

POLICY ESSAY

REINVESTING IN PUBLIC EDUCATION, A CORNERSTONE FOR AMERICA'S SUCCESS

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*“Education is the most powerful weapon which you can use
to change the world.”*

–Nelson Mandela

Time and time again we are reminded the key to success in America is directly related to a person's access to quality education. This idea conspicuously overlooks the most significant problem currently facing America's children: the unfortunate truth that one's zip code, and directly related socio-economic status, is a significant determinant of school and education quality. Our most historically underserved communities bear the burden of trying to reform crumbling and struggling schools, while residents try to lift themselves and their families out of poverty. Unfortunately, the rhetoric of those opposed to social safety net programs often insinuates that people living in poverty remain poor because it is “easy” to live off government assistance. In the eyes of many, living off the government system means living in comfort without putting forth effort. They believe there is no incentive to get a job, to further one's education, or to “pull yourself up by your bootstraps.” This overly simplistic notion fails to answer an essential question: how can everyday Americans pull themselves and their families up if the very bootstraps we are asking them to grab are broken?²

¹ Congresswoman Fudge has represented the Eleventh District of Ohio since 2008. She was elected in a special election following the untimely death of Congresswoman Stephanie Tubbs Jones, the first African American woman elected to Congress from Ohio. She has served the people of Ohio for more than two decades, beginning in the Cuyahoga County Prosecutor's Office. She was the first African American and the first female mayor of Warrensville Heights, Ohio. Congresswoman Fudge currently serves on the House Agriculture Committee, where she is Ranking Member of the Subcommittee on Conservation and Forestry, and on the House Committee on Education and the Workforce, where she served as Ranking Member of the Subcommittee on Early Childhood, Elementary and Secondary Education in the 114th Congress. She has also served as Chair of the Congressional Black Caucus for the 113th Congress and Chair of the 2016 Democratic National Convention.

² “Research has shown that the poor living in areas where poverty is prevalent face impediments beyond those of their individual circumstances. Concentrated poverty contributes to poor housing and health conditions, higher crime and school dropout rates, as well as employment dislocations. As a result, economic conditions in very poor areas can create limited opportunities for poor residents that become self-perpetuating.” U.S. Dep't of Agric. Econ. Res. Serv., *Geography of Poverty*, Geography of Poverty (2017), <https://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/geography-of-poverty.aspx> [https://perma.cc/G7XT-25PS].

Access to high quality pre-school, elementary, and secondary education does not begin and end with classroom instruction. A family cannot lift themselves out of poverty if parents cannot earn a living wage,³ cannot afford quality childcare or preschool,⁴ and cannot put food on the table.⁵ Although debates over curriculum and achievement measures are important, these debates often occur at the expense of everything else a child needs to succeed in the classroom. While we must address issues of overcrowding, over-worked teachers, and outdated resources, the classroom is only one element of a child's school experience. Meaningful investments in a child's education and future reach much beyond these obvious debates.

Any legitimate discussion about improving the American K-12 education system must consider the intersection of all policies that affect our children's overall well being. If a child cannot drink from the school water fountain because it is contaminated with lead—lead that will impede brain development, alter behavior patterns, and ultimately have lasting health and learning consequences—we have failed to make a meaningful investment in education. If there are no arts programs or physical education classes to help a child channel their energy and creativity, we have not fully invested in that child's education. If we are funding school security officers while experiencing a shortage of guidance counselors, we are setting our most underserved students up for failure. A child cannot learn and retain information if they come to school hungry and cannot receive a healthy breakfast and lunch. What good is school “choice” if there is no transportation to those allegedly better schools or if parents cannot afford the cost difference between an allotted voucher and the actual cost of attendance? Well-rounded, quality education and meaningful access lies at the intersection of equitable housing, transportation, health, and anti-poverty policies.

Though valiant efforts to combat poverty and discrimination span generations, my Republican colleagues have continuously proposed policies that would undermine our economic safety nets, cut entitlement benefits, and take money out of our public schools, effectively plunging more people into poverty and burying those already there. Just last year, Republican House Members put forth a Child Nutrition Reauthorization package that would have resulted in millions of lower-income children losing access to free and reduced-price breakfast and lunch, while placing additional, unfunded ad-

³ Gene Falk et al., *Poverty and Economic Opportunity*, Congressional Research Service, <http://www.crs.gov/Reports/IF10562?source=search&guid=e11106e25a424373b6a47922c30ae1a0&index=0>.

⁴ Abbie Lieberman, *Child Care as an Intergenerational Solution to Poverty*, NEW AMERICA (2014), <https://www.newamerica.org/education-policy/edcentral/child-care-intergenerational-solution-poverty/> [https://perma.cc/BP2P-QPXN].

⁵ According to 2015 statistics, 43.1 million people (13.5 percent) were in poverty, including 14.5 million (20 percent) children under the age of 18. 42.2 million Americans lived in food-insecure households, including more than 13 million children. Poverty and Hunger in America, FEEDING AMERICA (2015), <http://www.feedingamerica.org/hunger-in-america/impact-of-hunger/hunger-and-poverty/> [https://perma.cc/6776-73W7].

ministrative burdens on schools.⁶ The same bill would have facilitated block granting funds from the child nutrition program, a tactic that could undermine an otherwise successful program.⁷ There is ample data illustrating that block granting federal funds leads to a decrease in dollars spent on the designated program.⁸ Instead, state governments tend to use some of the funds to fill unrelated budget gaps.⁹ That is why I oppose employing block grants generally, but especially for programs that benefit children in poverty, including those affected by Title I funding. Reliable data also shows where poverty is concentrated,¹⁰ which schools have the lowest graduation rates,¹¹ and where children have the least access to early childhood education programs such as Head Start.¹² We have the knowledge, yet we consistently fail to muster the political will for greater investment in these areas. Political will does not only apply to lawmakers; every American must demand better for our children.

Despite some of the rhetoric employed during our most recent election cycle, Congress and the American public must remember that poverty does not only exist in urban districts such as mine.¹³ Some of our nation's most impoverished citizens live in rural communities, not urban city centers.¹⁴ Data from the United States Department of Agriculture (USDA) shows the overall rate of poverty is higher in nonmetropolitan counties, with the largest gaps between poverty in metro and nonmetropolitan counties in the rural South.¹⁵

⁶ Improving Child Nutrition and Education Act of 2016, H.R. Res. 5003, 114th Cong. (2016).

⁷ *Id.*

⁸ Robert Jay Dilger & Eugene Boyd, Block Grants: Perspectives and Controversies, Congressional Research Service (July 15, 2014), <https://fas.org/sgp/crs/misc/R40486.pdf> [<https://perma.cc/RT9U-CZMJ>]. Kenneth Finegold, Laura Wherry & Stephanie Schardin, *Block Grants: Historical Overview and Lessons Learned*, URB. INST. SERIES A No. A-63 (2004).

⁹ LaDonna Pavetti, Ife Floyd, & Liz Schott, *How States Have Spent Federal and State Funds Under the TANF Block Grant* (Center on Budget and Policy Priorities, 2016).

¹⁰ PAUL A. JARGOWSKY, CONCENTRATION OF POVERTY IN THE NEW MILLENNIUM: CHANGES IN PREVALENCE, COMPOSITION, AND LOCATION OF HIGH POVERTY NEIGHBORHOODS (The Century Foundation, 2013).

¹¹ Nat'l Center for Ed. Stat., *The Condition of Education - Elementary and Secondary Education - Student Effort, Persistence and Progress - Public High School Graduation Rates - Indicator May*, U.S. DEP'T OF EDUC. (2016), https://nces.ed.gov/programs/coe/indicator_coi.asp [<https://perma.cc/S9NL-5FZX>].

¹² U.S. Dep't of Educ., *A Matter of Equity: Preschool in America*, U.S. DEP'T OF EDUC. (2015), <https://www2.ed.gov/documents/early-learning/matter-equity-preschool-america.pdf> [<https://perma.cc/D5X3-8NVW>].

¹³ Congresswoman Fudge's district includes the downtown areas of Cleveland, OH and large portions of downtown Akron, OH. According to the latest data, Ohio has an overall poverty rate of 26.4% and is ranked 421st of the 436 Congressional districts.

¹⁴ According to USDA data, "people living in poverty tend to be clustered in certain regions, counties, and neighborhoods, creating opportunity obstacles for residents within those historically poor communities." U.S. Dep't of Agric. Econ. Res. Serv., *Geography of Poverty*, Geography of Poverty (2017), <https://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/geography-of-poverty.aspx> [<https://perma.cc/G7XT-25PS>].

¹⁵ *Id.*

As we discuss the policies that ensure all children have access to a quality education, it is important to note America's long struggle with poverty and equal access. Leaders in the United States have been working to combat poverty for generations. President Franklin D. Roosevelt fought to counter widespread poverty during the Great Depression with the development and passage of the New Deal, enacting public works programs, union protections, and creating Social Security.¹⁶ The National School Lunch Program was made permanent by President Harry S. Truman in 1946, after Congress recognized the importance of ensuring America's school children were well nourished.¹⁷ President Lyndon B. Johnson launched the 'war on poverty' with his Great Society initiative, creating fundamental earned benefit and safety net programs such as Medicare and Medicaid.¹⁸ Then came passage of the Civil Rights Act of 1964,¹⁹ the Voting Rights Act of 1965,²⁰ and the Fair Housing Act of 1968,²¹ all of which forever changed the face of equality and equity in America. Despite these monumental steps forward, poverty persists across our country, and our schools and students suffer the consequences.²²

¹⁶ John Hardman, *The Great Depression and the New Deal* (last visited April 1, 2017), https://web.stanford.edu/class/e297c/poverty_prejudice/soc_sec/hgreat.htm [<https://perma.cc/K27M-S9H2>].

¹⁷ Public Law 396, 60 Stat. 231 (1946) (codified as amended at 42 U.S.C. § 1751-69j (2000)); President Harry S. Truman, Statement by the President Upon Signing the National School Lunch Act (June 4, 1946) (transcript available at <http://www.presidency.ucsb.edu/ws/?pid=12410> [<http://perma.cc/KH82-LH2D>]) ("TODAY, as I sign the National School Lunch Act, I feel that the Congress has acted with great wisdom in providing the basis for strengthening the nation through better nutrition for our school children. In my message to Congress last January, I pointed out that we have the technical knowledge to provide plenty of good food for every man, woman, and child in this country, but that despite our capacity to produce food we have often failed to distribute it as well as we should. This action by the Congress represents a basic forward step toward correcting that failure.")

¹⁸ Robert Haveman et al., *The War on Poverty: Measurement, Trends, and Policy*, 34 J. OF POL'Y ANALYSIS AND MGMT. 593 (2015).

¹⁹ Pub. L. No. 88-352, 78 Stat. 241 (1964) (codified as amended at 42 U.S.C. § 2000 (2000)).

²⁰ Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended at 52 U.S.C. § 10101 (2004)).

²¹ Pub. L. No. 90-284, 82 Stat. 73, 81-89 (1968) (codified as amended at 42 U.S.C. § 2000 (2000)).

²² In 2015, 43.1 million (13.5%) people fell below the federal poverty line - \$24,250 for a family of four. See U.S. Census Bureau U.S. Dep't of Labor, *Selected Population Profile in the United States: 2015 American Community Survey 1-year Estimates*, AMERICAN FACT FINDER (2015), http://factfinder.census.gov/bkmk/table/1.0/en/ACS/15_1YR/S0201//popgroup~006 [<https://perma.cc/NV8Z-48RB>].

CRITICAL CIVIL RIGHTS LEGISLATION AND SUPREME COURT CASES OPENED
DOORS FOR MANY OF OUR NATION'S POOR, MINORITY, AND
DISABLED STUDENTS, AND THEIR FAMILIES.

The United Nations considers access to a quality education a fundamental human right, essential for the exercise of all other human rights.²³ Despite the consensus that education is fundamental, throughout U.S. history, access to a quality education has not been available to all. Public education began in the United States nearly two centuries ago, but from the outset a quality, equitable education has not been available to all. Since its inception, the Department of Education has evolved from primarily a data collection agency to a critical enforcer of civil rights and equal access protections.²⁴ Many battles have been fought throughout the Department's 150-year history to ensure that all children in America have access to a quality education. For instance, not until 1954 in *Brown v. Board of Education*, did the Supreme Court hold that a separate education was not, in fact, an equal one.²⁵ In *Brown*, the Supreme Court unanimously held that racial segregation of children in public schools violated the Equal Protection Clause²⁶ of the Fourteenth Amendment,²⁷ specifically finding that separate educational facilities are inherently unequal.²⁸ The Court noted that public education was the "very foundation of good citizenship" and "a principal instrument in awakening the child to cultural values."²⁹ The Justices emphatically stated that continuing the segregation of public schools perpetuated racist sentiments that African American children held a lower status in the community than white children.³⁰

A decade after the decision in *Brown*, the Civil Rights Act of 1964 formally banned segregation on the basis of race, religion, or national origin in public accommodations including parks, restaurants, and hotels.³¹ As President John F. Kennedy said, "simple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or re-

²³ United Nations Educational, Scientific and Cultural Organization, *The Right to Education*, UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION (2016), <http://www.unesco.org/new/en/right2education> [https://perma.cc/3U32-9S82].

²⁴ U.S. Dep't of Educ., *About Us: The Federal Role in Education*, U.S. DEP'T OF EDUC (2016), <https://www2.ed.gov/about/overview/fed/role.html> [https://perma.cc/N8FV-BXHL].

²⁵ See *Brown et al. v. Board of Education of Topeka et al.*, 347 U.S. 483, 494–95 (1954) (holding that segregated educational facilities are inherently unequal).

²⁶ *Id.*

²⁷ U.S. CONST. amend. XIV, § 1 ("No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . nor deny to any person within its jurisdiction the equal protection of the laws.") Fourteenth Amendment to the United States Constitution, Section 1, <https://www.archives.gov/founding-docs>.

²⁸ *Brown et al. v. Board of Education of Topeka et al.*, 347 U.S. 483, 495 (1954) (emphasis added).

²⁹ *Id.* at 493.

³⁰ See *id.* at 494.

³¹ See Civil Rights Act of 1964, Pub. L. No. 88-352, § 201, 78 Stat. 241, 243 (1964).

sults in racial [color or national origin] discrimination.”³² Title VI of the Civil Rights Act prohibited the use of federal funds for any discriminatory program, and authorized the Department of Education to assist with school desegregation.³³ Title VI also created a vital enforcement mechanism, allowing the federal agency responsible for distributing funds to cut them off or refer the matter to the Department of Justice for legal action if compliance could not be achieved voluntarily.³⁴

The passage of the Civil Rights Act proved to be a turning point in American culture. It not only addressed long-standing cornerstones of racial injustice, but also spurred a conversation about the true meaning of freedom and opportunity in America. Given the appointment of Senator Jeff Sessions as Attorney General, it is critical that we, as citizens, remember that the Department of Justice is headed by the *people’s* lawyer, and demand the protection and enforcement of basic civil rights for all citizens.³⁵ In the few weeks since Senator Sessions became Attorney General, he has halted the Department of Justice’s defense of the rights of transgender students, revoking Obama administration guidance protecting the rights of transgender students to use bathrooms and locker rooms matching their gender identity.³⁶ We must remain vigilant and ensure that our civil rights laws continue to protect the rights of all Americans.

Brown began the process of eliminating *de jure* school segregation, but our schools continue to suffer from *de facto* segregation.³⁷ Housing, and access to housing, plays a major role in a child’s ability to access quality education. Although there have been victories related to fair housing, many families struggle to access affordable housing, in turn affecting the schools their children attend.³⁸ In *Jones v. Alfred H. Mayer Co.*, the Supreme Court provided one of these victories. The Court held that Congress could use its power under the Enabling Clause of the Thirteenth Amendment to prohibit

³² See U.S. Department of Justice, *Title VI of the Civil Rights Act of 1964*, 42 U.S.C. § 2000D *et seq.*, UNITED STATES DEPARTMENT OF JUSTICE (Mar. 17, 2017), <https://www.justice.gov/crt/fcs/TitleVI-Overview> [https://perma.cc/8EQ5-MJP8].

³³ See *id.*

³⁴ See *id.*

³⁵ Cf. Bill Chappell, *Read Coretta Scott King’s Letter That Got Sen. Elizabeth Warren Silenced*, NPR (Feb. 8, 2017), www.npr.org/sections/thetwo-way/2017/02/08/514085145/read-coretta-scott-kings-letter-that-got-sen-elizabeth-warren-silenced [https://perma.cc/XEU4-V6ER].

³⁶ See Rebecca Hersher & Carrie Johnson, *Trump Administration Rescinds Obama Rule On Transgender Students’ Bathroom Use*, NPR (Feb. 22, 2017), <http://www.npr.org/sections/thetwo-way/2017/02/22/516664633/trump-administration-rescinds-obama-rule-on-transgender-students-bathroom-use> [https://perma.cc/L47R-2ESF].

³⁷ See Richard Rothstein, “*The Racial Achievement Gap, Segregated Schools, and Segregated Neighborhoods – A Constitutional Insult*,” ECON. POL’Y INST. (Nov. 12, 2014), <http://www.epi.org/publication/the-racial-achievement-gap-segregated-schools-and-segregated-neighborhoods-a-constitutional-insult/> [https://perma.cc/67TH-WXPM].

³⁸ See generally Deborah L. McKoy & Jeffrey M. Vincent, *Housing and Education: The Inextricable Link*, in SEGREGATION: THE RISING COSTS FOR AMERICA (James H. Carr & Nandinee K. Kutty eds., 1st ed. 2008).

racial discrimination in the sale and rental of private housing. Further, the Court held that the Civil Rights Act of 1866 banned racial discrimination in housing by private, as well as governmental, housing providers.³⁹ Though not specifically an education case, *Jones* was critical to the full realization and enforcement of *Brown*. Since the public school children attend is usually determined based on the neighborhood in which they live, people of all races must be able to rent or purchase housing in all neighborhoods in order to eliminate segregation in schools.

Passed the same year the Supreme Court decided *Jones*, the Fair Housing Act of 1968, also known as Title VIII of the Civil Rights Act of 1968, codifies the prohibition on discrimination in the sale, rental, and financing of housing based on color, race, sex, religion, or national origin.⁴⁰ The mission of the original Fair Housing Act was to eradicate discrimination in housing and promote residential integration.⁴¹ The Fair Housing Act was expanded in 1988 to further prohibit discrimination in housing based on disability or family status, namely whether people had children under age 18 or a woman was pregnant.⁴²

Segregation in public schools means more than racial segregation. It also includes socioeconomic segregation. Although the Court recognized the inequality of racial segregation in schools in *Brown*, as well as the inequality caused by housing discrimination in *Jones*, it has become complicit in funding schemes that result in socioeconomic segregation. In *San Antonio v. Rodriguez*, for instance, the Supreme Court upheld the San Antonio School District's financing plan based on local property taxes, despite the significant disparities it created among the quality of education local children received.⁴³ For instance, some school districts in the state spent twice as much per student as others.⁴⁴ The Court reasoned that education is not a fundamental right and that wealth-based discrimination in education did not violate the Equal Protection Clause.⁴⁵ Over time, this unfortunate decision has resulted in a decline in equitable public school financing, with many states and local school boards spending four times as much per student in some districts than it spends in others.⁴⁶ This lack of equitable resource

³⁹ See *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 413 (1968).

⁴⁰ See Fair Housing Act of 1968, 42 U.S.C. § 3604 (1968).

⁴¹ See *id.*

⁴² 42 U.S. Code § 3604 - Discrimination in the sale or rental of housing and other prohibited practices See Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, § 5, 102 Stat. 1619 (1988).

⁴³ See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 55 (1973).

⁴⁴ See *id.* at 65–66.

⁴⁵ See *id.* at 35.

⁴⁶ Cf. Cory Turner et al., *Why America's Schools Have a Money Problem*, NPR (Apr. 18, 2016), <http://www.npr.org/2016/04/18/474256366/why-americas-schools-have-a-money-problem> [https://perma.cc/RT4V-3RGY]. In 2013, adjusted for regional differences, for primary and unified school districts, the national average of spending per student, by school district, was \$11,841. For example, the Chicago Ridge School District spent \$9,794 per student, while an hour north, the Roundout School spent \$28,639.

distribution continues to disadvantage inner city and rural students living in communities with lower property values. These are often the same communities that cannot afford to pay the property tax increases that would provide their schools with critical funding increases.⁴⁷

The ability to access affordable housing affects the quality of life for far too many American families. Without it, many families are left without the ability to keep steady employment and access quality education for their children.⁴⁸ For the 2014–2015 school year alone, the Cleveland Metropolitan School District reported 4,048 of their students identified as homeless, 541 of whom were age 5 or younger.⁴⁹ This is just one example in an America currently experiencing an expanding gap between actual wages and the cost of housing. Recent studies indicate that wages have not kept up with rising housing costs in both the ownership and rental markets.⁵⁰ Estimates show that a family with one full-time worker earning minimum wage cannot afford fair market rent for a two-bedroom apartment anywhere in the United States.⁵¹ If a child does not know where they will sleep each night, the uncertainty will undoubtedly affect school performance and attendance. To truly address performance gaps, we must address inequities in all aspects of a child's life.

Racial and socioeconomic segregation are only two issues America must address when ensuring equitable access to education. Students with disabilities deserve the same chance to reach their full potential as any other child in America. Section 504 of the 1973 Rehabilitation Act was the first disability civil rights law enacted in the United States.⁵² The Act prohibits discrimination on the basis of disability in programs receiving federal funds. Section 504 was enacted to “firmly establish the right of handicapped Americans to dignity and self-respect as equal and contributing members of society, and to end the virtual isolation of millions of children and adults from society.”⁵³ Section 504 works in concert with the later-enacted Individuals with Disabilities Education Act to protect children with disabilities from un-

⁴⁷ *Id.*

⁴⁸ See *How Housing Affects Health, Education, and Employment Outcomes*, NATIONAL LOW INCOME HOUSING COALITION, (May 9, 2014), <http://nlihc.org/article/how-housing-affects-health-education-and-employment-outcomes> [https://perma.cc/6SL6-J3KV].

⁴⁹ See Northeast Ohio Coalition for the Homeless (NEOCH), *Poverty in Cuyahoga County*, NEOCH (Mar. 19, 2017), <http://www.neoch.org/poverty-homelessness-and-hunge/> [https://perma.cc/4XXN-SWMJ].

⁵⁰ Cf. National Low Income Housing Coalition, *Out of Reach, 2016*, NAT'L LOW INCOME HOUSING COALITION (Mar. 19, 2017), <http://nlihc.org/oor> [https://perma.cc/6CBE-HZZE].

⁵¹ See *id.*; see also Northeast Ohio Coalition for the Homeless, *supra* note 50. It was estimated that, in 2015, a family must make \$14.69/ hour to be able to afford a two-bedroom apartment in Cuyahoga County, OH – the minimum wage in Cuyahoga County as of 2016 is \$8.10/hour, meaning a single mother would “have to work at least two minimum wage jobs to provide for her children.” *Id.*

⁵² See Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 (2012). Section 794 (1973).

⁵³ *Rehabilitation Act of 1972*, 92nd 118 Cong. 2, 32310 Rec. 32,310 (1972) (statement of Sen. Humphrey).

equal treatment in schools and the community.⁵⁴ Together, the Acts ensure that the needs of students with disabilities are met as adequately as the needs of their non-disabled peers.⁵⁵

Congress enacted the Individuals with Disabilities Education Act (IDEA) in 1975 as the Education for the Handicapped Act to ensure that children with disabilities have an opportunity to receive an appropriate education.⁵⁶ Even though IDEA has been amended several times, its purpose has not changed.⁵⁷ The Act focuses on protecting the right of children with disabilities to an appropriate public education.⁵⁸ IDEA also strives to give parents a voice in the educational decisions schools make for their children.⁵⁹ It is important to remember these laws as we move forward with a discussion about the direction of education policy in the current Congress and Administration.

Just as fundamental civil rights protections have evolved, so has education policy. The Elementary and Secondary Education Act (ESEA), a cornerstone of President Johnson's "War on Poverty," was enacted in 1965 and became the nation's landmark preK-12 education law.⁶⁰ The Act aimed for a more equitable public education landscape by expanding the role of the federal government and emphasizing high standards and accountability.⁶¹ In addition to allocating funding for primary and secondary education, the Act established the Title I program to allocate supplemental funds for school districts serving students from low-income families.⁶² In subsequent years, Congress added programs and titles to the ESEA, such as the Bilingual Education Act, which addressed the needs of students with limited English language proficiency.⁶³

In 1978, President Jimmy Carter reauthorized ESEA to allow schools to use Title I funds for school wide programs if at least 75 percent of their students lived in poverty.⁶⁴ Unfortunately, President Ronald Reagan then dramatically reduced federal education funding. President Reagan changed ESEA implementation to consolidate multiple programs into one large block

⁵⁴ See Individuals with Disabilities Education Section 504 of the Rehabilitation Act, 20 of 1973, 29 U.S.C. §§ 1400–1482 (2012); Section 794 (1973).

⁵⁵ See *id.*

⁵⁶ See *id.* Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400–1482.

⁵⁷ See *id.*

⁵⁸ See *id.*

⁵⁹ See *id.*

⁶⁰ See Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27 (1965).

⁶¹ See *Elementary and Secondary Education Act of 1965*, SOC. WELFARE HIST. PROJECT, <http://socialwelfare.library.vcu.edu/programs/education/elementary-and-secondary-education-act-of-1965/> [perma.cc/4C3C-R2AZ].

⁶² See *id.*

⁶³ See Elementary and Secondary Education Amendments of 1967, 20 U.S.C. § 6301 (2012), Pub. L. No. 90-247 81 Stat. 783 (1968).

⁶⁴ See Education Amendments of 1978, 20 U.S.C. § 240 (2012), Pub. L. No. 95-561 92 Stat. 2143 (1978).

grant and loosen regulatory requirements.⁶⁵ These changes hurt disadvantaged students the most, resulting in fewer eligible students being served by Title I.⁶⁶ President Reagan also instituted significant budget cuts to the National School Breakfast and National School Lunch programs, causing schools across the country to eliminate kitchen equipment, increase meal costs, and turn to large-scale food processors for easy to heat and serve foods that lacked the same level of quality nutrition.⁶⁷

Recognizing the need to improve our nation's schools, President George H. W. Bush met with state governors for a summit on public education in 1989. The summit led to a consensus to increase educational accountability and standards through a stronger partnership between the federal government and the states.⁶⁸ Building on this momentum, President Bill Clinton worked to strengthen school accountability by signing the Improving the America's Schools Act (IASA) in 1994.⁶⁹ Under IASA, school districts were required to identify and create improvement plans for schools that failed to make adequate yearly progress (AYP).⁷⁰

Similarly, in 2002, President George W. Bush signed the No Child Left Behind Act (NCLB), which built upon a new call for greater accountability by significantly expanding testing requirements.⁷¹ The law required schools failing to make AYP for three consecutive years to plan for restructuring.⁷² Teachers hired using Title I funds were also required to be highly qualified.⁷³ While NCLB resulted in increased accountability and transparency, it failed to address some of the deeper problems in our education system.

Although the civil rights legislation, education laws, and landmark cases laid out above showed progress related to equality, equity, and access in public education, there is still much work to be done. Before discussing the best education policy for our children, this article must explore the reasons omnipresent proposals to funnel public, taxpayer money into private and charter school vouchers are misguided. First, private schools are not required to comply with many federal civil rights laws, including IDEA,

⁶⁵ See Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 357 (1981).

⁶⁶ See Janet Y. Thomas & Kevin P. Brady, *The Elementary and Secondary Education Act at 40: Equity, Accountability, and the Evolving Federal Role in Public Education*, 29 REVIEW OF RESEARCH IN EDUCATION 51, 53 (2005).

⁶⁷ Fed Up, Katie Couric, Directed by: Stephanie Soechtig (2014).

⁶⁸ See Janet Y. Thomas & Kevin P. Brady, *The Elementary and Secondary Education Act at 40: Equity, Accountability, and the Evolving Federal Role in Public Education*, 29 REVIEW OF RESEARCH IN EDUCATION 51, 54 (2005).

⁶⁹ See *id.* at 54–55.

⁷⁰ *Id.* at 55.

⁷¹ See *Elementary and Secondary Education Act of 1965*, SOC. WELFARE HIST. PROJECT, <http://socialwelfare.library.vcu.edu/programs/education/elementary-and-secondary-education-act-of-1965> [perma.cc/4C3C-R2AZ].

⁷² See No Child Left Behind Act of 2001, 20 U.S.C. § 6301 (2012). Pub. L. No. 107-110, 115 Stat. 1425 (2002).

⁷³ See *id.*

except in limited circumstances.⁷⁴ They are also not currently held to the same accountability and transparency standards for student growth and performance.⁷⁵ As a result, with regard to the rights protected by the IDEA, for instance, the Council of Parent Attorneys and Advocates found that parents of students with disabilities in more than half the states surveyed experienced partial or full revocation of parental and student rights upon acceptance of a private school voucher.⁷⁶ Second, vouchers often do not cover the cost of tuition, leaving parents to pay the difference plus any costs for additional services needed.⁷⁷ Thus, voucher programs essentially only work to place affected parents in a Catch 22: enroll their children in a private school at high cost and without their full legal rights, or keep their child in a potentially lower performing public school, saving money and preserving their rights of recourse and enforcement.

Similarly, none of the policies or legislation outlined below address this fundamental failure to provide basic civil rights protections for our more vulnerable students. Private and charter school proponents, including the new Secretary of Education Betsy DeVos, have consistently fought against complying with the same accountability standards Congress and the Department of Education require of public schools.⁷⁸ A basic tenet of the government's contract with the American public has always been, if an entity requests federal dollars, it must be accountable to the taxpayer.

The Every Student Succeeds Act (ESSA), passed in 2016, is the latest reauthorization of the 50-year-old ESEA, and it continues to protect disadvantaged and high need students.⁷⁹ ESSA rolled back much of the federal government's role in education policy, addressing everything from testing and teacher quality to low-performing schools, providing states more authority to make student education decisions.⁸⁰ The bill sustains and expands the Obama Administration's historic investments increasing access to high-qual-

⁷⁴ Selene Almazan & Denise Stile Marshall, *School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice*, COUNCIL OF PARENT ATT'YS & ADVOCs., INC. (June 2016), http://c.yimcdn.com/sites/www.copaa.org/resource/resmgr/2016_Conference/COPAA_Voucher_paper_final_R6.pdf [<https://perma.cc/8XAK-AKQ8>].

⁷⁵ See Massachusetts State Auditor, Independent State Auditor's Report on the Activities of the Executive Office of Education's and the Department of Education's Administration of the Charter School Program (2001), <http://www.mass.gov/auditor/docs/audits/2001/200040703.pdf> [<https://perma.cc/ZDV3-3VAB>].

⁷⁶ See *Vouchers*, COUNCIL OF PARENT ATT'YS & ADVOCs., <http://www.copaa.org/page/Voucher> [perma.cc/E5JH-HGJN].

⁷⁷ See JILL FELDMAN ET AL., U.S. DEP'T OF EDUC., EVALUATION OF THE DC OPPORTUNITY SCHOLARSHIP PROGRAM: AN EARLY LOOK AT APPLICANTS AND PARTICIPATING SCHOOLS UNDER THE SOAR ACT (2014).

⁷⁸ See Cory Turner, *School Vouchers, Oligarchy And Grizzlies: Highlights From The DeVos Hearing*, NPR (Jan. 18, 2017), <http://www.npr.org/sections/ed/2017/01/18/510417234/the-devos-hearing-in-their-own-words> [<https://perma.cc/A4ZU-M5GN>].

⁷⁹ Every Student Succeeds Act of 2015, Pub. L. No. 114-95, 114 Stat. 1177 (2015).

⁸⁰ Alyson Klein, *The Every Student Succeeds Act: An ESSA Overview*, EDUCATION WEEK (March 31, 2016), <https://www.edweek.org/ew/issues/every-student-succeeds-act/> [<https://perma.cc/UF7X-86YP>].

ity preschool; ensures that vital information is provided to educators, families, students, and communities through annual statewide assessments that measure students' progress toward those high standards; and advances equity by upholding critical protections for America's disadvantaged and high-need students.⁸¹

As Ranking Member of the House Committee on Education and the Workforce Subcommittee on Early Childhood, Elementary and Secondary Education in the 114th Congress, I participated in many hearings, markups and conference committee sessions to craft the reauthorization and rework of NCLB.⁸² While NCLB's programs have benefitted children traditionally overlooked, the achievement gap between poor children and their more affluent peers persists. My work on the Committee focused on closing that gap.⁸³ For instance, I successfully advocated for disaggregated data reporting requirements in ESSA because it is impossible to combat inequity without monitoring the performance of specific subgroups of students.⁸⁴ ESSA includes another provision I championed with the introduction of the *Core Opportunity Resources for Equity and Excellence Act of 2015* (H.R. 193).⁸⁵ Under this provision, schools identified as needing targeted support will be responsible for developing school district-approved plans to address and improve resource inequities.⁸⁶ This is a step in the right direction, holding districts accountable for human and material resource equity.

ESSA reauthorization ultimately passed with bipartisan support and preserved the vital Title I formula for school funding.⁸⁷ Throughout the process, however, some of my Republican colleagues displayed a troubling lack of concern regarding equitable school funding and the opportunity gaps such equity helps to narrow. They repeatedly attempted to block grant Title I funding, which would have resulted in a net loss of funds for many rural and urban districts. As explained earlier, block granting, by its very nature, means states would have one set pot of money to distribute to schools as they see fit, disregarding the hard fought equity formulas that ensure disadvantaged schools receive the funds they need to serve their students at the same level as their better funded counterparts.

Despite bipartisan support of ESSA, Republicans opened the 115th Congress with an attempt to undo Department of Education rulemaking critical to the successful implementation of the Act's state plan and reporting

⁸¹ Every Student Succeeds Act (ESSA), U.S. DEP'T OF EDUC., <https://www.ed.gov/essa?src=rn> [<https://perma.cc/RJQ5-7TSQ>].

⁸² See *Biography*, CONGRESSWOMAN MARCIA L. FUDGE, <https://fudge.house.gov/biography/1/> [<https://perma.cc/2VDS-Q2UW>].

⁸³ See *id.*

⁸⁴ See *id.*

⁸⁵ Core Opportunity Resources for Equity and Excellence Act of 2015, H.R. 193, 114th Cong. (2015).

⁸⁶ See *id.*

⁸⁷ See Every Student Succeeds Act of 2015, Pub. L. No. 114-95, 114 Stat. 1177 (2015).

requirements.⁸⁸ H.J.Res. 57, a joint resolution filed under the Congressional Review Act (CRA), aims to nullify, and prevent the Department of Education from ever re-regulating (absent an act of Congress), the rule clarifying state and district flexibility under ESSA for accountability, data and reporting, and state plan requirements.⁸⁹ Once signed into law, this bill will create incredible instability in education planning at the state and local level, as states have already begun crafting their ESSA compliance and implementation plans. It will also prevent the Department of Education from ever implementing one of the core tenets of what was a bipartisan piece of legislation.

WHERE DO WE GO FROM HERE?

First we must address the current under-funding of our public schools and school programs. Following the Great Recession of 2008, many Republicans in Congress insisted on enacting a harmful policy known as sequestration, arbitrarily implementing government-wide budget caps in an attempt to project fiscal responsibility. These cuts were passed as part of the Budget Control Act of 2011, also known as the debt ceiling compromise.⁹⁰ The sequester took effect on March 1, 2013, triggering caps on discretionary spending and demanding \$1.5 trillion in spending cuts over ten years.⁹¹ This was anything but fiscally responsible. Many lawmakers have consistently made exceptions for defense and national security spending, as well as unfunded tax cuts for the wealthiest Americans, yet demanded budgetary offsets for any spending that improves the lives of everyday Americans. Programs such as Medicaid,⁹² the Supplemental Nutrition Assistance Program (SNAP),⁹³ the Women, Infants, and Children (WIC) program,⁹⁴ the National School Breakfast and Lunch Programs,⁹⁵ and public education funding

⁸⁸ See Pub. L. No. 115-13 (2017).

⁸⁹ See *id.*

⁹⁰ See Dylan Matthews, *The Sequester: Absolutely everything you could possibly need to know, in one FAQ*, WASH. POST (Feb. 20, 2013), https://www.washingtonpost.com/news/wonk/wp/2013/02/20/the-sequester-absolutely-everything-you-could-possibly-need-to-know-in-one-faq/?utm_term=.095dd27f8f59 [https://perma.cc/EA8G-7Y9P].

⁹¹ See *id.*

⁹² See Edwin Park, *House GOP Medicaid Provisions Would Cut Federal Medicaid Spending by \$560 Billion Over Next Decade*, CTR. ON BUDGET & POL'Y PRIORITIES (Mar. 3, 2017), <http://www.cbpp.org/blog/house-gop-medicaid-provisions-would-cut-federal-medicaid-spending-by-560-billion-over-next> [https://perma.cc/A2N6-Q63B].

⁹³ See Dottie Rosenbaum & Brynne Keith-Jennings, *House 2017 Budget Plan Would Slash SNAP by More Than \$150 Billion Over Ten Years*, CTR. ON BUDGET & POL'Y PRIORITIES (Mar. 21, 2016), <http://www.cbpp.org/research/food-assistance/house-2017-budget-plan-would-slash-snap-by-more-than-150-billion-over-ten> [https://perma.cc/69SZ-6RDV].

⁹⁴ See Zoë Neuberger & Robert Greenstein, *The Impact of the Sequester on WIC*, CTR. ON BUDGET & POL'Y PRIORITIES (Apr. 11, 2013), <http://www.cbpp.org/research/the-impact-of-the-sequester-on-wic> [https://perma.cc/SN9U-KZCF].

⁹⁵ See Zoë Neuberger, *House Proposal to Block-Grant School Meal Programs Would Put Children's Nutrition at Risk*, CTR. ON BUDGET & POL'Y PRIORITIES (July 8, 2016), <http://www>

have been favorite targets for budgetary cuts.⁹⁶ Republicans have demanded budget offsets for emergency funding after Hurricane Sandy⁹⁷ and delayed funding to help those poisoned by their state government in Flint, Michigan for nearly a year.⁹⁸ Children are still being poisoned by lead in their homes due to cutbacks to lead abatement programs over several years, affecting their learning and behavioral development.⁹⁹ There is currently no significant infrastructure investment in our schools, leaving many without clean, working drinking fountains. The list could go on.

According to the Department of Education, the Federal contribution to elementary and secondary education for school year 2012–2013 was only about eight percent of total funding.¹⁰⁰ This percentage includes funds not provided by the Department of Education, such as Head Start funds distributed by the Department of Health and Human Services and the Department of Agriculture’s National School Lunch program.¹⁰¹ President Obama’s Fiscal Year (FY) 2017 budget request included \$69.4 billion in discretionary funding for the Department of Education, an increase of \$1.3 billion over FY 2016.¹⁰² Unfortunately, Congress’s inability to agree on a bipartisan budget that properly invested in priorities of both parties led to the passage of a Continuing Resolution, flat funding agencies at the FY 2016 level through April and hindering any increased investment.¹⁰³ As the President rolls out his new budget for fiscal year 2018, watch for domestic programs to be the target of cuts as a way to “offset” increases in defense spending and to pay

.cbpp.org/research/food-assistance/house-proposal-to-block-grant-school-meal-programs-would-put-childrens [https://perma.cc/G94Q-ZM3S].

⁹⁶ See Michael Leachman, Nick Albares, Kathleen Masterson, & Marlana Wallace, *Most States Have Cut School Funding, and Some Continue Cutting*, CTR. ON BUDGET & POL’Y PRIORITIES (Jan. 25, 2016), <http://www.cbpp.org/research/state-budget-and-tax/most-states-have-cut-school-funding-and-some-continue-cutting> [https://perma.cc/JE9R-NRWB].

⁹⁷ Hernandez Raymond Hernandez, Congress Approves \$51 Billion in Aid for Hurricane Victims, N.Y. TIMES (Jan. 28, 2013), <http://www.nytimes.com/2013/01/29/nyregion/congress-gives-final-approval-to-hurricane-sandy-aid.html> [https://perma.cc/E9YU-WTD4].

⁹⁸ See Phil Helsel, *Senator Puts Hold on Lead Bill, Says Flint Doesn’t Need Fed Aid*, NBC NEWS (March 4, 2016), <http://www.nbcnews.com/news/us-news/senator-puts-hold-lead-bill-says-flint-doesn-t-need-n532136> [https://perma.cc/K254-K8JU].

⁹⁹ See Harry Stein & Brendan Duke, *House Budget Cuts Would Weaken the Economy for Future Generations*, CTR. FOR AM PROGRESS (Apr. 14, 2016), <https://www.americanprogress.org/issues/economy/reports/2016/04/14/135661/house-budget-cuts-would-weaken-the-economy-for-future-generations/> [https://perma.cc/MP95-VELA].

¹⁰⁰ *The Federal Role in Education*, U.S. DEP’T OF EDUC. (July 21, 2016), <https://www2.ed.gov/about/overview/fed/role.html> [https://perma.cc/E4BS-XFSZ].

¹⁰¹ *Id.*

¹⁰² Melanie Garunay, *President Obama’s Final Budget: Innovating for a Better Future*, WHITE HOUSE (Feb. 9, 2016), <https://obamawhitehouse.archives.gov/blog/2016/02/09/president-obamas-2017-budget-innovating-better-future> [https://perma.cc/FR42-ZABP].

¹⁰³ See Further Continuing and Security Assistance Appropriations Act, 2017, Pub. L. No. 114-254, 130 Stat. 1005.

for tax cuts for top earners. In reality, the Department of Education's budget constitutes only a small part of education spending.¹⁰⁴

Still, the Department's elementary and secondary programs annually serve nearly 16,900 school districts and approximately 50.4 million students attending more than 98,000 public schools and an additional 5.2 million students in 28,000 private schools.¹⁰⁵ Furthermore, ninety-one percent of all American K-12 students attend public schools.¹⁰⁶ When funding cuts driven by sequestration or flat funding and shifting priorities occur, they put our most vulnerable at risk and perpetuate systemic issues such as the school to prison pipeline.¹⁰⁷ These systemic challenges disproportionately impact children of color and those with disabilities or mental health conditions.¹⁰⁸

As discussed above in *San Antonio*, public education is now, in every state, funded primarily through local property taxes allocated to local school districts. This local funding allocation provides the majority of the money spent on public education.¹⁰⁹ So long as this remains the primary school funding mechanism, children attending schools in poorer neighborhoods with lower property values, like many inner cities and rural communities, will be at a disadvantage. Many parents with the means to do so, move their families from neighborhoods with lower performing schools to more affluent neighborhoods with higher performing schools.¹¹⁰ Families without the economic means will never be able to move their children to neighborhoods with a higher tax-base and better-funded school. Federal education policy attempts to correct the inequities in school funding through Title I. Title I of ESEA provides financial assistance to local educational agencies (LEAs) and schools with high numbers or percentages of children from low-income families to help ensure all children meet challenging state academic standards.¹¹¹ The preservation of Title I funding provides those families with

¹⁰⁴ United States Department of Education, Budget Office, (last visited Apr. 6, 2017) <https://www2.ed.gov/about/overview/budget/index.html?src=rt> [https://perma.cc/GW5C-DNZK].

¹⁰⁵ *Id.*

¹⁰⁶ National Center for Education Statistics, (Apr. 6, 2017) <https://nces.ed.gov/fastfacts/display.asp?id=372> [https://perma.cc/H8WR-EYG5].

¹⁰⁷ Catherine Kim, Daniel J. Losen & Damon Hewitt, *The school to prison pipeline: structuring legal reform* (2012).

¹⁰⁸ *Id.*

¹⁰⁹ United States Department of Education, Budget Office—U.S. Department of Education, <https://www2.ed.gov/about/overview/budget/index.html?src=ct> [https://perma.cc/7T64-VL3M].

¹¹⁰ Deluca, Stephanie & Peter Rosenblatt, *Does Moving to Better Neighborhoods Lead to Better Schooling Opportunities? Parental School Choice in an Experimental Housing Voucher Program*, *Teachers College Record*, Vol. 112, Number 5, May 2010, pp. 1443-1491, <http://itp.wceruw.org/Spring%2011%20seminar/DelUCA%20Rosenblatt%202010.pdf> [https://perma.cc/D5FK-GT3P].

¹¹¹ U.S. Department of Education, Programs: Improving Basic Programs Operated by Local Education Agencies (Title I, Part A), <https://www2.ed.gov/programs/titleiparta/index.html?exp=0> [https://perma.cc/MWB4-D68E].

more school resources for their children, and is critical to equitable public education investment.

Access to a quality public education should be considered a fundamental right for all our children. We do not want the quality of a child's education to be determined by how much their state chooses to invest in public education. A child in Kansas, Wisconsin, or Alabama, for example, should not receive a lesser quality education than a child in California, New York, or Massachusetts based on the tax policies and priorities of their Governor or the state legislature's ruling political party. As a nation, America must ask itself a simple question: what do we stand for? For example, if we can suddenly find \$8-20 billion, or more (depending on the estimate one chooses), to pay for a wall few experts believe will solve any real immigration problem, why should we not instead invest that money in our children's future?

Where we choose to invest taxpayer dollars is a direct reflection of our priorities as a nation. The idea of a southern border wall is merely one example in the news today. In his first budget outline, President Trump calls for a \$54 billion increase in defense spending while proposing significant cuts to critical domestic programs. Those dollars could instead be invested in a wide range of vital programs, such as: universal Pre-K; large-scale investments in public school education and infrastructure; increasing rates of reimbursement for national school breakfast and lunch programs so schools can invest in fresh foods, new kitchen equipment, nutrition education, and food service workers; increasing access to free or reduced-price meals for vulnerable children; increasing funding for summer feeding and summer electronic benefit transfer (EBT) programs so children will not go hungry during the summer months; increasing funding for the highly successful Farm-to-School grant program; investments in continuing education for teachers; increasing funding so schools can reinvest in physical education and the arts; or providing schools with necessary funding to eradicate lead in paint and drinking water systems.

The real discussion about education investment requires going beyond public versus private school funding. Schools are a sanctuary for many of our most vulnerable children. For example, the free or dramatically reduced price meals they receive at school may be the only meals many eat on a given day.¹¹² Innovative programs like the summer electronic benefits transfer pilot and Farm-to-School grants expand children's access to healthy meals and their knowledge of healthy eating. As the former Secretary of Agriculture Tom Vilsack testified, Farm-to-School programs produce nearly \$300 million in local economic benefit with only \$5-6 million in grants dis-

¹¹² 13.1 million children in the United States lived in food insecure households in 2015. Alisha Coleman-Jensen, et al., *Household Food Insecurity in the United States in 2015*, USDA ERS (Sept. 2016), <https://www.ers.usda.gov/webdocs/publications/err215/err-215.pdf> [<https://perma.cc/LC65-GG8C>].

tributed nationwide.¹¹³ The *Farm to School Act of 2015*, which I co-introduced with my colleague Representative Jeff Fortenberry (R-NE), would increase the amount of grant dollars to \$15 million.¹¹⁴ The bill was largely incorporated in the House and Senate versions of Child Nutrition Reauthorization, which unfortunately did not pass the 114th Congress.¹¹⁵ Farm-to-School is a proven program and I will continue advocating for its expansion. If we are going to spend taxpayer dollars, Congress must be good stewards of the people's money and spend it on measures that will improve the lives of America's families and children.

Our public education system is not just under budgetary attacks. This year, legislation was introduced that would eliminate the Department of Education.¹¹⁶ Another bill was introduced that would repeal ESEA and limit the authority of the Department to solely administering block grant funding, completely turning public education funds into a voucher program.¹¹⁷ The very first Education and Workforce Committee hearing on education in the 115th Congress was "*Helping Students Succeed Through the Power of Choice*," focusing again on converting public education dollars into vouchers.¹¹⁸ The accountability and data collection standards of ESSA discussed above are already under attack and must be preserved to ensure that all students are receiving a quality education. Despite these attempts to reduce or completely eliminate the Department of Education, I believe there will always be a role for the Federal government in education. Ensuring a uniform standard of accountability for taxpayer dollars, equal enforcement of federal

¹¹³ Testimony of Former Secretary of Agriculture Thomas Vilsack before the House Committee on Education and the Workforce, Full Committee: "*Child Nutrition Assistance: Are Federal Rules and Regulations Serving the Best Interests of Schools and Families?*," June 16, 2015, archived video available at: <http://edworkforce.house.gov/calendar/eventingle.aspx?EventID=399016> [<https://perma.cc/HC3X-QAZQ>].

¹¹⁴ *Farm to School Act of 2015*, by Rep. Jeff Fortenberry (R-NE) & Rep. Marcia L. Fudge (D-OH), introduced Feb. 25, 2015 (H.R. 1061 - 114th Congress), <https://www.congress.gov/bill/114th-congress/house-bill/1061?q=%7B%22search%22%3A%5B%22Fudge%22%5D%7D> [<https://perma.cc/9YCW-BUBA>].

¹¹⁵ See H.R. 5003, *Improving Child Nutrition and Education Act of 2016*, by Rep. Todd Rokita, introduced 04/20/2016, (114th Congress), <https://www.congress.gov/bill/114th-congress/house-bill/5003?q=%7B%22search%22%3A%5B%22hr5003%22%5D%7D&r=1> [<https://perma.cc/3KWJ-BPUP>].

¹¹⁶ See H.R. 899 - "To Terminate the Department of Education," by Rep. Thomas Massie (R-KY-4), introduced February 7, 2017, <https://www.congress.gov/bill/115th-congress/house-bill/899?q=%7B%22search%22%3A%5B%22hr899%22%5D%7D&r=1> [<http://perma.cc/W7ZG-R5D5>].

¹¹⁷ H.R. 610 - "To distribute Federal funds for elementary and secondary education in the form of vouchers for eligible students and to repeal a certain rule relating to nutrition standards in schools", introduced by Rep. Steve King (R-IA-4), introduced January 23, 2017, <https://www.congress.gov/search?q={%22congress%22:%22115%22,%22source%22:%22legislation%22,%22search%22:%22hr610%22}&searchResultViewType=expanded> [<http://perma.cc/A2VQ-TXAQ>].

¹¹⁸ *Helping Students Succeed Through the Power of School Choice: Hearings before the Subcommittee on Early Childhood, Elementary, and Secondary Education*, U.S. House of Representatives, 115th Cong. 1 (2017), <http://edworkforce.house.gov/calendar/eventingle.aspx?EventID=401212> [<http://perma.cc/3B92-P88X>].

civil rights statutes (nondiscrimination, IDEA, etc.), and conducting nationwide research are essential functions most effectively performed at the federal level. The Department of Education, accountable to both chambers of Congress, is an essential monitoring and enforcement mechanism to ensure all students are treated equally, regardless of race, gender, religion, disability, or sexual orientation.

The Trump Administration has made its view on public education clear. On the campaign trail, then candidate Trump's main public education proposal consisted of a \$20 billion plan to reprioritize education funds into vouchers.¹¹⁹ President Trump has referred to our critical public education system "failing government schools."¹²⁰ In Betsy DeVos, President Trump found a champion of school vouchers and privatization. Though lacking any formal training in education, Secretary DeVos aimed to completely restructure Michigan's education system, lobbying to shift monies away from traditional public education toward for-profit, religious-based charter and private schools.¹²¹ This is especially troubling because Secretary DeVos has done so while not only seeking to divert taxpayer dollars away from our public schools, but while simultaneously insisting that charter and private schools should not be subject to the same transparency and reporting requirements associated with taking public monies. Using taxpayer dollars to subsidize education with a specific religious tilt is also constitutionally questionable given the restrictions of the Establishment Clause of the First Amendment and legal precedent necessitating the separation of church and state.¹²²

I am not an opponent of private and charter schools.¹²³ I am an advocate for the proposition that all children deserve access to a high quality education. I am not convinced that greater "choice" is the only magic bullet solution to our education issues, even though it seems to be the only conversation many lawmakers want to have regarding elementary and secondary

¹¹⁹ *New School Choice Policies to be Unveiled by Donald J. Trump Today*, TRUMP PENCE MAKE AMERICA GREAT AGAIN (Sept. 8, 2016), <https://www.donaldjtrump.com/press-releases/new-school-choice-policies-to-be-unveiled-by-donald-j.-trump-today> [http://perma.cc/NBX5-587E].

¹²⁰ *Trump Outlines Bold New Plan for School Choice*, TRUMP PENCE MAKE AMERICA GREAT AGAIN (Sept. 8, 2016), <https://www.donaldjtrump.com/press-releases/donald-j.-trump-remarks-on-school-choice> [http://perma.cc/S8T8-G7FB].

¹²¹ Kate Zernike, *Betsy DeVos, Trump's Education Pick Has Steered Money From Public Schools*, N.Y. TIMES, <https://www.nytimes.com/2016/11/23/us/politics/betsy-devos-trumps-education-pick-has-steered-money-from-public-schools.html> [https://perma.cc/SZ7L-2RXL].

¹²² U.S. CONST. amend. I; *see also*, *Everson v. Board of Education*, 330 U.S. 1 (1947) (stated explicitly that the Constitution has erected a "wall between church and state" or a "separation of Church from State"); *Engel v. Vitale*, 370 U.S. 421 (1962) (unconstitutional for state officials to compose an official school prayer and require its recitation in public school); *Epperson v. Arkansas*, 393 U.S. 97 (1968) (overturning an Arkansas state law that banned the teaching of evolution in public schools for religious purposes).

¹²³ Congresswoman Marcia L. Fudge Call for More Accountability, at House Committee on Education and the Workforce Full Committee Hearing, Expanding Educational Opportunity Through School Choice (Feb. 3, 2016), <https://www.youtube.com/watch?v=sQ2ppZsOfmQ&index=7&list=PLvMJEyscsnRvln2bwTAZseFgzoOqZ7Q> [http://perma.cc/P5Z9-U3S6].

education improvements. I believe we should be wary of arguments that call for investment of more public money in “choice” for charter and private schools, as long as proponents resist accountability measures and data collection. I cannot say it often enough: any entity using taxpayer dollars should be transparent and accountable to the American taxpayer. We, as the United States Congress, are accountable for the dollars we take from taxpayers. We are responsible to the people of the United States, regardless of the type of school those resources support. Our children’s education should not be for sale to for-profit corporations, which are very vocal proponents of the magic bullet of choice without full public accountability.

With the consistent emphasis on choice, I will always forcefully advocate as much for those students without a choice as my colleagues do for those with a choice. We must spend as much time focusing on the schools that educate ninety to ninety-five percent of all of our children as we do on those that educate five to ten percent.¹²⁴ The poorest among us will continue to suffer in underfunded public schools as more and more resources are diverted to choice programs. Too many parents will not have the resources to make up tuition differences or cover services such as transportation, inevitably reserving school choice for parents who can already afford it. While school choice supporters often cite the desire to provide low-income students with opportunities beyond their local “failing” public schools, many of these programs do not require students to have previously enrolled in a public school; therefore public funds are benefiting students who are already attending private schools.¹²⁵

We must be vigilant about the consequences private school choice programs will inevitably have for some of our most vulnerable populations.¹²⁶ It cannot be emphasized enough that, aside from resisting academic accountability standards, these programs are not obligated to adhere to federal civil rights laws, including IDEA.¹²⁷ Even more disturbing is the fact that Secretary DeVos showed a stunning lack of basic comprehension during her Senate confirmation hearing about what these laws do and the Department’s role

¹²⁴ The Condition of Education - Participation in Education - Elementary/Secondary - Private School Enrollment - Indicator May (2016), https://nces.ed.gov/programs/coe/indicator_cgc.asp

¹²⁵ Huriya Jabbar et al., *Will School Vouchers Benefit Low-Income Families? Assessing the Evidence*, TEX. CTR. FOR EDUC. POLICY (2015), <http://www.edb.utexas.edu/tcep/resources/TCEP%20Graduate%20Seminar%20DRAFT%20Vouchers%20Memo.pdf> [<https://perma.cc/6XFV-MWBC>].

¹²⁶ Neil Campbell & Catherine Brown, *Vouchers Are Not a Viable Solution for Vast Swaths of America*, CTR. FOR AM. PROGRESS (March 3, 2017), <https://www.americanprogress.org/issues/education/news/2017/03/03/414853/vouchers-are-not-a-viable-solution-for-vast-swaths-of-america/> [<https://perma.cc/6CRH-UDTT>].

¹²⁷ U.S. Department of Education, *Provisions Related to Children With Disabilities Enrolled by Their Parents in Private Schools* (2008), <https://www2.ed.gov/admins/lead/speced/privateschools/idea.pdf> [<https://perma.cc/5NDD-FPXV>].

in enforcing them.¹²⁸ The pursuit of choice can prove to be disastrous as parents sign their rights away and are left with few remedies, if any, when their children do not receive the appropriate accommodations and resources.

Our public education system will not fix itself, nor will *de facto* segregation correct itself overnight. When problems come to light, it is the responsibility of Congress to act. An April 2016 report by the Government Accountability Office (GAO) found that the number of socioeconomic and racially segregated schools is actually increasing, negatively impacting students nationwide.¹²⁹ Data show that poor, segregated schools receive fewer resources, offer students fewer educational opportunities, and administer more disciplinary actions.¹³⁰ Expanding socioeconomic and racial diversity in schools will reverse these troubling trends and help future generations receive the education they deserve. In fact, students from low-income households who attend diverse schools are nearly seventy percent more likely to attend college than students from similarly situated households who attend high-poverty schools.¹³¹

This is why I introduced the *Stronger Together School Diversity Act of 2016* (H.R. 5738).¹³² *Stronger Together* creates a voluntary program to support the development and expansion of new and existing community-driven strategies to increase diversity in America's schools. The bill authorizes \$120 million to provide planning and implementation grants to support voluntary local efforts to increase socioeconomic and racial diversity in schools; supports school districts, independently or in collaboration with neighboring districts, as well as regional educational authorities and educational service agencies; and allows grants to fund a range of proposals including studying segregation, evaluating current policies, and developing evidence-based plans to address socioeconomic and racial isolation, creating or expanding innovative school programs that can attract students from outside the local area, and recruiting, hiring, and training new teachers to support specialized schools. Increasing diversity in staff, resources, and stu-

¹²⁸ Testimony of Secretary of Education Betsy DeVos before the Senate Committee on Health, Education, Labor, and Pensions, Full Committee: "Nomination of Betsy DeVos to serve as Secretary of Education," January 17, 2017, archived video, <https://www.help.senate.gov/hearings/nomination-of-betsy-devos-to-serve-as-secretary-of-education> [<https://perma.cc/KT3A-VEBF>].

¹²⁹ See generally Government Accountability Office, *K-12 Education: Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination* (GAO-16-345) (April 2016), <http://www.gao.gov/assets/680/676745.pdf> [<https://perma.cc/VF2L-NRTB>].

¹³⁰ *Id.*

¹³¹ *The Benefits of Socioeconomic and Racially Integrated Schools and Classrooms*, THE CENTURY FOUND. (Feb. 10, 2016), <https://tcf.org/content/facts/the-benefits-of-socioeconomically-and-racially-integrated-schools-and-classrooms/> [<https://perma.cc/MX8B-6X44>].

¹³² Stronger Together School Diversity Act of 2016, H.R. 5738, 114th Cong., by Rep. Marcia L. Fudge (D-OH-11) (July 12, 2016), <https://www.congress.gov/bill/114th-congress/house-bill/5738?q=%7B%22search%22%3A%5B%22Stronger+Together%22%5D%7D&r=1> [<https://perma.cc/MX8B-6X44>].

dent populations in our public schools is a critical part of reinvesting in public education.

We must invest in our teachers. Teachers receive some of the lowest pay when compared to other college graduates, as well as all workers. As of 2015, public school teachers earned twenty-three percent less than other college graduates and only five percent more than all other workers.¹³³ African American female teachers in the early childhood workforce feel poor compensation and benefits most acutely, earning an average of eighty-four cents for every \$1 earned by their white counterparts.¹³⁴ When adjusted for educational backgrounds, years of experience, and employment characteristics, the gap is still ninety-three cents on the dollar, a meaningful difference in a workforce making an average of \$30,000 per year.¹³⁵ We entrust teachers with our most precious resources, our children, and demand more and more from them in terms of accountability and student performance. It is only fair and just that we compensate them accordingly.

Investment in education also includes investment in childcare and early learning programs so that all children start school on as equal a footing as possible. The Child Care and Development Block Grant, for example, serves only eight percent of federally eligible children in Ohio,¹³⁶ reaching only 45,600 Ohio children.¹³⁷ Only twelve percent of three-year-olds and seventeen percent of four-year-olds in Ohio are enrolled in public preschool programs.¹³⁸ We can and must do better. Access to high quality, early childhood learning is not only an education issue; it is also an issue of economic equality.¹³⁹ There are nearly 24 million children under the age of six in the

¹³³ Sylvia A. Allegretto & Lawrence R. Mishel, "Teachers' pay continues to fall further behind pay of comparable workers," *ECON. POL'Y INST.*, (Aug. 9, 2016), <http://www.epi.org/publication/the-teacher-pay-gap-is-wider-than-ever-teachers-pay-continues-to-fall-further-behind-pay-of-comparable-workers/> [<https://perma.cc/XB68-QBXY>].

¹³⁴ Simon Workman & Rebecca Ullrich, *Quality 101: Identifying the Core Components of a High-Quality Early Childhood Education Program*, *CTR. FOR AM. PROGRESS*, (Feb. 13, 2017), <https://www.americanprogress.org/issues/early-childhood/reports/2017/02/13/414939/quality-101-identifying-the-core-components-of-a-high-quality-early-childhood-program/> [<https://perma.cc/W8PF-RP4Q>].

¹³⁵ Rebecca Ulrich, Katie Hamm, & Leila Schochet, *6 Policies to Support the Early Childhood Workforce*, *CTR. FOR AM. PROGRESS* (Feb. 6, 2017), <https://www.americanprogress.org/issues/early-childhood/reports/2017/02/06/298085/6-policies-to-support-the-early-childhood-workforce/> [<https://perma.cc/3ZFF-PR68>].

¹³⁶ *Investments in Early Childhood*, *OFFICE OF CHILD CARE* (April 12, 2016), <http://www.acf.hhs.gov/programs/occ/investments-in-early-childhood> [<https://perma.cc/AF6V-FU5U>].

¹³⁷ *FY 2014 Preliminary Data Table 1 - Average Monthly Adjusted Number of Families and Children Served*, *OFFICE OF CHILD CARE*, (May 26, 2015), <http://www.acf.hhs.gov/programs/occ/resource/fy-2014-preliminary-data-table-1> [<https://perma.cc/HYV9-AW5T>].

¹³⁸ W. Steven Barnett, et al., *The State of Preschool 2015: State Preschool Yearbook*, *NAT'L INST. FOR EARLY EDUC. RES.*, (2016), <http://nieer.org/state-preschool-yearbooks/the-state-of-preschool-2015> [<https://perma.cc/N54L-472M>]. In states that do not serve 3-year-olds or with no preschool program, enrollment rates include federal Head Start only.

¹³⁹ *A Matter of Equity: Preschool in America*, *U.S. DEPT. OF EDUC.* (2015), <https://www2.ed.gov/documents/early-learning/matter-equity-preschool-america.pdf> [<https://perma.cc/3DHX-GCPM>].

United States.¹⁴⁰ Sixty-five percent of these children live in households with all available parents participating in the workforce, yet only ten percent of child care programs in the United States are considered to be high quality.¹⁴¹ Furthermore, only fourteen percent of three-year-olds and thirty-six percent of four-year-olds are enrolled in a public preschool setting such as Head Start or state-funded preschool program.¹⁴²

The average cost of center-based childcare in the United States comprises nearly thirty percent of the median family income, mitigating much of the economic benefit of both parents working if family earnings are not at the higher end of the income scale.¹⁴³ In Ohio, 847,640 children are under the age of six.¹⁴⁴ Sixty-nine percent of these children come from households with all available parents in the workforce.¹⁴⁵ The annual cost of childcare at Ohio centers averages \$16,318 per year for an infant and a four-year-old, or twenty-seven percent of the median income for families with children.¹⁴⁶ In most cases, specifically for low-income families and people of color, the average cost of childcare would constitute a majority of family net income.¹⁴⁷ Combine this cost with persistently low wages and the increasing cost of housing, and quality childcare and preschool are out of reach for far too many families. Ensuring access to affordable childcare and pre-K schooling can increase mothers' workforce participation, boosting families' incomes and the overall state's economy.¹⁴⁸ The economic impact of investing in quality, affordable childcare and early learning programs is indisputa-

¹⁴⁰ Jessica Troe, *Early Learning in the United States*, CTR. FOR AM. PROGRESS (July 19, 2016), <https://www.americanprogress.org/issues/early-childhood/reports/2016/07/19/141234/early-learning-in-the-united-states/> [https://perma.cc/655L-9E7X].

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Center for American Progress, *Ohio Fact Sheet citing Bureau of the Census, "Current Population Survey, Annual Social and Economic Supplement, 2015,"* <http://www.census.gov/cps/data/cpstabcreeator.html> (last accessed April 2016); Jessica Troe, *Early Learning in Ohio*, CTR. FOR AM. PROGRESS (July 19, 2016), https://cdn.americanprogress.org/wp-content/uploads/2016/07/13123316/EC-factsheets_OH.pdf [https://perma.cc/MH2H-9YUQ].

¹⁴⁵ American FactFinder, United States Census Bureau (Table GCT2302: Percent of Children Under 6 Years Old with All Parents in the Labor Force - United States — States; and Puerto Rico, Universe: Own children under 6 years in families and subfamilies, 2010-2014 American Community Survey 5-Year Estimates, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_GCT2302US01PR&prodType=table [https://perma.cc/4GCY-X5MB].

¹⁴⁶ See Kids Count Data Center, Median Family Income Among Households With Children, <http://datacenter.kidscount.org/data/tables/65-median-family-income-among-households-with-children#detailed/1/any/false/573,869,36,868,867/any/365> [https://perma.cc/CCV8-VASS].

¹⁴⁷ See Kids Count Data Center, *Median Family Income Among Households With Children By Race And Ethnicity*, <http://datacenter.kidscount.org/data/tables/8782-median-family-income-among-households-with-children-by-race-and-ethnicity#detailed/1/any/false/573,869,36,133,35/4038,4040,4039,2638,2597,4758,1353/17618> [https://perma.cc/E2KR-Y4YB].

¹⁴⁸ Josh Bivens et al., "It's time for an ambitious national investment in America's children," ECON. POL'Y INST. (APRIL 6, 2016), [HTTP://WWW.EPL.ORG/PUBLICATION/ITS-TIME-FOR-AN-AMBITIOUS-NATIONAL-INVESTMENT-IN-AMERICAS-CHILDREN/](http://www.epl.org/publication/its-time-for-an-ambitious-national-investment-in-americas-children/) [HTTPS://PERMA.CC/4VJQ-T67Q].

ble. Analysis shows that, in Ohio alone, if annual childcare costs did not exceed more than ten percent of the family's income, the state's economy would increase nearly \$65.83 million.¹⁴⁹

Recognizing the importance of affordable early childhood education, ESSA includes a new title specifically designed to stimulate innovation and coordinate state efforts.¹⁵⁰ Title IX authorizes a new Preschool Development Grant program within the Department of Health and Human Services and jointly administered by the Department of Education.¹⁵¹ These competitive grants will provide funding for states that propose to improve coordination, quality, and access in early childhood education for low- and moderate-income children from birth to age five. States will be supported in implementing strategic plans for high quality early learning, encouraging partnerships with Head Start, states, and local agencies, and maximizing parental choice within a mixed delivery system.¹⁵² According to the First Five Years Fund, these ESSA provisions "aim to promote early learning coordination within communities; greater alignment with the early elementary grades; and early childhood education focused capacity building among teachers, leaders, and other staff serving young children."¹⁵³

CONCLUSION

We are entering interesting and potentially dangerous times for public education. We must never give up on the fight to provide a high quality education to each and every child in America. The foundation of our education policy is still functioning as a basic civil rights protection, but we must do more. No child in America should go hungry, and we must fight for each and every child to have access to a quality breakfast and lunch, not just during the school year, but all year. Access to affordable, quality early learning programs should be universal. We must work toward enacting a universal pre-K program to ensure that all children start life on an equal educational footing, regardless of their parent's income or the state in which they live. As Congress discusses the federal budget and appropriations, we must preserve, and increase, funding for Head Start and after-school programs.

The passage of ESSA was an important step forward, but it is important to continue to advocate for transparency and state accountability on behalf of all students. We must never lose sight of the incredible value that comes

¹⁴⁹ *Id.*

¹⁵⁰ Every Student Succeeds Act of 2015, Pub. L. No. 114-95, 114 Stat. 1177 (2015).

¹⁵¹ *Id.*

¹⁵² First Five Years Fund, *Comparing the Three Iterations of the Nation's Biggest Education Law – ESSA* (Jan. 11, 2016) <http://ffyf.org/resources/comparison-of-three-iterations-of-the-nations-biggest-education-law/> [<https://perma.cc/7FV5-2KUU>].

¹⁵³ First Five Years Fund, "Summary and Analysis: Early Learning Provisions of the Every Student Succeeds Act," (Jan. 18, 2016), <http://ffyf.org/resources/eceinessa2015/> [<https://perma.cc/5EVB-4RKK>].

when we fully invest in education. Congress learned from the shortcomings of No Child Left Behind and now we will continue to work with states to strike a balance between accountability and flexibility so that across the country - regardless of zip code - students have the opportunity to follow their dreams. Those bootstraps we tell everyday Americans to grab hold of must be strengthened, not ripped from their very hands.

“Education is the passport to the future, for tomorrow belongs to those who prepare for today.”

–Malcolm X