

# Rodriguez at Fifty: Lessons Learned on the Road to a Right to a High-Quality Education for All Students

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How long? Not long, because the arc of the moral universe is long, but it bends toward justice.

—Martin Luther King Jr.<sup>1</sup>

INTRODUCTION .....	343
I. LESSONS LEARNED IN THE BATTLES FOR EQUITABLE AND ADEQUATE SCHOOL FUNDING .....	346
II. THE ROAD TO A HIGH-QUALITY EDUCATION FOR ALL STUDENTS ..	354
CONCLUSION.....	359

## INTRODUCTION

This year marks the fiftieth anniversary of the Supreme Court’s decision in *San Antonio Independent School District v. Rodriguez* that our Constitution does not guarantee a fundamental right to education.<sup>2</sup> This anniversary is no cause for celebration. However, it does invite our nation to reflect on the lessons learned since the decision and, most importantly, how our nation can build on those lessons to ensure that all students have access to a high-quality education. Thank you for the

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\* Martha Lubin Karsh and Bruce A. Karsh Bicentennial Professor of Law, Director, Education Law Institute. I am grateful for the excellent research assistance of Maya Artis, Madeline Daniels and Abigail Jones. Some of this work draws upon a lecture that I delivered at the symposium “50 Years after San Antonio Independent School District v. Rodriguez: New and Old Fights for Equity in Public Schools,” hosted by Virginia Law Review Online on February 17, 2023. See UVA Law Review Symposium, (Feb. 22, 2023, 7:38:21 AM), <https://www.law.virginia.edu/sites/default/files/transcripts/Robinson.pdf> [<https://perma.cc/G24D-DBV7>]. This Essay is dedicated to Charles J. Ogletree, Jr., mentor, friend, and co-editor of *THE ENDURING LEGACY OF RODRIGUEZ: CREATING NEW PATHWAYS TO EQUAL EDUCATIONAL OPPORTUNITY* (2015).

1. Martin Luther King Jr., Address at the Conclusion of the Selma to Montgomery March (Mar. 25, 1965), in *A CALL TO CONSCIENCE: THE LANDMARK SPEECHES OF DR. MARTIN LUTHER KING, JR.* 131 (Clayborne Carson & Kris Shepard eds., 2001).

2. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973) (“Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.”).

opportunity to close this Symposium on this impactful, but often underestimated, opinion. The *Loyola University Chicago Law Journal* organized and hosted an exceptional event, and I am honored to have been part of that event and this Symposium Issue.

Demetrio Rodriguez began his fight for fair school funding in 1968. We owe him and the coalition of parents from the Edgewood Independent School District who joined the litigation a debt of gratitude for the fortitude and perseverance they demonstrated in this fight. By taking this fight to the highest Court in our land and through the Texas system, their work demonstrated a fundamental belief that all children are entitled to a high-quality education regardless of socioeconomic status, race, ethnicity, or zip code.

After fighting for more than two decades, Demetrio Rodriguez and the parent coalition ultimately prevailed in the Texas Supreme Court.<sup>3</sup> That court held in 1989 that the Texas Constitution guaranteed both children in wealthy and poor school districts access to “substantially equal opportunity to have access to educational funds.”<sup>4</sup> The successful litigation in Texas, as well as in a number of other states (such as New Jersey, Kansas, and Massachusetts), brought important gains to the students and families who benefited from those court victories.<sup>5</sup>

While it is important to acknowledge what has been gained by the types of litigation that Demetrio Rodriguez and others initiated, it is just as critical that we acknowledge just how far we still must travel before all students are provided a high-quality education that is not adversely

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3. *Edgewood Indep. Sch. Dist. v. Kirby (Edgewood I)*, 777 S.W.2d 391, 398 (Tex. 1989); *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491, 496 (Tex. 1991); *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489, 503 (Tex. 1992); David G. Hinojosa, *Rodriguez v. San Antonio Independent School District, Forty Years and Counting*, in *THE ENDURING LEGACY OF RODRIGUEZ: CREATING NEW PATHWAYS TO EQUAL EDUCATIONAL OPPORTUNITY* 23, 24–27 (Charles J. Ogletree, Jr. & Kimberly Jenkins Robinson eds., 2015).

4. *Edgewood I*, 777 S.W.2d at 397 (“Children who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds.”).

5. *Hinojosa*, *supra* note 3, at 44; *see also* *Abbott v. Burke*, 575 A.2d 359, 383 (N.J. 1990) (“In effect, we hold that under the present funding scheme state aid that is counter-equalizing, that increases funding disparities, and that has no arguable educational or administrative justification, is unconstitutional.”); *Montoy v. State*, 120 P.3d 306, 310 (Kan. 2005) (finding the Kansas school funding system unconstitutional and noting that “the district court found that the financing formula was not based upon actual costs to educate children but was instead based on former spending levels and political compromise. This failure to do any cost analysis distorted the low enrollment, special education, vocational, bilingual education, and the at-risk student weighting factors”); *McDuffy v. Sec’y of Exec. Off. of Educ.*, 615 N.E.2d 516, 553–55 (Mass. 1993) (finding the education funding system was unconstitutional due to the significant disparities in educational opportunities between more and less affluent school districts).

impacted by a student's class, race, ethnicity, or zip code. Demetrio Rodriguez's daughter, Patricia Rodriguez, spoke recently at a symposium at the University of Virginia School of Law.<sup>6</sup> She explained that her father noted, "I don't think I'm ever gonna see the change in the way how schools are funded in Texas. I'm probably gonna die before that happens."<sup>7</sup> She shared that he died without seeing that change. His daughter is a teacher in the Edgewood School District, and she shares her father's sentiments that she also may not see the change in school funding that her students need.<sup>8</sup>

I understand both the need for change and the discouragement that many feel about progress's slow nature. I have dedicated my career to making a difference on these impactful issues. As I do this work, I keep at the forefront of my mind a photograph in my office of a classroom during Jim Crow. The young African American children sit without shoes in a rudimentary schoolhouse with an African American teacher. Those children would never have imagined being able to attend some of the schools that some children who look like them enjoy today. I am reminded that those who endured slavery and segregation could never picture the improvements in educational opportunities that have occurred since that time. Likely, my ancestors never pictured someone who looks like me, an African American woman, as a professor at one of the most prestigious law schools in the nation, the University of Virginia School of Law, given that the University of Virginia was built by enslaved laborers.<sup>9</sup> I press on in this work because I believe at my core that meaningful and lasting change is possible when we relentlessly pursue it.

As we mark the fiftieth anniversary of *Rodriguez*, it is essential that we examine both what has been accomplished since that time and what still

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6. Patricia Rodriguez, Speech at the University of Virginia Law Review (VLR) Online Symposium: 50 Years After San Antonio Independent School District v. Rodriguez: New and Old Fights for Equity in Public Schools (Feb. 17, 2023) (not recorded). Patricia Rodriguez is the daughter of Demetrio Rodriguez, who, along with other families, challenged the substandard conditions of their school district. *Id.*

7. *Id.*

8. *Id.*

9. Marion Post Wolcott, *First Grade in Flint River Farms School, Georgia* (photograph) (May 1939), <https://www.loc.gov/item/2017800831/> [<https://perma.cc/86BE-98WZ>]. Scholars have confirmed that important benefits were conferred to children educated in African American schools during segregation. See, e.g., VANESSA SIDDLE WALKER, *THEIR HIGHEST POTENTIAL: AN AFRICAN AMERICAN SCHOOL COMMUNITY IN THE SEGREGATED SOUTH* (1996) (describing the nurturing learning environment that some African American schools in the South provided during segregation); see also University of Virginia, Memorial to Enslaved Laborers, <https://mel.virginia.edu/> [<https://perma.cc/B8JG-5AXL>] (describing the memorial to the enslaved laborers who built the University of Virginia).

remains to be accomplished. This Essay explores these issues and calls for a renewed effort to accomplish the ultimate aims of the litigation that Demetrio Rodriguez and others began more than fifty years ago.

### I. LESSONS LEARNED IN THE BATTLES FOR EQUITABLE AND ADEQUATE SCHOOL FUNDING

As we reflect on the *Rodriguez* decision, we should first consider what we have learned and what those lessons mean for the road ahead. In this Part, I identify four lessons that we can draw from more than a half-century of fights for equitable and adequate school funding.

First, school funding litigation has supported noteworthy gains and reforms for school funding. One of those gains is establishing a broad scholarly consensus that money spent well matters. The Court in *Rodriguez* noted that the impact of school spending on educational quality remained debatable when the decision was rendered.<sup>10</sup> Yet, as was noted on multiple occasions during the Symposium, that debate has since been resolved in the face of robust evidence that money spent well matters, including evidence presented in court that led judges to agree.<sup>11</sup> Research confirms that school funding reforms can lead to improved outcomes for students.<sup>12</sup>

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10. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 42–43 (1973) (“Indeed, one of the major sources of controversy concerns the extent to which there is a demonstrable correlation between educational expenditures and the quality of education . . .”).

11. Kimberly Jenkins Robinson, *Introduction: The Essential Questions Regarding a Federal Right to Education*, in *A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY* 1, 12–13 (Kimberly Jenkins Robinson ed., 2019) [hereinafter Robinson, *The Essential Questions*]; Charles J. Ogletree, Jr. & Kimberly Jenkins Robinson, *Creating New Pathways to Equal Educational Opportunity*, in *THE ENDURING LEGACY OF RODRIGUEZ: CREATING NEW PATHWAYS TO EQUAL EDUCATIONAL OPPORTUNITY*, *supra* note 3, at 263, 266. There is such a broad consensus that even Eric Hanushek, one of the chief proponents of the argument that money does not matter, conceded in a deposition that “Money spent wisely, logically, and with accountability would be very useful indeed.” Michael Rebell, *Rodriguez Past, Present, and Future*, in *THE ENDURING LEGACY OF RODRIGUEZ: CREATING NEW PATHWAYS TO EQUAL EDUCATIONAL OPPORTUNITY*, *supra* note 3, at 65, 71; *see also* BRUCE D. BAKER, *EDUCATIONAL INEQUALITY AND SCHOOL FINANCE: WHY MONEY MATTERS FOR AMERICA’S STUDENTS* (2018) (compiling and analyzing research on why money matters).

12. C. Kirabo Jackson et al., *The Effects of School Spending on Educational and Economic Outcomes: Evidence from School Finance Reforms*, 131 Q.J. ECON. 157, 160 (2015) (“Although we find small effects for children from affluent families, for low-income children, a 10% increase in per pupil spending each year for all 12 years of public school is associated with 0.46 additional years of completed education, 9.6% higher earnings, and a 6.1 percentage point reduction in the annual incidence of adult poverty. The results imply that a 25% increase in per pupil spending throughout one’s school years could eliminate the average attainment gaps between children from low-income (average family income of \$31,925 in 2000 dollars) and nonpoor families (average family income of \$72,029 in 2000 dollars).”); Julian LaFortune et al., *School Finance Reform and the Distribution of Student Achievement* 23, 31 (Nat’l Bureau of Econ. Research, Working Paper

Second, the Court in *Rodriguez* questioned the ability of courts to adjudicate complex school funding litigation.<sup>13</sup> It explained that it lacked expertise in remedying issues of public funding.<sup>14</sup> State courts have proven quite adept at handling school funding cases and discerning standards that the judiciary can apply when they choose to do so.<sup>15</sup> For instance, in New Jersey and elsewhere, the court insisted that the school funding formula be linked to the state's academic standards.<sup>16</sup> If you consider the successes of state school finance litigation and what federal courts were able to accomplish in school desegregation when strong standards were in place, it is clear that the judiciary has the ability to handle these types of cases if it so chooses.<sup>17</sup>

Third, it is also essential to acknowledge that we are not in the place that we were when the *Rodriguez* litigation began, nor are we in the place that we would be without decades of school finance litigation and the critical wins from those cases, even while we acknowledge the significant setbacks.<sup>18</sup> For example, the Court in *Rodriguez* commented that the Court did not have any indication that the state had not provided students

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No. 22011, 2016) (finding that school funding reforms result in additional state funding for schools and that additional funding is allocated to lowering class size, increasing instructional spending and increasing capital investments and that “[r]eforms increased the absolute and relative achievement of students in low-income districts”).

13. *Rodriguez*, 411 U.S. at 43 (noting that the judicial system should avoid limiting states' abilities to research and develop solutions to complex educational issues).

14. *Id.* at 41, 43.

15. *Rebell*, *supra* note 11, at 72.

16. *See, e.g., Abbott v. Burke*, 693 A.2d 417, 429 (N.J. 1997) (“Because [the school funding formula] does not in any concrete way attempt to link the content standards to the actual funding needed to deliver that content, we conclude that this strategy . . . is clearly inadequate and thus unconstitutional . . .”); *see also Rebell*, *supra* note 11, at 70 (“Standards-based reform put into focus the fundamental goals and purposes of our system of public education. . . . [T]he new state standards provided the courts practical tools for developing judicially manageable approaches for dealing with complex educational issues and implementing effective remedies and offered judges workable criteria for crafting practical remedies in these litigations.”).

17. *See* Kimberly Jenkins Robinson, *Resurrecting the Promise of Brown: Understanding and Remedying How the Supreme Court Reconstitutionalized Segregated Schools*, 88 N.C. L. REV. 787, 835–37 (2010) (explaining how the Court's effective “reconstitutionalization” of segregated schools exacerbated the Court's “deconstitutionalization” of school finance disparities).

18. *See* Hinojosa, *supra* note 3, at 44 (“Whether you look at school funding systems in Texas, New Jersey, Kansas, or Massachusetts, the inequities of today are a far cry from the inequities of yesteryear. As a former clerk for Justice Powell noted, ‘Right or wrong, *Rodriguez* unleashed school-funding innovation throughout the country that continues to this day.’” (quoting Jeffrey S. Sutton, *San Antonio Independent School District v. Rodriguez and Its Aftermath*, 94 VA. L. REV. 1963, 1977 (2008))); *accord Rebell*, *supra* note 11, at 72 (“The courts' intervention in education finance matters has resulted in significant increases in both the adequacy of educational funding and the equity of resource distributions in many states. In other instances, though, strong resistance from the governor and/or the legislature has delayed or impeded mandated reforms.”).

with the education necessary to exercise their rights to free speech and to vote. However, recent assessment data reveals that millions of students are not acquiring the basic minimum skills of numeracy and literacy that they need to function in society.<sup>19</sup>

Acknowledging this forward movement is critical because we need that momentum to keep growing the leadership, scholarship, and advocacy that pave the path for more equitable and excellent schools for all students. If this journey is futile, young lawyers should pursue other career paths. I am particularly focused on the next generation of lawyers because, as I often tell my students at the University of Virginia School of Law, you are the boots on the ground. You are the soldiers we need in this fight because we are battling against deeply intractable systems and strong political headwinds. Building a cadre of lawyers who are prepared to mobilize for a high-quality and equitable education can go a long way toward building on the progress made in school funding reform and school desegregation litigation.

Finally, while we acknowledge these important gains, we also must recognize that widespread racial and socioeconomic educational opportunity gaps persist in this country. Many students go to school every day in low-quality schools that provide them with low-quality educational opportunities, and too often, class, geography, ethnicity, and race determine who gets a world-class school and who gets a substandard one.<sup>20</sup>

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19. See *Rodriguez*, 411 U.S. at 36–37; see also Robinson, *The Essential Questions*, *supra* note 11, at 7–9 (discussing large gaps in educational opportunity and achievement by race and class).

20. See Jennifer Seelig, *Clear View of Rural Education*, in CULTIVATING RURAL EDUCATION: A PEOPLE-FOCUSED APPROACH FOR STATES 14 (Caitlin Howley & Sam Redding eds., 2021) (“Rural school districts typically have smaller numbers of students than their urban and suburban counterparts, and many struggle with decreasing community populations and declining student enrollment. Local school funding is often based on property taxes, which means that school districts in property-rich areas or areas with business properties bring in more local revenue than school districts in property-poor areas or areas with nonapplicable taxes such as agricultural and forested lands. Due to this situation, some rural districts experience financial distress and struggle to generate local fiscal resources through referendums and tax levies.”); Paul C. Gorski, REACHING AND TEACHING STUDENTS IN POVERTY: STRATEGIES FOR ERASING THE OPPORTUNITY GAP 1–2 (2nd ed. 2018) (“[Children from poverty] are assigned disproportionately to the most inadequately funded schools with the largest class sizes and least experienced teachers. They are more likely than wealthier peers to be teased or bullied and to attend schools with fewer extracurricular options.” (citations omitted)); see also *The State of the Teacher Workforce: A State-by-State Analysis of the Factors Influencing Teacher Shortages, Supply, Demand, and Equity*, LEARNING POL’Y INST. (July 27, 2023), <https://learningpolicyinstitute.org/product/state-of-teacher-workforce-interactive> [<https://perma.cc/JNH2-SS5U>] [hereinafter *The State of the Teacher Workforce*] (finding that a child from a school with a high concentration of minority students is more than twice as likely to have an uncertified teacher and nearly twice as likely to have an inexperienced teacher as students in schools with lower concentrations of minority students); U.S. CHAMBER OF COM., AMERICA’S OPPORTUNITY GAPS: BY THE NUMBERS, SYSTEMIC BARRIERS TO EQUALITY OF OPPORTUNITY

School funding is one area in which disparities abound, and these disparities serve as key drivers in the inequities in teacher quality, resources, and facilities. When school district funding levels are compared to the goal of spending adequate funding necessary to reach the United States average test outcomes, the districts in the quintile with the highest poverty spend 13 percent below the amount they would need to reach adequacy and the districts with the second highest poverty spend 11.4 percent less, while the districts in the quintile with the least poverty receive 34 percent more funding than necessary to reach adequacy.<sup>21</sup> Just over one-third (35 percent) of white U.S. students attend schools that are underfunded, while well over two-thirds of Latinx and African American students (71 percent and 75 percent, respectively) attend schools that are underfunded to reach average U.S. test scores.<sup>22</sup> The average African American receives 17 percent below adequate spending and the average Latinx student receives 11 percent below adequate spending, while the average white student receives 22 percent above adequate levels.<sup>23</sup>

Some students and teachers are beginning to call attention to the dismal conditions in their schools. For instance, students at Druid Hills High School in DeKalb County, Georgia, created a video to show the community just how dismal the conditions were in their school.<sup>24</sup> The video reveals sewage leaking into an area designated for eating lunch, mold, exposed electrical wires that risked shocking students, and crumbling walls.<sup>25</sup> It is important to understand that while many think that such conditions are limited to large inner-city schools, Druid Hills High

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FOR BLACK AMERICANS AND PEOPLE OF COLOR 2, 8–9 (2020), [https://www.uschamber.com/assets/archived/images/americas\\_opportunity\\_gaps\\_-\\_by\\_the\\_numbers\\_white\\_paper\\_2020\\_full.pdf](https://www.uschamber.com/assets/archived/images/americas_opportunity_gaps_-_by_the_numbers_white_paper_2020_full.pdf) [<https://perma.cc/VP97-DJMU>] (“60% of Black students in America attend a high-poverty, majority-minority school. . . . The average per pupil spending in high-poverty, non-white school districts is \$1,500 less than the national average.”); see also Linda Darling-Hammond, *America’s School Funding Struggle: How We’re Robbing Our Future by Under-Investing in Our Children*, FORBES (Aug. 5, 2019, 1:43 PM), <https://www.forbes.com/sites/lindadarlinghammond/2019/08/05/americas-school-funding-struggle-how-were-robbing-our-future-by-under-investing-in-our-children/> [<https://perma.cc/GHW4-XDKY>] (“The top-spending states spend about three times what the lowest-spending states allocate to education and, in many states, the wealthiest districts spend two to three times what the poorest districts can spend per pupil.”).

21. See BRUCE D. BAKER, MATTHEW DI CARLO & MARK WEBER, *THE ADEQUACY AND FAIRNESS OF STATE SCHOOL FINANCE SYSTEMS* 3–4 (5th ed. 2022) (outlining statistics regarding unequal and inadequate opportunities in state school finance systems).

22. See *id.* at 4.

23. See *id.*

24. See *Druid Hills High School Students Expose Mold, Crumbling Walls, Sewage Leak at School* (NBC 11Alive News broadcast Apr. 12, 2022), [https://youtu.be/\\_ySV0cuNBfE](https://youtu.be/_ySV0cuNBfE) [<https://perma.cc/B9JY-3M2U>].

25. See *id.* (speaking to the unsafe and unhygienic conditions of the school).

School is located in a suburban and relatively affluent neighborhood in Atlanta, and, even there, the students are subjected to unsafe, low-quality schools.<sup>26</sup> These harmful conditions are happening much more broadly than isolated instances of extreme poverty.

Teachers also are protesting the poor conditions in their schools by striking.<sup>27</sup> For example, teachers in Columbus, Ohio, went on strike in 2022 to demand air conditioning and improved classroom learning environments.<sup>28</sup> During the 2018 Arizona teachers' strike, protestors demanded increased state education funding to fix poor classroom conditions, including outdated textbooks and technology.<sup>29</sup> Over the past several years, other teacher strikes fought for higher pay and better benefits, but also included similar demands for improved teaching and learning conditions.<sup>30</sup>

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26. Druid Hills High School is an International Baccalaureate high school located near Emory University in the suburbs of Atlanta, Georgia, and it was founded as a school for the children of faculty at Emory University. *About Us*, DRUID HILLS HIGH SCHOOL, <https://druidhillshs.dekalb.k12.ga.us/AboutUs.aspx> [<https://perma.cc/C25N-XY6Y>] (last visited Dec. 13, 2023). During the 2019–20 school year, 42 percent of students attending Druid Hills High School were in poverty under Title I, which is one of the lowest numbers of any high school in DeKalb County. DEKALB CO. SCH. DIST., TITLE I, PART A FY20 SCHOOL ALLOCATIONS, <https://www.dekalbschoolsga.org/documents/title-i/fy20-school-allocations.pdf> [<https://perma.cc/QV7V-DJUG>]. The attendance zone for Druid Hills High School includes the neighborhood immediately surrounding the school, Druid Hills, as well as areas further north and east into the DeKalb County suburbs. *District Boundary Map*, GREAT SCHS., <https://www.greatschools.org/school-district-boundaries-map/?districtId=55&level=h&schoolId=720&state=GA> [<https://perma.cc/H7LP-SZJ4>] (last visited Dec. 13, 2023). In the Druid Hills suburb, the median household income is \$138,262 and 85.7% of people hold a bachelor's degree or higher. U.S. CENSUS BUREAU, QUICKFACTS: DRUID HILLS CDP, GEORGIA, <https://www.census.gov/quickfacts/fact/table/druidhillscdpgeorgia/PST045222> [<https://perma.cc/SZ9Q-PYWC>] (last accessed Dec. 13, 2023).

27. See Madeline Will, *Why Teachers are Going on Strike This Fall—and What Could Come Next*, EDUC. WK. (Sept. 19, 2022), <https://www.edweek.org/teaching-learning/why-teachers-are-going-on-strike-this-fall-and-what-could-come-next/2022/09> [<https://perma.cc/HK92-HDAH>] (describing some of the districts in the United States where teachers are protesting against poor school conditions).

28. See Daniella Silva, *Teachers in Ohio's Largest School District Go on Strike 2 Days Before the Start of the School Year*, NBC NEWS (Aug. 23, 2022, 6:47 AM), <https://www.nbcnews.com/news/us-news/teachers-ohios-largest-school-district-go-strike-2-days-start-new-scho-rcna44239> [<https://perma.cc/M8XK-LEFV>] (“The union said the school board walked away from the bargaining table on July 28 and has refused to agree to language in a contract that ‘will guarantee Columbus students basics like air conditioning, appropriate class sizes, and full-time art, music, and P.E. teachers in elementary schools.’”).

29. See Alvin Chang, *Arizona Teacher Walkout: How 3 Decades of Tax Cuts Suffocated Public Schools*, VOX NEWS (Apr. 26, 2018, 9:23 AM), <https://www.vox.com/2018/4/25/17276284/arizona-teacher-strike-tax-cut-funding-data> [<https://perma.cc/5VX4-HDCX>] (discussing the effect of tax cuts on Arizona schools).

30. See Will, *supra* note 27 (“Since 2018, there has been a historic wave of teacher activism, with statewide teacher walkouts in West Virginia, Oklahoma, and Arizona, as well as smaller-scale statewide protests in North Carolina, South Carolina, Virginia, Kentucky, and Colorado. There



It is critical that we raise awareness of these widespread disparities in educational opportunities because survey data reveals that the public does not understand these disparities. For example, a parent survey by Pathways in Education asked, “Do you feel students of color are afforded the same education opportunities as their peers?”<sup>31</sup> Most white parents (81 percent) responded that students of color receive the same educational opportunities, and 72 percent of Hispanic parents also responded affirmatively.<sup>32</sup> In contrast, only 43 percent of Black families agreed that students of color receive the same opportunities.<sup>33</sup> Similarly, 30 percent of African American parents agreed that schools adequately support students from low-income homes, while 66 percent of white and 59 percent of Hispanic parents agreed that such support was adequately provided.<sup>34</sup> This survey reveals that we have a racial and ethnicity gap regarding the knowledge of educational opportunity gaps.

It is important that people understand that we have many, many low-quality schools in our country, which is one of the richest nations in the world.<sup>35</sup> The public must first understand there is a problem before it is willing to work on a solution. I believe that one of the reasons that we do not have more support for a federal right to education is that no consensus exists that our schools are broken. And many who do recognize the broken nature of our schools propose an exit plan rather than a solution to fix our schools.

While all states provide guarantees of education, state law does not offer sufficient guarantees of a high-quality education for all students. Consider Michigan as one example of an ineffective state right to education. The Michigan Supreme Court rejected school funding claims in both the 1970s and 1980s that attempted to address the disparities in

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have also been several big-city teacher strikes, including in Los Angeles, Chicago, Denver, Minneapolis, and St. Paul, Minn.”); accord Education Week Staff, *Teacher Strikes: 4 Common Questions*, EDUC. WK. (March 13, 2018), <https://www.edweek.org/teaching-learning/teacher-strikes-4-common-questions/2018/03> [<https://perma.cc/NFK4-3ZZC>] (noting that “Pennsylvania, Illinois, Washington state, and California lead the way with the highest number of teacher strikes” and that from 2010 to 2018 teacher strikes occurred in Pennsylvania, Illinois, California, Washington, Oregon, Colorado, Ohio, Vermont, Arizona, Missouri, New Jersey, Oklahoma, and West Virginia).

31. PATHWAYS IN EDUCATION & YOUNG GOVERNMENT, PARENT VIEWS ON EDUCATION 20 (2016), <http://www.educationsurveyresults.org/wp-content/uploads/2016/02/Parent-Views-On-Education-by-PIE-and-YouGov.pdf> [<https://perma.cc/H3PP-LYTQ>].

32. *Id.*

33. *Id.*

34. *Id.* at 22.

35. WORLD BANK, WORLD DEVELOPMENT INDICATORS DATABASE, GROSS DOMESTIC PRODUCT 2022 1 (2023), [https://databankfiles.worldbank.org/public/ddpext\\_download/GDP.pdf](https://databankfiles.worldbank.org/public/ddpext_download/GDP.pdf) [<https://perma.cc/7VAN-7NDN>].

school funding between districts.<sup>36</sup> As a result, leading education scholar Kristine Bowman explains that in Michigan “the right to education in the state constitution is not a fundamental right and at most constitutes a thin access right. The legislature, the executive, and the judiciary have not been willing and able to create a higher floor.”<sup>37</sup> State courts in such states as Rhode Island, Florida, and Illinois have refused to review legislative approaches to school funding alleging that they did not want to invade the purview of the legislature.<sup>38</sup>

The decisions in these states illustrate a broader concern regarding state rights to education. Far too often, state rights to education offer insufficient guarantees of a high-quality education. Not only are some state rights unenforceable, many neglect the need to distribute resources equitably, and they vary greatly in rigor, with some cases setting a high bar and others offering only a rotting floor.<sup>39</sup> Furthermore, state civil rights laws that aim to protect students from discrimination not only vary from state to state, but also often omit a requirement to remedy disparate impact discrimination so, like federal law, intent to discriminate must be proved.<sup>40</sup>

*Rodriguez*, along with other cases that limited the equal protection clause and Title VI of the Civil Rights Act to the hard-to-prove intentional

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36. Kristine L. Bowman, *The Inadequate Right to Education: A Case Study of Obstacles to State Protection*, in A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY, *supra* note 11, at 65, 68 (“[A]t the end of 1973, the [Michigan] Supreme Court . . . vacat[ed] the prior decision on arguably unpersuasive procedural grounds. . . . In the early 1980s, . . . the Michigan Court of Appeals affirmed the trial court’s grant of summary judgment in favor of the state, holding that the question presented was essentially the same as in the prior litigation.” (citing *Milliken v. Green*, 212 N.W.2d 711, 712 (Mich. 1973); *E. Jackson Pub. Sch. v. State*, 348 N.W.2d 304 (Mich. Ct. App. 1984))).

37. Bowman, *supra* note 36, at 76.

38. See *id.* at 69; see also *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 408 (Fla. 1996) (finding that the plaintiffs have not provided a measure of adequacy that would prevent the judiciary from intruding into legislative authority to appropriate state funds and to provide “for an adequate and uniform system of education”); *Comm. for Educ. Rts. v. Edgar*, 672 N.E.2d 1178, 1189 (Ill. 1996) (“Historically, this court has assumed only an exceedingly limited role in matters relating to public education, recognizing that educational policy is almost exclusively within the province of the legislative branch.”); *City of Pawtucket v. Sundlun*, 662 A.2d 40, 58 (R.I. 1995) (holding that educational policy is “committed to the Legislature”).

39. See KIMBERLY JENKINS ROBINSON, *LEARNING POL’Y INST., PROTECTING EDUCATION AS A CIVIL RIGHT: REMEDYING RACE DISCRIMINATION AND ENSURING A HIGH-QUALITY EDUCATION 14–15* (2021) [hereinafter *PROTECTING EDUCATION AS A CIVIL RIGHT*] (“In addition, judicial hostility to school finance litigation as well as legislative resistance can hinder school finance litigation and the reforms that are enacted even when plaintiffs prevail. Such obstacles existed before the COVID-19 pandemic hit. Therefore, judicial enforcement of state rights to education remains elusive in numerous states.” (footnote omitted)).

40. See *id.* at 13–14 (“Many state protections from racial discrimination in education do not reach disparate impact discrimination.”).

discrimination, resulted in the absence of a federal judicial remedy for funding and other disparities in educational opportunities.<sup>41</sup> There also is no federal remedy for abysmally low-quality schools. No federal court will provide a remedy to the students of color and low-income students systematically receiving lower-quality teachers, despite teacher quality being a key determinant of student outcomes.<sup>42</sup>

Only one federal court, the United States Court of Appeals for the Sixth Circuit, has held in *Gary B. v. Snyder* that the United States Constitution protects a right to literacy, but that decision was vacated by the full court after the plaintiffs reached a settlement based on the initial win.<sup>43</sup> This holding shows that guaranteeing a federal right to education is within the realm of judicial possibilities. Yet, given the Court's recent decisions overturning affirmative action and relegating the provision of abortion to state law, the current Court is not one that would likely recognize a federal right to education.<sup>44</sup>

However, our federal rights express our highest commitments to core values. Without a guarantee of a high-quality education, we will continue to have a harmful patchwork of low-quality schools here and high-quality schools there. This contradiction reveals that as a nation, we tolerate and perpetuate the denial of high-quality education to millions of students

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41. *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 287 (1978) (holding that the equal protection clause only prohibits intentional discrimination); *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001) (holding that Section 601 of Title VI of the Civil Rights Act of 1964 does not include a private right of action to enforce agency prohibitions of disparate impact discrimination); *see also* Robinson, *The Essential Questions*, *supra* note 11, at 1–2 (explaining how *Rodriguez* left the task of remedying educational disparities to the states and localities).

42. *See generally* *The State of the Teacher Workforce*, *supra* note 20 (compiling data on how students, particularly students of color, are assigned inexperienced and uncertified teachers); Raj Chetty et al., *The Long-term Impacts of Teachers: Teacher Value-Added and Student Outcomes in Adulthood* (Nat'l Bureau of Econ. Rsch., Working Paper No. 17699, 2012).

43. *Gary B. v. Whitmer*, 957 F.3d 616 (6th Cir. 2020), *reh'g en banc granted, opinion automatically vacated by circuit rule*, 958 F.3d 1216 (6th Cir. 2020); *see* Press Release, Michigan Governor Gretchen Whitmer, Governor Whitmer and Plaintiffs Announce Settlement in Landmark Gary B. Literacy Case (May 14, 2020), <https://www.michigan.gov/whitmer/news/press-releases/2020/05/14/governor-whitmer-and-plaintiffs-announce-settlement-in-landmark-gary-b--literacy-case> [<https://perma.cc/8QKA-VUGS>] (“The Sixth Circuit’s decision is groundbreaking, being the first to recognize a right of access to literacy.” (quoting Evan Caminker, Co-counsel for the case, Professor of Law and former Dean at the University of Michigan Law School)).

44. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2165–67 (2023) (explaining that the consideration of race in admission is subject to strict judicial scrutiny and that Harvard and the University of North Carolina “have fallen short of satisfying that burden”); *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2242 (2022) (overruling *Roe* and *Casey* and allowing the states to regulate abortions).

every academic year despite bipartisan rhetoric by presidents of both parties and other leaders that education is the civil rights issue of our time.<sup>45</sup>

The road ahead requires our nation to translate this rhetoric into a lived reality for all of our students.

## II. THE ROAD TO A HIGH-QUALITY EDUCATION FOR ALL STUDENTS

This brings us to these questions: if education is the civil rights issue of our time, why do so many students attend low-quality schools every day? And, why do we tolerate a distribution of educational opportunities that typically favors wealthy and many white families and neighborhoods while leaving behind families and neighborhoods with less wealth and many students of color? Most importantly, how can we make sure that all students receive access to a high-quality education in ways that make the dreams of Demetrio Rodriguez and his fellow plaintiffs a reality?

Currently, there is no national debate about whether our nation needs a federal right to a high-quality education. I am on a mission to change that. Such a right can serve as a powerful tool to raise the floor on the types of educational opportunities that all students receive to a level that enables them to be college and career ready.<sup>46</sup> A federal right to a high-quality education can also drive reductions in the racial, ethnic, geographic, and socioeconomic gaps in educational opportunities.<sup>47</sup> Although there is not a widespread national debate on a federal right to education, some are pushing bipartisan legislation on such a right, and new organizations are proposing reforms that advance equal educational opportunity.<sup>48</sup>

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45. See ROBINSON, PROTECTING EDUCATION AS A CIVIL RIGHT, *supra* note 39, at 1; Robinson, *The Essential Questions*, *supra* note 11, at 19–20; Bowman, *supra* note 36, at 76–77.

46. See LAURA JIMENEZ, CTR. AM. PROGRESS, PREPARING AMERICAN STUDENTS FOR THE WORKFORCE OF THE FUTURE: ENSURING EVERY STUDENT’S READINESS FOR COLLEGE, CAREER, AND CIVIC LIFE (2020) (“Research and practice have led to consensus on the different dimensions of readiness all students need for college and future careers. These include academic mastery across a range of subjects, technical training either in a specific field or in cross-cutting skills such as computer literacy, and 21st-century skills such as critical thinking and collaboration.” (citing DAVID T. CONLEY, COUNCIL OF STATE GOVERNMENTS, FOUR KEYS TO COLLEGE AND CAREER READINESS (2011))); see generally ANNE MISHIN, OVERVIEW: STATE DEFINITIONS OF COLLEGE AND CAREER READINESS 3 (2014), [https://ccrcenter.org/sites/default/files/CCRS\\_Definitions\\_Brief\\_REV\\_1.pdf](https://ccrcenter.org/sites/default/files/CCRS_Definitions_Brief_REV_1.pdf) [<https://perma.cc/33RQ-AMTY>].

47. Kimberly Jenkins Robinson, *Conclusion: An American Dream Deferred: A Federal Right to Education*, in A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY, *supra* note 11, at 327, 329–32.

48. See Justice, Equity, Diversity and Inclusion Coalition, Center for Tax and Budget Accountability, *Who We Are*, CTR. FOR TAX & BUDGET ACCOUNTABILITY, <https://www.ctbaonline.org/abo/ut/justice-equity-diversity-and-inclusion-coalition> [<https://perma.cc/8NC6-J5DZ>] (last visited Oct. 31, 2023) (describing their proposed legislation to guarantee every child access to a federal right to

To support debate on the possibilities of a federal right to education and to raise awareness of educational opportunity gaps, I recently led the launch of the Education Rights Institute at the University of Virginia School of Law.<sup>49</sup> As its Director, and in coordination with our staff, I will be guiding the Education Rights Institute's work to increase understanding of inequitable disparities in educational opportunities and federal resources to close those gaps, as well as to produce and support scholarship regarding a federal right to education. I also will be leading work to boost school districts' understanding of their obligations to address both intentional and disparate impact discrimination on the basis of race, color, and national origin to comply with Title VI of the Civil Rights Act of 1964.<sup>50</sup> In many ways, this work carries on the journey that Demetrio Rodriguez began more than 50 years ago because the educational inequities that his lawsuits aimed to correct endure.

To insist that our political leaders translate rhetoric that identifies education as the civil rights issue of our time into reality, we first must identify the path forward to guaranteeing that every student enjoys a right to a high-quality education. I believe that federal legislation provides the most viable avenue to guarantee that every student has a right to access a high-quality education, given the composition and disposition of our current Supreme Court. In my edited volume, *A Federal Right to Education: Fundamental Questions for Our Democracy*, I acknowledge the challenges of a congressional right to education, but ultimately conclude that

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a high-quality education); accord Mark Lieberman, *Meet the New Group Promising to Tackle School Funding and Segregation Together*, EDUC. WK. (June 19, 2023), <https://www.edweek.org/policy-politics/meet-the-new-group-promising-to-tackle-school-funding-and-segregation-together/2023/06> [<https://perma.cc/UJX7-QKJJ>]; Education Rights Institute, *About the Education Rights Institute*, UNIV. OF VA. SCH. OF LAW, <https://www.law.virginia.edu/education/about-education-rights-institute> [<https://perma.cc/4YNJ-JWPC>] (last visited Dec. 14, 2023).

49. See Mark Lieberman, *America's Children Don't Have a Federal Right to Education: Will That Ever Change?*, EDUC. WK. (Oct. 24, 2023), <https://www.edweek.org/policy-politics/americas-children-dont-have-a-federal-right-to-education-will-that-ever-change/2023/10> [<https://perma.cc/KJ2F-RATG>] (noting that the Education Rights Institute, which is supported by almost \$5 million in private donations, will be working to close knowledge gaps regarding disparities in educational opportunities and their costs and "helping people understand that we can choose to build a better system, we just have to decide that that's what we want"); Josette Corazza, *At Institute Launch, Nasir Implores Nation to "Dream Bigger" for Education*, UNIV. OF VA. SCH. OF LAW (Oct. 18, 2023), <https://www.law.virginia.edu/news/202310/institute-launch-nasir-implores-nation-dream-bigger-education> [<https://perma.cc/86U2-PY9W>].

50. Education Rights Institute, *supra* note 48; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Education Effectuation of Title VI of the Civil Rights Act of 1964, 34 C.F.R. § 100.3(b)(2) (2020).

the benefits of a statutory right would outweigh these challenges.<sup>51</sup> A statutory right will reflect the weight, deliberation, and scope that are imposed by the political compromises of the legislative process.<sup>52</sup> However, the majoritarian endorsement of the principle that each and every student is entitled to a high-quality education and the political and popular support that the right would have to garner to secure passage can help to shore up the right from the attack of those opposed to a more level educational playing field.<sup>53</sup>

Additionally, a congressional right to education would be able to usher in the overdue shifts to education federalism that the *Rodriguez* Court expressed reluctance to impose.<sup>54</sup> The Court stated that “it would be difficult to imagine a case having a greater impact on our federal system than the one now before us, in which we are urged to abrogate systems of financing public education presently in existence in virtually every State.”<sup>55</sup> The deep irony of this statement is that the Court viewed the widespread nature of the problem as a compelling reason not to intervene. In reality, the widespread and entrenched nature of inequitable and inadequate school funding systems across the fifty states reveals that our laboratories of democracy are experiencing a foundational crisis that requires federal leadership, and intervention to restore education to its rightful place as an engine of democracy, society, and equality.<sup>56</sup>

When considering the viability of a federal right to education, it is essential to understand that guaranteeing a federal right to education does not require federalizing our nation’s education system. Instead, I am proposing a more balanced federal-state-local partnership where the federal government invests more in education while demanding more from states and localities while still allowing state leadership, experimentation, and innovation to thrive. State leadership would continue to flourish in part

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51. See Kimberly Jenkins Robinson, *A Congressional Right to Education: Promises, Pitfalls, and Politics*, in *A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY*, *supra* note 11, at 188–98 (discussing how Congress should enact a congressional right to education and its potential benefits and drawbacks).

52. *Id.*

53. *Id.*

54. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 44 (1973) (discussing the inherent questions of federalism in deciding if the Court should review a state’s laws under “a traditional presumption of constitutionality” or strict scrutiny).

55. *Id.*

56. See HORACE MANN, TWELFTH ANNUAL REPORT TO THE SECRETARY OF THE MASSACHUSETTS STATE BOARD OF EDUCATION 59 (1849) (“*Education, . . . beyond all other devices of human origin, is the great equalizer of the conditions of men, the balance-wheel of the social machinery.*” (emphasis added)); see generally DEREK W. BLACK, *SCHOOL HOUSE BURNING: PUBLIC EDUCATION AND THE ASSAULT ON AMERICAN DEMOCRACY* (2020).

because the federal government would merely establish a floor rather than occupy the entire field.<sup>57</sup>

A statutory right to education could shift federalism incrementally to avoid the backlash of such prior dramatic shifts in education federalism, such as occurred in the No Child Left Behind Act of 2001.<sup>58</sup> Education federalism and the insistence on state and local control of education and limiting federal oversight of education has served as one of the principal roadblocks to the success of laws and policies that advanced equal educational opportunity. For instance, elevating local control led the Supreme Court to subordinate effective and lasting school desegregation.<sup>59</sup> It also led Congress to limit the federal role in insisting on high-quality teachers.<sup>60</sup> This insistence on local and state control of education led to a watered-down Every Student Succeeds Act that greatly reduced the federal role in the Elementary and Secondary Education Act (ESEA) and eviscerated the federal commitment to equity in ESEA.<sup>61</sup>

Additionally, a congressional right to education could adopt a collaborative enforcement approach in which the states, localities, and the federal government work together to redesign education to deliver a high-quality education to all students. This collaboration would involve regular state reporting about state and local efforts to provide high-quality education to experts who would review the reports and offer insights and expertise on how to address obstacles and build on successful reforms. This approach would help to emphasize investments in classrooms and schools over the hiring of lawyers, although litigation also will likely be needed.<sup>62</sup>

Federal legislation to guarantee a high-quality education must wrestle with the difficult questions regarding what a federal right to education should guarantee. In my book, *A Federal Right to Education: Fundamental Questions for Our Democracy*, leading education and legal

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57. Robinson, *supra* note 51, at 200; Kimberly Jenkins Robinson, *Disrupting Education Federalism*, 92 WASH. UNIV. L. REV. 959, 1002–05, 1014–16 (2015).

58. See No Child Left Behind Act of 2001, Pub. L. No. 107-10, 115 Stat. 1425 (2002) (“To close the achievement gap with accountability, flexibility, and choice, so that no child is left behind.”).

59. Kimberly Jenkins Robinson, *The High Cost of Education Federalism*, 48 WAKE FOREST L. REV. 287, 294–314 (2013) [hereinafter *High Cost*].

60. See *id.* at 327–30 (noting how the effectiveness of the highly qualified teacher requirements was undermined).

61. See Robinson, *supra* note 51, at 188–98; Kimberly Jenkins Robinson, *Restructuring the Elementary and Secondary Education Act’s Approach to Equity*, 103 U. MINN. L. REV. 915, 916 (2018); Robinson, *High Cost*, *supra* note 59, at 287, 311.

62. Robinson, *supra* note 51, at 193–96. A federal right to education has been proposed in both the House and Senate, but has not prevailed. *Id.* at 187.

scholars analyze what a federal right to education should guarantee.<sup>63</sup> Linda Darling-Hammond, one of the nation's top education scholars, identifies three essential resources that a federal right to education should guarantee: "a competent, certified, well-trained teacher," "a well-trained competent principal," and "the resources to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, can be met."<sup>64</sup> Rachel Moran, former dean of University of California, Los Angeles Law School and education law scholar, contends that such a right should protect the right to compete with one's peers.<sup>65</sup> Carmel Martin and her colleagues, then at the Center for American Progress, recommend that a federal right to education equalize access to high-quality education with accountability to ensure that educational investments are well spent.<sup>66</sup> Joshua Weishart, leading education law and policy scholar, contends that a federal right to education should build upon lessons from equal protection and due process by "guaranteeing equal liberty."<sup>67</sup> Their chapters reveal their agreement that there should be a federal floor of educational opportunity but that scholarly views differ on what the floor should be.<sup>68</sup>

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63. *Id.* at 187.

64. Linda Darling-Hammond, *Assuring Essential Educational Resources through a Federal Right to Education*, in *A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY*, *supra* note 11, at 235, 241.

65. See generally Rachel F. Moran, *The Constitution of Opportunity: Democratic Equality, Economic Inequality, and the Right to Compete*, in *A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY*, *supra* note 11, at 261, 274 ("The opportunity to compete expresses a collective regard for students . . . by making clear that they will have an authentic chance to vie for political voice and productive employment.").

66. See Carmel Martin et al., *Lessons from State School Finance Inform a New Federal Right to Equal Access to a High-Quality Education*, in *A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY*, *supra* note 11, at 283, 291–95 ("[L]ow income students need more than equity or adequacy; they need sufficient funding to ensure success—which means more funding, not equal funding—and equal access to core services, with accountability for outcomes.").

67. Joshua E. Weishart, *Protecting a Federal Right to Educational Equality and Adequacy*, in *A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY*, *supra* note 11, at 303, 310–15.

68. See Darling-Hammond, *supra* note 64, at 235, 241 (arguing that a federal right to education should guarantee resources like "high-quality teachers and principals, access to a rigorous curriculum geared to the demands of the twenty-first century society and economy, and the course materials and technology needed for such an education"); Moran, *supra* note 65, at 261, 269–74 (contending that a "right to education must be defined in a way that prevents a race to the bottom among public schools and limits gross disparities in per-pupil expenditures"); Martin et al., *supra* note 66, at 283, 291–95 (asserting that a federal right to education should begin with school finance reform including delivering additional resources to students from low-income households); Weishart, *supra* note 67, at 303, 318–20 (noting that a federal right to education should guarantee a floor of adequacy and address regional differences and the variations in the needs of students).



We also must build new and broad coalitions to secure federal reform. Rural communities are often-overlooked partners in this fight for high-quality schools. Many rural communities are suffering under the weight of low-quality schools.<sup>69</sup> Rural communities must be included in the push for high-quality schools that oftentimes give greater attention to the concerns in urban schools.<sup>70</sup> While urban-rural coalitions may make for strange bedfellows, such coalitions also will convey the widespread nature of the problem.

In addition, the push for high-quality schools should build upon the momentum of teacher protests that are spotlighting low-quality schools.<sup>71</sup> Far too many teachers have to spend their own money on basic supplies for their classrooms and students, even though the average teacher salary in 2021–22 was \$66,397.<sup>72</sup> This practice is both widespread and entirely unacceptable. It also is further evidence of just how subpar our schools are today.

#### CONCLUSION

Today's law students and lawyers can serve as critical boots on the ground to insist on more excellent and equitable education systems and to assist in enacting laws and policies that support such systems. Many

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69. See Karen Eppley, *Strong Rural Educators*, in *CULTIVATING RURAL EDUCATION: A PEOPLE-FOCUSED APPROACH FOR STATES 43* (Caitlin Howley & Sam Redding eds., 2021) (highlighting the problems in small, remote, rural schools including few opportunities to take Advanced Placement courses, a short supply of special education teachers, and higher rates of inexperienced teachers); Richard M. Ingersoll & Henry Tran, *Teacher Shortages and Turnover in Rural Schools in the US: An Organizational Analysis*, 59 *EDUC. ADMIN. Q.* 396, 421 (2023) (“[H]igh-poverty rural schools, in particular, face the most intense teacher turnover and yet the staffing challenges of rural schools receive less attention than those of their urban counterparts.”).

70. TOM FOX ET AL., U.S. DEP'T EDUC., *LEADING EDUCATION INNOVATIONS IN RURAL SCHOOLS: REFLECTIONS FROM 13 GRANTEES 2* (2017) (“[M]uch of the literature about education innovation and reform tends to focus on urban areas, with little attention to rural locales.”); see also Dan Fishman, *School Reform for Rural America*, 15 *EDUC. NEXT* 9, 15 (2015) (“An education system that is lackluster in urban America is perhaps even more so in rural areas. It fails both to educate students for college and to prepare them for post-high school careers that allow for individual flourishing without draining out a community's highest achievers.”).

71. See *supra* text accompanying notes 27–30 (describing the protests by teachers against the poor conditions in their schools).

72. Amanda Litvinov, *Out-of-Pocket Spending on School Supplies Adds to Strain on Educators*, NAT'L EDUC. ASS'N (Oct. 14, 2022), <https://www.nea.org/nea-today/all-news-articles/out-pocket-spending-school-supplies-adds-strain-educators> [<https://perma.cc/XW56-WQPQ>] (“Well over 90 percent of teachers spend their own money on school supplies and other items their students need to succeed.”); NAT'L CTR. FOR EDUC. STATS., U.S. DEP'T OF EDUC., *TABLE: 211.50: ESTIMATED AVERAGE ANNUAL SALARY OF TEACHERS IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS 1959-60 THROUGH 2021-22* (2022), [https://nces.ed.gov/programs/digest/d22/tables/dt22\\_211.50.asp](https://nces.ed.gov/programs/digest/d22/tables/dt22_211.50.asp) [<https://perma.cc/AX8E-QVMM>].

individuals pursue a law degree to make the world a better place. Joining and leading the efforts to guarantee a federal right to a high-quality education is one way to do just that. Loyola University Chicago School of Law's core mission is to "commit to . . . anti-subordination" inspired by Jesuit values.<sup>73</sup> Restructuring educational opportunities to reach disadvantaged communities not only would counter the subordinating effects of the current distribution of educational opportunities but also would have ripple effects through housing, criminal justice, and health care, as well as our democracy, economy, and society.

Some may think that law school loans stand in the way of contributing to these efforts. A 2021 survey by the American Bar Association's Young Lawyers Division found that 90 percent of respondents took out loans to attend law school or previous education and owed "an average of roughly \$108,000 in J.D. loans and \$130,000 in all loans combined at graduation."<sup>74</sup> If you are an individual who is carrying a six-figure debt or more, you may think that working to advance equal educational opportunities is not something that you can afford to do. Instead, you may believe that big law is the only option for you.

The good news is that many law firms have joined the work to improve the quality and access to educational opportunities. Sidley Austin LLP and Miller Cohen, PLC assisted in the representation of the students in the *Gary B.* litigation mentioned previously that won the first court victory that found a federal right to literacy.<sup>75</sup> Almost 300 law firms across the country have joined together to form the Law Firm Anti-racism Alliance (LFAA) to work with legal services organizations to tear down systemic and structural racism.<sup>76</sup> One of the most promising aspects of LFAA is that it has eighteen working groups that include everything from education to employment to health care and housing.<sup>77</sup> Students from low-income households and students of color face a complex and deeply entrenched system that undermines their educational opportunities,

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73. Loyola University Chicago School of Law, *Mission*, LOY. UNIV. CHI., <https://www.luc.edu/law/about/mission/index.cfm> [<https://perma.cc/CF65-KVXU>] (last visited Oct. 27, 2023).

74. YOUNG LAWS. DIV. AM. BAR ASS'N & ACCESSLEX INST., *STUDENT DEBT: THE HOLISTIC IMPACT ON TODAY'S YOUNG LAWYER 4* (2021) [https://www.accesslex.org/sites/default/files/2021-09/Student Debt\\_The Holistic Impact on Today's Young Lawyer.pdf](https://www.accesslex.org/sites/default/files/2021-09/Student%20Debt_The%20Holistic%20Impact%20on%20Today's%20Young%20Lawyer.pdf) [<https://perma.cc/AK6C-R9SF>].

75. *Gary B. v. Whitmer*, 957 F.3d 616, 620, 648 (6th Cir. 2020), *reh'g en banc granted*, *opinion automatically vacated by circuit rule*, 958 F.3d 1216 (6th Cir. 2020).

76. *Alliance Firms List*, L. FIRM ANTIRACISM ALL., <https://www.lawfirmantiracismalliance.org/lfaacharter/alliance-firms> [<https://perma.cc/34GB-J2VM>] (last visited Dec. 14, 2023).

77. *Working Groups*, L. FIRM ANTIRACISM ALL., <https://www.lawfirmantiracismalliance.org/lfaacharter/srliworkinggroups> [<https://perma.cc/KU6U-4NJQ>] (last visited Dec. 14, 2023).

including being impacted by inadequate healthcare and unstable housing opportunities than students from middle class households.<sup>78</sup> Therefore, a multifaceted approach to tackling systemic class discrimination and racism is better poised to accomplish the systemic change that is needed to provide all students with high-quality education.

Charles Hamilton Houston, an impactful civil rights lawyer, implicitly challenged lawyers to help society become a better place by stating that “[a] lawyer’s either a social engineer or [ ] a parasite on society.”<sup>79</sup> Houston defined a social engineer as an insightful and greatly skilled lawyer who comprehended the Constitution and how to employ it to remedy the challenges of communities as well as to improve the circumstances of disadvantaged individuals.<sup>80</sup> I challenge current and future attorneys to become the social engineers that our nation’s students, and frankly, our entire nation needs today to build the law and policy architecture that will deliver an excellent and equitable education. Thank you.

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78. See Richard Rothstein, *Why Children from Lower Socioeconomic Classes, on Average, Have Lower Academic Achievement Than Middle-Class Children*, in CLOSING THE OPPORTUNITY GAP: WHAT AMERICA MUST DO TO GIVE EVERY CHILD AN EVEN CHANCE 61, 62–63 (Prudence L. Carter & Kevin G. Welner eds., 2013) (noting the social and economic manifestations of socioeconomic class that have demonstrable negative effects on average achievement in schools).

79. GENNA RAE MCNEIL, GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS 84 (Univ. of Pa. Press 1983) (quoting Thurgood Marshall, in GERALDINE SEGAL, IN ANY FIGHT SOME FALL 34 (1975)); Charles J. Ogletree Jr., Commentary, *All Deliberate Speed: Reflections on the First Half-Century of Brown v. Board of Education*, 66 MONT. L. REV. 283, 285 (2005).

80. MCNEIL, *supra* note 79, at 84.



SCHOOL *of* LAW