

20-2082

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IN THE

**United States Court of Appeals**

**For the First Circuit**

A.C., a minor, by her parent and guardian ad litem, Torrence S. Waithe; A.C.C., a minor, by her parent and guardian ad litem, Nicolas Cahuec; A.F., minor, by his parent and guardian ad litem, Aletha Forcier; R.F., a minor, by her parent and guardian ad litem, Aletha Forcier; I.M., a minor, by his parents and guardians ad litem Jessica Thigpen and Anthony Thigpen; L.M., a minor, by her parents and guardians ad litem Jessica Thigpen and Anthony Thigpen; K.N.M.R., a minor, by her parent and guardian ad litem, Marisol Rivera Pitre; J.R.H., a minor, by her parents and guardians ad litem, Moira Hinderer and Hillary Reser; M.S., a minor, by his parent and guardian ad litem, Mark Santow; M.M.S., a minor, by his parent and guardian ad litem, Amie Tay; M.S., a minor, by her parents and guardians ad litem, Maruth Sok and Lap Meas; A.W., a minor, by her parent and guardian ad litem, Chanda Womack; J.W., a minor, by her parent and guardian ad litem, Chanda Womack; N.X., a minor, by her parents and guardians ad litem, Youa Yang and Kao Xiong,

*Plaintiff-Appellants,*

v.

GINA M. RAIMONDO, in her official capacity as Governor of the State of Rhode Island; NICHOLAS A. MATTIELLO, in his official capacity as Speaker of the Rhode Island House of Representatives; DOMINICK J. RUGGERIO, in his official capacity as President of the Rhode Island Senate; RHODE ISLAND STATE BOARD OF EDUCATION; COUNCIL ON ELEMENTARY AND SECONDARY EDUCATION; ANGELICA INFANTE-GREEN, in her official capacity as Commissioner of Education of the State of Rhode Island,

*Defendants-Appellees.*

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*On appeal from the United States District Court for the District of Rhode Island*

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**BRIEF OF AMICUS CURIAE**

**NATIONAL COUNCIL FOR THE SOCIAL STUDIES**

**IN SUPPORT OF APPELLANTS AND REVERSAL**

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## **CORPORATE DISCLOSURE STATEMENT**

The undersigned counsel certifies that the *amicus curiae* National Council for the Social Studies is not a subsidiary of any other corporation and no publicly held corporation owns 10 percent or more of the *amicus curiae* organization's stock.

*/s/ Yahnnes Cleary*

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Dated: February 1, 2021

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## INTEREST OF AMICUS CURIAE<sup>1</sup>

Founded in 1921, the National Council for the Social Studies (“NCSS”) is the largest professional association in the United States devoted solely to social studies education.<sup>2</sup> With members in all 50 states, the District of Columbia, and 35 countries, NCSS serves as an umbrella organization for elementary, secondary, and college teachers of civics, history, geography, economics, political science, sociology, psychology, anthropology, and law-related education, as well as for curriculum designers and specialists, social studies supervisors, and leaders in the various disciplines that constitute the social studies. Membership in NCSS is open to any person or institution interested in the social studies.

NCSS is deeply committed to improving social studies and civics education. NCSS views the primary purpose of social studies education as helping young people develop the ability to make informed, reasoned decisions for the public good as citizens of a culturally diverse, democratic society in an interdependent world. NCSS’s mission is to advocate and build capacity for quality social studies education by providing leadership, services, and support to educators. NCSS achieves its

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<sup>1</sup> Counsel for both parties have consented to the filing of this brief. No counsel for a party authored the brief in whole or in part; no party or party’s counsel contributed money to fund preparing or submitting the brief; and no person other than the *amicus curiae* or their counsel contributed money intended to fund preparing or submitting the brief.

<sup>2</sup> *About National Council for the Social Studies*, NAT’L COUNCIL FOR THE SOCIAL STUDIES, <https://www.socialstudies.org/about> (last visited Jan. 31, 2021).



mission in large part by supporting social studies professionals in adopting and implementing high-quality, research-based social studies educational practices. Toward this end, NCSS publishes social studies curriculum standards; academic scholarship on social education, including through its flagship, peer-reviewed journal, *Social Education*, and the journal *Theory & Research in Social Education*; and “position statements” on timely and critical issues in social studies education.<sup>3</sup>

In 1994, NCSS published national curriculum standards for social studies education, which were updated in 2010 as the *National Curriculum Standards for Social Studies: A Framework for Teaching, Learning and Assessment* (the “National Curriculum Standards” or the “Standards”).<sup>4</sup> These National Curriculum Standards have been widely used as a tool for curriculum development and alignment. In 2013, NCSS first published the *College, Career and Civic Life C3 Framework for Social Studies State Standards: Guidance for Enhancing the Rigor of K-12 Civics, Economics, Geography, and History* (the “C3 Framework”).<sup>5</sup> The C3 Framework provides guidance to states for enhancing state social studies standards, and to

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<sup>3</sup> NAT’L COUNCIL FOR THE SOCIAL STUDIES, <https://www.socialstudies.org/advocacy/ncss-position-statements> (last visited Jan. 31, 2021).

<sup>4</sup> See NCSS, *Expectations of Excellence: Curriculum Standards for Social Studies* (1994); NCSS, *National Curriculum Standards for Social Studies: A Framework for Teaching, Learning and Assessment* (2010).

<sup>5</sup> See NCSS, *College, Career and Civic Life C3 Framework for Social Studies State Standards: Guidance for Enhancing the Rigor of K-12 Civics, Economics, Geography, and History* (2017).

practitioners for strengthening their social studies programs. As discussed *infra* Section II, these documents also provide important guidance for educating students for productive civic engagement.

## **INTRODUCTION**

The fundamental goal of schooling in a democratic society is to equip students with the knowledge, skills, experiences, and values needed for engaged, responsible civic life. High quality social studies education, and civics education in particular, is essential to this goal. Through civics education, students learn about the history, principles, and institutions of American democracy, and gain the skills to participate responsibly and effectively in civic and democratic processes. Civics education helps foster a reasoned commitment to the founding principles and values that bind American citizens together. Students who receive quality civics education are more likely to vote and participate in community activities, and are better equipped to work collaboratively to solve complex problems.

Unfortunately, national data demonstrate that U.S. students are not receiving adequate civics education. Recent events following the November 2020 U.S. elections demonstrate the potential dangers of neglecting this fundamental component of democratic citizenship.

In collaboration with dozens of expert individuals and organizations in the field of social studies and its constituent disciplines, NCSS has developed national

curriculum standards for social studies education, and a framework that provides guidance to states in developing quality civics curriculum in particular. As described further below, this guidance sets forth fundamental democratic concepts and skills that students should understand and develop in connection with a civics education. A civics education that does not impart these fundamental concepts and skills cannot prepare students for active, engaged, and responsible democratic citizenship. To ensure that Rhode Island public school students are adequately prepared for citizenship, NCSS respectfully urges the Court to reverse the district court’s order granting the defendants’ motion to dismiss.

## **ARGUMENT**

### **I. Civics Education Is Necessary For Democratic Citizenship**

Education generally, and civics education in particular, is fundamental to American democracy. In the words of educational reformer and philosopher John Dewey, “[d]emocracy has to be born anew every generation, and education is its midwife.”<sup>6</sup> As the district court explained, “Education, and particularly civics education, has been a fundamentally important value throughout our nation’s history because it is the foundation of an informed citizenry that can effectively participate

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<sup>6</sup> John Dewey, *Democracy and Education: An Introduction to the Philosophy of Education* (1916).

in a republican form of government.”<sup>7</sup> It follows then that an essential goal of schooling in the United States is to equip citizens with “civic knowledge” and “civic skills, experiences and values” needed for active and engaged democratic citizenship.<sup>8</sup> Indeed, the need to promote civic awareness was one of the very motivations for the development of a system of public education in the United States.<sup>9</sup>

The fundamental role that quality civics education plays in developing an engaged democratic citizenry is supported by empirical research. For example, a 2010 study found that students who completed a year of civics or government coursework were three to six percent more likely to vote after high school than those without exposure to civics education.<sup>10</sup> A 2008 study of 4,057 students from 52 high schools in Chicago evaluated the degree to which classroom-based civics education contributed to the development of commitments to civic participation among a

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<sup>7</sup> *A.C. v. Raimondo*, No. 1:18-cv-00645-WES-PAS, 2020 WL 6042105, at \*10 (D.R.I. Oct. 13, 2020).

<sup>8</sup> *See* Class Action Compl. (“Compl.”) at ¶ 9, *A.C. v. Raimondo*, No. 1:18-cv-00645-WES-PAS (D.R.I. Nov. 28, 2018).

<sup>9</sup> *Id.* at ¶ 2. *See* Nat’l Council for the Social Studies, *A Vision of Powerful Teaching and Learning in the Social Studies*, 80 SOCIAL EDUCATION 180–82 (2016), available at <https://www.socialstudies.org/social-education/80/03/vision-powerful-teaching-and-learning-social-studies>.

<sup>10</sup> Jennifer Bachner, *From Classroom to Voting Booth: The Effect of High School Civic Education on Turnout*, working paper, Harvard University, Cambridge, Mass. (May 23, 2010).

population of largely low-income students of color.<sup>11</sup> Based on the results of bi-annual surveys asking the students to rate the degree to which they agreed with certain civics-related statements such as “[b]eing actively involved in community issues is my responsibility,” the study authors concluded that civic learning opportunities generated an increase in civic engagement, and that the impact “was both sizable and substantially larger than any other measure in [the] study.”<sup>12</sup>

A 2007 study of 2,811 U.S. ninth graders concluded that an observed gap in civics knowledge and expected civics participation between Latino and non-Latino citizens could be narrowed by providing Latino students with a more open classroom climate for civics discussion and more time devoted to discussions of political topics and democracy.<sup>13</sup> In another study, high school students who were taught political science methodology “were able to simulate the same type of decisions that political

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<sup>11</sup> Joseph E. Kahne & Susan E. Spote, *Developing Citizens: The Impact of Civic Learning Opportunities on Students’ Commitment to Civic Participation*, 45 AM. EDUC. RESEARCH JOURNAL 738–66 (September 2008).

<sup>12</sup> *Id.* at 746, 753. Civic learning opportunities included learning about “problems in society,” “current events,” and “issues about which one cares”; “experiencing an open climate for classroom discussions of social and political topics”; hearing from civic role models”; “learning about ways to improve the community”; and “working on service learning projects.” *Id.* at 746–47.

<sup>13</sup> Judith Torney-Purta, C.H. Barber & Britt Wilkenfeld, *Latino Adolescents’ Civic Development in the United States: Research Results From the IEA Civic Education Study*, 36 J.L OF YOUTH & ADOLESCENCE 111, 114, 118–19 (2007).

operatives make when they are faced with having to balance political needs with limited financial resources.”<sup>14</sup>

The need for quality, civics education is particularly urgent today. As the district court observed:

We are a society that is polarized as much as any time in our history; we live in echo-chambers of cable television news shows, Twitter feeds, and YouTube videos. And political leaders, driven further and further to their extremes by their increasingly extremist constituencies, appear more willing to break through the soft guardrails of democracy to achieve their ends.<sup>15</sup>

The district court’s warning proved prophetic. A December 2020 Quinnipiac University poll found that 34 percent of registered voters—nearly 50 million Americans—did not believe that President Biden’s November 2020 electoral victory was legitimate, and that 77 percent of Republicans believed there was widespread voter fraud, while 97 percent of Democrats said there was not.<sup>16</sup> This divided public

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<sup>14</sup> Wayne Journell, Melissa Walker Beeson & Cheryl A. Ayers, *Learning to Think Politically: Toward More Complete Disciplinary Knowledge in Civics and Government Courses*, 43 THEORY & RESEARCH IN SOC. EDUCATION 28, 51 (2015). Another study found that students given the opportunity to consider and debate controversial topics in a classroom setting exhibited improved “communicative self-efficacy.” Alex R. Lin, Joshua F. Lawrence, Catherine E. Snow & Karen S. Taylor, *Assessing Adolescents’ Communicative Self-Efficacy to Discuss Controversial Issues: Findings From a Randomized Study of the Word Generation Program*, 44 THEORY & RESEARCH IN SOC. EDUCATION 316, 333 (2016).

<sup>15</sup> A.C., 2020 WL 6042105, at \*3 (citing Cass Sunstein, *Going to the Extremes: How Like Minds Unite and Divide* (2009)).

<sup>16</sup> *60% View Joe Biden's 2020 Presidential Victory As Legitimate, Quinnipiac University National Poll Finds; 77% Of Republicans Believe There Was*

opinion existed despite public statements by the U.S. Attorney General that the Department of Justice had not found evidence of widespread voter fraud,<sup>17</sup> and dismissal of dozens of lawsuits seeking to challenge the election results based on alleged voter fraud.<sup>18</sup> Skepticism of the election results culminated in the January 6, 2021 mob riot at the United States Capitol in an apparent attempt to avoid the results of the presidential election. Although history will no doubt shed further light on the causes and effects of these events, they clearly reinforce the urgent need for quality civics education that instructs students about fundamental democratic institutions, norms, and processes, such as democratic elections, separation of powers, and transitions of power based on the consent of the people.<sup>19</sup>

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*Widespread Voter Fraud*, QUINNIPIAC UNIV. (Dec. 10, 2020), [https://poll.qu.edu/images/polling/us/us12102020\\_usrn76.pdf](https://poll.qu.edu/images/polling/us/us12102020_usrn76.pdf).

<sup>17</sup> See Ryan Lucas, *Barr: DOJ Has No Evidence Of Fraud Affecting 2020 Election Outcome*, NPR (Dec. 1, 2020), <https://www.npr.org/sections/biden-transition-updates/2020/12/01/940786321/barr-doj-has-no-evidence-of-fraud-affecting-2020-election-outcome>.

<sup>18</sup> Rosalind S. Helderan & Elise Viebeck, *'The Last Wall': How Dozens of Judges Across the Political Spectrum Rejected Trump's Efforts to Overturn the Election*, WASH. POST (Dec. 12, 2020), [https://www.washingtonpost.com/politics/judges-trump-election-lawsuits/2020/12/12/e3a57224-3a72-11eb-98c4-25dc9f4987e8\\_story.html](https://www.washingtonpost.com/politics/judges-trump-election-lawsuits/2020/12/12/e3a57224-3a72-11eb-98c4-25dc9f4987e8_story.html); Jim Rutenberg, Nick Corasaniti & Alan Feuer, *Trump's Fraud Claims Died in Court, but the Myth of Stolen Elections Lives On*, N.Y. TIMES (Dec. 26, 2020), <https://www.nytimes.com/2020/12/26/us/politics/republicans-voter-fraud.html>.

<sup>19</sup> See *NCSS Responds to Assault on Democracy*, NAT'L COUNCIL FOR THE SOCIAL STUDIES, (Jan. 7, 2021), <https://www.socialstudies.org/news/ncss-responds-assault-democracy>. Recent events also highlight the importance of teaching students to discern reliable from unreliable sources of information, which is a “prerequisite for informed democratic participation” and a key component of

While the need for quality, civics education is particularly urgent today, it is not new. “Numerous studies have found that levels of civic engagement in the United States are lower than desirable, particularly among youth.”<sup>20</sup> Results from the National Assessment of Educational Progress (NAEP), a Congressionally-mandated survey that collects and reports information about student achievement in various academic subjects, including civics, indicate that, between 1998 and 2018, less than one-quarter of U.S. eighth graders performed at or above the “NAEP Proficient” level on the civics assessment.<sup>21</sup> Under this standard, eighth graders:

should understand and be able to explain purposes that government should serve. These students should have a good understanding of differences between government and civil society and of the importance of the rule of law. They should recognize discrepancies between American ideals and reality and be able to describe continuing efforts to address them. They should understand the separation and sharing of powers among branches of government and between federal

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civics education in an increasingly digital world. Sarah McGrew, Joel Breakstone, Teresa Ortega, Mark Smith & Sam Wineburg, *Can Students Evaluate Online Sources? Learning From Assessments of Civic Online Reasoning*, 46 THEORY & RESEARCH IN SOC. EDUCATION 165, 169 (2018); see also Margaret Crocco, Anne-Lisa Halvorsen, Rebecca Jacobsen & Avner Segall, *Teaching With Evidence*, 98 KAPPAN 67, 68 (2017).

<sup>20</sup> JUDITH TORNEY-PURTA & SUSAN VERMEER, DEVELOPING CITIZENSHIP COMPETENCIES FROM KINDERGARTEN THROUGH GRADE 12: A BACKGROUND PAPER FOR POLICYMAKERS AND EDUCATORS 739 (2006). See also CAMPAIGN FOR THE CIVIC MISSION OF SCHOOLS, GUARDIAN OF DEMOCRACY: THE CIVIC MISSION OF SCHOOLS 6, 13–15 (2011).

<sup>21</sup> NAEP Report Card: Civics, Achievement-Level Results, THE NATION’S REPORT CARD, <https://www.nationsreportcard.gov/civics/results/achievement/> (last visited Jan. 31, 2021).



and state governments, and they should be able to explain how citizens influence government.<sup>22</sup>

Students who do not understand these principles—and basic principles of democracy, such as “federalism, the separation of powers, checks and balances, government by the consent of the governed, and individual rights”<sup>23</sup>—simply cannot meaningfully participate in a democratic society that is built upon them.

## **II. Civics Education Requires Knowledge of the History, Principles, and Foundations of American Democracy**

Nearly 30 years ago, NCSS began developing national standards to provide educators and curriculum specialists with “a set of principles by which social studies content can be organized to build a viable, valid, and defensible social studies curriculum for grades from pre-K through 12.”<sup>24</sup> Since that time, the Standards have been widely used by teachers, schools, districts, states, and other nations as a tool for curriculum development and alignment. The Standards are based on the premise that “[s]ocial studies has as its primary goal the development of a democratic citizenry.”<sup>25</sup> Consistent with this premise, the Standards identify “Civic Ideals and Practices” as one of the ten organizing themes for any social studies program for

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<sup>22</sup> *The NAEP Civics Achievement Level Details: Grade 8*, NAT’L ASSESSMENT OF EDUCATIONAL PROGRESS, <https://nces.ed.gov/nationsreportcard/civics/achieve.aspx#grade8> (last visited Jan. 31, 2021).

<sup>23</sup> *Id.*

<sup>24</sup> *Nat’l Curriculum Standards*, *supra* note 6, at 12.

<sup>25</sup> *Id.*

grades pre-K through 12 because “[a]n understanding of civic ideals and practices is critical to full participation in society and is an essential component of education for citizenship.”<sup>26</sup> A civics education should provide students with “a historical and contemporary understanding of the basic freedoms and rights of citizens in a democracy,” and an understanding of “the institutions and practices that support and protect those freedoms and rights.”<sup>27</sup> Among the questions students consider in connection with any civics curriculum include:

What are the democratic ideals and practices of a constitutional democracy? What is the balance between rights and responsibilities? What is civic participation? How do citizens become involved? What is the role of the citizen in the community and the nation, and as a member of the world community?<sup>28</sup>

More recently, NCSS has published the C3 Framework, which reinforces the Standards by providing expert guidance to states in developing social studies curriculums that support students in learning to be actively engaged in civic life. Authors of the C3 Framework include more than a dozen experts in the field of social studies education and related social sciences, in collaboration with social studies K-12 educators from more than 20 states, and fifteen professional organizations committed to the advancement of social studies education, including the American Bar Association, the Campaign for the Civic Mission of Schools, and Street Law.

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<sup>26</sup> *Id.* at 23; *see also id.* at 62–65, 157–60.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 23.

The C3 Framework sets forth three fundamental concepts and skills that students should understand and develop in connection with civics education: (1) Civic and Political Institutions; (2) Participation and Deliberation (Applying Civic Virtues and Democratic Principles); and (3) Processes, Rules, and Laws.<sup>29</sup>

*First*, to act responsibly and effectively, citizens of a democratic society must understand democratic institutions and the principles that these institutions are intended to reflect. This requires an understanding of law, politics, and government. The C3 Framework sets forth several grade-level benchmarks by which students can learn these fundamental concepts. For example, by grade 2, a civics curriculum should provide students with opportunities to “[e]xplain the need for and purposes of rules in various settings inside and outside of school.” By grade 5, students should “[e]xamine the origins and purposes of rules, laws, and key U.S. constitutional provisions.” By grade 8, students should “[e]xamine the origins, purposes, and impact of constitutions, laws, treaties, and international agreements.” By high school, students should “[a]nalyze the impact of constitutions, laws, treaties, and international agreements on the maintenance of national and international order.”<sup>30</sup>

*Second*, civics education must teach the principles—such as adherence to the social contract, consent of the governed, limited government, legitimate authority,

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<sup>29</sup> *C3 Framework*, *supra* note 7, at 31–34.

<sup>30</sup> *Id.* at 32.

federalism, and separation of powers—that guide democratic institutions such as legislatures, courts, and government agencies. It also must teach civic virtues—such as honesty, mutual respect, cooperation, and attentiveness to multiple perspectives—that democratic citizens must use when interacting with each other on matters of public importance. Students learn these concepts by, among other things, studying founding documents of the United States, and applying and reflecting them through actual civic engagement. The C3 Framework sets forth several milestones based on grade level by which students learn these principles. For example, by grade 2, students should be able to “[c]ompare their own point of view with others’ perspectives.” By grade 5, students should “[i]dentify the beliefs, experiences, perspectives, and values that underlie their own and others’ points of view about civic issues.” By grade 8, students should “[e]xplain the relevance of personal interests and perspectives, civic virtues, and democratic principles when people address issues and problems in government and civil society.” By high school, students should “[a]nalyze the impact and the appropriate roles of personal interests and perspectives on the application of civic virtues, democratic principles, constitutional rights, and human rights.”<sup>31</sup>

*Finally*, through civics education, students learn how various processes, laws, and policies work. This requires an understanding of political systems, and

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<sup>31</sup> *Id.* at 33.

experience in defining and addressing public problems. The C3 Framework sets forth milestones by which students may learn these concepts. For example, by grade 2, students should be able to “[i]dentify and explain how rules function” in public settings. By grade 5, students should be able to “[e]xplain how rules and laws change society and how people change rules and laws.” By grade 8, students should be able to “[a]ssess specific rules and laws (both actual and proposed) as means of addressing public problems.” By high school, students should be able to “[a]nalyze how people use and challenge local, state, national, and international laws” to address public issues.<sup>32</sup>

The C3 Framework serves as a frame for organizing social studies and civics curricular content rather than a prescription for the specific content to be taught. It recognizes that civic engagement in a constitutional democracy “requires knowledge of the history, principles, and foundations of our American democracy, and the ability to participate in civic and democratic processes.”<sup>33</sup> It explains that civics education requires knowledge of the U.S. political system, as well as “state and local governments; markets; courts and legal systems; civil society; other nations’ systems and practices; international institutions; and the techniques available to citizens for preserving and changing a society.”<sup>34</sup> Importantly, “[c]ivics is not limited to the

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<sup>32</sup> *Id.* at 34.

<sup>33</sup> *Id.* at 31.

<sup>34</sup> *Id.*

study of politics and society; it also encompasses participation in classrooms and schools, neighborhoods, groups, and organizations.”<sup>35</sup> However, civics education must recognize that not all participation is beneficial; for students to learn to contribute appropriately to public processes and discussion, they must learn civic virtues and principles that guide participation, the norm of deliberation, and civic practices such as voting, volunteering, jury service, and other forms of engagement.

The civics concepts and skills set forth in the Standards and the C3 Framework are consistent with the quantum of civics education described in the Complaint in this action.<sup>36</sup> A civics curriculum that does not impart these fundamental democratic concepts and skills simply cannot prepare students for democratic citizenship.

### **CONCLUSION**

For these reasons, NCSS respectfully urges the Court to reverse the district court ruling granting defendants’ motion to dismiss plaintiffs’ claims.

Dated: February 1, 2021  
New York, New York

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<sup>35</sup> *Id.*

<sup>36</sup> *See* Compl. ¶ 8.

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## CERTIFICATE OF COMPLIANCE

I hereby certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and Circuit Rule 32(g)(1) because this brief contains 3451 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Further, this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

*/s/ Yahnnes Cleary*

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Dated: February 1, 2021



## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system on February 1, 2021.

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