the state level and are consistent with state responsibilities for education under their own constitutions.

#### The counterplan results in state experimentation and a race to the top.

KTF 12 — The Koret Task Force on K–12 Education, a group of senior education scholars brought together by the Hoover Institution, 2012 (“Choice and Federalism: Defining the Federal Role in Education,” Report by The Koret Task Force on K–12 Education, Available Online at <http://www.hoover.org/sites/default/files/research/docs/choice-and-federalism.pdf>, Accessed 06-15-2017, p. 15-16)

We recommend that the choice approach be an option for states. We envision a world in which some states stay under federal accountability control and some are able to opt out and embrace a more competitive system in which the federal role is very different.

We believe that top-down federal accountability (i.e., some evolution of NCLB) is necessary in the context of our current system of dispersed authority but that it is not necessary (except for information reporting) for a truly competitive system in which parents can choose their schools, schools have incentives to perform, and schools are held accountable from the bottom up.

We realize that the appeal of our proposal will vary across states, and we believe that states should have the right to decide how to proceed on such a fundamental and important area of policy. A state option would allow the states most interested in choice-based reform to pursue that option, whereas other states could stick with some [end page 15] version of the evolving status quo. Comparisons of student progress in states opting into choice-based reform versus those remaining with the current arrangements would allow Congress to evaluate the reform as implemented in pilot states and use that information in deciding whether to expand the program.

#### The counterplan avoids the federalism DA — it promotes state experimentation and local control.

Whitehurst 12 — Grover J. “Russ” Whitehurst, Director of the Brown Center on Education Policy at the Brookings Institution, Member of The Koret Task Force on K–12 Education—a group of senior education scholars brought together by the Hoover Institution, former Director of the Institute of Education Sciences at the U.S. Department of Education, former U.S. Assistant Secretary for Educational Research and Improvement, former Chair of the Department of Psychology at the State University of New York at Stony Brook, holds a Ph.D. in Experimental Child Psychology from the University of Illinois at Urbana-Champaign, 2012 (“Let the Dollars Follow the Child,” *Education Next*, Volume 12, Number 2, Spring, Available Online at <http://educationnext.org/let-the-dollars-follow-the-child/>, Accessed 06-15-2017)

Moving Forward

The approach we recommend places the federal government in a central role in providing information and compensatory funding and in promoting a competitive and information-rich marketplace for education services. Mechanisms we espouse, such as student-based funding, open enrollment systems, charter schools, and virtual education, are having some success in breaking open the current system, but they require very special circumstances at the state and local level. We understand that our proposals, if adopted, would represent a fundamental shift in the federal government’s role in K–12 education. An attempt to reauthorize ESEA, IDEA, and Head Start to conform to our recommendations may well fail, in part because what we propose will appeal more to some states than to others. There is nothing wrong with such differences. Indeed, the federalism we espouse is built on the advantage that is conferred to citizens by having government policies and services determined as close to home as possible. There is a legislative way forward consistent with our proposal and federalism, one with a rich legislative history and experience of success at the federal level:

Let states opt out of the statutory and regulatory requirements of ESEA, IDEA, Head Start, and other relevant federal laws in exchange for creating a marketplace of informed choice and competition. Some states will find throwing off the federal yoke in exchange for providing maximum education choice for their citizens politically attractive and viable. Those states can serve as the laboratory for the proposals we have put forward. If these initiatives fail to advance student achievement, social equity, and education productivity, and if they lose the support of a state’s electorate, they will be abandoned, and the state will return to the federal fold. If, instead, some states experience the success we think is likely, other states would find the risk of coming onboard manageable and, we think, face escalating demand from their citizens.

The education system clearly has vast consequences for this nation’s economy, society, and world leadership. The federal government has a crucial role to play in protecting and promoting precisely those national interests that lower levels of government cannot. We believe the most promising approach is to move decisionmaking closer to the consumers of K–12 public education by unleashing pent-up demand and empowering parents to choose schools for their children.

### CP Solves “School Choice Fails”

#### Research about existing school choice doesn’t apply to the counterplan because it increases competitive pressure and guarantees informed choice.

KTF 12 — The Koret Task Force on K–12 Education, a group of senior education scholars brought together by the Hoover Institution, 2012 (“Choice and Federalism: Defining the Federal Role in Education,” Report by The Koret Task Force on K–12 Education, Available Online at <http://www.hoover.org/sites/default/files/research/docs/choice-and-federalism.pdf>, Accessed 06-15-2017, p. 67-68)

In thinking about the magnitude of effects on school performance that might be produced by a truly open and competitive school marketplace, it is important to consider that the competition for regular public schools that is presently provided by charter and private schools is weak. Unlike a private liberal arts college that will be forced to close or restructure itself if it cannot maintain enrollment (as more than 35 percent have had to do in the last twenty years), regular public schools are frequently buffered from enrollment losses. At the same time enrollment gains at charter and private schools may be a mixed blessing. To be specific, because charter schools are typically underfunded on a per-pupil basis relative to regular public schools, and because funds for students do not flow directly via a backpack model from public schools losing students to charter schools gaining students, the economic competitive pressure on regular school administrators is muted. Further, for many charter schools, each student enrolled is a loss leader in the sense that the school has to raise private funds to cover the difference between the actual costs of educating that student and the public funding that is received. Further, there are often perverse positive incentives for regular public schools that lose students. For instance, overcrowding may be reduced and lower-performing students may be disproportionally those that flee, whereas funding may remain constant. Finally, competition as it presently exists in US public education does not conform to the models of information provision and choice architectures [end page 67] that we propose. In other words, when parents have choice at all they typically have to exercise it without valid and easily understood information on school performance.

That the vast majority of studies of school competition in the United States find positive effects on school performance in the area of academic achievement is remarkable, given that the competitive pressures are weak and parents aren’t well informed. We believe that the existing research on the systemic effects of school competition in the United States is sufficient in and of itself to support the view that schools improve when parents can choose which schools their children attend. When research in K–12 education is combined with the voluminous research and theory on competition in other fields, we believe there is little rational basis for the position that schooling delivered through a hierarchical monopoly (the present system) will achieve better outcomes than schooling delivered through a marketplace in which parents have choice and information and funding follows students to the schools they attend.

### CP Solves Information Gap

#### The counterplan solves the information gap — this empirically improves outcomes.

KTF 12 — The Koret Task Force on K–12 Education, a group of senior education scholars brought together by the Hoover Institution, 2012 (“Choice and Federalism: Defining the Federal Role in Education,” Report by The Koret Task Force on K–12 Education, Available Online at <http://www.hoover.org/sites/default/files/research/docs/choice-and-federalism.pdf>, Accessed 06-15-2017, p. 45-49)

Clearly, there is much work to be done on the design and implementation of K–12 enrollment systems that provide the maximal choice to parents and valid information on school popularity. We note, however, the considerable progress that has already been made in implementing strategy-free enrollment processes in the public schools in New York City and Boston. The challenges that must be addressed are largely around equity of access and the inclusion of the universe of available schools, including private schools. Were federal funds for high-need K–12 students available to any accredited education provider, as is the case in postsecondary education, private schools would have a reason to participate in an open-enrollment system.

Designing an effective choice architecture is relatively simple compared with many of the challenges facing K–12 education in the United States. And the dividend will be huge. The chicken-and-egg problem for ESEA reauthorization (i.e., how can the federal government require choice when the necessary choice architecture is present only in a few jurisdictions) can easily be addressed by providing states that adopt choice systems a release from a variety of other federal regulations and by providing competitive funding to entities that design and manage such systems.

• As a condition of the receipt of federal funds to support the education of individual students, schools be required to participate in data collections to be used to report to the public on the performance of individual schools.

• The federal government should competitively fund the designers and implementers of school choice portals. [end page 45]

Just as people may be lined up to see a movie or eat at a restaurant for what film critics and nutrition experts might judge the wrong reasons, so too can the revealed popularity of schools send a false signal about school quality. In the postsecondary arena, for example, that the University of XYZ is more selective than the College of ABC sends a fuzzy signal, at best, as to whether XYZ provides a superior education. The potential for choice and competition to improve the quality of schooling depends on parents having good information on which to base their choice of school.25

Suppose that, per standard economic theory, parents are prepared to act rationally in their choice of schools. In other words, they know the outcomes they want for their children, calculate the probability that each of the schools available to them will produce those outcomes, and select the school that maximizes the probability of those outcomes. Of course, parents choosing schools for their children are no more fully rational than people choosing restaurants at which to eat, but even were parents disposed to act rationally, they currently operate under severe information constraints that hamper their ability to maximize the outcomes they seek.

The only information parents are presently entitled to with respect to school performance is from district and school report cards that are required under the ESEA. This information, however, is insufficient to allow parents to make the best decisions for their children (e.g., it lacks any measures of consumer satisfaction; academic achievement indexes do not take into account the value added by schools; measures of teacher effectiveness are absent). Some missing information is held by districts and states and not released to parents and the public, [end page 46] which allows the education bureaucracy to manage choice in ways that serve its interests, rather than those of students and parents.

Further, the information that is made available to parents is typically presented in ways that degrade whatever value it might have. Local school districts are presently responsible for presenting information to parents to support school choice, but they have significant incentives to hoard that information and to present it in a self-serving manner. For instance, they may wish to present themselves as attractive, spread enrollments across school facilities, minimize transportation costs, and reduce the influence of actors outside the management bureaucracy. These self-serving tendencies are not theoretical; roughly half of all districts required to offer school choice due to low-performing schools under the current ESEA notify eligible parents well after the school year has already begun. What parent wants to transfer her child to another school partway through the school year, with all the disruption in learning and relationships with peers that will result? Whether some school districts notify eligible parents at all is in question: about a quarter of parents with a child eligible for choice indicate that they have not received notification about this option from the school district.26

Because school districts are interested parties in the choice transactions made by the population they serve, we recommend that they should not be the architects and managers of either the choice process or the provision of information that would be the primary resource for parents. The federal government could launch competitions to fund independent entities to carry out these tasks; it could fund states to carry out such competitions; or it could simply require states to establish [end page 47] choice processes that are at an arm’s length from schools as a condition of receiving discretionary funds under the ESEA and IDEA.

As we have indicated, parents need more and different types of information than they are presently receiving from federally mandated school report cards. Among the types of the now missing information that could be required are the percentage of inexperienced teachers in a school; popularity of the school in districts that offer open enrollment or as measured through parental satisfaction surveys; tenure of the principal and past performance of schools in which that principal has served; the transfer rates for students; absentee rates for teachers; absentee rates for students; curriculum focus in key subjects; availability of extracurricular and after-school programs and rates of student participation in those programs; annual operating budget of the school expressed as overall per-pupil expenditure and instructional per-pupil expenditure; rates of detention and disciplinary actions; gain scores on districtwide assessments; availability of accelerated and advanced coursework (e.g., advanced placement courses and levels of student participation and performance in those courses); and, for high schools, graduation rates and college enrollment and persistence rates.

How information is presented to parents is also important. A federal study of Title I implementation found that most school choice notification letters to parents omitted key types of information, such as the schools parents could choose, and that the average notification letter was written above an eleventh-grade reading level, which is another reason that the systems that support school choice need to be independent of the schools and the school systems that are the entities being chosen. The medical residency match would not work if it were left up to individual medical schools to manage it. [end page 48]

Strong evidence exists that providing better information on school performance combined with opportunities for school choice affects parental behavior and student outcomes. For example, Hastings and Weinstein conducted an experiment in the Charlotte-Mecklenburg School District in which information sheets clearly and simply describing and comparing schools’ academic performance were distributed along with school choice forms to parents with children in randomly selected schools serving primarily low- to middle-income neighborhoods. Parents in the control schools in the same neighborhoods received either no information on school performance or, if they were in schools that were sanctioned under NCLB, the federally mandated information. The researchers found that providing parents with direct information on school test scores resulted in significantly more parents choosing higher-scoring schools for their children. In turn, children of parents in the informed-choice group subsequently evidenced significantly higher academic achievement than children of parents in the low-information choice condition.27

#### The counterplan solves information asymmetry.

KTF 12 — The Koret Task Force on K–12 Education, a group of senior education scholars brought together by the Hoover Institution, 2012 (“Choice and Federalism: Defining the Federal Role in Education,” Report by The Koret Task Force on K–12 Education, Available Online at <http://www.hoover.org/sites/default/files/research/docs/choice-and-federalism.pdf>, Accessed 06-15-2017, p. 69-70)

A marketplace for education should no more be free of government oversight and regulation than a marketplace for gas grills. People need to be protected from exploding grills, and students and their families, from fly-by-night operators and from persistently unsafe or ineffective schools. Consumer protection in the form of requirements that must be met by schools that enter into and continue to provide publicly funded services in the K–12 education market are an essential state function, notwithstanding the potential for excessive or unwise regulation. The requisite mechanisms already exist in the postsecondary market in the form of accreditation and for charter schools in the form of state or local level charter authorizers, although there is considerable room for improvement in both these mechanisms.45

Another important federal regulatory and oversight role concerns the structure and implementation of choice architectures to prevent even greater concentrations of high-need students in particular schools than we presently experience. More-educated, affluent parents tend to be more active and informed consumers of education services for [end page 69] their children than less-affluent, educated parents. Chile implemented a voucher system in 1981 that provided vouchers to any student who wished to attend a private school. The voucher program increased private school enrollment from 20 percent to 40 percent within the first seven years. Middle-class students, however, were much more likely than poor students to leave public schools for private schools. The Chilean experience illustrates that choice systems must be carefully designed to avoid students being sorted by race, economic background, and other conditions that represent externalities that the nation wants and needs to temper. We have previously described ways that choice systems can be engineered to avoid schools that are segregated on dimensions of student need. For example, the simple feature of eliminating a default school assignment by the school district—thus requiring every parent to engage in school choice—reduces socioeconomic differences in the likelihood that parents will shop for schools. Further, if the information on the school choice portal is designed to highlight clearly important variables of school performance rather than leaving it up to parents to sort through dozens of variables of varying levels of importance in frequently opaque displays, socioeconomic differences in knowing what’s important to consider can be muted. Here, again, the federal government has a role to play, for example, by providing funding through open competitions for designers and implementers of school choice portals.

### They Say: “Racialized Inequality DA”

#### School choice achieves integration and closes opportunity and achievement gaps — aff authors are wrong.

D’Amato 17 — David S. D’Amato, Adjunct Professor of Law at DePaul University, Member of the Board of Policy Advisors at the Heartland Institute and the Future of Freedom Foundation, holds a J.D. from New England Law | Boston and an L.L.M. from Suffolk University Law School, 2017 (“Integrating schools by expanding choice,” *The Hill*, March 20th, Available Online at <http://thehill.com/blogs/pundits-blog/education/324886-integrating-schools-by-expanding-choice>, Accessed 06-19-2017)

Last spring, a report from the U.S. Government Accountability Office revealed several disturbing, interrelated trends in U.S. public education. The GAO found that racial segregation is growing in America’s public schools and that the color divide predictably tracks another, the troubling concentration of poor students in these schools.

The GAO’s findings, based on a survey of data from the 2000-2001 to 2013-2014 school years, show that schools that “had high percentages of poor and Black or Hispanic students grew from 9 to 16 percent.” And these schools are “the most racially and economically concentrated” overall, with 75 to 100 percent of students being either black or Hispanic and eligible for free or reduced-price lunches.

In the ‘60s and ‘70s, following the Supreme Court’s 1954 decision in Brown v. Board of Education, schools steadily desegregated, the plans often compelled and overseen by the courts.

But American public schools have seen a recrudescence of racial segregation since the ‘80s, even as other social institutions and areas of life have become more integrated. In a report for EdChoice, economist Benjamin Scafidi suggests that this increased race and class segregation may be the result of “growing programmatic homogenization” in American public schools.

As public schools across the country grow more alike, students sort by race and class rather than according to interest or school specialization, which has effectively been precluded.

A large and growing body of evidence suggests that introducing more choice and autonomy for parents would help to reverse the harmful resegregation trend of the last few decades.

In assigning students to their schools based on their physical addresses, the government education system reinforces ethnic, social, and economic homogeneity — and thus segregation — as a matter of course. Among the most powerful and obvious arguments for school choice is that it breaks this cruel pattern, allowing parents and their children an escape from the underperforming, indeed second-class, schools to which American society has relegated poor and minority students.

School choice options (for example, voucher programs) allow students from low-income homes, often in predominantly-minority urban communities, to attend better public schools in the suburbs or even private schools that would otherwise have been too expensive.

The relationship between race issues and the cluster of discrete policies grouped together under the term “school choice” has long been a source of controversy. Such choice-expanding policies have followed a wide range of plans, and the desegregation impact of school choice will naturally depend on the design of the particular program under consideration.

Considered as a whole, the empirical evidence on school choice programs recommends them as a potent remedy to the problem of segregation. In fact, school choice policies are doubly beneficial, providing students in the worst schools better alternatives and furthering integration in some of the most racially segregated areas of the country.

Indeed, as a two-part installment of NPR’s This American Life titled “The Problem We All Live With” illuminated, some critics of school choice oppose is precisely because it integrates schools; the series highlighted a Missouri town hall meeting in which several parents express their disapproval of a school choice policy that allowed students from a mostly-black neighboring district with failing schools to opt for a different school. It’s easy to explain how school choice policies promote school desegregation; they break the connection between location on a map and assigned school, a connection that has systematically disadvantaged students of color.

As reporter Nikole Hannah-Jones observed on This American Life, “In most of the thousands of poor, segregated schools in America, that would be it. Your zip code is the anchor that traps you.”

School choice stands to benefit these poor, minority students far more than advantaged students, those from more affluent communities whose parents already have choices and whose public schools tend to meet or exceed standards.

In 2013, education scholar Greg Forster surveyed the findings of eight studies on the racial integration effects of school choice — specifically, means-tested voucher programs — in Cleveland, Milwaukee, and Washington, DC.

In seven of the eight, voucher programs that allowed parents to send their children to private schools were shown to increase racial integration. These findings stand to reason. Because public school segregation tends to coincide with geographical segregation, private schools — unbound to a fixed locale — tend to be more integrated.

All of this is to say nothing of the myriad other benefits of school choice. As mechanisms for achieving accountability and strong student performance, choice and competition have been proven themselves more effective than either further centralizing testing and curriculum standards or throwing more money at the problem. Human capital and institutional culture are far more important to successful K-12 education than is the number of dollars spent per student. And as in any other human enterprise, accountability requires choice, options from which an individual may freely choose.

Comparisons, to be relevant and actionable from a policy perspective, must be made between the known facts about school choice and the public education status quo as it actually exists and has existed. It is idle to compare school choice to a counterfactual version of government-monopoly education in which segregation has not steadily increased for more than thirty years.

At the very least, expanding the range of options available to underprivileged parents and their children, minorities in particular, compares quite favorably to the broken status quo. Choice and competition are inherently disruptive to the status quo, and no one is entitled to the continuation of the way things are, whether it’s the school administrators and union bosses invested in it or the Missouri parent who believes she’s entitled to a segregated school.

#### Choice expands opportunities for poor and minority students.

Biddle 12 — RiShawn Biddle, Editor and Founder of *Dropout Nation*—an online publication about education reform, Director of Communications at the National Indian Education Association, 2012 (“The False Debate Over School Choice and Equal Opportunity Must End,” *Dropout Nation*, January 31st, Available Online at <http://dropoutnation.net/2012/01/31/the-false-debate-over-school-choice-and-equality-must-end/>, Accessed 06-19-2017)

Contrary to what the NAACP and its allies think, expanding charter schools and choice doesn’t limit equal opportunity. If anything, it is choice that will help expand and equalize opportunities high-quality school opportunities for poor and minority kids by ending Zip Code Education policies — such as zoned schooling (along with restrictions on expansion of school choice that are supported by the NEA, the AFT, and district bureaucracies) — that relegate families to schools that aren’t worthy of their children’s futures. Right now in Mississippi, poor families, regardless of where they live, are restricted to failure mills in their neighborhoods, while middle class families (especially those who are minority or the first in their generation to achieve such status) are often restricted to warehouses of mediocrity whose shiny new buildings hide laggard instruction and low expectations for poor white, black and Latino kids. At the same time, choice also helps to give families their rightful roles as lead decision-makers in education, breaking the power of district bureaucracies (who are the biggest employers and political players in many parts of the Cotton State) and the NEA affiliates that influence them.

If anything, school choice can help jumpstart the push for other systemic reforms. Bringing leading charter school operators such as KIPP and Green Dot to the state (along with nurturing high-quality local operators) would certainly help poor and minority kids get the high-quality teaching, curricula, and cultures of genius that they need for lifelong success. At the same time, expanding choice will jumpstart reforms — especially in improving how teachers are recruited, trained, evaluated, and compensated — needed to improve American public education in Mississippi and throughout the nation.

The NAACP and its allies should stop engaging in faulty thinking that stands against all kids, including those from poor and minority households. Particularly given its proud legacy in advancing civil rights, the NAACP should stand for choice and equal opportunity, not for just one or the other.

#### No studies support their argument.

Forster 16 — Greg Forster, Senior Fellow with the Friedman Foundation for Educational Choice, holds a Ph.D. in Political Philosophy from Yale University, 2016 (*A Win-Win Solution: The Empirical Evidence on School Choice*, Fourth Edition, May, Available Online at <http://www.edchoice.org/wp-content/uploads/2016/05/A-Win-Win-Solution-The-Empirical-Evidence-on-School-Choice.pdf>, Accessed 06-19-2017, p. 1)

Key findings:

• Ten empirical studies have examined school choice and racial segregation in schools. Of those, nine find school choice moves students from more segregated schools into less segregated schools, and one finds no net effect on segregation. No empirical study has found that choice increases racial segregation.

### They Say: “Blame-Shifting DA”

#### School choice improves public schools.

Forster 16 — Greg Forster, Senior Fellow with the Friedman Foundation for Educational Choice, holds a Ph.D. in Political Philosophy from Yale University, 2016 (*A Win-Win Solution: The Empirical Evidence on School Choice*, Fourth Edition, May, Available Online at <http://www.edchoice.org/wp-content/uploads/2016/05/A-Win-Win-Solution-The-Empirical-Evidence-on-School-Choice.pdf>, Accessed 06-19-2017, p. 4)

Meanwhile, the idea that school choice might improve public schools is dismissed as ideological claptrap. In fact, the empirical evidence consistently shows it is the case, and the reasons are not hard to explain. One reason choice would improve public schools is that it allows parents to find the right particular school for each individual child. Every child is unique and has unique educational needs.

But probably the most important reason school choice would improve public schools is because it gives parents a meaningful way to hold schools accountable for performance. Under the current system, if a school is not doing a good job, the only ways to get a better school—purchase private schooling or move to a new neighborhood—are expensive and impractical.

The current school system is especially unjust to low-income and disadvantaged families. As a government monopoly, the system is most likely to provide good services to, and be responsive to the concerns of, politically powerful parents, which means wealthier, better-educated, and (let’s face it) whiter parents. Poor and otherwise disadvantaged families too often get the least attention from the system. And they are the least likely to have the means to seek private schooling or move. Seventy percent of black workers, for example, make less than $50,000 per year, compared to 52 percent of white workers.2 Indeed, a decreased ability to exit the system only reinforces the system’s tendency to deliver poor services. They are captive clientele.

Thus, in the absence of parental choice, schools lack the healthy, natural environment of client empowerment that is essential to producing better performance in most other service institutions. Hospitals know they must do a good job or lose patients. Professionals like doctors and lawyers must provide good services or lose clients. Stores must provide good value or lose customers. This system is so critical to keeping institutions mission-focused that we take it completely for granted—everywhere but in K–12 schooling.

It is widely agreed that monopolies generally provide poor quality because nothing bad will happen to them if they do not serve their clients well. When they get bad service, customers say, “I’ll take my business elsewhere,” because they know that is what will prompt better service. They do this to nonprofit institutions the same way they do it to businesses, because they know it is not profit that creates better performance; it is client choice.

The failure of education policy to embrace the American principle that people should have stewardship over their own lives and make their own choices is a great hindrance to reform. One way opinion leaders can rectify this problem is by making the public aware of the large body of empirical research that examines how choice affects participants, public schools, and the civic community at large.

#### The counterplan is comparatively better than the plan at improving education.

KTF 12 — The Koret Task Force on K–12 Education, a group of senior education scholars brought together by the Hoover Institution, 2012 (“Choice and Federalism: Defining the Federal Role in Education,” Report by The Koret Task Force on K–12 Education, Available Online at <http://www.hoover.org/sites/default/files/research/docs/choice-and-federalism.pdf>, Accessed 06-15-2017, p. 31-34)

Restructuring compensatory funding in ESEA and IDEA

The largest federal K–12 education programs administered by the US Department of Education, Title I of the ESEA and the Individuals with Disabilities Education Act (IDEA), are designed to disburse funds to states and school districts for the education of high-need students. Rather than the complicated and intrusive federal schemes under which funds are presently disbursed under Title I of ESEA (for economically disadvantaged students) and IDEA (for students with disabilities), funds should be attached to individual students to be transferred to the schools and educational services used by those students. Individual schools would receive federal funds based on student counts, with a weighting formula to adjust for factors such as the increased burden of educating high concentrations of high-need students and for regional differences in the costs of services.12

There is nothing radical or untested about our proposal for weighted student funding, sometimes called backpack funding because the funds are attached to individual students who carry that resource to whichever school they attend. A 2009 report identified fourteen school districts that had implemented some form of weighted student funding.13 Many more are considering moving toward it, most recently Philadelphia. In general, the experience with backpack funding is that more funds go to the schools that serve needy students than under traditional distribution schemes, which is exactly what is intended. [end page 31]

Some would argue that Title I of ESEA is a form of weighted student funding in that districts receive funding in proportion to the number of students they serve from economically disadvantaged backgrounds.14 From its beginning, however, Title I funding has been directed to school districts rather than to individual schools. Although funding is supposed to favor high-poverty districts and the highest poverty schools within those districts, the funding formula distorts that intent. The most recent national evaluation of Title I found that the lowest poverty schools received 37 percent more per enrolled low-income student than the highest poverty schools.15 Given the intent of the law, that disparity should flow in the opposite direction. Twenty-seven percent of Title I funds received by school districts do not find their way into instructional expenditures at all, being used for administration, transportation, student services, and the like. If the American people and Congress want the roughly $15 billion in funds that are appropriated annually under Title I to get to the schools that serve economically disadvantaged students, they need to attach the funding to students rather than dispersing it to districts through complex and politically motivated formulas. The same is true of the roughly $12 billion in IDEA funding. A school that enrolls a high-need student should be able to count on a supplemental deposit of a known amount to its operating budget.

As some of the authors of this report have demonstrated empirically, beyond a threshold level it is how money is spent rather than per pupil [end page 32] expenditure itself that is most directly related to student achievement.16 Huge differences exist among school districts in how productively they invest their funds. For example, the Wisconsin school systems of Oshkosh and Eau Claire are about the same size, serve similar student populations, and get largely similar results on state exams—but Eau Claire spends over $1,000 more per student than Oshkosh.17 In a larger frame, the United States spends more per student on its education system than almost any other developed country in the world without world-leading results.18

Our proposals regarding how federal funds should be dispensed to support the education of high-need students are not an endorsement of views on education finance that have found their expression in so-called adequacy legal actions. The theory of action of equity/adequacy lawsuits is that the quality of education is proportional to the level of expenditure and that, thus, poorer school districts should receive a court-mandated state supplement of funds to assure an adequate education for their students. School resources, however, are not the dominant factor in whether students “beat the odds.”

Increasing productivity in education is extremely important. Schemes for providing compensatory funding for the education of high-need students need to enhance the productivity of the institutions that serve those students. Simply handing out more money to school districts will not raise student achievement substantially for students with special needs. Our proposal creates the necessary link between compensatory [end page 33] funding for high-need students and increasing the productivity of the education providers who serve those students. It does so through the competitive mechanisms detailed subsequently in this report. Weighted funding of individual students is a critical design feature of our model. It creates conditions under which federal cash transfers for high-need students support choice and competition and thereby increase the quality of schooling and the achievement of students.

#### Choice solves. Funding doesn’t.

Hederman and Azerrad 12 — Rea Hederman, Assistant Director and Research Fellow at the Center for Data Analysis at The Heritage Foundation, holds an M.P.P. from Georgetown University, and David Azerrad, Associate Director of the B. Kenneth Simon Center for Principles and Politics at The Heritage Foundation, holds a Ph.D. in Politics from the University of Dallas, 2012 (“Defending the Dream: Why Income Inequality Doesn’t Threaten Opportunity,” Heritage Foundation Report, September 13th, Available Online at <http://www.heritage.org/poverty-and-inequality/report/defending-the-dream-why-income-inequality-doesnt-threaten-opportunity>, Accessed 06-19-2017)

These failures of our education system have far-reaching consequences for the students who are left behind. By failing to impart basic literacy and numeracy, our schools are effectively putting the American Dream beyond the reach of countless children. It is hard to think about moving ahead in life if you have a hard time reading and trouble counting.

Those on the Left will, of course, readily acknowledge these problems, but their proposed solution—more funding—completely misses the mark. Our schools are already awash in money. According to the U.S. Department of Education, the average annual per-pupil expenditure in public schools is more than $10,000—double the amount it was in 1970 (in constant dollars). This means that the taxpayers will spend no less than $120,000 on the education of the typical child who finishes high school. Regrettably, however, the correlation between spending and achievement is basically nil.[155]

To begin to address the crisis in education, we must recognize that throwing more money at our schools will not fix the problem. Rather, we need to empower parents to choose the best schools for their children and release schools from federal bureaucratic strictures that stifle reform and innovation.[156] To do that, we do not need to wait for Superman to come to the rescue.

### They Say: “Reject Neg Ev”

#### Multiple studies support the benefits of choice.

Miller 15 — Chad Miller, Director of Education Policy at the American Action Forum—a nonprofit issue advocacy group, former Senior Director for Federal Advocacy at the National Alliance for Public Charter Schools, 2015 (“Providing Equality Of Opportunities: A Review Of School Choice 2015,” American Action Forum, January 27th, Available Online at <https://www.americanactionforum.org/insight/providing-equality-of-opportunities-a-review-of-school-choice-2015/>, Accessed 06-19-2017)

Results

With the number of students participating in choice programs increasing, parents from all economic backgrounds are seeing the benefits of sending a child to a better-fit school. It is also important to note that a majority of families involved in publically funded school choice programs come from low-income communities. Meanwhile, public school systems in low socioeconomic status communities are often under-resourced, negatively affecting students’ academic progress. Multiple research studies have shown that providing educational options creates a more competitive, productive school system for all and leads to improved academic outcomes.

One such report by education expert Paul E. Peterson, summarizes the positive impact of providing education options to disadvantaged students and the long-term academic effects. Referencing a study conducted on high school test performance at the University of Chicago, he notes the positive effect of a private Catholic education on student achievement. Using test results, the private education yielded positive impact for all students. Specifically, socio-economically disadvantaged minority students received an even greater private school advantage. Peterson also notes the private sector has shown positive impacts on education attainment, especially for minority students.

Another study in Washington, D.C. examined the effects of the DC Opportunity Scholarship Program on high school graduation rates. The DC Opportunity Scholarship Program allowed students to use a voucher up to $7,500 to cover tuition, books, and transportation for a better school choice. In 2009, 5,547 students qualified for a voucher. Of the 5,547 students, 2,281 students were awarded the scholarship and used it within the 2009 year. 91 percent of these students graduated high school. This was thirty percent higher than the average graduation rate of D.C. Public Schools. The findings from this scholarship program study promote the positive effects of school choice in academic achievement, which then creates a more highly educated community.

In New York, a study by the Brookings Institution and Harvard University shows African American participants in a private school choice program were 24 percent more likely to enroll in college as a result of receiving a voucher. The study also shows that African American enrollment rates in selective colleges more than doubled among voucher students, and the rate of enrollment in full-time colleges increased by 31 percent.[3]

There are others, and more studies are released each year, but overall the findings are the same. School choice programs are providing a growing number of students the opportunity to achieve academic success.

Conclusion

With the rise of different educational options, school choice remains an important factor in ensuring equal opportunities for disadvantaged children. As concluded by multiple research studies, school choice and supporting financial aid programs allow disadvantaged students a better chance to receive a high-quality K-12 education. Moreover, choice programs offer economic benefits to the state through scholarship tax programs and even promotes a competitive, productive atmosphere among different types of schools. Simply put – school choice yields positive results.

#### “Gold standard” research supports choice.

Bedrick 16 — Jason Bedrick, Education Policy Analyst at the Cato Institute, former Member of the New Hampshire House of Representatives, former Education Policy Research Fellow at the Josiah Bartlett Center for Public Policy, holds a Master’s in Public Policy from the John F. Kennedy School of Government at Harvard University, 2016 (“Public or Private, What Students Need Is Educational Choice,” *WalletHub*, August 5th, Available Online at <https://www.cato.org/publications/commentary/public-or-private-what-students-need-educational-choice>, Accessed 06-15-2017)

Perhaps most importantly, research shows that educational choice works. The near-consensus of random-assignment studies — the gold standard of social science research — finds that educational choice programs improve students’ academic performance and increases their likelihood of graduating high school and enrolling in college.

Not only do participating students benefit, but so do those who remain in their assigned schools. More than 30 studies find that choice programs produce modest but statistically significant positive effects in district schools as a result of the increased choice and competition.

Whether they exercise choice or not, all students benefit from having more choices.

#### Outlier studies don’t disprove the pro-choice consensus.

Forster 16 — Greg Forster, Senior Fellow with the Friedman Foundation for Educational Choice, holds a Ph.D. in Political Philosophy from Yale University, 2016 (*A Win-Win Solution: The Empirical Evidence on School Choice*, Fourth Edition, May, Available Online at <http://www.edchoice.org/wp-content/uploads/2016/05/A-Win-Win-Solution-The-Empirical-Evidence-on-School-Choice.pdf>, Accessed 06-19-2017, p. 1-2)

Executive Summary

This report surveys the empirical research on private school choice programs. It provides a thorough overview of what the research has found on five key topics:

• Academic outcomes of choice participants

• Academic outcomes of public schools

• Fiscal impact on taxpayers and public schools

• Racial segregation in schools

• Civic values and practices

The evidence points clearly in one direction. Opponents frequently claim school choice does not benefit participants, hurts public schools, costs taxpayers, facilitates segregation, and even undermines democracy. However, the empirical evidence shows that choice improves academic outcomes for participants and public schools, saves taxpayer money, moves students into more integrated classrooms, and strengthens the shared civic values and practices essential to American democracy. A few outlier cases that do not fit this pattern may get a disproportionate amount of attention, but the research consensus in favor of school choice as a general policy is clear and consistent.

The results are not difficult to explain. School choice improves academic outcomes for participants and public schools by allowing students to find the schools that best match their needs and by introducing healthy competition that keeps schools mission-focused. It saves money by eliminating administrative bloat and rewarding good stewardship of resources. It breaks down the barriers of residential segregation, drawing students together from diverse communities. And it strengthens democracy by accommodating diversity, de-politicizing the curriculum, and allowing schools the freedom to sustain the strong institutional cultures that are necessary to cultivate democratic virtues, such as honesty, diligence, achievement, responsibility, service to others, civic participation, and respect for the rights of others.

The size of the benefit provided by existing school choice programs is sometimes large, but is usually more modest. This is not surprising because the programs themselves are modest—curtailed by strict limits on the students they can serve, the resources they provide, and the freedom to innovate. Only a universal educational choice program, accessible to all students, is likely to deliver the kind of dramatic improvement American schools need in all five of these important areas.

### They Say: “No Coercion Net-Benefit”

#### School choice is a moral imperative because it protects liberty. The aff has an overwhelming burden of proof: if consequences are comparable, always prioritize liberty.

Vallier 17 — Kevin Vallier, Associate Professor of Philosophy at Bowling Green State University, Adjunct Fellow at the Niskanen Center, holds a Ph.D. in Philosophy from the University of Arizona, 2017 (“The Moral Imperative of School Choice,” Niskanen Center, May 24th, Available Online at <https://niskanencenter.org/blog/moral-imperative-school-choice/>, Accessed 06-20-2017)

The empirical debate aside, I will argue that school choice is a moral imperative, regardless of whether it boosts educational outcomes. Assume for the sake of argument that moving to a robust school choice policy regime, where any family in America can receive a tax credit to home school or to send its children to a private school, or to any other public school, will produce no net improvement in educational outcomes. We should still have such a system based on two ordinary, widely acceptable moral principles.

First, when two policies have roughly equal empirical promise, we should choose the policy that better protects liberty. Second, parents have a much stronger moral claim to decide how their children should be educated than government does, even when greater government control could produce more social and economic equality. Let’s call the first the Liberty as Default Principle and the second the Parental Autonomy Principle.

The Presumption of Educational Liberty

The Liberty as Default Principle is based on a simple idea: if government is going to coerce people, it must meet a presumption in favor of liberty. Personal freedom is not absolute, just the default, but this means that there must be a good reason to override it. Many political philosophers from across the political spectrum hold to this principle (Joel Feinberg, Stanley Benn, John Rawls, Jerry Gaus), for it is based on the even more fundamental idea that all personal interference with the choices of others requires a justification; the interferer bears the burden of proof. The presumption in favor of liberty can be overridden by lots of considerations, such as protecting people from harm or exploitation. But in the absence of a justification, liberty should be the rule, not control or domination.

The Liberty as Default Principle only specifies who has the burden of proof in proposing legal policy. The Parental Autonomy Principle is much stronger; it holds that in cases where parental liberty is at stake it is especially hard to override. And the Parental Autonomy Principle is just as compelling. The family unit, however much it has varied across human history, is of greater moral importance than government. Parents have a much stronger moral claim on how to provide for their children than government. This is plain when we ask what could morally justify government taking children away from their parents. We generally think that parents must have seriously harmed or neglected their children. Our reasons for deferring to parental autonomy (again, as a default) are empirical and normative—empirical because parents will better provide for their children than governments, and normative because parents simply have a strong moral right to raise their children as they choose.

However governments get their authority, governmental authority over children is hard to acquire. This does not mean that government cannot compel parents to feed or clothe their children or to educate them in general. But it does mean that when governments and parents disagree about how to raise the parents’ children, the parents should almost always prevail.

Parental liberty includes not only the right to choose how to feed, clothe, and cure children. It also includes the right to teach children just about anything, especially when it comes to moral, political, and religious matters. We already acknowledge that this right extends to educational choices on at least some margins. After all, even staunch public school advocates favor democratic governance of schools; and they probably support their local PTA. Parents should at least collectively have a say in how their children are educated. Furthermore, few people in the United States want to ban all private schools or home schools.

We also do not normally think that a governmental interest in ensuring equality of opportunity or equal outcomes overrides parental choices. We do not allow the government to pursue its interest in equality (insofar as it has such an interest) by redistributing children from bad parents to good parents, or even by forcibly removing rich children from private schools or home schools in order to increase the quality of under-performing schools. We do not coercively forbid committed parents from giving their children almost any advantage, and we’re even inclined to allow parents incredible liberty to pursue positional goods, goods whose consumption reduces the quality or value of other forms of the good.

#### Choice is intrinsically valuable because it decreases coercion.

Jacoby 17 — Jeff Jacoby, Columnist for *The Boston Globe*, holds a J.D. from Boston University Law School, 2017 (“School choice keeps the peace,” *The Boston Globe*, February 12th, Available Online at <http://www.jeffjacoby.com/19662/school-choice-keeps-the-peace>, Accessed 06-19-2017)

Yet the reasons to liberate Americans from the monopoly of government-run schooling go beyond educational outcomes and academic success. School choice also promotes peace.

Public schools, it is said, bring together children from differing backgrounds and imbue them with the shared values that unite our pluralist society and prevent balkanization. It's a pretty theory, but it has never been true.

"Throughout American history," observes Neal McCluskey of the Cato Institute, "public schooling has produced political disputes, animosity, and sometimes even bloodshed between diverse people. Such clashes are inevitable in government-run schooling because all Americans are required to support the public schools, but only those with the most political power control them."

Far from being the glue that holds our communities together, public schooling is too often the wedge that drives them apart. Americans differ profoundly on countless fundamental matters — abortion and guns, gay marriage and Darwinism, immigration and policing, Islam and foreign trade. By definition, a one-size-fits-all public school model — in which school committees decide which messages schools promote, which textbooks are used, and which programs get funded — cannot reflect the views of all parents.

For those who find themselves in the minority, there is no equitable resolution. Either they resign themselves to the indoctrination of their children in ways they don't approve, or they do battle with other parents or elected officials to change the way their kids are taught, or they pull out of the government-education system altogether, opening their own schools at their own expense while still having to pay for the public schools where their priorities are rejected.

When public schools have a monopoly on education, coercion is inescapable. And where there is coercion, there will be conflict.

At the Cato website, McCluskey maintains a "Public School Battle Map" that catalogs the clashes and angry controversies into which neighbors are constantly driven by the public school status quo. These battles erupt in state after state, year after year. They are fought over differences about curriculum, moral and religious values, reading assignments, race and ethnicity, sexuality and gender. For 2016 alone, scores of conflicts are recorded: in a Louisiana school district, for example, where students were banned from bringing American flags to football games; in Mississippi, where legislation was introduced to protect the right of teachers to discuss "controversial subjects," such as creationism; in Maine, where a high school senior's gay pride quote for his yearbook was censored; in Colorado, where atheists demanded the right to distribute antireligious literature to students.

McCluskey's map, which goes back only to 2001, records more than 1,500 instances of such political fighting. When schools are controlled by the government, and the government is controlled by the winners of elections, parents, teachers, and administrators will inevitably end up doing battle.

More school choice means less educational conflict. Let families choose from a wide array of educational options, and you diminish their impulse to fight over what gets taught and by whom. Winner-take-all is a terrible model for civil society. By contrast, a model built on freedom, pluralism, and equality — a model in which parents have as much leeway to provide for their children's schooling as they do for their meals, clothing, or religious training — would be immeasurably fairer, and a far better bet for keeping the peace.

#### Even if they win that school choice “fails,” we can still win on this net-benefit alone.

Pondiscio 17 — Robert Pondiscio, Senior Fellow and Vice President for External Affairs at the Thomas B. Fordham Institute, Senior Advisor at Democracy Prep Public Schools—a network of charter schools, holds an M.S. in Education from Mercy College, 2017 (“Putting the evidence cart before the school choice horse,” *Flypaper*—the Thomas B. Fordham Institute’s blog, March 8th, Available Online at <https://edexcellence.net/articles/putting-the-evidence-cart-before-the-school-choice-horse>, Accessed 06-20-2017)

With Donald Trump in the White House and long-time school choice advocate Betsy DeVos installed as his education secretary, arguments for and against vouchers and scholarship tax credits are burning white hot.

A New York Times report and subsequent editorial claimed that "three of the largest voucher programs in the country, enrolling nearly 180,000 children nationwide, showed negative results." Choice advocates fired back, disputing the methodology of those studies and insisting that the vast majority of "gold standard" research has found that school choice produces "equivalent or superior academic results, usually for a fraction of what is spent on public schools," in the words of the Cato Institute's Neal McCluskey.

Who's right? Who's wrong?

Wonky battles over research studies can be illuminating. They can also be irrelevant or premature. While McCluskey and other advocates are correct that the preponderance of evidence tends to favor school choice, this entire debate puts the cart before the horse. When we look to test-based evidence—and look no further—to decide whether choice "works," we are making two rather extraordinary, unquestioned assumptions: that the sole purpose of schooling is to raise test scores, and that district schools have a place of privilege against which all other models must justify themselves.

That's really not what choice is about. Choice exists to allow parents to educate their children in accordance with their own needs, desires and values. If diversity is a core value of yours, for example, you might seek out a school where your child can learn alongside peers from different backgrounds. If your child is a budding artist, actor or musician, the "evidence" that might persuade you is whether he or she will have the opportunity to study with a working sculptor or to pound the boards in a strong theater or dance program. If your child is an athlete, the number of state titles won by the lacrosse team or sports scholarships earned by graduates might be compelling evidence. If faith is central to your family, you will want a school that allows your child to grow and be guided by your religious beliefs. There can be no doubt that, if you are fortunate enough to select a school based on your child's talents or interests or your family's values and traditions, the question of whether school choice "works" has already been answered. It's working perfectly for you.

Deciding whether or not to permit parents to choose based solely on test-based evidence is presumptuous. It says, in effect, that one's values, aspirations and priorities for one's child amount to nothing. Worse, our evidence-based debate presumes that a single, uniform school structure is and ought to be the norm, and that every departure from that system must justify itself in terms of a narrow set of outcomes that may not reflect parents' – or society's – priorities. Academic outcomes matter, of course, but so do civic outcomes, character development, respect for diversity and faith and myriad others. "These outcomes shouldn't be placed in a framework that begs the question of whether [a single school system] is the right structure," notes Ashley Berner, Deputy Director of the Johns Hopkins Institute for Education Policy.

The question is not whether academic outcomes matter, but when they matter. Evidence should be used to influence school choice program and policy designs, not to decide whether or not choice should be permitted in the first place. The desirability of school choice and educational pluralism is a values-driven question, not an evidence-based one. Decide first if families should have publicly supported options beyond a single, uniform system. Then use evidence to inform choice or ensure that taxpayer funds are well spent.

Berner is the author of the new book "Pluralism and American Public Education: No One Way to School," which notes that making traditional district schools the default setting makes American education an outlier. In other countries, she notes, the state "either operates a wide array of secular, religious and pedagogical schools, or it funds all schools but operates only a portion of them." Pluralism does not exist to create competition for state-run schools; it's valued intrinsically.

That doesn't mean pluralistic systems are indifferent to school performance. Governments in other lands intervene when schools fail to produce acceptable academic outcomes, but the corrective measures are "sector agnostic," Berner notes. In the U.K., for example, whether it's a Church of England school or a nonsectarian, state-run school that's not performing well doesn't matter, since both are government-supported. "The conversation is not, 'See? Church of England schools are terrible!' The conversation is, 'All schools need to serve students well. Period,'" she says. School outcomes are a downstream conversation. The larger, more important debate—should we have a state-run or pluralistic system?—comes first.

School choice proponents who seek to prove that vouchers, tax credits and scholarships "work" by citing test-score-based research have allowed themselves to be lured into argument that can never be completely won. They have tacitly agreed to a reductive frame and a debate over what evidence is acceptable (test scores) and what it means to "win" (better test scores). This is roughly akin to arguing whether to shop at your neighborhood grocery store vs. Wal-Mart based on price alone. Price is important, but you may have reasons for choosing the Main Street Grocery that matter more to you than the 50 cents per pound you'd save on ground beef. Perhaps Main Street's fresh local produce and personal service are more important to you.

If we limit the frame of this debate to academic outputs alone, every new study provides ammunition, but never a conclusion. The real debate we should be having is, "What kind of system do we want?" Answer that question first, then use evidence to improve the school designs, policies and programs we have agreed deserve public support.

### They Say: “Market Approach Fails”

#### Education failures are caused by government, not the market.

McCluskey 12 — Neal McCluskey, Director of the Center for Educational Freedom at the Cato Institute, former Policy Analyst at the Center for Education Reform, holds a Ph.D. in Public Policy from George Mason University, 2012 (“What to Do about Inequality? Free Market Education,” *Boston Review*, March 19th, Available Online at <https://www.cato.org/publications/commentary/what-do-about-inequality-free-market-education>, Accessed 06-20-2017)

David Grusky assumes that income inequality is necessarily a bad thing, and lays it at the feet of “market failure.” I’ll not address the overall contention because it is not my area of expertise, but in education, while Grusky is correct in perceiving many problems, they cannot be ascribed to markets. They are government failures.

On schooling, Grusky fingers two “bottlenecks” as primary inequality producers: first, artificially low supply of disadvantaged college students due to poor academic preparation and, second, constrained demand for students by slot-rationing elite universities.

Few would likely argue with these major concerns. The poor generally aren’t well prepared for college work, and elite schools do not expand their available seats to meet demand. To blame market failure for these realities, however, is impossible because American education is dominated by government.

The vast majority—86 percent—of students in elementary and secondary education attend public schools, while 11 percent go to private institutions, and 3 percent are homeschooled. This is largely a result of the requirement that all taxpayers pay for government education and expend additional funds if they want private options. Moreover, in education profit-seeking—a staple of free markets that drives investment and expansion—is highly discouraged because tax benefits accrue only to nonprofit schools.

In higher education the public-private enrollment differential is not as stark, but it is big. In 2009 only 27 percent of college students attended private schools. And government money is a gigantic piece of postsecondary funding, hitting roughly $264 billion in 2010. Again, profit-seeking is powerfully discouraged by tax laws.

We have nothing close to a free market in education—the bottlenecks are real. But, to be fair, it would be wrong to assert that moving to such a market would solve all of our educational problems. Many of those troubles appear to be linked to culture, family structures, and other factors that neither government nor markets can easily manipulate. But the existing evidence suggests that increasing educational freedom would move us in the right direction.

For one thing, in elementary and secondary education, choice already exists. However, it often can be exercised only by buying a house in a neighborhood with a preferred public school. Moving to a system of universal choice would lower the gargantuan barrier of a house-worth’s “tuition,” somewhat leveling the playing field.

Universal choice would also avoid a pernicious aspect of the current, politically controlled system: the teachers, administrators, and others whose livelihoods come from the public schools, and who therefore have the greatest stake in the system, naturally exert the most power over public schooling. And because they are normal human beings they tend to thwart efforts to hold them accountable for their performance. It’s a problem that hurts the poor the most, as they have the least political clout or ability to game the system. Choice would let the poor quickly vote with their feet, whereas the current approach forces them to engage in endless politicking in which they are hopelessly outgunned.

The research on American private school–choice programs strongly suggests that choice works for the poor. No random-assignment studies of such programs, which are usually geared toward low-income families, reveal negative effects of choice, and all show at least some positive effects. The benefits aren’t usually gigantic, but the programs are typically too hamstrung to create the widespread competition and innovation needed to create a dynamic, sustainably improving system.

In higher education, government intervention is central to creating bottlenecks. Foremost, college prices rise even more quickly than health care costs largely because the federal government, through student aid, ensures that students can pay them. But aid programs generally favor middle- or upper-class parents who have the personal or accountant savvy to take full advantage of loans and tax credits through effective long-term planning. A 1999 study reported by the National Center for Education Statistics shows that poor parents are dramatically less likely than wealthy ones to estimate the costs of college.

The failure of good colleges to scale up is rooted in the tax bias against profits. Colleges generally plow money back into existing operations rather than expand, because they can’t reward, and therefore attract, investors. Instead, existing faculty and administrators are the primary stakeholders.

Of course there are some for-profit colleges, and they have seen demand rise precipitously over the last decade. But they are under constant political attack, and their prices are steep. Again, though, the latter is a function of federal aid enabling all schools to raise their prices with impunity, not the schools’ for-profit status. And there is decent evidence that for-profit schools, other things equal, do a more efficient job of providing students the skills they are looking for.

Grusky is right that there are significant problems in American education. They cannot, however, be pinned on market failure.

#### Market competition does work in education.

KTF 12 — The Koret Task Force on K–12 Education, a group of senior education scholars brought together by the Hoover Institution, 2012 (“Choice and Federalism: Defining the Federal Role in Education,” Report by The Koret Task Force on K–12 Education, Available Online at <http://www.hoover.org/sites/default/files/research/docs/choice-and-federalism.pdf>, Accessed 06-15-2017, p. 23)

Our position is that competition for students and the public funds associated with them, if accompanied by providing parents with reliable information on the schools’ performance, will create a marketplace for schooling that will evolve toward what parents want, be more innovative, and become more productive. Creating an even playing field for schools will allow those that are responsive to the needs of parents and students to prosper.

Evidence from economics, much of it subsumed in the literature on the theory of firms, as well as considerable research in education,9 indicates that schools respond to competitive pressure. For example, West and Woessmann find that performance on international examinations by fifteen-year-olds in twenty-nine developed countries is positively associated with the share of the K–12 education marketplace that is held by private schools in those countries.10 Just as a managers of for-profit entities have their desire for salary, perks, security, power, and prestige disciplined by the extent to which the firm that employs them competes successfully for customers, so too do managers of schools respond to circumstances in which there is competition for students and their funding.

### They Say: “Doesn’t Solve Democracy Advantage”

#### School choice best supports democratic values.

Porter-Magee 14 — Kathleen Porter-Magee, Bernard Lee Schwartz Policy Fellow at the Thomas B. Fordham Institute, Superintendent and Chief Academic Officer at the Partnership for Inner-City Education—a charitable organization working to create outstanding Catholic elementary schools for low-income students, former Senior Advisor for Policy and Instruction at the College Board, former Director of Curriculum and Professional Development at Achievement First, former Director of Teacher and Principal Professional Development and Recruitment for the Archdiocese of Washington, D.C., holds an M.A. in Education Policy and Leadership from the George Washington University, 2014 (“Democracy, community, and school choice,” Thomas B. Fordham Institute, June 11th, Available Online at <https://edexcellence.net/articles/democracy-community-and-school-choice>, Accessed 07-09-2017)

While proponents of school choice often base their case on student achievement—contending that choice-based accountability leads to school improvement and stronger pupil attainments—opponents seem likelier to argue against choice on the grounds that it fractures communities and undermines democratic values. This dynamic is unfortunate because it leaves the impression that the advancement of school choice is hostile to—or at least indifferent to—issues of community and democracy. The reality, however, is that nothing could be farther from the truth.

There is no doubt that opponents of school choice are spilling more ink than reformers on this question of education for democracy and community. It is, for instance, the mission of the new Network for Public Education to “fight to protect, preserve and strengthen our public school system, an essential institution in a democratic society.” And education historian Diane Ravitch repeatedly makes the case that the traditional public school system is “one of the foundation stones of our democracy” and that “an attack on public education is an attack on democracy.”

However, the case that the traditional school system is the only or even the best path to upholding community and democracy is remarkably weak. In fact, a close look at the history of traditional public education reveals the strongly anti-democratic strains of the common schools movement, some of which we still live with today (a topic that receives a thoughtful book-length discussion in Charles Glenn’s Myth of the Common School).

The troubling but often forgotten truth is that for over two centuries, the traditional public school system was used by a white, largely Protestant elite in the service of an agenda that was often deeply anti-Catholic, anti-black, and often anti-immigrant. Its very structure and, indeed, its hostility to parental choice was driven in part by a desire for the majority to dictate the education and values for every child in this country.

The legacy of this view can be seen in the thirty-eight state constitutions that contain so-called “Blaine Amendments,” prohibiting public funding of schools with religious affiliation. While ostensibly used to protect democratic public institutions from sectarian influences, the incorporation of such provisions was part of an explicitly anti-Catholic movement aimed at forcing children into a Protestant-led education system—forced, that is, by a majority that feared “papacy” and hoped to indoctrinate Catholic immigrants into the “American” way of life. In fact, in 1922, the voters of Oregon actually passed an initiative that made it illegal to send children to parochial schools. (The Supreme Court struck it down three years later in the famous Pierce v. Society of Sisters case.) While opponents of school choice try to portray this hostility to independent schools as obvious or normal, it is not. In fact, the norm among Western democracies like Australia, England, Germany, Italy, Israel, Ireland, the Netherlands, Sweden, Switzerland, and Wales is the advancement of public education through funding to both private and public schools.

The common-school movement was even more anti-democratic on the issue of race. Throughout its history, there has been a deep hostility to the education of African Americans, first denying them access to education outright and later using both de facto and de jure segregation to ensure that black children received an unequal education. In fact, the Alabama constitution still includes a clause explicitly prohibiting black and white students from being educated together at the same school—and moves to rescind this outdated language failed as recently as 2012.

Indeed, it was in response to the hostility of the white Protestant elite that African Americans, like Catholics, took up the task of building up their own network of schools. As Chris Stewart reminds us,

School choice is not new to us, in fact, some might say we invented it. The first charter school that I can find record of was established by Lucy Laney, an African American educator, in the 1880’s. Mary McCloud Bethune came out of Laney’s school, and started her own as well. Black educators and Northern religious societies started independent schools at a time when the State would not, or could not, educate black children. That is a story which repeats itself in a consistent line from that time until now.

Given the history of school choice as a force of liberation and equality, it’s not surprising that a survey by 50CAN found that support for “creating more competition in our school system by allowing more charter schools to open” was 2.6 times higher among black liberals as white liberals and 3.6 times higher among Hispanic liberals.

Drawing upon our rich diversity as a nation and despite the open hostility for an entrenched elite, independent schools of all kinds flourish here. For example, U.S. Catholic schools are the largest nongovernmental school system in the world, and they were built on the belief that parents should have the freedom to ensure that their education was aligned with the own values and principles of their community. Urban Catholic schools, in particular, serve as bedrocks of the communities in which they’re located. And this is true especially for urban poor and minority students they serve.

In their new book Lost Classroom, Lost Community: Catholic Schools’ Importance in Urban America, authors Margaret F. Brinig and Nicole Stelle Garnett found

…that Catholic elementary schools are important generators of social capital in urban neighborhoods. . . . Catholic school closures precede elevated levels of crime and disorder and suppressed levels of social cohesion. Conversely . . . an open Catholic school in a neighborhood (correlates) with lower levels of serious crime. . . . Catholic schools matter to urban neighborhoods not only as educational institutions—although, to be sure, they matter a great deal educationally—but also as community institutions.

If we’re serious about the role of schools in saving communities and buttressing democracy, perhaps we should talk more about giving real voice and opportunities to communities to create and support their own schools. School choice, far from being an attack on our democratic values, has historically been and remains today one of its best expressions of our democracy process at work. Reformers should be rightly proud of the achievement gains that have been secured through choice, but we should be even more proud of the way in which choice embraces a pluralistic view of what public education can and should be.

#### School choice empirically boosts civic education — studies prove.

Forster 16 — Greg Forster, Senior Fellow with the Friedman Foundation for Educational Choice, holds a Ph.D. in Political Philosophy from Yale University, 2016 (*A Win-Win Solution: The Empirical Evidence on School Choice*, Fourth Edition, May, Available Online at <http://www.edchoice.org/wp-content/uploads/2016/05/A-Win-Win-Solution-The-Empirical-Evidence-on-School-Choice.pdf>, Accessed 06-19-2017, p. 23-24)

There have been seven empirical studies examining how school choice affects civic values and practices, such as toleration for the rights of others. Five of these studies find that school choice has a positive impact on these civic concerns. The remaining two studies find that school choice has no visible impact on them. None find that choice has a negative impact on these values and practices.

Measuring Civic Values and Practices

Research on how education impacts civic values and practices has measured a wide range of variables, including tolerance for the rights of others, civic knowledge, civic participation, volunteerism, social capital, civic skills, and patriotism. The largest existing review of the research comparing public and private schools on these issues, Wolf’s “Civics Exam,” found that it overwhelmingly points to either no difference or a positive impact from private schooling on these measures, even in studies that use methods to compensate for the “selection bias” of families selecting into private schools. Readers interested in a thorough overview of that research should consult that paper.47

This report looks only at empirical studies of school choice programs, as opposed to the broader universe of studies that compare public and private schooling generally. These studies tend to be methodologically superior, as better ways of accounting for selection bias are often available with choice programs. In four cases, gold-standard random-assignment methods were employed.

This report looks at all empirical studies of civic values and practices using all methods, not just the random-assignment studies. This is not the practice it followed for studies of academic effects. There are a smaller number of random-assignment studies for civic values and practices than is the case with academic effects, and it’s dangerous to rely on too small a universe of studies. Moreover, no new random-assignment studies of civic values and practices have been released for more than 10 years; excluding a recent reanalysis of old data, described below, the most recent random-assignment findings were published in 2002. Therefore, one should not expect a significant body of random-assignment studies will be built up over time, as is occurring for the studies on academic effects.

One study, examining a privately funded voucher program in San Francisco, has been excluded because it is only a descriptive comparison of the voucher-using and non-voucher-using populations. That study found no visible difference in tolerance for the rights of others between the two populations. However, as a descriptive analysis, this cannot explain much about whether the voucher had an impact, as distinct from other factors.48

It was appropriate to include descriptive studies in the review of research on racial segregation because descriptive information about the racial makeup of schools provides insight into an important question: what impact school choice has on students’ school environments. If choice is moving students from more segregated schools to less segregated schools (or vice versa) it is highly desirable to know that. Here, the descriptive information does not contribute to the relevant policy questions.

The most widely studied topic in this field is tolerance for the rights of others. Researchers generally use the same method to measure this topic, with only small variations. Students are asked to identify their least-liked group of people. Students typically name a variety of groups ranging from neo-Nazis and the KKK to those who disagree with them on passionate political issues (for example, pro-lifers name pro-choicers and pro-choicers name pro-lifers) to disliked religious minorities such as evangelical Christians. Students are then asked a battery of yes-or-no questions on whether their least-liked group should be permitted to have or do certain things. Examples include voting, organizing a march, or having a book in the library sympathetic to their point of view.

What the Studies Show

One of the first empirical studies of school choice’s impact on civic values and practices was conducted [end page 23] by Wolf, Peterson, and Martin West. They studied students who applied for vouchers in a privately funded voucher program in Washington, D.C. in the late 1990s (not to be confused with the federally funded program created in D.C. in 2004). Applicants were offered vouchers based on a lottery, allowing the researchers to use a random-assignment method. They found that voucher students were more likely to say they would “definitely permit” their least-liked group to perform civic actions like give a speech in their community or run for president.49

Another early study, by Peterson and David Campbell, examined the results of a nationwide privately funded voucher program in the early 1990s. This study measured levels of both tolerance and civic knowledge and was able to employ a random-assignment method. It found no visible difference in either tolerance or civic knowledge between the voucher and non-voucher student groups.50

Campbell conducted a separate analysis of data from this nationwide program. He found that students offered a voucher scored higher than their non-voucher counterparts on political tolerance but the same in civic knowledge. His original analysis was unable to use a random-assignment method.51 However, he was later able to refine his method to confirm the finding using random assignment.52

Howell and Peterson analyzed random-assignment data from a privately funded voucher program in Washington, D.C. They found no visible effect on tolerance for the rights of others between the voucher and non-voucher student groups.53

Two recent studies by David Fleming examine data from the School Choice Demonstration Project in Milwaukee. These are not random-assignment data, as was noted previously in regard to the academic findings of the School Choice Demonstration Project. This should be borne in mind when interpreting the findings. Nonetheless, in the field of civic values and practices where fewer random-assignment studies are available and new ones do not seem likely to be forthcoming, other evidence is worth considering.

Fleming examined the impact of school choice on the civic involvement of families, rather than just students. School choice does not just impact students; it also changes the role of the family in the life of society because it puts parents in charge of education. Fleming found that in families using Milwaukee vouchers, as compared with a matched sample of public school families, parents were more likely to be actively involved in their children’s schools, parent-teacher organizations, and other education groups.54 He also found parents were more likely to see a connection between education and the civic institutions of society, to say that their children were learning how government works, and to be involved themselves in civic activities.55

### They Say: “Ruralism DA”

#### Turn: choice *improves* educational opportunity in rural America.

Craig 14 — Ellie Rae Craig, Analyst with Bellwether Education Partners—a nonprofit organization aimed at reforming public and private education, holds an M.P.A. from the School of Environmental Affairs at Indiana University-Bloomington, 2014 (“Six Reasons Rural Families Should (and Can) Have School Choice,” EdChoice—a nonprofit, nonpartisan school reform organization, Available Online at <https://www.edchoice.org/blog/six-reasons-rural-families-should-and-can-have-school-choice/>, Accessed 07-23-2017)

A common argument against school choice in rural America is that there just aren’t enough schools from which to create rural school choice. But the more you understand about choice policy and the rural-schools landscape, the more you realize this argument actually distorts the facts, obscures rural students’ needs, and undersells the tools available to families, educators, and communities.

Six points are worth keeping in mind.

1. Many schools of choice already exist in rural communities. According to the National Alliance for Public Charter Schools and the National Center for Education Statistics, respectively, there are 814 rural charter schools and 7,045 rural private schools. These numbers alone demonstrate that options can be created and sustained.

2. Rural America is larger and more diverse than many might assume. A “rural” area is defined by the U.S. Census Bureau as a population, housing, and territory not included within an urban area. An urban area contains 50,000 or more people. By those measures, about one in four U.S. students live in rural communities. These range from New England to the Deep South, from the Mississippi Delta to the Great Plains, from the Mountain West to the Desert Southwest, and from Alaska to Hawaii. Boys and girls in these areas deserve educational alternatives that meet their needs just as much as students living in urban or suburban areas. If we truly believe in the value of school choice, it would be unfair to millions of parents and their children if we simply wrote it off for a quarter of our students.

3. Not all rural communities are remote. Strong intra- and inter-district choice programs can immediately make options available to many rural students. These programs simply give children access to existing public schools. Distance can pose challenges, but smartly written transportation policies can help.

4. In a number of important cases, school choice has been used to preserve schooling options that had been in jeopardy. A school-closure or -consolidation plan—with which many rural areas are familiar—can threaten to take away a community’s neighborhood school. The right policies can empower stakeholders to either protect the school through charter conversion or replace the school through a new start.

5. Charter and private school choice laws in many states make it possible for interested educators, families, community leaders, and others to start new schools. Today’s stock of rural schools needn’t be the same as tomorrow’s. A strong charter law or private school choice program can empower education stakeholders to help shape the contours of the future portfolio of schools.

6. Online educational options are available to anyone with access to a computer and the internet. Technology, whether through fully virtual schools or a variety of online course offerings, can expand the educational options available to rural students, better leverage existing human capital, and potentially reduce costs. Done properly, a single high-quality online program can quickly match the needs of thousands of kids.

School choice is by no means the answer to every rural K-12 challenge. But in some circumstance it can certainly help. The “there aren’t enough schools” argument underestimates both the demand for options and the mechanisms available to expand them.

#### No Ruralism Impact — rural communities are growing now.

Vilsack 16 — Tom Vilsack, United States Secretary of Agriculture, 2016 (“Rural America Has Already Begun to Rebound,” *Room for Debate*—a *New York Times* scholarly blog, September 19th, Available Online at <https://www.nytimes.com/roomfordebate/2016/09/19/prosperity-is-up-but-not-for-rural-america/rural-america-has-already-begun-to-rebound>, Accessed 07-30-2017)

Despite concerns about the fate of rural America, a number of key benchmarks show these areas have been growing economically since 2014. Many were surprised when the Census Bureau released data last Thursday showing median household income in non-metro areas of the United States had increased by 3.4 percent in 2015 and poverty rates had fallen.

That many people in small towns around the country still feel left behind is an indication of how deep a hole these regions were in. At the depths of the Great Recession, rural counties were shedding 200,000 jobs per year, rural unemployment stood at nearly 10 percent and poverty rates reached heights unseen in decades. Many rural communities were ill-positioned to bounce back quickly, since widespread job loss came as the economy was increasingly focused on technology.

But we're seeing progress. Rural populations have stabilized and are beginning to grow, the Agriculture Department reported earlier this year. Then we learned that rural counties had added more than 250,000 jobs in 2014 and 2015. As a result, the rural unemployment rate has dropped below 6 percent for the first time since 2007. Hunger is down in rural and urban areas alike. Today, about 8 million fewer people are struggling to provide adequate food for themselves or their families compared to the height of the recession.

Taken together, these benchmarks demonstrate a turning point in rural communities. Clearly, there is more to do to build a new economy in rural areas. But over the last eight years, federal assistance has helped more than 1.2 million families buy, repair or refinance homes in rural America. The Obama administration has invested in 8,350 schools, libraries, hospitals and public spaces that improve the rural quality of life. And more than 5 million Americans who live and work in rural areas have gotten broadband internet service.

The census report about rural America’s quiet, remarkable comeback demonstrates how long-term government investment is central to rural America's continued progress.

#### Choice does solve in rural areas — course access, virtual schools, and homeschool-private hybrids.

McShane 17 — Michael McShane, Director of Education Policy at the Show-Me Institute—a St. Louis-based free market think tank, Adjunct Scholar in Education Policy Studies at the American Enterprise Institute, former Research Assistant to Professor Patrick Wolf at the University of Arkansas-Fayetteville, holds a Ph.D. in Education Policy from the University of Arkansas-Fayetteville and an M.Ed. from the University of Notre Dame, 2017 (“A Better Education for Rural Students,” *U.S. News & World Report*, April 10th, Available Online at <https://www.usnews.com/opinion/knowledge-bank/articles/2017-04-10/dispelling-the-myth-that-school-choice-cant-help-rural-students>, Accessed 07-23-2017)

From my perch in the Paris of the Plains, I actually see school choice offering a great deal to rural communities. I travel frequently around the Show-Me State talking about education policy. (By my count I’ve already logged north of 4,600 miles this year, including a trip where I hid from a tornado in a McDonald’s refrigerator, but that is another story.) I meet lots of folks who identify problems that school choice, writ large, can help solve.

Here in Missouri we have 518 school districts, 448 of which offer high school. Last year, 284 of those (mostly rural) districts didn’t have a single student take an AP class, 181 didn’t have a single student take calculus and 189 didn’t have a single student take an advanced physics class. This shouldn’t surprise us, as many of these districts are very small and probably lack a critical mass of interested students to justify hiring a teacher for advanced classes.

This is where course access comes in, granting funding flexibility to students and allowing them to take 2 or 3 (or even more) courses from outside providers. These courses might be offered by a university, a for-profit provider, a nearby community college or technical school or even another school district. Maybe a small rural district wants to make the investment to hire a Mandarin teacher and can generate revenue by sharing his or her class in an online course marketplace for surrounding districts. This could be virtual instruction, or it could be an in-person class at the local carpenters’ union apprenticeship center.

Here school choice is used to supplement rural public schools. Many small rural schools and districts face perennial threats of consolidation. By opening up to course access, they can offer their students a full range of course options while still preserving their autonomy and local identity.

Education savings acounts bring their own strengths to the table. In areas of sparse population, it might not be feasible to create a new 500-student charter school, but there may very well be enough demand to start an Acton Academy – like homeschool-hybrid private school. Students could use part of their ESA to pay tuition and then have money left over to supplement with tutoring, online coursework or other enrichment materials. Sixty-nine percent of rural families already have a private school within 10 miles of where they live, and a stream of public funds should only increase supply. Rural communities are also rife with homeschoolers and homeschool co-ops, and such a program could help these families provide a well-rounded and thorough education for their children.

If you only think of school choice as school vouchers or charter schools, I can get why you think school choice can’t help rural communities. But if instead you look at school choice as a three-legged stool of charter schools, course access programs and education savings accounts, communities can match the solution to their needs.

Education reform has to start by identifying problems and then backing out solutions from there. The solution in Higginsville might not be the same as the one in Joplin, which might not be the same as the one in Ferguson. That’s OK. By giving local communities the tools to create the kinds of schools that meet their needs and the flexibility to organize those schools in the most productive ways, we can create an environment where children in rural communities thrive.

#### No “distance” issues — rural choice includes alternative, magnet, charter and dual-enrollment schools.

Nathan 17 — Joe Nathan, Director of the Center for School change, former public school teacher, administrator, PTA president, and weekly newspaper columnist, 2017 (“People who say geography means rural areas can’t share in Trump’s school choice vision are wrong. Here’s why,” *Chalkbeat*, January 5th, Available Online at <http://www.chalkbeat.org/posts/us/2017/01/05/people-who-say-geography-means-rural-areas-cant-share-in-trumps-school-choice-vision-are-wrong-heres-why/>, Accessed 07-26-2017)

Do some school choice programs make sense in rural America? For students like Paige Knutson, Daniel Lopez Gomez, and Merle Vander Weyst, the answer is certainly yes.

President-elect Donald Trump and his choice for secretary of education insist that private-school vouchers are a good idea. I strongly disagree. But there are examples across America that show how public school choice options can help rural students and families. Having worked with rural schools for 28 years, I know that geography isn’t an insurmountable hurdle.

These options include district schools-within-schools, alternative and magnet schools, charter schools, distance learning options, and dual high school/college credit programs. With federal support, the best of them should be identified, strengthened and replicated.

Why? Let’s start with Paige, Daniel, and Merle.

Some years ago, Paige Knutson brought Minnesota legislators to tears as she explained how a rural Minnesota alternative school had saved her life. Knutson, an honor student and cheerleader, was the oldest in a large farm family that was in danger of losing their property. When she became pregnant, she was kicked off the cheerleading squad and removed from the honor society. These weren’t appropriate responses from the school. But they were the reality.

She thought about taking her own life. Fortunately, a friend told her about a nearby alternative school that welcomed her. Her testimony helped convince Minnesota legislators to permit state per-pupil dollars to follow youngsters who attend alternative schools across district lines.

Dozens of communities in rural Minnesota, like Blackduck, Cass Lake, and Redwood Falls, host these alternative schools. One of the most inspiring programs I’ve seen anywhere in the U.S. is the annual MAAP STARS conference, where alternative school students perform, display projects, and earn statewide recognition.

Daniel Lopez Gomez is one of them. He came to the small town of Worthington, Minnesota from Guatemala in 2013, speaking little English. But he blossomed at the Worthington Alternative School. He recently was named “MAAP Student of the Year.”

Thousands of Minnesota students, many of them in rural communities, attend schools of choice, including but not limited to alternative public schools for youngsters with whom traditional schools have not succeeded.

Merle Vander Wyste, who attends the online Blue Sky Charter School, represents another form of rural school choice. Online schools, including Blue Sky, aren’t successful with all students. But they work very well for some young people.

In an award-winning essay, Vander Wyste explained:

“I was never popular in school. Because of bullying I suffered from social anxiety and depression. I often had suicidal thoughts. In my own home, I didn’t have other students telling me how I needed to act. I did not have anyone pressuring me to try drugs. No one told me that the brand of clothing I was wearing was inadequate. I was able to experience my own personal growth as a person.

Attending Blue Sky Charter School has been a great experience for me. It has allowed me to continue my education in a safe, relaxed setting in my home … I work better at night … and I am able to schedule lessons around work or another activity.”

There are other forms of school choice that work in rural settings. They include:

District schools within schools: One way for rural districts to offer more choices is to innovate within the space they already occupy. Forest Lake, Minnesota features two schools in one building, one of which is Central Montessori Elementary. For many years, International Falls Elementary School did the same — one school had traditional grade-level classrooms, and the other operated more like a one-room schoolhouse, with several grades of students working with each other.

Rural charter schools: Most charter schools aren’t in rural areas. But some are: According to the National Alliance for Public Charter Schools, there were 732 rural charters enrolling nearly 200,000 students in 2014-15 school year. Charisse Gulosino has provided fascinating maps of rural charters located, for example, on rural American Indian reservations. She also noted that rural charters serve a slightly higher percentage of low-income students than the national average. One of the most well-known is in tiny Henderson, Minnesota, where students at the Minnesota New Country School study and contribute to the local community.

Dual-credit programs: Minnesota and Washington allow 11th and 12th graders to spend time on a college campus (or in Minnesota, to take college courses on a campus or online), with state funds following students paying for the tuition. Minnesota’s Post-Secondary Enrollment Options law also pays for the students’ books and lab fees. Thousands of rural students use these great programs.

I hope that President-elect Trump, DeVos, and Congress will listen to rural, as well as urban and suburban, families that are making great use of these opportunities. Using multiple measures, the federal government can help identify the best of these programs. Then it can help share information, expand and replicate those that are unusually successful.

#### Expanding course options solves.

Roth and Flanders 17 — Collin Roth, Research Fellow at the Wisconsin Institute for Law and Liberty, and Will Flanders, Research Director at the Wisconsin Institute for Law and Liberty, holds a Ph.D. in Political Science from Florida State University, 2017 (“Kids In Rural Areas Need School Choice, Too,” *The Federalist*, May 31st, Available Online at <http://thefederalist.com/2017/05/31/kids-rural-areas-need-school-choice/>, Accessed 07-23-2017)

Rural School Choice Can Look Different

Expanding school choice to rural and small-town communities won’t necessarily look the same as it does in urban centers. But it doesn’t make the task any less urgent. While it would be naïve to expect a sudden explosion of new schools in rural America, long-established parochial schools are mainstays in many communities. Supply does exist.

In addition, school choice can come in the form of course choice, whereby a local private school and a local public school can provide students in a given community new options in the form of different courses. This will benefit students with different interests, ambitions, and needs. A robust voucher program can open these doors.

It’s increasingly urgent to change the perception of school choice away from something that is only reserved for the disadvantaged kids in downtown Milwaukee or Washington DC to something that will provide new opportunities for students wherever they might live.

Wisconsin legislators can make a difference by lifting the impediments to growth by eliminating stifling enrollment and income caps. Around the country, policymakers and the education reform movement ought to apply their principles consistently, recognizing that education choice can work for all families. School choice has been found to increase test scores and graduation rates, and even to reduce the risk that children will become involved in the criminal justice system.

Fighting for more and better education options should be a goal for all of our communities.

### CFR Supports School Choice

#### Their CFR evidence supports our counterplan.

CFR 12 — Council on Foreign Relations Task Force Chaired by Joel I. Klein, Chief Executive Officer of the Education Division and Executive Vice President in the Office of the Chairman at News Corporation, former Chancellor of the New York City Department of Education, former Assistant U.S. Attorney General in charge of the antitrust division of the U.S. Department of Justice, former Deputy White House Counsel to President Clinton, holds a J.D. from Harvard Law School, and Condoleezza Rice, Professor of Political Economy in the Graduate School of Business, Thomas and Barbara Stephenson Senior Fellow on Public Policy at the Hoover Institution, and Professor of Political Science at Stanford University, former U.S. Secretary of State, former National Security Adviser to President George W. Bush, holds a Ph.D. from the University of Denver, 2012 (“U.S. Education Reform and National Security,” Council on Foreign Relations Independent Task Force Report Number 68, Available Online at <https://www.cfr.org/content/publications/attachments/TFR68_Education_National_Security.pdf>, Accessed 07-13-2017, p. 51)

To address the need for intervention in the lives of today’s children, the Task Force supports giving parents a wider range of educational options and encouraging states and school districts to foster the school-level innovation that will lead to good options for families. Choice is especially important for poor parents, who are more likely to live in districts with underperforming schools. Within the public arena, mobility within a district (i.e., allowing children and families to select their schools), magnet schools, and charter schools can provide alternative educational opportunities for individual students. And as schools recognize that they must educate children effectively or lose students, they will be motivated to perform better. Coupled with necessary resources, well-prepared educators, and strong curricula, this motivation has the power to improve the quality of education.

Admittedly, it is too early to determine the full effect of school choice in systemic reform—but competition has a salutary effect in almost every other aspect of American life, including the United States’ well-regarded higher education system, and K-12 public schools should arguably be no different.

## Ban Private Schools CP

### 1NC — Ban Private Schools CP

#### First/next off is the Ban Private Schools Counterplan.

#### The United States federal government should abolish private and parochial K-12 schools and require compulsory attendance in public K-12 schools in the United States.

#### Only the counterplan can remedy educational inequalities — it’s impossible as long as private schools exist.

Chemerinsky 15 — Erwin Chemerinsky, Dean, Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law at the University of California-Irvine School of Law, former Alston & Bird Professor of Law and Political Science at Duke University, 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, 2015 (“Remedying Separate and Unequal: Is It Possible to Create Equal Educational Opportunity?,” *The Enduring Legacy of Rodriguez: Creating New Pathways to Equal Educational Opportunity*, Edited by Charles J. Ogletree, Jr. and Kimberly Jenkins Robinson, Published by Harvard Education Press, ISBN 9781612508313, p. 249-250)

On May 17, 2014, the nation celebrated the sixtieth anniversary of the Supreme Court’s landmark decision in Brown v. Board of Education.1 The simple and tragic reality is that American public education is separate and unequal.2 Schools today are more segregated than they have been for decades, and segregation is rapidly increasing. Wide disparities exist in funding for schools. In Brown, Chief Justice Earl Warren spoke eloquently of the importance of education and how separate can never be equal.3 More than a half century later, in an even more technologically complex society, education is even more essential.

The causes for this tragedy are easy to recite. There never has been the political will to pursue equal educational opportunity. No president since the 1960s has devoted any attention to decreasing segregation or to equalizing school funding. The Supreme Court refused to allow the needed steps to deal with the problem in its holding that metropolitan school districts can be created as a remedy only in very limited circumstances and that disparities in school funding do not violate the Constitution.4 Moreover, Supreme Court [end page 249] decisions in the 1990s have required the lifting of even successful desegregation orders, causing the resegregation of schools.5 The Court’s most recent decision about school desegregation, Parents Involved in Community Schools v. Seattle School District No. 1, greatly limited the ability of school boards to pursue voluntary desegregation plans, such as by considering race as one factor in assigning students so as to enhance diversity.6

In this essay, I look behind these explanations and argue that the central problem in achieving equal educational opportunity has been the lack of a unitary system of education. Desegregation will not occur in most cities so long as parents can move their children to suburban or private schools. Adequate, let alone equal, funding for schools will not occur so long as wealthy parents can send their children to private or suburban schools, where far more is spent on education than in inner cities. A crucial aspect of Brown’s wisdom was the importance of a unitary system of education. Minority children are far more likely to receive quality education when their schooling is tied to that of wealthy white children. The failure to create truly unitary systems is the core explanation for the inequalities in American schools today.

Consider a simple analogy: the dual system of medical care. If wealthy people had to receive their medical treatment in public hospitals, is there any doubt that the quality of those hospitals would be dramatically different? But so long as the public hospital system is just for poor people, and often predominately racial minorities at that, they never will be of the same quality as top private hospitals. The same is true of schools.

Therefore, I propose a radical solution: the abolition of private and parochial schools in the United States and the creation of large metropolitan school districts. Under this proposal, every child will be required to attend these public schools. In this way, there truly would be a unitary system of education and, as a result, equality of school funding and meaningful desegregation. Desegregation and equalization of funding can be achieved through this approach, but probably not otherwise.

### Solvency Explanation/Overview

#### As long as rich parents have the option to “opt-out” of the public system by sending their kids to private school, there will never be the necessary political momentum to remedy opportunity and achievement gaps via desegregation and equitable funding. Banning private schools and requiring compulsory public schooling for all children immediately and dramatically alters elite interests so that the rich and powerful are committed to creating quality public schools — that’s Chemerinsky.

#### This solves the case *without spending any money*.

### They Say: “Parental Leverage Fails”

#### Only the counterplan solves — it reframes public schools as “insurance,” not “welfare.”

Chemerinsky 15 — Erwin Chemerinsky, Dean, Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law at the University of California-Irvine School of Law, former Alston & Bird Professor of Law and Political Science at Duke University, 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, 2015 (“Remedying Separate and Unequal: Is It Possible to Create Equal Educational Opportunity?,” *The Enduring Legacy of Rodriguez: Creating New Pathways to Equal Educational Opportunity*, Edited by Charles J. Ogletree, Jr. and Kimberly Jenkins Robinson, Published by Harvard Education Press, ISBN 9781612508313, p. 261)

Conclusion

As Brown has now passed its sixtieth anniversary, it is easy to be discouraged by the failure to create integrated, equal public schools. All institutions share responsibility. The Supreme Court deserves a great deal of the blame for its decisions precluding metropolitan-wide desegregation efforts and for not finding that disparities in school funding are unconstitutional. Presidents and Congress deserve the blame for ignoring the issue for so long.

The underlying problem is that as long as parents can opt out of public schools in cities, by sending their children to private and suburban schools, there never can be desegregation and never will be equalization of resources for education. The only solution is to make sure that every child must attend the public schools. Then, and only then, will parents have the incentive to ensure adequate education for all. Put another way, if schools for the poor are regarded as a welfare program, they always will be inadequately funded. But if education is an insurance program, affecting and benefiting all, then their quality will be assured.

Ultimately, if American society will ever be more equal, it will be through education. But the reality is that the American educational system is terribly unequal and thus an engine for widening, not closing, the gap between whites and racial minorities and between rich and poor. And the problem of segregation and inequality in education is getting worse, not better. The Supreme Court in Brown got it right: providing equal educational opportunity requires a unitary system of schools. But the justices in Brown could not have imagined the white flight to suburban and private schools that would frustrate desegregation. Nor could they have imagined that less than two decades later the Supreme Court would hold that education was not a fundamental right. Creating equal educational opportunity requires creating school systems where all children—rich and poor, white children and children of color—are all present. That is what I try to imagine and propose in this essay.

#### Forcing rich white parents to care about public schools is the only way to achieve sustainable funding equality.

Chemerinsky 15 — Erwin Chemerinsky, Dean, Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law at the University of California-Irvine School of Law, former Alston & Bird Professor of Law and Political Science at Duke University, 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, 2015 (“Remedying Separate and Unequal: Is It Possible to Create Equal Educational Opportunity?,” *The Enduring Legacy of Rodriguez: Creating New Pathways to Equal Educational Opportunity*, Edited by Charles J. Ogletree, Jr. and Kimberly Jenkins Robinson, Published by Harvard Education Press, ISBN 9781612508313, p. 258-259)

Creating A Truly Unitary System Of Education

At this point, there seems neither the political nor the judicial will to deal with the growing segregation and inequalities in American schools. No political candidate is addressing the issue. Since court decisions are causing the problem, not solving it, it seems appropriate to begin thinking of new solutions, even if at this point they seem unlikely to ever be implemented. I believe that the only answer to separate and unequal schools is a truly unitary system, where every child—rich and poor, of color and white—will receive education in the same school system.

My proposal is simple, although unrealistic at this point in American history. First, every child must attend public school through high school. There will be no private schools, no parochial schools, no home schooling. Second, metropolitan school districts will be created for every metropolitan area. In each metropolitan area, there will be equal funding among the schools, except where educational needs dictate otherwise, and efforts will be taken to ensure desegregation. Third, states will ensure equality of spending among metropolitan school districts within their borders.

How could this happen? One possibility would be through the Supreme Court, though certainly not with the current Court. The Supreme Court could find that the existing separate and unequal schools deny equal protection and could order the creation of a unitary system as a remedy. Another way to achieve this would be by legislative action. Congress could adopt a law to achieve these goals, using its power under Section 5 of the Fourteenth Amendment, or state legislatures could do so within their borders.

For the Supreme Court to do this, it would need to find that there is a fundamental right to education and that equality of educational opportunity is a compelling government interest. Education is the key to the exercise of many other constitutional rights, ranging from freedom of speech to voting. The Court has held that spending money in election campaigns is speech protected by the First Amendment because money facilitates speech. But education, too, facilitates speech and communication. Freedom of the [end page 258] press is meaningless unless there is literacy, and literacy cannot occur without education.

Congress could act even in the absence of judicial decisions. Congress has broad power under Section 2 of the Thirteenth Amendment to eradicate the “badges and incidents” of slavery. The educational disparities between white children and black children are a legacy of slavery and racism. In fact, Congress could act to create unitary school systems through its spending power and conditions on grants, or even under its commerce power because of the dose relationship between education and the economy.

I do not minimize the radical nature of this proposal. But this is the way in which equal educational opportunity can be achieved. If wealthy parents must send their children to public schools, then they will ensure adequate funding of those schools. However, they have no incentive to care about funding in public schools so long as their children are in private or suburban schools. Moreover, desegregation can be meaningfully achieved in metropolitan school systems that include suburbs and cities, especially if white students cannot flee to private schools.

#### The counterplan builds political support for public schools and reallocates private school resources.

Cook 12 — John Cook, Editor at *Gawker*, former Reporter for *The Chicago Tribune*, 2012 (“There's a Simple Solution to the Public Schools Crisis,” *Gawker*, September 13th, Available Online at <http://gawker.com/5943005/theres-a-simple-solution-to-the-public-schools-crisis>, Accessed 07-02-2017)

The ongoing (but maybe soon to end?) teachers' strike in Chicago is being viewed by many as an early skirmish in a coming war over the crisis in public education—stagnant or declining graduation rates, substandard educations, dilapidated schools, angry teachers, underserved students. There is one simple step that would go a long way toward resolving many of those issues: Make all schools public schools.

It's an oft-noted irony of the confrontation in Chicago that Mayor Rahm Emanuel sends his children to the private, $20,000-a-year University of Chicago Lab School, which means his family doesn't really have much of a personal stake in what happens to the school system he is trying to reform. This is pretty routine behavior for rich people in Chicago, and there's a pretty good reason for it: Chicago's public schools are terrible. If you care about your children's education, and can afford to buy your way out of public schools, as Emanuel can, it's perfectly reasonable to do so. Barack and Michelle Obama made a similar decision, opting to purchase a quality education for their daughters at Sidwell Friends rather than send them to one of Washington, D.C.'s, deeply troubled public schools.

A lot of Chicago parents with the resources to do so have followed Emanuel's lead: 17% of schoolchildren in Chicago attend private schools, and so don't have to trouble themselves with whether or not their local public school has air conditioning, or a library (160 do not), or classes with 45 students. Those kids that don't attend private schools tend overwhelmingly to be from families with less political power and resources than Emanuel's: 87% of them are from low-income families, and 86% are black or hispanic.

Nationwide, where 10% of the nation's students—and 16% of the white ones from families making more than $75,000 per year—attend private schools, the stratification is similar. White and asian students enroll in private schools at twice the rate of black and hispanic ones, according to Harvard University's Civil Rights Project. Nearly two thirds of private-school students are from wealthy families. In the nation's 40 largest school districts, one in three white students attends private school (the number is one in ten for black students).

So you can see why there's a problem. Here's the solution: Make Rahm Emanuel and Barack Obama's children go to public schools. From a purely strategic and practical standpoint, it would be much easier to resolve the schools crisis if the futures of America's wealthiest and most powerful children were at stake. Wealthy people tend to lobby effectively for their interests, and if their interests were to include adequate public funding for the schools their children attend, and libraries, and air-conditioning, those goals could likely be achieved without having to resort to unpleasant things like teachers' strikes.

This would of course be a radical and highly disruptive step. It would involve forcibly transferring ownership of all existing private schools to the school district in which they reside, and readjusting local tax schemes to capture the tuition parents currently pay (the nationwide average is $8,549 per year, which means a total of $47 billion is spent each year on opting out of the public education system). Then access to the newly "nationalized" schools would have to be distributed on some fair basis to local students, with the wealthy kids who don't make the cut into their old schools being sent to the regular ones, without air conditioning or libraries. And resources would have to be redistributed within the school districts so that the resources formerly lavished on private schools could be spent shoring up the failing public ones.

### They Say: “Ban Gets Circumvented”

#### This also applies to the plan — it doesn’t eliminate inequalities in access to out-of-school opportunities, either.

#### The counterplan still solves well enough.

Chemerinsky 15 — Erwin Chemerinsky, Dean, Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law at the University of California-Irvine School of Law, former Alston & Bird Professor of Law and Political Science at Duke University, 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, 2015 (“Remedying Separate and Unequal: Is It Possible to Create Equal Educational Opportunity?,” *The Enduring Legacy of Rodriguez: Creating New Pathways to Equal Educational Opportunity*, Edited by Charles J. Ogletree, Jr. and Kimberly Jenkins Robinson, Published by Harvard Education Press, ISBN 9781612508313, p. 260)

One criticism of this proposal is that it can be circumvented as wealthy parents will provide supplemental classes for their students, after school and on weekends. Certainly nothing in this proposal limits what occurs outside of school hours. But this type of inequality is not a reason to abandon unitary schools. Wealthier children always will have the chance to attend nicer summer camps, go on better vacations, and take more enrichment classes. But, if anything, all of these other inequalities make it even more important that schools be equal for all.

### They Say: “Constitutional Liberty DA”

#### No link and benefits outweigh.

Chemerinsky 15 — Erwin Chemerinsky, Dean, Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law at the University of California-Irvine School of Law, former Alston & Bird Professor of Law and Political Science at Duke University, 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, 2015 (“Remedying Separate and Unequal: Is It Possible to Create Equal Educational Opportunity?,” *The Enduring Legacy of Rodriguez: Creating New Pathways to Equal Educational Opportunity*, Edited by Charles J. Ogletree, Jr. and Kimberly Jenkins Robinson, Published by Harvard Education Press, ISBN 9781612508313, p. 259-260)

The most significant objection to this proposal is that it is unconstitutional under current law. In Pierce v. Society of Sisters, the Supreme Court held that parents have a fundamental right to send their children to parochial schools, declaring unconstitutional an Oregon law that prohibited parochial school education.45 The Court based this on the right of parents to control the upbringing of their children and thus to send their children to a religious rather than a secular school.

However, this right, like other fundamental rights, is not absolute. I would argue that strict scrutiny is met and that therefore interference with the parents’ right to control the upbringing of their children is justified. There is a compelling interest in achieving equality of educational opportunity, and the means are necessary because no other alternative is likely to succeed.

Parents desiring religious education for their children would claim a violation of their free exercise of religion. Of course, under the Supreme Court’s decision in Employment Division v. Smith, the free exercise clause would not be violated by such a neutral law of general applicability.46 I do not minimize the interests of parents in providing religious instruction for their children. However, parents could still do this through afterschool and weekend programs. This is not the same as education where religion permeates [end page 259] instruction, but it does provide a way in which parents can provide religious education for their children.

Perhaps the Court would need to reconsider Wisconsin v. Yoder as well, to the extent that it is read as creating a right of parents to isolate their children from the influences of public education.47 In Yoder, the Court held that Amish parents had the right to exempt their fourteen- and fifteen-year-old children from compulsory school requirements so as to preserve the special Amish culture. Read broadly, parents could invoke Yoder to justify a right to home schooling if parents wanted to insulate their children from the influences of public education. Simply put, the courts should hold that the compelling need for equal schooling outweighs this right of parents.

#### No spillover to other constitutional rights. The counterplan only affects private schools, not housing or healthcare. Durable neg fiat prevents rollback.

#### The counterplan is justified under the Fourteenth Amendment — it doesn’t violate constitutional rights.

Tushnet 91 — Mark Tushnet, Professor of Law at Georgetown University Law Center, holds a J.D. from Yale Law School, 1991 (“Public and Private Education: Is There a Constitutional Difference?,” University of Chicago Legal Forum, Volume 1991, Article 4, Available Online at <http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1089&context=uclf>, Accessed 07-02-2017, p. 54-55)

2. Prohibiting private schools.

The next question is whether a state could prohibit private schools. Here there appears to be a definitive answer. Pierce v Society of Sisters squarely held unconstitutional a state effort to eliminate private schools.54 Without attempting to undermine the authority of Pierce entirely,55 I would note that it arose in a context of nativist hostility to Catholics, and that the police power justification for prohibiting private schools was quite attenuated. 6 In addition, Pierce relied on the doctrine of substantive due process.57 According to the Court in Bowers v Hardwick,58 “[t]he Court is most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution.”59 In consequence, according to the Court, "[t]here should be . . . great resistance to expand the substantive reach" of the due process clause.60

It is difficult to imagine contemporary contexts in which legislatures might actually abolish private schools, and thus it is difficult to assess what the balance would be between the interest protected in Pierce and the goals the government was trying to attain. [end page 54] Consider, however, the possibility that Congress, acting pursuant to its power under section five of the Fourteenth Amendment, concluded that the availability of private schools interfered with society's ability to reach a point of social integration where judgments about people's worth are made solely on the basis of individual merit, and therefore prohibited the operation of private schools.61 That justification is more substantial than the one offered in Pierce, and it might be sufficient to overcome the weakened protection given substantive due process rights by the Court's analysis in Bowers.

In short, there is no reason to believe that governments would try to abolish private schools. Yet, despite Pierce, the doctrinal materials are available to uphold such an abolition under certain circumstances. Under those circumstances, the difference between public and private schools would of course disappear as well.

#### Private schools are immoral — turns their freedom impact.

Cook 12 — John Cook, Editor at *Gawker*, former Reporter for *The Chicago Tribune*, 2012 (“There's a Simple Solution to the Public Schools Crisis,” *Gawker*, September 13th, Available Online at <http://gawker.com/5943005/theres-a-simple-solution-to-the-public-schools-crisis>, Accessed 07-02-2017)

And while it would have the practical effect of forcing school boards and municipalities to be accountable to their privileged elite as well as their poor families, there's also a moral argument for banning private education. Put simply: Equality of opportunity demands that children should not be penalized—or advantaged—by the accident of their birth. Educational benefits, which are the most crucial resource when it comes to determining the life-outcomes for children of all backgrounds, shouldn't be distributed based on how rich your parents are. They should be distributed equally. Even if we stipulate that radical inequality is OK for adults—once you are out in the world, you rise or fall by the work of your own hands—when it comes to children, it's perverse to dole out educations based on arbitrary circumstances completely beyond their control.

And that's what private education does: It allows parents to purchase better life-prospects for their kids simply because they can afford it. (The real estate market and the property-tax-based funding model for public schools do the same thing—being able to afford a home in a good school district, which is then funded by taxes levied on that valuable home, is structurally very similar to paying tuition for a private school.) Of course, the act of simply raising children in a wealthy home is a form of purchasing them better life-prospects than poorer children. And attempting to equalize that dynamic would be impossible without unacceptable governmental intrusions into the child-parent relationship.

But educational benefits are something that we as a nation have long held should be afforded to all children, irrespective of their backgrounds. And we've further held that withholding access to those benefits based on race or ethnicity—in other words, on morally arbitrary circumstances over which the children have no control—is wrong. Our current system of private and public education effectively distributes the best educations to those who were born into the right families, like Rahm Emanuel's. He shouldn't be able to buy his kids a better shot at life than his constituents can afford.

#### The Constitution is an open-ended framework, not a “side constraint.”

Litchwick 11 — Dahlia Lithwick, journalist covering courts and the law for *Slate*, 2011 (“Read It and Weep,” *Slate*, January 4th, Available Online at http://www.slate.com/articles/news\_and\_politics/jurisprudence/2011/01/read\_it\_and\_weep.single.html, Accessed 04-30-2012)

This newfound attention to the relationship between Congress and the Constitution is thrilling and long overdue. Progressives, as Greg Sargent points out, are wrong to scoff at it. This is an opportunity to engage in a reasoned discussion of what the Constitution does and does not do. It's an opportunity to point out that no matter how many times you read the document on the House floor, cite it in your bill, or how many copies you can stuff into your breast pocket without looking fat, the Constitution is always going to raise more questions than it answers and confound more readers than it comforts. And that isn't because any one American is too stupid to understand the Constitution. It's because the Constitution wasn't written to reflect the views of any one American.

The problem with the Tea Party's new Constitution fetish is that it's hopelessly selective. As Robert Parry notes, the folks who will be reading the Constitution aloud this week can't read the parts permitting slavery or prohibiting cruel and unusual punishment using only their inside voices, while shouting their support for the 10th Amendment. They don't get to support Madison and renounce Jefferson, then claim to be restoring the vision of "the Framers." Either the Founders got it right the first time they calibrated the balance of power between the federal government and the states, or they got it so wrong that we need to pass a "Repeal Amendment" to fix it. And unless Tea Party Republicans are willing to stand proud and announce that they adore and revere the whole Constitution as written, except for the First, 14, 16th, and 17th amendments, which totally blow, they should admit right now that they are in the same conundrum as everyone else: This document no more commands the specific policies they espouse than it commands the specific policies their opponents support.

This should all have been good news. The fact that the Constitution is sufficiently open-ended to infuriate all Americans almost equally is part of its enduring genius. The Framers were no more interested in binding future Americans to a set of divinely inspired commandments than any of us would wish to be bound by them. As Justice Stephen Breyer explains in his recent book, Making Our Democracy Work: A Judge's View, Americans cannot be controlled by the "dead hands" of one moment frozen in time. The Constitution created a framework, not a Ouija board, precisely because the Framers understood that the prospect of a nation ruled for centuries by dead prophets would be the very opposite of freedom.

## States CP

### 1NC — States CP

#### First/next off is the States Counterplan.

#### The fifty state governments of the United States should establish and enforce a state-based constitutional right to education that requires all children in their respective states to receive equal access to an excellent elementary and secondary public education and adopt state-based systems of school financing to accomplish this goal.

#### Establishing education as a fundamental right under state constitutions solves.

Gormley 6 — Ken Gormley, Professor of Law at the Duquesne University School of Law, holds a J.D. from Harvard Law School, 2006 (“Education As A Fundamental Right: Building A New Paradigm,” *Forum on Public Policy*, Volume 2, Number 2, Available Online at <http://forumonpublicpolicy.com/vol2no2.edlaw/gormley.pdf>, Accessed 07-20-2017, p. 223-225)

Another federal Constitutional Convention is not likely to occur in the United States, in the foreseeable future. Yet amending a state constitution, as a rule, is not a difficult process. Unlike the Herculean task of revising the federal charter, most state constitutions – because they are far more detailed and must be updated regularly – can be changed with relative ease and alacrity. In Pennsylvania, as in many other states, an amendment simply requires a majority vote of two successive legislatures, plus approval by the voters in the following election.77 Assuming the ballot question is phrased fairly, proposed amendments can be ushered through the process with relative ease.78

Presently, only a tiny number of states contain language in their state constitutional text that comes close to “fundamental rights” language. The Washington Constitution make it a “paramount” duty of the state “to make ample provision for the education of all children residing within its borders....”79 The Georgia Constitution states that providing an adequate public education for citizens is a “primary obligation” of the state.80 The Illinois Constitution, one of the few to use the word “fundamental,” tracing itself back to an earlier era before that term carried its current meaning, provides: “A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities. The State shall provide for an efficient system of high quality public educational institutions and services.”81

The only state constitution to include a truly modern “fundamental rights” provision is that of Florida, which was amended in 1998 to incorporate such express language. Article IX, Section 1 of the Florida Constitution now provides: “The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders.”82 [end page 223]

It is true, as Paul Tractenberg has observed in a chapter on education rights contained in the splendid new treatise on state constitutional law edited by Alan Tarr and Robert Williams, that “strong” education provisions do not necessarily produce strong judicial interpretations of those provisions.83 Language alone does not necessarily a winning constitutional argument make. For instance, the text in Illinois and Georgia set forth above has not led to successful school finance overhauls, despite vigorous challenges.84 Even in Florida, where the 1998 amendments were aggressively constructed to produce education finance reform, there has not yet been a successful challenge utilizing those provisions.85

Yet none of this means that the cup is half empty rather than half full. There is no question that clear, strong, modern constitutional text that defines education as a fundamental right is invaluable and productive on many levels. First, it gives the courts a sturdier hook on which to hang decisions mandating educational finance reform, if they wish to do so, rather than forcing them to rely upon ambiguous provisions that are often centuries old. Second, it gives legislatures and governors political cover, enabling them to point their fingers at the courts and the state constitution if costly school finance reforms – which they may favor personally but fear politically – are necessary. Third, fresh constitutional history in the form of legislative debates and/or written explanations drafted at the time constitutional initiatives are ratified by voters provides a strong footing on which to base school finance reform – much stronger than antiquated and murky provisions that pre-date public school education as we know it today. Fourth, and perhaps most importantly, the “fundamental right” designation has a specific meaning in modern American constitutional jurisprudence; thus, it will bring with it certain tests and standards that ensure that dysfunctional and inequitable school funding schemes do not remain in place.

If the words “education constitutes a fundamental right of all citizens” are inserted into the text of a state constitution, there is a specific, practical significance to such an amendment. It means, pursuant to the prevailing jurisprudence of most states, which is consistent with federal jurisprudence, that strict scrutiny would be triggered whenever the government enacted a law or took action, which impacted that right. This, in turn, would mean that the courts would be required to examine such a legislative scheme with a healthy measure of skepticism, and to strike it down unless there were “compelling government interests” that justified it.86 Such an explicit constitutional [end page 224] command would give the courts potent ammunition. It would allow them (indeed it would require them) to mandate that the state legislature fix glaring problems relating to education funding, rather than side step them. Maintaining dysfunctional systems of pub[l]ic education would simply not be an option under this constitutional standard.

#### State-wide finance systems *alone* solve educational inequality.

Brown 13 — Cynthia G. Brown, Vice President for Education Policy at the Center for American Progress, former Director of the Resource Center on Educational Equity of the Council of Chief State School Officers, former Assistant Secretary for Civil Rights in the U.S. Department of Education, holds a Master’s in Public Administration from the Maxwell School at Syracuse University, 2013 (“How to Make School Funding Fair,” *Education Week*, May 21st, Available Online at <http://www.edweek.org/ew/articles/2013/05/22/32brown.h32.html>, Accessed 06-14-2017)

Larger questions surround what states should do to address funding inequities between school districts. Most states have adopted funding formulas aimed at ameliorating differences in the ability of districts to raise funding from local property taxes. Property-wealthy towns are able to raise more dollars at lower tax rates than property-poor districts, leading to inequities in per-pupil funding. Yet, as the commission report points out, prior attempts to address these inequities, such as through state funding formulas, merely patch a broken system and fail to redress inequities or to produce the kind of academic achievement our children need and deserve.

The time has come to strongly consider the need for larger systematic reform of funding systems. In a chapter in the recently released book Education Governance for the Twenty-First Century: Overcoming the Structural Barriers to School Reform, I propose a "new" approach to school funding: States should adopt a state-based system of school financing—one in which states provide all nonfederal resources for education, and districts no longer have the power to raise funds from local property taxes.

Under such a system, all districts would receive the resources they need to educate all of their children. Funding levels would be based on the specific needs of the students and of the districts, not just the resources districts are fiscally able to raise based on local property values. Local schools and districts would be able to provide additional funding of up to 10 percent of their state allocation for local priorities and programs.

I say "new" in quotation marks because this is almost the same proposal President Richard M. Nixon's Commission on School Finance called for in 1972. Yet, more than 40 years later, almost no states have taken this approach, and the idea has practically fallen off the radar in school funding discussions. Hawaii and Vermont come the closest, with less than 10 percent of total funding coming from local sources. They are rarities in this country, however, and by far two of the smallest states.

I also say "new" because this method of funding schools has been adopted in other countries; it's just "new" to the United States. As a paper that CAP released last week shows, three Canadian provinces, for example, have each moved from joint local-provincial school funding systems—systems like those in most U.S. states—to provincial-level funding systems. Under such a system, the province has full responsibility for providing all funding for public schools, according to the report titled "Canada's Approach to School Funding." The province determines the resource needs for each district and ensures the district actually receives that funding.

These provinces—Alberta, British Columbia, and Ontario—have each taken a unique approach to designing their provincial-level funding systems. Alberta, for example, has set up a centralized fund into which all property-tax dollars raised for education purposes flow. These dollars are then allocated on a per-pupil basis to every district in the province. Additional funding is provided by the provincial government on top of this allotment. In contrast, in Ontario, local school districts continue to raise funding from local property taxes, but the tax rates are set by the provincial government. This allows the province to ensure that districts raise amounts consistent with the districts' overall provincially determined funding needs, and not inconsistent with principles of equality and equity.

To be sure, states can certainly have equitable funding systems that continue to allow local districts to set their own tax rates and raise money from local property taxes. New Jersey and Ohio are good examples; in these states, differences in property wealth do not dictate differences in per-pupil spending, and districts with greater educational needs receive additional funding. But most states have failed in this regard, despite decades of lawsuits and so-called reform efforts. It's time to try something else.

The National Commission on Excellence in Education's seminal 1983 report, A Nation at Risk, warned of a "rising tide of mediocrity" in this country. I worry today that mediocrity is found as much in our legislatures as in our schools. We need bold leaders with the political strength to tackle the problems in our system and fight for the solutions we need. Adopting a state-level system of funding education is an essential element of finally providing all children with a high-quality education.

### State Constitutional Right Solves

#### Including a right to education in state constitutions solves.

Gormley 6 — Ken Gormley, Professor of Law at the Duquesne University School of Law, holds a J.D. from Harvard Law School, 2006 (“Education As A Fundamental Right: Building A New Paradigm,” *Forum on Public Policy*, Volume 2, Number 2, Available Online at <http://forumonpublicpolicy.com/vol2no2.edlaw/gormley.pdf>, Accessed 07-20-2017, p. 227)

If education is to become a fundamental right in any meaningful sense in modern America, there is no better way to accomplish this than to make it so, expressly. The creative use of state constitutions to establish a renaissance in public education in our country is a most promising new frontier. It is exactly the path Thurgood Marshall and Charles Houston would have taken, if they were here to take the next ambitious step with the benefit of historical hindsight, and foresight.

If education is really as important as we profess, in America, we should not be shy about trading in the paradigm of Brown v. Board of Education for a new one, now that the bridge that Houston and Marshall constructed has supported its weight for a half-century, serving its purpose. Including education as a fundamental right in our state charters is a positive way to fight a battle that we should not permit ourselves to grow tired of, let alone to lose.

#### State action is better — it avoids minimalist pressures in federal courts.

Greene 13 — Jamal Greene, Professor of Law at Columbia Law School, holds a J.D. from Yale Law School, 2013 (“Book Review/Response: Katharine Young and Jamal Greene on Economic and Social Rights,” *I·CONnect*—the blog of the *International Journal of Constitutional Law*, October 14th, Available Online at <http://www.iconnectblog.com/2013/10/book-review-response-katharine-young-and-jamal-greene-on-economic-and-social-rights/>, Accessed 07-20-2017)

Part of the difficulty of this frame is that all court decisions catalyze. The catalytic courts of interest to Young do so intentionally and positively, with a view towards devolving rights enforcement to more competent or accountable institutions, but a court may also catalyze inadvertently or negatively. This can happen through backlash, as rights opponents mobilize to defeat or limit a right recognized by judges.[8] It can occur when a court loss helps to publicize a perceived rights deficit and leads to expanded movement activity. But “negative” catalysis may also occur when the closing of a legal avenue forces a movement to redirect resources in more creative and effective directions. Judicial recalcitrance spurs rights proponents to seek more productive audiences, whether legislatures, executive officials, other adjudicatory bodies, or private actors otherwise sidelined or inert due to excessive focus on an apex court. A court’s desistance may open up decisional space in unanticipated ways.

Thus, defeat in Rodriguez was hardly the end of efforts to constitutionalize the right to a quality education. Although education is not a fundamental right under the U.S. federal constitution, every one of the 50 state constitutions obliges the state government to establish a system of education, and a great many of them, through text or interpretation, require that education to be of a certain quality.[9] The defeat for reformers in Rodriguez precipitated the so-called second and third waves in school funding reform, focusing on equality and adequacy guarantees explicit or implicit in state law.[10] School funding cases have been brought under state constitutions in at least 45 states since 1970.[11] After losing in Rodriguez, the very same plaintiff, Demetrio Rodriguez, along with many others, successfully persuaded the Texas Supreme Court to invalidate the state’s system of school financing in 1989.[12] Two years later, the Texas court invalidated the legislative response to its decision and required the state to fundamentally restructure its entire public school system.[13] School financing cases are far from uniformly successful at the state level, but the Texas story is not an outlier: plaintiffs have won the majority of such cases over the last 25 years.[14]

It is at least arguable that this state of affairs is superior to the Supreme Court recognizing a fundamental right to education at the federal level, even from a conventional rights perspective. Nationalizing a potentially expensive social right across a vast and diverse nation would have exerted strong minimalist pressure even on a liberal court. As Michael Ignatieff writes of human rights more generally, “The universal commitments implied by human rights can be compatible with a wide variety of ways of living only if the universalism implied is self-consciously minimalist.”[15] The Burger and Rehnquist Courts are virtually guaranteed to have succumbed to this pressure. And so, success in Rodriguez would have meant that many of the resources devoted to securing educational rights at the state level would instead have been directed to endless federal litigation aimed at persuading an increasingly conservative federal bench to flesh out the right in progressive (or, more likely, non-regressive) ways.

The possibility that local institutions might be more receptive to rights claims is a feature of federal systems, not a bug.[16] It is surprising, then, that Young’s typology does not forthrightly reserve a space for accounts grounded directly in federalism and the limits it places on centralized authority. Surely this oversight is intentional, given the centrality of federalism to constitutional politics not just in the United States but also in Young’s native Australia. One can only guess at the reason, but here’s a try: an acknowledgement that rejecting rights at one level might be instrumental to realizing rights at another exposes the paralyzingly diversity of approaches to economic and social rights. If devolving authority to the states may help to institutionalize rights, then so too may devolving authority to private market forces. No typology of rights enforcement can effectively accommodate the opportunity cost of success in court, or the opportunity benefit of failure, and retain any prescriptive power.

#### State experimentation solves best — their solvency deficits are contained and outweighed by experimentation’s benefits.

Wilkins 5 — Brooke Wilkins, J.D. Candidate at the J. Reuben Clark Law School at Brigham Young University, holds a B.S. in Biology Teaching from Brigham Young University, 2005 (“Should Public Education be a Federal Fundamental Right?,” *Brigham Young University Education and Law Journal* (2005 BYU Educ. & L. J. 261), Available Online to Subscribing Institutions via Lexis-Nexis)

Some may view this lack of state constitutional protection as an inexcusable harm to children. Perhaps it is. But the range of response which states demonstrate is part of the strength of federalism. States can more freely experiment with varying solutions to multifaceted problems. The educational process is highly individualized and organic and does not lend itself well to centralized dictation. Experimentation across many states is desirable for determining best practices. There may be losses and harms in a number of states, but at least those harms would be limited to those states rather than spread across the entire Union.

### Statewide Finance Solves

#### State action solves by implementing progressive school financing.

Baker and Corcoran 12 — Bruce D. Baker, Professor in the Department of Educational Theory, Policy, and Administration in the Graduate School of Education at Rutgers, The State University of New Jersey, former Associate Professor of Teaching and Leadership at the University of Kansas, holds an Ed.D. in Organization and Leadership from the Teachers College of Columbia University, and Sean P. Corcoran, Associate Professor of Economics and Education Policy at the Steinhardt School of Culture, Education, and Human Development and former Associate Director of the NYU Institute for Education and Social Policy at New York University, holds a Ph.D. in Economics from the University of Maryland-College Park, 2012 (“The Stealth Inequities of School Funding,” Center for American Progress, September 19th, Available Online at https://www.americanprogress.org/issues/education/reports/2012/09/19/38189/the-stealth-inequities-of-school-funding/, Accessed 06-20-2017)

States must scrutinize regressive funding systems and implement progressive funding formulas and approaches that use financial resources in ways that will most effectively level the educational playing fields between their districts. Nationwide, school finance disparities continue to seriously undermine the mission of this country’s public schools. Eliminating these disparities must be a priority if our goal is to successfully educate this generation of children to compete and win in the global marketplace.

#### State action solves by eliminating local funding disparities.

Walter et al. 13 — Karla Walter, Senior Policy Analyst at the Center for American Progress Action Fund, et al., with Tom Hucker, Member of the Maryland House of Delegates, David Madland, Director of the American Worker Project at the Center for American Progress Action Fund, Nick Bunker, Research Assistant in Economic Policy at the Center for American Progress Action Fund, and David Sanchez, Special Assistant in Economic Policy at the Center for American Progress Action Fund, 2013 (“Improve the quality of education for all students,” *States at Work: Progressive State Policies to Rebuild the Middle Class*, Published by the Center for American Progress, March 21st, Available Online at <https://cdn.americanprogress.org/wp-content/uploads/2013/03/StateMiddleClassPolicies-Ch5.pdf>, Accessed 06-20-2017, p. 125-126)

Ensure equitable funding to poor jurisdictions

States must put an end to persistent school funding inequity that often leaves students from high-poverty districts without the resources they need to succeed in school. Too often, state and local funding of public schools entrench rather than alleviate existing disadvantages.

Local funding—generated primarily through property taxes—allows property-rich districts to raise far more support for their schools than property-poor areas. About 40 percent of school funding is generated at the local level across the country,42 but in states such as Illinois and Nevada, this number is about 60 percent.43

And although state tax revenue is supposed to ameliorate this inequality and provide increased funding for high-need districts, too often states fail to target state funding based on need, causing funding gaps to remain. In some cases state funding distribution methods may even exacerbate inequity in resources by providing state funding to the communities with the least need, according to a recent Center for American Progress report by Rutgers University’s Bruce D. Baker and New York University’s Sean P. Corcoran.44 As a result, in 39 states, differences in per-pupil funding across districts still range by more than $1,000.45 To be sure, funding inequality cannot be blamed for all the problems of struggling schools, but failing to provide schools with the resources they need means that low-performing schools, which are often high poverty, may find it challenging to adopt necessary reforms.

In order to provide equal opportunity to students in high-poverty schools, state legislatures should adopt a state-centralized system of financing that allocates funding based on student need that all but eliminates local funding of schools, as Cynthia Brown, Vice President for Education Policy at the Center for American Progress, advocates for in an upcoming book.46 School districts would be prohibited from raising more than 10 percent in additional funds. Admittedly, this would be costly and politically difficult and would require significant commitment by the state government to provide sufficient aid to backfill local contributions. Yet some states have already undertaken this approach. Local revenues generate only 3 percent of public school funding in Hawaii, which has a state centralized system, and 8 percent in Vermont.47

At a minimum, states should implement progressive funding formulas that allocate resources through a weighted student funding system that takes into account [end page 125] student needs and the local district’s capacity to meet those needs. Such systems ensure the districts that spend the most are those with the greatest student needs.

States that have adopted more equitable systems of public school funding have seen results in the classroom. In New Jersey, for example, after lawmakers adopted a more equitable funding system, test scores improved and the achievement gap narrowed. Between 2003 and 2007 all New Jersey students improved their fourthgrade reading scores, and the gap between African American and white students continued to narrow through 2011. On eighth-grade math, all students in New Jersey improved between 2003 and 2011 and achievement gaps were narrowed for African American (but not Latino) students versus white students.48

### Theory

#### The counterplan raises a core topic controversy in the area of this aff — contextual evidence proves.

Wilkins 5 — Brooke Wilkins, J.D. Candidate at the J. Reuben Clark Law School at Brigham Young University, holds a B.S. in Biology Teaching from Brigham Young University, 2005 (“Should Public Education be a Federal Fundamental Right?,” *Brigham Young University Education and Law Journal* (2005 BYU Educ. & L. J. 261), Available Online to Subscribing Institutions via Lexis-Nexis)

Often lost in all the debate is the question of what government structure is best suited to make decisions regarding the funding, provision and superintendence of education. On one level, all agree regarding the importance of education. But is the federal government best suited to deal with educational policy issues? Are the state governments? What is the role of the judiciary in creating and enforcing the positive law aspects of educational policy?

### They Say: “Global Right To Education Add-On”

#### Multiple alternate causalities prevent global education.

GCC 11 — Global Concerns Classroom, a project of the Concern Worldwide—a non-governmental, international, humanitarian organization working to prevent poverty, 2011 (“Top 8 Barriers To Education,” August 25th, Available Online at <http://gcc.concernusa.org/education/top-8-barriers-to-education/>, Accessed 07-14-2017)

For millions of children around the world, attending school is simply out of the question. For several reasons, they may never be able to set foot inside a classroom. However, Millennium Development Goal #2 seeks to make inequitable access to education a thing of the past. We compiled the top barriers to education to illustrate what we must overcome to achieve MDG 2.

Poverty – For nearly 90 countries, primary education comes at a cost to families. Between school tuition fees, uniforms, and supplies, school is often an unaffordable luxury.

Child Labor – In many villages, children may provide a valuable source of income to their families. Rather than spending money on school, families can earn it by sending their child to work instead. A child can’t balance work and school, so a family must make a decision. Often, earning an income is a far more attractive option.

HIV/AIDS – HIV/AIDS often leaves children too ill to attend school. Or, if a family member has contracted the disease, a child may have to stay at home to provide care.

Location – For millions of children, school may be several miles away. In many cases, this walk can be too arduous or dangerous. Parents may decide that it is safer to have a child stay at home rather than walk miles to school every day.

Conflict – Conflicts and wars ravage communities. Between the destruction of schools, the fleeing of child refugees, and the recruitment of child soldiers, conflicts play a major role in disrupting education systems.

Culture and Tradition – Some families may be opposed to education because of their culture or tradition. This especially impacts young girls. However, in our first blog post this month, we discussed the tremendous benefits of educating a girl. To reread this post, follow this link.

Disability – Children with disabilities often are underserved or ignored completely in school.

Teacher Shortages – Large class sizes and underpaid or under-qualified teachers limit the availability of quality education. As we discussed last week in our blog post on Burundi, war uproots and destroys villages. This often leads to a lack of trained or qualified teachers.

## Minimum Wage CP

### 1NC — Increase Minimum Wage CP

#### First/next off is the Minimum Wage Counterplan.

#### The United States federal government should gradually raise the federal minimum wage until it reaches fifteen dollars an hour in 2024, adjust the minimum wage each year thereafter to keep pace with growth in typical worker wages, and phase out the subminimum wage for tipped workers, workers with disabilities, and workers under age 20.

#### Raising the minimum wage reduces poverty and inequality.

EPI 17 — Economic Policy Institute, a nonprofit, nonpartisan think tank created to include the needs of low- and middle-income workers in economic policy discussions, 2017 (“Why America Needs a $15 Minimum Wage,” Economic Policy Institute Fact Sheet, April 26th, Available Online at <http://www.epi.org/publication/why-america-needs-a-15-minimum-wage/>, Accessed 07-19-2017)

The federal minimum wage is just $7.25 and has not increased since 2009. The Raise the Wage Act of 2017 would gradually raise the federal minimum wage to $15 an hour by 2024. Here is how it would work:

\* Raise the federal minimum wage to $9.25 this year and increase it over the next seven years until it reaches $15 an hour in 2024.

\* After 2024, adjust the minimum wage each year to keep pace with growth in the typical worker’s wages.

\* Phase out the outdated subminimum wage for tipped workers, which has been frozen at a meager $2.13 since 1991.1

\* Sunset the much-criticized subminimum wages for workers with disabilities employed in sheltered workshops and for workers under age 20.

The Raise the Wage Act follows the lead of the growing number of states and cities that have adopted significant minimum wage increases in recent years

\* Since the Fight for $15 was launched by striking fast-food workers in 2012, three states representing approximately 18 percent of the U.S. workforce—California, New York, and the District of Columbia—have approved raising their minimum wages to $15 an hour.2

\* Additional states—including Washington, Oregon, Colorado, Arizona, and Maine—have approved minimum wages ranging from $12 to $14.75 an hour.3

The benefits of gradually phasing in a $15 minimum wage by 2024 would be far-reaching, lifting pay for tens of millions of workers and reversing decades of growing pay inequality

\* Gradually raising the federal minimum wage to $15 by 2024 would lift pay for 41 million workers—nearly 30 percent of the U.S. workforce.

\* Affected workers who work year round would receive a raise on the order of $3,500 a year—enough to make a tremendous difference in the life of a preschool teacher, bank teller, or fast-food worker who today struggles to get by on around $20,000 a year.

\* A $15 minimum wage would begin to reverse decades of growing pay inequality between the lowest-paid workers and the middle class. For example, failure to adequately increase the minimum wage accounts for 48 percent of the increase in inequality between women at the middle and bottom of the wage distribution since 1979.4

\* A $15 minimum wage by 2024 would generate $144 billion in higher wages for workers and would also benefit their communities. Because lower-paid workers spend much of their extra earnings, this injection of wages will help stimulate the economy and spur greater business activity and job growth.5

### Decreases Inequality

#### Raising the minimum wage decreases inequality.

Cooper 17 — David Cooper, Senior Economic Analyst at the Economic Policy Institute, Deputy Director of the Economic Analysis and Research Network—a national network of over 60 state-level policy research and advocacy organizations, holds a Master’s in Public Policy from Georgetown University, 2017 (“Raising the minimum wage to $15 by 2024 would lift wages for 41 million American workers,” Economic Policy Institute, April 26th, Available Online at <http://www.epi.org/publication/15-by-2024-would-lift-wages-for-41-million/>, Accessed 07-19-2017)

The minimum wage is also a mechanism for combating inequality. As increased productivity has translated into higher wages for high-wage workers, a rising minimum wage ensures that the lowest-paid jobs also benefit from these improvements. This is the essence of the “fairness” implied in the name of the Fair Labor Standards Act, the act that established the minimum wage.

Figure B shows how the federal minimum wage has compared with the wages of typical U.S. workers. The solid line shows the value of the federal minimum wage as a percentage of the median wage of all full-time, full-year workers. The gradual decline of the line illustrates how inadequate increases in the federal minimum wage gradually increased the gap between the lowest-paid workers and those in the middle of the wage distribution. Indeed, the declining value of the federal minimum wage is the key driver of the growth in inequality between low-wage workers and middle-wage workers since the late 1970s (see Zipperer 2015a and Mishel 2014b). In 1968, the federal minimum wage was equal to roughly half the wage of the typical U.S. worker: 52.1 percent of the median wage of all full-time workers. In 2016, the minimum wage is projected to be just over one-third of the wage of the typical worker: 34.9 percent of the median wage of all full-time, full-year workers.

[Graph Omitted — see URL]

The dotted lines in the figure show that the Raise the Wage Act would reverse this growth in inequality and place the minimum wage above its historical high point. Because of the uncertainty of median wage growth over the next eight years, the figure shows two scenarios: one in which nominal median wages rise at the rate of projected inflation, so that there is no real wage growth, and one where median wages grow 0.5 percent per year faster than projected inflation from 2016 to 2024. The Raise the Wage Act would lift the ratio of the minimum to the full-time, full-year median wage to 60.2 percent if there is no real wage growth, or 57.6 percent if there is modest real wage growth. Of course, if wages for middle-wage workers growth faster than 0.5 percent above inflation, this ratio will be smaller.

### Decreases Poverty

#### The counterplan allows low-wage workers to escape poverty.

Cooper 17 — David Cooper, Senior Economic Analyst at the Economic Policy Institute, Deputy Director of the Economic Analysis and Research Network—a national network of over 60 state-level policy research and advocacy organizations, holds a Master’s in Public Policy from Georgetown University, 2017 (“Raising the minimum wage to $15 by 2024 would lift wages for 41 million American workers,” Economic Policy Institute, April 26th, Available Online at <http://www.epi.org/publication/15-by-2024-would-lift-wages-for-41-million/>, Accessed 07-19-2017)

Conclusion

Since its inception in the Great Depression, a strong minimum wage has been recognized as a key labor market institution that, if effectively maintained, can provide the foundation for equitable and adequate pay for American workers. However, the failure to regularly and adequately raise the federal minimum wage over the past five decades is one of several policy failures that have denied a generation of American workers more significant improvement in their quality of life. In fact, the erosion of the minimum wage has left low-wage workers today earning significantly less than their counterparts 50 years ago.

Raising the federal minimum wage to $15 by 2024 would take its value to a level that finally ensures full-time work is a means to escape poverty, and would provide tens of millions of America’s lowest-paid workers with a substantial, long-overdue improvement in their standard of living. Past increases in the minimum wage have been too timid to preserve low-wage workers’ standard of living, let alone allow them to share in the broader benefits of rising productivity and a growing economy. In contrast, the Raise the Wage Act is a bold proposal that would achieve these goals.

Automating future increases by indexing to growth in the median wage would ensure workers at the bottom of the wage scale are never again left behind as productivity improvements lead to broader improvements in wages. In addition, gradually raising and eliminating the separate lower wage for tipped workers would eliminate the disparities in labor protections and living standards that currently exist between tipped and non-tipped workers. These actions would significantly improve the well-being of millions of American workers and their families, and help to reduce long-standing race- and gender-based wage inequities.

#### Without the counterplan, workers can’t meet basic needs.

Owens 17 — Christine Owens, Executive Director of the National Employment Law Project—a non-partisan, not-for-profit organization that conducts research and advocates on issues affecting low-wage and unemployed workers, former Director of Public Policy at the AFL-CIO, holds a J.D. from the University of Virginia, 2017 (“America needs a $15 minimum wage,” *The Hill*, April 30th, Available Online at <http://thehill.com/blogs/pundits-blog/the-administration/331294-america-needs-a-15-minimum-wage>, Accessed 07-19-2017)

Pay has fallen so far that nearly 4 in 10 of America’s workers today struggle on less than $31,200 a year — which is what $15 an hour translates to for a full-time worker. Far from teenagers, the 41 million U.S. workers who would get a raise under the Democrats’ proposal are overwhelmingly mid-career adults. The typical worker who would see a raise is a 36-year-old woman with some college level coursework who works full time but still struggles to pay the bills.

In fact, many of those eking out a living on less than $15 an hour are skilled workers in jobs that many of us think ought to lead to a stable, middle class life. They are pre-school teachers and nursing assistants; bank tellers and factory workers; home health aides and construction laborers.

While the movement for a $15 minimum wage started with 200 brave fast-food workers in New York City walking off their jobs, it has now spread nationally. And with good reason: cost of living analysis shows that in all 50 states, single workers will need to earn more than $15 an hour by 2024 just to afford basic housing, food, transportation and other costs. And those supporting families and those in more expensive regions will need even more.

Unlike past minimum wage proposals that have delivered important but modest boosts for a small group of workers at the very bottom, a $15 minimum wage, once it’s fully phased in, would raise pay by about $3,500 for almost 1 in 3 workers. That’s a tremendous difference for a child care provider or a security guard who today struggles on $20,000 a year or less — and would begin to reverse decades of widening pay inequality.

And what about the impact on businesses and the economy? Once phased in, a $15 minimum wage would boost paychecks nationwide by $144 billion a year. That’s money that workers will put right back into the economy, helping local businesses and spurring growth. Rigorous economic analysis by University of California economists of the $15 minimum wages that California and New York are now phasing in shows that the big boosts in consumer spending that they generate offset a substantial portion of the higher costs to businesses. Fast food snack chain Wetzel’s Pretzels reports that they’re already seeing this impact at their California locations: sales are up as the minimum wage phases in, offsetting their higher payroll costs.

### They Say: “Research Disproves Benefits”

#### Previous research assumes a modest wage hike. The counterplan’s more significant increase *does* solve.

Bernstein and Spielberg 17 — Jared Bernstein, Senior Fellow at the Center on Budget and Policy Priorities, former Chief Economist and Economic Adviser to Vice President Joseph Biden, former Deputy Chief Economist at the U.S. Department of Labor, holds a Ph.D. in Social Welfare from Columbia University, and Ben Spielberg, Research Assistant at the Full Employment Project at the Center on Budget and Policy Priorities, holds a B.S. in Mathematical and Computational Sciences from Stanford University, 2017 (“Why a $15 Minimum Wage Is Good Economics,” *The American Prospect*, May 4th, Available Online at <http://prospect.org/article/why-15-minimum-wage-good-economics>, Accessed 07-19-2017)

The Raise the Wage Act of 2017, co-sponsored by Senators Patty Murray and Bernie Sanders and House members Bobby Scott and Keith Ellison, would hike the federal minimum wage to $15 an hour by 2024. It would then index the minimum wage to the median wage (to keep low-wage workers’ pay changing at the same pace as the pay of middle-wage workers) and would gradually phase out the loopholes in federal minimum-wage law that set subminimum wages for tipped workers, teenagers who’ve just started their jobs, and workers with disabilities.

The value of the federal minimum wage peaked in 1968, at $9.68 in inflation-adjusted terms. Based on forecasts of inflation, a $15 minimum wage in 2024 would be worth about $12.50 in 2016 dollars, representing a substantial increase above what this country has ever experienced. In 2024, $15 would also likely put the value of the minimum wage close to an unprecedentedly high 60 percent of the median wage. (Back in the 1960s, the minimum wage was around 50 percent of the median.) Almost 30 percent of the workforce would be expected to benefit from the proposed raise by the time the increase was fully phased in, a level far higher than the 10 percent of workers who’ve benefited from the more modest raises of recent decades.

The uncharted nature of the proposed increase means that past minimum wage research, though it is of very high quality, is not necessarily a reliable guidepost in this case. Moderate increases of the magnitude we’ve often seen, in both national and subnational cases, have been found to have very few, if any, of the negative impacts on jobs that their opponents have predicted. But the magnitude of this proposed increase, even with the long phase-in, takes it “out of sample” relative to most past research.

That doesn’t mean, however, that the increase will hurt those it’s intended to help.

In this as in many other economic policy debates, proponents of progressive policies have allowed ourselves to be painted into analytical corners by focusing on the wrong questions. The criterion for an acceptable minimum-wage increase cannot be that if even one person loses a job, it’s not worth doing. Suppose we applied that standard to trade policy, or to technological progress. We’d have to dock every cargo ship and smash the machines!

The questions we should be asking are about workers’ experiences: First, how many workers would benefit from this policy, who are they, and how badly do they need the money? Research by David Cooper at the Economic Policy Institute finds that the Raise the Wage Act of 2017 would give 41 million workers a raise. It would disproportionately benefit women and people of color and would provide additional income to the families of nearly one-quarter of the nation’s children. Fifty-five percent of the workers who would benefit come from families with incomes currently lower than $50,000 a year, and these are families that generally rely on those workers for the bulk of that money.

## Tax The Rich CP

### 1NC — Tax The Rich CP

#### First/next off is the Tax The Rich Counterplan.

#### The United States federal government should eliminate tax avoidance opportunities and establish an eighty percent top marginal tax rate for incomes, capital gains, and dividends over one million dollars.

#### Raising taxes on the rich reduces pre-tax and post-tax inequality.

Bruenig 14 — Matt Bruenig, Freelance Writer specializing in Poverty and Political Theory, has written for *The Washington Post*, *Los Angeles Times*, *The Atlantic*, *The New Republic*, *The American Prospect*, *In These Times*, *Jacobin*, and *Dissent*, 2014 (“America should jack up its top tax rate to 70 percent,” *The Week*, March 24th, Available Online at https://theweek.com/articles/449183/america-should-jack-tax-rate-70-percent, Accessed 06-19-2017)

Thomas Piketty's new book, Capital in the 21st Century, painstakingly details the dynamics of wealth and income inequality throughout the last two centuries, and offers a somewhat grim picture of the future of economic inequality. Along the way, Piketty also offers his theory of the cause of exploding executive pay and how we can successfully combat this destructive trend.

Piketty's solution is to jack up taxes on top incomes to essentially confiscatory rates, as high as 80 percent even. Now, raising taxes on the rich in an effort to reduce inequality is a fairly generic idea. But Piketty's reasoning for why such a tax would be successful is much different from what advocates of such a move usually suggest.

The typical line is that increasing taxes on the rich would reduce their take-home pay while providing public revenues that could be used to increase the take-home pay of others. In this view, increasing taxes on top incomes would not reduce what is somewhat misleadingly called "pre-tax" inequality, but it would reduce "post-tax" inequality.

In Piketty's view, the equalizing effects of such a tax would be much more expansive. A very high top tax rate would not only change the distribution of income after taxes. It would also alter incentives in such a way to change the distribution before taxes.

To understand why, it is necessary to determine why executive pay has exploded so much in the last few decades. In 1978, the top 350 CEOs commanded average compensations of $1.4 million. By 2011, that figure had ballooned to over $12.1 million. In total over that period, CEO pay went from 26.5 times average employee pay to 206 times the average pay. This is an unprecedented pay increase, one that basic economic theories of worker compensation struggle to explain.

In theory, executives, like other employees, are paid based on their marginal productivity. That is, executives receive in income an amount equivalent to the value they contribute to their company. But if this were true, it would mean that somehow executives in America got super-productive a few decades ago, way more productive than they ever were in the past and way more productive than executives in other countries.

This seems very unlikely. What's more likely, according to Piketty, is that top executives are being much more aggressive about demanding higher pay. These demands have been helped along by the fact that corporate governance in America is a joke, with boards often filled by friends or peers of top executives. But more than that, the demands are helped along by the fact that it is basically impossible to meaningfully measure the marginal productivity of top executives. How can you isolate the precise value a CEO adds to a multibillion dollar firm with tens of thousands of employees? The answer is that you can't.

In an atmosphere of uncertainty over how much value executives actually contribute to companies, executive pay — which is a small percentage of overall company costs anyway — can shoot up enormously, especially when the CEO's buddies are the people tasked with voting on these increases.

This explains the mechanism of exploding executive pay. But it does not explain why it has happened now. If the value-add of an executive is hard to assess and corporate governance is weak in America, then why did it take off when it did?

Piketty's answer: Blame the slashing of top tax rates. For much of the 20th century, top tax rates in the U.S. were very high, as much as 90 percent. When almost all of an income increase goes to taxes, there is little reason to demand an exorbitant salary. Under this tax regime, corporate executives still made great salaries and still did their jobs well, but they didn't push as hard to extract as much money from their companies as possible. It just wasn't worth it.

This means re-upping top tax rates — let's say, to a 70 percent top marginal tax rate for incomes over $1 million — would actually cause income to be more equally distributed even before taxes are counted.

Relative to the top rate now (39.6 percent), this might seem high, but we've seen higher. In the middle of the last century, the top marginal tax rate hit as high as 90 percent, and averaged over 80 percent. Moreover, increasing the top rate does not mean that all of a CEO's income would be taxed at 70 percent — just the amount above the $1 million threshold.

Executives would receive much less compensation in such a world, which would reduce the income gap, and also free up money firms currently dedicate to executive pay for other uses, e.g. to increase the compensation of some of its other employees or engage in more research and development.

Jacking up taxes on the very rich would thus provide a double dose of inequality reduction, first by cutting exorbitant pay that has no discernible relationship to the productivity of executives, and second by bringing in tax revenue that could be used to reduce ultimate inequality even further. Debates about such a move often focus solely upon the revenue piece of the policy, with opponents typically pointing out that it would generate only modest revenues. And while this narrow point may be true, it ignores the other half of the argument.

### Decreases Inequality

#### The counterplan significantly decreases inequality.

Aaron 15 — Henry J. Aaron, Bruce and Virginia MacLaury Senior Fellow and former Director of Economics Studies at The Brookings Institution, holds a Ph.D. in Economics from Harvard University, 2015 (“Can taxing the rich reduce inequality? You bet it can!,” The Brookings Institution, October, Available Online at <https://www.brookings.edu/wp-content/uploads/2016/06/taxing-the-rich-you-bet-aaron.pdf>, Accessed 07-20-2017, p. 1-2)

The claim

My colleagues reported that an increase in the top-bracket tax rate from 39.6 percent to 50 percent would lower one measure of inequality, the Gini coefficient,2 by a seemingly negligible amount—from 0.5595 to 0.5558. While that shift looks small—it is just 0.7 percent of the original value—it increases by 10 percent the income equalizing effect of the current tax system. And, if one counts the impact on inequality of distributing the revenue, $95 billion in the first year and $1.3 trillion over a decade3 to people in the bottom fifth of the income distribution, this policy would lower inequality as measured by the Gini coefficient by 20 percent of the reduction produced by the current tax system.

Even using the measure that my colleagues employ, the reduction in inequality is not negligible. But the Gini coefficient, although the most commonly used measure of overall inequality, is poorly suited to measure the impact of a tax increase on the very rich. Specifically, ‘the Gini’ is relatively insensitive to income changes at both the top and the bottom of the income distribution. My colleagues acknowledge this point, writing “We acknowledge that the Gini coefficient is more sensitive to changes in the middle of the income distribution than in the tails of that distribution.” It would have been helpful, therefore, to have used another indicator of income inequality that does not share this shortcoming.

As it happens, my colleagues presented data on one such measure, the 99/10 ratio. It shows the ratio of incomes of taxpayers at the 99th percentile to those at the 10th percentile of the income distribution. That measure shows that raising the top personal income tax rate when coupled with transfer of the revenue to the lowest-income fifth of taxpayers has a large effect on inequality. That combination lowers the 99/10 ratio by nearly as much as does the current tax system.

No single measure of income inequality is superior to all others for all purposes. Some show greater sensitivity to changes in income at the top, some to changes in incomes at the bottom, and some to changes in between. For example, almost none of the tax effects of an increase in the top-bracket tax rate show up in the 99/10 ratio for the simple reason that the top bracket applies only to the top ½ of 1 percent of all filers.

When different measures give different results, the sensible course is to take a step back, and use one’s judgment as to decide which is most informative. In this case, using a measure that focuses on income changes at the top and bottom of the income distribution demonstrates that an increase in the top bracket rate combined with distribution to people at the bottom has a major effect on measured inequality.

Sensible tax policy

It is important to use judgment not only in selecting a measure of inequality, but also in choosing what tax policy to evaluate. Simply raising the top tax bracket would aggravate a well-recognized problem with the current tax system. For that reason, an increase in the top-bracket rate should, and almost certainly would, be combined with other measures. Here is why.

Raising the tax on ordinary income but not that on gains and dividends would exacerbate tax avoidance. The 39.6- percent top tax rate on ordinary income, such as wages and salaries, is much higher than the 20-percent top rate on capital gains and dividends.4 Currently, the highest income 1 percent of all filers derive slightly more income from capital gains and dividends than they do from wages and salaries.5

The gap between tax rates on various forms of income encourages people to go to considerable effort and expense to convert more-highly-taxed wages and salaries into capital gains or dividends. Although such conversions are often costly, they are worth it, provided one has enough income to shelter. A multi-billion dollar tax planning industry thrives on fees wealthy filers willingly pay for help to do just that. Tax avoidance is quite legal, but if one is interested in boosting taxes on the rich, one would be ill advised to encourage them to shelter more of it.

An increase in the top rate on ordinary income should be linked to an increase in the rate on capital gains and dividends to avoid making a bad problem worse. Exactly how much the rate on capital gains and dividends would have to go up to achieve that result is hard to pin down. For illustration, however, I assume that if the top rate on ordinary income were increased to 50 percent, the tax rate applied to capital gains and dividends would go up by the same amount, from 20 percent to 30.4 percent.6 These two changes would boost revenue by $144 billion a year or $2.0 trillion over ten years. If that revenue were distributed to the bottom 20 percent of the income distribution, the rate increases combined with the transfers would lower the 99/10 income ratio by 110 percent as much as it is by the entire current tax system.

As noted, the 99/10 ratio misses nearly all of the tax effects of raising the top bracket. If the top bracket rate [end page 1] of 50 percent is extended to the highest-income 1 percent of tax filers, the impacts on inequality are increased. Over the ten-year budget window, applying the 50 percent rate to the top 1 percent of all filers and boosting the rate on capital gains and dividends from 20 to 30.4 percent would raise $2.3 trillion. If this revenue were distributed to the bottom 20 percent of the income distribution, the gap between the incomes of people at the 99th and 10th percentile would be cut by almost half from its pre-tax level.

Sensible budget policy

Taxes are collected for one of two reasons: to balance current spending; or, when deficits are problematic, to avoid undesired spending cuts that would otherwise be necessary. Thus, to gauge the full impact on inequality of changes in tax policy one should pair them with the spending they pay for. Using the Gini coefficient, the Congressional Budget Office reports that government transfers in cash and in kind reduce inequality of market incomes more than twice as much as do taxes of all kinds. Transfers account for nearly 40 percent of the income of people in the bottom income quintile (and even more of those at the 10th income percentile). This fact underscores two key points.

• Because taxes pay for public spending, one cannot understand the impact of tax changes on income inequality without considering the activities that they pay for.

• Public expenditures are a much more powerful instrument than is the tax system for equalizing the distribution of income.

The conclusion that boosting the top bracket can powerfully affect inequality holds even if the revenue is not directly allocated to lower-income households. Projected budget deficits are fueling calls for massive cutbacks in public spending. The Congressional budget resolution passed this year calls for spending cuts of $4.9 trillion over ten years. Of that total, $3.1 trillion would fall on people with low or modest incomes.7 The tax changes shown in lines 3, 4, and 5, of the table below would yield, cumulatively over ten years, respectively, $1.3 trillion, $2.0 trillion, and $2.3 trillion.

Even if one accepts the view that currently projected deficits justify such spending cuts (which I do not), the added revenue from tax increases falling exclusively on the highest-income Americans would undercut the argument that such spending cuts are necessary to prevent an increase in the ratio of debt to GDP. The benefits of avoiding such cuts would accrue to people of modest means who benefit from the programs on which spending would be slashed. These benefits should be counted along with the direct revenue effects in measuring the impact on inequality of tax increases.

That income inequality has increased massively in the past four decades is beyond serious dispute. Most income gains have accrued to those at the very top of the income distribution. Large proportional gains have accrued to the top 10 percent, larger proportional increases to the top 1 percent, and truly massive increases to the top 0.1 percent of income recipients. My colleagues and I agree that inequality has increased so much and for so many reasons that no single policy can fully offset their effects. That conclusion certainly holds for so narrowly focused a policy as one that increases just the top tax rate on ordinary income from 39.6 percent to 50 percent, a measure that affects only about half of the income of ½ percent of tax payers. But the question remains: can such a policy make a significant dent in inequality? The answer is a clear: Yes.

#### An 80 percent tax rate solves without negative economic externalities.

Piketty et al. 12 — Thomas Piketty, Professor at The School for Advanced Studies in the Social Sciences and at the Paris School of Economics, former Assistant Professor of Economics at the Massachusetts Institute of Technology, holds a Ph.D. from The School for Advanced Studies in the Social Sciences and the London School of Economics and Political Science, et al., with Emmanuel Saez, Professor of Economics and Director of the Center for Equitable Growth at the University of California-Berkeley, former Assistant Professor of Economics at Harvard University, holds a Ph.D. in Economics from the Massachusetts Institute of Technology, and Stefanie Stantcheva, Assistant Professor of Economics at Harvard University, holds a Ph.D. in Economics from the Massachusetts Institute of Technology, 2012 (“Response: Testing Tax Policy,” *Boston Review*, March/April, Available Online at https://bostonreview.net/archives/BR37.2/ndf\_thomas\_piketty\_emmanuel\_saez\_stefanie\_stantcheva\_inequality.php, Accessed 07-20-2017)

David Grusky believes that taxing the rich won’t do much to solve extreme income inequality in the United States, because it does nothing to correct the real culprit—the growing gap in pre-tax income. We disagree.

Our research on eighteen OECD countries shows that, between 1975 and 2008, there was indeed a strong correlation between reductions in top tax rates and increases in top 1 percent pre-tax income shares. For example, the United States in this period experienced a 35 percentage point reduction in its top income tax rate and a very large ten percentage point increase in its top 1 percent pre-tax income share. By contrast, France and Germany saw very little change in their top tax rates and their top 1 percent income shares during the same period. Hence, the evolution of top tax rates is a good predictor of changes in pre-tax income concentration.

There are three explanations for the strong response of top pre-tax incomes to top tax rates. They have very different policy implications and thus should—and can—be tested.

First, higher top tax rates may discourage work effort and business creation among the most talented—the so-called supply-side effect. In this scenario, lower top tax rates would lead to more economic activity by the rich and hence more economic growth. We found that in a purely supply-side model, the revenue-maximizing top tax rate would be 57 percent. This implies that the United States still has some leeway to increase taxes on the rich, but that the upper limit has already been reached in many European countries.

Second, higher top tax rates can increase tax avoidance. In that scenario, increasing top rates in a tax system riddled with loopholes and tax-avoidance opportunities is not productive either. However, a better policy would be to first close loopholes so as to eliminate most tax avoidance opportunities and only then increase top tax rates. With sufficient political will and international cooperation to enforce taxes, it is possible to eliminate most tax avoidance opportunities, which are well known and documented. With a broad tax base offering no significant avoidance opportunities, only real supply-side responses would limit how high the top tax rate can be set before becoming counter-productive.

Third, top earners, especially managers of complex organizations, might be able to affect their own pay by bargaining harder or influencing compensation committees. Naturally, the incentives for such rent-seeking are much stronger when top tax rates are low. In this scenario, cuts in top tax rates not only increase top income shares, but the increases in top 1 percent incomes come at the expense of the remaining 99 percent. In other words, top rate cuts stimulate rent-seeking at the top but not overall economic growth.

To tell these various scenarios apart, we need to analyze to what extent top tax rate cuts lead to higher economic growth. We found that, since the 1970s, there has been no correlation between cuts in top tax rates and average annual real GDP-per-capita growth. Countries that made large cuts in top tax rates, such as the United Kingdom and the United States, have not grown significantly faster than countries that did not, such as Germany and Denmark. Hence, a substantial fraction of the response of pre-tax top incomes to top tax may in fact be due to increased rent-seeking at the top rather than increased productive effort.

The bottom line is that rich countries have all grown at roughly the same rate over the past 30 years, in spite of huge variations in tax policies. Using a model in which the response of top earners to top tax rate cuts is due in part to increased rent-seeking behavior and in part to increased productive work, we find that the top tax rate could be as high as 83 percent—as opposed to 57 percent in the pure supply-side model—without harming economic growth.

## Congress CP

### 1NC — Congress CP

#### First/next off is the Congress-*Only* Counterplan.

#### The United States Congress should establish and enforce a constitutional right to education guaranteeing that all children in the United States receive equal access to an excellent elementary and secondary public education by tying federal education funding to state compliance with this goal.

#### The counterplan is mutually exclusive — the plan is all three branches because it fiats “the” USFG and because their solvency advocate specifies Court action. The counterplan is *only* Congress. The plan and perm link to the Court DA.

#### The counterplan solves — Congress can create a federal right to education by tying it to federal education funding.

Robinson 7 — Kimberly Jenkins Robinson, Assistant Professor of Law at the Emory School of Law, holds a J.D. from Harvard Law School, 2007 (“The Case for a Collaborative Enforcement Model for a Federal Right to Education,” *UC Davis Law Review* (40 U.C. Davis L. Rev. 1653), June, Available Online to Subscribing Institutions via Lexis-Nexis)

C. Establishing a Federal Right to Education Through Spending Legislation

Congress should recognize a federal right to education through spending legislation that establishes reasonable conditions on federal financial assistance for the general welfare. n374 While some may worry that this Article's proposal would violate federalism principles in which state and local governments principally control education, n375 the proposal addresses any potential federalism objections to congressional recognition of a federal right to education. The Supreme Court has set very limited requirements for spending legislation by requiring that such action must be "in pursuit of the "general welfare,'" unambiguous, and related "to the federal interest in particular national projects or programs." n376 In addition, spending legislation must not violate other constitutional provisions or be "so coercive as to pass the point at which "pressure turns into compulsion.'" n377 Many scholars view these requirements as rather [\*1723] weak limitations on the spending power and suggest that the Court revise its current approach. n378 While scholars have noted that the Court could apply these factors in a more rigorous fashion in the future, the Court has not yet chosen to do so. n379

If the current lenient standards for spending legislation remain in place, this Article's proposal would satisfy these requirements. First, Congress shapes what is or is not within the general welfare and "courts should defer substantially to the judgment of Congress" on this issue. n380 Thus, legislation establishing a federal right to education would advance the general welfare because experts have consistently viewed a strong education system as an important pillar for the foundation of the nation. n381 As education scholar Richard Elmore has explained, "There is no avoiding a national interest in education; citizenship and education are inextricable." n382 The federal government has repeatedly demonstrated its interest in education, including improving the quality of education and encouraging equal educational opportunity, through past education spending legislation that has not been successfully challenged, including the Elementary and Secondary Education Act of 1965. n383

[\*1724] Second, this approach easily satisfies the "unambiguous" requirement by advocating clear conditions in the federal right to education. Third, the requirement that a statute must not violate any "independent constitutional bar" merely demands that the power "not be used to induce the States to engage in activities that would themselves be unconstitutional." n384 The spending legislation proposed in this Article would not encourage states to take unconstitutional actions, such as encourage states to infringe upon the free speech of local governmental entities. n385

The limitation on spending authority that poses the most trouble for this proposal is that the legislation may operate so coercively that it becomes compulsory in effect. n386 To analyze this requirement, consider that in South Dakota v. Dole, the Supreme Court upheld the constitutionality of a statute that conditioned five percent of federal highway funds on establishment of a minimum drinking age of twenty-one. n387 The Court determined that the statute had not exceeded the boundaries of coercion to become compulsion because Congress merely conditioned the required action on a small percentage of highway funds. n388

Several features of this Article's proposal satisfy the requirement that the legislation must not be compulsory. First, any funding withheld under the statute, while significant in dollar amount, should comprise a relatively small percentage of education funding overall. The Supreme Court approved withholding five percent of federal highway funding in Dole. n389 Therefore, limiting the condition of funds to only a fraction of federal funding for education, even a fraction larger than five percent, could prevent the program from becoming compulsory [\*1725] while still encouraging state action in furtherance of the right to education.

Second, the expert panel would issue nonbinding, advisory recommendations to encourage states to develop their own approaches to identified concerns or violations. Rather than trying to convince states to follow the panel's recommendations, the panel could propose some optional approaches to concerns and leave discretion to the states to choose amongst a variety of solutions. n390 Finally, states may choose to reject the funding available under the statute. n391 With these limitations, the proposed approach would pass constitutional muster like other exercises of congressional spending authority in recent decades that have "increased the extent to which [Congress] places conditions on recipients of federal aid." n392 Moreover, courts have upheld the constitutionality of far more coercive spending statutes than the mechanism proposed here. n393

Ultimately, by focusing the federal government's attention on a collaborative approach through the Spending Clause, this Article's proposal places the federal government in a position that remains consistent with the historical role of the federal government in education. n394 As Elmore has noted, the federal government's role "has been to assert and reassert a national interest in education, using indirect, collaborative financing mechanisms and targeting of resources on curricula and on student populations, while at the same time deferring to states and localities on basic questions of finance and organization." n395 Under this proposal, state and local governments would continue to serve as the primary decisionmakers in education, while federal involvement and oversight would encourage the states to take effective action that will address unequal educational opportunities and poor quality schools. If the federal government focuses on encouraging states to improve the quality of schools, [\*1726] reducing disparities in the quality of educational opportunities, and developing expertise on how quality can be improved, such investments would reap substantial rewards for the nation. n396

### 1NC — Courts Bad For Education Policy

#### Court action fails to improve schools — money not key, narrow focus, info problems, and unintended consequences.

West and Dunn 9 — Martin R. West, Assistant Professor of Education, Political Science, and Public Policy at Brown University, Deputy Director of the Program on Education Policy and Governance at Harvard University, holds a Ph.D. in Government and Social Policy from Harvard University, and Joshua M. Dunn, Assistant Professor of Political Science at the University of Colorado-Colorado Springs, Senior Research Fellow at The Heritage Foundation, holds a Ph.D. from the University of Virginia, 2009 (“The Supreme Court as School Board Revisited,” *From Schoolhouse to Courthouse: The Judiciary’s Role in American Education*, Edited by Joshua M. Dunn and Martin R. West, Published by the Thomas B. Fordham Institute and the Brookings Institution Press, ISBN 9780815703075, p. 10-12)

America’s experience with education litigation, however, offers ample reason to doubt the judiciary’s claim on the title of the least-imperfect branch. Courts often explicitly announce their goals and, in many areas, it is obvious that they have fallen well short of reaching them. Indeed, the judiciary’s attempt to desegregate the public schools has become the leading example for scholars bemoaning the limits of court-led reform.28 While the broader effects of Brown and its progeny on American race relations are debated, it is clear that few de jure segregated school systems were eliminated before 1964. With new backing from Congress and the executive branch, the Supreme Court in 1968 required previously segregated school districts to adopt a remedial plan that “promises realistically to work now” to produce racially balanced schools.29 This renewed effort yielded considerable progress, particularly in the South, but soon provoked hostility not only from white parents but also from blacks, many of whom lost faith in the potential of busing programs to enhance their children’s educational opportunities. In the pivotal 1974 case, Milliken v. Bradley, the Court limited the scope of desegregation remedies to districts found to have engaged in de jure segregation. It proceeded to muddle through until the 1990s, when, despite continued racial imbalance, it directed lower courts to begin withdrawing from the supervision of school districts.30

Similarly, there is scant evidence that the numerous school finance judgments issued by state courts since the 1970s have measurably improved student outcomes, and recent decisions indicate that state courts are increasingly doubtful that judicially manageable standards exist that would ensure better results.31 Both equity- and adequacy-based claims effectively reduce education policy choices to the deceptively simple metric of money, which years of experience and voluminous research suggest is unlikely on its own to improve the quality of [end page 10] education. Yet when courts have delved into the details of reform, the results have not been encouraging. Peter Schrag, a longtime proponent of school finance litigation, regretfully concludes “that the courts are rarely great places to make educational policy. . . . Where they try to detail specific remedies . . . the courts may soon find themselves deeper in the business of imposing across-the-board educational programs . . . than they are equipped to manage.”32

Why have judicial interventions in education policy so often yielded disappointing results? Perhaps the most important reason is that schools, as Shep Melnick explains in chapter 2, are a quintessential example of what political scientist James Q. Wilson termed “coping organizations.” This simply means that it is difficult both to monitor what the organization does and to measure how well it has done it. Students’ academic outcomes reflect not only the quality of their schools, but also a host of factors outside of those schools’ control. Those directly responsible for managing public education, such as principals, school board members, and superintendents, struggle to know how well teachers are doing their job. The courts, which only engage educational institutions intermittently, have even more difficulty in determining whether their reforms have been successful—or even if they have been implemented at all.

The informational problems confronting courts are also exacerbated in education cases. The legal process, Nathan Glazer has pointed out, tends to “exaggerate theoretical considerations and reduce practical considerations.” For example, he notes, “in a school desegregation case, it is not a teacher or principal who will testify, but experts and administrators from distant universities on both sides of the argument.”33 Education research is notoriously inconsistent in quality and often so narrowly focused as to provide only limited guidance for policy, yet it is precisely this research that courts must use to order reforms. The strongest evidence for the benefits of early childhood education, for instance, comes from small-scale, intensive interventions for highly disadvantaged students and may not apply to other types of programs and populations. In a similar way, experimental evidence suggests that smaller class sizes in the early grades can raise student achievement, but it is not at all clear that broad class-size reductions represent the most effective use of funds. Nonetheless, these two reforms have proven popular with judges responding to school finance adequacy claims.34

Furthermore, the absence of strong performance incentives in public education increases the likelihood that court decisions will produce unintended consequences. Under Wood v. Strickland, all public school employees are personally liable for disciplinary actions that violate student rights.35 In a condition of legal uncertainty, teachers and school administrators can therefore be expected to behave defensively even when doing so conflicts with educational goals. Such goal displacement seems to occur even when the legal position of schools is strong: since the 1970s courts have increasingly adopted a “pro-school” position [end page 11] in school discipline cases, yet conflict-averse school officials go out of their way to accommodate exceptionally disruptive behavior (see chapter 11). Leaving aside the time and disruption of a lawsuit, the personal costs to officials of defending themselves can be significant if they are unable to obtain free legal counsel, insurance, or indemnification. And access to free counsel raises its own set of concerns as officials can be understandably anxious about the quality of representation provided by government attorneys of uncertain skill and motivation.36

Each of these judicial imperfections is most apparent when courts are asked to play the leading role in ambitious reform efforts. In such circumstances, courts must create an ongoing enforcement regime despite unstable doctrine and a lack of judicially manageable standards. They seem to founder or succumb to exhaustion as a result.

#### *Missouri v. Jenkins* proves.

Dunn 8 — Joshua Dunn, Assistant Professor of Political Science at the University of Colorado-Colorado Springs, Senior Research Fellow at The Heritage Foundation, holds a Ph.D. from the University of Virginia, 2008 (“The Perils of Judicial Policymaking: The Practical Case for Separation of Powers,” The Heritage Foundation, September 23rd, Available Online at <http://www.heritage.org/political-process/report/the-perils-judicial-policymaking-the-practical-case-separation-powers>, Accessed 07-16-2017)

Exhibit A for anyone making a case against judicial policymaking, however, would have to be Missouri v. Jenkins.[2] This case, which reached the Supreme Court three times, witnessed a federal judge, Russell Clark, mandating tax increases on those living in the Kansas City, Missouri, School District (KCMSD) in order to pay for educational programs and facilities. Almost all schools in the district were turned into magnet schools with special themes such as Slavic studies, performing arts, classical Greek, and agribusiness. But such programs required special facilities and instructors, so the KCMSD was lavished with, among other things, petting zoos, climate-controlled art galleries, and a model United Nations with simultaneous translation capability. One high school was so finely appointed that it became known as the "Taj Mahal."

Judge Clark's goal was to lure white students from the suburbs into the district while simultaneously improving the quality of education for Kansas City's minority children. The judge failed.

After more than $2 billion had been spent and the minutest details of the school district's operations had been regulated, suburban white students stayed away, and the academic performance of the students trapped in the district declined—a difficult feat considering the district's already abysmal test scores.

Missouri v. Jenkins therefore illustrates something other than pure judicial tyranny at work. It illustrates judicial incompetence. While the taxpayers of Kansas City doubtless have opinions about living under a court's enlightened rule, what is most striking and significant is that after seizing all of that power, the court accomplished so little. Granted, elaborate buildings and programs were constructed, but they were just means to an end. How could the exercise of so much power leave the court no closer to, and arguably further away from, its primary goals than when it started?

The evidence from Missouri v. Jenkins indicates that courts are ill-equipped to make public policy, whether judges act tyrannically or have benign intentions. Thus, there appear to be two different types of arguments, principled and practical, against judicial policymaking. The first appeals to the Constitution: Judges should avoid making policy because it violates the principle of separation of powers. The second avoids criticizing the legitimacy of judicial policymaking and instead questions the capacity of courts to achieve their policy objectives.

### Extend: “Money Not Key”

#### Court interventions on education empirically fail because they can only order more funding.

Izumi 16 — Lance Izumi, Koret Senior Fellow and Senior Director of Education Studies at the Pacific Research Institute for Public Policy—a think tank, Chair of the Board of Directors of the Foundation for California Community Colleges, former Speechwriter to United States Attorney General Edwin Meese III, holds an M.A. in Political Science from the University of California-Davis and a J.D. from the Gould School of Law at the University of Southern California, 2016 (“Courts Shouldn't Make Education Policy,” *Daily Journal*, May 4th, Available Online at <https://www.pacificresearch.org/article/courts-shouldnt-make-education-policy/>, Accessed 07-01-2017)

In a recent decision, the California Court of Appeal ruled that it was up to the California Legislature, not the judiciary, to set the level of spending for schools. The court's ruling makes good sense, not only for legal reasons, but also in light of judicial history and education research.

The 1st District Court of Appeal's decision came in the consolidated appeal of Campaign for Quality Education v. California and Maya Robles-Wong v. California. 2016 DJDAR 3853 (April 20, 2016). In their appeal, the plaintiff-appellants alleged that California violated Sections 1 and 5 of Article IX of the California Constitution.

Specifically, the appellants alleged that these sections provided for, according to the appellate court, "a judicially-enforceable right to an education of 'some quality' for all public school children, and alternatively, that the Legislature is currently violating its constitutional obligations to 'provide for' and keep up and support' the 'system of common schools' by its current educational financing system." In other words, the appellants wanted the court to find that there was some minimal level of funding required to ensure a quality education for public school students.

The court, however, in its 2-1 decision, refused to become embroiled in setting education quality and spending levels. "To the contrary," said the court majority, "the language of these constitutional sections do not include qualitative or funding elements that may be judicially enforced by the courts." Rather, "the constitutional sections leave the difficult and policy-laden questions associated with educational adequacy and funding to the legislative branch."

Further, the court majority, citing the landmark Serrano v. Priest education funding case, noted that the California Supreme Court found no constitutional mandate for the state Legislature "to provide funds for each child in the State at some magic level to produce either an adequate-quality educational program or a high-quality educational program."

The appellants' funding claim would have required the court to impose its "judgment over that of the Legislature in order to determine whether particular policy benefits public education," which the court said, "we decline to do." The court's declination was prudent given the history of failed judicial interventions into education spending and policy decision-making.

Perhaps the most egregious example of judicial intervention occurred between 1985 and 1997 in Kansas City, Missouri, where a federal district court judge set himself up as the policymaking czar for the city's school system. Over the 12-year period, Judge Russell Clark ordered the state and the local school district to spend more than $2 billion on a variety of projects and programs in order to improve student achievement.

According to a report on the case by the Washington, D.C.-based Cato Institute, "With that money, the district built 15 new schools and renovated 54 others." These schools had amenities ranging from robotics labs to new libraries to even a planetarium. One high school "had 900 interconnected computers, one for every student in the school," which was a cutting-edge innovation in the 1990s.

In addition, the district-wide student to instructional staff ratio was reduced down to less than 13-to-1, the lowest of any major school district in the nation. The Cato report noted, "For working parents, the district provided all-day kindergarten for youngsters and before- and after-school programs for older students."

Judge Clark even ordered massive increases in local property taxes to pay for, among other things, a 40 percent increase in the salaries of teachers and other school personnel.

Kansas City's per-pupil spending ranking shot up to number one among the 280 largest school districts in the country. But in the end, all that spending produced very little improvement in student achievement.

According to the Cato report, "Year after year the test scores would come out, the achievement levels would be no higher than before, and the black-white [performance] gap would be no smaller."

"I truly believed," said then-Kansas City school board president Sue Fulson, "if we gave teachers and administrators everything they said they needed that they would truly make a huge difference." She was confident that "we would see not just results, but dramatic results, educationally." When those results failed to appear, Fulson said it was "my bitterest disappointment."

Kansas City's failure is not surprising given the weight of education research on education spending and quality. Stanford University's Eric Hanushek, one of the nation's top education economists, has warned: "Simple conclusions such as 'lack of resources is the fundamental factor driving low achievement' have been contradicted by the evidence: dramatic increases in resources have not led to the improvement in performance of our students."

A recent comprehensive multi-year analysis of Michigan's education spending and student testing data by the Mackinac Center, a public policy research organization, found that "there is no statistically significant correlation between how much money public schools in Michigan spend and how well students perform academically." To explain this lack of correlation, the Mackinac researchers posit, "public schools, on average, fail to spend additional resources in ways that measurably improve student achievement."

Given the myriad factors that influence the quality of education, many of which have little to do with state spending levels, it is no wonder that the Legislative Analyst's Office, the respected research arm of the California Legislature, has said: "Research and experience suggest that how we spend available resources is at least as important as how much we spend on education."

In the majority opinion in Campaign for Quality Education, Justice Martin Jenkins wrote that the state constitution does not allow courts "to dictate to the Legislature, a coequal branch of government, how to best exercise its constitutional powers to encourage education and provide for and support a system of common schools throughout the state." By limiting judicial intervention into education policymaking, the court not only remained true to the intent of the state constitution, but it also saved itself from having to make determinations on a litany of in-the-weeds issues that it would almost certainly get wrong.

#### New Jersey proves.

Heise 2 — Michael Heise, Professor of Law at Case Western Reserve University, former Deputy Chief of Staff to the U.S. Secretary of Education, holds a Ph.D. from Northwestern University and a J.D. from the University of Chicago, 2002 (“The Courts, Educational Policy, and Unintended Consequences,” *Cornell Journal of Law and Public Policy*, Volume 11, Issue 3, Summer, Available Online at <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1042&context=cjlpp>, Accessed 07-13-2017, p. 655)

In this regard, New Jersey's three-decade-long school finance litigation spectacle provides one vivid example of the difficulties with translating judicial victories into educational victories, especially where strong political consensus is lacking. 143 On the one hand, litigants succeeded in raising New Jersey's per-pupil spending level to among the nation's highest.144 On the other hand, despite increased spending, student achievement levels in New Jersey's urban districts continue to lag behind national averages. 145 Moreover, in response to the "forced exchange" between New Jersey taxpayers and schools, New Jersey voters in 1990 directed their anger over a tax increase, partly a result of the court decisions, toward Gov. Jim Florio by denying him a second term in office. 146

### Extend: “Narrow Focus”

#### Courts only address narrow issues, not the broader context — they can’t consider opportunity costs.

Dunn 8 — Joshua Dunn, Assistant Professor of Political Science at the University of Colorado-Colorado Springs, Senior Research Fellow at The Heritage Foundation, holds a Ph.D. from the University of Virginia, 2008 (“The Perils of Judicial Policymaking: The Practical Case for Separation of Powers,” The Heritage Foundation, September 23rd, Available Online at <http://www.heritage.org/political-process/report/the-perils-judicial-policymaking-the-practical-case-separation-powers>, Accessed 07-16-2017)

The Problem of Isolated Issues

This, then, leads to the final problem of isolated issues. Courts can address policy problems only in a "piecemeal" fashion. Because they can address only the legal question before them, judges cannot consider other issues related to the problem, which nevertheless might be essential for solving it. For instance, poverty clearly affects educational performance, but when considering whether a state adequately funds education, a court must focus only on educational spending. It cannot ask whether a change in welfare policy, low-income housing, job-training programs, or crime-reduction efforts would be necessary for improving educational outcomes in poorly performing schools.

Not considering the context of different policy problems breeds irrational public policy. Since courts discuss policy in the language of rights and duties, they do not take opportunity cost into account. If a right has been violated, it must be remedied regardless of the cost, but rational policymaking requires consideration of opportunity cost. One must consider whether a dollar spent on policy X would be better spent on policy Y. But Courts cannot consider whether a dollar or $2 billion spent to improve education would be better spent on roads, police, prisons, public health, or nothing at all.

### Extend: “Info Problems”

#### Judges get bad info in education lawsuits — they lack expertise needed to make smart decisions.

Dunn 8 — Joshua Dunn, Assistant Professor of Political Science at the University of Colorado-Colorado Springs, Senior Research Fellow at The Heritage Foundation, holds a Ph.D. from the University of Virginia, 2008 (“The Perils of Judicial Policymaking: The Practical Case for Separation of Powers,” The Heritage Foundation, September 23rd, Available Online at <http://www.heritage.org/political-process/report/the-perils-judicial-policymaking-the-practical-case-separation-powers>, Accessed 07-16-2017)

The Problem of Inadequate Information

While the adversarial legal process creates incentives for each party to generate massive amounts of information for judicial consumption, there are problems with both the reliability of that information and the ability of judges to process it. Judges are generalists and do not have specialized training in the often highly technical areas of the physical and social sciences that are central to the issues they are being asked to resolve. Moreover, in many of these disputes, there is no consensus within the scientific discipline, so it is unreasonable to expect a judge to be the arbiter of these complex disputes.

Because they are so ill equipped, judges must rely on expert witnesses who are invariably partisan and therefore produce partisan information. Making effective public policy, however, requires that those who make it have access to accurate information and the ability to comprehend what the information means. Lacking this ability, judges are left to the partisan perspective of "experts."

Of course, legislators also receive partisan and biased information from interest groups, but legislatures are open institutions with specialized committees and attendant staff, and they solicit and receive information from a variety of interested parties. Also, if a legislator relies on inaccurate information from an interest group, others have incentives to expose those inaccuracies. In contrast, lawsuits are largely closed processes and rely primarily on information produced by the two parties involved in the litigation. If a biased expert witness gives unreliable information, that fact will have little effect on his or her ability to serve as a witness in a trial somewhere else.

An additional problem with the information judges receive is that it is excessively theoretical and insufficiently practical. For example, in disputes over education policy, the expert witnesses are nearly always university professors who generally have little experience actually teaching children or managing schools.[18] These activities, despite the ambition or pretensions of schools of education, cannot be codified in a manual.[19] They require knowledge that comes only with experience and practice. Therefore, in a judicial policymaking regime, those who have the most practical experience and knowledge necessary for effective implementation will have the least influence on public policy.

#### Judges *aren’t* education experts — they can’t resolve complicated debates.

Heise 2 — Michael Heise, Professor of Law at Case Western Reserve University, former Deputy Chief of Staff to the U.S. Secretary of Education, holds a Ph.D. from Northwestern University and a J.D. from the University of Chicago, 2002 (“The Courts, Educational Policy, and Unintended Consequences,” *Cornell Journal of Law and Public Policy*, Volume 11, Issue 3, Summer, Available Online at <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1042&context=cjlpp>, Accessed 07-13-2017, p. 656)

The school finance area in particular is fraught with peril for many. The overwhelming majority of judges (and their clerks) are not trained as policy analysts and thus possess little expertise in school finance minutiae. School finance litigation frequently forces judges into unfamiliar technical and policy terrain. For example, in the most recent chapter of the decade-long DeRolph litigation, the Ohio Supreme Court all but admitted that its understanding of the state's complicated school funding formula in a recent decision was flawed. 147

Judges' struggles with the asserted relation between educational spending and student achievement also inform. Despite decades of attention, scholars continue to explore the precise relation between educational resources and achievement. Complicated debates continue to smolder in the academic literature. 148 Despite significant social scientific uncertainty surrounding the nature and contour of the relation between resources and achievement, many court opinions demonstrate judges' willingness to assume clarity where none exists, at least among social scientists. 149

### Extend: “Unintended Consequences”

#### Court action undermines political support for education reform.

Heise 2 — Michael Heise, Professor of Law at Case Western Reserve University, former Deputy Chief of Staff to the U.S. Secretary of Education, holds a Ph.D. from Northwestern University and a J.D. from the University of Chicago, 2002 (“The Courts, Educational Policy, and Unintended Consequences,” *Cornell Journal of Law and Public Policy*, Volume 11, Issue 3, Summer, Available Online at <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1042&context=cjlpp>, Accessed 07-13-2017, p. 659-660)

C. Deflecting Attention and Responsibility

School finance litigation that leverages student standards and assessments deflects attention away from students, schools, and parents and toward school funding formulas, lawyers, and judges. The nagging gap between what citizens seek and what children (and schools) deliver in terms of academic achievement justifiably worries many people. 156 Indeed, concerns about the quality of education in this country are neither ill-founded nor lacking in empirical support. Evidence of problems with our educational system is well chronicled. 157 Many educational achievement indicators, viewed from a variety of vantage points, fuel increasingly somber assessments of the condition of American education. 158 Despite what many people - particularly parents - might want to believe, many well-intentioned efforts designed to reform education, partly by increasing student achievement, have largely failed to achieve their goals.159 A mournful consensus has formed around two general observations: (1) American students' academic performance remains unsatisfactory and increasingly poor in comparison with many of the students' foreign counterparts, and (2) these trends have not improved over time despite numerous reform efforts.160

Although fingers continue to point at an array of potential sources of liability, eyes focus upon schools and, more specifically, their resources. To be sure, there is plenty of blame to go around for the disappointment, and it may well prove that school funding formulas contribute to some degree. That said, it is assuredly not the case that school finance [end page 659] and funding formulas are the sole cause of something as complex as underwhelming school and student performance.

Although most acknowledge the problems in American education and the need for increased accountability,161 responsibility for the problems has proven difficult to establish. School finance litigation and the involvement of judges and courts buffer elected officials and lawmakers from responsibility for improving schools. Of course, there is no shortage of public officials who resent litigants' seeming "end-run" around the political process to the courtroom. By deploying standards and assessments in a manner that recasts school finance questions as legal questions, litigants seek to extract from courts and judges what they cannot get from legislators and governors. It is easy to understand lawmakers' angst. After all, successful school finance lawsuits threaten to cost state governments dearly and further erode lawmakers' discretion over education policymaking and budgets. Many governors and lawmakers are displeased to find that a school finance court decision has blown a multi-million-dollar (or more) hole in a state's carefully crafted, long-negotiated budget.

#### Court action chills education policymaking — it makes schools afraid of lawsuits.

Heise 2 — Michael Heise, Professor of Law at Case Western Reserve University, former Deputy Chief of Staff to the U.S. Secretary of Education, holds a Ph.D. from Northwestern University and a J.D. from the University of Chicago, 2002 (“The Courts, Educational Policy, and Unintended Consequences,” *Cornell Journal of Law and Public Policy*, Volume 11, Issue 3, Summer, Available Online at <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1042&context=cjlpp>, Accessed 07-13-2017, p. 657-658)

B. Chilling Educational Policy

Even if courts were suitably structured or judges well-trained or both, such judicial activity would nonetheless likely chill educational policymaking. The policymaking chill flows largely from the economic consequences triggered by legal judgments resulting from successful school finance lawsuits. When educational policymakers assess the costs and benefits of possible standards and assessments policies, the prospect that a policy initiative could enhance the prospects (and possible success) of a school finance lawsuit must now enter into the equation. The potential financial consequences of the lawsuits in New York and North Carolina to policymakers (and taxpayers) illustrates why a new variable must be included into cost-benefit analyses of education policies, at least standards and assessments policies.

When New York policymakers adopted the Regents Learning Standards and related exams in 1996 after more than a decade of development and debate, 151 it is safe to assume, they did not do so in an effort to increase the state's legal exposure to school finance litigation. However, as previously discussed, results from Regents Exams were used successfully by school finance litigants suing the state at the trial court, though not at the appellate court. 152 Whether the state will be ordered by a court to reform its school funding scheme in a manner that addresses the challenges [end page 657] confronting New York City's public schools is not yet clear. Fiscal data hint at the magnitude of the issue that remains in litigation.

The amount of money at stake is significant, even by New York standards. According to the U.S. Department of Education, New York state spent $26.9 billion in 1989-99 on its public elementary and secondary schools. 153 In fiscal 1997, $3.7 billion (42.5%) of New York City's $8.7 billion total revenue for its public elementary and secondary students came from the state.154

While no firm consensus exists on how much more funding New York City schools needs to achieve constitutional adequacy, estimates include an additional $1 billion or more per year.155 An additional $1 billion per year to New York City schools would amount to an immediate 11% boost to New York City's annual education revenue stream and 3.7% of the state's entire K-12 public education budget. Thus, from either an absolute or relative vantage point, the fiscal implications of the litigation are vast. If this estimate is even close to accurate and if the trial court decision is reinstated, what it means is that New York residents might need to generate an additional $1 billion of new education spending, redistribute existing state funds, or devise some combination of both.

Such significant financial consequences surely influence education policymakers as well as policy. To assume otherwise is to blink at reality. Policymakers contemplating developing and implementing standards and assessments must now ask themselves whether the real (or perceived) benefits to student performance and school accountability warrant the increase in legal exposure to successful school finance judgments that can fuel significant budgetary pressure. Rational assessments of otherwise desirable policies could plausibly change if the effective cost of such a policy reaches the levels suggested by recent school finance decisions in New York and North Carolina.

#### Court involvement distracts attention from education reform.

Heise 2 — Michael Heise, Professor of Law at Case Western Reserve University, former Deputy Chief of Staff to the U.S. Secretary of Education, holds a Ph.D. from Northwestern University and a J.D. from the University of Chicago, 2002 (“The Courts, Educational Policy, and Unintended Consequences,” *Cornell Journal of Law and Public Policy*, Volume 11, Issue 3, Summer, Available Online at <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1042&context=cjlpp>, Accessed 07-13-2017, p. 634-635)

Efforts to transform educational standards and assessments into legal entitlements for enhanced funding through the judiciary raise important legal and policy questions. Courts' institutional limitations hamstring their ability to formulate and implement educational policy. Public and private attention to lawyers and lawsuits often deflects school administrators' resources and focus from more pressing challenges, such as improving student achievement and addressing structural impediments [end page 634] to educational reform. The weight of these unanticipated costs is borne largely by schoolchildren and, consequently, our nation.

#### Courts are structurally incapable of dealing with unintended consequences.

Dunn 8 — Joshua Dunn, Assistant Professor of Political Science at the University of Colorado-Colorado Springs, Senior Research Fellow at The Heritage Foundation, holds a Ph.D. from the University of Virginia, 2008 (“The Perils of Judicial Policymaking: The Practical Case for Separation of Powers,” The Heritage Foundation, September 23rd, Available Online at <http://www.heritage.org/political-process/report/the-perils-judicial-policymaking-the-practical-case-separation-powers>, Accessed 07-16-2017)

The Problem of Unintended Consequences

Closely related to the problems created by inadequate information are litigation's unintended consequences. Both litigation and legislation produce unintended consequences, but because litigation produces less reliable information, courts know less about the potential second-order consequences of a particular policy.

Moreover, litigation limits the ability of the government to react to these unintended consequences. The remedy in litigation is designed to restore a right or fulfill a government obligation and thus cannot easily be modified. If a legal proceeding has determined that the judge's ordered program is the proper remedy for the proven violation, modifying the remedy raises questions about the court's judgment and also raises the appearance that the modification has deprived someone of a right the initial judgment was intended to restore. If the legally determined remedy is not working, perhaps the court's decision about the violation was questionable as well.

### Extend: “Missouri v. Jenkins”

#### The plan will be a repeat of *Missouri v. Jenkins*.

Wilkins 5 — Brooke Wilkins, J.D. Candidate at the J. Reuben Clark Law School at Brigham Young University, holds a B.S. in Biology Teaching from Brigham Young University, 2005 (“Should Public Education be a Federal Fundamental Right?,” *Brigham Young University Education and Law Journal* (2005 BYU Educ. & L. J. 261), Available Online to Subscribing Institutions via Lexis-Nexis)

Yet if public education is considered a federal fundamental right it could embroil the federal judiciary in administrative educational issues. A fundamental right should invoke strict scrutiny. n212 Strict scrutiny means that any governmental regulation must be narrowly tailored to accomplish a compelling interest. Few regulations survive such analysis. So any educational policy that anyone would care to litigate would most likely be struck down by the court. The State could not accurately predict how to create educational policy. The difficulties and costs associated with litigation could harm educational processes. Courts would have to depend upon mounds of sociology, rather than legal or constitutional principles, in order to make decisions. The judiciary could be forced to expound the minutest details of educational policy.

#### It was a total failure.

Dunn 8 — Joshua Dunn, Assistant Professor of Political Science at the University of Colorado-Colorado Springs, Senior Research Fellow at The Heritage Foundation, holds a Ph.D. from the University of Virginia, 2008 (“The Perils of Judicial Policymaking: The Practical Case for Separation of Powers,” The Heritage Foundation, September 23rd, Available Online at <http://www.heritage.org/political-process/report/the-perils-judicial-policymaking-the-practical-case-separation-powers>, Accessed 07-16-2017)

Missouri v. Jenkins illustrates that courts have immense power to command but often little power to change. Judge Clark commanded that taxes be raised, and they were raised. He ordered that buildings be built, and they were built. But those commands did little to change the quality of education in Kansas City. This reveals that courts are by nature unwieldy institutions for designing and implementing public policy. As the U.S. Supreme Court was muddling through desegregation in the early 1970s, it certainly could not have envisioned that its decisions would create the catastrophe of Missouri v. Jenkins.

#### It also took forever.

Wilkins 5 — Brooke Wilkins, J.D. Candidate at the J. Reuben Clark Law School at Brigham Young University, holds a B.S. in Biology Teaching from Brigham Young University, 2005 (“Should Public Education be a Federal Fundamental Right?,” *Brigham Young University Education and Law Journal* (2005 BYU Educ. & L. J. 261), Available Online to Subscribing Institutions via Lexis-Nexis)

Missouri v. Jenkins n213 is an example of what can happen when the judiciary takes on educational policy issues. The federal district court was attempting to enforce desegregation laws. By the time the issue reached the U.S. Supreme Court, the federal district court judge was ordering salary increases, ordering funding of educational programs, approving facility improvements and otherwise using judicial decrees to effect an increased attractiveness of the district. The course of the litigation took over eighteen years. A federal district court became mired in minute [\*290] educational procedures, and the resulting cost of litigation. n214 However, what was the district court to do when the political branches of the state government were not desegregating the schools? The tension is difficult.

#### So will the plan.

Heise 2 — Michael Heise, Professor of Law at Case Western Reserve University, former Deputy Chief of Staff to the U.S. Secretary of Education, holds a Ph.D. from Northwestern University and a J.D. from the University of Chicago, 2002 (“The Courts, Educational Policy, and Unintended Consequences,” *Cornell Journal of Law and Public Policy*, Volume 11, Issue 3, Summer, Available Online at <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1042&context=cjlpp>, Accessed 07-13-2017, p. 657)

Another worrisome aspect of courts' involvement in education policymaking is their seeming inability to disengage from judicial supervision once begun. The nation's experience with school desegregation aptly illustrates this point. Although almost fifty years have passed since the Brown decision, federal courts remain embroiled in many desegregation plans.150 As litigants continue to squabble about what it means for a school district to be "unitary" or "fully integrated," the direct and indirect costs associated with school desegregation plans mount. Analogous battles over school finance issues promise to become just as contentious and prolonged.

### Congress Solves

#### The counterplan effectively convinces the states to follow-through — federal funding is an important carrot.

Robinson 7 — Kimberly Jenkins Robinson, Assistant Professor of Law at the Emory School of Law, holds a J.D. from Harvard Law School, 2007 (“The Case for a Collaborative Enforcement Model for a Federal Right to Education,” *UC Davis Law Review* (40 U.C. Davis L. Rev. 1653), June, Available Online to Subscribing Institutions via Lexis-Nexis)

Others may argue that this Article's approach would not achieve its goal because most states would choose to reject the funding offered under the proposed statute. However, states have typically acquiesced to congressional conditions to financial assistance and have not opted [\*1744] out. n490 If Congress adopts this proposal, the states may similarly choose to work with the federal government rather than forego financial assistance. In this regard, it is noteworthy that although NCLB is the most intrusive federal education statute in American history, "states are responding to federal policy [in NCLB] in a way not seen since the mid-1970s, when they rose to the challenge of implementing the Individuals with Disabilities Education Act and Title IX of the Educational Amendments of 1972." n491 Thus, states may continue this pattern of cooperation even if Congress increases its involvement in education.

Furthermore, any suggestion that the states will reject the funding offered under the proposal underestimates the influence that federal funds have over education. Federal funds remain only a small fraction of revenue for education, typically estimated at between seven to ten percent. n492 However, districts must use most state and local funding for expenses determined by law; therefore, federal money wields disproportionate influence because it often represents the largest source of money available to districts for innovative reforms and special programs. n493 Consequently, states will remain reluctant to relinquish the limited funds available for school districts to develop creative approaches and new plans for their schools.

#### Judicial action isn’t needed — Congressional action *alone* solves.

Robinson 7 — Kimberly Jenkins Robinson, Assistant Professor of Law at the Emory School of Law, holds a J.D. from Harvard Law School, 2007 (“The Case for a Collaborative Enforcement Model for a Federal Right to Education,” *UC Davis Law Review* (40 U.C. Davis L. Rev. 1653), June, Available Online to Subscribing Institutions via Lexis-Nexis)

This Article contends that when considering which solution to adopt, the nation should reexamine the benefits of recognizing a federal right to education. Such a right does not have to include a judicially focused approach to improve the provision of educational opportunities in the United States. n499 Instead, this Article proposes that Congress recognize a federal right to education through Spending Clause legislation. States would periodically report on their enforcement of this right to a panel of education experts that would offer recommendations for improvement. Technical and financial assistance also would be available under the statute. This Article has contended that such a right would be more palatable to the American public and would reap compelling benefits.

For too long, the United States has sacrificed the education of low-income, urban, and minority students, as well as the overall quality of American education, on the altar of local control. The nation must recognize that, as President Kennedy so eloquently stated, "our progress as a nation can be no swifter than our progress in [\*1746] education." n500 A collaborative approach in which the United States recognizes a federal right to education that guarantees equal educational opportunity and that aims to ensure that children develop to their fullest potential will help address longstanding educational disparities and improve the quality of public education to the benefit of the entire nation.

### CP Avoids “Courts Bad” Arguments

#### The counterplan avoids our “courts bad” arguments.

Heise 2 — Michael Heise, Professor of Law at Case Western Reserve University, former Deputy Chief of Staff to the U.S. Secretary of Education, holds a Ph.D. from Northwestern University and a J.D. from the University of Chicago, 2002 (“The Courts, Educational Policy, and Unintended Consequences,” *Cornell Journal of Law and Public Policy*, Volume 11, Issue 3, Summer, Available Online at <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1042&context=cjlpp>, Accessed 07-13-2017, p. 654-655)

3. Structural Barriers

That courts sometimes struggle in the educational policy setting should not surprise. Courts are structurally ill-equipped to make the sometimes delicate policy tradeoffs incident to the school finance enterprise. Formal litigation, designed to resolve legal disputes in an adversarial manner, was never meant to serve as a dispassionate, thoughtful, [end page 654] deliberate forum to consider and weigh competing policy and funding objectives and goals.141 The adversarial setting is a blunt instrument and ill-suited to generate the political consensus that is often necessary to carry out policy decisions. This is not to say that the legislative process is perfect. Clearly, it is not. Rather, the smaller point is that, at least at a general level, despite their defects, the political processes, legislative and, to a lesser extent, executive branches remain comparatively better structured than courts to set and implement general school finance policy. 142