

Summary of Amicus Brief filed by eminent constitutional scholar and former Harvard Law School Dean, Martha Minow

*Building on her deep knowledge of *Brown v. Board of Education*, Professor Minow creates an elegant argument for why a right to a civics education must be considered a fundamental right.*

This case implicates the right to equal access to education—including education for and about civics—a fundamental principle embodied in *Brown v. Board of Education*, 347 U.S. 483 (1954). The importance of a civics education cannot be overstated; the Court need look no further than recent events at the U.S. Capitol to appreciate the perils of a populace ignorant of basic constitutional mandates and democratic norms.

The district court correctly recognized the central, historical role of education—and, specifically, civics education—but erred in holding the right to a minimally adequate civics education is not fundamental under the U.S. Constitution, misapplying Supreme Court jurisprudence. For centuries, governmental actors at all levels recognized the importance of education as a core function of government. At the time the Fourteenth Amendment was passed, the majority of states recognized education as a fundamental right and, today, all fifty states require some duration of education for all children.

It was in this historical context that the Court in *Brown* described education as “perhaps the most important function of state and local governments.” This bold language is unlike that used to describe any other right not already recognized as fundamental, holding open the door for later recognition of a fundamental right to education. In *Plyler* the Court expressed that “education has a fundamental role in maintaining the fabric of our society” (457 US 202 at 221 (1982)). Additionally, in *San Antonio v. Rodriguez*, the Court suggested failure to provide “an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process” (411 US 1, at 37 (1973)) could be unconstitutional. Even assuming the district court was correct in reading *Rodriguez* as requiring a “totally inadequate” education to trigger a fundamental right, an education that does not prepare students to capably participate in a democratic society—i.e., a civics education—is not an adequate education. Depriving students of a civics education, which is a fundamental right, violates their due process and equal protection rights.

In addition, Rhode Island’s failure to provide a minimally adequate civics education disproportionately impacts low-income and racially minoritized students as compared to their more affluent peers in predominantly white districts. Disparities in civics educational opportunities, leading to similar disparities in political involvement, disquietingly echo the *de facto* “separate but equal” construct struck down in *Brown*. Moreover, even if an adequate civics education were not a federal fundamental right, Rhode Island’s actions fail both heightened scrutiny and rational basis review.